



RESOLUTION # 21-46

Authorizing Rusk County to Enter Into the Settlement Agreements with McKesson Corporation, Cardinal Health, Inc., AmerisourceBergen Corporation, Johnson & Johnson, Janssen Pharmaceuticals, Inc., Ortho-McNeil-Janssen Pharmaceuticals, Inc., and Janssen Pharmaceutica, Inc., Agree to the Terms of the MOU Allocating Settlement Proceeds, and Authorize Entry Into the MOU with the Attorney General

ROLL CALL Board Members	AYE (Yes)	NAY (No)	Abstain/Excused
1. TERRY DUSHELL	X		
2. JERRY BILLER			X
3. ALAN RATHSACK	X		
4. TONY HAUSER	X		
5. TIMOTHY MILLER			X
6. ROBERT STOUT	X		
7. RANDY TATUR	X		
8. LYLE LIEFRING	X		
9. BILL MCBAIN	X		
10. KEN PEDERSEN	X		
11. PHIL SCHNEIDER	X		
12. JIM MEYER	X		
13. MARK SCHMITT	X		
14. LISA DOBROWOLSKI	X		
15. TOM HANSON	X		
16. VACANT			
17. DAVE WILLINGHAM	X		
18. MICHAEL HRABAN	X		
19. KEN BROWN	X		
YB BECCA STRICKLEN			X
YB MEGAN VANDOORN	X		
TOTAL	17	0	3

TO THE RUSK COUNTY BOARD OF SUPERVISORS

1 WHEREAS, in Resolution No. 17-26, the County Board of Supervisors
2 authorized the County to enter into an engagement agreement with von Briesen & Roper,
3 s.c., Crueger Dickinson LLC and Simmons Hanly Conroy LLC (the "Law Firms") to
4 pursue litigation against certain manufacturers, distributors, and retailers of opioid
5 pharmaceuticals (the "Opioid Defendants") in an effort to hold the Opioid Defendants
6 financially responsible for the County's expenditure of vast money and resources to
7 combat the opioid epidemic;

8
9 WHEREAS, on behalf of the County, the Law Firms filed a lawsuit against the
10 Opioid Defendants;

11
12 WHEREAS, the Law Firms filed similar lawsuits on behalf of 66 other
13 Wisconsin counties and all Wisconsin cases were coordinated with thousands of other
14 lawsuits filed against the same or substantially similar parties as the Opioid Defendants in
15 the Northern District of Ohio, captioned *In re: Opioid Litigation*, MDL 2804 (the
16 "Litigation");

17
18 WHEREAS, four (4) additional Wisconsin counties (Milwaukee, Dane,
19 Waukesha, and Walworth) hired separate counsel and joined the Litigation;

20
21 WHEREAS, since the inception of the Litigation, the Law Firms have
22 coordinated with counsel from around the country (including counsel for Milwaukee,
23 Dane, Waukesha, and Walworth Counties) to prepare the County's case for trial and
24 engage in extensive settlement discussions with the Opioid Defendants;

25
26 WHEREAS, the settlement discussions with McKesson Corporation, Cardinal
27 Health, Inc., AmerisourceBergen Corporation, Johnson & Johnson, Janssen
28 Pharmaceuticals, Inc., Ortho-McNeil-Janssen Pharmaceuticals, Inc., and Janssen
29 Pharmaceutica, Inc. (the "Settling Defendants") resulted in a tentative agreement as to
30 settlement terms pending agreement from the County and other plaintiffs involved in the
31 Litigation;

32
33 WHEREAS, copies of the Distributors Settlement Agreement and Janssen
34 Settlement Agreement (collectively "Settlement Agreements") representing the terms of
35 the tentative settlement agreements with the Settling Defendants have been provided with
36 this Resolution;

37
38 WHEREAS, the Settlement Agreements provide, among other things, for the
39 payment of certain sums to Participating Subdivisions (as defined in the Settlement
40 Agreements) upon the occurrence of certain events detailed in the Settlement
41 Agreements;

42
43 WHEREAS, the County is a Participating Subdivision in the Settlement
44 Agreements and has the opportunity to participate in the benefits associated with the
45 Settlement Agreement provided the County (a) approves the Settlement Agreements; (b)
46 approves the Memorandum of Understanding allocating proceeds from the Settlement
47 Agreements among the various Wisconsin Participating Subdivisions, a copy of which is
48 attached to this Resolution (the "Allocation MOU"); (c) approves the Memorandum of
49 Understanding with the Wisconsin Attorney General regarding allocation of settlement
50 proceeds, a copy of which is attached to this Resolution (the "AG MOU"); and (d) the

BOARD ACTION

Vote Required: Majority Vote of a Quorum

Motion to Approve Adopted

1st LIEFRING Defeated

2nd PEDERSEN

No: 0 Yes: 17 Exc: 3

Reviewed by: _____, Corp. Counsel

Reviewed by: _____, Finance Director

FISCAL IMPACT: (Note if there is any fiscal impact or not)

Certification:
I, Connie Meyer, Clerk of Rusk County, hereby certify that the above is a true and correct copy of a resolution that was adopted on the 21 day of December 2021 by the Rusk County Board of Supervisors.

