



MEMORANDUM

Date: November 13, 2017

To: The Honorable Chair and Members
Pima County Board of Supervisors

From: C.H. Huckelberry
County Administrator

A handwritten signature in black ink, appearing to be "CHH", is written over the typed name "C.H. Huckelberry".

Re: **Possible Litigation Related to the Opioid Crisis –Recovering Costs against Opioid Manufacturers and Distributors**

The County has been approached by two law firms to consider joining future opioid litigation. The first law firm is Mike Moore Law Firm, LLC, including the Grant Woods Law with local representation from Rusing, Lopez and Lizardi, PLLC. The second law firm is Keller Rohrback, LLP, a national firm.

Background information on this subject is attached for your information. The Mike Moore Law Firm was the leading firm in the successful tobacco litigation and is the preferred firm and I will be recommending the Board of Supervisors enter into an agreement to join the opioid litigation against manufacturers and distributors.

The recommended method of proceeding will be to first evaluate the County's likelihood of cost recovery related to opioid deaths, emergency services and treatment programs for addiction. If found warranted, the second phase of the representation is to file the appropriate lawsuit and/or join ongoing litigation.

I have asked the County Attorney to place this item on the November 21, 2017 Board of Supervisors Agenda for direction by the Board. The item will also be listed as an Executive Session Item.

CHH/anc

Attachment

c: Andrew Flagg, Chief Civil Deputy County Attorney



RUSING LOPEZ
& LIZARDI
ATTORNEYS AT LAW

Michael J. Rusing
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October 10, 2017

The Honorable Steve Christy
Pima County Board of Supervisors
130 W. Congress, 11th Floor
Tucson, AZ 85701

Re: Opioid Crisis

Dear Steve:

Per our recent discussion, enclosed are some materials regarding the possibility of Pima County entertaining a lawsuit against opioid manufacturers and distributors.

As everybody knows, there is a terrible opioid crisis gripping America and abundant literature and other evidence suggests that a significant portion of the fault for this lies at the feet of the manufacturers and distributors of these drugs. In general, the concept is that these were drugs initially approved and primarily used to treat acute pain in relatively temporary circumstances, or end of life palliative relief in cancer patients. This, definitionally, was a relatively small market, and the industry decided to push use of these dangerous and addictive drugs for use in much more widespread circumstances. An unprecedented pharmaceutical marketing effort ensued directed towards prescribers in particular, extolling the virtues of opioid based drugs for all manner of pain, far beyond that ever envisioned initially by the makers or by the FDA. As a result, opioid prescriptions for things like minor back pain, run of the mill minor injuries, and even menstrual cramps, became amazingly widespread. The result was predictable and is well known: vast numbers of average folks became addicted to them with resulting huge personal and societal costs.

With regard to the public sector, the costs associated with the opioid epidemic are immense. They include such things as increased health care in County run hospitals and substance abuse treatment centers, criminal justice costs (including courts, attorneys, and incarceration facilities), employee medical health plan costs, and workers' compensation programs. For Pima County, you are probably looking at costs well into the nine-digits.

I enclose for your information, a PowerPoint tailored to Arizona and an article about the opioid crisis entitled *Short Answers to Hard Questions About the Opioid Crisis*, for a little more background.

As a result of this irresponsible conduct, Cities, Counties, States, and Indian Nations have begun filing lawsuits against the culpable parties in a manner much reminiscent of the tobacco

The Firm has one or more attorneys admitted to practice in Arizona, California, Colorado, Maryland, Nevada, New Hampshire, New York, and Washington, D.C.

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litigation, though obviously there are some stark differences. I have been in contact with what is clearly the dream team of opioid litigators in the country led by Mike Moore who, as Mississippi's Attorney General in 1994, filed the first State lawsuit against tobacco companies. Enclosed are a couple of articles talking about Mike and his approach to the opioid makers, one from the Wall Street Journal and one from Bloomberg Businessweek. In addition to Mr. Moore, other luminaries involved include Paul Hanly, from New York City, who is a national mass-tort player and one of the leaders in the early asbestos products liability cases, though more recently has been involved in playing lead-role in pharmaceutical cases. The Team also includes J.R. Whaley, from Baton Rouge, who is renowned for his representation of claimants who suffered damages a result of the explosion that occurred in the Gulf of Mexico on the BP Deep Water Horizon rig and its subsequent oil spill. If this matter proceeds, my law firm would be the local counsel. A complete breakdown of a potential team is enclosed.

