



**PEMBROKE PINES
CITY COMMISSION**

Frank C. Ortis
MAYOR
954-450-1020
fortis@ppines.com

Jay D. Schwartz
VICE MAYOR
DISTRICT 2
954-450-1030
jschwartz@ppines.com

Thomas Good, Jr.
COMMISSIONER
DISTRICT 1
954-450-1030
tgood@ppines.com

Angelo Castillo
COMMISSIONER
DISTRICT 4
954-450-1030
acastillo@ppines.com

Iris A. Siple
COMMISSIONER
DISTRICT 3
954-450-1030
isiple@ppines.com

Charles F. Dodge
CITY MANAGER
954-450-1040
cdodge@ppines.com

INTER-OFFICE CORRESPONDENCE

MEMORANDUM NO. 2021-054

TO: Frank C. Ortis, Mayor
Members of the City Commission

CC: Charles F. Dodge, City Manager
Aner Gonzalez, Assistant City Manager
Daniel Rotstein, Risk Manager
Lisa Chong, Finance Director
Kipp Shimpeno, Police Chief
John Picarello, Fire Chief
Marlene D. Graham, City Clerk

FROM: Samuel S. Goren, City Attorney *SSG*
Julie F. Klahr, Deputy City Attorney *JFK*

DATE: April 21, 2021

RE: City of Pembroke Pines ("City") / Opioid Litigation
Settlement

The City received the attached correspondence and Memorandum of Understanding ("MOU") from Florida Attorney General Moody regarding settlement negotiations in the opioid litigation pending in federal court against Purdue Pharma, L.P., the Sackler family, multiple distributors of the drugs, and others.

This litigation involves the development, marketing, and distribution of Oxycontin and the resulting proliferation of persons addicted to pain medicines resulting from taking this drug as well as the propagation of pill mills in our community and around the country. Attorney General Moody's letter seeks to obtain the City of Pembroke Pines' approval of this MOU and in exchange the City will receive a portion of the settlement proceeds to be used towards abatement activities in accordance with the terms of the MOU.

WHAT IS THIS CASE ABOUT?

As you know from the City's participation in this litigation, opioid misuse is currently the nation's number one public health threat. Opioids are a family of drugs that include prescription painkillers, such as hydrocodone and Oxycodone, and illegal drugs like heroin. One hundred and thirty Americans die from opioid overdose daily, with the death toll attributed to opioids in the United States quadrupling over the last 20 years.

Although this prescription medication was initially touted as being non-addictive, that claim has since been determined to be incorrect. Litigation was filed by many plaintiffs around the country, including the City of Pembroke Pines, alleging that Purdue Pharma, L.P., its owners the Sackler family, and many others were aware or were made aware of the fallacy of these claims, and yet continued to mass produce, sell, distribute, and prescribe these pharmaceuticals in response to an ever-increasing demand. This was the underlying basis for the exploding pill mill industry. It is also believed that as people became used to the effects of these drugs, they first began to take more and more, and higher and higher doses until they moved on to other stronger regulated drugs to manage their pain such as propofol, fentanyl, and illegal drugs such as heroin and methamphetamines. The cascading effect was to create increased law enforcement efforts, an increase in the number of overdose calls to fire rescue, not to mention the overall detrimental community impacts and resulting societal problems stemming from this addiction epidemic.

The resulting litigation, filed by the City of Pembroke Pines and a number of governmental and private entities around the country against a vast array of defendants, was consolidated into a multidistrict litigation in the federal courts located in Ohio. All 50 states' attorneys general participated in this litigation as well. This resulting settlement as summarized by Attorney General Moody seeks to resolve the various cases against multiple parties on behalf of all states and their political subdivisions, and including the City of Pembroke Pines. The amount of the settlement involves various defendants but the amount each pays is dependent upon the number of states and the number of their political subdivisions that sign on to the settlement agreement.

THE PROPOSED SETTLEMENT

This settlement will result in a pay out of funds to each of the 50 states in accordance with a matrix developed amongst the parties. As Attorney General Moody explains in her letter, the State of Florida will receive 7.03% of the overall payout to these parties. This amount was calculated both on the basis of population and on the basis of the overall impact experienced by the state. Florida's percentage exceeds other states whose population exceeds Florida's as the social and economic impact that Florida endured due to the opioid epidemic is greater. The only states receiving larger percentages than Florida are those states located in the areas where the addiction and pill mills proliferated to such a degree they were nicknamed the "opioid belt."

The amount of the payout is dependent upon external factors as well. It will depend upon how many jurisdictions sign on to the MOU, as well as the profitability of some of the defendants during the payout period of the settlement. The settlement is proposed to be paid out over a period of years. One such term that has been discussed is 18 years. The tobacco litigation settlement has been one basis for how the settlement terms have been designed in this case.

