

# City of Galveston



## City Attorney's Office

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September 30, 2021

Honorable Mayor Brown  
Honorable Member of Council  
Galveston City Council  
City Hall  
Galveston, Texas 77551

Re: Recommendation in favor of participation in the Opioid Settlement negotiated through the Office of the Attorney General of Texas as well as other participating states.

Dear Members of Council:

This is to recommend the City Council approve participation of the settlement negotiated by a number of states, including Texas, of the cases filed against various pharmaceutical companies which have produced opioid medications.

### Background

As you may recall, the City had previously been approached by a team of attorneys proposing to represent the City in a suit against various manufacturers and distributors of opioid products to the public. The plaintiffs' theory was that the manufacturers and distributors encouraged physicians to prescribe opioid medications without revealing the addictive nature of the products, resulting in opioid deaths and abuses. These results in turn visited costs upon various governmental entities through increased cost of treatment. The proposing counsel at the time told the Council that at some time the City would be participating in a settlement; the choice was whether the settlement would be as part of a group or as an individually represented entity. Council decided to forego the filing of such a suit.

The State of Texas, through its Attorney General Ken Paxton, filed suit and other states joined including North Carolina, Tennessee, California, Colorado, Connecticut, Delaware, Florida, Georgia, Louisiana, Massachusetts, New York, Ohio, and Pennsylvania.

In addition to the State of Texas, other Texas units of government filed suit including 110 counties, 5 cities, 10 Hospital districts and 3 school districts filed suit.

The plaintiffs' have reached a tentative settlement with Johnson and Johnson and opioid distributors McKesson, Cardinal Health and Amerisource Bergen. In each of the settling states, the state has 30 days to review the agreement offers and structure, including how much funds each state would receive. Local governments will have 150 days to sign off on the agreement.

The Attorney General's Office has requested various counties and cities, including Galveston, to sign on to a settlement proposal which will produce a modest payment to the City. Under the settlement, entities which have filed suit will release their claims; others such as Galveston must merely agree to participate in the settlement. At this point, there is no minimum number of entities required for the deal to go forward, and the maximum number is every city and county in Texas. The larger the number of participants, the higher the payouts. Subdivisions in participating states have until January 2, 2022 to sign on to the settlement.

#### The settlement amount

The settlements negotiated by the proposed settling states are for a total amount of \$26 billion.

Of this amount \$21 billion come from opioid distributors McKesson, Cardinal Health and Amerisource Bergen. \$5 billion will come from manufacturer Johnson & Johnson (including its subsidiary Janssen Pharmaceuticals). These amounts will be shared by all the participating states.

The Attorney General represents that Texas *could* receive as much as \$1.17 billion from the distributors and \$268 million from J&J for almost \$1.5 billion. Much of the money is targeted for opioid abatement. These are estimated amounts and as such are subject to change.

J&J is enjoined from manufacturing, selling, and promoting opioids for 10 years. Distributors must establish a centralized clearinghouse jointly overseen by states and distributors; Distributors will be required to take measures to detect suspicious orders.

#### Distribution of funds

This settlement should not be seen as the end of our future budget challenges. And the precise payments are subject to a number of factors, such as the number of entities which sign off on the settlement.

The entire res of settlement funds will be split into three shares: 1) the subdivision share (15% of the total funds); 2) the Abatement Fund share (70% of the total funds) and 3) the Attorney General funds share (15% goes to AG Office).

The Subdivision share is split among various cities. The share for Galveston is listed on Exhibit B of the Settlement Allocation Term sheet as \$488,187; but at the time of drafting the latter I was informed by an Ass't Attorney General the estimated City of Galveston share would be \$595,891. The portion of the Galveston payment derived from J&J funds would be paid out over 9 years; the funds paid from the distributors are paid out over 18 years. The City would get approximately \$39,470 for 9 years and \$26,738 for the next 9 years. Again these numbers are based on maximum participation and that is unlikely to occur.

The Abatement Share fund will be made available for the reimbursement of costs incurred by entities dealing with opioids and for educational programs. Disbursement will be made by the Opioid Council under rules to be written and are allocated by region. Galveston County is in Region 2 along with Angelina, Brazoria, Hardin, Jasper, Jefferson, Liberty, Nacogdoches, Newton, Orange, Polk, Sabine, San Augustine, San Jacinto, Shelby and Tyler counties; the total allocation for Region 2 will be \$54,149,215.

Requirements for acceptance

Acceptance of the settlement must be made by City Council through the adoption of a Resolution approving the Texas Term Sheet. Settlement Participation forms for both J&J and the Distributors must also be signed and I suggest that authority be delegated to the City Manager.

I recommend approval by Council. The City has not initiated any opioid litigation on its own. While not the largest sum of money in the world, the City receipt of \$488,187 over a number of years is a sum we otherwise would not have. I do not see a down side for the City and therefore recommend approval. I have invited the Attorney General's Office to be available to take questions by phone during our Council meeting as well.

Very truly yours,

*/ Donald S. Glywasky*

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