



AGENDA REPORT
April 10, 2018

SUBJECT:

Opioid Litigation

FISCAL IMPACT:

All fees and costs are contingent upon recovery.

DEPT/OFFICE:

County Attorney Office

REQUESTED ACTION:

Consider whether any of the law firms responding to the County RFQ relating to possible representation in Opioid Litigation should be selected to proceed with such litigation.

SUMMARY EXPLANATION and BACKGROUND:

On January 23, 2018, the Board approved proceeding with litigation against companies involved in creating the Opioid crisis.

On March 20, 2018, the Board tabled selection of a law firm to provide more time for consideration of the law firms responding to the RFQ.

On March 19, 2018, one Firm, Morgan & Morgan withdrew from consideration. While Robbins & Geller requested to be paired with Morgan & Morgan, Robbins & Geller submitted a stand alone application and may be considered independently of Morgan & Morgan.

On March 22, 2018, Procurement sent the summary spreadsheet entitled Opioid Litigation Evaluation to the bidders requesting that they review it for inaccuracies or discrepancies. Two firms responded. The summary spreadsheet has been conservatively edited for corrections. Of note, all firms are now described as very experienced, as no distinction was intended between experienced and very experienced. Additionally, as to Line 17, all firms with leadership position on the federal multi-district litigation (MDL #2804) are annotated as such. As described in the litigation documents, co-leads are members of the executive committee, who in consultation with the executive committee, are charged with leadership in formulating and presenting positions on substantive and procedural issues in the litigation. Members of the executive committee manage the litigation, oversee discovery, hire experts, prepare for and try cases, and engage in resolution discussions. Co-liaison counsel are members of the executive committee in charge of essentially administrative matters, including coordinating meetings and communications between the court and other counsel. The Judge assigned to the federal cases, Judge Dan Aaron Polster, U.S. District Court, Northern District of Ohio, Eastern Division acknowledges the role served by the attorneys in these functions in managing the cases.

Contact Persons:

ChristineSchverak, Assistant County Attorney, christine.schverak@brevardfl.gov, phone 321-633-2090

Eden Bentley, Interim County Attorney, eden.bentley@brevardfl.gov, phone 321-633-2090

Shannon Wilson, Deputy County Attorney, shannon.wilson@brevardfl.gov, phone 321-633-2090

ATTACHMENTS:

Description

- **Opioid Litigation Summary (Changes in Red)**



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April 11, 2018

MEMORANDUM

TO: Eden Bentley, Interim County Attorney

RE: Item V.A., Opioid Litigation

The Board of County Commissioners, in regular session on April 10, 2018, approved the Charpentier Law Firm to represent Brevard County in the Opioid Litigation.

Your continued cooperation is greatly appreciated.

