

DRAFT OPIOIDS TRUST & ALLOCATION ORDER

12/13/21

I. INTRODUCTION

- A. The Commonwealth filed a complaint naming McKesson Corporation, Cardinal Health, Inc. and AmeriSource Bergen Corporation (“Distributors”) as Defendants, alleging their actions furthered the improper distribution of prescription opioid drugs made and marketed by pharmaceutical manufacturers (the “Commonwealth Distributor Claims”).
- B. The Complaint is docketed at _____.
- C. The Distributors each deny that they have engaged in any wrongdoing.
- D. On _____ the Commonwealth and the Distributors filed a settlement of the Commonwealth Distributor Claims in the form of a Final Judgment/Consent /Decree.
- E. On _____ the Commonwealth filed a Complaint naming Johnson and Johnson, Janssen Pharmaceuticals, Inc., Ortho-McNeil-Pharmaceuticals, Inc., and Janssen

Pharmaceutica, Inc. (“ collectively J&J”) as defendants,
alleging that it had violated various Pennsylvania laws through
its manufacture, sale and promotion of prescription opioid
products (The “Commonwealth Manufacturer Claims”)

- F. The Complaint against J&J is docketed at _____.
- G. J&J denies that it has engaged in any wrongdoing.
- H. On _____ the Commonwealth and J&J filed a
settlement of the Commonwealth Manufacturer claims in the
form of a Final Judgment/Consent Decree docketed at
_____.
- I. On _____ the Commonwealth, the Distributors
and J&J filed a consent motion to consolidate the actions
_____. Commonwealth v. Distributors, Docket
No. _____ and Commonwealth v. J&J,
Docket No. _____. The court granted that
motion on _____ at Docket No. _____.
- J. The Distributors and J&J settlements will deliver up to
\$1,070,609,642 to the Commonwealth over as many as 18 years
with payments to be made as described in Paragraph IV. C-D of

the Distributors Settlement Agreement and Paragraphs V. B1 and V. B8 of the J & J Settlement Agreement.

After a motion from the parties the Court orders the following:

II. ORDER

A. The creation of the Pennsylvania Opioid Misuse and Addiction Abatement Trust.

1. This Order creates a trust known as the Pennsylvania Opioid Misuse and Addiction Abatement Trust. This Trust shall distribute and allocate the remainder of the funds (“Trust Funds”) payable to Pennsylvania and its Participating Subdivisions (as defined below) from the Distributors Settlement Agreement and the J&J Settlement Agreement after the payment of Attorneys’ Fees and Expenses as described in Section IX, Exhibit 4. The Trust Funds shall be divided into three accounts: The Commonwealth Account, the County Abatement Account and the Litigating Subdivision Account. Attorneys’ Fees and Expenses shall not be considered Trust Funds.
 - a. The Commonwealth Account shall consist of Fifteen (15) % of the Trust Funds to be distributed

and shall be paid to the Commonwealth of Pennsylvania for deposit to the Opioid Settlement Restricted Account as established by 72 P.S. § 1792-A.1.

- b. The County Abatement Account shall consist of Seventy (70) % of the Trust Funds to be distributed and shall be paid to Counties and other County Subdivisions in the manner described in the Allocation Section at ¶VII(A) below.
- c. The Litigating Subdivision Account shall consist of Fifteen (15) % of the Trust Funds to be distributed and shall be paid directly to the Litigating Subdivisions in the manner described in the Allocation Section at ¶VII(B) below.

B. Methodology and Requirements. This order sets forth the methodology and requirements for allocation and payment of funds achieved as the result of Pennsylvania’s Opioid Litigation, as defined below. Every Participating Subdivision that agrees to participate in the Settlements and accept the Trust Funds described herein shall be subject to the jurisdiction of

this Court for compliance and enforcement of this order and also have standing to petition this Court for enforcement of this Order and payment of the funds allocated to it. No subdivision may challenge another subdivision's use of funds, but subdivisions in the same geographic region are encouraged to coordinate their use of Trust Funds allocated by this Order.

III. DEFINITIONS

- A. **OAG** – The Pennsylvania Office of Attorney General.
- B. **Commonwealth**. The Commonwealth of Pennsylvania.
- C. **Companies** – collectively means McKesson Corporation, Cardinal Health, Inc., AmeriSource Bergen Corporation, and J&J.
- D. **Board of Trustees** – Trustees appointed pursuant to this Order to manage and direct the Pennsylvania Opioid Misuse and Addiction Abatement Trust.
- E. **Covered conduct** – means “covered conduct” as defined in the Distributors Settlement Agreement at Paragraph I. O. and in the J&J Settlement Agreement at Paragraph I.16.
- F. **Counties**—Subdivisions, as enumerated and classified in 16 P.S. § 201 to 211.

- G. **County Subdivisions** – All political subdivisions within a given county, including, but not limited to, cities, townships, boroughs, school districts, and municipal authorities.
- H. **Intrastate Allocation Formula.** The formula for distributing funds from the County Abatement Fund contained in Exhibit 1.
- I. **Litigating Subdivisions.** Counties, County Subdivisions and District Attorneys that have existing litigation against the Companies as of (Date).
- J. **Non-Participating Subdivisions.** Counties and County Subdivisions with populations greater than 10,000 that refuse to participate in these Settlements.
- K. **Participating Subdivisions.** County and County Subdivisions of more than 10,000 in population as established by the 2019 population estimate of the U.S. Bureau of Census that have agreed to participate in these settlements.
- L. **Pennsylvania’s Opioid Litigation.** The Coordinated Opioid Proceedings (CV-2017-08095) pending in the Delaware County Court of Common Pleas before the Hon. Barry C. Dozor, and any proceedings initiated by Litigating Subdivisions pending in

In re National Prescription Opiate Litig. MDL No. 2804 (N.D. Ohio), pending before Hon. Dan Polster.

- M. **Population.** Whenever this Order refers to population, it refers to the 2019 estimate of the United States population by the United States Census Bureau, except for purposes of calculating the Litigating Subdivision's share, which uses 2020 Census figures.
- N. **Settlements.** The Distributors Settlement Agreement dated July 21, 2021 among the settling states, settling distributors and participating subdivisions; and the J&J Settlement Agreement dated July 21, 2021 among the settling states, participating subdivisions and J&J, for Covered Conduct by the Companies.
- O. **Other Settlement(s).** Any of the following pertaining to liability arising from the marketing, manufacturing, sale, promotion, distribution, prescribing or dispensing of opioids shall fall within the purview of this order: a future settlement agreement entered into by OAG together with subdivisions, and District Attorneys, and any damages awarded as a result of such litigation by OAG together with subdivisions, and District Attorneys; or Court ordered distributions pursuant to a United

States Bankruptcy Court approved plan for claims of the Commonwealth, its subdivisions and District Attorneys.

P. **Single-county authorities (“SCAs”).** The agency designated under 4 PA. Code §§254.1 to 254.20 plan and coordinate drug and alcohol prevention, intervention and treatment services for a geographic area which may consist of one or more counties and to administer the provisions of such services funded through the agency. Some Counties have agreements to coordinate the operation of a Single County Authority with other Counties either by having one County’s SCA act for multiple counties or by retaining a vendor to perform such function for multiple counties. In either event, such organizations shall be considered an SCA for purposes of this order.

Q. **Trust** – Pennsylvania Opioid Misuse and Addiction Abatement Trust.

IV. PARTIES TO THIS ORDER

A. Commonwealth of Pennsylvania, by and through the Office of Attorney General.

B. Participating Subdivisions.

V. PENNSYLVANIA OPIOID MISUSE AND ADDICTION ABATEMENT TRUST (TRUST)

A. **Purpose.** The Pennsylvania Opioid Misuse and Addiction Abatement Trust shall have as its purpose to distribute Trust Funds obtained by the Commonwealth and its subdivisions from the Settlements. The Trust shall receive Trust Funds, hold such funds until payment, and then disburse such funds pursuant to the terms and conditions set forth herein. The funds obtained and ultimately paid by the Trust shall be distributed to the Commonwealth and its Participating Subdivisions only for the purposes set forth in Exhibit E to the Distributors Settlement Agreement and J&J Settlement Agreement and the Trust shall review expenditures by subdivisions which receive Trust Funds to insure that such spending was consistent with Exhibit E. Exhibit E is incorporated into this order by reference and all spending of funds allocated by this order shall be consistent with the requirements of Exhibit E. The Trust shall also receive and distribute funds from Other Settlements.

B. **Governance.** The Trust shall be governed by a Board of Trustees consisting of the following 13 members:

1. Chairperson, appointed by the Governor. The Chairperson shall be non-voting, except in cases of a tie. The Chairperson may not be an individual qualified to serve under any category of state-level members. The Chairperson shall serve at the pleasure of the Governor. The Chairperson shall be appointed 20 days after entry of this order.
2. A secretary of one of the Commonwealth's health and human services agencies, as appointed by the Governor. The secretary may appoint a designee, who is an employee of the respective agency.
3. Four Legislative Member Trustees, with one trustee appointed by each:
 - a. The Speaker of the House;
 - b. The Minority Leader of the House;
 - c. The President Pro Tempore of the Senate; and
 - d. The Senate Minority Leader.
4. Seven Regional Trustees appointed by the following County or City Officials:
 - a. Mayor of the City of First Class;

- b. The County Executive of the County Second Class;
- c. County Commissioners or County Executives of the Counties in the Capital Region, defined as including the following 16 counties: Adams, Berks, Centre, Cumberland, Dauphin, Fulton, Franklin, Huntingdon, Juniata, Lancaster, Lebanon, Mifflin, Perry, Snyder, Union, and York;
- d. The County Commissioners or County Executives of the Northeastern Pennsylvania region, defined as including the following 18 counties: Bradford, Carbon, Clinton, Columbia, Lackawanna, Luzerne, Lycoming, Monroe, Montour, Northumberland, Pike, Potter, Schuylkill, Sullivan, Susquehanna, Tioga, Wayne, and Wyoming;
- e. The County Commissioners or County Executives of the Southeastern Pennsylvania region, defined as including the following 6 counties: Bucks, Chester, Delaware, Lehigh, Montgomery, and Northampton;

- f. The County Commissioners or County Executives of the Northwestern Pennsylvania, defined as including the following 13 counties: Armstrong, Cameron, Clarion, Clearfield, Crawford, Elk, Erie, Forest, Jefferson, Mercer, McKean, Venango, and Warren;
- g. The County Commissioners or County Executives of the Southwestern Pennsylvania, defined as including the following 12 counties: Beaver, Bedford, Blair, Butler Cambria, Fayette, Greene, Indiana, Lawrence Somerset, Washington, and Westmoreland.

5. Appointment of Trustees

- a. The Trustee appointed by the Mayor of the City of the First Class shall be confirmed by a majority vote by the City Council of the City of the First Class.
- b. The Trustee appointed by the County Executive of the County of the Second Class shall be appointed by the County Executive and confirmed by a

majority of the County Council for the County of the Second Class.

- c. A Trustee appointed by the County Commissioners of the Five County Regions, under ¶(V)(B)(4)(c)-(g) shall be selected by a majority of votes from each County within each respective region. Each County shall have one vote for selecting the trustee for its respective region. In the event of a tie vote among the Counties in a region, the Chairperson Court shall select a Trustee from the pool of candidates from each region that received the highest number of equal votes.
- d. Within 30 days of final approval of this order, each County shall submit to the Attorney General, solely for the purpose of preparing ballots, the County's nomination for the Trustee from the Region the County to which the County belongs. Counties may nominate someone from within their own boundaries or from another county within that County's region. Multiple Counties can nominate

the same person. Once the nominations have been submitted, the Attorney General shall create and mail ballots, along with a Resume or Curriculum Vitae for each Trustee Candidate. The Attorney General shall set a date to return such ballots that shall be no earlier than 45 days after mailing the ballots. The Trustee nominees with the highest number of county votes in each region shall be appointed to the Board of Trustees for a term running until June 30, 2025.

- e. Subsequent Appointments to the Board of Trustees from the five regions shall be held in two-year intervals, beginning in 2025. The County with the largest population in each region shall be responsible for collecting nominations from each County and preparing and distributing ballots in enough time to seat new Trustees, by July 1 2025, if existing Trustees are not reelected. Counties in a region can retain an existing Trustee by unanimous consent without holding a new nomination and

balloting process as long as the Trustee has not exceeded maximum term as described in ¶ V(B) (8)(b).

6. **Qualifications of Trustees**

Counties are encouraged to designate trustees from one or more of the following professional classifications.

- a. A County Commissioner, member of County Council or County Executive.
- b. SCA administrator or County Health Commissioner.
- c. Physician with specialized practice and training in the treatment of substance use disorder.
- d. Nurse with specialized practice and training the treatment of substance use.
- e. Certified peer support substance use disorder treatment provider/specialist.
- f. Licensed pharmacist.
- g. Emergency medical services provider.
- h. Re-entry specialist/service provider.

- i. Individual in recovery from substance use disorder.
- j. Parent or guardian of someone who has had opioid use disorder.
- k. A researcher with expertise in substance use from a college or university in Pennsylvania.

7. Residency:

- a. To qualify as a Regional Representative Trustee, an individual must reside in or have a principal place of business qualifying the individual for service on the Board of Trustees located in that region.

8. Terms:

- a. Legislative member trustees shall serve terms not exceeding two years, which shall expire at the conclusion of each legislative session. Legislative member trustees may be re-appointed, with no limit on the number of times they may be re-appointed.

- b. Regional Representative Trustees shall serve two-year terms and may be appointed three times consecutively. No individual shall serve more than ten years during the individual's lifetime as a Regional Trustee.
 - c. A secretary of one of the Commonwealth's health and human services agencies or such secretary's designee shall serve a term of no more than eight years and may be replaced by the secretary at any time.
 - d. In the event of a resignation or removal of a Trustee, the person appointing the Trustee shall appoint a replacement.
9. **Compensation:** Trustees shall serve as volunteers and shall receive no compensation for serving on the Board of Trustees. They shall be entitled to reasonable travel, lodging and subsistence expenses when attending meetings of the Board of Trustees, which shall be paid from the monies allocated for the Trust's management set forth in ¶IV (C)(9).

C. Operations

1. The Board of Trustees shall meet a minimum of four times a year. During such meetings, the Trustees shall appoint a financial institution licensed by the United States Office of the Comptroller of the Currency to invest all funds received only in securities fully guaranteed by the Government of the United States of America and which may have a maturity date of no more than one year.
2. Except for the year 2022, by September 1 of each year, The Board of Trustees shall notify each County and each Litigating Subdivision of the amounts each will receive out of the County Abatement and Litigating Subdivision Accounts. In the year 2022, that notification shall occur 30 days before distribution of the funds allocated under this Order.
3. Except for the year 2022, by November 15 of each year, in order for funds to be paid from the County Abatement Account, each County or the Health Department of a city of the First Class shall submit to the Trust the

certification attached as Exhibit 2 and list the payees and respective addresses to which the County Abatement Check shall be sent. Multiple Counties and the Health Department of the city of the First Class, County Subdivisions and District Attorneys may file joint certifications for some or all of the funds allocated to them. A joint certification shall designate the amount to be paid out of the joint applicants' allocation and the name and address of the payee.

4. Except for the year 2022, by November 15 of each year, in order for funds to be distributed from the Litigating Subdivision Account, each Litigating Subdivision shall submit to the Trust the certification attached as Exhibit 3 and list the payees and respective addresses to which the County Abatement Check shall be sent in accordance with ¶ (VII)(B). Multiple Litigating Subdivisions may file joint certifications for some or all of the funds allocated to them.

5. In the year 2022, certifications shall be filed consistent with the terms of subparagraphs 2 and 3 above within 60 days of entry of this order.
6. Except for the year 2022, the Board of Trustees shall pay the funds it holds in trust less the minimum amount needed to maintain its account for holding such funds on or about of June 15 of each year for funds to distributed to the Commonwealth from the Commonwealth Account, and on or about December 15 of each year for funds to be distributed from the Country Abatement and Litigating Subdivision Accounts.
7. In the year 2022, the Trust shall distribute the funds it receives within 60 days of receipt in accordance with the allocations under (II)(A)(1).
8. The Funds designated for the Commonwealth of Pennsylvania shall be distributed from the Trust to the Commonwealth of Pennsylvania Opioid Settlement Restricted Account.

9. The Board of Trustees may use up to 1% of the Trust funds to retain such persons or firms to manage the investment, and distributions.
10. All funds must be spent within 18 months of receipt except if a Subdivision is using such funds multi-year capital project in accordance with Exhibit E of the Distributors Settlement Agreement and J&J Settlement Agreement.
11. Each County or the Health Department of the city of the First Class shall submit a report to the Board of Trustees by March 15 beginning in the year 2023 year, showing the actual expenditures of such funds and the amount of funds received but not spent by the close of the previous calendar year. Funds should be spent equitably across the County in a way that most effectively abates the effects of the Opioid misuse and addiction within the judgment of the County Commissioners, County Executive and County Council. The Board of Trustees shall set the requirements of such reporting, with input from qualified academic researchers.

12. A Quorum of seven trustees shall be necessary to conduct business of the board.
13. The Board of Trustees may adopt any other operating procedures it deems fit, so long as such procedures are consistent with this order and all applicable laws.

VI. RESPONSIBILITIES OF THE TRUST

- A. The Trust shall have the following responsibilities:
 1. Receiving, maintaining, and investing funds until final disbursement of all settlement funds.
 2. Reviewing certifications in accordance with the terms specified by this document.
 3. Reviewing annual reports on spending to ensure compliance with the settlement terms.
 4. Disbursing the Annual Shares to the Commonwealth, Counties and Litigating Subdivisions for that year.
 5. Otherwise establishing its own operating rules and procedures.
 6. Preparing an annual report and accounting for the authorizing court which shall be made public and

undertaking all other reporting requirements consistent with the terms of the settlements.

VII. ALLOCATION

- A. The funds designated for the County Abatement Account shall be distributed directly to the Counties or such other organization designated by the County. Each County shall receive its share consistent with the methodology outlined in Exhibit 1, with each county receiving a minimum of \$1 million combined from the Distributors Settlement Agreement and J&J Settlement Agreement.
- B. The funds designated for the Litigating Subdivision Account shall be distributed directly to participating litigating subdivisions based on population according to the 2020 Census, with the following caveats:
1. 25% of the Litigating Subdivision Account will be set aside for Delaware County, Carbon County, and the City of Philadelphia, as entities that have done substantial work to advance litigation against the settling defendants.
 2. Allocation for District Attorneys' shares will be based on half of the population of the county they serve.

3. Allocation of Litigating Special Districts' shares will be based on 10% of the population that they serve.
4. The following minimum payments will apply, subject to availability of funds:
 - a. For subdivisions with populations smaller than 10,000: \$80,000 from the Distributors Settlement Agreement \$20,000 from the J&J Settlement Agreement.
 - b. For subdivisions with populations between 10,000 and 50,000: \$200,000 from the Distributors Settlement Agreement/\$50,000 from the J&J Settlement Agreement.
 - c. For subdivisions with populations between 50,001 and 100,000: \$400,000 from the Distributors Settlement Agreement/\$100,000 from the J&J Settlement Agreement.
 - d. For subdivisions with populations larger than 100,000: \$800,000 from Distributors Settlement Agreement/\$200,000 from the J&J Settlement Agreement.

- C. If Bonus A described in the Distributors and J&J Settlement Agreements is achieved, funds to be paid through the Litigating Subdivision Account will be paid out over the following three years' worth of payments.
- D. If a District Attorney does not participate in these settlements, then the Trust Funds that would have been paid to such non-participating District Attorney will be paid to those District Attorneys that agree to participate in these settlements. The amount for a non-participating District Attorney being reallocated to participating District Attorneys shall be allocated in the same manner as funds are allocated in ¶ VII B(2) above.

VIII. MISCELLANEOUS

- A. The Trust shall be dissolved upon final disbursement of all funds from all covered settlements.
- B. The Trust shall not pay any Participating Subdivision or Litigating Subdivision in any year in which the subdivision fails to submit a certification by _____ of the year in which the Trust has funds to distribute.
- C. The proceedings and meetings of this Trust shall be governed by the Sunshine Act, 65 Pa. C. S §§ 701-16.

- D. All Trustees and any person employed by the Trust shall be governed by and shall be considered Public Officials within the meaning of the Public Official and Employee Ethics Act, 65 Pa. C. S. §§1101-13 since such person's will be either an existing Public Officials or Public employees or appointed by Public Officials or appointed pursuant to this court order to perform a function administering a trust to protect the public interest.
- E. This Court shall maintain jurisdiction over the Trust and the funds it holds until the Trust is dissolved.
- F. Any beneficiary of the trust may file a complaint with the Board of Trustees if the beneficiary disputes an action by the Trust with regard to that individual beneficiary.
1. Such Complaint shall be in writing and the Board of Trustees must respond in writing to such beneficiary within 60 days of receipt of such complaint.
 2. If the Board of Trustees' response resolves the beneficiary's complaint, the beneficiary may petition this court for a resolution of its complaint.

3. No beneficiary shall have standing to challenge another beneficiary's use of funds under this order or the Trust action with regard to another beneficiary.
4. Nothing in this order shall change the requirements for SCAs under Federal or state laws.

IX. ATTORNEYS' FEES:

A. The methodology for the payment of Attorneys' Fees and expenses for the Distributors and Johnson & Johnson settlements only is set forth in Exhibit 4.

X. FORFEITURE & PENALTIES.

A. County Abatement Account Penalties:

1. Any County which agrees to participate in these Settlements will receive 70% of the amount allocated to it under the Intrastate Allocation Formula ("Allocated Share"). Such County may receive up to an additional 30% of its allocated share by securing the participation of its constituent subdivisions as participants in these Settlements as follows:

- a. Any County where all the Litigating Subdivisions and all subdivisions with a population greater than 30,000 agree to participate in the Settlement Agreements will receive an additional 20% of its allocated share.
- b. Any County where all the non-litigating subdivisions with a population greater than 10,000 agree to participate in the Settlement Agreements will receive an additional 10% of its allocated share.
- c. A subdivision which agrees to participate in either the Distributors Settlement Agreement or the J&J Settlement Agreement, but not the other, the payment to the County shall have its allocation reduced by 150% the pro-rata size of the settlement to which the subdivision did not agree.
- d. Funds withheld pursuant to this provision will be re-allocated to the Commonwealth Account.

B. Litigating Subdivision Penalties

1. Any Litigating Subdivision that fails to agree to participate in the Settlement Agreements shall receive nothing from the County Abatement Account, the Litigating Subdivision Account and shall not have any portion of its Attorney Fees or Costs paid out of those settlements.

C. Inappropriate Spending and Failure to File Reports.

1. If a County or Litigating Subdivision spends some or all of its funds in a way that is not in accordance with the requirements of Exhibit E to the Settlement Agreements or fails to provide the Board of Trustees with an annual report of its spending, the Board of Trustee shall withhold the next year's payments to such County or Subdivision. The County or Litigating Subdivision will have up to 3 months to cure the misspending or provide the annual report of its spending and receive its full payment. If it is not cured after 3 months, the Board of Trustees may reduce or withhold payments going forward, and re-allocate the difference to the Commonwealth Account.

So Ordered:



Exhibit 1

County shares have been determined based on a 4-metric formula, with the following weights:

- **All Overdose Deaths** – Number of all overdose deaths 2015-2019 as compiled by the CDC (40%)
- **OD-Related Hospitalizations** – Number of unique individuals hospitalized for any OD-related diseases 2016-2019 as compiled by the Pennsylvania Health Care Cost Containment Council (PHC4) via OpenDataPA (20%)
- **EMS Naloxone Administrations** -- Number of naloxone doses administered by Emergency Medical Services 2018-2020 as compiled by the Pennsylvania Department of Health (20%)
- **Adjusted MME** - Total Morphine Milligram Equivalents (MME) of prescription opioids dispensed by county 2006-2014 per ARCOS data, adjusted by the ratio of OD prevalence rate or the ratio of overdose deaths, whichever was higher per county (20%)

The resulting County shares are as follows:

County	4-Metric (MME Adjusted) Formula (unequal weights: (40-20-20-20)
Adams	0.344%
Allegheny	11.524%
Armstrong	0.606%
Beaver	1.274%
Bedford	0.192%
Berks	1.891%
Blair	0.807%

Bradford	0.225%
Bucks	5.803%
Butler	1.369%
Cambria	1.587%
Cameron	0.072%
Carbon	0.644%
Centre	0.250%
Chester	2.230%
Clarion	0.147%
Clearfield	0.299%
Clinton	0.105%
Columbia	0.328%
Crawford	0.671%
Cumberland	1.048%
Dauphin	1.611%
Delaware	6.468%
Elk	0.168%
Erie	2.051%
Fayette	1.348%
Forest	0.049%
Franklin	0.514%
Fulton	0.077%
Greene	0.205%
Huntingdon	0.179%
Indiana	0.683%

Jefferson	0.189%
Juniata	0.061%
Lackawanna	1.393%
Lancaster	2.266%
Lawrence	0.989%
Lebanon	0.603%
Lehigh	2.107%
Luzerne	3.282%
Lycoming	0.642%
McKean	0.180%
Mercer	0.931%
Mifflin	0.173%
Monroe	0.827%
Montgomery	5.047%
Montour	0.143%
Northampton	1.686%
Northumberland	0.578%
Perry	0.231%
Philadelphia	23.146%
Pike	0.283%
Potter	0.067%
Schuylkill	0.986%
Snyder	0.109%
Somerset	0.425%
Sullivan	0.050%

Susquehanna	0.166%
Tioga	0.149%
Union	0.082%
Venango	0.336%
Warren	0.139%
Washington	1.647%
Wayne	0.315%
Westmoreland	3.227%
Wyoming	0.204%
York	2.571%

Exhibit 2

[Year]

[County of _____][City of Philadelphia] Abatement Account
Certification

I, _____, on behalf of [the County of _____] [City of Philadelphia] hereby Certify that the County Abatement Funds received by [the County of _____] [the City of Philadelphia] will be used in a manner consistent with the Abatement uses described in Exhibit E to the Distributors and J&J Settlement Agreements and that the payee(s) and their addresses and the amount indicated are:

Payee:

Address:

Amount:

Date: County of _____

By: _____

Title: _____

[Date: City of Philadelphia

By: _____

Title: _____

Exhibit 3

[Year]

[County of _____][City of Philadelphia]Litigating Subdivision
Certification

I, _____, on behalf of [the County of _____] [City of Philadelphia] hereby certify that the Litigating Subdivision Funds received by [the County of _____] [the City of Philadelphia] will be used in a manner consistent with the Abatement uses described in Exhibit E to the Distributors and J&J Settlement Agreements and that the payee(s) and their addresses and the amount indicated are:

Payee:

Address:

Amount:

Date: County of _____

By: _____

Title: _____

[Date: City of Philadelphia

By: _____

Title: _____]

Exhibit 4

ORDER

AND NOW, this ____ day of December 2021, after review of the Motion to Establish a Pennsylvania Opioid Fee Fund, Appoint a Special Master to Determine and Disburse Fees, and Establish a Procedure for Reimbursing Counsel for Documented Expenses and Costs it is hereby **ORDERED** and **DECREED** as follows:

This Attorney Fee and Cost Order is entered into as an adjunct to the Pennsylvania Opioids Trust and Allocation Order entered in [INSERT CASE CAPTION] (the “Trust”) to which this is Exhibit 4. Attached as exhibits to this Attorney Fee and Cost Order are the National Janssen Settlement Agreement (Exhibit A), and the National Distributor Settlement Agreement (Exhibit B). Unless otherwise set forth herein, defined terms in this Attorney Fee and Cost Order shall have the same meanings in the National J&J and Distributor Settlement Agreements and the Trust.

I. Establishment of Pennsylvania Opioid Fee Fund

Consistent with the terms of the Trust, an attorney fee fund shall be established and held in a separate account, to be held and disbursed in a manner consistent with the terms of this Attorney Fee and Cost Order (the “Pennsylvania Opioid Fee Fund”).

A. Amount and Timing of Payments to Establish the Fund

The amount of the Pennsylvania Opioid Fee Fund shall be equal to 6.6% of all base and bonus payments governmental entities will receive in the Commonwealth of Pennsylvania over the course of all payment years under the J&J/Janssen and Distributor Settlement Agreements.

With respect to the timing, although the payment terms from the Settling Defendants extend over an eighteen year period, if the Commonwealth of Pennsylvania is eligible for “Incentive A” under the J&J and Distributor Settlements, the Pennsylvania Opioid Fee Fund shall be funded in its entirety in the first three years, under the following payment schedule: 50% paid in settlement payment year one; 25% paid in settlement

payment year two; and 25% in paid in settlement payment year three.¹ Alternatively, if the Commonwealth of Pennsylvania is not eligible for Incentive A, the Pennsylvania Opioid Fee Fund shall be funded in its entirety in the first five years, with equal payments made in each settlement payment year, understanding that if Incentive A is not achieved, participation levels in the Commonwealth may increase in subsequent years, which may result in an increase in the overall funds to the Commonwealth and a corresponding increase of the Pennsylvania Opioid Fee Fund, causing some fluctuation in the amount of the payment each year such that each payment is not equal.²

As discussed in detail below, in order to be eligible to participate in the Pennsylvania Opioid Fee Fund, counsel must agree to waive enforcement of their fee contracts with respect to the Pennsylvania clients for whom they are seeking to recover fees. If certain counsel do not agree to waive their fee agreements with respect to 10.01% to 25% of the clients (measured by population), the amount of the Pennsylvania Opioid Fee Fund shall be reduced on a dollar-for-dollar basis, based on the percentage of the eligible population who do not agree to waive their fee contracts.³ If 10% or fewer of the counsel for Pennsylvania clients (measured by population of the clients for whom counsel is not participating) do not agree to waive their fee, the amount of the Pennsylvania Opioid Fee Fund shall not be reduced. If greater than 25% of the clients (measured by participation of the clients for whom counsel is not participating) do not agree to waive their fee, there will

¹ For illustrative purposes only, if the Commonwealth will receive \$1,000,000,000 in payments from the settlements, with Incentive A, the Pennsylvania Opioid Fee Fund will receive \$66,000,000 total, with \$33,000,000 paid in payment year one, \$16,500,000 paid in payment year two, and \$16,500,000 paid in payment year three.

² For illustrative purposes only, if the Commonwealth will receive \$900,000,000 in payments from the settlements, without Incentive A, the Pennsylvania Opioid Fee Fund will receive \$59,400,000 total, with \$11,880,000 paid in payment year one, \$11,880,000 paid in payment year two, \$11,880,000 paid in payment year three, \$11,880,000 paid in payment year four, and \$11,880,000 paid in payment year five, but if participation levels increase, the payment amounts in payment years three to five may increase and not be equal.

³ For illustrative purposes only, if the Pennsylvania Opioid Fee Fund is to be funded at \$66,000,000, but 15% of the eligible clients, by population, do not agree to waive their contracts and participate in the fund, then the amount of the fund shall be reduced by \$9,900,000, for a total of \$56,100,000.

be no further reductions to the amount of the fund beyond those that occur for greater than 10% up to 25%.

B. The Pennsylvania Opioid Fee Fund Shall Be a Qualified Settlement Fund

The Pennsylvania Opioid Fee Fund shall constitute a single qualified settlement fund within the meaning of section 468B of the Internal Revenue Code of 1986, as amended, and Treasury Regulation Sections 1.468B-1, *et seq.* and will be disbursed consistent with the terms of this order, and will remain subject to the continuing and exclusive jurisdiction of this Court:

All amounts deposited in the Pennsylvania Opioid Fee Fund shall be invested conservatively in a manner designed to assure timely availability of funds, protection of principal and avoidance of concentration risk. All payments into the Pennsylvania Opioid Fee Fund, and any interest thereon, will be held until disbursed in a manner consistent with this Order. No distributions shall be made from the Pennsylvania Opioid Fee Fund except through the process established by this Order. No parties or their counsel shall be considered to be in constructive receipt, as determined under federal income tax principles, of any amounts held by the Pennsylvania Opioid Fee Fund.

II. Appointment of Special Master and Administrator

The Court hereby appoints, retired Judge Mark Bernstein as Special Master, to oversee and allocate the Pennsylvania Opioid Fee Fund, and [INSERT] as Administrator to oversee administration and administrative costs of the Fund.

[INSERT RE BACKGROUND/EXPERIENCE OF SPECIAL MASTER AND ADMINISTRATOR]

The Special Master shall be responsible for designing and implementing processes and procedures for the allocation of fees, costs, and expenses, consistent with the criteria set forth in this Order. Subject to review by this Court under an abuse of discretion standard, the Special Master shall have the sole authority for making decisions regarding allocations, disbursements, and payments from the Pennsylvania Opioid Fee Fund.

The Administrator shall assist the Special Master and shall be responsible for making any necessary tax filings and payments of taxes, estimated taxes, and associated interest and penalties, if any, by the Pennsylvania Opioid Fee Fund. The Administrator shall be responsible for responding to any questions from, or audits regarding such taxes by, the Internal Revenue Service or any state or local tax authority, as well as questions from the Department of Labor. The Administrator shall also be responsible for complying with all tax information reporting and withholding requirements with respect to payments made by the Pennsylvania Opioid Fee Fund, as well as paying any associated interest and penalties. All such tax, interest, and penalty payments and all expenses and costs incurred in connection with taxation of the Pennsylvania Opioid Fee Fund (including, without limitation, expenses of tax attorneys and accountants) shall be paid from the Pennsylvania Opioid Fee Fund and shall be considered administrative costs. The Administrator will obtain a Federal Taxpayer Identification Number for the Fund upon entry of an order by this Court establishing the Fund. The Administrator shall be authorized, upon final distribution of all monies paid into the Fund to take appropriate steps to wind down the Fund and thereafter be discharged from any further responsibility with respect to the Fund.

The services of the Special Master, the Administrator, and any vendors and services they determine to be necessary and appropriate to conduct and complete their work, shall be paid or reimbursed from the Pennsylvania Opioid Fee Fund.

As a threshold step in the fee allocation process, the Special Master shall allocate a portion of the Pennsylvania Opioid Fee Fund that will be used exclusively for the payment of common benefit fee awards, with the remaining portion to be used for contingency fee awards.

III. Awards for Common Benefit Fees

With respect to the common benefit portion of the Pennsylvania Opioid Fee Fund, the Court hereby directs the Special Master to: (1) set up a process to receive requests for common benefit fees and set forth the required materials to be provided to the Special Master in connection with fee requests; (2) make a preliminary recommendation on the distribution of common benefit fees; and (3) address any requests to be heard regarding that preliminary recommendation by attorneys that sought common-benefit fees and then, make a final determination regarding the distribution of common

benefit fees to qualifying counsel. This Court may review the final determination of an approved distribution of any common benefit funds. Any review by this Court of an award made by the Special Master concerning the common benefit funds shall be under an abuse of discretion standard.

Counsel shall only be eligible to apply for common benefit fees concerning work incurred in connection with the representation of Pennsylvania clients who filed cases in the Unified Judicial System of Pennsylvania and executed Participation Agreements to participate in the J&J and Distributor Settlements. If counsel represents clients whose cases are pending in federal court in MDL 2804 or who do not participate in the J&J and Distributor Settlements, counsel may not be awarded common benefit fees for work incurred in connection with representation of those clients.

In making determinations for payments for common benefit fees, the Special Master shall give consideration to the factors set forth in [Insert Pennsylvania case citations regarding fee awards to be provided by the AGO], as these have been applied and interpreted by courts with reference to common benefit and other court-awarded fees, as well as the following factors, which may be applied and given relative weight in the Special Master's discretion:

- the applicant's contemporaneously recorded time and labor dedicated to Pennsylvania Participating Subdivisions. Claimed "time" shall not be automatically accepted by the Special Master but shall be critically reviewed. Time and labor incurred by contract lawyers for document review shall not be included in connection with any applicant's request for common benefit fees, but rather such time shall be submitted as an expense, for the actual cost of those services;
- the novelty, time, and complexity of the work performed for Pennsylvania Participating Subdivisions;
- the preclusion of other employment by the applicant due to time dedicated to Pennsylvania Participating Subdivisions;
- the "common benefit," if any alleged to have been conferred by the applicant with respect to the coordinated proceedings pending before this Court;

- the amount of the expenditures paid by the applicant which were necessary to prosecute the applicant's case(s);
- the experience, reputation, and ability of the applicant;
- the status of discovery in the cases primarily handled by the applicant in the coordinated proceedings pending before this Court;
- the nature of any work by the applicant on "bellwether" cases or cases that were similarly active in the coordinated proceedings pending before this Court;
- any pressure points successfully exerted by the applicant in cases against the Settling Defendants or any risk for Settling Defendants created by the applicant in cases against them in the coordinated proceedings pending before this Court;
- any risk for defendants created by applicants in cases against the Settling Defendants in the coordinated proceedings pending before this Court;
- successful and unsuccessful motion practice in cases worked on by the applicant in the coordinated proceedings pending before this Court;
- the date of filing of any cases filed by the applicant in the coordinated proceedings pending before this Court;
- the number and population of entities represented by the applicant and the fees that would have been awarded under the extinguished contingent fee agreements with respect to the applicant's Pennsylvania Participating Subdivisions;
- whether the applicants' Pennsylvania Participating Subdivision clients brought claims against the Settling Defendants;
- whether the applicant has had a leadership role in the coordinated proceedings pending before this Court;

- whether the applicant has had a leadership role in any negotiations aimed at resolving the litigation in the coordinated proceedings pending before this Court; and
- any other factors that the Special Master finds to be appropriate to consider.

IV. Fee Awards Based on Contingent Fee Contracts

With respect to the contingent fee portion of the Pennsylvania Opioid Fee Fund, the Special Master is directed to establish and implement procedures for the distribution fees to compensate eligible counsel for work on behalf of Pennsylvania Participating Litigating Subdivisions, in lieu of enforcement of contingency fee contracts. As part of that process, counsel submitting fee petitions for each Participating Litigating Subdivision shall represent they waive enforcement rights against the subdivision clients of all contracts entered into in conjunction with the representation of Pennsylvania clients for whom they are seeking to recover contingency fees, prior to applying for contingency fees from the Pennsylvania Opioid Fee Fund. With respect to contingency fee awards from the Pennsylvania Opioid Fee Fund, any counsel who represents Pennsylvania clients who executed Participation Agreements to participate in the J&J and Distributor Settlements shall be eligible to apply for contingency fees, regardless of the jurisdiction where they filed their cases, provided they comply with the other requirements in this Attorney Fee and Expense Order.

Awards of contingency fees shall be made by applying a mathematical model identical or substantially similar to the Mathematical Model attached as part of Exhibit R to the National Settlement Agreements (see Distributor Settlement Agreement at pp. R-22 to R-25 (the “Mathematical Model”) to the Pennsylvania Participating Subdivisions that are part of the coordinated proceedings pending before this Court. Awards of contingency fees made by the Special Master shall be based exclusively on (1) the settlement amount that will be received by each participating Pennsylvania Litigating Subdivision, the terms of each participating Pennsylvania Litigating Subdivision’s contingency fee contract, and the filing date for each participating Pennsylvania Litigating Subdivision. No other factors or subjective criteria may be used by the Special Master in calculating contingency fee awards. The Special Master is encouraged to work with counsel who developed the above referenced the Mathematical Model. The Special Master shall oversee the application of the Mathematical Model and

resolve any questions or disputes concerning eligibility. The Special Master is empowered to hear disputes concerning and ensure the accuracy of the mathematical calculation. As to awards from the Contingency Fee Fund, there shall be no right of appeal.

V. Reimbursement of Costs and Expenses

Consistent with the terms of the Trust, the Trust shall reimburse counsel, from the opioid settlement funds held by the Trust, for documented costs and expenses incurred in connection with the representation of Pennsylvania clients who filed cases in the Unified Judicial System of Pennsylvania and executed Participation Agreements to participate in the J&J and Distributor Settlements. Counsel submitting requests for costs and expenses from the Trust must first apply to the cost fund established in connection with the Distributor and J&J Settlements in the “MDL Fees and Cost Funds. To the extent that counsel are not fully reimbursed by the MDL Cost Fund for costs and expenses incurred the representation of Pennsylvania clients who filed cases in the Unified Judicial System of Pennsylvania and executed Participation Agreements to participate in the J&J and Distributor Settlements, including costs for document review by contract attorneys, the Trust shall reimburse counsel for such costs and expenses from the opioid settlement funds held by the Trust. Cost and expense payments may not be funded from the Pennsylvania Opioid Fee Fund. With respect to the timing of cost and expense payments, the Trust shall pay counsel within a reasonably prompt time following the receipt of a request from counsel that complies with the terms of this Attorney Fee and Expense Order. To the extent assistance is requested from the Trust to further the purpose of this Attorney Fee and Expense Order, the Special Master is authorized to retain and utilize, under his supervision, accountants and/or other professionals and vendors, as necessary and appropriate, to assist in the administration and distribution of expenses.

VI. Miscellaneous

To prevent insolvency of the Pennsylvania Opioid Fee Fund, no award shall be made until all applications have been received and award amounts for each applicant are finalized.

BY THE COURT:
