





Lawsuits filed by the U.S. Department of Justice, the U.S. Attorney's Office, and the State Attorney Generals for violations of the Controlled Substance Act or state consumer protection laws have resulted in significant multi-million dollar settlements (for example, \$44 million from Cardinal Health; \$24 million from Purdue Pharma; \$150 million from McKesson; \$35 million from Mallinckrodt; and \$16 million from AmerisourceBergen). Further, about a decade ago, the U.S. Department of Justice obtained a criminal penalty of \$692 million against Purdue Pharma. While these figures are astonishing and could certainly positively impact the negative effects of the opioid crisis if realized, it is unknown at this time what kind of damages could be established, sustained, and ultimately awarded in causes of action filed at our level.

It should also be noted that forty-one Attorney Generals, including Florida's Attorney General, Pam Bondi, have joined forces to investigate opioid manufacturers and distributors. Subpoenas have already been issued requesting documents pertaining to the companies' opioid distribution business. It is uncertain how individual local government lawsuits could affect the multi-state efforts.

Should the BCC decide to commence litigation, it would be necessary to retain outside counsel, as the nature of this type of litigation goes well beyond what the CAO can handle. This does not pose a problem, as there are at least fourteen firms who would like the opportunity to represent the County. Based on the firms' informal representations, litigation would be pursued without County funding. Attorney's fees would be paid on a contingency basis, with costs fronted by the firm, only to be reimbursed by the County if there is an acceptable recovery. Firms have not been able to give us a reliable estimate of what those costs could be.

If BCC direction is to move forward, staff recommends a formal competitive selection process be used to secure outside counsel. The County Attorney's Office would develop a Request for Proposal, convene a selection committee to review the proposals, and either recommend one firm/team of firms to the BCC for approval, or, in the alternative, short-list three firms for the BCC's consideration and selection.

In any event, the CAO will continue to monitor the cases that have been filed. We will also keep communication open with our colleagues throughout the state as well as the Florida Association of Counties and the National Association of Civil County Attorneys (NACo).

MEMORANDUM

DATE: November 14, 2017  
TO: Palm Beach County Board of County Commissioners  
FROM: Kim Phan, Assistant County Attorney  
RE: Opioid Epidemic Litigation Overview

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Florida

- 3/29/17 – Pam Bondi appointed to President Trump’s Opioid and Drug Abuse Commission
- 5/03/17 – Governor Scott declares opioid epidemic a public health emergency
- 6/14/17 – Governor Scott signs House Bill 477 creating new penalties and enhances existing laws related to opioids
- 7/11/17 – Commissioner McKinlay gives directive at Board of County Commissioners’ meeting to the County Attorney’s Office to research opioid matter and potential litigation
- 7/18/17 – City of Delray Beach officially hires Robbins, Geller, Rudman & Dowd to pursue opioid litigation
- 8/8/17 – Fact finding meeting held at Palm Beach State College
- 9/19/17 – Florida Attorney General, Pam Bondi, issues a news release that Florida is part of a multi-state investigation of manufacturers and distributors of opioids. Currently, 41 attorney generals are involved. The attorney generals served subpoenas on pharmaceutical manufacturers Endo, Teva/Cephalon, Janssen, Allergan and their related entities. They also served a supplemental civil investigative demand on Purdue Pharma. Additionally, the attorney generals sent letters to opioid distributors AmerisourceBergen, Cardinal Health, and McKesson, seeking documents pertaining to their opioid distribution business. Ms. Bondi also joined a separate coalition of 37 attorney generals in asking the American’s Health Insurance Plans to examine policies to ensure they are not aiding the national opioid crisis.
- 9/26/17 – Governor Scott proposes as part of his 2018-2019 recommended budget to allocate \$50 million to combat opioid abuse. He will also propose new legislation geared towards combating opioid abuse.
- 9/29/17 – Palm Beach County State Attorney, Dave Aronberg, will make eight proposals addressing opioid issues during the January 2018 legislative session.
- 10/23/17 – Commissioner McKinlay writes letter to Governor Scott requesting an extension of opioid epidemic state of emergency and support of the County’s request of \$1 million dollars from the Legislature to assist the County in developing an addiction intake facility
- 10/26/17 – President Trump declares the opioid epidemic a public health emergency

### **Possible Plaintiffs**

Counties, Cities, State, Attorney General

All outside counsel consulted believe that PBC can bring a separate suit rather than file jointly with other government entities, and would prefer that

### **Possible Defendants<sup>1</sup>**

#### **Distributors:**

- McKesson
- AmerisourceBergen
- Cardinal Health

#### **Manufacturers:**

- Purdue Pharma
- Cephalon
- Janssen (Johnson & Johnson)
- Endo
- Actavis
- Insys
- Teva Pharmaceuticals
- Mallinckrodt

#### **Pharmacies**

- Walgreens
- CVS
- Walmart
- Costco

#### **Local doctors**

#### **Causes of Action:**

- Florida Deceptive and Unfair Trade Practices Act
- Negligence
- Misrepresentation
- Public Nuisance
- Unjust Enrichment
- RICO
- Distributors violated the federal Controlled Substances Act by failing to alert US DEA of suspicious opioid purchases

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<sup>1</sup> Affiliates and subsidiaries are not listed.

**Forums to File Suit:**

- State Court
- Federal Court

**Damages:**

Past and Future damages: building and maintaining treatment facilities, reimbursement for social services and other expenses used to treat addiction i.e. antidote to treat overdoses, reimbursement for added law enforcement, first responders, fire rescue, and medical personnel, reimbursement for costs of prosecution and jails, education, rehabilitation and treatment funding, etc.

**Current Pending Lawsuits:** (Most are at initial pleading/Motion to Dismiss stage)

As of 10/2017 – 82 (66 Fed cases and 16 State cases) government entities have filed suit against manufacturers, distributors, large drugstore chains, and doctors.

City of Chicago, IL, Mississippi State, and City of Everett, WA lawsuits have gotten past the Motion to Dismiss stage

9/25/17 – Plaintiffs (46 government entities) have filed a motion to consolidate pre-trial proceedings before the US Judicial Panel on Multidistrict Litigation (MDL). An MDL is a special procedure in federal courts for streamlining similar lawsuits that are currently pending where a single judge and court will decide pre-trial issues. Hearing is scheduled for 11/30/17 in St. Louis, MO.

**Law Firms Consulted:**

- **Weiss, Handler & Cornwell, PA (Boca Raton, FL)**
  - Contact Person: Henry Handler & Bill Cornwell
  - Fee structure: negotiable
  - Current lawsuits: none
- **Motley Rice, LLC (Multiple locations)**
  - Contact Person: Linda Singer & Dan Gelber
  - Fee structure: 25% flat rate plus cost reimbursement
  - Current lawsuits: City of Chicago, Santa Clara, California, New Hampshire, and Albany
- **Simmons, Hanly, Conroy, PA (multiple locations)**
  - Contact Person: Paul Hanly and Sarah Burns
  - Fee Structure: 2 options – 1) sliding scale between 10% to 40% based on stage of litigation + reimbursement of costs; or 2) flat rate of 25% plus reimbursement of costs
  - Current lawsuits: 12 lawsuits filed on behalf of various government entities
  - Represents 20 government entities
  - Represented 5000 individual plaintiffs in 2007 and settled with Purdue for \$75 million
- **Levin, Papantonio, Thomas, Mitchell, Rafferty & Proctor (Pensacola, FL)**
  - Contact Person: Jeff Gaddy

- Fee Structure: 30% flat rate plus reimbursement of costs; not sure if would negotiate on that
  - This is a consortium of law firms working together – 6 total
  - Current lawsuits: 7 lawsuits filed on behalf of W. Va. counties;
  - Represent 20 government entities
- **Robbins, Geller, Rudman & Dowd, LLP (Boca Raton, FL)**
    - Contact Person: Mark Dearman
    - Fee Structure: (Negotiable) sliding scale 18% to MTD stage, 21% MSJ, 23% MOL, 25% anything after plus cost reimbursement
    - Current lawsuits: none
    - Currently represents the City of Delray Beach
    - Has experience with product liability lawsuits
- **Napoli Shkolnik, PLLC (Multiple locations)**
    - Contact Person: Joe Ciaccio (or Lawrence Newman, local Boca Raton attorney)
    - Fee Structure: sliding scale capped at 25% plus costs reimbursement
    - Current lawsuits: 13 lawsuits filed on behalf of varies government entities
    - Represents 44 government entities
- **Gordon & Doner, PA (Palm Beach Gardens, FL)**
    - Local liaison for Napoli Shkolnik, PLLC
- **Critton, Luttier & Coleman, LLP (West Palm Beach, FL)**
    - Contact Person: Greg Coleman
    - Fee Structure: contingency
    - Current lawsuits: none
    - Has experience in product liability lawsuits
- **Mike Moore Law Firm, LLC (Flowood, MS)**
    - Contact Person: Michael Moore
    - Fee Structure: Sliding Scale capped at 25% + cost reimbursement
    - Current lawsuits: States of Mississippi and Ohio. Has passed the Motion to Dismiss stage
    - He has connections with Paul Hanly at Simmons, Hanly, Conroy, PA. He most likely will collaborate with another law firm if PBC hires him.
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- **Gilbert, LLP (Washington DC)**
    - Legal assistant (Shirley Martinez) called and asked if a request for proposal has been issued yet. I explained that we are still just gathering information at this time. I said her attorney may contact me to discuss this matter at any time and gave her my contact information.
- **Labaton Sucharow, LLP (New York, NY)**
    - Contact Person: Michael Canty
    - Fee Structure: Open, competitive

