



IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

IN RE: OPIOID LITIGATION

CIVIL ACTION NO. 21-C-9000 PHARM

THIS DOCUMENT APPLIES TO:

**STATE OF WEST VIRGINIA ex rel.
PATRICK MORRISEY, Attorney General,**

Plaintiff,

v.

CIVIL ACTION NO. 20-C-131 PNM

CVS PHARMACY, INC., et al.,

Defendants.

ORDER DETERMINING LITIGATION COST AMOUNT

Now pending before the Court is the *Joint Motion for Determination of Litigation Cost Amount* ("Joint Motion") (Transaction ID 69005054) filed by the parties on January 26, 2023. Having reviewed the Joint Motion and the CVS West Virginia State-Wide Opioid Settlement Agreement ("Settlement Agreement") signed by the parties on September 20, 2022, and attached to the Joint Motion as Exhibit A, the Court finds:

1. The Settlement Agreement provides that CVS will pay the Settlement Sum of \$82,500,000, inclusive of the "Litigation Cost Amount" and the "Remediation Amount."

Section III.A. of the Settlement Agreement states:

Settlement Sum. The Settlement Sum is \$82,500,000, reflecting a substantial premium for the State given the unique facts and circumstances associated with the Actions, including without limitation the imminent trial date and the impact of opioid abuse and misuse in the State. The Settlement Sum shall be inclusive of (1) the Litigation Cost Amount attributable to reimbursement of the State's and Participating Local Governments' reasonable attorney fees, costs, and expenses incurred through the Execution Date in connection with their Claims against CVS and the Released Entities in the Actions, and to be disbursed as provided in Section IX below; and (2) the Remediation Amount attributable to the Alleged Harms, which shall be used to fund opioid abatement and treatment activities throughout the State and disbursed as provided in Section IV below. CVS does

not concede that these activities constitute cognizable abatement. For the avoidance of doubt, the Remediation Amount equals the aggregate amount paid or incurred by CVS hereunder other than amounts that constitute the Litigation Cost Amount. The Qualified Settlement Fund Administrator shall place the Litigation Cost Amount and the Remediation Amount into separate sub-funds within the Qualified Settlement Fund pending their disbursement as provided in this Settlement Agreement. On or before the Participation Date, the State shall provide to CVS Election and Release Forms (in the form annexed as Exhibit D) demonstrating that (1) at least 96% of the population of Litigating Local Governments, (2) at least 96% of Counties, and (3) at least 96% of the population of Non-Litigating Local Governments as of the Participation Date that are Class I or Class II Local Governments have become Participating Local Governments (collectively, the “Participation Threshold”). For the avoidance of doubt, the requirement that CVS pay the Settlement Sum pursuant to this Agreement shall become binding only upon the State’s provision to CVS of Election and Release Forms demonstrating that it has met the Participation Threshold.

3. Section III.B. of the Settlement Agreement further states:

Timeline for Settlement Sum Allocation and Payments. Provided that the State has met the Participation Threshold, within three (3) business days of the earliest of either CVS’s receipt of Election and Release Forms demonstrating that the Participation Threshold has been met or the Participation Date, the Parties shall jointly file with the Court a request that the Court determine what portion of the Settlement Sum constitutes the Litigation Cost Amount. The State agrees that it will not seek a Litigation Cost Amount percentage greater than that sought from any other settling party, and it is the Parties’ expectation and intent that the Litigation Cost Amount percentage shall be no greater than for any other settling party. If the Court has not issued an order regarding the portion of the Settlement Sum that constitutes the Litigation Cost Amount by February 13, 2023, the Parties will meet and confer and will agree by February 20, 2023 on an allocation as between the Remediation Amount and the Litigation Cost Amount, subject to revision by the Court. If the parties agree on an allocation as between the Remediation Amount and the Litigation Cost Amount and the Court later orders a different allocation as between the Remediation Amount and the Litigation Cost Amount, the State agrees to cooperate with CVS in preparing any tax forms reasonably requested by CVS, including but not limited to those set out in Section XI.F. CVS shall, within fifteen (15) days after the occurrence of (1) the Participation Date; (2) the Court issuing a ruling determining what portion of the Settlement Sum constitutes the Litigation Cost Amount or an agreement by the Parties on such allocation, whichever comes first; (3) CVS’s receipt of Election and Release Forms demonstrating that the Participation Threshold has been met; and (4) the date the Qualified Settlement Fund has been established under the authority and jurisdiction of the Court and CVS has received from the West Virginia Attorney General a W-9 and wire instructions for the Qualified Settlement Fund, pay into the Qualified Settlement Fund the total sum of

\$52,500,000 (the “Initial Payment”). Beginning one year after the Initial Payment, CVS shall pay into the Qualified Settlement Fund in equal annual installments \$30,000,000 over ten (10) years (the “Subsequent Payments”) pursuant to the schedule set forth in Exhibit H (or over the payment period agreed to in any Global Settlement if shorter than 10 years, subject to net present value analysis).

4. The parties represent that on January 17, 2023, the State submitted to CVS the Local Government Election and Release Forms demonstrating that the Participation Threshold has been met.

5. The parties further represent that CVS needs the differentiation of the “Litigation Cost Amount” for tax-reporting purposes and for purposes of compliance with the Ongoing Common Benefit Order (Doc. 4428) in *In re National Prescription Opiate Litigation*, Case No. 1:17-md-2804, pending in the United State District Court for the Northern District of Ohio, Eastern Division.

Finding that the Parties have not agreed upon an allocation of the Settlement Sum within the time specified in Section III.B. of the Settlement Agreement the Court **ORDERS** the following allocation of the Settlement Sum, subject to further Order of the Court: (1) the Litigation Cost Amount as specified in Section III.A. of the Settlement Agreement shall be Fifteen Percent (15%) of the Settlement Sum; and (2) the Remediation Amount as specified in Section III.A. of the Settlement Agreement shall be Eighty-Five Percent (85%) of the Settlement Sum.

A copy of this Order has this day been electronically served on all counsel of record via File & ServeXpress.

It is so **ORDERED**.

ENTERED: March 2, 2023.

/s/ Alan D. Moats
Lead Presiding Judge
Opioid Litigation

/s/ Derek C. Swope
Presiding Judge
Opioid Litigation