THE OPIOID CRISIS: UPDATES ON OPIOID-RELATED LITIGATION
FLORIDA’S RESPONSE TO THE OPIOID CRISIS

Melissa McKinlay
Mayor, Palm Beach County
THE STATISTICS

FLORIDA - 2016

• Total drug-related deaths increased by 22 percent (2,126 more)

• 5,725 opioid-related deaths were reported, which is a 35 percent increase (1,483 more)

• 6,658 (24 percent more) individuals died with one or more prescription drugs in their system

• Deaths caused by heroin increased 30%

• Deaths caused by fentanyl increased 97%

• More people were killed by fentanyl and heroin in the first half of 2016 than in all of 2015

• 14 Deaths Per Day = more deaths per day than at the height of the Pill Mill Crisis (8 per day)

• Have been under a Governor-declared Public Health Crisis Declaration since May 2017
FLORIDA MEDICAID EXPENSES

• $4.1 million/day spent on hospital-related medical expenses alone
• Medicaid billed as primary insurer from heroin & opioid overdoses = $2.1 billion (2015)
• $842 million Neonatal Abstinence Syndrome Treatment Costs over 6 years
  • 2014 = 1,903 babies born with NAS
  • 2016 = 4,215 babies born with NAS
PALM BEACH COUNTY – THE LAST TWO YEARS

• Nearly 1200 overdose deaths
• Nearly 9000 overdose related calls to County Fire Rescue
• Over 9300 treatment admissions (2015/16)
• A 509% increase in overdose deaths in a 4yr period
• A 1041% increase in spending on Narcan, $200k in 2016
• Over $13 million spent on Fire Rescue calls ($1500 per call)
• Neonatal Abstinence Syndrome cases increased 174%
• ONLY 24 publicly financed residential detox beds in a County with 1.4 million people
In the last year:

- Approved detailed strategic plan
- Committed $3 million over two years
- Hiring Drug “Czar” and 2 Medical Examiners
- Lead the effort to seek state public health declaration
- Developed a Heroin Task Force & a Sober Home Task Force under leadership of State Attorney
- Fire Rescue Pilot Project
- Creating Strategic Prevention Framework/School Partnership
- Law Enforcement & Judicial Partnerships Creating Diversion Programs Prior to Arrest
- Addiction Receiving Facility
- Actively Pursuing Litigation
Florida Attorney General Action:

- Florida is part of a multi-state investigation of manufacturers and distributors of opioids. Currently, 41 attorney generals are involved.
- Joined a separate coalition of 37 attorney generals in asking American’s Health Insurance Plans to examine policies to ensure they are not aiding the national opioid crisis.
- Currently interviewing for outside counsel for litigation.
- Attended a conference with Federal Judge & parties involved in Multi-District Litigation lawsuits re: exchange information and preliminary settlement discussions.
<table>
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### Potential Causes of Action
- Florida Deceptive and Unfair Trade Practices Act
- Negligence
- Misrepresentation
- Public Nuisance
- Unjust Enrichment
- RICO
- Fraud

### Possible Defendants

**Distributors:** (affiliates and subsidiaries are not all listed)
- McKesson Corp.
- AmerisourceBergen Corp.
- Cardinal Health, Inc.

**Manufacturers:** (affiliates and subsidiaries are not all listed)
- Purdue Pharma, L.P.
- Cephalon, Inc.
- Janssen Pharmaceuticals, Inc. (Johnson & Johnson)
- Endo Pharmaceuticals, Inc.
- Actavis, Inc.
- Insys Therapeutics, Inc.
- Teva Pharmaceutical Industries, LTD
- Mallinckrodt Pharmaceuticals

**Pharmacies:** (affiliates and subsidiaries are not all listed)
- Walgreens
- CVS
- Walmart
- Costco
THE OPIOID CRISIS: UPDATE ON NEW YORK STATE OPIOID RELATED LITIGATION

Stephen J. Acquario, Esq.
Executive Director, New York State Association of Counties

NYSAC
NEW YORK STATE ASSOCIATION OF COUNTIES

NACo Legislative Conference – March 6, 2018
OVERVIEW

The epidemic of overdoses and deaths from the abuse of prescription painkillers and heroin has devastated countless families and communities across the country. And it is not limited by demographic, economic, or geographic limitations.

