

MEMORANDUM

To: Haley & Olson P.C.'s Municipal Clients

From: Amy Thomas

Date: August 30, 2021

Re: Opting into the Global Opioid Settlement

Background

On August 24, 2021, two representatives from the Texas Attorney General's office held at an informational meeting at Waco City Hall for local governmental entities regarding the recent opioid settlement reached with Johnson & Johnson and the three largest opioid distributors in the nation (comprising 90% of all opioid distributors in the market). This memo is a write up of what was learned at that meeting and an outline of next steps to opt into the settlement should your City choose to do so.

Overview of Settlement

As you all are likely aware, for many years now states and local governmental entities have been pursuing litigation against opioid manufactures and distributors for their role in the ongoing opioid crisis. This summer a \$26 billion settlement was reached with manufacturer Johnson & Johnson and distributors AmerisourceBergen, Cardinal Health, and McKesson. Texas' combined share of the settlement is approximately \$1.5 billion.

The actual amount Texas ultimately receives is dependent on the number of governmental entities that participate. To maximize the potential settlement, the Attorney General is encouraging as many entities as possible to participate. The representatives from the AG's office also noted another motivating factor for encouraging Texas' governmental entities to participate in the settlement: ensuring the long-term solvency of the opioid manufacturers and distributors. The settlement will pay out over a period of 18 years (with a majority of payments upfront). By settling now and spreading the payments out a bit, the companies aim to avoid bankruptcy (like Purdue Pharma) and governmental entities are hoping to avoid costly bankruptcy litigation and the need to file claims.

Importantly, this settlement is available for both litigating and non-litigating governmental entities. Which means that smaller cities that did not file suit can opt into the settlement and receive funds. Distribution within Texas will be governed by both the

“Texas Term Sheet” and Government Code § 403.1044. Entities that opt in will receive a one-time direct payment and thereafter, access to a fund that is regionally administered for qualifying uses.

Money received in the settlement may only be used for fighting the opioid crisis or reimbursing governmental entities for costs associated with the crisis. However, the settlement agreement does not just provide money to fight the crisis. The agreement also contains injunctive relief aimed at changing the industry to make it safer and less vulnerable to abuse. Through the terms of the settlement agreement, the distributors will be required to establish and fund an independent clearinghouse to track opioid distribution nationwide and flag suspicious orders. J&J will be prohibited from selling or promoting opioids entirely.

How the Funds Will be Administered

15% of the settlement funds Texas receives will go political subdivisions that have opted in via direct payments based on population and other data points on how hard-hit the subdivision has been hit by the crisis (i.e. overdose deaths, arrests, etc....). Assuming that Texas has enough participation to get the full settlement amount (and that will be unknown until January of 2022), the maximum direct payment that could be received by local cities and counties is as follows:

Waco	\$624,966.86
Hewitt	\$24,139.02
Robinson	\$21,973.63
Gatesville	\$32,949.46
Copperas Cove	\$162,943.23
McLennan County	\$646,491.31

It should be noted that Woodway’s direct payment was not calculated by the AG for purposes of the presentation because the population is under 10,000.¹ However, Woodway is still absolutely eligible for the settlement and direct payments. When I asked about an estimate for Woodway, I was given the amount of \$25,713.00.

70% of the settlement funds Texas receives will go to abatement programs to be administered regionally. McLennan County is in Region 16, together with Bosque, Coryell, Falls, Hill and Limestone counties and each of their cities. Should Texas and our

¹ The Attorney General is focusing on Cities with populations above 10,000 because their participation is what is being measured to determine the size of the settlement. However, entities of all sizes are eligible to receive funds.

region have full participation, Region 16 should expect to receive \$11,653,877.23 for abatement programs. If a city or a county in a particular region chooses not to participate in the settlement, then they may not receive funds from the regional allocation. However, a county's choice not to participate in the settlement will not affect a city within that county's ability to access the funds. The only thing that would be affected is Texas' total share of the settlement along with the region's total share of the settlement.

The Texas Comptroller is still working on writing the exact procedures for obtaining the regionally allocated funds, but the Texas Term Sheet envisions these funds will be distributed through a local council or board, appointed by the Governor and Attorney General. Local governmental entities will be able to apply to receive those funds for qualifying abatement programs or reimbursements by writing a short grant application to the regional council or board.

How to Opt In

Local governmental entities of any size can opt into the settlement and receive funds. There is no minimum population requirement to opt in. To officially join the settlements, local governmental entities will need to sign two releases of claims (one for J & J and one for all three distributors together).

This release of claims prevents your City from later filing suit against J&J or any of the named distributors for claims "relating to past, present, and future financial, societal, and related expenditures arising out of the alleged misuse and abuse of opioid products." Signing this release will not affect your City's right to later file suit against other manufacturers or distributors nor does this release affect the right of individual citizens within your Cities who may have individual claims of their own. If your City does later decide to sue, there is a suspension of payments and a potential offset of those payments written into the settlement agreement.

The Texas AG outlines three steps for participation:

1. Sign the Two Subdivision Settlement Participation Forms.
2. Adopt the Texas Term Sheet and its intrastate allocation schedule.
3. Return all three documents to opioids@oag.texas.gov by January 2, 2022.

Conclusion

For cities that have not already filed suit against the opioid industry, this settlement agreement represents an opportunity to both recoup costs associated with the crisis as well as develop abatement programs without going through the time, stress, and financial burden of litigation. Cities should decide whether or not they would like to opt

in before January 2, 2022 so that all of the paperwork can be executed properly. The Attorney General has not yet announced when the first of these settlement funds will be distributed. As soon as we receive an update about the total amount of the settlement and the timeline for distribution, we will pass that information along to each of you. For more information and to download forms please visit:

<https://www.texasattorneygeneral.gov/globalopioidsettlement>