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May 24, 2019

CITY OF WEST ALLIS
MAYOR

Mayor Dan Devine
Mayor's Office- City of West Allis
7525 W. Greenfield Ave.
Room 123
West Allis, WI 53214

Re: City of West Allis Opioid Litigation

Dear Mayor Devine, Members of the Common Council Chair, and City Attorney Decker:

We would like to thank you again for the opportunity to appear telephonically with Attorney Tabak on Tuesday night to present our desire to represent West Allis in the litigation against opioid manufacturers and distributors. I would also like to clarify and provide you with some further information regarding some of the issues that were discussed.

About our Firm

Napoli Shkolnik, PLLC is a law firm with offices in eleven states across the Country. Our firm specializes in several areas of law, including mass tort pharmaceutical litigation. We have been appointed as leadership in litigations across the Country. We currently represent around 250 counties and cities in litigation against opioid manufactures and distributors. We are members of the leadership committee of the opioid multi-district litigation (MDL) located in the Northern District of Ohio. An MDL is a federal procedure designed to handle complex cases when it is found that numerous civil actions involve one of more common questions of fact in different districts. We are also the lead attorneys of the New York state court coordinated opioid litigation as well as the West Virginia state court coordinated litigation. Our office is counsel for Cuyahoga County, Ohio which will be the first MDL trial. This trial will be held in October with no adjournments possible, per Judge Polster. Through this litigation, we along with the other leadership firms have retained dozens of experts who have been working on this case for over a year. We have conducted hundreds of depositions and exchanged and received over one hundred million pages of documents.

Analysis of Pending Litigation

As we discussed, the MDL litigation has been moving forward at an incredibly fast speed considering the extent of this litigation. We are in the middle of conducting depositions



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of the defense experts and preparing for trial in October. While we are hopeful that settlement discussions will be fruitful, we fully expect to try this case in the fall. In New York and West Virginia state court, we have successfully defeated the defendants' attempts to dismiss the case and are in the middle of document discovery and depositions.

We believe West Allis would have a significant claim in this litigation. We would be happy to discuss further the claims of West Allis privately, if we are chosen to be retained.

Our Strategy Moving Forward

One of the main questions we heard you raise on Tuesday night was the decision between state and federal Court (the federal MDL). Ultimately, the decision would be completely up to the city as to where to file. As we have discussed, we are proceeding with cases both in the federal MDL as well as in state courts throughout the country, including New York, West Virginia, and Tennessee.

Currently, the overwhelming majority of cases filed in state court are removed to federal court and sent to the federal MDL, despite attempts to remand. Judge Polster, who is overseeing the MDL, is currently not considering any motions to remand cases back to state court. Obviously many clients like the idea of having their cases handled by local judges. However, there are several factors to consider. We have been through and continue to go through the discovery war with these defendants. In Cuyahoga County, our client was forced to exchange approximately 20 million pages of documents and approximately 50 County employees and former employees sat for full day depositions. It was a significant burden on our client, a County of over one million people. Any client which chooses to proceed in state court should be prepared to undergo the discovery process.

We have also already seen the risks associated with filing in state court. While every one of our clients who have filed in state court have successfully defeated motions to dismiss, this is not true for all cases handled by others. A case filed by many cities and towns in Connecticut was dismissed by a state court judge. Most recently, the state of North Dakota's case against Purdue Pharmaceuticals was dismissed by a state court judge. A client that chooses to pursue litigation alone in state court runs the risk of an adverse decision. We have also recently seen the potential benefit of state court with the large settlement reached by the State of Oklahoma.

Our office would be happy to discuss the risks and benefits of state court further privately and provide our recommendations. It would be up to the city to determine whether the benefits of state court outweighed the risks and benefits.



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No Cost to West Allis

We have included a copy of the draft special counsel agreement we would ask West Allis to sign should you decide to retain us. As you will see, there is no cost directly to West Allis, win or lose. Our office would cover all of the costs associated with the case and therefore all of the risk. Our agreement provides that we would receive a contingency fee of 25%, only if the case is successful and West Allis receives a recovery.

Local Counsel Assistance

Attorney Fred Tabak will be local counsel in the representation of West Allis, and will assist with all aspects of the case, including depositions, interrogatories, and keeping West Allis “in the loop.” Fred Tabak has over 50 years experience as a trial lawyer and has tried over 200 jury trials.

Attached is a copy of a proposed contract for representation for your review. For your reference, our firm website is www.napolilaw.com. Shayna, Sal and I are available to discuss any further questions or concerns you may have. We can be reached at 212-397-1000 or by e-mail (JCiaccio@napolilaw.com, SSacks@napolilaw.com, SBadala@napolilaw.com). You should also feel free to call Fred Tabak at his office (414-375-1741) or his cell (414-331-6599).

Thank you again for the opportunity to potentially represent West Allis in this important litigation.

Very truly yours,

Joseph L. Ciaccio
Napoli Shkolnik, PLLC

Encl.
cc: Fred Tabak