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VIA E-MAIL
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Mark E. Berman
City Attorney
Pompano Beach City Hall
100 West Atlantic Blvd, Room 467
Pompano Beach, Florida 33060

Re: *Opioids Epidemic Litigation*

Dear Mr. Berman:

We are writing to provide you with an update on the status of the ongoing negotiations with the Florida Attorney General in the National Prescription Opiate Litigation.

As you are aware, outside counsel for nearly all litigating political subdivisions within the State of Florida have been working together to negotiate an allocation agreement with the State. This allocation agreement is intended to govern the distribution of settlement proceeds obtained through the Distributor and Johnson & Johnson deal as well as any additional settlements obtained in the National Prescription Opiate litigation.

We have now received a revised allocation proposal from the Attorney General's office, which is set forth in the attached Memorandum of Understanding. This proposal is the result of numerous meetings with the Attorney General's office and includes feedback and comments from many local subdivisions. Based on the status of this litigation, the likely structure of any resolution, the potential litigation risks in the absence of such an agreement, and the concerns and priorities of our clients, we believe that this revised proposal reflects a reasonable compromise between the State and its political subdivisions.

The purpose of this communication is to summarize the primary terms of the Memorandum and attempt to anticipate questions that you or your Council may have regarding this litigation and allocation proposal. The Distributor and J&J deal contemplate the need for relatively quick buy-in on an allocation between the State and its subdivisions in order to maximize recovery. Although we do not have a precise timeframe on when the Distributor and J&J deal will be finalized or how much time will be provided for buy in, we recommend raising these matters with your council at this time. We also anticipate that the Attorney General will be making an announcement of their own. It is anticipated that if this proposal meets with the approval of litigating political subdivisions, it would be implemented through council resolutions. An exemplar resolution is also included with this correspondence.

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As always, we are available to meet with you or your Council to address any questions or concerns. Please note that this is a preliminary document, and that further clarity regarding the terms of the Memorandum will be developed in further documents which will effectuate this agreement.

Why is an allocation agreement necessary?

At least 88 political subdivisions within the State of Florida, as well as the State of Florida itself, have filed suit against numerous entities engaged in the manufacture, marketing, promotion, distribution or dispensing of opioids. Another 30 political subdivisions within the State of Florida have filed claims in the Purdue bankruptcy. The Plaintiffs' Executive Committee is in ongoing negotiations with the Distributors and J&J, with potential resolutions anticipated in the coming weeks or months.

Under the likely settlement structure for these cases, states and their political subdivisions are strongly incentivized to reach a joint resolution of all State and political subdivision claims. Where such a joint resolution can be obtained, the political subdivisions and the State will receive a substantially larger settlement amount if they are all parties to the settlement. Therefore, it is in the best interest of all political subdivisions and the State of Florida to reach an allocation agreement which will permit the joint resolution of all claims within the state.

How can the funds be used?

Under this agreement, all settlement funds received by the State of Florida and its political subdivisions must be utilized for strategies, programming and services used to expand the availability of treatment for individuals impacted by substance use disorders ("Approved Purposes"). A non-exclusive list of potential abatement programs and uses are included in Exhibits A and B to the agreement. These uses are intended to best serve the overall purpose and intention of this litigation, which is to abate the continuing public health crisis of opioid addiction within our communities.

How are the funds allocated?

Consistent with the original proposal, this Proposal divides all settlement funds between three funds: (1) the City/County Fund; (2) the Regional Fund; and (3) the State Fund.

The **City/County Fund** consists of 15% of the total settlement amounts allocable to the State of Florida. These funds are distributed to all counties and qualifying municipalities in the State of Florida. The allocation of the City/County Fund between counties and municipalities is based on a model referred to as the "Negotiation Class Metrics." This model was developed in the National Prescription Opiate MDL, and considers: (1) the amount of opioids shipped to the county; (2) the number of opioid deaths that occurred in that county; and (3) the number of people who suffer opioid use disorder in that county. Allocations between counties and municipalities within each county use historical federal data showing how the specific county and the cities within it have made opioids-related expenditures in the past.

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The **Regional Fund** consists of a sliding scale between 30% and 40% of the total settlement amounts allocable to the State of Florida, with the largest percentages occurring in the immediate years after settlement, and decreasing over time. Through our negotiation with the Attorney General, we have been successful in increasing the overall amount of this Fund from the original proposal.

