

## **Opioid Litigation: Proposed MOU with State of Florida – Key Points**

- The proposal was developed by State of Florida and the PEC (Plaintiffs' Executive Committee for the Opioid Multi District Litigation Panel).
- The MOU is a non-binding preliminary agreement to participate in an agreement governing the distribution of settlement proceeds obtained from settlements of opioid litigation with the Cardinal Health, Inc., McKesson Corp. and AmerisourceBergen Corp. (collectively known as "the Distributors") and Johnson & Johnson as well as the Purdue Pharma and Mallinckrodt bankruptcies.
- The proposed allocation plan appears to provide greater potential benefits to local governments than the default allocations that have already been negotiated in the bankruptcy cases and are underway in other cases. Those default plans will be applied unless a different agreement is reached beforehand.
- Under the proposed MOU, there are separate City/County and Regional Funds, in addition to the State fund. Under the default plans, there is no separate City/County fund and all the money flows through regional Managing Entities.
- The proposed MOU allocates 15% of total settlement amounts to the City/County fund; a sliding scale of 30-40% to the Regional Fund; and the remaining 45-55% to the State. According to the State, these percentages are more favorable to the cities and counties than a *pro rata* allocation based on the proofs of claims filed in the bankruptcy cases, where the State's claim was four to five times the aggregate amount of the city and county claims.
- Recipients of the proceeds must use the funds for abatement activities that address the public health crisis of opioid addiction in the community, such as first responder training and prevention programs for youth. This restriction serves to maximize available funds because it affords certain tax benefits to the defendants and also avoids federal clawback/recoupment of substantial portions of the settlement proceeds.
- The proposed MOU also provides for the creation of an expense fund to cover attorney's fees and litigation expenses incurred on behalf of litigating local governments, to the extent not paid by the defendants as part of the negotiated settlement. The expense fund payment is an enhancement based upon a percentage of the City/County fund. As an incentive to participation by the local governments, the payment ranges from 0% (for less than 85% participation) up to 10% (for 96-100% participation).