In terms of the types of cases themselves, a wide range of theories of liability have been asserted in various jurisdictions around the country on behalf of governmental entities, including deceptive trade acts and practices, public nuisance fraud, unjust enrichments, and negligence. I enclose for your information two separate lawsuits, one filed in Louisiana and one in New York, on behalf of counties situated there by members of this Team.

The Team I have outlined for you would like to take the opportunity to explore these causes of action on behalf of the County to determine the viability and magnitude of such, and would like to be retained by the County for that purpose, at no charge or cost to the County. Furthermore, members of the Team are willing to come to Tucson to meet with whomever you feel would be appropriate to explain exactly what we propose to do in analyzing such claims. The notion would be that, if such an investigation is approved, the Team would report back to the County with its findings and a proposal about going forward and upon what terms.

I look forward to hearing back from you regarding how you would like to proceed.

Very truly yours,



Michael J. Rusing

MJR\skw
Enclosures
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cc: Pima County Attorney Barbara LaWall
Pima County Administrator Chuck Huckleberry

ORGANIZATIONAL CHART FOR OPIOID LITIGATION

Immediate Needs of the Pima County (Local Counsel):

Rusing Lopez & Lizardi, PLLC (Mick Rusing)

Other Litigation/Resolution Counsel:

Mike Moore Law Firm, LLC (Mike Moore)

Law Offices of Drake M. Martin (Drake Martin)

Manufacturer Litigation:

Hagens, Berman, Sobol, Shapiro, LLP (Steve Berman)

Davidson Bowie, PLLC (John L. Davidson)

Ditrapano, Barrett, DiPiero McGinley & Simmons, PLLC (Sean McGinley)

Distributor Litigation:

Simmons, Hanly, Conroy, LLC (Paul Hanly)

Law Offices of P. Rodney Jackson (P. Rodney Jackson)

McGowan, Hood & Felder, LLC (Jay Ward)

Appellate Issues:

Bartimus, Frickleton, & Robertson, PC (Edward Robertson)

Kellogg, Hansen, Todd, Figel & Frederick (David Frederick)

Coordination with State of Arizona and other Local Government Entities:

Rusing Lopez & Lizardi, PLLC (Mick Rusing)

Young Law Office, P.A. (Tom Young)

Whaley Law Firm (J.R. Whaley)

KELLER ROHRBACK L.L.P.

LAURIE B. ASHTON ①③
JERALD BIEN-WILLNER ①②
IAN S. BIRK ④
KENNETH A. BLOCH ④
KAREN E. BOXX ④
GRETCHEN FREEMAN CAPPIO ④
ALISON CHASE ①②
T. DAVID COPLEY ①③④
ROB J. CRICHTON ①③
MAUREEN M. FALECKI ②④
JULI FARRIS ②③④
RAYMOND J. FARROW ④
ERIC J. FIERRO ④
WILLIAM L. FLEMING ④
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LAURA R. GERBER ④
MATTHEW M. GEREND ④
GARY A. GOTTO ④
BENJAMIN GOULD ②④

CHRISTOPHER GRAVER ④
MARK A. GRIFFIN ①④
AMY N.L. HANSON ④
IRENE M. HECHT ④
SCOTT C. HENDERSON ④
MICHAEL G. HOWARD ④
DEAN N. KAWAMOTO ②④④
RON KILGARD ①④④
KATHRYN M. KNUDSEN ④
DAVID J. KO ④
TANYA KORKHOV ④
ERIC R. LALIBERTE ④
BENJAMIN J. LANTZ ④
LUKE M. LARIVIERE ④
CARI CAMPEN LAUFENBERG ④
ELIZABETH A. LELAND ④
JEFFREY LEWIS ④
TANA LIN ②④④④
DEREK W. LOESER ④
HOLLY E. LYNCH ④

