



## LEGAL ISSUES

RELATING TO COUNTY GOVERNMENT

# Opioid Litigation Settlements and Reporting

# What's Next?

*by Andrew T. Phillips, Attolles Law, s.c.*

The opioid epidemic has caused devastating harm to communities across the country, including those right here in Wisconsin. As front-line service providers, counties are no strangers to the impacts of the epidemic, whether it be through the sheriff's office, medical examiner, court system, child welfare, human services, health department or other unit of county government. While it is impossible and unfair to measure the value of life in monetary terms, counties have devoted significant financial resources to fighting the epidemic and those investments will continue for many years to come.

The opioid epidemic created far more harm to counties than simply requiring "extra" resources — the epidemic forced counties to divert resources from other areas of need. For this reason, in 2017, Wisconsin counties led the way in a nationwide litigation effort aimed at holding those persons and entities responsible for the epidemic — companies that elevated the pursuit of enormous profits above human life — accountable. The litigation effort resulted in what many have called the largest and most complicated civil litigation in our country's history, involving more than 3,000 state and local governments in the consolidated case known as MDL 2804, which was venued in federal court in the Northern District of Ohio. Wisconsin counties should take pride in the fact that they were some of the first local governments in the nation to file suit and had a seat at the leadership table in the MDL proceedings.

Following lengthy and protracted litigation, states and local governments agreed upon settlement terms with most of the entities primarily responsible for the opioid epidemic. Several entities, Purdue Pharma, Endo Health Solutions and Mallinckrodt Pharmaceuticals, declared bankruptcy and reorganized to allow assets to be distributed to claimants harmed by their egregious actions. The settlements and bankruptcy proceedings have resulted in various revenue streams to Wisconsin counties and, in addition, contain terms related to the allowable use of the revenues and required reporting. This article provides a brief overview of the various revenue streams and the reporting requirements associated with the settlements and bankruptcy distributions.<sup>1</sup>

### ► Revenue streams and reporting requirements

In simple terms, the consolidated opioid litigation (MDL 2804) was split into three case tracks — claims against opioid manufacturers, claims against opioid distributors, and claims against opioid retailers and pharmacies.<sup>2</sup> The three case tracks resulted in various settlements and, as noted above, three of the primary opioid manufacturers filed bankruptcy.

▪ **BANKRUPTCIES.** Purdue Pharma, which many believe was primarily responsible for the onset of the opioid epidemic, filed for bankruptcy in 2019. They subsequently reached an agreement to make approximately \$10 billion available to claimants, including up to \$6 billion from the Sackler family

**This article is not intended as a comprehensive guide to the settlements and reporting requirements.**

It is impossible to even attempt to summarize all the information in an orderly fashion. Likewise, there continues to be developments impacting the settlements and bankruptcy proceedings and, therefore, it is important to review the latest information to fully understand your county's interests. For additional insight on these topics, please consult with your corporation counsel and the attorneys who represented your county in the litigation. In addition to organizing periodic opioid summits, which provide an opportunity for collaboration, the WCA has created an **online repository of information surrounding abatement efforts at [wisopioidabatement.com](https://www.wisopioidabatement.com).**

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who owned the majority of the company. Purdue's bankruptcy plan was met with opposition, however, as many believe the terms granting immunity to the Sackler family to be unwarranted. In December 2023, the U.S. Supreme Court heard oral arguments in the bankruptcy case and will eventually decide how the plan will proceed. As of this article's publication, there is no final resolution in the Purdue bankruptcy and the revenue stream to Wisconsin counties relating to the bankruptcy remains unknown.

Like the Purdue bankruptcy, the Endo Health Solutions bankruptcy proceedings are ongoing as the court and interested parties attempt to reach an agreement on distribution of assets and revenues from the restructured entity. The revenues payable to Wisconsin counties have not been finally determined.

The Mallinckrodt bankruptcy case resulted in approximately \$5.8 million distributed to the state of Wisconsin and Wisconsin local governments that filed lawsuits (71 counties and 16 municipalities). Those sums were distributed in two installments in 2023. As part of the distribution, recipients are required to spend all revenues on approved abatement uses and report expenditures through an online portal.

