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RESOLUTION # 35-2023

Resolution Authorizing Oneida County to Enter Into the Settlement Agreements with Teva Pharmaceutical Industries Ltd., Allergan Finance, LLC, Walgreen Co., Walmart, Inc., CVS Health Corporation and CVS Pharmacy, Inc., Agree to the Terms of the Addendum to the MOU Allocating Settlement Proceeds, and Authorize Entry Into the MOU with the Attorney General

Resolution approved for presentation to the Oneida County Board by the Supervisors of the Administration Committee

Resolved by the Board of Supervisors of Oneida County, Wisconsin:

WHEREAS, the Oneida County Board of Supervisors previously authorized Oneida County to enter into an engagement agreement with von Briesen & Roper, s.c., Crueger Dickinson LLC and Simmons Hanly Conroy LLC (the "Law Firms") to pursue litigation against certain manufacturers, distributors, and retailers of opioid pharmaceuticals (the "Opioid Defendants") in an effort to hold the Opioid Defendants financially responsible for the County's expenditure of vast money and resources to combat the opioid epidemic;

WHEREAS, on behalf of Oneida County, the Law Firms filed a lawsuit against the Opioid Defendants;

WHEREAS, the Law Firms filed similar lawsuits on behalf of 66 other Wisconsin counties and all Wisconsin cases were coordinated with thousands of other lawsuits filed against the same or substantially similar parties as the Opioid Defendants in the Northern District of Ohio, captioned *In re: Opioid Litigation*, MDL 2804 (the "Litigation");

WHEREAS, four (4) additional Wisconsin counties (Milwaukee, Dane, Waukesha, and Walworth) hired separate counsel and joined the Litigation;

WHEREAS, since the inception of the Litigation, the Law Firms have coordinated with counsel from around the country (including counsel for Milwaukee, Dane, Waukesha, and Walworth Counties) to prepare the County's case for trial and engage in extensive settlement discussions with the Opioid Defendants;

WHEREAS, the settlement discussions with Teva Pharmaceutical Industries Ltd., Allergan Finance, LLC, Walgreen Co., Walmart, Inc., CVS Health Corporation and CVS Pharmacy, Inc.. (the "Settling Defendants") resulted in a tentative agreement as to settlement terms pending agreement from the County and other plaintiffs involved in the Litigation;

WHEREAS, copies of the various settlement agreements relating to the Settling Defendants (collectively "Settlement Agreements") representing the terms of the tentative settlement agreements with the Settling Defendants have been provided with this Resolution;

WHEREAS, the Settlement Agreements provide, among other things, for the payment of certain sums to Participating Subdivisions (as defined in the Settlement Agreements) upon the occurrence of certain events detailed in the Settlement Agreements;

WHEREAS, the County is a Participating Subdivision in the Settlement Agreements and

52 has the opportunity to participate in the benefits associated with the Settlement Agreement
53 provided the County (a) approves the Settlement Agreements; (b) approves the Memorandum of
54 Understanding allocating proceeds from the Settlement Agreements among the various
55 Wisconsin Participating Subdivisions, a copy of which is attached to this Resolution (the
56 "Allocation MOU"); (c) approves the Memorandum of Understanding with the Wisconsin Attorney
57 General regarding allocation of settlement proceeds, a copy of which is attached to this Resolution
58 (the "AG MOU"); and (d) the Legislature's Joint Committee on Finance approves the terms of the
59 Settlement Agreements and the AG MOU;

60
61 **WHEREAS**, 2021 Wisconsin Act 57 created Section 165.12 of the Wisconsin Statutes
62 relating to the settlement of all or part of the Litigation;

63
64 **WHEREAS**, pursuant to Wis. Stat. § 165.12(2), the Legislature's Joint Committee on
65 Finance is required to approve the Settlement Agreements and the AG MOU;

66
67 **WHEREAS**, pursuant to Wis. Stat. § 165.12(2), the proceeds from any settlement of all or
68 part of the Litigation are distributed 70% to local governments in Wisconsin that are parties to the
69 Litigation and 30% to the State;

