

INTER-OFFICE CORRESPONDENCE

MEMORANDUM NO. 2021-01

TO: Mayor and Members of the Village Council

FROM: Donald J. Doody, Village Attorney *DJD*

DATE: June 23, 2021

RE: Village of Sea Ranch Lakes (“Village”) / Opioid Litigation Settlement

The Village has received the attached Memorandum of Understanding (“MOU”) from Florida Attorney General Moody regarding settlement negotiations in the opioid litigation pending in federal court and bankruptcy court against Purdue Pharma, L.P., the Sackler family, Mallinckrodt PLC, Johnson and Johnson, and multiple distributors of the drugs.

The litigation involves the development, marketing, and distribution of Oxycontin and the proliferation of persons addicted to pain medicines resulting from taking this drug as well as the propagation of pill mills in our community and around the country. Attorney General Moody's letter seeks to obtain the Village of Sea Ranch Lakes's approval of the MOU and in exchange the Village will receive a portion of the settlement proceeds to be used towards abatement activities in accordance with the terms of the MOU.

THE LAWSUIT

Litigation was filed by many plaintiffs around the country, alleging that Purdue Pharma, L.P., its owners - the Sacker family, and many others were aware or were made aware of the fallacy of the claims that Oxycontin was non-addictive, and yet Purdue Pharma continued to mass produce, sell, distribute, and prescribe this drug in response to an ever-increasing demand. This was the underlying basis for the exploding pill mill industry. It is also believed that as people became used to the effects of this drug, they first began to take it more and more, until they moved on to other stronger regulated drugs to manage their pain such as propofol, fentanyl, and illegal drugs such as heroin and methamphetamines. The cascading effect was to create increased law enforcement efforts, an increase in the number of overdose calls to fire rescue, not to mention the overall detrimental community impacts and resulting societal problems stemming from this addiction epidemic.

The litigation, filed by a number of governmental and private entities around the country against a vast array of defendants, was consolidated into a multidistrict litigation in the federal court located in Ohio. All 50 states' attorneys general are participating in this litigation. The settlement as summarized by Attorney General Moody seeks to resolve the

various cases against multiple parties on behalf of all states, and their agencies and political subdivisions. The amount of the settlement involves various defendants but the amount each pays is dependent upon the number of states and the number of their political subdivisions that sign on to the settlement agreement.

THE PROPOSED SETTLEMENT

This settlement will result in a pay out of funds to each of the 50 states in accordance with a matrix developed amongst the parties. As Attorney General Moody explains in her letter, the State of Florida will receive 7.03% of the overall payout from these parties. This amount was calculated both on the basis of population and on the basis of the overall impact experienced by the state. Florida's percentage exceeds other states whose population exceeds Florida's as the social and economic impact that Florida endured due to the opioid epidemic is greater. The only states receiving larger percentages than Florida are those states located in the areas where the addiction and pill mills proliferated to such a degree they were nicknamed the "opioid belt."

The amount of the payout is dependent upon external factors as well. It will depend upon how many jurisdictions sign on to the MOU, as well as the profitability of some of the defendants during the payout period of the settlement. The settlement is proposed to be paid out over a period of years. One such term that has been discussed is 18 years. The tobacco litigation settlement has been one basis for how the settlement terms have been designed in this case.

Also like the tobacco litigation settlements, the use of the funds by the states and their political subdivisions is not intended to reimburse for the expenses they incurred in dealing with the impacts of the opioid epidemic, but rather are required to be used for abatement activities, such as strategies, programming, and services used to expand the availability of treatment for individuals impacted by opioid use disorder and their co-occurring behavioral health disorders. A list of examples of potential abatement activities is included in the exhibits attached to the MOU provided by Attorney General Moody.

Distribution of the Settlement Proceeds

All of the monies received by Florida will be divided between three (3) funds: 1) the Village/County Fund; 2) the Regional Fund; and 3) the State Fund.

The **Village/County Fund** will be **fifteen percent (15%)** of the total settlement proceeds and will be distributed to all counties and qualifying municipalities in the State of Florida, including the Village of Sea Ranch Lakes. This fund is being allocated based upon a matrix developed by the Plaintiff's Executive Committee. This matrix takes into consideration 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 are based upon historical federal data showing how the specific county and municipalities within it have made opioid-related

expenditures in the past. A spreadsheet was included with Attorney General Moody's letter which shows the amount each municipality will likely receive.

