

Law & Major Contracts Meeting Agenda



Committee Chair: Nancy Barr

800 Michaelan Office Bldg.
148 Martine Avenue, 8th Floor
White Plains, NY 10601
www.westchesterlegislators.com

Wednesday, April 21, 2021

10:00 AM

Committee Room

CALL TO ORDER

Joint with Budget & Appropriations

MINUTES APPROVAL

April 12, 2021 at 10:00 a.m.

I. ITEMS FOR DISCUSSION

Guests: County Attorney John Nonna and Senior Assistant County Attorney Loren Zeitler

1. [2021-265](#) ACT - Retention of law firm Napoli Shkolnik PLLC

AN ACT authorizing the retention of the law firm of Napoli Shkolnik PLLC to be of counsel to the County Attorney in an action on behalf of the County of Westchester against certain generic pharmaceutical companies and others who fixed prices, allocated markets, and engaged in antitrust violations, which resulted in the overpayment for generic drugs by Westchester County.

COMMITTEE REFERRAL: COMMITTEES ON BUDGET & APPROPRIATIONS AND LAW & MAJOR CONTRACTS

2. [2021-266](#) ACT - CA to join County of Westchester as Plaintiff (Generic Pharm Companies)

AN ACT authorizing the County Attorney to join the County of Westchester as plaintiff in an action against certain generic pharmaceutical companies and others who fixed prices, allocated markets, and engaged in antitrust violations, which resulted in the overpayment for generic drugs by Westchester County.

COMMITTEE REFERRAL: COMMITTEES ON BUDGET & APPROPRIATIONS AND LAW & MAJOR CONTRACTS

II. OTHER BUSINESS

III. RECEIVE & FILE

ADJOURNMENT

George Latimer
County Executive

Office of the County Attorney

John M. Nonna
County Attorney

April 7, 2021

Honorable Westchester County Board of Legislators
County of Westchester
800 Michaelian Office Building
148 Martine Avenue
White Plains, New York 10601

Re: Request to authorize the retention of the law firm of Napoli Shkolnik PLLC to be of counsel to the County Attorney in an action on behalf of the County of Westchester against certain generic pharmaceutical companies and others who fixed prices, allocated markets, and engaged in antitrust violations, which resulted in the overpayment for generic drugs by Westchester County.

Dear Members of the Honorable Board of Legislators:

Attached for your consideration is an Act which, if approved by your Honorable Board, authorize the retention of the law firm of Napoli Shkolnik PLLC to be of counsel to the County Attorney in an action on behalf of the County of Westchester against certain generic pharmaceutical companies and others who fixed prices, allocated markets, and engaged in antitrust violations, which resulted in the overpayment for generic drugs by Westchester County.

Another piece of proposed legislation is simultaneously being submitted to your Honorable Board. That legislation, if passed, would authorized the County Attorney to join the County of Westchester as plaintiff in an action against certain generic pharmaceutical companies and others who fixed prices, allocated markets, and engaged in antitrust violations, which resulted in the overpayment for generic drugs by the County.

The Office of the County Attorney does not have the resources necessary to commence and maintain such a large, complex action. Consequently, by submission of this proposed legislation, authorization is being sought to retain the law firm of Napoli Shkolnik PLLC to be of counsel to the County Attorney in this matter. Napoli Shkolnik PLLC has already been retained by several other New York counties — including Nassau — to represent them in this litigation.



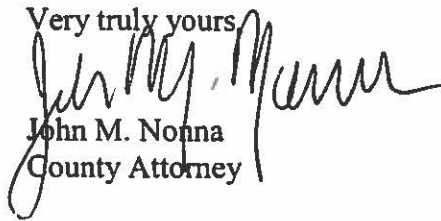
This office has been informed by Napoli Shkolnik PLLC that they will be compensated on a contingency fee basis, the terms of which are as follows:

Counsel shall be paid on a contingency fee basis under which Counsel shall receive:

- i. 7.5% of pre-complaint recovery;
- ii. 15% of recovery after ruling on a motion to dismiss;
- iii. 20% of recovery after close of pretrial discovery; and
- iv. 25% of recovery after a ruling on summary judgment.

For the foregoing reasons, I request the retention of the law firm of Napoli Shkolnik PLLC to be of counsel to the County Attorney in an action on behalf of the County of Westchester against certain generic pharmaceutical companies and others who fixed prices, allocated markets, and engaged in antitrust violations, which resulted in the overpayment for generic drugs by Westchester County.

Very truly yours,

A handwritten signature in black ink, appearing to read "John M. Nonna". The signature is written in a cursive style with a large, sweeping flourish at the end.

John M. Nonna
County Attorney

JMN/lz
Encls.

BOARD OF LEGISLATORS

COUNTY OF WESTCHESTER

Your Committee is in receipt of a proposed Act, which, if enacted by your Honorable Board, would authorize the authorize the retention of the law firm of Napoli Shkolnik PLLC to be of counsel to the County Attorney in an action on behalf of the County of Westchester against certain generic pharmaceutical companies and others who fixed prices, allocated markets, and engaged in antitrust violations, which resulted in the overpayment for generic drugs by Westchester County.

Another piece of proposed legislation has been simultaneously submitted to your Honorable Board. That legislation, if passed, would authorize the County Attorney to join the County of Westchester as plaintiff in an action against certain generic pharmaceutical companies and others who fixed prices, allocated markets, and engaged in antitrust violations, which resulted in the overpayment for generic drugs by the County.

The County Attorney has informed Your Committee that the Law Department does not have the resources necessary to commence and maintain such a large, complex action. Consequently, by submission of this proposed legislation, authorization is being sought to retain the law firm of Napoli Shkolnik PLLC to be of counsel to the County Attorney in this matter. Napoli Shkolnik PLLC has already been retained by 14 other New York counties — including Nassau — to represent them in this action.

The Law Department has been informed by Napoli Shkolnik PLLC that they will be compensated on a contingency fee basis, the terms of which are as follows:

Counsel shall be paid on a contingency fee basis under which Counsel shall receive:

- v. 7.5% of pre-complaint recovery;

- vi. 15% of recovery after ruling on a motion to dismiss;
- vii. 20% of recovery after close of pretrial discovery; and
- viii. 25% of recovery after a ruling on summary judgment.

Your Committee has carefully considered the subject matter and the attached act and recommends retaining the law firm of Napoli Shkolnik PLLC to be of counsel to the County Attorney in an action against generic pharmaceutical companies with regard to the inflated pricing of generic pharmaceuticals in Westchester County.

An affirmative vote of a majority of the Board is required to pass this legislation.

Dated: White Plains, New York
, 2021

FISCAL IMPACT STATEMENT

SUBJECT: Napoli Shkolnik PLLC

NO FISCAL IMPACT PROJECTED

OPERATING BUDGET IMPACT

To Be Completed by Submitting Department and Reviewed by Budget

SECTION A - FUND

GENERAL FUND

AIRPORT FUND

SPECIAL DISTRICTS FUND

SECTION B - EXPENSES AND REVENUES

Total Current Year Expense \$ -

Total Current Year Revenue TBD

Source of Funds (check one): Current Appropriations Transfer of Existing Appropriations

Additional Appropriations

Other (explain)

Identify Accounts: TBD- Law firm to be paid on a contingency basis.

Potential Related Operating Budget Expenses: Annual Amount \$0

Describe: _____

Potential Related Operating Budget Revenues: Annual Amount TBD

Describe: An act authorizing the retention of the firm Napoli Shkolnik to be of counsel to the County Attorney in an action on behalf of the County against certain generic pharmaceutical companies which resulted in the overpayment for generic drugs by Westchester County.

Anticipated Savings to County and/or Impact on Department Operations:

Current Year: N/A

Next Four Years: N/A

Prepared by: Patricia Haggerty

Title: Sr. Budget Analyst

Department: Budget

Date: April 7, 2021

Reviewed By: 

Budget Director

Date: 4/7/21

AN ACT authorizing the retention of the law firm of Napoli Shkolnik PLLC to be of counsel to the County Attorney in an action on behalf of the County of Westchester against certain generic pharmaceutical companies and others who fixed prices, allocated markets, and engaged in antitrust violations, which resulted in the overpayment for generic drugs by Westchester County.

BE IT ENACTED by the County Board of Legislators of the County of

Westchester as follows:

§ 1. The law firm of Napoli Shkolnik PLLC is retained to be of counsel to the County Attorney in an action on behalf of the County of Westchester against certain generic pharmaceutical companies and others who fixed prices, allocated markets, and engaged in antitrust violations, which resulted in the overpayment for generic drugs by Westchester County.

§ 2. The County Attorney or his designee is hereby authorized and empowered to undertake such legal proceedings and prepare all documents necessary or desirable to accomplish the purpose of this Act.

§ 3. This Act shall take effect immediately.

George Latimer
County Executive

Office of the County Attorney

John M. Nonna
County Attorney

April 7, 2021

Honorable Westchester County Board of Legislators
County of Westchester
800 Michaelian Office Building
148 Martine Avenue
White Plains, New York 10601

Re: Request to authorize the County Attorney to join the County of Westchester as plaintiff in an action against certain generic pharmaceutical companies and others who fixed prices, allocated markets, and engaged in antitrust violations, which resulted in the overpayment for generic drugs by Westchester County.

Dear Members of the Honorable Board of Legislators:

Attached for your consideration is an Act which, if approved by your Honorable Board, would authorize the County Attorney to join the County of Westchester as plaintiff in an action against certain generic pharmaceutical companies and others who fixed prices, allocated markets, and engaged in antitrust violations, which resulted in the overpayment for generic drugs by Westchester County.

Because the conduct dates back to approximately 2010 and covers almost every generic pharmaceutical product, the County's spending on these products – and thus potential damages in this suit, which can be trebled – is significant.

For example, on March 2, 2020, one of the potential defendants, Sandoz, agreed to pay a \$195 million criminal penalty in connection to felony antitrust charges arising from the company's antitrust violations regarding generic drug pricing.

A four-count felony charge accusing Sandoz of participating in conspiracies with other generic-drug makers between 2013-15 was recently filed in the Eastern District of Pennsylvania. The Department of Justice entered into a deferred prosecution agreement with Sandoz the same day, under which it agreed to co-operate with the ongoing investigation and admitted that sales resulting from the alleged schemes rose above \$500 million.

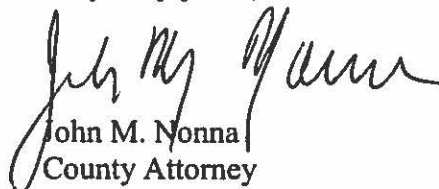


Although a criminal fine is different from an admission of damages in a civil suit, it is an encouraging development in the long road ahead. Civil damages from this and other Defendants are likely to be significantly more.

The law firm of Napoli Shkolnik PLLC filed a lawsuit in the Supreme Court of New York, Nassau County, on behalf of 14 New York Counties, against generic pharmaceutical manufacturers based upon their consistent behavior with respect to the generic pharmaceutical market. The complaint seeks damages, disgorgement of profits, injunctive relief, attorneys' fees and costs, and other relief.

The case was removed to federal court and transferred to the MDL (Multi-District Litigation) for this matter, currently pending in the U.S. District Court for the Eastern District of Pennsylvania. The case is *County of Nassau, et al v. Actavis Holdco US, Inc., et al.*, 20-00065-CMR (16-MDL-2724) (E.D. Pa.).

Very truly yours,



John M. Nonna
County Attorney

Encls.
JMN/lz

BOARD OF LEGISLATORS
COUNTY OF WESTCHESTER

Your Committee is in receipt of a proposed Act, which if enacted by your Board, would authorize the County Attorney to join the County of Westchester as plaintiff in an action against certain generic pharmaceutical companies and others who fixed prices, allocated markets, and engaged in antitrust violations, which resulted in the overpayment for generic drugs by Westchester County.

Because the conduct dates back to approximately 2010 and covers almost every generic pharmaceutical product, the County's spending on these products – and thus potential damages in this suit, which can be trebled – is significant.

For example, on March 2, 2020, one of the potential defendants, Sandoz, agreed to pay a \$195 million criminal penalty in connection to felony antitrust charges arising from the company's antitrust violations regarding generic drug pricing.

A four-count felony charge accusing Sandoz of participating in conspiracies with other generic-drug makers between 2013-15 was recently filed in the Eastern District of Pennsylvania. The Department of Justice entered into a deferred prosecution agreement with Sandoz the same day, under which it agreed to co-operate with the ongoing investigation and admitted that sales resulting from the alleged schemes rose above \$500 million.

Although a criminal fine is different from an admission of damages in a civil suit, it is an encouraging development in the long road ahead. Civil damages from this and other Defendants are likely to be significantly more.

The law firm of Napoli Shkolnik PLLC filed a lawsuit in the Supreme Court of New York, Nassau County, on behalf of 14 New York Counties, against generic pharmaceutical manufacturers based upon their consistent behavior with respect to the generic pharmaceutical market. The complaint seeks damages, disgorgement of profits, injunctive relief, attorneys' fees and costs, and other relief.

The case was removed to federal court and transferred to the MDL (Multi-District Litigation) for this matter, currently pending in the U.S. District Court for the Eastern District of Pennsylvania. The case is *County of Nassau, et al v. Actavis Holdco US, Inc., et al.*, 20-00065-CMR (16-MDL-2724) (E.D. Pa.).

Your Committee has carefully considered the subject matter and the attached act and recommends authorizing the County Attorney to join the County of Westchester as plaintiff in an action against certain generic pharmaceutical companies and others who fixed prices, allocated markets, and engaged in antitrust violations, which resulted in the overpayment for generic drugs by Westchester County.

An affirmative vote of a majority of the Board is required to pass this legislation.

Dated: White Plains, New York
April , 2021

COMMITTEE ON

FISCAL IMPACT STATEMENT

SUBJECT: Napoli Shkolnik PLLC

NO FISCAL IMPACT PROJECTED

OPERATING BUDGET IMPACT

To Be Completed by Submitting Department and Reviewed by Budget

SECTION A - FUND

GENERAL FUND

AIRPORT FUND

SPECIAL DISTRICTS FUND

SECTION B - EXPENSES AND REVENUES

Total Current Year Expense \$ -

Total Current Year Revenue \$

Source of Funds (check one): Current Appropriations Transfer of Existing Appropriations

Additional Appropriations

Other (explain)

Identify Accounts: _____

Potential Related Operating Budget Expenses: Annual Amount N/A

Describe: _____

Potential Related Operating Budget Revenues: Annual Amount N/A

Describe: An Act authorizing the County Attorney to join the County of Westchester as plaintiff in an action against certain generic pharmaceutical companies and others which resulted in the overpayment for generic drugs by Westchester County.

Anticipated Savings to County and/or Impact on Department Operations:

Current Year: N/A

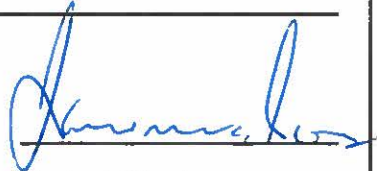
Next Four Years: N/A

Prepared by: Patricia Haggerty

Title: Sr. Budget Analyst

Department: Budget

Date: April 7, 2021

Reviewed By: 

Budget Director

Date: 4/8/21

ACT NO. - 2021

AN ACT authorizing the County Attorney to join the County of Westchester as plaintiff in an action against certain generic pharmaceutical companies and others who fixed prices, allocated markets, and engaged in antitrust violations, which resulted in the overpayment for generic drugs by Westchester County.

BE IT ENACTED by the Board of Legislators of the County of Westchester as follows:

Section 1. The County Attorney is hereby authorized to join the County of Westchester as plaintiff in an action against certain generic pharmaceutical companies and others who fixed prices, allocated markets, and engaged in antitrust violations, which resulted in the overpayment for generic drugs by Westchester County.

Section 2. The County Attorney or his duly designated representative is hereby authorized to undertake such legal proceedings and prepare all documents necessary or desirable to accomplish the purpose of this Act.

Section 3. This Act shall take effect immediately.