RYAN MCDEVITT ④
DANIEL MENSHER ④⑤
IAN J. MENSHER ④
MICHAEL W. MEREDITH ④
RACHEL MOROWITZ ④
GRETCHEN S. OBRIST ④
ROBERT S. OVER ④
DUDLEY B. PANCHOT ④
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DAVID S. PREMINGER ④
MATTHEW J. PREUSCH ②④
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③ ADMITTED IN COLORADO
④ ADMITTED IN IDAHO
⑤ ADMITTED IN ILLINOIS
⑥ ADMITTED IN MASSACHUSETTS
⑦ ADMITTED IN MICHIGAN
⑧ ADMITTED IN MINNESOTA
⑨ ADMITTED IN MONTANA
⑩ ADMITTED IN NEW YORK
⑪ ADMITTED IN OHIO
⑫ ADMITTED IN OREGON
⑬ ADMITTED IN WASHINGTON
⑭ ADMITTED IN WASHINGTON, D.C.
⑮ ADMITTED IN WISCONSIN

October 17, 2017

VIA FEDEX and EMAIL

*Confidential Communication
Attorney Work Product*

Barbara LaWall
32 N. Stone Avenue
Tucson, AZ 85701
Pimacounty.attorney@pcao.pima.gov

Re: Litigation Concerning Opioid Epidemic

Dear Barbara:

I don't believe we've ever met. I'm a litigation lawyer in Phoenix, in practice here in Arizona for over 35 years. My firm is a national class action law firm, with offices in Seattle, California, and New York, as well as Phoenix. I write concerning the national litigation that is now beginning in earnest concerning the opioid epidemic. There are now dozens of cases pending across the country, and the Judicial Panel on Multi-District Litigation is considering a petition to centralize the cases (or at least the ones pending in federal court) for pre-trial management. I think it is likely that relatively soon the JPML will appoint a judge to manage the cases. Once that happens, a centralized, national litigation effort by American municipalities to recover some of their losses from the opioid epidemic will be underway.

I think that Pima County should seriously consider joining this effort. One point of particular importance, and I cannot stress this too strongly, is that these are *not* class actions. Although the liability issues in the cases overlap considerably (hence the JPML proceeding), each local government must prove its own case and prove up its own damages. Moreover, in a case like this, the County will likely not be able to recover its damages derivatively through some other governmental entity, such as the State of Arizona. Generally, each municipality has its own elements of damages, which are not duplicated by the damages suffered by the governmental entities in which the city is located. Therefore, a municipality that does not

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participate will likely recover nothing. I enclose a recent complaint we filed for the City of Tacoma. Currently, we are working on a complaint for another local government as well.

A group of lawyers in our Seattle office is heading up this effort. I wonder if one of them and I could speak with you, or meet with you in person in Tucson, to discuss the current state of the litigation and Pima County's possible participation. In the balance of this letter I address what seem to me the key issues, both generally and from the County's point of view.

I. OPIOID EPIDEMIC

Millions of Americans are addicted to prescription pain killers. These opioid drugs, such as OxyContin, are more powerful than morphine, and can have profound and devastating effects on the health of those who use them. Not only are prescription opioids highly addictive, they act as gateways to even more dangerous opioids, including heroin. The Centers for Disease Control ("CDC") has categorized this crisis as an epidemic, and in a recent study it found that sales of opioids quadrupled between 1999 and 2010, and the percentage of people who took painkillers stronger than morphine jumped from 17% to 37% in the same period.

Labeling the opioid crisis an epidemic, while helpful in terms of raising awareness, might be a misnomer—the astonishing jump in prescription rates did not occur by chance. There are responsible parties: the manufacturers of prescription opioids, including Purdue Pharma and Teva Pharmaceuticals. It has been reported that corporate documents show the makers of prescription opioids deliberately sought to increase prescription rates of opioids by lying to doctors and the public about their dangers. Before this decision to "mass market" opioid painkillers, the use of these powerful drugs was confined to end-of-life palliative care, where the profound risks of addiction were of less concern. This, however, was a limited market. Purdue and others wanted to expand the applications for these drugs to generate new profits.

