



## MEMORANDUM

**TO: Montgomery County Officials**

**FROM: Jayne Conroy, Sarah Burns, Holly Nighbert, Simmons Hanly Conroy**

**RE: Summary of Janssen (J&J) Settlement Term Sheet and New York Opioid Settlement Sharing Agreement Prepared for Montgomery County**

**DATE: August 2, 2021**

*Privileged & Confidential -- Attorney-Client Communication*

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### **The Settlement Agreement with Johnson & Johnson (J&J)**

On July 25, 2021, the New York Attorney General's Office announced that it had entered into a settlement agreement with Johnson & Johnson (J&J) regarding the company's manufacturing and distribution of opioids. The New York J&J Settlement Term Sheet (J&J Term Sheet) is essentially a "New York" carve out from the proposed National Settlement that J&J put into place nationwide<sup>21</sup>, due to the advanced status of the New York coordinated litigation, culminating in the current trial before Judge Garguilo in Suffolk County. All of the monies paid under the New York J&J Term Sheet are distributed among the various political subdivisions according to the New York Opioid Settlement Sharing Agreement (included at the end of the J&J Term Sheet as Exhibit B, "Sharing Agreement") and will ensure continuing payments to each subdivision, bringing much needed funding to our communities to abate the epidemic.

With the exception of the State of New York, Nassau County, and Suffolk County (who are already signatories to the J&J Term Sheet due to their trial status), all other political subdivisions in the State (including the City of New York) will now have an opportunity to become a party to the term sheet by executing Exhibit A at page 29 and the Sharing Agreement Exhibit B at page 32. Settlement funds allocated to each subdivision will be distributed pursuant to the terms set forth in the Sharing Agreement.

J&J will pay to the State and its subdivisions a total of approximately \$229.8 million. Payments shall be divided into base and incentive payments. The minimum that J&J will pay to the State and its subdivisions totals approximately \$98.5 million and is referred to as the "Base Payment".

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<sup>21</sup> Please note that the J&J and Distributor Deals are two separate deals in New York State. These deals are combined into one "National Deal" for all other states. Simmons Hanly Conroy will be sending a subsequent communication regarding the New York Distributor Deal.

The cornerstone of the proposed settlement is full resolution of governmental claims filed in the State which will ensure maximum recovery to all. To that end, there are various “Incentive” scenarios built into the agreement to secure that idea and achieve the full \$229 million value.

J&J will make “Incentive” payments potentially totaling up to approximately \$131.4 million. The total amount of money payable to New York State and its individual subdivisions is dependent on the level of participation of these subdivisions. In short, the more subdivisions across New York that sign on to the J&J Term Sheet, the more the deal is worth to J&J, and the more the company will pay to everyone collectively.

Under Incentive A which comprises 100% of the total potential agreement and will be paid on an expedited basis if met, requires 1) that the state pass legislation placing a time bar on litigation, and 2) a high percentage of subdivisions agree to the deal.

Step 1 has now been met with the enactment of Senate Bill S7194. The bill authorizes NYAG to release all claims filed after June 30, 2019. Montgomery County filed against J&J on 9/5/2018. As for Step 2, Simmons Hanly Conroy and Napoli Shkolnik represent nearly all litigating subdivisions in the state, and of those eligible subdivisions that are either represented by other firms or not represented by a firm at all, the NYAG is optimistic they will participate in the Agreement. The attorneys and NYAG’s office have confidence the subdivisions will hit full incentives through wide participation and encourage all subdivisions to join the agreement. Incentives B and C, are alternative payment incentives if Incentive A is not met. As discussed above, the attorneys and NYAG’s office have confidence the subdivisions will meet Incentive A, especially in light of the enactment of S7194.

### **The Distribution Structure Under the J&J Term Sheet**

By way of reminder, all of the monies paid under the New York J&J Term Sheet are distributed among the various political subdivisions according to the New York Opioid Settlement Sharing Agreement. Should Montgomery County elect to be a party to the Sharing Agreement, Montgomery County will be considered a “Direct Share Subdivision.” As a Direct Share Subdivision, the County would be entitled to receive funds from the J&J settlement pursuant to sections II(B)(4) and (5) with 5.4% paid to the County as “Direct Unrestricted Funds” and 5.4% to the County for spending on Approved Uses (“Direct Restricted Funds”).

