



A voice for the people. A vision for the future.

September 25, 2019

Via Email

Re: Opioid Litigation – Negotiating Class Information

Dear CLIENT,

We are writing this letter to advise you of a “negotiating class” which was recently certified by Judge Polster in In re: National Prescription Opiate Litigation, MDL No. 2804 (N.D. Ohio). You may have recently received a “Class Action Notice and Frequently Asked Questions”, which is a notice approved by the Court to provide preliminary information regarding this negotiating class. With this letter and the attachments, we are providing you with additional details in an attempt to further explain the class and to answer common questions. We have attached to this letter for your reference the Order certifying the Negotiating Class, a memorandum of law in support of the Order, and various documents that provide detailed information about the Negotiating Class and how it would work. All of these documents can also be found at www.OpioidsNegotiatingClass.info.

BRIEF SUMMARY

The opioid litigation against the manufacturers and distributors of opioids is one of the largest and most complex civil cases of our time. Lawsuits have been filed by States, Indian Tribes, hospitals, third-party payers, individuals, and of course local governments such as counties, cities, towns, parishes, boroughs, and other types of local municipalities. There are approximately 34,000 local governments in the United States and about 2,200 of those local governments have filed opioid-related lawsuits, with more being filed each week.

The purpose of the Negotiating Class is to unify all 34,000 local governments into a single negotiating entity to maximize their bargaining power and to provide finality to the opioid litigation for settling defendants. The Negotiating Class also provides a practical solution to the allocation of funds to counties and cities across the country by basing the allocation upon standardized opioid impact-related metrics. The Negotiating Class is also unlike other class actions in that each class member will have the opportunity to vote on any settlement offer, and a settlement offer will only be accepted upon a 75% approval by the class members.

*John F. Romano, Board Certified by the Florida Bar and the National Board of Trial Advocacy in Civil Trial Law
Eric Romano, Board Certified by the Florida Bar and the National Board of Trial Advocacy in Criminal Trial Law | Todd A. Romano, Attorney at Law
Corey B. Friedman, Attorney at Law (also admitted in California) | Susan B. Ramsey, Attorney at Law | Hall E. Marsocci, Attorney at Law
Andrew Moore, Attorney at Law | Destiny R. Barbosa, Attorney at Law | Joshua Horton, Attorney at Law
Elliot B. Richman, Chief Operating Officer (admitted in New York & Connecticut only)
Joseph M. Lee, P.A., Attorney at Law – Real Estate, Probate & Guardianship | Robert J. Hewitt III, Investigator | Tara Bradshaw, Investigator*

EcoCentre, The Living Building, 1005 Lake Avenue, Lake Worth, Florida 33460-3709 | MAILING ADDRESS: P.O. Box 21349, West Palm Beach, Florida 33416-1349
OFFICE: 561.533.6700 | TOLL FREE: 866.533.6700 | FAX: 561.533.1285 | WEB: romanolawgroup.com

Romano Law Group is proud to print on recycled paper

The Negotiating Class is an “opt-out class,” which means all local governments are presumed to be in the Negotiating Class and will only be removed if they take specific action to opt-out on or before November 22, 2019. If the Negotiating Class ultimately negotiates a favorable settlement, any local governments that opt-out will not be included in the settlement.

This letter explains the terms of the Negotiating Class so you can make the decision that is best for your community. We will also set up conference calls as necessary to make sure you have all the information you need to make a decision.

In short, each local government must decide by November 22, 2019 to remain in the Negotiating Class or to opt-out. We strongly recommend you remain in the Negotiating Class and do not opt-out.

IF YOU REMAIN IN THE NEGOTIATING CLASS YOU ARE AGREEING TO THREE THINGS

First, you are agreeing to the allocation model. Attached to this letter is a Memorandum titled “How the Allocation Model Works,” which explains the allocation model in detail. In short, the allocation model is based upon three factors (each weighted equally): (1) the number of persons suffering from opioid use disorder in the county; (2) the number of opioid overdose deaths that occurred in the county; and (3) the amount of opioids distributed within the county. Although population is not directly a factor in determining the allocation of settlement funds, it will indirectly impact the allocations as the three factors will usually be higher in more populated areas. The three factors are based on reliable, detailed, and objective national data, and the allocation model uses these factors to determine the share of a settlement fund that would flow into each county. Please note that the allocation model does not itself determine how a county and the cities within the county will divide the share. Initially, the county and cities will be given an opportunity to agree on a distribution formula and will be encouraged to look at benchmarks such as the local tax structure or the historical spending in the area by the different entities on opioid related expenses. If a county and the cities within it cannot reach agreement on how to share the county’s allocation, then a court-appointed Special Master will divide the funds. Unless one of the local governments provides an alternative approach for the Special Master’s consideration, he or she will divide the funds by applying a formula that relies on federal data showing how counties and the cities within them historically have split funding for government functions potentially relevant to the abatement of the opioid crisis.¹

¹ For example, and for illustrative purposes only, Cuyahoga County, Ohio contains 59 cities, including Cleveland and Parma. The federal data show that Cuyahoga County is responsible for 64.5% of local government spending in the county on functions potentially relevant to opioid abatement, while Cleveland is responsible for 17.4% of spending, Parma is responsible for 1.5% of spending, and the other cities in Cuyahoga County together are responsible for 16.6% of spending. Accordingly, if a defendant reaches a national, global settlement with all cities and counties that results in an initial disbursement of \$750 million, and Cuyahoga County is allocated \$3.6 million, then, under the default intra-county allocation formula, Cuyahoga County government ultimately would receive approximately \$2.3 million (64.5%) of the settlement funds allocated to the County, Cleveland would receive \$625,226 (17.4%), Parma would receive \$53,581 (1.5%), and the remaining cities in Cuyahoga County would receive smaller amounts, totaling \$600,953 (16.6%). As noted above, the County government and city governments may agree to share the funds however they choose; the formula applies only if they cannot agree and no party to such a dispute presents an acceptable alternative formula to the Special Master.

