

RESOLUTION NO. 2022-97

RESOLUTION BY THE EXECUTIVE COMMITTEE AUTHORIZING ENTRY INTO THE SETTLEMENT AGREEMENTS WITH TEVA PHARMACEUTICAL INDUSTRIES LTD., ALLERGAN FINANCE, LLC, WALGREEN CO., WALMART, INC., CVS HEALTH CORPORATION, AND CVS PHARMACY, INC., AGREEING TO THE TERMS OF THE ADDENDUM TO THE MOU ALLOCATING SETTLEMENT PROCEEDS, AND AUTHORIZING ENTRY INTO THE MOU WITH THE ATTORNEY GENERAL

To the Honorable Members of the Racine County Board of Supervisors:

WHEREAS, the Racine County Board of Supervisors previously authorized the 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; and

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

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”); and

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

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; and

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; and

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; and

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; and

WHEREAS, the County is a Participating Subdivision in the Settlement Agreements and has the opportunity to participate in the benefits associated with the Settlement Agreement provided the County (a) approves the Settlement Agreements; (b) approves the Memorandum of Understanding allocating proceeds from the Settlement Agreements among the various

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Wisconsin Participating Subdivisions, a copy of which is attached to this Resolution (the “Allocation MOU”); (c) approves the Memorandum of Understanding with the Wisconsin Attorney General regarding allocation of settlement proceeds, a copy of which is attached to this Resolution (the “AG MOU”); and (d) the Legislature’s Joint Committee on Finance approves the terms of the Settlement Agreements and the AG MOU; and

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

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

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

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

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

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

WHEREAS, the Legislature’s Joint Committee on Finance is not statutorily authorized or required to approve the allocation of proceeds of the Settlement Agreements among Wisconsin Participating Subdivisions; and

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

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

WHEREAS, there is provided with this Resolution a summary of the essential terms of the Settlement Agreements, the deadlines related to the effective dates of the Settlement Agreements, the ramifications associated with the County’s refusal to enter into the Settlement

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4 Agreements, the form of the Addendum, the form of the AG MOU, and an overview of the
5 process for finalizing the Settlement Agreements; and

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

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

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16 **WHEREAS**, the Law Firms anticipate making application to the national fee fund
17 established in the Settlement Agreements seeking payment, in whole or part, of the fees, costs,
18 and disbursements owed the Law Firms pursuant to the engagement agreement with the
19 County; and

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21 **WHEREAS**, it is anticipated the amount of any award from the fee fund established in
22 the Settlement Agreements will be insufficient to satisfy the County's obligations under the
23 engagement agreement with the Law Firms; and

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25 **WHEREAS**, the County, by this Resolution, and pursuant to the authority granted the
26 County in the applicable Order emanating from the Litigation in relation to the Settlement
27 Agreements and payment of attorney fees, shall authorize and direct the escrow agent
28 responsible for the receipt and distribution of the proceeds from the Settlement Agreements to
29 establish an account for the purpose of segregating funds to pay the fees, costs, and
30 disbursements of the Law Firms owed by the County (the "Attorney Fees Account") in order to
31 fund a local "backstop" for payment of the fees, costs, and disbursements of the Law Firms; and

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33 **WHEREAS**, in no event shall payments to the Law Firms out of the Attorney Fees
34 Account and the fee fund established in the Settlement Agreements exceed an amount equal to
35 25% of the amounts allocated to the County in the Addendum; and

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37 **WHEREAS**, the intent of this Resolution is to authorize the County to enter into the
38 Settlement Agreements, the Addendum, and the AG MOU, establish the County's Opioid
39 Abatement Account, and establish the Attorney Fees Account; and

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41 **WHEREAS**, the County, by this Resolution, shall authorize the County's corporation
42 counsel to finalize and execute any escrow agreement and other document or agreement
43 necessary to effectuate the Settlement Agreements and the other agreements referenced
44 herein.

