



WASHOE COUNTY

Integrity Communication Service

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STAFF REPORT

BOARD MEETING DATE: *February 23, 2023*

DATE: Thursday, February 9, 2023

TO: Board of County Commissioners

FROM: Michael Large, Deputy District Attorney
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THROUGH: Nathan Edwards, Assistant District Attorney
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SUBJECT: Recommendation and possible action to approve the settlement between Walmart and the State of Nevada in the opioid litigation and execution by Washoe County of "Walmart Settlement Participation Form" and releases pursuant to the One Nevada Agreement on Allocation of Opioid Recoveries ("One Nevada Agreement") previously agreed upon for participation in settlements.

An exact net amount to the county is not determined at this time, but it is expected the settlement will result in a gross payment from the defendants to the State of Nevada in an amount of \$32,231,037.14 and that the County's net payout from that amount will be determined according to the provisions of the One Nevada Agreement on Allocation of Opioid Recoveries approved by the Board in July 2021. Under the One Nevada Agreement, Washoe County will receive (before deductions required but yet to be calculated):

6.841995% of the Local Government Allocation (making up 38.77% of the total allocation)

14% of the Medicaid Match Allocation (17.37% of the total allocation)

District Attorney. (All Commission Districts.) FOR POSSIBLE ACTION.

SUMMARY

Staff recommends approval of the proposed settlement agreement with the State of Nevada and Walmart pursuant to the One Nevada Agreement and execution of the Walmart Settlement Participation Form attached hereto as Exhibit 1.

This Board has previously authorized the initiation of litigation against various defendants related to damages incurred due to the opioid crisis. On July 27, 2021, this Board entered into the One Nevada Agreement which provides the allocation model for

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distribution of any monetary recovery from the defendants between all governmental entities within the State of Nevada.

Pursuant to WCC 65.240(5), the Board has sole authority to settle any claim or suit for damages in excess of \$24,999. Pursuant to litigation authority delegated to the County Manager or Board Chair pursuant to NRS 241.0357, authority is limited to \$150,000. It is expected this settlement will result in substantially more than these cutoffs. Accordingly, Board approval has been sought.

Washoe County Strategic Objective supported by this item: Stewardship of Our Community

PREVIOUS ACTION

March 26, 2019 - the Board approved an agreement for legal services for outside counsel to represent the County against manufacturers, distributors, and dispensers of opioid-based drugs.

July 24, 2020 - a Complaint was filed against numerous corporate defendants.

June 8, 2021 - the Board received an update on the litigation and bankruptcy cases involving the various opioid defendants and took action to direct counsel for Washoe County to cast its vote to approve a bankruptcy plan consistent with other members of the Multi-State Government Entities ("MSG") in the Purdue Pharma Bankruptcy Case No. 19-23649 filed in the United States Bankruptcy Court Southern District of New York.

July 27, 2021 – the Board approved the One Nevada Agreement which provides the allocation model for distribution of any monetary recovery from the defendants between all governmental entities within the State of Nevada.

June 21, 2022 – the Board approved "Amendment No. 2 to One Nevada Agreement on Allocation of Opioid Recoveries" which allows the Nevada Attorney General's Office to divide the Recoveries in accordance with the percentages and terms of the One Nevada Agreement and remit payments to Local Governments and attorneys' fees to the appropriate Counsel on behalf of the Local Governments. Recoveries means settlement payments totaling \$285,679,409.03 from opioids distributor defendants AmerisourceBergen Drug Corporation, Cardinal Health, and McKesson, and opioid manufacturer defendant Janssen/Johnson & Johnson to compensate for the effects of the nationwide opioid crisis.

BACKGROUND

After the Board hired outside counsel to represent Washoe County in opioid-related litigation matters, a Complaint was filed in the Second Judicial District Court. Counsel has filed actions in state district court and claims in bankruptcy actions across the country. Those cases are proceeding, and several are being resolved in the bankruptcy courts.

The parties by and through outside counsel have engaged in settlement discussions with certain opioid defendants. A tentative settlement agreement has been reached between the State of Nevada and Walmart. The proposed Subdivision Settlement Participation

Forms allows Washoe County to be a party to these settlement agreements and resolve the claims against Walmart.

Between Walmart and the State of Nevada is an amount of \$32,231,037.14. If approved, Washoe County would be allocated its percentage of these settlement funds pursuant to the One Nevada Agreement. It is important to note that the settlement with Walmart also provides for the payment of fees and costs from different fee and costs funds, which will substantially increase the amount that will go towards abatement.

This settlement does not affect the ongoing litigation by Washoe County against the other defendants in the previously filed actions.

FISCAL IMPACT

Unknown. The amounts received by Washoe County are dependent on the allocation model contained in the One Nevada Agreement which requires that the amount of the lead litigator costs be deducted first, and then a reduction of the Federal Government CMS Medicaid Costs/Share amounts. These two amounts are currently unknown. Under the One Nevada Agreement, Washoe County will receive:

6.841995% of the Local Government Allocation (making up 38.77% of the total allocation)

14% of the Medicaid Match Allocation (17.37% of the total allocation)

Any funds received from this settlement will be deposited into IN20517 – 485300. Use of the funds will adhere to the guidelines established by the State.

RECOMMENDATION

It is recommended that the Board approve the agreement between the State of Nevada and Walmart and approve execution of the Walmart Settlement Participation Form.

POSSIBLE MOTION

Should the Board agree with staff's recommendation, a possible motion would be:

Move to approve the settlement between the State of Nevada and Walmart, and approve execution of the Walmart Settlement Participation Form for distribution of monies to Washoe County pursuant to the One Nevada Agreement.