It effects individuals of every age, race, and gender.

The CDC reported that in 2016 more than 11 million people abused prescription drugs. The number of drug overdose deaths has never been higher, and the majority of these deaths, 66% in 2016, involved opioids.
WHAT ARE OPIOIDS?

Opioids are a class of drugs that include the illegal drug heroin, synthetic opioids such as fentanyl, and pain relievers available legally by prescription, such as oxycodone (OxyContin®), hydrocodone (Vicodin®), codeine, and morphine.

Opioid pain relievers are generally safe when taken for a short time and as prescribed by a doctor, but because they produce euphoria in addition to pain relief, they can be misused (taken in a different way or in a larger quantity than prescribed, or taken without a prescription).

Regular use—even as prescribed by a doctor—can lead to dependence and, when misused, opioid pain relievers can lead to overdose incidents and deaths.

- National Institute on Drug Abuse
THE OPIOID CRISIS:
DISTRIBUTION OF CODEINE & RELATED SYNTHETICS

Oxycodone distribution peaked in 2012 in New York while the 2016 distribution of 3.4 Metric Tons\(^1\) remained more than 50% higher than distribution in 2006 and was seven-fold higher than in 2000.

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\(^1\) Greater than 3,400,000 Grams of Oxycodone distributed

New York State drug overdose deaths continue to increase and are now nearly 3x the annual rate from 1999.

MORE THAN LITIGATION: A THREE-PRONGED APPROACH
2018: OPIOID LITIGATION

Hundreds of states, counties and cities across the country have brought litigation against the manufacturers and distributors of opioid pain medications.

Briefly, this litigation brings claims against these parties for their role in creating the current state of the opioid epidemic, including deceptive marketing to physicians and distributing opioids in violation of state and federal law.
2018 OPIOID LITIGATION: DAMAGES BEING SOUGHT BY COUNTIES

**Employee costs**, including overtime, health insurance, workers compensation costs;

**Criminal justice services**, including medical examiner costs, storage of bodies, toxicology lab costs, police services, corrections, Narcan/naloxone training;

**Mental health**, including addiction counseling, substance abuse clinics;

**Human services**, including foster care, family and children services, public assistance for child care, hospital care, indigent burial services;

**Court costs**, including public defense services, prosecution, probation, specialized drug courts, juvenile courts and detention, surrogate court, DUI services.
PUTNAM COUNTY EXECUTIVE RESPONSE

“Heroin and opioid use is a major public health and safety crisis and the cost to our community is not limited to pain and suffering of the individuals impacted,” said Odell. Unfortunately, there is also a taxpayer impact, including massive resources used in public health, law enforcement, the court system, mental health and social services, coroner and medical examiner, and many other programs and services. The County has significant damages and we will aggressively pursue those damages through litigation.”

The goal of the litigation is to fully compensate Putnam County for unnecessary costs incurred because of prescription opioid abuse, including workplace costs relative to loss of productivity, healthcare costs such as abuse treatment, and criminal justice costs.
NEW YORK STATE LAWSUITS AS OF MARCH 2018: A MAJORITY OF NY COUNTIES HAVE FILED OR RETAINED ATTORNEYS

- Over 50 NYS counties have either filed or retained counsel and are in the process of filing, as well as NYC and several of the larger cities.
- Most New York cases are filed in State Court.
- The New York cases have been moving ahead on a “fast track,” quicker than the rest of the country.
NEW YORK STATE COORDINATION MOTIONS AND DISCOVERY

• Defendants have filed motions to dismiss which have been fully opposed by the Counties. Oral argument is scheduled for February 28th and March 19th.

• Counsel representing the Plaintiffs have now spent many hours researching and opposing these motions.

• We have successfully argued that discovery is necessary now, as opposed to the usual waiting until motions to dismiss are decided.

• Judge Gargiulo has put the cases on a “fast track” and has permitted discovery.

