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Re: Attorney General Notice Regarding Opioid Settlement

Background

Two nationwide settlement agreements (the “Settlement Agreements”) were reached in the opioid litigation brought by states and political subdivisions – one against pharmaceutical distributors McKesson, Cardinal Health, and AmerisourceBergen, and one against a manufacturer, Janssen Pharmaceuticals, Inc. (the “Settling Parties”). Collectively, the settlements amount to \$22.8 billion payable to state and local subdivisions over the next 18 years. A city qualifies to receive a portion of the settlement funds so long as it opts into the settlement agreements.

Settlement Agreements

The Settlement Agreements provide for the allocation of the settlement funds among the states according to an agreed upon formula. That formula is influenced by the number of political subdivisions within that state that opt into the Settlement Agreements. As such, the State of Minnesota (the “State”) is heavily incentivized to encourage political subdivisions to opt in. Additionally, there are a number of potential future events that can reduce the total annual payout. The biggest one being additional suits brought by political subdivisions after the Settlement Agreements were reached. If a political subdivision chooses not to opt into the Settlement Agreements and instead brings its own suit, the total pot for the settling parties is reduced. The states involved in the settlement, then, are even further incentivized to introduce legislation to bar their political subdivisions from bringing claims of their own. A political subdivision that does not opt into the Settlement Agreements will not be eligible for any of the settlement funds, even if they are barred by a legislative action from bringing a claim.

A political subdivision that does opt into the Settlement Agreements will be eligible for the settlement funds. How those funds are allocated within the State depends on what the Attorney General and the legislature do in the coming months. The Settlement Agreements provide for a default allocation, but the State may reach alternate agreements for distribution or pass legislation that alters the default allocation or assigns the entirety or a portion thereof to a State fund for later allocation. Currently, the amount allocated to the State is roughly \$300 million. The default allocation assigns 15% of this amount to political subdivisions. From there, a percentage is allocated to each city. For example, if a city’s percentage is 0.4293%, the settlement amount would be approximately \$193,000.

The funds provided in the Settlement Agreement come with strings attached. At least 85% of the funds must be used for abatement of the opioid epidemic (“Abatement”). A broad range of pre-approved forms of Abatement are provided and fall into categories including intervention,

treatment, education, and recovery services. While the remaining 15% of the funds may be used for other purposes, any non-Abatement use must be reported to the Settlement Fund Administrator. Administrative costs reasonably related to Abatement are qualifying expenditures.

Opting Into the Settlement Agreements

If a city wishes to opt into the Settlement Agreements, it must request a copy to execute by going to the following URL and entering the registration code provided on the Attorney General's letter: <https://settlement-registration.web.app/>. A specific individual will need to be designated as having the authority to execute the documents provided to join the Settlement Agreements. The deadline to opt in is **January 2, 2022**. Ultimately, a city that opts into the settlement will be provided a Participation Agreement, Release, model Resolution, and instructions on executing the documents using DocuSign.

Analysis and Recommendation

In opting into the Settlement Agreements, a city forfeits its right to bring an individual suit against the Settling Parties. In exchange for forfeiting that right, a city gains eligibility to receive a portion of the settlement funds, as outlined above. Given the incredibly complex nature of this litigation, bringing an individual suit would either be extremely costly and time-consuming or require identifying a capable law firm that would litigate the matter on a contingency fee basis, with likely several years necessary before a resolution. In the interim, it is possible the State might take actions to hinder or fully obstruct efforts by political subdivisions to bring individual suits.

If a city has no interest in proceeding with an individual suit, it should opt into the Settlement Agreements. The work necessary to do so is minor and a city stands to benefit from additional funding to address opioid epidemic-related problems. We recommend that cities opt into the Settlement Agreements.