70
71 **WHEREAS**, Wis. Stat. § 165.12(4)(b)2. provides the proceeds from the Settlement
72 Agreement must be deposited in a segregated account (the "Opioid Abatement Account") and
73 may be expended only for approved uses for opioid abatement as provided in the Settlement
74 Agreements;

75
76 **WHEREAS**, Wis. Stat. § 165.12(7) bars claims from any Wisconsin local government
77 against the Opioid Defendants filed after June 1, 2021;

78
79 **WHEREAS**, the definition of Participating Subdivisions in the Settlement Agreements
80 recognizes a statutory bar on claims such as that set forth in Wis. Stat. § 165.12(7) and, as a
81 result, the only Participating Subdivisions in Wisconsin are those counties and municipalities that
82 were parties to the Litigation (or otherwise actively litigating a claim against one, some, or all of
83 the Opioid Defendants) as of June 1, 2021;

84
85 **WHEREAS**, the Legislature's Joint Committee on Finance is not statutorily authorized or
86 required to approve the allocation of proceeds of the Settlement Agreements among Wisconsin
87 Participating Subdivisions;

88
89 **WHEREAS**, the Law Firms have engaged in extensive discussions with counsel for all
90 other Wisconsin Participating Subdivisions resulting in the proposed Allocation MOU, which is an
91 agreement between all of the entities identified in the Allocation MOU as to how the proceeds
92 payable to those entities under the Settlement Agreements will be allocated;

93
94 **WHEREAS**, the proposed Addendum to the MOU ("Addendum") provided with this
95 Resolution provides for allocation of settlement proceeds among the Wisconsin Participating
96 Subdivisions according to the same percentages as that provided in the previously-approved MOU
97 allocating the settlement proceeds of the settlements involving McKesson Corporation, Cardinal
98 Health, Inc., AmerisourceBergen Corporation, Johnson & Johnson, Janssen Pharmaceuticals,
99 Inc., Ortho-McNeil-Janssen Pharmaceuticals, Inc., and Janssen Pharmaceutica, Inc.;

100
101 **WHEREAS**, there is provided with this Resolution a summary of the essential terms of the
102 Settlement Agreements, the deadlines related to the effective dates of the Settlement

103 Agreements, the ramifications associated with Oneida County's refusal to enter into the
104 Settlement Agreements, the form of the Addendum, the form of the AG MOU, and an overview of
105 the process for finalizing the Settlement Agreements;

106
107 **WHEREAS**, Oneida County, by this Resolution, shall deposit the proceeds of the
108 Settlement Agreements consistent with the terms of this Resolution and Wis. Stat. § 165.12(4)(b);
109

110 **WHEREAS**, pursuant to Oneida County's engagement agreement with the Law Firms,
111 Oneida County shall pay up to an amount equal to 25% of the proceeds from successful resolution
112 of all or part of the Litigation, whether through settlement or otherwise, plus the Law Firms' costs
113 and disbursements, to the Law Firms as compensation for the Law Firms' efforts in the Litigation
114 and any settlement;

115
116 **WHEREAS**, the Law Firms anticipate making application to the national fee fund
117 established in the Settlement Agreements seeking payment, in whole or part, of the fees, costs,
118 and disbursements owed the Law Firms pursuant to the engagement agreement with Oneida
119 County;

120
121 **WHEREAS**, it is anticipated the amount of any award from the fee fund established in the
122 Settlement Agreements will be insufficient to satisfy Oneida County's obligations under the
123 engagement agreement with the Law Firms;

124
125 **WHEREAS**, Oneida County, by this Resolution, and pursuant to the authority granted
126 Oneida County in the applicable Order emanating from the Litigation in relation to the Settlement
127 Agreements and payment of attorney fees, shall authorize and direct the escrow agent
128 responsible for the receipt and distribution of the proceeds from the Settlement Agreements to
129 establish an account for the purpose of segregating funds to pay the fees, costs, and
130 disbursements of the Law Firms owed by Oneida County (the "Attorney Fees Account") in order
131 to fund a local "backstop" for payment of the fees, costs, and disbursements of the Law Firms;

