

City of Fort Lauderdale

*City Hall
100 North Andrews Avenue
Fort Lauderdale, FL 33301
www.fortlauderdale.gov*



Meeting Minutes

Tuesday, January 23, 2018

12:00 PM

Opioid Litigation Proposals

City Commission Conference Room

CITY COMMISSION - SPECIAL MEETING

FORT LAUDERDALE CITY COMMISSION

***JOHN P. "JACK" SEILER Mayor - Commissioner
BRUCE G. ROBERTS Vice Mayor - Commissioner - District I
DEAN J. TRANTALIS Commissioner - District II
ROBERT L. McKINZIE Commissioner - District III
ROMNEY ROGERS Commissioner - District IV***

***LEE R. FELDMAN, City Manager
JOHN HERBST, City Auditor
JEFFREY A. MODARELLI, City Clerk
CYNTHIA A. EVERETT, City Attorney***

ROLL CALL

Present 5 - Commissioner Dean J. Trantalis, Commissioner Robert L. McKinzie, Commissioner Rogers, Vice Mayor Bruce G. Roberts and Mayor John P. "Jack" Seiler

QUORUM ESTABLISHED

Also Present: City Manager Lee R. Feldman, City Clerk Jeffrey A. Modarelli, City Attorney Cynthia A. Everett and City Auditor John Herbst

No e-comments were submitted for this meeting.

CALL TO ORDER

Mayor Seiler called the meeting to order at 12:10 p.m.

PRESENTATIONS

[18-0121](#)

Presentations - Opioid Litigation Proposals

1. Haliczzer Pettis & Schwamm, P.A.
2. Kelley Uustal, PLC
3. Motley Rice, LLC
4. Levin, Papantonio, Thomas, Mitchell, Rafferty & Proctor, P.A.
5. Simmons Hanly Conroy, LLC

Mayor Seiler stated the purpose of the meeting is to determine the City's legal representation for opioid litigation. He acknowledged ongoing efforts by Fire and Police Department personnel to address street drugs and the current opioid crisis, commenting on the impact on City resources and the community.

Mayor Seiler thanked Staff for their work to bring this issue forward to pursue litigation. There will be five legal teams presenting to the Commission. The five legal teams are comprised of trial attorneys from law firms specializing in this type of litigation.

In response to Mayor Seiler, the legal teams confirmed there were no substantive changes to information provided to the Commission last Thursday.

1. Haliczzer Pettis & Schwamm, P.A.

Mayor Seiler recognized Robert "Bobby" Gilbert, Esq., Kopelowitz Ostrow, Coral Gables, Florida, and member of the Haliczzer Pettis legal team. Mr. Gilbert introduced those present from the Haliczzer Pettis Multi-District Litigation (MDL) legal team.

Mayor Seiler recognized Eugene K. Pettis, Esq., Haliczzer Pettis & Schwamm, P.A. Mr. Pettis discussed his legal team's qualifications and national prominence. He also commented on the significance of two members of this team being members of the MDL Plaintiff's Executive Committee (PEC). The PEC manages the MDL litigation. All of his team's members are from Florida based law firms.

Mr. Pettis commented on the importance of the MDL legal team's local roots in representing the community and his representation of the City on numerous matters over the past 15 years. Mr. Pettis discussed the negative impact of opioids in the community due to the actions of pharmaceutical companies and their distributors. He commented on costs associated with the opioid crisis, his team's work with various municipalities across the county and the importance of knowing how to work with Staff to determine the numerous levels of costs.

Mr. Pettis expounded on his team's qualifications, discussing their successful legal experience in closing the "pill mills" in Broward County. Mr. Pettis emphasized that the opioid problem is a local community problem and his team will bring the necessary expertise to the table.

Mayor Seiler recognized Paul Geller, Robbins Geller Rudman & Dowd LLC, Boca Raton, Florida. Mr. Geller addressed the Commission on his current experience in representing the City on litigation involving its employee pension benefits as compared the importance of this opioid litigation and its negative impact on people without regard to socio-economic factors. Mr. Geller confirmed the Haliczzer Pettis MDL legal team was selected by Broward County (County) to represent them in their opioid litigation, commenting on the synergy between the County and the City.