▪ **DISTRIBUTOR AND JANSSEN SETTLEMENTS.** In 2021, nationwide settlements were reached to resolve all claims brought by states and local governments against the three largest pharmaceutical distributors, McKesson, Cardinal Health, and AmerisourceBergen and against manufacturer Janssen Pharmaceuticals, Inc. and its parent company Johnson & Johnson. In all, the distributors will pay up to \$21 billion over

18 years, and Janssen will pay up to an additional \$5 billion over no more than nine years. Litigating Wisconsin counties and municipalities are expected to receive a total of approximately \$180 million from the distributors and \$42 million from Janssen. Wisconsin counties have been receiving, and will continue to receive, annual payments as a result of the settlement. The settlement agreements require that a significant portion of the proceeds be spent on approved abatement uses and that any expenditure that is not an approved use be reported. However, because Wis. Stat. § 165.12(4) requires counties to spend proceeds on approved abatement uses, the reporting requirements are minimal.

▪ **PHARMACY SETTLEMENTS.** In late 2022, agreements were announced with three pharmacy chains (CVS, Walgreens and Walmart) and two additional manufacturers (Allergan and Teva.) These settlements require:

- Teva to pay up to \$3.34 billion over 13 years and to provide either \$1.2 billion of its generic version of the drug Narcan over 10 years or \$240 million of cash in lieu of product, as each state may elect;
- Allergan to pay up to \$2.02 billion over seven years;
- CVS to pay up to \$4.9 billion over 10 years;
- Walgreens to pay up to \$5.52 billion over 15 years; and
- Walmart to pay up to \$2.74 billion in 2023, and all payments to be made within six years.

As with the settlements with the distributors and Janssen, litigating Wisconsin counties and municipalities can expect annual payments beginning in March 2024,

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although the precise amount of revenues for all years has not been determined.<sup>3</sup> Also similar to the distributor and Janssen settlements, the reporting requirements associated with these revenues are minimal given the requirements set forth in Wis. Stat. § 165.12(4).

### ▶ Reporting beyond the minimum

While no amount of money can truly compensate counties for the opioid epidemic, it would be fair to characterize the significant funds flowing into Wisconsin as a “once-in-a-generation” opportunity to create lasting change in battling the epidemic. This is important and critical work that Wisconsin counties will undertake in the years to come. As counties recognize, settlement funds are invested, not spent, with the expectation to stem the tide of the opioid epidemic.

Counties have a desire to be transparent in their programs, services and initiatives funded by settlement dollars. The transparency is not a result of any mandate from a settlement agreement or statute — it arises from a desire to share information, learn what does or does not work, and collaborate to make the most of the settlement funds. Transparency is important to all stakeholders in the fight against the opioid epidemic — counties, state government, municipalities, treatment providers, diversion experts and the broader community.

Understanding these aspirations, the WCA Board of Directors’ Ad Hoc Task Force on Opioid Abatement Strategies has instructed WCA staff and legal counsel to work on reporting mechanisms that provide far more information than that required under statute or agreement. The task force has made clear its desire that counties have information at their fingertips, allowing for an informed decision-making process when it comes to abatement strategies. Look for additional information surrounding reporting in the coming months.

### ▶ Conclusion

The important work surrounding abatement has just begun. The opioid epidemic did not happen overnight and abating the epidemic will take many years of determined effort. Wisconsin counties are determined to ensure the wise investment of the resources generated through the litigation effort and the WCA is committed to supporting counties in this endeavor. If you have any other questions surrounding this topic, please do not hesitate to contact the WCA or the author. ■

*Attolles Law, s.c. works on behalf of Wisconsin counties, school districts and other public entities across the state of Wisconsin. Its president & CEO, Andy Phillips, has served as outside general counsel for the Wisconsin Counties Association for nearly 20 years.*

1. Additional information regarding the various settlements and revenue streams can be found at [nationalopioidsettlement.com](http://nationalopioidsettlement.com).
2. Information regarding MDL 2804 can be found at [ohnd.uscourts.gov/mdl-2804](http://ohnd.uscourts.gov/mdl-2804).
3. The first payment from these settlements, scheduled for March 2024, results in approximately \$75 million to Wisconsin, with litigating Wisconsin counties and municipalities receiving approximately \$43.5 million.

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