Also like the tobacco litigation settlements, the use of the funds by the states and their political subdivisions is not intended to reimburse the expenses they incurred in dealing with the impacts of the opioid epidemic, but rather are required to be used for abatement activities, such as strategies, programming, and services used to expand the availability of treatment for individuals impacted by opioid use disorder and their co-occurring behavioral health disorders. A list of examples of potential abatement activities is included in the exhibits attached to the MOU provided by Attorney General Moody.

Distribution of the Settlement Proceeds

All of the monies received by Florida will be divided between three (3) funds: 1) the City/County Fund; 2) the Regional Fund; and 3) the State Fund.

The **City/County Fund** will be **fifteen percent (15%)** of the total settlement proceeds and will be distributed to all counties and qualifying municipalities in the State of Florida, including the City of Pembroke Pines. This fund is being allocated based upon a matrix developed by the Plaintiff's Executive Committee in which those representing the City of Pembroke Pines participated. This matrix takes into consideration 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. Allocations between counties and municipalities are based upon historical federal data showing how the specific county and municipalities within it have made opioid-related expenditures in the past. A spreadsheet was included with Attorney General Moody's letter which shows the amount each municipality will receive.

The **Regional Fund** comprises a sliding scale **between 30% and 40%** of the total settlement proceeds received by the State of Florida with the largest percentages occurring in the immediate years after settlement and decreasing over time. This fund is allocated between "Qualified Counties" and "Non-Qualified Counties." In addition to other qualifications pertaining to abatement infrastructure, the determination is based upon population over/under 300,000 persons. Broward County is considered a Qualified County, therefore the monies will be provided directly to the County. In order to receive these funds, it is necessary that at least 50% of the population within Broward County in order for these funds to flow to Broward County. In Non-Qualified Counties, the monies are provided to the managing entities for behavioral health which serve those jurisdictions. In all instances, the monies must be spent on abatement activities.

The **State Fund** accounts for **45% to 55%** of the total settlement amounts which also must be spent on abatement activities.

DOES THIS APPLY TO US AS PLAINTIFFS IN THE LITIGATION?

The City is a party to this litigation, and this settlement was negotiated by Attorney General Moody as well as private counsel representing the City. The goal was to secure the greatest amount of the settlement proceeds for the State, the counties and cities. Your private counsel has specifically informed us that they are supportive of this settlement on your behalf. It is their belief that they have been able to obtain the greatest amount of settlement monies from the defendants for you and the entirety of the State.

Although other cities and counties did not join in on this litigation, they will also be receiving funds due to the State's participation on their behalf. The City of Pembroke Pines is receiving its share of those monies which account for approximately 0.46% of the funds distributed in Broward County, which accounts for approximately 9.06% of the City/County Fund portion of the proceeds.

In addition to being a party to this litigation, many defendants filed for bankruptcy and the City filed the necessary claims in those proceedings as well. This proposed settlement would encompass resolution of those actions as well. Unlike the MOU proposed by Attorney General Moody, a different allocation has been proposed in those bankruptcy cases which would provide a default allocation with distributions only to political subdivisions with populations greater than 400,000. Attorney General Moody and the City's private counsel believe that what they were able to negotiate in the proposal presented in the MOU is a more beneficial outcome for the City.

Although the City executed a retainer agreement with its private counsel representing it in this matter providing for a contingency fee, those fees will **NOT** be deducted from the proceeds received by the City. Instead, all attorney's fees will be paid out of a separate portion of the overall settlement proceeds. The City will be entitled to keep 100% of the funds flowing to it from this distribution.

If the City were not in agreement to enter into this MOU with the State of Florida, it could be precluded choose to it would not received these proceeds and would be required to negotiate its own settlement in this matter. Since this negotiation involving multiple states and parties took over 18 months to reach a settlement, it is unlikely that there will be adequate funds available after this settlement is disbursed, especially with those entities which have filed for bankruptcy. There are a number of plaintiffs in this litigation which are not included as state, county or city plaintiffs and once this settlement is entered into, the remaining parties, including any states, counties or cities which choose not to participate will have their bite at the apple with whatever remains. Additionally, Attorney General Moody has indicated that the State would file a separate action seeking to bar future claims by political subdivisions that had not already filed their own claims as it would put this MOU and settlement agreement at risk and would further maximize the recovery for the State and those subdivisions that did agree to this settlement proposal. Alternatively, Attorney General Moody has suggested seeking legislation to protect the interests of those political subdivisions which have agreed are protected to ensure they receive the recovery contemplated in the MOU.

NEXT STEPS

It is requested that all political subdivisions in the state consider this matter within 60-90 days from the date of her letter or by July 12. If the City is inclined to accept the terms of this settlement and approve the MOU, this matter will be placed on the next City Commission agenda for the approval of a resolution which our office will prepare for your consideration.

This is a complicated matter and our office is available and ready to answer your questions in coordination with your outside counsel representing the City in this matter. Should there be any further questions or concerns please do not hesitate to contact us.

SSG:JFK:sa