Connie Meyer
County Clerk, Rusk County

1 Legislature's Joint Committee on Finance approves the terms of the Settlement
2 Agreements and the AG MOU;

3
4 WHEREAS, 2021 Wisconsin Act 57 created Section 165.12 of the Wisconsin
5 Statutes relating to the settlement of all or part of the Litigation;

6
7 WHEREAS, pursuant to Wis. Stat. § 165.12(2), the Legislature's Joint
8 Committee on Finance is required to approve the Settlement Agreements and the AG
9 MOU;

10
11 WHEREAS, pursuant to Wis. Stat. § 165.12(2), the proceeds from any
12 settlement of all or part of the Litigation are distributed 70% to local governments in
13 Wisconsin that are parties to the Litigation and 30% to the State;

14
15 WHEREAS, Wis. Stat. § 165.12(4)(b)2. provides the proceeds from the
16 Settlement Agreement must be deposited in a segregated account (the "Opioid Abatement
17 Account") and may be expended only for approved uses for opioid abatement as provided
18 in the Settlement Agreements;

19
20 WHEREAS, Wis. Stat. § 165.12(7) bars claims from any Wisconsin local
21 government against the Opioid Defendants filed after June 1, 2021;

22
23 WHEREAS, the definition of Participating Subdivisions in the Settlement
24 Agreements recognizes a statutory bar on claims such as that set forth in Wis. Stat. §
25 165.12(7) and, as a result, the only Participating Subdivisions in Wisconsin are those
26 counties and municipalities that were parties to the Litigation (or otherwise actively
27 litigating a claim against one, some, or all of the Opioid Defendants) as of June 1, 2021;

28
29 WHEREAS, the Legislature's Joint Committee on Finance is not statutorily
30 authorized or required to approve the allocation of proceeds of the Settlement
31 Agreements among Wisconsin Participating Subdivisions;

32
33 WHEREAS, the Law Firms have engaged in extensive discussions with counsel
34 for all other Wisconsin Participating Subdivisions resulting in the proposed Allocation
35 MOU, which is an agreement between all of the entities identified in the Allocation MOU
36 as to how the proceeds payable to those entities under the Settlement Agreements will be
37 allocated;

38
39 WHEREAS, there is provided with this Resolution a summary of the essential
40 terms of the Settlement Agreements, the deadlines related to the effective dates of the
41 Settlement Agreements, the ramifications associated with the County's refusal to enter
42 into the Settlement Agreements, the form of the Allocation MOU, the form of the AG
43 MOU, and an overview of the process for finalizing the Settlement Agreements;

44
45 WHEREAS, the County, by this Resolution, shall establish the Opioid
46 Abatement Account for the receipt of the proceeds of the Settlement Agreements
47 consistent with the terms of this Resolution;

48
49 WHEREAS, the County's Opioid Abatement Account shall be separate from
50 the County's general fund, shall not be commingled with any other County funds, and
51 shall be dedicated to funding opioid abatement measures as provided in the Settlement
52 Agreements;

53
54 WHEREAS, pursuant to the County's engagement agreement with the Law
55 Firms, the County shall pay up to an amount equal to 25% of the proceeds from
56 successful resolution of all or part of the Litigation, whether through settlement or
57 otherwise, plus the Law Firms' costs and disbursements, to the Law Firms as
58 compensation for the Law Firms' efforts in the Litigation and any settlement;

59
60 WHEREAS, the Law Firms anticipate making application to the national fee
61 fund established in the Settlement Agreements seeking payment, in whole or part, of the
62 fees, costs, and disbursements owed the Law Firms pursuant to the engagement
63 agreement with the County;

1
2 **WHEREAS**, it is anticipated the amount of any award from the fee fund
3 established in the Settlement Agreements will be insufficient to satisfy the County's
4 obligations under the engagement agreement with the Law Firms;
5

