

Memo: Attorney-Client Communication

To: Cities and Counties: Hotel/Motel Incremental Tax Fund Participants
From: J. Anderson Davis, Attorney for Class and Class Administrator
Date: January 29, 2018
Re: Opioid Litigation

Our law firm has been contacted by some of the same group of lawyers¹ that we worked with previously in the online travel litigation regarding potential litigation pertaining to the ongoing opioid epidemic. As you recall, our team was successful with the online travel litigation, and we are planning to use a similar class action model to pursue recovery of funds for cities and counties in litigation against the manufacturers and distributors of prescription pain medication.

Over 140 municipal, county, and state governments are currently pursuing litigation against leading opioid manufacturers for the medical, public health, and law enforcement costs related to opioid use. These lawsuits allege that the current opioid crisis stems from the manufacturers and distributors' improper and aggressive promotion of prescription medications such as OxyContin and Percocet. These cases have been consolidated and transferred to the U.S. District Court for the Northern District of Ohio, but at some point each case could be returned to their respective local courts.

From a recent news report:

In the wake of an inarguable opioid epidemic throughout the United States, manufacturers of prescription pain medications may need to pay out sooner than expected. Last month, the United States Judicial Panel on Multidistrict Litigation ruled to centralize the pretrial proceedings of 64 class actions pending against a number of pharmaceutical companies. As is the goal in multidistrict litigation, the centralization process, captioned *In Re: National Prescription Opiate Litigation*, will likely speed up discovery and efficiently streamline the parties toward a settlement or trial.

The lawsuits, filed by city and local governments, allege the defendant manufacturers and distributors created a public health crisis by mishandling the dissemination and promotion of these drugs, which causes the deaths of 150 Americans daily and the development of opioid addiction in millions of others. The plaintiffs assert that the defendants both overstated the benefits and downplayed the risks of opioid use while engaging in deceptive and

¹ At this time, our legal team includes: J. Anderson Davis of Brinson, Askew, Berry, Seigler, Richardson & Davis, LLP; Robert K. Finnell of The Finnell Firm; William Q. Bird of Bird Law Group; and John Crongeyer of the Crongeyer Law Firm.

aggressive marketing tactics to physicians and, in turn, patients. Further, the defendants are alleged to have failed to monitor, detect, investigate, refuse and report suspicious orders of opioids. The “Big Three” distributor defendants and their subsidiaries—AmerisourceBergen Corp., McKesson Corp., Cardinal Health 110, LLC, Cardinal Health, Inc., Cardinal Health 105, Inc, Cardinal Health 108, LLC, Cardinal Health 112, LLC, Cardinal Health 414, LLC, and The Harvard Drug Group, LLC—are the named defendants in a majority of the cases and are allegedly responsible for the distribution of 80% of the medications at issue. There are 50 named defendants.

Anjelica Cappellino, *MDLs to Watch: National Prescription Opioid Litigation*, THE EXPERT INSTITUTE (Jan. 18, 2018).

Litigation involving the opioid epidemic is in many ways similar to the well-publicized litigation involving tobacco. In tobacco-related settlements, state governments swooped in and claimed the proceeds, in most cases leaving out the cities and counties that were also severely affected by the tobacco use of their citizens and suffered related economic damages. With the opioid litigation, it is imperative that cities and counties have a seat at the table and claim the opportunity to be justly compensated for their damages. Thus, we feel it is in the best interests of all Georgia cities and counties to participate.

I am attaching hereto a proposed Resolution declaring the opioid addiction a nuisance in your community. This Resolution, if passed, will allow your community to put on record its position regarding the opioid crisis and its local impact.

Finally, I would ask that you engage our legal team on a contingency fee basis, as occurred in the online travel litigation. By entering into a contingency fee agreement, our legal team takes on the financial burdens and risks of litigation, and your city or county will not incur any attorneys’ fees unless the litigation is successful. To this end, I have attached hereto a proposed Fee Agreement for your review and consideration. We would welcome the opportunity and privilege to once again represent your city or county.