To convince doctors to prescribe such powerful drugs, however, the drug makers had to overcome decades of research and medical knowledge that opioids were extraordinarily addictive and should only be used in rare circumstances. Purdue, Teva, and others orchestrated multi-faceted strategies to hide the dangers of opioids. For example, the pharmaceutical companies claimed that they had developed new, non-addicting opioids and hired doctors to write papers, present talks, and visit other doctors to explain the safety and efficacy of opioids in treating a wide range of ailments. The companies promoted opioids in a relentless advertising campaign for the treatment of everyday aches and pains even though the drugs were originally intended to treat end-stage cancer patients.

In addition to marketing highly addictive opioids for a broad range of pain, the companies encouraged providers to prescribe much longer courses of opioid treatment than were necessary. Purdue's marketing materials, for example, included patient coupons for up to a 30-

day supply of OxyContin. In contrast, current CDC guidelines advise that three days or less is often sufficient to treat acute pain, and more than seven days is rarely needed.

The drug makers' efforts worked. Over the ensuing decade, doctors wrote millions of new prescriptions for OxyContin and other opioids for patients who, before the marketing campaign, would never have been given such powerful drugs. Yet, as effective as the marketing campaign was for driving Big Pharma profits, the reality for patients was far darker, for although the drug companies claimed the "new wave" of opioids did not carry a risk of addiction, this was a deliberate lie. Opioids are terribly addictive. And, not only were doctors now prescribing them to people who had never needed them in the past, but because doctors had been assured their patients would not become addicted to the pills, they often did not track the long-term use of these dangerous medicines.

The misrepresentations made by these drug manufacturers regarding the efficacy, benefits, and non-addictive qualities of opioids have largely been confirmed by the CDC in its *Guideline for Prescribing Opioids for Chronic Pain*, issued in 2016 and approved by the FDA ("2016 Guideline"). The 2016 Guideline indicates that there is extensive evidence to support the substantial harms related to opioid use, including addiction, withdrawal, and mortality. The 2016 Guideline also makes clear that there is insufficient evidence to determine whether there are any long-term benefits of treating chronic pain with opioid therapy. Furthermore, the CDC issued its guidelines after "a systematic review of the best available evidence, along with input from experts, and further review and deliberation by a federal chartered advisory committee." Thus, these guidelines credibly contradict statements made by drug manufacturers regarding the safety of opioid use.

The addictiveness of opioids has not been lost on the illegal drug market. As prescriptions for opioids from legitimate doctors rose, so too have the black-market sales of these opioids. Drug traffickers set up fake clinics, "pill mills", and other fronts to purchase opioids from Purdue and others so that they could sell them on the street.

Purdue and other drug manufacturers have profited handsomely from this illegal drug trade. In one case alone, it became apparent that an illegal drug ring in Los Angeles purchased more than \$15 million of OxyContin from Purdue, which the drug ring sold in cities throughout California. Documents from the criminal trial against members of the drug ring show that although Purdue's representatives had investigated the fake clinic and alerted Purdue's officers to the fraud, Purdue refused to stop selling OxyContin to this "gold mine" client. Not only is this behavior morally repugnant, but it also violates a consent decree that Purdue entered into in 2007, which required the manufacturer to prevent diversion sales.¹ Purdue instead has helped

¹ The jurisdictions that entered into the 2007 consent decree are Arizona, Arkansas, California, Connecticut, Idaho, Illinois, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Montana, Nebraska, Nevada, New Mexico, North Carolina, Ohio, Oregon, Pennsylvania, South Carolina, Tennessee, Texas, Vermont, Virginia, Washington, Wisconsin and the District of Columbia. A copy of the consent decree is attached.

flood the black market with opioids—while lining its own pockets.

