

**MEMORANDUM OF UNDERSTANDING  
BETWEEN THE STATE OF MISSOURI AND ITS POLITICAL SUBDIVISIONS  
ON PROCEEDS RELATING TO THE SETTLEMENT OF OPIOID LITIGATION**

**A. General Principles**

1. WHEREAS, the people of the State of Missouri have been harmed by a national and state-wide opioid epidemic caused, in part, by fraudulent marketing and licit and illicit opioid use and distribution throughout the State of Missouri;

2. WHEREAS, the State of Missouri and its political subdivisions share a common desire to abate and alleviate the impacts of the opioid epidemic in Missouri;

3. WHEREAS, the structure of settlements with certain pharmaceutical supply chain entities currently facing investigations and litigation in Missouri and throughout the country will take the form of national settlement agreements with Missouri receiving a share of the proceeds of those national agreements to abate the opioid crisis within Missouri;

4. WHEREAS, Missouri's share of settlement funds from certain national settlement agreements will be maximized only if all necessary Missouri political subdivisions participate; and

5. WHEREAS, Missouri and certain of its political subdivisions enter into this Memorandum of Understanding ("MOU") to maximize and facilitate the distribution of the proceeds of national settlement agreements allocated to the State of Missouri.

**B. Definitions**

***Settlement Fund Definitions***

6. "J&J National Settlement" means a national settlement agreement with Johnson & Johnson and its related corporate entities concerning alleged misconduct in the manufacture, marketing, promotion, distribution, and dispensing of opioids.

7. "Distributor National Settlement" means a national settlement agreement with pharmaceutical distributors AmerisourceBergen, Cardinal Health, McKesson, and their related corporate entities concerning alleged misconduct in the marketing, promotion, distribution, and dispensing of opioids.

8. "Purdue Bankruptcy Settlement" means any national settlement with non-federal government entities, including states and their political subdivisions, in the Purdue Bankruptcy Plan as approved by the Court in *In re: Purdue Pharma, L.P.*, Case No. 19-23648, which is pending in the United States Bankruptcy Court for the Southern District of New York.

9. "Mallinckrodt Bankruptcy Settlement" means any national settlement with non-federal government entities, including states and their political subdivisions, in the Mallinckrodt Bankruptcy Plan as approved by the Court in *In re: Mallinckrodt plc*, Case No. 20-12522, which is pending in the United States Bankruptcy Court for the District of Delaware.

10. “J&J Settlement Funds” shall mean monetary amounts allocated to the State of Missouri and its political subdivisions in the J&J National Settlement.

11. “Distributor Settlement Funds” shall mean monetary amounts allocated to the State of Missouri and its political subdivisions in the Distributor National Settlement.

12. “Opioid Settlement Funds” refers collectively to the J&J Settlement Funds and the Distributor Settlement Funds.

13. “Purdue Settlement Funds” shall mean monetary amounts allocated to the State of Missouri and its political subdivisions in the Purdue Bankruptcy Settlement.

14. “Mallinckrodt Settlement Funds” shall mean monetary amounts allocated to the State of Missouri and its political subdivisions in the Mallinckrodt Bankruptcy Settlement.

15. “Bankruptcy Settlement Funds” refers collectively to the Purdue Settlement Funds and the Mallinckrodt Settlement Funds.

16. “National Settlements” collectively means the Settlement Agreements governing the J&J National Settlement, the Distributor National Settlement, the Purdue Bankruptcy Settlement, and the Mallinckrodt Bankruptcy Settlement.

17. “Settlement Funds” refers collectively to Opioid Settlement Funds and Bankruptcy Settlement Funds.

***Political Subdivision and Share Definitions***

18. “Political Subdivisions” means all political subdivisions of the State of Missouri.

19. “Non-Litigating Subdivisions” or “NLS” means Political Subdivisions with a population of 10,000 or more individuals, according to Exhibit G to the J&J National Settlement and the Distributor National Settlement, that did not initiate opioid-related litigation on or before January 1, 2021.

20. “Litigating Subdivisions” or “LS” means Political Subdivisions that initiated opioid-related litigation on or before January 1, 2021.

21. “State Share” refers to the amount of the Settlement Funds allocated to the State of Missouri to be used in accordance with Mo. Stat. Ann. § 196.1050.

22. “Non-Litigating Subdivisions Share” or “NLS Share” refers to the amount of the Settlement Funds allocated to Non-Litigating Subdivisions. The Non-Litigating Subdivisions Share shall be distributed according to Exhibit G to the J&J National Settlement and the Distributor National Settlement.

23. “Litigating Subdivisions Share” or “LS Share” refers to the amount of the Settlement Funds allocated to Litigating Subdivisions.

24. "Approved Uses" shall mean those uses identified in the J&J National Settlement and the Distributor National Settlement.

**C. Allocation of Opioid Settlement Funds (J&J and Distributor)**

25. The Opioid Settlement Funds (applying to the J&J Settlement Funds and the Distributor Settlement Funds only) shall be divided as follows:

60% to the State Share, and

40% to the Litigating Subdivisions Share.

26. Non-Litigating Subdivisions shall receive the same allocation they would have received under the default provisions of the National Settlements, and distributed according to Exhibit G to the J&J National Settlement and the Distributor National Settlement. Thus, Non-Litigating Subdivisions shall receive the same amount under Exhibit G they would have received as if 15% of the Opioid Settlement Funds had been allocated to all Political Subdivisions.

27. The Non-Litigating Subdivisions Share of the Opioid Settlement Funds shall be deducted from the State Share; it shall not be deducted from the Litigating Subdivisions Share. The Non-Litigating Subdivisions Share shall be paid directly to them by the national administrator and shall not be deposited into accounts for the State of Missouri.

28. All Opioid Settlement Funds allocated to the State Share shall be deposited into the Opioid Addiction Treatment and Recovery Fund and used only for Approved Uses consistent with the provisions of Mo. Stat. Ann. § 196.1050.

29. Any Political Subdivision that cannot use its Opioid Settlement Funds for Approved Uses as required by this MOU may remit their allocated share of Opioid Settlement Funds to the State to be deposited in the Opioid Addiction Treatment and Recovery Fund.

**D. Allocation of Bankruptcy Settlement Funds (Purdue and Mallinckrodt)**

30. The Bankruptcy Settlement Funds (applying to the Purdue Settlement Funds and Mallinckrodt Settlement Funds only) shall be divided as follows:

85% to the State Share, and

15% to the Litigating Subdivisions Share.

31. The question of whether the Sackler family can and should be shielded from opioid-related litigation by the Purdue Bankruptcy Settlement is currently under appellate review. In the event that the appellate court removes the Purdue Bankruptcy Settlement protections for the Sackler family and its members and those individuals become vulnerable to opioid-related litigation, then the division outlined in paragraph 30 related to the Sackler family portion of the Purdue Bankruptcy Settlement shall be null and void. If this contingency occurs, then the Sackler family portion of the Purdue Settlement Funds shall be subject to further negotiation between the State of Missouri and Political Subdivisions.

32. All Bankruptcy Settlement Funds allocated to the State Share shall be deposited into the Opioid Addiction Treatment and Recovery Fund and used only for Approved Uses consistent with the provisions of Mo. Stat. Ann. § 196.1050.

33. Any Political Subdivision that cannot use its Bankruptcy Settlement Funds for Approved Uses as required by this MOU may remit their allocated share of Bankruptcy Settlement Funds to the State to be deposited in the Opioid Addiction Treatment and Recovery Fund.

**E. Attorneys' Fees for Litigating Subdivisions—Applicable to Opioid Settlement Funds and Bankruptcy Settlement Funds**

34. No portion of any Settlement Funds allocated to the State Share or Non-Litigating Subdivisions Share shall be used for attorneys' fees. Instead, any attorneys' fees payable from the Settlement Funds shall be deducted exclusively from the Litigating Subdivisions Share.

35. A Local Government Cost and Fee Fund ("LGCFF") will be created to resolve Litigating Subdivisions attorneys' fees and litigation expense obligations with contingency fee counsel who filed opioid lawsuits on or before January 1, 2021 and who represent Litigating Subdivisions who are eligible for direct payments under this Memorandum.

36. Any contingency-fee counsel retained by Litigating Subdivisions who are eligible for direct payments under this Memorandum must first seek recovery from an attorneys' fee fund established in the National Settlements.

37. The amount of the LGCFF shall be equal to 9% of the Litigating Subdivisions Share under this Memorandum.

38. Under no circumstances may counsel collect more for its work on behalf of a Litigating Subdivision than the attorneys' fees authorized by the MDL Court's order in the national opioids MDL proceedings. *See Order, In re National Prescription Opiate Litigation*, Case No. 17-MD-2804 (MDL 2804) (N.D. Ohio) (August 6, 2021) (Doc. 3814).

39. The amount and timing for the payments to counsel under this Memorandum shall be consistent with the percentages and timing set forth in Exhibit R § (II) (A) (1) of the Distributor National Settlement and Exhibit R § (II) (A) (1) of the J&J National Settlement.

40. Any funds remaining in the LGCFF beyond what is required to pay contingency counsels' fees and expenses for Litigating Subdivisions who are eligible for direct payments under this Memorandum shall revert to the Litigating Subdivision Share to be used for Approved Purposes as set forth in this agreement.

**F. Compliance Reporting and Accountability—Applicable to Opioid Settlement Funds and Bankruptcy Settlement Funds**

41. Any recipient of Settlement Funds pursuant to this MOU shall maintain, for a period of at least three years or a period of time required by any record retention laws, whichever is longer, records of abatement expenditures and documents underlying those expenditures, so that

it can be verified that funds are being or have been utilized in a manner consistent with the Approved Uses.

42. Each recipient of Settlement Funds shall provide to the General Assembly a report detailing for the preceding year (1) the amount of Settlement Funds received; (2) a detailed reporting of how any Settlement Funds were spent, including, but not limited to, an itemization of the person or entity to whom the funds were paid and the program, service, or product for which the funds were used; and (3) whether or not the expenditure fits within an Approved Use and identify such Approved Use. The State, through its relevant agencies, shall publish on its website the reports described above.

43. Each recipient of Settlement Funds shall comply with the auditing and reporting provisions set forth in the National Agreements, including but not limited to, cooperating with the Settlement Fund Administrator, the Enforcement Committee, and the Settling Distributors. *See, e.g.,* Distributor National Settlement at V.E.3 and Janssen National Settlement at VI.E.3.

**G. Applicability and Effective Date—Applicable to Opioid Settlement Funds and Bankruptcy Settlement Funds**

44. This MOU is meant to serve as a State Subdivision Agreement under the J&J National Settlement and the Distributor National Settlement.

45. This MOU is meant to serve as a Statewide Abatement Agreement in the Purdue Bankruptcy Settlement and the Mallinckrodt Bankruptcy Settlement.

46. This MOU is contingent on achieving participation from all Litigating Subdivisions, meaning Missouri receives its full available allocation of \$457.6 million and/or the Litigating Subdivisions receive an allocation no less than \$183 million. If all Litigating Subdivisions do not participate and the allocations noted above are not achieved, then this MOU becomes null and void.

47. The Parties agree to use their best efforts and cooperate in good faith to achieve 100% participation by Non-Litigating Subdivisions in Missouri necessary to achieve all available incentives under the National Settlements.

48. The provisions relating to the Bankruptcy Settlement Funds in this MOU shall become binding upon the Effective Date in the Purdue Bankruptcy Settlement and/or the Mallinckrodt Bankruptcy Settlement.

49. If any settlement addressed herein proceeds as to Missouri and the events set forth herein occur, but on different dates, the Effective Date shall be the earlier date.

50. This MOU does not automatically apply to future national settlements with opioid manufacturers, distributors, or other opioid-related Defendants not named herein. It will only apply to such settlements if the State and Political Subdivisions agree in a separate written MOU or other Agreement executed by the applicable parties.

51. The parties acknowledge that this MOU does not excuse any requirements placed upon them by the terms of any national settlement agreement, except to the extent those terms allow for a State-Subdivision Agreement to do so, or as required by state law.

**H. Enforceability & Implementation—Applicable to Opioid Settlement Funds and Bankruptcy Settlement Funds**

52. No person or entity is intended to be a third-party beneficiary of this MOU. Only the State and Political Subdivision signatory parties can enforce the terms of this MOU.

53. Unless required otherwise by a National Settlement or any court order, this MOU shall be interpreted using Missouri law. Any dispute between (1) on one hand, a settling Defendant in the National Settlements, and (2) on the other hand, either the State of Missouri and/or a Political Subdivision related to the provisions of this MOU must be adjudicated by the St. Louis City Circuit Court in the State of Missouri.

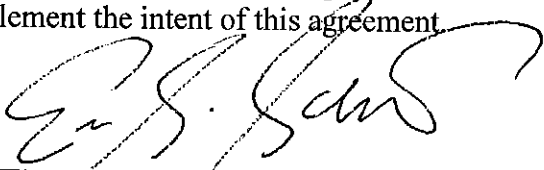
Any dispute related to the provisions of this MOU between (1) on one hand, the State of Missouri, and (2) on the other hand, a Political Subdivision, must be adjudicated by the Missouri circuit court that encompasses the defending party (i.e, the party that did not initiate the litigation).<sup>1</sup>

54. If any provision of this MOU is held invalid by any court of competent jurisdiction, this invalidity does not affect any other provision which can be given effect without the invalid provision.

55. This MOU may be signed and executed simultaneously in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same agreement. A signature transmitted by facsimile or electronic image shall be deemed an original signature for purposes of executing this MOU.

56. Each person signing this MOU represents that he or she is fully authorized to enter into the terms and conditions of, and to execute, this MOU on behalf of the Political Subdivision he or she represents, and that all necessary approvals and conditions precedent to his or her execution have been satisfied.

57. The Parties agree to consider in good faith any amendments as necessary to implement the intent of this agreement.



ERIC S. SCHMITT  
Attorney General of the State of Missouri

Date: 2/18/22

<sup>1</sup> For the City of Kansas City, Missouri, that circuit court is the court situated in Jackson County, Missouri (Sixteenth Judicial Circuit).

**ADDITIONAL SIGNATURE PAGE TO**

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BETWEEN THE STATE OF MISSOURI AND ITS POLITICAL SUBDIVISIONS ON  
PROCEEDS RELATING TO THE SETTLEMENT OF OPIOID LITIGATION**

I have all necessary power and authorization to sign and execute this MOU on behalf of

\_\_\_\_\_  
(political subdivision(s))

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_