

SUBJECT: A RESOLUTION OF THE MATANUSKA-SUSITNA BOROUGH ASSEMBLY AUTHORIZING PARTICIPATION IN SETTLEMENT AGREEMENTS RELATED TO THE NATIONWIDE OPIOID LITIGATION.

AGENDA OF: October 5, 2021

Assembly Action:

Approved under the consent agenda
10-5-21 (B) (S)

MANAGER RECOMMENDATION: Present to the Assembly for consideration.

APPROVED BY MICHAEL BROWN, BOROUGH MANAGER: MB

Route To:	Department/Individual	Initials	Remarks
	Originator	NS	
	Finance Director	MB	
	Borough Attorney	MB	
	Borough Clerk	MB 9/27/21	(B) (S)

ATTACHMENT (S) : Fiscal Note: YES X NO
Resolution Serial No. 21-103 (3 pp)
FAQ sheet (3 pp)
Short Summary (2 pp)

SUMMARY STATEMENT: This resolution is being presented by the Borough Manager after consultation with the Borough Attorney to authorize the Matanuska-Susitna Borough to participate in the current settlement agreements and any similar future settlement agreements related to the nationwide opioid litigation.

Currently, there are 2 settlement agreements. The full text of the agreements can be found at website (last visited on 9/15/2021) <https://www.opioidsettlementtracker.com/globalsettlementtracker>

One settlement agreement will forever release claims against a manufacturer of prescription opioids, Johnson & Johnson. The other settlement agreement will forever release claims against three major distributors; AmerisourceBergen, Cardinal Health, and McKesson. These settlement agreements both include the named affiliates and subsidiaries of the named companies, but do not

apply to claims against any other manufacturers or distributors. It is anticipated there may be future settlements with additional manufacturers or distributors with similar settlement provisions.

Allocation of funds under the current agreements are based upon population. As per the terms of the agreements, the State of Alaska will receive a specified percentage of the proceeds. While the settlement agreements are comprehensive, they are also complex. They contain incentive payments that depend on the totality of participating jurisdictions and are therefore outside of the control of any single member of the parties entering the settlements.

Given these unknowns, the following is a rough order of magnitude what might be expected. It is likely that payments of just over \$58 million will be made to Alaska over a period of 18 years. Of that amount, 15% of those proceeds will be allocated to the State of Alaska (approximately \$8.7 million over 18 years) and 70% of the proceeds (approximately \$40.6 million over 18 years) will go to an abatement account.

The remaining 15% of Alaska proceeds goes to the participating municipalities (approximately \$8.7 million over 18 years). The jurisdictions eligible in Alaska to participate are Municipality of Anchorage, Matanuska-Susitna Borough, Fairbanks North Star Borough, Kenai Peninsula Borough, City and Borough of Juneau, Ketchikan Gateway Borough, Kodiak Island Borough, City of Fairbanks, and City of Wasilla. The participating subdivisions must reach an agreement about how to distribute the funds and this will also involve discussions with the State of Alaska. These discussions could also include an endowment fund for future use. Again, all estimates of potential funds are a rough order of magnitude and are dependent on a variety of factors outside the control of the Matanuska-Susitna Borough.

Regardless of actual distribution amounts and methods, the current settlement agreements require that 85% of the distributor's proceeds and 86.5% of the Johnson & Johnson proceeds be spent on "opioid remediation" as outlined in the agreements.

Both settlement agreements contain an Exhibit K which is the actual release to be signed by the Borough Manager.

The attached FAQ sheet (3 pp) and Short Summary (2 pp) are also included for additional information.

Upon agreeing to the current settlement agreements, Borough officials will continue to engage with the other municipalities and the State of Alaska to discuss the future issues related to disbursement, use, and any future settlements. The goal of these

discussions will be to create a settlement structure with the State of Alaska and other municipalities participating in the settlement which will address local needs, support residents and service providers, and to protect the settlement funds from legislative action beyond the terms agreed to by parties of the settlement.

The Borough Manager and Borough Attorney will give reports to the Assembly from time to time as to the status of these issues and if any future settlements are entered into, and informational memorandum will be presented to the Assembly.

RECOMMENDATION OF ADMINISTRATION: Approval of Resolution Serial No. 21-103

MATANUSKA-SUSITNA BOROUGH
FISCAL NOTE

Agenda Date: October 5, 2021

SUBJECT: A RESOLUTION OF THE MATANUSKA-SUSITNA BOROUGH ASSEMBLY AUTHORIZING PARTICIPATION IN SETTLEMENT AGREEMENTS RELATED TO THE NATIONWIDE OPIOID LITIGATION.