132
133 **WHEREAS**, in no event shall payments to the Law Firms out of the Attorney Fees Account
134 and the fee fund established in the Settlement Agreements exceed an amount equal to 25% of
135 the amounts allocated to the County in the Addendum;

136
137 **WHEREAS**, the intent of this Resolution is to authorize Oneida County to enter into the
138 Settlement Agreements, the Addendum, and the AG MOU, establish Oneida County's Opioid
139 Abatement Account, and establish the Attorney Fees Account; and

140
141 **WHEREAS**, Oneida County, by this Resolution, shall authorize Oneida County's Board
142 Chair or designee to finalize and execute any escrow agreement and other document or
143 agreement necessary to effectuate the Settlement Agreements and the other agreements
144 referenced herein;

145
146 **NOW, THEREFORE, BE IT RESOLVED:** the County Board of Supervisors hereby
147 approves:

- 148
149 1. The execution of the Settlement Agreements and any and all documents ancillary
150 thereto and authorizes the Board Chair or designee to execute same.
151 2. The final negotiation and execution of the Addendum in form substantially similar
152 to that presented with this Resolution and any and all documents ancillary thereto
153 and authorizes the Board Chair or designee to execute same upon finalization

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provided the percentage share identified as allocated to Oneida County is substantially similar to that identified in the Addendum provided to the Board with this Resolution.

- 3. The final negotiation and execution of the AG MOU in form substantially similar to that presented with this Resolution and any and all documents ancillary thereto and authorizes the Board Chair or designee to execute same.
- 4. The execution by the Board Chair or designee of any additional documents or agreements for the receipt and disbursement of the proceeds of the Settlement Agreements as referenced in the Addendum.

BE IT FURTHER RESOLVED: all proceeds from the Settlement Agreements not otherwise directed to the Attorney Fees Account shall be deposited in Oneida County's Opioid Abatement Account. The Opioid Abatement Account shall be administered consistent with the terms of this Resolution, Wis. Stat. § 165.12(4), and the Settlement Agreements.

BE IT FURTHER RESOLVED: Oneida County hereby authorizes the establishment of an account separate and distinct from any account containing funds allocated or allocable to Oneida County which shall be referred to by Oneida County as the "Attorney Fees Account." An escrow agent shall deposit a sum equal to up to, but in no event exceeding, an amount equal to 20% of the County's proceeds from the Settlement Agreements into the Attorney Fees Account. If the payments to Oneida County are not enough to fully fund the Attorney Fees Account as provided herein because such payments are made over time, the Attorney Fees Account shall be funded by placing up to, but in no event exceeding, an amount equal to 20% of the proceeds from the Settlement Agreements attributable to Local Governments (as that term is defined in the Allocation MOU) into the Attorney Fees Account for each payment. Funds in the Attorney Fees Account shall be utilized to pay the fees, costs, and disbursements owed to the Law Firms pursuant to the engagement agreement between Oneida County and the Law Firms provided, however, the Law Firms shall receive no more than that to which they are entitled under their fee contract when considering the amounts paid the Law Firms from the fee fund established in the Settlement Agreements and allocable to Oneida County. The Law Firms may make application for payment from the Attorney Fees Account at any time and Oneida County shall cooperate with the Law Firms in executing any documents necessary for the escrow agent to make payments out of the Attorney Fees Account.

BE IT FURTHER RESOLVED that all actions heretofore taken by the Board of Supervisors and other appropriate public officers and agents of Oneida County with respect to the matters contemplated under this Resolution are hereby ratified, confirmed and approved.

Vote Required: Majority = 2/3 Majority = _____ 3/4 Majority = _____

The County Board has the legal authority to adopt: Yes No _____ as reviewed by the Corporation Counsel, _____, Date: 3.14.23

Approved for presentation to the County Board by the Administration Committee this 13th day of March, 2023.

Consent Agenda Item: YES NO

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Offered and passage moved by:

William J. Lee
Supervisor
Russell J. ...
Supervisor
Tom Kelly
Supervisor
Supervisor Cushing - via zoom
Supervisor
Supervisor Schaefer - via zoom
Supervisor

20 Ayes
0 Nays
1 Absent
0 Abstain
X Adopted

by the County Board of Supervisors this 21st day March, 2023.

