

SHEBOYGAN COUNTY RESOLUTION NO. 29 (2021/22)

Re: **Authorizing Sheboygan County to Enter Into the Settlement Agreements with McKesson Corporation, Cardinal Health, Inc., AmerisourceBergen Corporation, Johnson & Johnson, Janssen Pharmaceuticals, Inc., Ortho-McNeil-Janssen Pharmaceuticals, Inc., and Janssen Pharmaceutica, Inc., Agree to the Terms of the Memorandum of Understanding Allocating Settlement Proceeds, and Authorize Entry Into the Memorandum of Understanding with the Attorney General**

WHEREAS, in Resolution No. 13 (2017/18), the County Board of Supervisors authorized Sheboygan County ("the County") to enter into an engagement agreement with von Briesen & Roper, s.c., Crueger Dickinson LLC, and Simmons Hanly Conroy LLC ("the Law Firms") to pursue litigation against certain manufacturers, distributors, and retailers of opioid pharmaceuticals ("the Opioid Defendants") in an effort to hold the Opioid Defendants financially responsible for the County's expenditure of vast money and resources to combat the opioid epidemic, and

WHEREAS, on behalf of the County, the Law Firms filed a lawsuit against the Opioid Defendants, and

WHEREAS, the Law Firms filed similar lawsuits on behalf of 66 other Wisconsin counties, and all Wisconsin cases were coordinated with thousands of other lawsuits filed against the same or substantially similar parties as the Opioid Defendants in the Northern District of Ohio, captioned *In re: Opioid Litigation*, MDL 2804 ("the Litigation"), and

WHEREAS, four (4) additional Wisconsin counties (Milwaukee, Dane, Waukesha, and Walworth) hired separate counsel and joined the Litigation, and

WHEREAS, since the inception of the Litigation, the Law Firms have coordinated with counsel from around the country (including counsel for Milwaukee, Dane, Waukesha, and Walworth Counties) to prepare the County's case for trial and engage in extensive settlement discussions with the Opioid Defendants, and

WHEREAS, the settlement discussions with McKesson Corporation, Cardinal Health, Inc., AmerisourceBergen Corporation, Johnson & Johnson, Janssen Pharmaceuticals, Inc., Ortho-McNeil-Janssen Pharmaceuticals, Inc., and Janssen Pharmaceutica, Inc. ("the Settling Defendants") resulted in a tentative agreement as to settlement terms pending agreement from the County and other plaintiffs involved in the Litigation, and

WHEREAS, copies of the Distributors Settlement Agreement and Janssen Settlement Agreement (collectively "the Settlement Agreements") representing the terms of the tentative Settlement Agreements with the Settling Defendants are on file in the County Clerk's Office, and

WHEREAS, the Settlement Agreements provide, among other things, for the payment of certain sums to Participating Subdivisions (as defined in the Settlement Agreements) upon the occurrence of certain events detailed in the Settlement Agreements, and

WHEREAS, the County is a Participating Subdivision in the Settlement Agreements and has the opportunity to participate in the benefits associated with the Settlement Agreement provided the County (a) approves the Settlement Agreements; (b) approves the Memorandum of Understanding allocating proceeds from the Settlement Agreements among the various Wisconsin Participating Subdivisions, a copy of which is on file in the County Clerk's Office ("the Allocation MOU"); (c) approves the Memorandum of Understanding with the Wisconsin Attorney General regarding allocation of settlement proceeds, a copy of which is on file in the County Clerk's Office ("the AG MOU"); and (d) the Legislature's Joint Committee on Finance approves the terms of the Settlement Agreements and the AG MOU, and

WHEREAS, 2021 Wisconsin Act 57 created Section 165.12 of the Wisconsin Statutes relating to the settlement of all or part of the Litigation, and

WHEREAS, pursuant to Wis. Stat. § 165.12(2), the Legislature's Joint Committee on Finance is required to approve the Settlement Agreements and the AG MOU, and

WHEREAS, pursuant to Wis. Stat. § 165.12(2), the proceeds from any settlement of all or part of the Litigation are distributed 70% to local governments in Wisconsin that are parties to the Litigation and 30% to the State, and

WHEREAS, Wis. Stat. § 165.12(4)(b)2 provides the proceeds from the Settlement Agreement must be deposited in a segregated account ("the Opioid Abatement Account") and may be expended only for approved uses for opioid abatement as provided in the Settlement Agreements, and

WHEREAS, Wis. Stat. § 165.12(7) bars claims from any Wisconsin local government against the Opioid Defendants filed after June 1, 2021, and

WHEREAS, the definition of Participating Subdivisions in the Settlement Agreements recognizes a statutory bar on claims such as that set forth in Wis. Stat. § 165.12(7) and, as a result, the only Participating Subdivisions in Wisconsin are those counties and municipalities that were parties to the Litigation (or otherwise actively litigating a claim against one, some, or all of the Opioid Defendants) as of June 1, 2021, and

WHEREAS, the Legislature's Joint Committee on Finance is not statutorily authorized or required to approve the allocation of proceeds of the Settlement Agreements among Wisconsin Participating Subdivisions, and

WHEREAS, the Law Firms have engaged in extensive discussions with counsel for all other Wisconsin Participating Subdivisions resulting in the proposed Allocation MOU, which is an agreement between all of the entities identified in the Allocation MOU as to how the proceeds payable to those entities under the Settlement Agreements will be allocated, and

WHEREAS, there is provided with this Resolution a summary of the essential terms of the Settlement Agreements, the deadlines related to the effective dates of the Settlement Agreements, the ramifications associated with the County's refusal to enter into the Settlement Agreements, the form of the Allocation MOU, the form of the AG MOU, and an overview of the process for finalizing the Settlement Agreements, and