- Current lawsuits: none
- Has been retained by Scotts County, TN to investigate
- Has connections with Lieff Cabraser Heimann & Bernstein, LLP
- **Searcy, Denny, Scarola, Barnhart & Shipley, PA (West Palm Beach, FL)**
  - Contact Person: Brenda Fulmer
  - Fee Structure: undecided
  - Current Lawsuits: none
  - Has mass tort experience and a mass tort department
- **Podhurst Orseck, PA (Miami, FL)**
  - Contact Person: Steven Rosenthal
  - Fee Structure: contingency basis + costs
  - Current Lawsuits: none
  - Has mass tort and class action experience
- **Michael J. Bern & Partners, LLP (New York, NY)**
  - Contact Person: Marc Bern and Mitchell Caesar
  - Fee Structure: contingency basis at 25% + costs
  - Current Lawsuits: 8 counties in Pennsylvania
  - Has experience in class actions

#### Settlements/Fines

2007 – lawsuit against Purdue Pharma with 5000 plaintiffs settled for **\$75 million**; US DOJ used the same discovery information in that lawsuit to obtain criminal penalty of **\$692 million**; **\$19 million settlement** with 26 states

May 2008 – McKesson paid **\$13.25 million** to U.S. attorneys' offices in FL, MD, CO, TX, UT, CA to settle civil penalties that three McKesson facilities to report suspicious orders of hydrocodone and alprazolam

Oct 2008 – Cardinal Health paid **\$34 million** to seven US attorneys' offices in FL, TX, WA, NJ, GA, CA, & CO for failing to report suspicious orders of hydrocodone for violations of the Controlled Substances Act

2015 - CVS in Sanford, FL; settled for **\$22 million** with DEA and the US. Attorneys' Office because they were filling painkiller prescriptions far in excess of the average pharmacy in violation of the Controlled Substances Act, in 2011 they filled 3 million dosages in single area

2015 - Purdue Pharma paid Kentucky **\$24 million settlement** in lawsuit filed by the Attorney General accusing the company of misleading the public about the addictiveness

2015 – Insys settled with State of Oregon Attorney General for **\$1.1 million** for allegedly promoting opioid (Subsys form of Fentanyl sprayed under the tongue) for uses other than cancer pain; First government entity to settle with Insys for this alleged misconduct

Dec 2016 - Cardinal Health settled for **\$44 million** (violated the Controlled Substance Act in Maryland, Florida, and New York) with the US Attorney's Office; settled with West Virginia. For **\$20 million** (Jan

2017); AmerisourceBergen agreed to pay **\$16 million** to West Virginia to settle lawsuit; Cardinal Health paid **\$20 million** to settle lawsuit in West Virginia filed by the Attorney General

Jan 2017 - McKesson settled with DOJ for **\$150 million** because they did not warn DEA about the large # of suspicious orders; this settlement included suspension of sales of controlled substances from distribution centers in Colorado, Ohio, Michigan, and Florida.

Jan 2017 - AmerisourceBergen – settle with West Virginia **\$16 million** in a lawsuit filed by the Attorney General against a dozen companies for its role in a drug supply chain that includes doctors who write prescriptions for non-medical purposes and pill mill pharmacies.

Jan 2017 - Costco settled **\$11.75 million** with DOJ for violating Controlled Substance Act; admitted to violation

2017 - Insys agreed to pay **\$2.9 million** to New Hampshire in a lawsuit filed by the Attorney General that it violated the State Consumer Protection Act

May 2017 – Teva Pharmaceuticals agrees to pay **\$1.6 million** to Santa Clara County, CA and Orange County, CA District Attorney's Office

July 2017 – Mallinckrodt is the first major manufacturer to reach a settlement for **\$35 million** with the DOJ for alleged violations of Controlled Substance Act; Mallinckrodt did not admit fault; DOJ alleged that Mallinckrodt's actions and omissions formed a link in the chain of supply that resulted in oxycodone pills being sold on the streets. Between 2008-2012, 500 million Mallinckrodt's pills ended up in Florida or 66% of all oxycodone sold in Florida.

August 2017 – Insys Therapeutics agrees to pay Illinois Attorney General **\$4.45 million**