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46 **NOW, THEREFORE, BE IT RESOLVED:** the Racine County Board of Supervisors
47 hereby approves:

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49 1. The execution of the Settlement Agreements and any and all documents ancillary
50 thereto and authorizes the County Executive and/or Board Chair to execute same.

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52 2. The final negotiation and execution of the Addendum in form substantially similar to
53 that presented with this Resolution and any and all documents ancillary thereto and
54 authorizes the County Executive and/or Board Chair to execute same upon finalization

4 provided the percentage share identified as allocated to the County is substantially
5 similar to that identified in the Addendum provided to the Board with this Resolution.
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8 3. The final negotiation and execution of the AG MOU in form substantially similar to that
9 presented with this Resolution and any and all documents ancillary thereto and
10 authorizes the County Executive and/or Board Chair to execute same.
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12 4. The execution by the County Executive and/or Board Chair of any additional
13 documents or agreements for the receipt and disbursement of the proceeds of the
14 Settlement Agreements as referenced in the Addendum.
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16 **BE IT FURTHER RESOLVED** that all proceeds from the Settlement Agreements not
17 otherwise directed to the Attorney Fees Account shall be deposited in the County’s Opioid
18 Abatement Account. The Opioid Abatement Account shall be administered consistent with the
19 terms of this Resolution, Wis. Stat. § 165.12(4), and the Settlement Agreements.
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21 **BE IT FURTHER RESOLVED** that the County hereby authorizes the establishment of
22 an account separate and distinct from any account containing funds allocated or allocable to the
23 County which shall be referred to by the County as the “Attorney Fees Account.” An escrow
24 agent shall deposit a sum equal to up to, but in no event exceeding, an amount equal to 20% of
25 the County’s proceeds from the Settlement Agreements into the Attorney Fees Account. If the
26 payments to the County are not enough to fully fund the Attorney Fees Account as provided
27 herein because such payments are made over time, the Attorney Fees Account shall be funded
28 by placing up to, but in no event exceeding, an amount equal to 20% of the proceeds from the
29 Settlement Agreements attributable to Local Governments (as that term is defined in the
30 Allocation MOU) into the Attorney Fees Account for each payment. Funds in the Attorney Fees
31 Account shall be utilized to pay the fees, costs, and disbursements owed to the Law Firms
32 pursuant to the engagement agreement between the County and the Law Firms provided,
33 however, the Law Firms shall receive no more than that to which they are entitled under their
34 fee contract when considering the amounts paid the Law Firms from the fee fund established in
35 the Settlement Agreements and allocable to the County. The Law Firms may make application
36 for payment from the Attorney Fees Account at any time and the County shall cooperate with
37 the Law Firms in executing any documents necessary for the escrow agent to make payments
38 out of the Attorney Fees Account.
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40 **BE IT FURTHER RESOLVED** that all actions heretofore taken by the Board of
41 Supervisors and other appropriate public officers and agents of the County with respect to the
42 matters contemplated under this Resolution are hereby ratified, confirmed and approved.
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44 Respectfully submitted,

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46 1st Reading _____

EXECUTIVE COMMITTEE

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48 2nd Reading _____
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Thomas E. Roanhouse, Chairman

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51 **BOARD ACTION**

52 Adopted _____

53 For _____

54 Against _____

Tom Kramer, Vice-Chairman

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4 Absent _____

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Robert N. Miller, Secretary

7 VOTE REQUIRED: majority

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Jason Eckman

10 Prepared by:
11 Corporation Counsel

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Robert D. Grove

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Tom Hincz

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Donald J. Trottier

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Melissa Kaprelian

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Scott Maier

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Fabi Maldonado

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30 **The foregoing legislation adopted by the County Board of Supervisors of**
31 **Racine County, Wisconsin, is hereby:**

32 **Approved:** _____

33 **Vetoed:** _____

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35 **Date:** _____,

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38 _____
Jonathan Delagrave, County Executive