We are aware that some of you may have already committed to become involved in opioid litigation with other attorneys. If so, we would welcome the opportunity to work together with them on this highly important matter.

Should you have any questions, please do not hesitate to contact me.

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RETENTION AGREEMENT FOR OPIOID LITIGATION

WHEREAS, the undersigned has determined that claims should be made against AmerisourceBergen Corp., McKesson Corp., Cardinal Health 110, LLC, Cardinal Health, Inc., Cardinal Health 105, Inc, Cardinal Health 108, LLC, Cardinal Health 112, LLC, Cardinal Health 414, LLC, The Harvard Drug Group, LLC, Purdue Pharma, L.P., Purdue Pharma, Inc., The Purdue Frederick Company, Inc., Teva Pharmaceutical Industries USA, Ltd., Cephalon, Inc., Johnson & Johnson, Janssen Pharmaceuticals, Inc., Ortho-McNeil-Janssen Pharmaceuticals, Inc. n/k/a Janssen Pharmaceuticals, Inc., Janssen Pharmaceutica, Inc. n/k/a Janssen Pharmaceuticals, Inc., Endo Health Solutions Inc., Endo Pharmaceuticals, Inc., Allergan , PLC f/k/a Actavis, PLC, Actavis, Inc. f/k/a Watson Pharmaceuticals, Inc., Watson Laboratories, Inc., Actavis, LLC, Actavis Pharma, Inc. f/k/a Watson Pharma, Inc., and other similar pharmaceutical companies (hereinafter "Pharmaceutical Companies") which have engaged in violations of Medicaid Fraud Control Act and other violations of law in the fraudulent marketing and sales of certain highly addictive, opiate-derived painkillers for purposes for which they are neither safe nor effective; and

WHEREAS, the undersigned has determined that the investigation, research, and litigation of the claims may require the expenditure of large sums of money and require the work of numerous lawyers, paralegals, and others who are familiar with the Pharmaceutical Companies' wrongful actions and/or inactions and related issues for an extended period of time; and,

WHEREAS, the undersigned has further determined that it is in the best interests of this governmental entity and its citizens that it authorizes J. Anderson Davis to represent it in such litigation and to associate other counsel, if needed, to proceed with the claims against the Pharmaceutical Companies

IT IS, ACCORDINGLY, AGREED as follows:

1. The undersigned hereby retains J. Anderson Davis, and his firm, Brinson, Askew, Berry, Seigler, Richardson & Davis, LLP, and its lawyers ("Law Firm"), who are hereby designated to investigate, research, and prepare claims or complaint(s) for the undersigned to file in any appropriate Court or before any appropriate governmental agency.

2. The undersigned does not relinquish its authority or responsibility through this Retention Agreement. It has the sole authority to settle this litigation on behalf of the City and its citizens, and the Law Firm shall apprise it of all settlement offers. The Law Firm shall consult with the Chief Executive Officer or the designee, and obtain his approval on all material matters pertinent to the claims and any litigation arising therefrom; including whether and how to proceed with litigation, which claims to advance, what relief to seek, and whether and on what terms to settle. The undersigned and the Law Firm both recognize that the claims present numerous factual and legal obstacles and that no assurance of success on the

claims has or can be made.

3. Notwithstanding the potential difficulties, the Law Firm has agreed to represent the undersigned, and the undersigned hereby agrees that the Law Firm will be compensated for any monies recovered by it on the following basis:

a. Recovery of Attorneys' Fees: The undersigned may request that the Court, to the extent permitted by applicable law, award the it and the Law Firm reasonable attorneys' fees.

b. In addition, the Law Firm will be entitled to compensation that, along with any award of attorneys' fees, shall not exceed Thirty percent (30%) of the total amount recovered.

c. All reasonable and necessary costs of litigation including, but not limited to, court costs, travel, witness fees, consultants, accounting, and expert fees and expenses, as shall be approved by the undersigned, shall be borne entirely by the Law Firm, but shall be reimbursed from any gross recoveries from the pursuit of the claims.

d. The Law Firm shall receive no compensation or reimbursement other than set out above, and all within conformity of law. In the event that no recovery is realized, the Law Firm shall receive no compensation or reimbursement.

