

Opioid Litigation Resolutions

Tennessee Status Report

Association of County Mayors Conference

September 1, 2021

What is going on?

LITIGATION

Legislation

Negotiations

Bankruptcy
Plans

Settlement
Proposals

Litigation Solution?

- More than 3,000 lawsuits by state & local governments
- Potential for thousands more
- Rush to the courthouse
- Bankruptcies: competing with other creditors
- Appeals

Peace Dividends

- **Settlements:** Maximize financial terms by incentivizing global peace
- **Bankruptcies:** Maximize funds for state and local governments by committing them to opioid abatement

What resolutions could mean for TN

- More than **\$710 million** over 18 years
- Most of the money dedicated to opioid abatement
- Counties receiving funds and playing key role in providing services

Proposed Resolutions

Settlements

- Three national distributors
 - McKesson
 - AmerisourceBergen
 - Cardinal Health
- Janssen/J&J

Bankruptcy Plans favoring abatement

- Purdue
- Mallinckrodt

Getting prepared: Legislation

- 2021 Legislative Session: Public Chapter 491
- Creates Opioid Abatement Fund
 - For abatement proceeds from state litigation, settlements
 - Separate from General Fund
 - Must be spent on future abatement
- Creates Opioid Abatement Council
 - Independent Council determining use of Abatement Fund
 - State- and local-selected members
- Addresses allocation for distributor/J&J settlements

Proposed Settlements: Status

- **State joinder:** Awaiting announcement on moving forward
- **Subdivision joinder:**
 - 120-day period
 - Notices will be sent out
 - Websites, meetings, outreach to follow
 - Will be asked to join both settlements
 - Expect state-subdivision agreement approval as well

Settlements: Financial Terms

- **Assuming maximum payments:**
- Distributor settlement:
 - More than **\$495 million** over 18 years
- J&J Settlement:
 - More than **\$110 million** over 9 years
 - Front-loaded with about 75% paid by July 2025

Settlements: Money Flow

15%
Subdivisions

All Counties
Certain Cities

70%
**Abatement
Fund**

Statutory Trust
County Share

15%
State

General Fund

Settlements: Abatement Fund

- 70% of funds for future abatement
- Per statute:
 - Money flows into the Tennessee Opioid Abatement Fund
 - Opioid Abatement Council determines approved abatement programs
 - 35% of funds allocated to participating counties for abatement
 - 65% determined by Council, funds still end up in communities

Maximizing Settlement Funds

- “Assuming maximum payments” figures reflect potential only
- Settlements are filled with carrots and sticks
 - About half of the funds are contingent on incentives tied to subdivision participation or other resolution of subdivision claims
 - Substantial payment amounts can be suspended and offset as a result of new subdivision litigation
- Legislation provides TN protection and a path to maximum recovery

Settlement: Next Steps

- Companies announce they are moving forward, subdivision joinder 120-day clock starts
- Notices go out to all counties, certain cities
- Additional details provided through websites, email, zoom sessions, meetings, etc.
- Subdivisions sign-on to the settlements
- National determination as to whether there is enough subdivision joinder to make settlements effective.
- If no deal, back to current status

Bankruptcy Cases: Status

- **Purdue:**
 - Bankruptcy plan includes Sackler claims
 - Confirmation of bankruptcy plan expected today
 - Post-confirmation motions, appeal
- **Mallinckrodt:**
 - Currently voting on bankruptcy plan
 - Opioid claim resolution similar to Purdue
 - Other creditors, less money

Purdue: Flow of Abatement Funds

- Estimated funds to states and subdivisions: **\$105 million** over 10 years.
- All money to states and subdivisions must be for abatement
- No direct payments to subdivisions or state general fund
- Allocation of abatement funds can be addressed through statute, state-subdivision agreement or default provisions
- Anticipate having a TN state-subdivision agreement to mirror abatement allocation in settlements

What to Expect

- Settlement notice
- Lots of information and outreach
- Request to join both settlements and state-subdivision agreement
- Establishment of Abatement Trust Fund and formation of Opioid Abatement Council
- If sufficient participation, settlements become effective early next year and first payments made in April and July
- If bankruptcy plans go forward, payments begin next year

Questions and Contacts

- Litigating subdivisions encouraged to contact their outside counsel
- AG Office will make information available to everyone and provide contact info for questions