These funds are allocated to counties in accordance with the “Negotiating Class Metrics” described above. In the case of counties with a population of over 300,000, and which satisfy other criteria regarding abatement infrastructure, (termed “Qualified Counties”) these funds are provided directly to the county. For the remainder of counties within the State, these funds are provided to the Managing Entity for that county, to be spent on approved purposes within that county.

For Qualified Counties: For those counties with a population of greater than 300,000, we encourage you to review the definition of Qualified County to ensure that you can meet the other requirements set forth therein. Importantly, the definition of Qualified County requires that you reach an agreement with at least some municipalities within your county as to how these funds are spent. Specifically, you must reach an agreement with a sufficient number of municipalities such that the aggregate population of municipalities which consent to the county’s use of these funds is more than half the aggregate population of individuals residing within municipalities in your County. The requirements of such agreements are subject to further discussion and negotiation.

For counties which do not meet the criteria to be a Qualified County: Smaller counties have shared a concern that the Regional Funds attributable to their counties will be paid to the Managing Entity, as opposed to the county directly. In our negotiations, we sought to expand the definition of Qualified County to include smaller counties with sufficient infrastructure to effectively utilize these funds. Unfortunately, our efforts have not been successful. The Attorney General continues to take the position that these funds will be more effectively leveraged in these communities if aggregated and directed by the Managing Entity. However, given the expanding role and responsibilities of Managing Entities, we believe there is an opportunity for smaller counties to develop collaborative and mutually beneficial relationships with these Managing Entities, such that these funds will be spent in a way which will realize the same or greater better community benefits. As many of these Managing Entities are represented in this litigation, we are prepared to assist you in developing these relationships. The Attorney General has also agreed to help communities get involved in or engage with their Managing Entities.

The **State Fund** consists of the remaining 45% to 55% of the total settlement amounts allocable to the State of Florida, depending on the amount of the Regional Fund above. As with the City/County Fund and Regional Fund, these funds must be spent on Approved Purposes.

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Are there any reporting requirements?

The State and each local government must report its expenditures to the Department of Children and Families each year.

This agreement also establishes an Opioid Abatement Taskforce or Council. The Taskforce or Council includes appointments from municipalities, qualified counties and non-qualified counties. The purpose of the Opioid Abatement Taskforce or Council is to advise the Governor, Legislature, Florida's Department of Children & Families and Local Governments on priorities that should be addressed as part of the opioid epidemic and to review how monies have been spent.

How will the attorneys be paid?

Through the course of negotiating these settlements and this allocation agreement, we have sought to create a separate fund for the payment of attorneys' fees. In this manner, the costs of attorneys' fees are shared by both litigating and non-litigating entities, rather than paid directly from the recovery of litigating entities, as provided in the agreement or retainer.

The original proposal from the Attorney General provided for the development of a separate fund for the payment of attorney's fees. This revised proposal creates a fee fund of between 0-10% of the City/County fund, depending on the degree to which litigating local governments choose to participate in this settlement. Under this proposal, counsel must first attempt to obtain a legal fee from any national fee fund established as part of any settlement. If counsel is unable to obtain their full contracted fee from that fund, counsel may then obtain additional funds from this separate fund. In most cases, this will result in a substantial reduction in the attorney's fees to counsel from what is set forth in the agreement or retainer, and will avoid the necessity of counties and cities paying the higher contingency fee directly from their recovery.

What is the risk if political subdivisions do not agree?

If we are not able to reach an agreement with the Attorney General's office, this may threaten the overall allocation of settlement proceeds to the State of Florida and its local governments. This is because the settlement agreement currently under negotiation incentivize states and local governments to reach allocation agreements, and penalizes those that do not.

Alternatively, there is a potential litigation risk that in the absence of an agreed upon allocation plan, the State may seek a declaration that only the State of Florida, and not its local governments, have standing to bring litigation on behalf of its citizens, threatening the ability of local governments to pursue their own lawsuits in this matter.

When must we make a decision about this proposal?

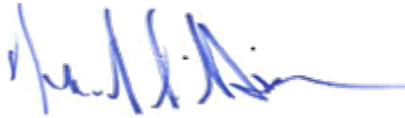
Potential settlements are anticipated in the coming weeks or months. These proposed settlements are anticipated to include provisions which establish time limits on agreements between

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states and political subdivisions. Although we do not have a precise timeframe on when the Distributor and J&J deal will be finalized or how much time will be provided for buy in, we recommend raising these matters with your council at this time. We anticipate that the Attorney General's office may make an announcement of their own in the coming weeks in an effort to build momentum.

We are available to meet with you or your Council and discuss this proposal at your request.

Very truly yours,



MARK J. DEARMAN