4. With the approval of the undersigned, the Law Firm may associate other attorneys at its own expense and at no cost to the undersigned. Notwithstanding such association of other attorneys, this Retention Agreement is non-assignable and non-transferable, nor are the Law Firm's commitments delegable without the express, written approval of the undersigned.

Dated this ___ day of February, 2018.

(GOVERNMENTAL ENTITY) _____

Name _____
Title _____

Attest: _____
Name _____
Title _____

(SEAL)

ACCEPTED BY:

BRINSON, ASKEW, BERRY,
SEIGLER, RICHARDSON & DAVIS, LLP

J. ANDERSON DAVIS

RESOLUTION REGARDING OPIOID CRISIS

WHEREAS, the United States and the several States, including the State of Georgia, are experiencing, in the words of the Center for Disease Control and Prevention, an opioid-induced “public health epidemic,” and;

WHEREAS, on October 26, 2017, the President of the United States declared the opioid crisis to be a “public health emergency,” and;

WHEREAS, 91 Americans die every day from an opioid overdose, with more than 15,000 deaths involving prescription opioids alone in 2015, and;

WHEREAS, data from the Center for Disease Control and Prevention demonstrates that 17.7% of Georgia High School students reported taking prescription pain killers without a doctor’s prescription, and;

WHEREAS, from 2014 to 2015 Georgia had a 64% increase in deaths by synthetic opioids (tramadol and fentanyl) and a 37.5% increase in Heroin deaths, and;

WHEREAS, in 2006 opioid drug overdose deaths were 31.5% of all overdose deaths and in 2015 accounted for 68.8% of overdose deaths in Georgia, and;

WHEREAS, governments (including federal, state and local) have born substantial financial and societal burden related to this crisis and epidemic and will incur costs for this nuisance for years to come into the foreseeable future, and;

WHEREAS, certain manufacturers and distributors knowing of the serious risks and adverse outcomes related to the use of their products, including their highly addictive nature, nevertheless did purposefully set out to persuade providers, regulators and patients that their products were safe and effective; and;

NOW THEREFORE, BE IT RESOLVED, that the _____ of the _____ of _____ finds and declares that there exists a public nuisance related to such products and that the _____ shall pursue such legal action as is available against such manufacturers, distributors and others as are necessary, either by itself or in concert with others, and to the full extent available under the law.

IT IS SO RESOLVED, this ____ day of February, 2018.

By: _____
_____, (title)_____

Attest: _____
_____, (title)

(SEAL)



Increased Costs to Cities and Counties as a Result of the Opioid Crisis

- Law Enforcement Costs
- Healthcare Costs
- Social Services Costs
- Administrative Costs

Increased Administrative Costs



A tradition of client success.

- Increase in volume of ordinance violations and code enforcement
- Increase in abatement of blighted areas
- Costs of overdose deaths (storage and burial)
- Turnover of First Responders based on burnout

Increased Healthcare Costs



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- Increase in volume of medical emergency calls
- Costs of providing Naloxone (Narcan)
- Un-recouped costs of providing medical treatment at hospitals for uninsured patients
- Increased costs of employee health insurance
- Increased costs of providing healthcare to inmates

Increased Costs of Social Services



A tradition of client success.

- Drug treatment programs
- Homeless programs
- Increased volume for Child Protective Services/Foster Care
- Job Placement/Unemployment
- School Dropout Prevention programs
- Educational programs

Increased Law Enforcement Costs



A tradition of client success.

- Increased Police, Fire, and Medical emergency calls
- Costs of policing, prosecuting, and incarcerating drug offenders
- Increased case volume in diversion programs, drug court, and mental-health court
- Probation and drug testing
- Training of First Responders to recognize and treat overdoses