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Resolution 2021- 108

AUTHORIZING SAWYER COUNTY TO ENTER INTO AN ENGAGEMENT AGREEMENT TO PURSUE LITIGATION AGAINST CERTAIN MANUFACTURERS, DISTRIBUTORS, AND RETAILERS OF OPIOID PHARMACEUTICALS

WHEREAS, in Resolution No. 2017-45 the County Board of Supervisors authorized the County to enter into an engagement agreement with von Briesen & Roper, s.c., Crueger Dickinson LLC and Simmons Hanly Conroy LLC (the “Law Firms”) to pursue litigation against certain manufacturers, distributors, and retailers of opioid pharmaceuticals (the “Opioid Defendants”) in an effort to hold the Opioid Defendants financially responsible for the County’s expenditure of vast money and resources to combat the opioid epidemic;

WHEREAS, on behalf of the County, the Law Firms filed a lawsuit against the Opioid Defendants;

WHEREAS, the Law Firms filed similar lawsuits on behalf of 66 other Wisconsin counties and all Wisconsin cases were coordinated with thousands of other lawsuits filed against the same or substantially similar parties as the Opioid Defendants in the Northern District of Ohio, captioned *In re: Opioid Litigation*, MDL 2804 (the “Litigation”);

WHEREAS, four (4) additional Wisconsin counties (Milwaukee, Dane, Waukesha, and Walworth) hired separate counsel and joined the Litigation;

WHEREAS, since the inception of the Litigation, the Law Firms have coordinated with counsel from around the country (including counsel for Milwaukee, Dane, Waukesha, and Walworth Counties) to prepare the County’s case for trial and engage in extensive settlement discussions with the Opioid Defendants;

WHEREAS, the settlement discussions with McKesson Corporation, Cardinal Health, Inc., AmerisourceBergen Corporation, Johnson & Johnson, Janssen Pharmaceuticals, Inc., Ortho-McNeil-Janssen Pharmaceuticals, Inc., and Janssen Pharmaceutica, Inc. (the “Settling Defendants”) resulted in a tentative agreement as to settlement terms pending agreement from the County and other plaintiffs involved in the Litigation;

WHEREAS, copies of the Distributors Settlement Agreement and Janssen Settlement Agreement (collectively “Settlement Agreements”) representing the terms of the tentative settlement agreements with the Settling Defendants have been provided with this Resolution;

WHEREAS, the Settlement Agreements provide, among other things, for the payment of certain sums to Participating Subdivisions (as defined in the Settlement Agreements) upon the occurrence of certain events detailed in the Settlement Agreements;

WHEREAS, the County is a Participating Subdivision in the Settlement Agreements and has the opportunity to participate in the benefits associated with the Settlement Agreement provided the County (a) approves the Settlement Agreements; (b) approves the Memorandum

47 of Understanding allocating proceeds from the Settlement Agreements among the various
48 Wisconsin Participating Subdivisions, a copy of which is attached to this Resolution (the
49 “Allocation MOU”); (c) approves the Memorandum of Understanding with the Wisconsin
50 Attorney General regarding allocation of settlement proceeds, a copy of which is attached to
51 this Resolution (the “AG MOU”); and (d) the Legislature’s Joint Committee on Finance
52 approves the terms of the Settlement Agreements and the AG MOU;

53

54 **WHEREAS**, 2021 Wisconsin Act 57 created Section 165.12 of the Wisconsin Statutes
55 relating to the settlement of all or part of the Litigation;

56

57 **WHEREAS**, pursuant to Wis. Stat. § 165.12(2), the Legislature’s Joint Committee on
58 Finance is required to approve the Settlement Agreements and the AG MOU;

59

60 **WHEREAS**, pursuant to Wis. Stat. § 165.12(2), the proceeds from any settlement of
61 all or part of the Litigation are distributed 70% to local governments in Wisconsin that are
62 parties to the Litigation and 30% to the State;

63

64 **WHEREAS**, Wis. Stat. § 165.12(4)(b)2. provides the proceeds from the Settlement
65 Agreement must be deposited in a segregated account (the “Opioid Abatement Account”) and
66 may be expended only for approved uses for opioid abatement as provided in the Settlement
67 Agreements;