Sincerely yours,

BOARD OF COUNTY COMMISSIONERS
SCOTT ELLIS, CLERK

Tammy Rowe

Tammy Rowe, Deputy Clerk

/cmw

cc: County Manager

Criteria	Brennster/Trenam	Beam/Bennans	Labaton/Lochaw	Maker/Chargentier	Motley Rice/Moore	Naselli/Morgan Bachory	Robbins/Geller	Scott & Scott	Simpson	
9b. Legal theories advanced?	1. product liability; general liability; fraud; gross negligence; intentional misconduct; punitive damages; FL deceptive/unfair trade practices; public nuisance claim; 2. Target manufacturers active in regional market, and after discovery add in particular distributors as appropriate	1. Manufacturers - Unfair/deceptive trade practices; public nuisance; fraud; unjust enrichment 2. Negligence/negligence per se - public nuisance as to wholesale distributors - Cause of action arises from distributors failure to comply with statutory obligations to monitor for orders of unusual size/frequency.	Will confer with client. False advertising litigation against Opioid Manufacturers; Diversion Litigation against Opioid Distributors; Diversion Litigation against Opioid Manufacturers; Public Nuisance.	Will confer with client. Nuisance is a good choice. Other theories advanced with other clients are false & deceptive statements by manufacturers, false and deceptive marketing by manufacturers, unlawful distribution by distributors, public nuisance, RICO fraud, negligence and negligent misrepresentation; negligence per se; civil conspiracy; fraud and fraudulent misrepresentation; punitive damages	Florida Deceptive & Unfair Trade Practices Act for its own spending in providing opioids through its health benefits and workers comp programs. Also common law claims for fraudulent and negligent misrepresentation. Public nuisance would allow recovery of past and future spending to abate the opioid epidemic. Negligence and negligent misrepresentation; negligence per se; civil conspiracy; fraud and fraudulent misrepresentation; punitive damages	12 Clients in a variety of states: Alaska, Kentucky, Montana, New Hampshire, South Carolina, City of Chicago, etc.	Sue Manufacturers, Wholesale Distributors, and opinion leaders. Public nuisance, Florida's deceptive and unfair trade practices act; fraud, negligence, monopolization; RICO; unjust enrichment, negligent marketing	Opioids best suited to holding manufacturers and wholesalers responsible include violations of Federal Controlled Substances Act and Federal RICO violations. Considering public nuisance claim. While possible to plead common law or Florida Statutory claims, County would be significantly resisted in its ability to plead the strongest case possible.	public nuisance, deceptive and unlawful trade practices, unfair competition, medical and common law fraud; racketeering, negligence, RICO, Florida deceptive and unfair trade practices act; unjust enrichment	Sue manufacturers for originating the public health crisis and opioid epidemic. Violations of FL deceptive and Unfair Trade Practices Act, public nuisance, common-law fraud (intentional misrepresentation) and conspiracy.
10. Gov't entities previously or currently representing in opioid litigation?	State of Tennessee and all 14 district attorneys	4 counties in Ohio; City of Delray Beach, Township of Irvington New Jersey and Marion County	Ohio, New Mexico, New Jersey, Michigan Atty Generals	Buchanan County, Missouri	12 Clients in a variety of states: Alaska, Kentucky, Montana, New Hampshire, South Carolina, City of Chicago, etc.	11 Municipalities in Wisconsin, Osceola and Alachua County, FL	Delray Beach, FL; Lauderdale, Broward County, City of Phoenix AZ; Nashville TN; Davidson County TN; etc. (some be in Morgan and Morgan here)	Jacksonville, FL; Haverhill MA; Paterson NJ; Bucks County PA; Mercer County PA; New Britain Conn. Etc.	129 County and municipalities nationwide since 2016. (see list at attachment E of bid)	
11. Free of Conflict of Interest	Confirmed No Conflicts	confirmed no conflicts	no current conflicts	no current conflicts, all 3 firm	no current conflicts	no current conflict.	no current conflict	no current conflicts known	no current conflicts known	
12. Public Crime Affidavit?	Not in bid	yes	yes	yes, all three firms	yes	yes	yes	yes	yes	
13. Considering claim for nuisance?	Yes	yes as to manufacturers, distributors, health care providers and pharmacy defendants	yes, favorable case law exists. Recovery here is primarily injunctive relief and abatement costs.	Yes, offers a remedy of abatement.	Yes, Public nuisance would allow recovery of past and future spending to abate the opioid epidemic.	Yes	Yes. It's the clearest path to obtain relief in the form of abatement. It provides path around common law bar against gov't recovery for cost of municipal services.	Yes.	Separate state claim in nuisance against both the manufacturer and distributor.	
14. Considering punitive damages?	Yes	Yes as to manufacturer and distributors	Yes, if county determines it is appropriate	Under Florida law, not permitted in an initial pleading and not permitted unless there is a reasonable showing of basis for recovery. There may be punitive damages here, but Firm would analyze situation	if the county pursued a common law claim under a negligence theory, punitive damages may be pursued to the extent that the underlying conduct was wanton, willful and reckless.	Yes, punitive damages for violation of Florida's fraudulent practices act.	In FL, no punitive damages unless County can make reasonable showing by evidence of reasonable basis for claim. Not in Initial Complaint, but perhaps as case develops. Recommend RICO claim for treble damages.	Yes, beneficial for county as it can recover future costs and it deters similar reckless future conduct.	The claims with the soundest basis do not involve punitive damages. However, actual damages are substantial. Further, we may advocate bringing claims such as RICO claims which allow for treble damages.	
15. Who do you represent in Florida	Currently no one.	City of Delray Beach and Marion County	Currently no one.	None but in active discussions.	Two confidential Florida cities.	Osceola County and Alachua County.	City of Delray Beach; City of Fort Lauderdale and Broward County	Fort Lauderdale, St. Lucie, West Palm Beach in other endeavors.	Hillsborough County, FL	
16. Have you filed any cases yet?	Yes	No	No	Yes for Buchanan County in Kansas; Commonwealth of Kentucky in pharmaceutical litigation	They are representing more than 12 gov't entities in litigation and investigations	10 cases filed. Osceola county is filed.	Yes, City of Delray Beach v. Purdue, and at least 4 others filed in bid.	Yes, Pasco County (NJ); New Haven, Conn; New Britain, Conn.	Yes, 128 cases in 10 states (see attachment F of bid)	
17. Position/title of co-lead counsel, executive committee etc?	None of current clients have opted to file in MDL.	Peter Wenzelhorst of the Spangenberg team has been appointed as Plaintiff's co-lead counsel in National Prescription Opiate Multidistrict Litigation. (MDL #2102)	No.	No, Plaintiff's steering committee hasn't been picked yet in MDL # 2804. (not a co-lead attorney or co-lead counsel, on cases counsel or on the executive committee)	Joe Rice - one of 3 co-lead counsel, Linda Singer - co-chair of manufacturer's litigation committee (MDL #2793)	Hunter Shohimi, plaintiff's executive committee in National prescription opiate MDL #2804	Paul J. Geller and Elizabeth Calverton as Plaintiff's Executive Committee, MDL No. 1804 AND settlement committee	Has, counseling clients to proceed in state court.	Paul Hanley - one of three co-lead counsel to lead the federal litigation, Erin Ockisson - one of 16 members of plaintiff executive committee tasked with leading and managing the nationwide federal court litigation (MDL #2102)	

