

**SHEBOYGAN COUNTY RESOLUTION NO. 03 (2024/25)**

Re: **Authorizing Sheboygan County to Enter Into the Settlement Agreement with Kroger Co., related to the Opioid Class Action Litigation**

**WHEREAS**, the County Board of Supervisors previously authorized 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;

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

**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”);

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

**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;

**WHEREAS**, the settlement discussions with The Kroger Co. (the “Settling Defendant”) resulted in a tentative agreement as to settlement terms pending agreement from the County and other plaintiffs involved in the Litigation;

**WHEREAS**, copies of the settlement agreement relating to the Settling Defendant (“Settlement Agreement”) representing the terms of the tentative settlement agreement with the Settling Defendant has been made available at <https://nationalopioidsettlement.com/wp-content/uploads/2024/05/Kroger-Multistate-Settlement-Agreement-Circulated-to-States-March-25-2024.pdf>;

**WHEREAS**, the Settlement Agreement provides, among other things, for the payment of certain sums to Participating Subdivisions (as defined in the Settlement Agreement) upon the occurrence of certain events detailed in the Settlement Agreement;

**WHEREAS**, the County is a Participating Subdivision in the Settlement Agreement and has the opportunity to participate in the benefits associated with the Settlement Agreement provided the County (a) approves the Settlement Agreement; (b) approves the Addendum Two to the Memorandum of Understanding allocating proceeds from the Settlement Agreement (“MOU”) among the various Wisconsin Participating Subdivisions, a copy of which is attached to this Resolution (“Addendum Two”); and (c) the Legislature’s Joint Committee on Finance approves the terms of the Settlement Agreement;

**WHEREAS**, pursuant to Section 12 of the State-Local MOU entered into between the Wisconsin Participating Subdivisions and the Attorney General of the State of Wisconsin (“State-Local MOU”), the Attorney General has provided notice that the terms of the State-Local MOU shall apply to the Settlement Agreement and all proceeds of such Settlement Agreement;

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

**WHEREAS**, pursuant to Wis. Stat. § 165.12(2), the Legislature's Joint Committee on Finance is required to approve the Settlement Agreement;

**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;

**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 Agreement;

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

**WHEREAS**, the definition of Participating Subdivisions in the Settlement Agreement 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;

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

**WHEREAS**, the Wisconsin Participating Subdivisions previously negotiated and approved the allocation of proceeds among themselves, which allocation is reflected in Exhibit A to the 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;

**WHEREAS**, the County and all other Wisconsin Participating Subdivisions agreed to and entered into that certain Addendum to the MOU ("Addendum One") that provided for allocation of settlement proceeds from previous settlements with certain pharmacies and manufacturers according to the same percentages as that provided in the MOU;

**WHEREAS**, the County has been informed as to the deadlines related to the effective dates of the Settlement Agreement, the ramifications associated with the County's refusal to enter into the Settlement Agreement, the form of Addendum Two and an overview of the process for finalizing the Settlement Agreements and such information, together with additional resources related to the settlement can be found at <https://nationalopioidsettlement.com/kroger-co-settlement/>;

**WHEREAS**, the County, by this Resolution, shall deposit the proceeds of the Settlement Agreement consistent with the terms of this Resolution and Wis. Stat. § 165.12(4)(b);

**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;

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

**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;

**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 Agreement and payment of attorney fees, shall authorize and direct the escrow agent responsible for the receipt and distribution of the proceeds from the Settlement Agreement 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 "Attorney Fees Account") in order to fund a local "backstop" for payment of the fees, costs, and disbursements of the Law Firms;

**WHEREAS**, in no event shall payments to the Law Firms out of the Attorney Fees Account and the fee fund established in the Settlement Agreement exceed an amount equal to 25% of the amounts allocated to the County by virtue of the Addendum Two (Exhibit A to the MOU);

**WHEREAS**, the intent of this Resolution is to authorize the County to enter into the Settlement Agreement, the Addendum Two, establish the County's Opioid Abatement Account, and establish the Attorney Fees Account; and

**WHEREAS**, the County, by this Resolution, shall authorize the County's corporation counsel to finalize and execute any other document or agreement necessary to effectuate the Settlement Agreement and the other agreements referenced herein;

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

1. The execution of the Settlement Agreement and any and all documents ancillary thereto and authorizes the Board Chair or designee to execute same.
2. The final negotiation and execution of Addendum Two in form substantially similar to that presented with this Resolution and any and all documents ancillary thereto and authorizes the Board Chair or designee to execute same upon finalization provided the percentage share identified as allocated to the County is substantially similar to that identified in the Addendum Two provided to the Board with this Resolution.
3. The execution by the Board Chair or designee of any additional documents or agreements for the receipt and disbursement of the proceeds of the Settlement Agreement.

**BE IT FURTHER RESOLVED:** all proceeds from the Settlement Agreement not otherwise directed to the Attorney Fees Account shall be deposited in the County's 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 Agreement.

**BE IT FURTHER RESOLVED:** the County hereby authorizes the establishment of 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 "Attorney Fees Account." An 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 Agreement into the Attorney Fees Account. If the payments to the County are not enough to fully fund the Attorney Fees Account as provided herein because such payments are made over time, the Attorney 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 Agreement attributable to Local Governments (as that term is defined in the MOU) into the Attorney Fees Account for each payment. Funds in the Attorney 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 Agreement and allocable to the County. The Law Firms may make application for payment from the Attorney 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 Attorney Fees Account.

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

Respectfully submitted this 18th day of June, 2024.

**FINANCE COMMITTEE**

*Vern Koch*  
Vern Koch, Chairperson

*Kathleen Donovan*  
Kathleen Donovan, Vice-Chairperson

*William Goehring*  
William Goehring, Secretary

*Curt Brauer*  
Curt Brauer

*Thomas Wegner*  
Thomas Wegner

Opposed to Introduction:

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Adopted 07/16/2024