68

69 **WHEREAS**, Wis. Stat. § 165.12(7) bars claims from any Wisconsin local government
70 against the Opioid Defendants filed after June 1, 2021;

71

72 **WHEREAS**, the definition of Participating Subdivisions in the Settlement Agreements
73 recognizes a statutory bar on claims such as that set forth in Wis. Stat. § 165.12(7) and, as a
74 result, the only Participating Subdivisions in Wisconsin are those counties and municipalities
75 that were parties to the Litigation (or otherwise actively litigating a claim against one, some, or
76 all of the Opioid Defendants) as of June 1, 2021;

77

78 **WHEREAS**, the Legislature’s Joint Committee on Finance is not statutorily authorized
79 or required to approve the allocation of proceeds of the Settlement Agreements among
80 Wisconsin Participating Subdivisions;

81

82 **WHEREAS**, the Law Firms have engaged in extensive discussions with counsel for all
83 other Wisconsin Participating Subdivisions resulting in the proposed Allocation MOU, which
84 is an agreement between all of the entities identified in the Allocation MOU as to how the
85 proceeds payable to those entities under the Settlement Agreements will be allocated;

86

87 **WHEREAS**, there is provided with this Resolution a summary of the essential terms of
88 the Settlement Agreements, the deadlines related to the effective dates of the Settlement
89 Agreements, the ramifications associated with the County’s refusal to enter into the Settlement
90 Agreements, the form of the Allocation MOU, the form of the AG MOU, and an overview of
91 the process for finalizing the Settlement Agreements;

92

93 **WHEREAS**, the County, by this Resolution, shall establish the Opioid Abatement
94 Account for the receipt of the proceeds of the Settlement Agreements consistent with the terms
95 of this Resolution;

96
97 **WHEREAS**, the County's Opioid Abatement Account shall be separate from the
98 County's general fund, shall not be commingled with any other County funds, and shall be
99 dedicated to funding opioid abatement measures as provided in the Settlement Agreements;

100
101 **WHEREAS**, pursuant to the County's engagement agreement with the Law Firms, the
102 County shall pay up to an amount equal to 25% of the proceeds from successful resolution of
103 all or part of the Litigation, whether through settlement or otherwise, plus the Law Firms' costs
104 and disbursements, to the Law Firms as compensation for the Law Firms' efforts in the
105 Litigation and any settlement;

106
107 **WHEREAS**, the Law Firms anticipate making application to the national fee fund
108 established in the Settlement Agreements seeking payment, in whole or part, of the fees, costs,
109 and disbursements owed the Law Firms pursuant to the engagement agreement with the County;

110
111 **WHEREAS**, it is anticipated the amount of any award from the fee fund established in
112 the Settlement Agreements will be insufficient to satisfy the County's obligations under the
113 engagement agreement with the Law Firms;

114
115 **WHEREAS**, the County, by this Resolution, and pursuant to the authority granted the
116 County in the applicable Order emanating from the Litigation in relation to the Settlement
117 Agreements and payment of attorney fees, shall execute an Escrow Agreement, which shall
118 among other things direct the escrow agent responsible for the receipt and distribution of the
119 proceeds from the Settlement Agreements to establish an account for the purpose of segregating
120 funds to pay the fees, costs, and disbursements of the Law Firms owed by the County (the
121 "Attorney Fees Account") in order to fund a state-level "backstop" for payment of the fees,
122 costs, and disbursements of the Law Firms;

123
124 **WHEREAS**, in no event shall payments to the Law Firms out of the Attorney Fees
125 Account and the fee fund established in the Settlement Agreements exceed an amount equal to
126 25% of the amounts allocated to the County in the Allocation MOU;

127
128 **WHEREAS**, the intent of this Resolution is to authorize the County to enter into the
129 Settlement Agreements, the Allocation MOU, and the AG MOU, establish the County's Opioid
130 Abatement Account, and establish the Attorney Fees Account; and

131
132 **WHEREAS**, the County, by this Resolution, shall authorize the County's corporation
133 counsel to finalize and execute any escrow agreement and other document or agreement
134 necessary to effectuate the Settlement Agreements and the other agreements referenced herein;

135
136 **NOW, THEREFORE, BE IT RESOLVED:** the County Board of Supervisors hereby
137 approves:

138


- 139 1. The execution of the Distributors Settlement Agreement and any and all
140 documents ancillary thereto and authorizes the Board Chair to execute same.
141
- 142 2. The execution of the Janssen Settlement Agreement and any and all documents
143 ancillary thereto and authorizes the Board Chair to execute same.
144
- 145 3. The final negotiation and execution of the Allocation MOU in form substantially
146 similar to that presented with this Resolution and any and all documents
147 ancillary thereto and authorizes the Board Chair to execute same upon
148 finalization provided the percentage share identified as allocated to the County
149 is substantially similar to that identified in the Allocation MOU provided to the
150 Board with this Resolution.
151
- 152 4. The final negotiation and execution of the AG MOU in form substantially
153 similar to that presented with this Resolution and any and all documents
154 ancillary thereto and authorizes the Board Chair to execute same.
155
- 156 5. The corporation counsel's negotiation and execution of the Escrow Agreement
157 for the receipt and disbursement of the proceeds of the Settlement Agreements
158 as referenced in the Allocation MOU.
159

160 **BE IT FURTHER RESOLVED:** the County hereby establishes an account separate
161 and distinct from the County's general fund which shall be titled "Opioid Abatement Account."
162 All proceeds from the Settlement Agreements not otherwise directed to the Attorney Fees
163 Account established under the Escrow Agreement shall be deposited in the Opioid Abatement
164 Account. The Opioid Abatement Account shall be administered consistent with the terms of
165 this Resolution, Wis. Stat. § 165.12(4), and the Settlement Agreements.
166

167 **BE IT FURTHER RESOLVED:** the County hereby authorizes the escrow agent
168 under the Escrow Agreement to establish an account separate and distinct from any account
169 containing funds allocated or allocable to the County which shall be referred to by the County
170 as the "Attorney Fees Account." The escrow agent shall deposit a sum equal to up to, but in no
171 event exceeding, an amount equal to 20% of the County's proceeds from the Settlement
172 Agreements into the Attorney Fees Account. If the payments to the County are not enough to
173 fully fund the Attorney Fees Account as provided herein because such payments are made over
174 time, the Attorney Fees Account shall be funded by placing up to, but in no event exceeding,
175 an amount equal to 20% of the proceeds from the Settlement Agreements attributable to Local
176 Governments (as that term is defined in the Allocation MOU) into the Attorney Fees Account
177 for each payment. Funds in the Attorney Fees Account shall be utilized to pay the fees, costs,
178 and disbursements owed to the Law Firms pursuant to the engagement agreement between the
179 County and the Law Firms provided, however, the Law Firms shall receive no more than that
180 to which they are entitled under their fee contract when considering the amounts paid the Law
181 Firms from the fee fund established in the Settlement Agreements and allocable to the County.
182 The Law Firms may make application for payment from the Attorney Fees Account at any time
183 and the County shall cooperate with the Law Firms in executing any documents necessary for
184 the escrow agent to make payments out of the Attorney Fees Account.

185 **BE IT FURTHER RESOLVED** that all actions heretofore taken by the Board of
186 Supervisors and other appropriate public officers and agents of the County with respect to the
187 matters contemplated under this Resolution are hereby ratified, confirmed and approved.
188

189 Recommended for adoption by the Sawyer County Board of Supervisors at its meeting on
190 December 16, 2021, by this Sawyer County Health and Human Services Board on December
191 7, 2021.

192 
193 _____
194 Dale Schleeter, Chairman



195
196 _____
197 Dawn Petit, Sawyer County Board Member



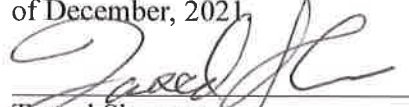
198
199 _____
200
201 Chuck Van Etten, Sawyer County Board Member


202
203 _____
204
205 Jennifer Vobornik, Community Member



206
207 _____
208
209 Dr. Sabrina Dunlap, Public Health Care Professional

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211 _____
212
213 This Resolution is hereby adopted by the Sawyer County Board of Supervisors this 16th day
214 of December, 2021.

215 
216 _____
217 Tweed Shuman,
218 Sawyer County Board of Supervisors Chairman



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