

ACT 28 - 2023

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 of Westchester to enter a settlement and general release agreement fully resolving the claims against Teva¹, a generic drug manufacturer, as well as its subsidiary drug distributor, Anda Inc., in an adversary proceeding filed in the Supreme Court of the State of New York, Westchester County, titled *The County of Westchester v. Purdue Pharma, et al.*, Index No. 51606/2018, transferred to the coordinated proceeding in the Supreme Court of the State of New York, Suffolk County and then transferred to the Supreme Court of the State of New York, Westchester County (the “Instant Proceeding”).

On February 6, 2018, the County of Westchester commenced an action against opioid manufacturers, distributors and dispensers in the Supreme Court of the State of New York, County of Westchester. The Complaint asserted several causes of action, such as deceptive marketing, false advertising, public nuisance, misrepresentation, fraud, negligence, and unjust enrichment and conspiracy, alleging that each of the Defendants contributed to the opioid epidemic that Westchester County has been battling and will continue to battle for the foreseeable future. The causes of action against Teva and its subsidiaries are based on claims that they contributed to the opioid epidemic by violating state and federal statutes related to the manufacturing and distribution of opioids, all of which contributed to a public health crisis.

¹ Teva Pharmaceutical Industries Ltd., the public parent company of the Teva defendants, is not a party to the litigation but is a party to the agreement and is liable for the payments. It has submitted to jurisdiction in New York for purposes of enforcement.

Nearly all of the counties in New York State commenced an action regarding the opioid epidemic against the same group of defendants. Our outside counsel in this action, Napoli Shkolnik, represents approximately half of those counties. All of the New York state actions were consolidated and were litigated in the Supreme Court of the State of New York, County of Suffolk, before Judge Garguilo. Of the municipal entities who sued, three bellwether plaintiffs – the County of Nassau, the County of Suffolk, and the State of New York – were selected to try the issue of liability. After delay due to the COVID epidemic, the trial before Judge Garguilo commenced on June 3, 2021, and after a seven-month trial, the jury found Teva liable.

On July 26, 2022, Teva, as well as its subsidiary drug distributor, Anda Inc., announced a \$4.35 billion national opioid settlement agreement (“Teva Global Agreement”). The proposal calls for Teva to pay up to \$3.7 billion in cash over 13 years and provide what Teva estimates as \$1.2 billion worth of the opioid overdose reversal drug naloxone. The Teva/New York Statewide Opioid Settlement Agreement (“Teva NY Agreement”) is essentially a New York carve out from the proposed Teva Global Agreement.

Since July 2022, the State and Suffolk and Nassau Counties have engaged in extensive negotiations that resulted, on November 3, 2022, in the announcement of the Teva NY Agreement. Under the agreement, Teva will be required to pay as much as \$550 million^[2], depending on the level of participation statewide. Monies paid under the Teva NY Agreement will be distributed among the various participating political subdivisions according to the Agreement itself or under two distinct Sharing Agreements (included in the agreement as Exhibits C and L). There are various “Incentive” scenarios built into the agreement. Teva will

^[2] Unlike the national deal, New York and its subdivisions will not be receiving naloxone product as part of this settlement. Instead, the settlement sum for New York includes \$15,871,275.20, which is the Product Cash Conversion Amount in New York (the calculated cash value of the naloxone product).

pay to the State and its participating subdivisions a total of up to approximately \$550 million considering the various Incentive payments offered.

Under the terms of the proposed settlement, Westchester County will receive a total of \$5,149,259.68 over the next 18 years. A portion of this money is from the “Global” fund (consistent with the national global settlement amount). This money is payable over 13 years. These funds are subject to a separate Sharing Agreement (Exhibit C). A portion of this money is also from the “Premium” fund made to the State as a trial plaintiff. This money is payable over 18 years. These funds are subject to a separate Sharing Agreement (Exhibit L).

As with prior settlements, some of the settlement proceeds must be used for “Approved Uses,” *i.e.*, for abatement and remediation, under the intrastate allocation agreement.^[3] Funds identified as “Abatement” must be used in this manner. Funds identified as “Unrestricted” may be used in any manner. The County may be able to procure additional funds. The Statewide Opioid Settlement Fund is designed to fund State projects that constitute Approved State Uses.

Similar to prior settlements, the Agreement provides injunctive relief that includes:

- a. A ban on high-dose opioids (greater than 40mg) and prescription savings programs;
- b. Prohibitions on marketing opioids and funding third parties that promote opioids;
- c. Restrictions on political lobbying;
- d. Disclosure of Teva opioid product clinical data.

^[3] Approved Uses is defined to include: 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, the agreement includes injunctive relief from Teva's distributor Anda, Inc., including:

- a. Ensuring the independence of Anda sales personnel who sell controlled substances from incentive-based compensation and retaliation;
- b. Mandatory training of new Controlled Substance Monitoring Program (CSMP) employees on CSMP and injunctive relief obligations. Employees will also be required to have annual training and testing of CSMP knowledge;
- c. Periodic review of systems and procedures that evaluate customer data for diversion of controlled substances; and
- d. Unannounced customer site visits verifying compliance with anti-diversion obligations.

In order to become a party to the Settlement Agreement, Westchester County has to do the following:

1. Sign (or give outside counsel Napoli Shkolnik permission to sign on Westchester County's behalf) Exhibit "B" to the Teva NY Agreement (New York Subdivision Participation Form), attached as Exhibit "B" hereto;
2. Sign (or give Napoli Shkolnik permission to sign on Westchester County's behalf) Exhibit "C" to the Teva NY Agreement (Teva New York Global Payment Opioid Settlement Sharing Agreement), attached as Exhibit "C" hereto;
3. Sign (or give Napoli Shkolnik permission to sign on Westchester County's behalf) Exhibit "L" to the Teva NY Agreement (Teva New York Premium Payment Opioid Settlement Sharing Agreement), attached as Exhibit "D" hereto.

Your Committee has carefully considered the matter and recommends approval of the annexed Act. The Act, which would authorize the County to enter into the proposed settlement to effectuate the resolution of the lawsuit, is in the best interests of the County.

Your Committee therefore recommends this Honorable Board approve the annexed Act authorizing the County to enter into the proposed settlement of the above-referenced lawsuit. An affirmative vote by a majority of the Board is required to pass this Act.

Dated: White Plains, New York
January 23, 2023

Vedat Fadi
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 Jennifer Zeller Johnson
 Nancy Bauer
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 Colin O'Neil
 Catherine Parker
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Vedat Fadi
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 Jennifer Zeller Johnson
 Nancy Bauer
 Colin O'Neil

Vedat Fadi
 Nancy Bauer
 Colin O'Neil
 Catherine Parker
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Budget &
Appropriations

Health
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Law & Major
Contracts

Dated: January 23rd, 2023
White Plains, New York

The following members attended the meeting remotely and approved this item out of Committee with an affirmative vote. Their electronic signature was authorized and is below.

Budget



Health



LMC



AN ACT authorizing the County of Westchester to settle the claims against Teva and its distributor Anda in an adversary proceeding filed in the Supreme Court of the State of New York, Westchester County, titled *The County of Westchester v. Purdue Pharma, et al.*, Index No. 51606/2018, transferred to the coordinated proceeding before Judge Garguilo in the Supreme Court of the State of New York, Suffolk County and then transferred to the Supreme Court of the State of New York, Westchester County (the “Instant Proceeding”)

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

1. The County of Westchester is hereby authorized to settle the claims against Teva and its distributor Anda in an adversary proceeding filed in the Supreme Court of the State of New York, Westchester County, titled *The County of Westchester v. Purdue Pharma, et al.*, Index No. 51606/2018, transferred to the coordinated proceeding in the Supreme Court of the State of New York, Suffolk County and then transferred to the Supreme Court of the State of New York, Westchester County (the “Instant Proceeding”).
2. The County Attorney or his designee is hereby authorized to execute and deliver all documents and take such actions as the County Attorney deems necessary or desirable to accomplish the purpose hereof.
3. This Act shall take effect immediately.

STATE OF NEW YORK)
) ss.
WESTCHESTER COUNTY)

I HEREBY CERTIFY that I have compared the foregoing Act, Act No. 28 - 2023, with the original on file in my office, and that the same is a correct transcript therefrom, and of the whole, of the said original Act, which was duly adopted by the County Board of Legislators, of the County of Westchester on January 23, 2023, and approved by the County Executive on January 27, 2023.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Corporate Seal of said County Board of Legislators on this 30th day of January, 2023.



Malika Vanderberg

The Clerk of the Westchester County
Board of Legislators

County of Westchester, New York