ORIGINATOR: NS

FISCAL ACTION (TO BE COMPLETED BY FINANCE)	FISCAL IMPACT <u>YES</u> NO
AMOUNT REQUESTED <u> *</u>	FUNDING SOURCE <u>Settlement Funds</u>
FROM ACCOUNT #	PROJECT
TO ACCOUNT: <u>100.00.00 3XXXXX</u>	PROJECT #
VERIFIED BY: <u>Yvonne Winkler</u>	CERTIFIED BY:
DATE: <u>9-21-21</u>	DATE:

EXPENDITURES/REVENUES:

(Thousands of Dollars)

OPERATING	FY2020	FY2021	FY2022	FY2023	FY2024	FY2025
Personnel Services						
Travel						
Contractual						
Supplies						
Equipment						
Land/Structures						
Grants, Claims						
Miscellaneous						
TOTAL OPERATING						

CAPITAL						
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REVENUE						
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FUNDING:

(Thousands of Dollars)

General Fund						
State/Federal Funds			<u>*</u>			
Other						
TOTAL			<u>*</u>			

POSITIONS:

Full-Time						
Part-Time						
Temporary						

ANALYSIS: (Attach a separate page if necessary) * Exact amts unknown at this time.

PREPARED BY:

PHONE:

DEPARTMENT:

DATE:

APPROVED BY:

DATE:

Chelene Hurd

9/21/2021

1. What are you announcing today?

States and subdivisions have reached final agreements with Johnson & Johnson, a manufacturer of prescription opioids, and the three major pharmaceutical distributors — Amerisource Bergen, Cardinal Health, and McKesson. These agreements resolve legal claims against those companies in return for their payment of \$26 billion and commitment to make major changes in how they do business to improve safety and oversight over the distribution of prescription opioid. Negotiations with the companies were led by a bipartisan 14-state executive committee, working closely with leading national counsel representing subdivisions.

2. Why is this important?

This settlement provides critical resources to help address the opioid crisis and requires industry changes that will help prevent anything like this from ever happening again. Since late 2019, the opioid addiction crisis in the US has resurged with a vengeance. During 2020, 93,000 people in the US died from opioid overdoses — the most ever, and more people than have ever died in a single year in the US from either car crashes or gun violence. These agreements make more than \$23.9 billion available to fund efforts to stem the crisis. They also require major changes to how prescription opioids are distributed and sold, with far more oversight and accountability throughout that process, to help control diversion of prescription opioids.

3. What are the highlights of the settlement?

\$26 billion in total payments will be available, including more than \$23.9 billion for opioid crisis remediation. The funding will be distributed among states according to an agreed upon formulation by the states that takes into account the extent of the harm within and the population of the state. The funding will be distributed within states according to state-local agreements, or through a default process set forth in the settlement agreements. States and local governments must use this funding to support a wide variety of methods to fight the opioid crisis.

States and local subdivisions can secure maximum payments by ensuring that current and future claims in their state are resolved. Resolution can occur through voluntary opt-ins, legislation, court rulings, or any combination of these methods. States that are unable to achieve complete resolution can

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RS 21-103*

still receive most of their maximum payment by meeting certain participation thresholds.

There will also be court-ordered injunctive relief requiring the three distributors, with oversight from an independent monitor, to help prevent deliveries of opioids to pharmacies where diversion and misuse are occurring. The distributors will be required to establish and fund a centralized, independent clearinghouse using detailed data analytics to keep close track of opioid distribution throughout the country. Johnson & Johnson will be required to stop selling or promoting opioids.

4. How will settlement funds be used, and who decides?

Funds must be used on a wide variety of opioid crisis abatement activities, examples of which are listed in the agreements. How settlement funds will be used will be determined in each state by the state and its subdivisions. States and their subdivisions can enter into an agreement among themselves that will govern how funds will be distributed within the state, or they can use the default arrangement that's spelled out in the master agreements.

5. When will settlement payments begin?

The first payment will be made as the settlement becomes legally effective. The first payments are expected to be received by participating states and subdivisions in April 2022.

6. Who are the parties to the settlement?

There are two agreements. One is among the states, political subdivisions, and the three major pharmaceutical distributors (AmerisourceBergen, Cardinal Health, and McKesson). The other is among the states, political subdivisions and Johnson & Johnson.

7. How can advocates, experts, service providers, concerned individuals, and others influence the way settlement funds are used?

By engaging with local and state officials to share ideas about the best way for abatement funds to be used.

im 21-203
RS 21-103

8. Who negotiated the settlement?

The states were represented in negotiations by an executive committee of 14 states, working in close coordination and communication with the remaining states and territories. Subdivisions have been represented primarily by private lawyers representing subdivisions around the country.

9. How does this settlement relate to the Multi-District Litigation (MDL) in federal court in Cleveland, Ohio?

These agreements resolve cases by local governments in the MDL against these four companies.

