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PLEASE REPLY TO
ATHENS ADDRESS

ATTORNEY-CLIENT PRIVILEGED COMMUNICATION

September 17, 2019

VIA ELECTRONIC MAIL

Daniel Connell, County Attorney - daniel@bennettandconnell.com

Lindsey Parrish, County Commissioner - district2com@cookcountyga.us

Faye Hughes, County Administrator - cookgov@windstream.net

Re: *In re: National Prescription Opiate Litigation*
United States District Court, Northern District of Ohio
Cook County, Georgia; Civil Action File No.: 1:18-op-45284

All:

As you know, we represent Cook County in the National Prescription Opiate Litigation. We are sending this update to each of the seventy-six Georgia counties and cities our firm represents.

Recently, a committee of plaintiffs' attorneys, aided by esteemed law professors and other expert advisors, filed a Motion for Certification of Rule 23(b)(3) Cities/Counties Negotiation Class. This proposal is the first of its kind in the mass tort arena, and it is receiving a great deal of attention from the parties, the Court and the media. On September 11, 2019, the Court granted the Motion in part. We have attached the Court's Order as well as the now-adopted Class Action Notice and Frequently Asked Questions.

Essentially, the Court's Order certifies an optional Negotiation Class, with membership available to each county, parish, borough, city, town, village, township, municipality or other incorporated area (collectively referred to herein as "counties" and "cities") in the United States. The potential total class is thus comprised of more than 3,000 counties and 30,000 cities. There are 49 proposed class representatives, made up of cities and counties of various sizes located throughout the United States. Notably, the class representatives include City of Atlanta, Cobb County, Georgia and County of Fannin, Georgia.

The Court found class certification criteria was met with respect to the two RICO claims and two Controlled Substance Act claims at issue in this litigation. These claims involve some or all of 13 sets of defendants, which are identified in the Court's Order. According to the Court's Order, the negotiation class is authorized to negotiate settlement with any of the 13 sets of defendants on any of these claims or issues, or any others arising out of common factual predicate.

Participation is completely voluntary, both for the plaintiff counties and cities as well as each defendant. If a defendant does not wish to participate, it can ignore the option to use the model. If a county or city does not wish to participate, it can opt-out.

Unlike most certified classes, this is not a litigation class; it is a negotiation class. The class members will be tasked with the responsibility of approving or disapproving settlement offers from the defendants in this litigation. With regard to each participating defendant, the class members will be asked to vote one time on one question: “Do you approve the total amount of the settlement?” There will be a 60-day notice period. A supermajority (75%) vote approving the settlement amount is required. Supermajority is defined as (1) 75% of the total number of litigating and non-litigating counties and cities, plus (2) 75% of the total voting population of all the litigating and non-litigating counties and cities, plus (3) 75% of the litigating and non-litigating counties and cities, weighted by their monetary allocation under the settlement.

The drafters of the Negotiation Class have created an Allocation Lookup Tool, which allows each county and city in the United States to discover what its share of a potential settlement may be. The Allocation Lookup Tool is based upon a hypothetical nationwide settlement of \$1 billion. We expect nationwide settlements in this litigation to far exceed \$1 billion, so this allocation should be seen as a multiplier rather than a final number. The allocation calculation is based on three metrics:

- (1) Opioid use disorder. The allocation model uses data from the National Survey on Drug Use and Health to count the number of persons with opioid use disorder within each entity.
- (2) Overdose deaths. The allocation model uses Multiple Causes of Death data, reported by the National Center for Health Statistics, the Centers of Disease Control and Prevention and Department of Health and Human Services, to assign a percentage share to each entity for opioid deaths. Because opioid deaths are known to be under-reported, unsummarized MCOD data is adjusted to more closely estimate deaths caused by these substances.
- (3) Amount of opioids. The United States Drug Enforcement Agency collects statistics on the amount of opioids shipped to a given location and reports them in a database known as ARCOS (Automation of Reports and Consolidated Orders System). The allocation model uses ARCOS data to measure opioid amounts by counting morphine milligram equivalents rather than the number of pills because different opioid drugs have different strengths (e.g., a 10 mg hydrocodone pill has 10 MMEs).

The Allocation Lookup Tool is available to the public and can be found online at <https://allocationmap.iclaimsonline.com/>. **Based on that tool, the total allocation value for Cook County is \$26,388 for every \$1 billion dollars of each nationwide settlement approved by the class.** The total allocation value will be shared between the county and cities within that county. As explained below, if the county and cities cannot agree on how to share the total allocation value among themselves, a default allocation formula will be used. If you are

interested in seeing the distribution between the county and cities using the default allocation formula, visit the Allocation Lookup Tool at the link provided.