In addition to the funds that are allocated based on the above allocation model, 15% of any settlement amount will go into a “Special Needs Fund,” and any class member will be able to apply for a payment from the Special Needs Fund. However, payments from the Special Needs Fund will only be made to those local governments that meet certain criteria based upon need and must be approved by the court-appointed Special Master.

Finally, the current fee agreement that a city or county has with its private outside counsel remains in effect and membership in the Negotiation Class does not change that. If there is a settlement that is approved by both the Negotiating Class and the Court, a Private Attorneys’ Fee Fund would be created, and outside counsel will be able to apply for fees and costs in lieu of any contingency fee agreement. A total of up to, but no more than, 10% of any approved Negotiating Class settlement amount will be held in the Private Attorneys’ Fee Fund.

For additional information about the allocation model, please visit www.OpioidsNegotiationClass.info. That website has an allocation map that allows you to use a drop-down menu to select your county or the county in which your municipality resides and see the amount that would be allocated to that county under a hypothetical gross settlement of \$1 billion. The amount you see on the website represents the amount *after* the 15% for the Special Needs Fund and the 10% for the Private Attorneys’ Fees Fund have been subtracted. We expect that any settlement will be many multiples of the hypothetical \$1 billion that is presented on the website, but that number serves as a guide to help you put any future offers into perspective moving forward.

Second, if you remain in the Negotiating Class, you are agreeing to the voting procedure. One of the unique aspects of this Negotiating Class is that class members will have the ability to vote on any settlement offers that are made. Each Negotiating Class Member will vote only once. The vote is simply yes or no—in favor or against the proposed settlement. Votes are then tabulated mechanically within six applicable voting pools to make sure a 75% supermajority of each pool is in favor of the proposed settlement before it is presented to the Court. The requirement of a 75% supermajority across the different voting pools ensures a wide cross-section of support from cities and counties of all sizes and interests. The six voting pools are described in more detail in the Negotiating Class Frequently Asked Questions (specifically FAQ’s #’s 16 and 17).

In short, although each Negotiating Class Member only gets one vote, each vote is counted in three different ways. First, each vote would be counted on a one entity/one vote basis. Second, each vote would be counted on a population basis (that is, each entity would get one vote for every person living in it per the latest census). Third, each vote would be weighted by the settlement fund allocation model. Additionally, to ensure that cities and counties that have not filed a lawsuit cannot force the litigating cities and counties into accepting a settlement, the votes of those local governments who filed lawsuits on or before June 14, 2019 are only counted among those that also filed suit by that date. Therefore, there are six voting pools in total; three for the litigating entities and three for the non-litigating entities. All six voting pools must approve a settlement offer by a 75% supermajority in order for a settlement offer to be accepted.

If a settlement offer is approved by the required 75% supermajority of all six voting pools, the Court will still need to review the terms of the settlement and decide whether to approve it utilizing the formal class action settlement approval process and criteria set forth in Federal Rule of Civil Procedure 23(e).

Third, if you remain in the Negotiating Class, you are agreeing to be bound by any settlement agreement approved by 75% of all six voting pools. If there is less than a 75% acceptance by any of the six voting pools, the settlement offer would be rejected. If a settlement offer is made and is approved by 75% of all six voting pools, then all Negotiating Class Members would be bound by the settlement even if they voted against the settlement.

WE STRONGLY RECOMMEND REMAINING IN THE NEGOTIATING CLASS

Our recommendation is that you remain in the Negotiating Class. You are automatically included in the Negotiating Class and will remain so unless you opt-out by November 22, 2019. We recommend you remain in the Negotiating Class because we believe this will provide the best opportunity for you to settle your claims against the various opioid manufacturers and distributors and avoid the burden and expenses of piecemeal litigation. The Negotiating Class allocation model provides a fair and objective mechanism for allocating funds to the various counties and cities across the country and also provides for transparency of the entire process such that each local government will know, in advance of voting, the total amount of money that will be allocated to each county (to be divided between the county and the municipalities within the county). Moreover, the voting procedure ensures that any settlement offer will not be accepted unless it has the support of at least 75% of the Negotiating Class Members.

Local governments that wish to opt-out of the Negotiating Class must affirmatively request to be excluded from the Negotiating Class by signing the "Exclusion Form," under penalty of perjury. The executed Exclusion Form must be emailed to info@OpioidsNegotiationClass.info on or before November 22, 2019 or sent via first-class mail to NPO Litigation, P.O. Box 6727, Portland, OR 97228-6727 (postmarked on or before November 22, 2019).

As discussed above, we are happy to schedule a conference call to answer any questions you may have about the Negotiating Class or its terms. Once a decision has been made whether to opt-in or out of the class, and no later than November 1, 2019, please email Amie Goldberg, amie@romanolawgroup.com, advising of your decision. As always, we sincerely appreciate the opportunity to represent your community.

Sincerely,



Eric Romano
eric@romanolawgroup.com
JER/AMG