People addicted to opioids face disastrous risks. First, it is not difficult to overdose on an opioid, with fatal results. Second, when insurance stops paying for opioids, or a doctor refuses to refill an addict's prescription, he or she faces a terrible choice—find illegal sources of prescription painkillers or switch to less expensive, more dangerous substitutes, such as another opioid: heroin.

Opioid manufacturers have endangered the lives and wellbeing of millions of Americans, and created a new generation of drug addicts, with a host of resulting consequences, including increased crime and homelessness, dramatic drug treatment costs, and lost productivity. All of this is because a handful of drug companies deliberately and knowingly lied about the risks of their products in order to generate record profits.

II. WHY PIMA COUNTY?

Opioids' terrible personal consequences have resulted in huge societal costs. The CDC estimated that the opioid epidemic costs the United States approximately \$78.5 billion annually, including workplace, criminal justice, and health care costs. The opioid crisis in Arizona has been severe. The Arizona Department of Health Services found that there were 790 reported opioid deaths in the state in 2016.² And the death rate in Pima County was worse than the state average in four of the top 20 causes of death, specifically: drug-induced death, opiates/opioids, pharmaceutical opioids, and heroin.³ The sum of charges for emergency-department visits in Pima County for opioid diagnosis-related care has risen dramatically—from approximately \$10 million in 2010 to almost \$25 million in 2016.⁴ Inpatient charges for opioid-related hospital visits last year totaled more than \$229 million.⁵ While there is no doubt the opioid epidemic is a national problem, its most significant impacts are concentrated in specific areas. Indeed, Pima County's Board of Supervisors recognized the burden that the opioid epidemic places on the local community when it passed a resolution this summer, commending Governor Doug Ducey for issuing an executive order regarding the crisis and also urging the State to appropriate funds for counties and local jurisdictions to address the emergency.⁶

² Josiah Destin, *Arizona had 191 opioid overdoses, 15 deaths last week*, The Arizona Republic (Jun. 26, 2017), <http://www.azcentral.com/story/news/local/arizona-health/2017/06/27/arizona-had-191-opioid-overdoses-15-deaths-last-week/430333001/>.

³ Memorandum from Gregory L. Hess, MD, Chief Medical Examiner, *et al.*, *Update on Opioid Response in Pima County* at 2 (Aug. 29, 2017) (available at https://www.scribd.com/document/357813000/Update-on-Opioid-Misuse-in-Pima-County#from_embed).

⁴ *Id.* at 6.

⁵ *Id.*

⁶ Bud Foster, *Pima County passes its own opioid resolution*, Tucson News Now (Jun. 20, 2017), <http://www.tucsonnewsnow.com/story/35710885/pima-county-passes-its-own-opioid-resolution>.

Counties like Pima have borne the brunt of this unfolding tragedy. For example, many counties have had to increase the amount of money they allocate to responding to opioid overdoses, including emergency responders and drug clinic costs. Policing costs, too, have risen; with more demand for illegal drugs and the associated impacts, public safety costs in many counties have markedly increased and the public safety dollars are diverted away from other priorities to address issues directly related to opioid addictions. Counties also bear significant costs creating and maintaining human services programs to help individuals impacted by opioid and heroin addiction. And less dramatically, but no less costly, the opioid epidemic costs counties—both directly and indirectly—from lost worker productivity.

Whether it's increased health care, employment, or public safety costs, Pima County ultimately bears much of the burden of dealing with opioid addiction within its borders, a problem that drug manufacturers created. We believe, however, that the County has several legal tools it might use to hold those ultimately responsible for the disaster accountable.

III. POTENTIAL CLAIMS AGAINST OPIOID MAKERS

The potential claims fall into three general categories—consumer protection law with statutory penalties, common law claims for the consequential impacts of the false advertising, and RICO.