The **Regional Fund** comprises a sliding scale **between 30% and 40%** of the total settlement proceeds received by the State of Florida with the largest percentages occurring in the immediate years after settlement and decreasing over time. This fund is allocated between "Qualified Counties" and "Non-Qualified Counties." In addition to other qualifications pertaining to abatement infrastructure, the determination is based upon populations over/under 300,000 persons. Broward County is considered a Qualified County, therefore the monies will be provided directly to the County. In order to receive these funds, it is necessary that at least 50% of the population within Broward County participates in this MOU in order for these funds to flow to Broward County. In Non-Qualified Counties, the monies are provided to the managing entities for behavioral health services which serve those jurisdictions. In all instances, the monies must be spent on abatement activities.

The **State Fund** accounts for **45% to 55%** of the total settlement amounts which also must be spent on abatement activities.

HOW DOES THIS APPLY TO SEA RANCH LAKES?

This settlement was negotiated by all attorneys general as well as the Plaintiffs Executive Counsel in the multidistrict litigation. The goal was to secure the greatest amount of the settlement proceeds for the states, the counties, and cities which were directly affected by the impacts of the opioid epidemic. It is the belief of the Plaintiffs Executive Counsel and the attorneys general, including Attorney General Moody, that they have been able to obtain the greatest amount of settlement monies from the defendants.

Although the Village did not participate as a party in this litigation, it will also be receiving funds due to the State's participation on its behalf. All cities and counties in the state and around the country are being afforded the opportunity to participate in this settlement, regardless of whether they filed independent claims in the multidistrict litigation or the bankruptcy court. The Village of Sea Ranch Lakes would receive its share of those monies which equals approximately 0.005% of the funds distributed in Broward County. Broward County's share accounts for approximately 9.06% of the Village/County Fund portion of the proceeds. All attorney's fees will be paid out of a separate portion of the overall settlement proceeds and the Village will be entitled to keep 100% of the funds flowing to it from this distribution.

Many defendants filed for bankruptcy and for those cities which filed the necessary claims in those proceedings, this proposed settlement would encompass resolution of those actions as well. Unlike the MOU proposed by Attorney General Moody, a different allocation has been proposed in those bankruptcy cases which would provide a default allocation with distributions only to political subdivisions with populations greater than 400,000. Attorney General Moody and the Plaintiffs Executive Committee believe that what

they were able to negotiate in the proposal presented in the MOU is a more beneficial outcome for those cities which did file bankruptcy claims than what is being provided in the default allocation described above. Moreover, as the Village's population is not nearly large enough to qualify for any portion of the bankruptcy distributions, even if it did file a claim, it would receive nothing from the defendants in that venue.

The Village may choose not to participate and receive no funds in the event that it does not wish to undertake the reporting and monitoring obligations associated with ensuring that the funds are used for approved purposes. If the Village were not in agreement with its terms or decides not to enter into this MOU with the State of Florida, it would be precluded from receiving these proceeds. Since this negotiation involves multiple states and parties it took over 18 months to reach a settlement. It is unlikely that there will be adequate funds available after this settlement is disbursed, especially with those entities which have filed for bankruptcy. There are a number of plaintiffs in this litigation which are not state, county or municipal plaintiffs and once this settlement is entered into, the remaining parties, including any states, counties or cities which choose not to participate, will have their bite at the apple of whatever remains. Additionally, Attorney General Moody has indicated that the State would file a separate action seeking to bar future claims by any Florida political subdivisions that had not already filed their own claims as it would put this MOU and settlement agreement at risk and would further maximize the recovery for the State and those subdivisions that did agree to this settlement proposal. Alternatively, Attorney General Moody has suggested seeking legislation to protect the interests of those political subdivisions which have agreed are protected to ensure they receive the recovery contemplated in the MOU.

NEXT STEPS

It is requested that all political subdivisions in the state consider this matter within 60-90 days from the date of the letter. If the Village is inclined to accept the terms of this settlement and approve the MOU, this matter should be placed on the next Village Commission agenda for the approval of a resolution which our office will prepare for your consideration.