• We have served discovery demands on the Defendants for discovery that we believe can help make an impact immediately on helping the counties fight the epidemic at the local level.
NEW YORK STATE COORDINATION
JUDGE JERRY GARGUILIO

- Cases have been coordinated together before State Trial Court Judge Jerry Garguilo in Suffolk County New York.
- Nearly twenty motions to dismiss have been filed and have been opposed by the Plaintiffs.
- Judge Garguilo is moving ahead quickly with the cases and has said he will make a decision within 60 days.
- Late March conference to discuss the potential resolution of the cases has been scheduled.

- Justice, Supreme Court, Appellate Term, Second Judicial Department, Appointed by Chief Administrative Judge A. Gail Prudenti, 2014 to Present
- Justice, Supreme Court, Suffolk County, Elected 2009-2022
- Former District Attorney of Suffolk County
- Former private practice, Jerry Garguilo, Attorney at Law
State and County Led Litigation Resulted in the Master Settlement Agreement with the Tobacco Industry.

The agreement runs in perpetuity, but the initial settlement of $246 billion was distributed to states based on a variety of factors including population and Medicaid costs.

To date, nearly $120 billion has been paid out to states.

### Master Settlement Agreement - Tobacco Payments to States 1999 - 2017 ($ in Millions)

<table>
<thead>
<tr>
<th>State</th>
<th>Payments 1999 thru 2017</th>
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<th>Payments 1999 thru 2017</th>
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FL, MN, MS, TX - settled separately

Total 1999-2017: $119,516
• In New York, the MSA payments were split equally between the State and counties - $15 billion in total so far.
• The payments were allotted to counties based on population and Medicaid costs:
  • $7.5 billion to the state
  • $7.5 billion to counties
• County involvement in the opioid industry litigation is important - counties need to protect their legal rights by getting involved early.
• The litigation stems from corporate claims that these drugs were not addicting, among other items.
• Many view these two litigation events as similar.
THROUGH ERIE COUNTY INTERVENTION, TRENDS IS GOING DOWN

2012 – 2017* OPIOID DEATHS
ERIE COUNTY

SOURCE: ERIE COUNTY MEDICAL EXAMINERS OFFICE, *CLOSED CASES REPORTED THRU 2/27/2018
The Opioid Crisis: Updates on Opioid-Related Litigation

2018 NACo Legislative Conference
Washington, D.C.
The CDC estimates the cost of unintentional opioid-related overdose deaths in NC was $1.3 billion in 2015.

From 1999-2016, opioid-related overdose deaths increased by more than 800%.

Estimated that nearly four people die each day in NC from accidental drug overdose.

Data from the NC Opioid Action Plan

www.ncacc.org
NCACC BACKGROUND

- Firms Started contacting the Association in late summer 2017
- Summary provided to NCACC Board of Directors in early October
- Webinar held with County Attorneys in mid-October
- NCACC is working with NC Attorney General
- Forum for County Attorneys held Nov. 15; goal was to provide information and forum for discussion
- Presentations from two law firm groups and the Office of the Attorney General
- Continuing webinars and updates provided from law firms and Attorney General’s office
- NCACC is not endorsing specific group

www.ncacc.org
## NORTH CAROLINA COUNTY LIST OF LEGAL ACTIVITY

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<tr>
<th>County</th>
<th>Action Description</th>
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<td>Bladen</td>
<td>Resolution declaring Opioid Crisis a public nuisance adopted</td>
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<tr>
<td>Brunswick</td>
<td>Resolution declaring Opioid Crisis a public nuisance and authorizing county to retain legal counsel adopted</td>
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<td>Buncombe</td>
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- North Carolina has 100 counties
- 22 have filed
- More expected
Early 2018, NCCAE conducted survey of state associations, status of litigation

- 15 responses

Key Observations:

- States in various stages of process and understanding of complex legal issue
- Major national firms engaged, local firms are active with commissioners
- Various approaches to engaging with States Attorneys Generals
- No clear template for damages estimation
- A need for unified communications to assist in best outcome for counties / NACo January call / NCCAE Taskforce created

www.ncacc.org
QUESTIONS