The County would also be entitled to receive a percentage of the funds from the J&J settlement pursuant to section IV(A)(1), through the “Regional Spend Fund” for Approved Uses as set forth in Schedule C of the Sharing Agreement<sup>22</sup>.

Finally, the County will have the opportunity to apply for funds from the State-held funds to be used for projects and programs focused on Approved Uses, see section II(B)(3) of the Sharing Agreement.

### **The Payment provisions Under the J&J Term Sheet**

If all incentives are met, a total of \$229.8 million will be paid out to New York State in 10 annual payments.

Assuming all incentives are met, the direct payments to Montgomery County will total over time to \$263,673.69.

\$56,278.18 can be used in an unrestricted manner (section II(B)(4));  
\$56,278.18 must be used in a restricted manner (section II(B)(5));  
\$151,117.33 must be used in a restricted manner (section IV(A)(1)).

Total amount to Montgomery County (with best case scenario participation):  
\$263,673.69

Total amount to Montgomery County (with worst case scenario participation):  
\$112,981.61

Assuming all incentives are met, the first three payments will be made all at once in Feb 2022 (Section X.A):  $\$54,706.38 + \$34,353.99 + \$50,926.02 = \$139,986.39$

Remaining payments will be made annually as scheduled in the agreement.

There is a most favored nation provision (Section XII) in the event the final National Settlement provides for a larger recovery from J&J than this agreement – New York State will receive the difference and it will be allocated directly to Montgomery County under the terms of the Sharing Agreement.

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<sup>22</sup> Approved Uses is defined carefully and includes using funds for purposes including: Treating Opioid Use Disorder; Supporting People in Treatment and Recovery; Connecting People who Need Help to Help; Addressing the Needs of Criminal-Justice Involved Persons; Addressing the Needs of Pregnant or Parenting Women and Their Families, Including Babies with Neonatal Abstinence Syndrome; Preventing Over-Prescribing and Ensuring Appropriate Prescribing and Dispensing of Opioids; Preventing Misuse of Opioids; Preventing Overdose Deaths and Other Harms; Supporting Law Enforcement and First Responders; Supporting Opioid Abatement Research; Supporting Post-Mortem Efforts.

In addition to the financial payments discussed above, the proposed agreement includes impactful injunctive relief which drastically changes the company's business model as it relates to opioids. The relief included requires J&J to cease the manufacture, sale and promotion of opioids or opioid products in the State of New York, among other types of relief, for ten years.

All of Simmons Hanly Conroy's Attorney Fees, Costs and Expenses will be paid directly by J&J out of a separate bucket of funds.

### **Recommendations, Action Items and Resources for Montgomery County**

#### **Recommendations for Montgomery County:**

1. Montgomery County become a party to New York J&J Settlement Term Sheet. Doing so will maximize the value of the settlement for ALL pending New York cases (including other Counties and the State and Montgomery County).
2. Montgomery County become a party to the New York Opioid Settlement Sharing Agreement.

#### **Action Items for Montgomery County:**

1. Sign (or give Simmons Hanly Conroy permission to sign on your County's behalf) Exhibit A to the J&J Term Sheet (New York Subdivision Election and Release Form);
2. Sign (or give Simmons Hanly Conroy permission to sign on your County's behalf) Exhibit B to the J&J Term Sheet (New York Opioid Settlement Sharing Agreement);
3. Return both executed documents to your counsel at Simmons Hanly Conroy.

#### **Resources Provided to Montgomery County:**

1. This Summary of Janssen Settlement Term Sheet and New York Opioid Settlement Sharing Agreement Prepared for Montgomery County;
2. Complete Copy of Janssen New York State-wide Opioid Settlement Agreement Term Sheet with All Exhibits and Schedules;
3. Execution Copy of New York Subdivision Release Form for Montgomery County;
4. Execution Copy of New York Opioid Settlement Sharing Agreement for Montgomery County;

5. Detailed Payment Scenario and Schedule Spreadsheet for Montgomery County;
6. Template Resolution to be used Approval of J&J Settlement Term Sheet if necessary.

**We ask that the signed materials (numbers 3 and 4 above) be returned to your counsel at Simmons Hanly Conroy no later than Friday, September 10, 2021.**