A. Arizona Consumer Fraud Act

The Arizona Consumer Fraud Act (“ACFA”) prohibits the “use or employment ... of any deception, deceptive or unfair act or practice, fraud, false pretense, false promise, misrepresentation, or concealment, suppression or omission of any material fact with intent that others rely on such concealment, suppression or omission, in connection with the sale or advertisement of any merchandise....” Ariz. Rev. Stat. Ann. § 44-1522. The ACFA provides an implied private cause of action. *See Dunlap v. Jimmy GMC of Tucson, Inc.*, 136 Ariz. 338, 342, 666 P.2d 83, 87 (App. 1983).

The County would argue that the drug makers have engaged in a wide range of prohibited acts, including providing deceptive, untrue, and misleading advertising to doctors, patients, and others in Pima County about the safety, efficacy, and character of their opioid painkillers. The County would need to show that the defendants’ claims that these prescription painkillers are non-addicting and safe for everyday use were wrong.

Under its ACFA claim, the County would likely seek two categories of relief. First, the County would ask the court to enjoin the drug makers from making false claims about their medications. Second, it would seek damages suffered as a result of the drug makers’ unlawful conduct. Punitive damages also may be available, if the County proves that the drug makers’ acts were wanton or reckless. *See id.* at 343. Because a claim under the ACFA must be filed within

one year after the cause of action accrues, however, damages would likely be limited to that time period. *See Steinberger v. McVey ex rel. Cty. of Maricopa*, 234 Ariz. 125, 142, 318 P.3d 419 (App. 2014).

As discussed further below, the scope of monetary relief potentially available here is hard to know without more information. Whether Pima County maintains self-funded health insurance for its employees or not, it is likely that the costs the County bears for its employees' health care have gone up as a result of the over-prescription of opioids. The County could seek to recover that overpayment, we believe, under the second prong of relief. This information is likely in the County's possession now, or can be obtained from its health insurer(s). Similarly, without discovery, both from the defendants as well as from doctors and hospitals in the County, it is hard to know how many violations of the law the defendants may have committed. But, these data ought to be readily obtainable in the normal course of discovery and internal document review.

B. Common Law Claims

1. Public Nuisance

In addition to the statutory claims, the County should consider including a claim for public nuisance against the drug makers and the wholesalers. Under Arizona law, public nuisance "encompasses any unreasonable interference with a right common to the general public." *Armory Park Neighborhood Ass'n v. Episcopal Cmty. Servs. in Arizona*, 148 Ariz. 1, 4, 712 P.2d 914 (1985).

Although this may not be a "typical" public nuisance, we think the County has a plausible argument that the opioid crisis—increased drug addictions, drug-related crimes, loss of work force, increased police work and strains on courts, etc.—has created a situation that is "injurious to health" and has interfered with the "comfortable enjoyment of life or property" in Pima County. Not only is this a public nuisance, but the County is the proper party to bring this case.

One of the benefits of this claim is that under a public nuisance action, the court would have wide latitude to craft remedies. The County, of course, may ask the Court to order defendants to abate that nuisance. And while there may be no statutory penalties available, the County could still argue that the court ought to mandate the defendants pay the County to address the many direct and indirect impacts of the epidemic on the County.

2. Negligence

In light of the drug makers' failures to stop selling their opioid painkillers to illegitimate pill mills and drug rings, the County may also be able to bring a claim of negligence against both the drug manufacturers and the pharmaceutical wholesalers.

Under Arizona law, to state a claim for negligence, the plaintiff must establish duty, breach, causation, and damages. The County should be able to rely on several sources to establish the defendants' duty—for example, federal drug law (opioid painkillers are Schedule II drugs and may not be distributed to illegitimate providers) and the 2007 consent decree into which Purdue and others entered into with several states, including Arizona, that obligates them to prevent the illegal “diversion” sales. The drug manufacturers and wholesalers have breached this duty by failing to ensure they are not selling these powerful drugs to pill mills, drug rings, and other illegitimate distributors. This failure has directly helped to increase the amount of these dangerous drugs in illegal markets, which, in turn, has had serious impacts on the County.

