



Legislation Text

File #: 21-19, **Version:** 1

SUBJECT/RECOMMENDATION:

Authorize the City of Clearwater to join the State of Florida and other local governmental units as a participant in the Florida Memorandum of Understanding and Formal Agreements implementing a Unified Plan and adopt Resolution 21-19.

SUMMARY:

On February 13, 2018, the City Council authorized hiring Motley Rice, LLC. to investigate, litigate, or negotiate for settlement, actionable claims that may be pursued by the City against individuals and entities related to the marketing, prescribing, distribution, or sale of opioids.

On November 15, 2018, Motley Rice filed a complaint in the Sixth Circuit court on behalf of the City, naming multiple pharmaceutical companies and distributors as defendants.

Since then, Motley Rice has been negotiating with distributors and through bankruptcies filed by several pharmaceutical companies for a settlement to the matter.

The State of Florida has filed an action pending in Pasco County, Florida, and a number of Florida Cities and Counties have also filed an action *In re: National Prescription Opiate Litigation*, MDL No. 2804 (N.D. Ohio) (the Opioid Litigation) and the City of Clearwater is a litigating participant in that action.

The State of Florida and lawyers representing certain various local governments involved in the Opioid Litigation have proposed a unified plan for the allocation and use of prospective settlement dollars from opioid related litigation. Based on the status of this litigation, the likely structure of any resolution, and the potential litigation risks in the absence of a statewide agreement, our counsel believes this proposal reflects a reasonable compromise between the State and its political subdivisions.

The Florida Memorandum of Understanding (the Florida Plan) sets forth a framework of a unified plan for the proposed allocation and use of opioid settlement proceeds. It is anticipated that formal agreements implementing the Florida Plan will be entered into at a future date. Participation in the Florida Plan by a large majority of Florida cities and counties will materially increase the amount of funds to Florida and should improve Florida's relative bargaining position during additional settlement negotiations.

Under the likely settlement structure for the cases, states and their political subdivisions are strongly incentivized to reach a joint resolution of all State and political subdivision claims. Joining with the State and other local government units means that the state and the political subdivisions will receive a substantially larger settlement amount if they are all parties to the settlement.

Under this agreement, all settlement funds received by the State of Florida and its political subdivisions must

be utilized for strategies, programming and services used to expand the availability of treatment for individuals impacted by substance use disorders (Approved Purposes). A non-exclusive list of potential abatement programs and uses are included in Exhibits A and B to the agreement. These uses are intended to best serve the overall purpose and intention of this litigation, which is to abate the continuing public health crisis of opioid addiction within our communities.

This Proposal divides all settlement funds between three funds: (1) the City/County Fund; (2) the Regional Fund; and (3) the State Fund.

The City/County Fund consists of 15% of the total settlement amounts allocable to the State of Florida. These funds are distributed to all counties and qualifying municipalities in the State of Florida. The allocation of the City/County Fund between counties and municipalities is based on a model referred to as the "Negotiation Class Metrics." This model was developed in the National Prescription Opiate MDL, and considers: (1) the amount of opioids shipped to the county; (2) the number of opioid deaths that occurred in that county; and (3) the number of people who suffer opioid use disorder in that county.

The Regional Fund consists of a sliding scale between 30% and 40% of the total settlement amounts allocable to the State of Florida, with the largest percentages occurring in the immediate years after settlement and decreasing over time. In the case of counties with a population of over 300,000, and which satisfy other criteria regarding abatement infrastructure, (termed "Qualified Counties") these funds are provided directly to the county. the definition of Qualified County requires that the county reach an agreement with at least some municipalities within the county as to how these funds are spent. Specifically, they must reach an agreement with a sufficient number of municipalities such that the aggregate population of municipalities which consent to the county's use of these funds is more than half the aggregate population of individuals residing within municipalities in your County.

The State Fund consists of the remaining 45% to 55% of the total settlement amounts allocable to the State of Florida, depending on the amount of the Regional Fund above. As with the City/County Fund and Regional Fund, these funds must be spent on Approved Purposes.

The State and each local government must report its expenditures to the Department of Children and Families each year.

This agreement also establishes an Opioid Abatement Taskforce or Council. The Taskforce or Council includes appointments from municipalities, qualified counties, and non-qualified counties. The purpose of the Opioid Abatement Taskforce or Council is to advise the Governor, Legislature, Florida's Department of Children & Families and Local Governments on priorities that should be addressed as part of the opioid epidemic and to review how monies have been spent.

Through the course of negotiating these settlements and this allocation agreement, outside counsel has sought to create a separate fund for the payment of attorneys' fees. In this manner, the costs of attorneys' fees are shared by both litigating and non-litigating entities, rather than paid directly from the recovery of litigating entities, as provided in the agreement or retainer.

The proposal creates a fee fund of between 0-10% of the City/County fund, depending on the degree to which litigating local governments choose to participate in this settlement. Under this proposal, counsel must first

attempt to obtain a legal fee from any national fee fund established as part of any settlement. If counsel is unable to obtain their full contracted fee from that fund, counsel may then obtain additional funds from this separate fund. In most cases, this will result in a substantial reduction in the attorney's fees to counsel from what is set forth in the agreement or retainer, and will avoid the necessity of counties and cities paying the higher contingency fee directly from their recovery.

If we are not able to reach an agreement with the Attorney General's office, this may threaten the overall allocation of settlement proceeds to the State of Florida and its local governments. This is because the settlement agreement currently under negotiation incentivize states and local governments to reach allocation agreements and penalizes those that do not.

Alternatively, there is a potential litigation risk that in the absence of an agreed upon allocation plan, the State may seek a declaration that only the State of Florida, and not its local governments, have standing to bring litigation on behalf of its citizens, threatening the ability of local governments to pursue their own lawsuits in this matter.