Criteria	Definition/Issue	Issue	Labels	Matter/Case/Person	Morgan	Oppose/Not Oppose	Criteria	Issue	Attorney/Case	Issue & Scope	Summary
15. Position/role of co-head counsel, executive committee etc?	None of current clients have opted to file in MDL.	Peter Weisberger of the Sangerberg team has been appointed as Plaintiff's co-counsel in National Product group. Cynthia Mulford is partner.		No, plaintiffs steering committee hasn't been picked yet in MDL. Not a co-head attorney or co-head counsel, as basis counsel are in the real time committee.	James Young, from Morgan & Morgan is on the plaintiffs steering committee.	DeWitt - ex-head counsel, Linda Singer - ex-head of manufacturer's legal committee	15. Position/role of co-head counsel, executive committee etc?	Harriet Shookoff, plaintiff's executive committee in National Product group. MDL.	Paul J. Keller and Elizabeth Carpenter are Plaintiff's Executive Committee. MDL. No 2864 AND settlement committee.	No, counseling clients is present in state court.	Paul Sherry - co-head counsel in chosen plaintiffs' executive committee.
									Kevin A. O'Leary MDL leader in the other state. Involvement in structure.		

V.A.

Lewis, Sally A

From: Newell, Marcia
Sent: Friday, March 23, 2018 10:07 AM
To: Lewis, Sally A
Cc: Tammy Rowe (Tammy.Rowe@brevardclerk.us); Bentley, Eden; Cummings, Cathleen; Pritchett, Rita; Mascellino, Carol; Tagye, Steven
Subject: Opioid Litigation Time Certain April 10th

Good morning, Sally.

Commissioner Pritchett would like to set a time certain of 5:30 p.m. for the above item on the agenda April 10th.

Thanks,

Marcia Newell

Legislative Aide to Commissioner Rita Pritchett
Marcia.newell@brevardcounty.us



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