C. Federal Racketeer Influenced and Corrupt Organizations Act (“RICO”)

Our complaint for the City of Tacoma includes a detailed claim under the federal racketeering law, RICO. That claim alleges that the opioid manufacturers established a racketeering “enterprise” for a common purpose: “to sell drugs, specifically opioids, that have little or no demonstrated efficacy for the pain they are purported to treat in the majority of persons that obtain prescriptions for them.” To pursue that common purpose, the complaint alleges, defendants committed a pattern of racketeering, including mail and wire fraud. That RICO claim includes a request for treble damages.

IV. ESTIMATING THE SCOPE OF POTENTIAL RECOVERY

As noted above, we lack some important information that would allow us to develop an estimate of the scope of any potential recovery. Although some of that information may only really be obtained through discovery—such as the number of false or misleading statements defendants made in Pima County—other information may be readily accessible by the County.

Below is a preliminary list of information we think the County may have that would be helpful in estimating the potential size of recovery here.

- Health care costs over the past 10 years
- Police costs that may be attributable to responding to drug-related crime, violence, public safety
- Costs related to treating incarcerated people addicted to opioids
- Response costs to address opioid overdoses, including doses of Narcan/naloxone purchased or used, number of emergency calls related to opioid use or overdose
- Increased costs of providing human services, including counseling, housing, prevention programs, as a result of opioid use among the populations being served

V. ONGOING OPIOID LITIGATION

Cities, counties, and states have filed over 60 such cases in 11 different federal district courts throughout the country. Additional cases are pending in state courts. Although each of these cases differ in some ways from each other, at root, they all allege that the drug makers deliberately developed a campaign to deceive patients, doctors, and public health agencies in order to inflate the demand for their powerful pain medications.

Favorable opinions in pending cases have provided helpful precedent on a number of legal issues. For example, in *The People of the State of California v. Purdue Pharma L.P.*, the Superior Court of the State of California, Orange County, originally stayed the proceedings based on the defendants' "primary jurisdiction" argument, i.e., that the FDA has primary jurisdiction of this matter. However, the court granted the County leave to file an amended complaint and lifted the stay. The court "strongly encouraged" the parties to participate in voluntary mandatory settlement conferences or mediation, noting that "[i]t appears similar actions have been resolved in other jurisdictions, so the parties here [are] not working on a blank canvas."

Similarly, in *City of Chicago v. Purdue Pharma, L.P.*, the Northern District of Illinois denied defendants' motion to dismiss or stay under the primary jurisdiction doctrine, finding that argument to be "unpersuasive." Further, the court denied defendants' motion to dismiss claims for deceptive business practices and misrepresentation, finding that "the City has identified to which Chicago-area prescribers defendants' representatives made alleged misstatements, what those alleged misstatements were, and generally when and where those alleged misrepresentations were made." Although other claims were dismissed, these dismissals were made with leave to amend, and the City has since amended its complaint to restate these claims.

Most recently, in *City of Everett v. Purdue Pharma, L.P., et. al.*, pending in the Western District of Washington, the court denied the bulk of the defendants' motion to dismiss the city's complaint, finding that the causal chain linking defendants' action to the city's injuries was a "direct sequence."

These cases have helped us to home in on the causes of action that we think are most likely to produce favorable outcomes for Pima County, were it to pursue this litigation.

* * *

Unfortunately, all this has a relatively short time fuse. As mentioned at the outset, the JPML has before it a petition to transfer and consolidate the separate opioid cases for pretrial proceedings. That petition was filed on September 25, 2017, captioned *In re: National Prescription Opiate Litigation*. We expect the panel will indeed consolidate the cases and, once they are assigned to a single district judge, the court will begin structuring the litigation, setting

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deadlines, etc. Although there is now no "deadline" for filing a case, I think there is no question that if County is interested in participating, the sooner it does so, the better. I would love to chat with you, on the phone or in person, about all of this. Thanks for your attention.

Sincerely,

A handwritten signature in black ink, appearing to read "Ron Kilgard". The signature is fluid and cursive, with a large initial "R" and "K".

Ron Kilgard

rkilgard@kellerrohrback.com

RK:sjs

Enclosures