6 **WHEREAS**, the County, by this Resolution, and pursuant to the authority
7 granted the County in the applicable Order emanating from the Litigation in relation to
8 the Settlement Agreements and payment of attorney fees, shall execute an Escrow
9 Agreement, which shall among other things direct the escrow agent responsible for the
10 receipt and distribution of the proceeds from the Settlement Agreements to establish an
11 account for the purpose of segregating funds to pay the fees, costs, and disbursements of
12 the Law Firms owed by the County (the "Attorney Fees Account") in order to fund a
13 state-level "backstop" for payment of the fees, costs, and disbursements of the Law
14 Firms;
15

16 **WHEREAS**, in no event shall payments to the Law Firms out of the Attorney
17 Fees Account and the fee fund established in the Settlement Agreements exceed an
18 amount equal to 25% of the amounts allocated to the County in the Allocation MOU;
19

20 **WHEREAS**, the intent of this Resolution is to authorize the County to enter into
21 the Settlement Agreements, the Allocation MOU, and the AG MOU, establish the
22 County's Opioid Abatement Account, and establish the Attorney Fees Account; and
23

24 **WHEREAS**, the County, by this Resolution, shall authorize the County's
25 corporation counsel to finalize and execute any escrow agreement and other document or
26 agreement necessary to effectuate the Settlement Agreements and the other agreements
27 referenced herein;
28

29 **NOW, THEREFORE, BE IT RESOLVED:** the County Board of Supervisors
30 hereby approves:
31

- 32 1. The execution of the Distributors Settlement Agreement and any and
33 all documents ancillary thereto and authorizes the Board Chair to
34 execute same.
35
- 36 2. The execution of the Janssen Settlement Agreement and any and all
37 documents ancillary thereto and authorizes the Board Chair to execute
38 same.
39
- 40 3. The final negotiation and execution of the Allocation MOU in form
41 substantially similar to that presented with this Resolution and any and
42 all documents ancillary thereto and authorizes the Board Chair to
43 execute same upon finalization provided the percentage share identified
44 as allocated to the County is substantially similar to that identified in
45 the Allocation MOU provided to the Board with this Resolution.
46
- 47 4. The final negotiation and execution of the AG MOU in form
48 substantially similar to that presented with this Resolution and any and
49 all documents ancillary thereto and authorizes the Board Chair to
50 execute same.
51
- 52 5. The corporation counsel's negotiation and execution of the Escrow
53 Agreement for the receipt and disbursement of the proceeds of the
54 Settlement Agreements as referenced in the Allocation MOU.
55

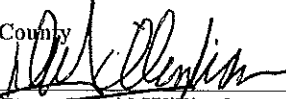
56 **BE IT FURTHER RESOLVED:** the County hereby establishes an account
57 separate and distinct from the County's general fund which shall be titled "Opioid
58 Abatement Account." All proceeds from the Settlement Agreements not otherwise
59 directed to the Attorney Fees Account established under the Escrow Agreement shall be
60 deposited in the Opioid Abatement Account. The Opioid Abatement Account shall be
61 administered consistent with the terms of this Resolution, Wis. Stat. § 165.12(4), and the
62 Settlement Agreements.
63

1 **BE IT FURTHER RESOLVED:** the County hereby authorizes the escrow
2 agent under the Escrow Agreement to establish an account separate and distinct from any
3 account containing funds allocated or allocable to the County which shall be referred to
4 by the County as the "Attorney Fees Account." The escrow agent shall deposit a sum
5 equal to up to, but in no event exceeding, an amount equal to 20% of the County's
6 proceeds from the Settlement Agreements into the Attorney Fees Account. If the
7 payments to the County are not enough to fully fund the Attorney Fees Account as
8 provided herein because such payments are made over time, the Attorney Fees Account
9 shall be funded by placing up to, but in no event exceeding, an amount equal to 20% of
10 the proceeds from the Settlement Agreements attributable to Local Governments (as that
11 term is defined in the Allocation MOU) into the Attorney Fees Account for each
12 payment. Funds in the Attorney Fees Account shall be utilized to pay the fees, costs, and
13 disbursements owed to the Law Firms pursuant to the engagement agreement between the
14 County and the Law Firms provided, however, the Law Firms shall receive no more than
15 that to which they are entitled under their fee contract when considering the amounts paid
16 the Law Firms from the fee fund established in the Settlement Agreements and allocable
17 to the County. The Law Firms may make application for payment from the Attorney
18 Fees Account at any time and the County shall cooperate with the Law Firms in
19 executing any documents necessary for the escrow agent to make payments out of the
20 Attorney Fees Account.
21

22 **BE IT FURTHER RESOLVED** that all actions heretofore taken by the Board
23 of Supervisors and other appropriate public officers and agents of the County with
24 respect to the matters contemplated under this Resolution are hereby ratified, confirmed
25 and approved.
26
27

SUBMITTED BY:

Rusk County



David Willingham, Board Chair