

Washington Distributor Settlement

August 8, 2022 presentation
Jeff Rupert, Washington AGO

The AGO's lawsuit against the distributors

- ▶ The AGO filed suit against AmerisourceBergen, Cardinal Health, and McKesson
- ▶ Nuisance and consumer protection claims
- ▶ Huge amount of document and data in discovery
- ▶ 6-month trial in King County Superior Court
- ▶ Settled at close of evidence

Overview of settlement

- ▶ Up to \$518 million payable over 17 years
 - ▶ \$430 million must be spent on combatting the opioid epidemic
 - ▶ Attorney General is directing an additional \$46 million in attorneys' fees to opioid spending by the State.
 - ▶ Remainder is attorneys' fees.

Who must join the settlement for it become effective?

- ▶ 125 local governments listed in the settlement
- ▶ All 37 jurisdictions that filed a lawsuit must join
- ▶ 90% of the local governments with a population over 10,000 that did not file a lawsuit must join

All other states have approved

- ▶ Washington settlement structure is very similar to the national distributor settlement that 48 other states and local governments joined
- ▶ No other State and its local governments have decided not to approve the national settlement

How a city or county can join the settlement

- ▶ Sign and return the Participation Form
- ▶ Deadline is September 23, 2022
- ▶ Return form to comopioidscases@atg.wa.gov

What happens if not enough cities and counties join the settlement?

- ▶ If not enough local governments join by September 23, 2022, the settlement is void
- ▶ No one gets any of the settlement money
- ▶ As of 8/8, only 17 out of 125 eligible local governments have returned the Participation Form

The national distributor settlement is part of Washington's settlement

- ▶ The national distributor settlement is incorporated into the Washington settlement as Exhibit H
- ▶ The terms and conditions in the national settlement apply to Washington

How will the money be split between the State and the local governments?

- ▶ The State and attorneys representing the local governments have agreed in principle to 50% local government/50% State split of the up to \$430 million abatement amount
- ▶ The local governments will receive up to \$215 million payable over 17 years

Why is the local government share “up to” \$215 million?

- ▶ The Washington and national settlement have base and incentive payment structures
- ▶ If less than 100% of the non-litigating local governments join, the settlement payments are less
- ▶ If a local government later files a lawsuit against the distributors, the settlement payments are less and the payments may be delayed

How to join the Allocation Agreement

- ▶ The Allocation Agreement has not yet been finalized, but will be sent to the local governments soon
- ▶ Sign the Allocation Agreement and return the signature page to comopioidscases@atg.wa.gov
- ▶ The threshold for the Allocation Agreement to be effective is in Exhibit O of the national settlement agreement

How are the local governments dividing their share?

- ▶ The One Washington MOU that Keller Rohrback circulated will be used to divide the local government share
- ▶ The Allocation Agreement makes a few changes to the One Washington MOU for the Distributor settlement

How to calculate the share your city or county would receive

- ▶ Exhibit B of the One Washington MOU lists the percentage that each eligible local government will receive
- ▶ Percentages based on population adjusted for proportionate share of the impact of the opioid epidemic
- ▶ A local government's share can be calculated by multiplying \$215 million and that local government's percentage in Exhibit B
- ▶ Attorneys' fees of 15% then need to be deducted, but this will not occur in later payment years as some of these fees are being paid via the settlement

How to join the One Washington MOU

- ▶ Sign the One Washington MOU
- ▶ Return the signature page to comopioidscases@atg.wa.gov or Keller Rohrback
- ▶ The threshold for the One Washington MOU to be effective is in Exhibit O of the national settlement agreement

A local government can decide to spend settlement money or pool it with others

- ▶ The One Washington MOU requires that each region establish an Opioid Abatement Council to oversee allocation, distribution, and spending
- ▶ A local government can spend settlement money itself or regionally
- ▶ Settlement funds must be spent on an Approved Use for fighting the opioid epidemic per court order

Spending and reporting requirements

- ▶ Opioid spending must be spent on an Approved Uses per court order
- ▶ Approved Uses are listed on Exhibit E of the national settlement agreement
- ▶ The national settlement and settlement administrator have reporting and tax cooperation requirements
- ▶ All records must be retained and the Public Records Act applies

To increase efficiency, please coordinate your spending with the State's spending

- ▶ The State's opioid spending is being coordinated by HCA and DOH
- ▶ Please discuss your spending plans with State and regional counsels so that spending can be coordinated

When do settlement payments start?

- ▶ The first payment is due by December 1, 2022
- ▶ Each of the 16 successive payment will be made on July 15

Will the settlement payments be the same each year?

- ▶ Settlement payments will not be the same but will not vary greatly unless certain incentive payments are not achieved. See Section IV and Exhibit M of the national settlement
- ▶ The first payment on December 1, 2022 will be approximately double the amount of the remaining 16 payments

Other opioid bankruptcies

- ▶ The Mallinckrodt and Purdue bankruptcies have different requirements, and no sign on is required for either
- ▶ There may be future opioid settlements

Questions

- ▶ Contact Jeff Rupert, the Complex Litigation Division Chief, at 206-389-2116 or Jeffrey.Rupert@atg.wa.gov
- ▶ You also can contact comopioidscases@atg.wa.gov
- ▶ <https://www.atg.wa.gov/distributors-washington-settlement> has more information about the settlement and the sign-on forms