

Law & Major Contracts Meeting Agenda



Committee Chair: David Imamura

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

Wednesday, September 4, 2024

10:00 AM

Committee Room

Joint with B&A

CALL TO ORDER

Please note: Meetings of the Board of Legislators and its committees are held at the Michaelian Office Building, 148 Martine Avenue, White Plains, New York, 10601, and remotely via the WebEx video conferencing system. Legislators may participate in person or via Webex. Members of the public may attend meetings in person at any of its locations, or view it online on the Westchester County Legislature's website: <https://westchestercountyny.legistar.com/> This website also provides links to materials for all matters to be discussed at a given meeting.

Joint with Budget & Appropriations

MINUTES APPROVAL

Monday, July 15, 2024 at 10:00 a.m.

I. ITEMS FOR DISCUSSION

Guests: Law Dept.: County Attorney John Nonna and Associate County Attorney Loren Zeitler

1. [2024-421](#) ACT - Authorize retention of the law firm of Napoli Shkolnik

AN ACT authorizing the retention of the law firm of Napoli Shkolnik to be of counsel to the County Attorney in an action on behalf of the County of Westchester against certain drug manufacturers and pharmacy benefit managers for anticompetitive activities and unlawful, unfair and deceptive business practices related to insulin and other diabetic medication in the United States.

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

2. [2024-422](#) ACT - Authorizing the CA to commence action against certain drug manufactures

AN ACT authorizing the County Attorney to commence an action on behalf of the County of Westchester against certain drug manufactures and pharmacy benefit managers for anticompetitive activities and unlawful, unfair and deceptive business practices related to

insulin and other diabetic medication in the United States.

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

July 26, 2024

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 to be of counsel to the County Attorney in an action on behalf of the County of Westchester against certain drug manufacturers and pharmacy benefit managers for anticompetitive activities and unlawful, unfair, and deceptive business practices related to insulin and other diabetic medication in the United States

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 to be of counsel to the County Attorney in an action on behalf of the County of Westchester against certain drug manufacturers and pharmacy benefit managers for anticompetitive activities and unlawful, unfair, and deceptive business practices related to insulin and other diabetic medication in the United States.

Another piece of proposed legislation is simultaneously being submitted to your Honorable Board. That legislation, if passed, would authorize the County Attorney to commence an action on behalf of the County of Westchester against certain drug manufacturers and pharmacy benefit managers for anticompetitive activities and unlawful, unfair, and deceptive business practices related to insulin and other diabetic medication in the United States

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 to be of counsel to the County Attorney in this matter. Napoli Shkolnik has already filed actions on behalf of 11 New York cities/counties with 3 New York cities/counties soon to be filed.



Michaelian Office Building, Room 600
148 Martine Avenue
White Plains, New York 10601

Telephone: (914)995-2660

Website: westchestergov.com

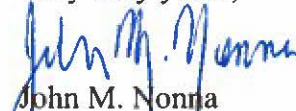
This office has been informed by Napoli Shkolnik that they will be compensated on a contingency fee basis, the terms of which are as follows:

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 to be of counsel to the County Attorney in an action on behalf of the County of against certain drug manufacturers and pharmacy benefit managers for anticompetitive activities and unlawful, unfair, and deceptive business practices related to insulin and other diabetic medication in the United States.

Very truly yours,


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 retention of the law firm of Napoli Shkolnik to be of counsel to the County Attorney in an action on behalf of the County of Westchester against certain drug manufacturers and pharmacy benefit managers for anticompetitive activities and unlawful, unfair, and deceptive business practices related to insulin and other diabetic medication in the United States.

Another piece of proposed legislation has been simultaneously submitted to your Honorable Board. That legislation, if passed, would authorize the County Attorney to commence an action on behalf of the County of Westchester against certain drug manufacturers and pharmacy benefit managers for anticompetitive activities and unlawful, unfair, and deceptive business practices related to insulin and other diabetic medication in the United States.

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 to be of counsel to the County Attorney in this matter. Napoli Shkolnik has already filed actions on behalf of 11 New York cities/counties with 3 New York cities/counties soon to be filed.

The Law Department has been informed by Napoli Shkolnik 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 to be of counsel to the County Attorney in an action against certain drug manufacturers and pharmacy benefit managers for anticompetitive activities and unlawful, unfair, and deceptive business practices related to insulin and other diabetic medication in the United States.

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

Dated: White Plains, New York
 , 2024

COMMITTEE ON

AN ACT authorizing the retention of the law firm of Napoli Shkolnik to be of counsel to the County Attorney in an action on behalf of the County of Westchester against certain drug manufacturers and pharmacy benefit managers for anticompetitive activities and unlawful, unfair, and deceptive business practices related to insulin and other diabetic medication in the United States.

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

Westchester as follows:

§ 1. The law firm of Napoli Shkolnik is retained to be of counsel to the County Attorney in an action on behalf of the County of Westchester against certain drug manufacturers and pharmacy benefit managers for anticompetitive activities and unlawful, unfair, and deceptive business practices related to insulin and other diabetic medication in the United States.

§ 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.

FISCAL IMPACT STATEMENT

SUBJECT: Law Firm of Napoli Shkolnik

☐ 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 TBD

Total Current Year Revenue TBD

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

☐ Additional Appropriations

☒ Other (explain)

Identify Accounts: The law firm will be paid on a contingency fee basis from the revenues received.

Potential Related Operating Budget Expenses: Annual Amount N/A

Describe: Request to authorize the retention of the law firm of Napoli Shkolnik to be of Counsel in an action on behalf of the County of Westchester against certain drug manufacturers and pharmacy benefit managers for anticompetitive activities and unlawful activities related to insulin.

Potential Related Operating Budget Revenues: Annual Amount N/A

Describe: _____

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: July 25, 2024

Reviewed By: Christina Rando

Budget Director

Date: 7/25/24

George Latimer
County Executive

Office of the County Attorney

John M. Nonna
County Attorney

July 26, 2024

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 commence an action on behalf of the County of Westchester against certain drug manufacturers and pharmacy benefit managers for anticompetitive activities and unlawful, unfair, and deceptive business practices related to insulin and other diabetic medication in the United States.

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 commence an action on behalf of the County of Westchester against certain drug manufacturers and pharmacy benefit managers for anticompetitive activities and unlawful, unfair, and deceptive business practices related to insulin and other diabetic medication in the United States.

Lawsuits have already been filed against three drug manufacturers – Eli Lilly, Novo Nordisk and Sanofi-Aventis – and pharmacy benefit managers (“PBMs”) by various state attorneys general and counties throughout the nation seeking injunctive relief, punitive damages, restitution, disgorgement, penalties and other legal and equitable monetary remedies. The Judicial Panel on Multidistrict Litigation consolidated all federal Insulin Pricing Scheme lawsuits in the District of New Jersey before Judge Brian Martinotti. Many governmental entities, like Westchester County, have self-insured health plans, including pharmacy benefits, for their employees and retirees. The entities contract with PBMs to oversee their prescription drug benefits. The PBMs negotiate prices with drug manufacturers and assist payors in managing drug expenses. Each PBM maintains a formulary and has the power to include or exclude a drug from its formulary.


The three insulin manufacturers named above produce over 90% of the global insulin supply. It is alleged that since at least 2003, they have been conspiring to artificially inflate their list prices and making undisclosed kickbacks to PBMs under the guise of rebates, discounts,



credits or administrative fees. The payments served as a quid pro quo for inclusion and favorable placement on the PBM formularies. The revenues generated by certain PBMS greatly surpassed the fair market value of the services they provided, and the kickbacks they received far exceeded the fair market value of those services.

The causes of action against the manufacturer and PBMs will include violations of the Racketeer Influenced and Corrupt Organizations Act ("RICO"), deceptive and unfair trade practices, civil conspiracy, and unjust enrichment. Potential remedies sought will include compensatory damages, injunctive relief and punitive damages. The law firm of Napoli Shkolnik has already filed actions on behalf of 11 New York cities/counties with 3 New York cities/counties soon to be filed.

Very truly yours,



John M. Nouna
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 Request to authorize the County Attorney to commence an action on behalf of the County of Westchester against certain drug manufacturers and pharmacy benefit managers for anticompetitive activities and unlawful, unfair, and deceptive business practices related to insulin and other diabetic medication in the United States.

Because the conduct dates back to approximately 2003 and covers insulin medication widely used, the County's spending on these products – and thus potential damages in this suit, which can be trebled – is significant.

Lawsuits have already been filed against three drug manufacturers – Eli Lilly, Novo Nordisk and Sanofi-Aventis – and pharmacy benefit managers (“PBMs”) by various state attorneys general and counties throughout the nation seeking injunctive relief, punitive damages, restitution, disgorgement, penalties and other legal and equitable monetary remedies. The Judicial Panel on Multidistrict Litigation consolidated all federal Insulin Pricing Scheme lawsuits in the District of New Jersey before Judge Brian Martinotti.

It is alleged that since at least 2003, the manufacturers have been conspiring to artificially inflate their list prices and making undisclosed kickbacks to PBMs under the guise of rebates, discounts, credits or administrative fees.

The payments served as a quid pro quo for inclusion and favorable placement on the PBM formularies. The revenues generated by certain PBMS greatly surpassed the fair market value of the services they provided, and the kickbacks they received far exceeded the fair market value of those services.

The causes of action against the manufacturer and PBMs will include violations of the Racketeer Influenced and Corrupt Organizations Act (“RICO”), deceptive and unfair trade

practices, civil conspiracy, and unjust enrichment. Potential remedies sought will include compensatory damages, injunctive relief and punitive damages.

Your Committee has carefully considered the subject matter and the attached act and recommends authorizing the County Attorney to commence an action on behalf of the County of Westchester against certain drug manufacturers and pharmacy benefit managers for anticompetitive activities and unlawful, unfair, and deceptive business practices related to insulin and other diabetic medication in the United States.

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

Dated: White Plains, New York
July __, 2024

COMMITTEE ON

ACT NO. - 2024

AN ACT authorizing the County Attorney to commence an action on behalf of the County of Westchester against certain drug manufacturers and pharmacy benefit managers for anticompetitive activities and unlawful, unfair, and deceptive business practices related to insulin and other diabetic medication in the United States.

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

Section 1. The County Attorney is hereby authorized to commence an action on behalf of the County of Westchester against certain drug manufacturers and pharmacy benefit managers for anticompetitive activities and unlawful, unfair, and deceptive business practices related to insulin and other diabetic medication in the United States.

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.

FISCAL IMPACT STATEMENT

SUBJECT: County v. Manufacturers of Insulin

☒ 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: N/A

Potential Related Operating Budget Expenses: Annual Amount N/A

Describe: An act authorizing the County Attorney to commence an action on behalf of the County of Westchester against certain drug manufactures and pharmacy benefit managers for anticompetitive activities and unlawful, unfair and deceptive businesses practices related to insulin.

Potential Related Operating Budget Revenues: Annual Amount N/A

Describe: _____

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: July 25, 2024

Reviewed By: Christine Lampert

Budget Director

Date: 7/25/24