If a participating defendant makes a settlement offer to the class, and it is approved by a supermajority as set out above, the money will be divided as follows:

- 75% of the total class settlement will be paid to the participating counties and cities. (The total allocation value for the county is the entire multiplier stated above in bold, not 75% of that amount.) It is left up to the counties and cities to determine the internal allocation of the county level award. Counties and cities may use a pre-existing mechanism, such as the allocation of sales tax or other revenues. In the event they cannot agree, a default allocation formula based on historical federal data relevant to opioid abatement will be used to allocate funds between the county and cities.
- 15% is set aside in a “Class Members’ Special Needs Fund.” Participating entities can apply to receive additional money out of this fund to address such things as a particularly severe opioid impact, unique regional services provided, or the time and costs of law departments or legal staff. Judge Polster is committed to allocating funds to the counties and cities hardest hit to be used for resources that will end the epidemic.
- 10% is set aside in a “Private Attorneys’ Fee Fund.” Subject to the approval of the co-counsel listed on our retainer agreements, our firm will attempt to seek our attorney fees and expenses from this fund in lieu of our contingency fee for any offer received through the negotiation class mechanism.

Please be advised that once a total settlement is approved by the supermajority, the participating counties and cities may be bound and required to accept their respective allocation of that amount. Rule 23(e), however, provides the outvoted class members the right to object during the formal approval process. Also, Judge Polster has reserved the right to institute a second opt-out opportunity for class members. Moreover, the metrics used in the allocation model (amount of opioids, overdose deaths, and opioid use disorder cases) appear to be a fair and reasonable way to allocate the settlement funds. Finally, any entity with special circumstances may apply to the Special Needs Fund for a greater award.

Like all counties and cities, you have the option to either remain a part of the negotiation class or to opt-out. **It is our recommendation that you remain a part of the negotiation class and NOT opt-out for the following reasons:**

1. Strength in numbers. Approximately 2,000 counties and cities have filed opioid lawsuits. The inclusion of non-litigating entities in the negotiation class means there may be more than 34,000 participants in the class. We feel a unified front of this magnitude against the defendants will likely generate the best possible settlement.

2. Earlier resolution. We expect the offers made to the negotiation class to be the earliest possible opportunities for resolution, with individual settlements to non-participating parties falling far behind. Earlier resolution is particularly favorable in light of anticipated bankruptcy proceedings involving Purdue Pharma. The Manufacturer Defendants did not oppose the model. The Distributor Defendants did not persuade Judge Polster against the model, and we suspect many of them may ultimately use it. We also expect, as does the Court, that the defendants who take advantage of the negotiation class model will use the opportunity to make a parallel offer to the States.

3. Your entity does not want to be on the outside looking in. Participation in the negotiation class gives your entity a vote and a voice, and it avoids the possibility of being overlooked or ignored as a stand-alone party. We feel Judge Polster highly favors this approach, and we do not know what kind of position your entity will be in if it's not part of the negotiation class. We have a good working relationship with the Plaintiff's Executive Committee and Class Lead Counsel, Jayne Conroy and Christopher Seeger, who will be negotiating on the part of the class.

4. The costs of not participating. The opioid litigation is projected to be one of the most costly litigations of all time. At this time, there are 23 law firms, 200 full time attorneys and over 100 experts working around the clock. To date, the plaintiffs have incurred over \$30 million dollars in expenses, taken 600 depositions and reviewed over 150 million pages of documents. Subject to the approval of our co-counsel, and if our application to the Private Attorneys' Fee Fund is approved, no further attorney fees or costs would be subtracted from any settlement allocation you may receive as a participant in the negotiation class.

5. Reduced workload and man hours for the participating entities. To date, your entity's involvement in the litigation has largely been your cooperation in the Plaintiff Fact Sheet process. If your entity were to opt-out of the negotiation class, your entity should expect to devote hundreds of hours to additional discovery requests, depositions, trial preparation, and attempts at individual settlement. Consider whether this is feasible and advisable for your individual entity.

You should receive your Class Notice by mail and/or email on or before September 20, 2019. The opt-out deadline is **November 22, 2019**. If you elect to remain a part of the negotiation class and not opt-out, there is no need to take any action. We will keep you apprised of any settlement offers and your opportunity to vote for or against those offers.

If you choose to opt-out, you must affirmatively do so by contacting Sara Schramm at sschramm@bbga.com or 706-354-4000. We must hear from you by November 1, 2019.

The process for opting-out requires an official or employee authorized to take legal action on behalf of your county or city to execute an Exclusion Request Form. Upon executing the Exclusion Request Form, your county or city will be excluded from the Negotiation Class and prohibited from sharing in any potential Negotiation Class settlement. If we do not hear from you by **November 1, 2019**, we will assume that you do not want to opt-out, and you will remain a member of the negotiation class.

Please feel free to contact Sara Schramm with any questions.

Sincerely,

/s/ Andrew J. Hill, III

Andrew J. Hill, III

AJHIII/slh

Enclosures

cc: Chris Clark, via email chris@clarksmithsizemore.com
Haynes Studstill, via email haynes@studstillfirm.com