WHEREAS, the County, by this Resolution, shall establish the Opioid Abatement Account for the receipt of the proceeds of the Settlement Agreements consistent with the terms of this Resolution, and

WHEREAS, the County's Opioid Abatement Account shall be separate from the County's general fund, shall not be commingled with any other County funds, and shall be dedicated to funding opioid abatement measures as provided in the Settlement Agreements, and

WHEREAS, pursuant to the County's engagement agreement with the Law Firms, the County shall pay up to an amount equal to 25% of the proceeds from successful resolution of all or part of the Litigation, whether through settlement or otherwise, plus the Law Firms' costs and disbursements, to the Law Firms as compensation for the Law Firms' efforts in the Litigation and any settlement, and

WHEREAS, the Law Firms anticipate making application to the national fee fund established in the Settlement Agreements seeking payment, in whole or part, of the fees, costs, and disbursements owed the Law Firms pursuant to the engagement agreement with the County, and

WHEREAS, it is anticipated the amount of any award from the fee fund established in the Settlement Agreements will be insufficient to satisfy the County's obligations under the engagement agreement with the Law Firms, and

WHEREAS, the County, by this Resolution, and pursuant to the authority granted the County in the applicable Order emanating from the Litigation in relation to the Settlement Agreements and payment of attorneys' fees, shall execute an Escrow Agreement which shall, among other things, direct the escrow agent responsible for the receipt and distribution of the proceeds from the Settlement Agreements to establish an account for the purpose of segregating funds to pay the fees, costs, and disbursements of the Law Firms owed by the County ("the Attorneys' Fees Account") in order to fund a state-level "backstop" for payment of the fees, costs, and disbursements of the Law Firms, and

WHEREAS, in no event shall payments to the Law Firms out of the Attorneys' Fees Account and the fee fund established in the Settlement Agreements exceed an amount equal to 25% of the amounts allocated to the County in the Allocation MOU, and

WHEREAS, the intent of this Resolution is to authorize the County to enter into the Settlement Agreements, the Allocation MOU, and the AG MOU, establish the County's Opioid Abatement Account, and establish the Attorneys' Fees Account, and

WHEREAS, the County, by this Resolution, shall authorize the County's Corporation Counsel to finalize and execute any escrow agreement and other document or agreement necessary to effectuate the Settlement Agreements and the other agreements referenced herein;

NOW, THEREFORE, BE IT RESOLVED that the Sheboygan County Board of Supervisors hereby approves:

1. The execution of the Distributors Settlement Agreement and any and all documents ancillary thereto and authorizes the Board Chair to execute same.
2. The execution of the Janssen Settlement Agreement and any and all documents ancillary thereto and authorizes the Board Chair to execute same.
3. The final negotiation and execution of the Allocation MOU in form substantially similar to that presented with this Resolution and any and all documents ancillary thereto and authorizes the Board Chair to execute same upon finalization provided the percentage share identified as allocated to the County is substantially similar to that identified in the Allocation MOU provided to the Board with this Resolution.
4. The final negotiation and execution of the AG MOU in form substantially similar to that presented with this Resolution and any and all documents ancillary thereto and authorizes the Board Chair to execute same.
5. The Corporation Counsel's negotiation and execution of the Escrow Agreement for the receipt and disbursement of the proceeds of the Settlement Agreements as referenced in the Allocation MOU.

BE IT FURTHER RESOLVED that Sheboygan County hereby establishes an account separate and distinct from the County's general fund which shall be titled "Opioid Abatement Account." All proceeds from the Settlement Agreements not otherwise directed to the Attorney Fees Account established under the Escrow Agreement shall be deposited in the Opioid Abatement Account. The Opioid Abatement Account shall be administered consistent with the terms of this Resolution, Wis. Stat. § 165.12(4), and the Settlement Agreements.

BE IT FURTHER RESOLVED that Sheboygan County hereby authorizes the escrow agent under the Escrow Agreement to establish an account separate and distinct from any account containing funds

allocated or allocable to the County which shall be referred to by the County as the "Attorneys' Fees Account." The escrow agent shall deposit a sum equal to up to, but in no event exceeding, an amount equal to 20% of the County's proceeds from the Settlement Agreements into the Attorney Fees Account. If the payments to the County are not enough to fully fund the Attorneys' Fees Account as provided herein because such payments are made over time, the Attorneys' Fees Account shall be funded by placing up to, but in no event exceeding, an amount equal to 20% of the proceeds from the Settlement Agreements attributable to Local Governments (as that term is defined in the Allocation MOU) into the Attorneys' Fees Account for each payment. Funds in the Attorneys' Fees Account shall be utilized to pay the fees, costs, and disbursements owed to the Law Firms pursuant to the engagement agreement between the County and the Law Firms provided, however, the Law Firms shall receive no more than that to which they are entitled under their fee contract when considering the amounts paid the Law Firms from the fee fund established in the Settlement Agreements and allocable to the County. The Law Firms may make application for payment from the Attorneys' Fees Account at any time and the County shall cooperate with the Law Firms in executing any documents necessary for the escrow agent to make payments out of the Attorneys' Fees Account.

BE IT FURTHER RESOLVED that all actions heretofore taken by the Board of Supervisors and other appropriate public officers and agents of Sheboygan County with respect to the matters contemplated under this Resolution are hereby ratified, confirmed, and approved.

Respectfully submitted this 21st day of December, 2021.

FINANCE COMMITTEE

William C. Goehring
William C. Goehring, Chairperson

Roger Te Stroete
Roger Te Stroete, Vice-Chairperson

Keith Ablter
Keith Ablter, Secretary

Thomas Wegner
Thomas Wegner

Robert Ziegelbauer
Robert Ziegelbauer

Opposed to Introduction:

Adopted 12/21/2021