Defeated
Tracy Hartman
Tracy Hartman, County Clerk

Therese K. Cushing
Ted Cushing, Oneida County Board Vice-Chair

Consent Agenda

Supervisors	A YE	NA Y	ABS	ABSTAIN
Schreier	—		X	
Rio	X			
Sorgel	X			
Fried	X			
Condado	X			
Oettinger	X			
Winkler	X			
Fisher	X			
Briggs	X			
Showalter	X			
Schultz	X			
Almekinder	X			
Harris	X			
Timmons	X			
Cushing	X			
Roach	X			
Thome	X			
Ryden	X			
Newman	X			
Kelly	X			
Holewinski	X			
TOTALS	20		1	
TAGS				

Resolution # 26 – 2023: Offered by the Supervisors of the Land Records Committee to convey tax foreclosed property, MI-1701 to Skyline Real Estate Services and RH-1426 to Shane Ford.

Resolution # 27 – 2023: Offered by the Supervisors of the Administration Committee to return Coronavirus Local Fiscal Recovery Fund (CLFRF) allocated to Oneida County through the American Rescue Plan Act (ARPA) back to Contingency which were previously allocated in Resolution # 17 - 2022 for the purpose of CDBG Close Grant Administration Services, General Engineering Company.

Resolution # 28 – 2023: Offered by the Supervisors of the Administration Committee to return Coronavirus Local Fiscal Recovery Fund (CLFRF) allocated to Oneida County through the American Rescue Plan Act (ARPA) back to Contingency which were previously allocated in Resolution # 42 - 2022 for the purpose of the Law Enforcement Center Jail Security Glass Replacement Project.

Resolution # 29 – 2023: Offered by the Supervisors of the Administration Committee approving a change order to the Slick LLP Auditor Contract.

Resolution # 30 – 2023: Offered by the Supervisors of the Administration Committee to request additional Coronavirus Local Fiscal Recovery Fund (CLFRF) allocated to Oneida County through the American Rescue Plan Act (ARPA) for the purpose of Audit Fees.

Resolution # 31 – 2023/Rezoning Petition # 16 – 2022: Offered by the Supervisors of the Planning and Development Committee to rezoning land from District #02 Single Family to District #07 Business B-2 on property described as Lot 1 CSM 4829 and Lot 8, Block 43 (PIN's TL-2136 and TL-2130) Town of Three Lakes, Oneida County.

Resolution # 32 – 2023/Ordinance Amendment # 1 – 2023: Offered by the Supervisors of the Administration Committee to amend Chapter 23 of the General Code of Oneida County section 23.07 Dog License to increase dog license fees.

Resolution # 33 – 2023/Ordinance Amendment # 2 – 2023: Offered by the Supervisors of the Labor Relations Employee Services (LRES) Committee to amend Chapter 4 of the General Code of Oneida County section 4.12 Goal Review Procedure, 4.16 Employee Classification and 4.24 Hiring Wage Rate and PTO Benefits.

Resolution # 24 – 2023: Offered by the Supervisors of the Labor Relations Employee Services (LRES) Committee to correct placement of the foreperson position on the restructure of wages at the Highway Department.

Resolution # 35 – 2023: Offered by the Supervisors of the Administration Committee authorizing Oneida County to enter into the Settlement Agreements with Teva Pharmaceutical Industries Ltd., Allergan Finance, LLC, Walgreen Co., Walmart, Inc., CVS Health Corporation and DVS Pharmacy, Inc., agree to the Terms of the Addendum to the MOU Allocating Settlement Proceeds, and Authorize Entry into the MOU with the Attorney General.

Resolution # 36 – 2023: Offered by the Supervisors of the Administration Committee to request Coronavirus Local Fiscal Recovery Fund (CLFRF) allocated to Oneida County through the American Rescue Plan Act (ARPA) for the Purpose of PVC Roof Replacement on Quonset for Transfer Station Dumpsters.

Removed by
Cossing

Appointments to Committees, Commissions and other Organizations:
Re-Appoint Patrick Marquart to the Airport Commission for a 6-year term to expire in April 2029.