10. How does this settlement relate to the Purdue Pharma bankruptcy proceedings?

These agreements do not involve Purdue Pharma. Resolution of the claims against Purdue and the Sackler family are at issue in the separate, pending bankruptcy proceedings.

11. How does this settlement relate to the McKinsey settlement that was announced in February 2021?

State claims against McKinsey are already resolved. These agreements do not include McKinsey. McKinsey was the consulting firm that worked with Purdue, which is currently in bankruptcy.

12. Does this settlement resolve all of the litigation against opioid makers, opioid distributors, pharmacy chains, and other defendants?

This settlement resolves litigation against these four companies based on opioid-related misconduct. It does not release other companies. Investigation and litigation will continue against other companies.

13. How can I get more information about the settlement?

Please click [here](#) to read the 2-page summary of the deal or [here](#) for the full deal.

im 21-203
RS 21-103

Summary of State/Subdivision Agreements with Johnson & Johnson and 3
Major Pharmaceutical Distributors

BACKGROUND:

Opioid overdose deaths are rising dramatically, and resources are desperately needed to address the epidemic. Since late 2019, the opioid addiction crisis in the US has resurged with a vengeance. During 2020, 93,000 Americans have died from opioid overdoses — the most ever in a single year, and more than have ever died in a single year in the US from either car crashes or gun violence. For several years, states and local governments have been investigating and litigating against many companies to hold accountable those responsible, change pharmaceutical industry practices for the better, and recover much-needed funds to address the crisis.

A broad coalition of states and subdivisions have now reached final agreements with four of these companies: one agreement is with opioid manufacturer Johnson & Johnson and the other is with the three major pharmaceutical distributors — AmerisourceBergen, Cardinal Health, and McKesson. These agreements resolve legal claims against those companies stemming from actions that fueled the opioid addiction epidemic. The agreements will be effectuated through consent orders entered in each participating state. Other companies are not covered by these agreements and remain under active investigation and litigation.

FINANCIAL TERMS:

The agreements with the distributors and Johnson & Johnson provide for payments totaling \$26 billion, with more than \$23.9 billion available to fund efforts to stem the crisis. The funding will be distributed to states according to the allocation agreement reached among states. Subdivisions can only participate in the agreement if their state participates. Distribution within states can be handled either through an intrastate agreement between the state and its subdivisions or through the default arrangement set forth in the agreements with the companies. States and local governments must use the funding to support any of a wide variety of strategies to fight the opioid crisis. There are also provisions for the companies to compensate attorneys who have pursued opioid litigation on behalf of states and local governments.

Because of the unprecedented nature of this nationwide litigation — involving thousands of separate cases and tens of thousands of potential governmental claimants — there are several provisions calibrated to incentivize maximum participation by state and local governments and to incentivize early participation. They include the division of payments into

im 21-203
RS 21-103

base and bonuses, with bonuses based on participation levels. There are also suspension, offset, and look-back provisions that are intended to deter future opioid litigation against the companies by state and local governments, now that they have agreed to a \$26 billion global nationwide settlement. These deterrents are substantially lessened in the event certain high levels (tiers) of participation by states and subdivisions are achieved nationally.

A state and its subdivisions can secure maximum payments for themselves by achieving full resolution (subject to certain minor exceptions) of the actual and potential opioid-related legal claims by public entities within the state. This can be done through voluntary opt-ins, legislation, judicial action, or any combination of these methods that resolves existing claims and bars future claims. States that are unable to achieve complete resolution can still receive substantial payments by resolving a significant portion of current and future subdivision claims. The partial payment percentages are set forth in sliding scales based on participation levels among subdivisions within a state.

The first payments will be received by state and local governments by July 1, 2022 assuming a critical mass of jurisdictions join. Johnson & Johnson's payout will be over 8 years; the distributors will pay their amount over 17 years. The states and local governments will receive 40% of the combined payout within the first 5 years, assuming the maximum bonus is achieved.

INJUNCTIVE TERMS:

In addition to the financial components, the agreements will also subject the companies to court orders requiring them to make major changes in how prescription opioids are distributed and sold, with far more oversight and accountability throughout that process, including an independent monitor, to help prevent deliveries of opioids to pharmacies where diversion and misuse are occurring. The distributors will also be required to establish and fund a centralized, independent clearinghouse using detailed data analytics to keep close track of opioid distribution throughout the country and raise red flags for suspicious orders. Johnson & Johnson will be prohibited from selling or promoting opioids.

SCHEDULE:

The deadline for states to sign onto the agreements is August 21, 2021. Subdivisions in participating states will then have through January 2, 2022, to join.

The first payments are expected to be received by participating states and subdivisions in April 2022.

IM 21-203
RS 21-103