Mayor Seiler recognized Mr. Pettis who expounded on the County's vetting process, confirming the Haliczzer Pettis MDL legal team was ranked number one and was selected in a 6-2 vote to represent the County in the MLD opioid litigation.

Mayor Seiler recognized Elizabeth Cabraser, Esq., Lief Cabraser

Heimann & Bernstein LLP, San Francisco, California, and member of the Haliczzer Pettis MDL legal team. Ms. Cabraser confirmed representation of the City of Nashville in opioid litigation and 40 years of experience in MDL litigation. She commented on the efforts of MDL litigation to do everything as quickly possible, the extraordinary nature of this litigation and the exceptional work of the presiding Judge. This litigation is an extraordinary opportunity to solve a horrific problem. Ms. Cabraser discussed the statistics involved in the opioid crisis.

Ms. Cabraser expounded on the efforts of U.S. District Judge Dan Polster in Cleveland. Judge Polster's efforts will begin with a January 31, 2018, meeting with all stakeholders involved. She expounded on specific aspects of this meeting, its goals and who will be fashioning a resolution. Ms. Cabraser said the legal team would be a bridge and its success will depend on the ability to translate the needs, information and concerns of cities and counties most affected into the best solutions. She noted the Haliczzer Pettis MDL team's partnership and commitment to pay attention, listen, advise, implement and follow through to ensure the community can fight back, recover and resolve the opioid crisis at the local level and nationally.

Mayor Seiler recognized Mr. Pettis who discussed the competence of his legal team legal team, citing their experience in trial court at the local, state and federal levels.

In response to Commissioner Trantalis' question about the scope of the litigation, the shaping of public policy through lobbying efforts and pursuing damages, City Attorney Everett commented it is a decision of the Commission. Discussions ensued on legal approaches. Mayor Seiler discussed his desire to address both issues, receiving monetary damages and changes at the legislative level through the judicial process. Additional comments ensued on legal approaches.

Commissioner Trantalis discussed efforts at the state legislative level to address the opioid crisis and its similarities to tobacco litigation. Mayor Seiler discussed results of previous MDLs. The residual effect of causes of actions in litigation requesting monetary damages was clarified. It was confirmed that the Judge could craft additional claims and damages.

2. Kelley Uustal, PLC

Mayor Seiler recognized Daryl Parks, Parks & Crump, LLC, Tallahassee, Florida, a member of the Kelley Uustal legal team. Mr. Parks discussed the Kelley Uustal legal team and their qualifications. Mr. Parks noted the benefits of pursuing litigation with Kelley Uustal, their

ability to guide policy legislation and addressing issues unique to the City. He commented on the importance and benefits of having a local law firm representing the City in Florida State Court.

Mayor Seiler recognized John Uustal, Esq., Kelley Uustal, PLC. Mr. Uustal discussed how the Kelley Uustal legal team was assembled, commenting on their different philosophy. He discussed the three types of firms participating in this type of MDL litigation and his team's approach in giving their clients proper representation, a Florida firm representing a Florida municipality. He noted his firm's previous experience, their recommendation that MDL clients not accept MDL settlements and his team's ability to try a case following an MDL settlement and negotiating a separate settlement. They present clients with an alternative to MDL litigation by representing them in Florida State Courts. Mr. Uustal cited details of recent actions in Florida State Court regarding the Takata Airbag products liability litigation.

John Uustal commented on three major opioid distributors located in Lakeland, Florida, and their ranking in the Fortune 500. He also discussed tobacco litigation in Florida State Court that resulted in clients being treated differently than those in MDL litigation. Mr. Uustal noted the qualifications of the MDL litigation team's and Judge Polster's ability to oversee this case.

Mr. Uustal confirmed the causes of action, citing Florida's nuisance and negligence laws and fines imposed by the Drug Enforcement Agency on opioid distributors under the Federal Controlled Substances Act. He recommended a "wait and see" approach concerning the progress of the MDL.

Mr. Uustal recommended having representation to address the needs of a smaller set of clients to maximize recovery, commenting on risks and the monetary component. Mr. