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January 20, 2023

## GENERAL MEMORANDUM 23-001

### Tribes and Alaska Tribal Health Organizations Eligible to Participate in Five New Tribal Opioid Settlements Totaling Nearly \$550 Million

Directors of the Tribal Settlement Trusts for the National Prescription Opiate Multi-District Litigation (MDL) recently released a Notice to all federally recognized Tribes and Alaska Tribal Health Organizations to inform them of their eligibility to participate in five new tribal opioid settlements negotiated by the court-appointed Tribal Leadership Committee (TLC). The proposed settlements will resolve tribal opioid claim against MDL Defendants Teva Pharmaceuticals, Allergan, Walmart, CVS, and Walgreens. Combined with the previously announced settlements and bankruptcy resolutions, these tribal opioid settlements will collectively bring over \$1 billion to combat the opioid epidemic in Indian Country over the next decade.

The Notice to All Federally Recognized Tribes from the settlement trust Directors explaining the details of these settlements, as well as participation forms for each of the settlements can be found [here](#). Additional information, including the full executed Master Settlement Agreement for each settlement, can be found online at [www.tribalopioidsettlements.com](http://www.tribalopioidsettlements.com). All federally recognized Tribes as well as Alaska tribal health organizations are eligible to participate in the settlements. Tribes have three years from the effective date of the settlements to join by submitting a signed participation form for each settlement. However, the sooner a Tribe joins, the sooner it can begin receiving settlement distributions for opioid abuse prevention and abatement. The key financial terms of each settlement are summarized below.<sup>1</sup>

- *Teva & Allergan Settlements:* Allergan has agreed to pay \$70,945,809.89 over seven annual payments to settle filed and potential tribal opioid claims against it, while Teva has agreed to pay \$119,181,538.15 over thirteen annual payments. Teva has also agreed to provide tribes with 200,000 Naloxone Hydrochloride Nasal Spray 2-dose kits over the course of 10 years (20,000 kits each year).

These two agreements were finalized together, as they depend on an indemnification agreement between the two defendants. Additionally, we note that there is *one* participation form for these two settlements, and that participating tribes and tribal organizations must participate in both settlements (or neither).

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<sup>1</sup> The amounts listed below for Walmart, CVS, and Walgreens do not include amounts to be paid under separate agreements to settle the Cherokee Nation's bellwether lawsuit against them.

- Walmart Settlement: Walmart has agreed to pay \$77,939,879 to settle the tribal claims against it. Walmart will pay the entire settlement amount in one lump sum to the Tribal Abatement Fund Trust ten days after reaching Effective Date.
- CVS Settlement: CVS has agreed to pay \$130,344,085.26, to be paid out in ten annual payments, to settle the tribal claims against it.
- Walgreens Settlement: Walgreens has agreed to pay \$148,356,029.40, to be paid out in fifteen annual payments, to settle the tribal claims against it.

The settlements will go into effect only once certain tribal participation thresholds are reached. For most of the settlements, 95% of Tribes and tribal organizations that have filed cases in the MDL, as measured by allocation share of the settlement allocation adopted in a separate bankruptcy proceeding involving Purdue pharma, must submit participation forms. The one exception is the Walmart settlement, which will become effective once 85% of litigating Tribes and tribal organizations, as measured by “Purdue allocation” share, have submitted participation forms.<sup>2</sup>

Each of the settlement trusts will be administered by the same three settlement Directors: Mary Smith, Kevin Washburn, and Kathy Hannan, or their successors, in partnership with the MDL court-appointed Special Master (David Cohen) who will handle certain ministerial tasks. The settlement terms provide that 85% of the total payment amounts shall be distributed to participating tribes and tribal organizations and must be used for remediation and abatement of the opioid crisis, while the remaining 15% may be used to cover litigation fees and costs. All of the settlements adopt the same broad definition and list of approved abatement uses, which include traditional healing and other culturally appropriate activities.<sup>3</sup> Participating tribes and tribal organizations will be required to submit annual reports certifying that the funds were used for approved abatement purposes.

All of the settlements will utilize the same final settlement allocation formula. The MDL court appointed Special Master David Cohen and former federal Judge Layn Phillips to consider tribal input and approve a final allocation formula for the settlements. Last fall, Special Master Cohen and Judge Phillips solicited feedback on the previously adopted “Purdue allocation,” and are now in the process of applying that feedback to approve a final allocation for these recent settlements as well as the prior J&J and Distributor settlements. The final allocation formula will likely be announced following the effective date of the settlements, and will be posted on the [settlement website](#) when available.

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<sup>2</sup> This allocation formula (the “Purdue Allocation”) is applicable only for purposes of meeting participation thresholds, and is posted on the settlement website at: <https://www.tribalopioidsettlements.com/Documents>.

<sup>3</sup> The full list of approved uses was first adopted in the Purdue bankruptcy and is available for review on the website at: [https://www.tribalopioidsettlements.com/Documents/Purdue\\_Approved\\_Uses\\_and\\_Tribal\\_Abatement.pdf](https://www.tribalopioidsettlements.com/Documents/Purdue_Approved_Uses_and_Tribal_Abatement.pdf).

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The Tribal Leadership Committee has set a goal to reach participation thresholds for these new settlements by the end of January, 2023, to expedite payment of the first settlement distribution. If you have any questions about the settlements, or would like assistance submitting participation forms, please reach out to us. You can reach Geoff Strommer ([gstrommer@hobbsstrauss.com](mailto:gstrommer@hobbsstrauss.com) or 503-242-1745), Ed Clay Goodman ([egoodman@hobbsstrauss.com](mailto:egoodman@hobbsstrauss.com) or 503-242-175), or Caroline Mayhew ([cmayhew@hobbsstrauss.com](mailto:cmayhew@hobbsstrauss.com) or 202-822-8282) with any questions.