



MEMORANDUM

To: Santaquin City Mayor & Council
From: Benjamin A. Reeves, Santaquin City Manager
Date: December 14, 2021
Subject: Opioid Litigation Settlement

Mayor & Council,

The Utah League of Cities and Towns and the Utah Attorney General's Office is seeking the support of Utah cities with a population of greater than 10,000 residents to approve in the settlement of Utah's Opioid Litigation Cases by authorizing Mayor Hunsaker to execute the attached Settlement Participation Form prior to the January 2, 2022 deadline.

To provide you background and context, I am attaching the following:

- Excerpts from a Highland City which outlines the Utah Attorney General's request
 - Memo from the ULCT with Participation Form
 - Resolution 12-03-2021 for your consideration
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Highland City Memorandum - Excerpts

BACKGROUND: This request comes from the Utah Attorney General's office and relates to two proposed settlement agreements regarding ongoing litigation involving opioid distributors and one opioid manufacturer. The distributors are McKesson, Cardinal Health, and AmerisourceBergen. The manufacturer is Janssen Pharmaceuticals, Inc., and its parent company Johnson & Johnson.

Several years ago, certain states and local political subdivisions initiated litigation against these companies related to their practices in developing, marketing, distributing, and other activities that caused or furthered the opioid epidemic. After years of litigation and negotiations, the parties have reached proposed, nationwide settlement agreements, one for the distributors and one for the manufacturer.

The proposed settlements would require the companies to provide billions of dollars in relief to states and local governments to alleviate and abate the opioid epidemic. These funds would be provided to the states, who would then use them for the benefit of the state and its political

subdivisions or distribute them to local governments for local use. The proposed settlements also require the companies to take certain actions or to stop taking certain actions related to opioid manufacturing and distribution.

The proposed settlements will only be effective if a sufficient number of states join the settlement. Further, the settlements provide for bonus incentive payments that provide additional money to states based on the number of local political subdivisions that opt into the settlements. Essentially, the companies do not wish to settle unless they can guarantee that a critical mass of government claims against them are being settled.

For the City side, the more political subdivisions that join, the more incentive money is paid out. Any political subdivision that does not join the settlement cannot receive funds from the payout and would have to pursue separate litigation against the companies. Thus the City has an incentive to participate in order to potentially receive funds or, at the least, to enable Utah to receive the most funds possible. Participation by the City requires the City to settle and release claims against the opioid companies, which would preclude the City from suing those companies for the same matters. Settlement by the City would not preclude any private person or entity from suing those companies.

The State of Utah has agreed to join the proposed settlements, but has not finalized how the settlement money would be used or allocated. The letter from the Attorney General indicates that the State may opt to retain the funds and use them for statewide programs and benefits, rather than make numerous small payments to local governments that provide less overall impact. Regardless, any funds coming to Utah to help offset the impacts of the opioid epidemic would be beneficial Highland residents and to other residents of the state. The proposed settlement agreements and other information related to the litigation and settlement can be found online at nationalopioidsettlement.com



TO: Utah Cities Over 10,000 Population

FROM: Roger Tew, ULCT General Counsel

DATE: December 2, 2021

SUBJECT: OPIOID SETTLEMENT MEMORANDUM

The purpose of this memorandum is to update Utah cities on the status of the opioid settlement. This issue has been discussed previously at LPC meetings and with city attorneys (UMAA) and city managers (UCMA). The ULCT Board of Directors has encouraged cities to participate in this settlement. However, the Board is aware that each city has to make their own determination.

At the moment there has been disagreement among some Utah counties about whether to participate in the settlement or to continue their own litigation. However, that position is fluid. Therefore, we are still encouraging the cities eligible to participate in the settlement do so. This request applies only to Utah cities with a population over 10,000 per the latest census.

Attached in this memo are the following:

- A page outline containing additional information
- Instructions for contacting the National Opioid Settlement Website. The most immediate action is for your city to register for the settlement on this website.
- Sample resolutions from other states (the resolution process has been used in several Utah cities).

Obviously, time is of the essence. Please call Roger Tew at 801-560-9273 or via email at rtew@ulct.org.

OPIOID DISCUSSION OUTLINE

Overview: The State of Utah has been litigating for several years with a number of pharmaceutical companies regarding those companies involvement with the opioid epidemic. Related litigation has been undertaken by all of Utah counties. No Utah cities have initiated litigation. The State has agreed to a settlement. The scope and money are dependent on whether Utah cities and counties agree to that settlement.

1. Available money
 - a. How much money is there?
 - i. State alone - \$151 million
 - ii. State and full local participation - \$270
 - iii. Payments over 18 years
 - b. County/State split
 - i. Legislative proposal: 55% to state, 45% to counties with city participation
 - ii. ULCT position on the county/state split?
 - c. Usage guidelines
 - i. Not mitigation money
 - ii. Available for treatment and prevention
 1. Most Utah cities do not provide these services/usually done at county/state level
 - d. General agreement of need for additional funding to cities that are providing homeless resources centers
 - e. City money largely tied to agreements with their counties. If a county refuses settlement, cities in those counties may be excluded.
2. Guardrails for county and state allocations
 - a. Maintenance of effort
 - i. Supplement, not supplant, existing funds
 - b. Need for "seat at the table" on any division of money
 - i. State must involve cities in discussion of how money is used
 - ii. Counties must involve cities in their counties in discussion of how money is used in each individual county
 - iii. Cities that provide services (i.e., first responder training, media campaigns, etc.) should be able to submit proposals or access block grants
 - iv. Cities and towns of less than 10,000 people but who have been negatively impacted must also be considered in discussions with the state and individual counties
3. Time Frames – Cities need to complete approval process by early January

PARTICIPATION INSTRUCTIONS

Thank you for registering your subdivision on the national settlement website and for considering participating in the proposed Settlement Agreement with Johnson & Johnson, Janssen Pharmaceuticals, Inc., Ortho-McNeil-Janssen Pharmaceuticals, Inc., and Janssen Pharmaceutica, Inc. (collectively “Janssen”). This virtual envelope contains a Participation Form including a release of claims. The Participation Form in this envelope must be executed, without alteration, and submitted in order for your subdivision to be considered potentially “participating.”

The sign-on period for subdivisions ends on January 2, 2022. On or after that date, the states (in consultation with the subdivisions) and the Settling Distributors will determine whether the subdivision participation rate is sufficient for the settlement to move forward. If the deal moves forward, your release will become effective. If it does not, it will not.

As a reminder, if you have not already started your review of the settlement documentation, detailed information about the Settlements may be found at: <https://nationalopioidsettlement.com/>. This national settlement website also includes links to information about how the Settlements are being implemented in your state and how settlement funds will be allocated within your state, including information about, and links to, any applicable allocation agreement or legislation. This website will be supplemented as additional documents are created. If you have questions, please contact your counsel (if you have counsel on opioids matters) or the Utah Attorney General’s Office through Kevin McLean at (801) 440-4680.

Settlement Participation Form

Governmental Entity: Centerville city	State: UT
Authorized Signatory:	
Address 1:	
Address 2:	
City, State, Zip:	
Phone:	
Email:	

The governmental entity identified above ("Governmental Entity"), in order to obtain and in consideration for the benefits provided to the Governmental Entity pursuant to the Settlement Agreement dated July 21, 2021 ("Janssen Settlement"), and acting through the undersigned authorized official, hereby elects to participate in the Janssen Settlement, release all Released Claims against all Released Entities, and agrees as follows.

1. The Governmental Entity is aware of and has reviewed the Janssen Settlement, understands that all terms in this Election and Release have the meanings defined therein, and agrees that by this Election, the Governmental Entity elects to participate in the Janssen Settlement and become a Participating Subdivision as provided therein.
2. The Governmental Entity shall, within 14 days of the Reference Date and prior to the filing of the Consent Judgment, dismiss with prejudice any Released Claims that it has filed.
3. The Governmental Entity agrees to the terms of the Janssen Settlement pertaining to Subdivisions as defined therein.
4. By agreeing to the terms of the Janssen Settlement and becoming a Releasor, the Governmental Entity is entitled to the benefits provided therein, including, if applicable, monetary payments beginning after the Effective Date.
5. The Governmental Entity agrees to use any monies it receives through the Janssen Settlement solely for the purposes provided therein.
6. The Governmental Entity submits to the jurisdiction of the court in the Governmental Entity's state where the Consent Judgment is filed for purposes limited to that court's role as provided in, and for resolving disputes to the extent provided in, the Janssen Settlement.
7. The Governmental Entity has the right to enforce the Janssen Settlement as provided therein.

8. The Governmental Entity, as a Participating Subdivision, hereby becomes a Releasor for all purposes in the Janssen Settlement, including but not limited to all provisions of Section IV (Release), and along with all departments, agencies, divisions, boards, commissions, districts, instrumentalities of any kind and attorneys, and any person in their official capacity elected or appointed to serve any of the foregoing and any agency, person, or other entity claiming by or through any of the foregoing, and any other entity identified in the definition of Releasor, provides for a release to the fullest extent of its authority. As a Releasor, the Governmental Entity hereby absolutely, unconditionally, and irrevocably covenants not to bring, file, or claim, or to cause, assist or permit to be brought, filed, or claimed, or to otherwise seek to establish liability for any Released Claims against any Released Entity in any forum whatsoever. The releases provided for in the Janssen Settlement are intended by the Parties to be broad and shall be interpreted so as to give the Released Entities the broadest possible bar against any liability relating in any way to Released Claims and extend to the full extent of the power of the Governmental Entity to release claims. The Janssen Settlement shall be a complete bar to any Released Claim.
9. In connection with the releases provided for in the Janssen Settlement, each Governmental Entity expressly waives, releases, and forever discharges any and all provisions, rights, and benefits conferred by any law of any state or territory of the United States or other jurisdiction, or principle of common law, which is similar, comparable, or equivalent to § 1542 of the California Civil Code, which reads:

General Release; extent. A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.

A Releasor may hereafter discover facts other than or different from those which it knows, believes, or assumes to be true with respect to the Released Claims, but each Governmental Entity hereby expressly waives and fully, finally, and forever settles, releases and discharges, upon the Effective Date, any and all Released Claims that may exist as of such date but which Releasors do not know or suspect to exist, whether through ignorance, oversight, error, negligence or through no fault whatsoever, and which, if known, would materially affect the Governmental Entities' decision to participate in the Janssen Settlement.

10. Nothing herein is intended to modify in any way the terms of the Janssen Settlement, to which Governmental Entity hereby agrees. To the extent this Election and Release is interpreted differently from the Janssen Settlement in any respect, the Janssen Settlement controls.

I swear under penalty of perjury that I have all necessary power and authorization to execute this Election and Release on behalf of the Governmental Entity.

Signature: _____

Name: _____

Title: _____

Date: _____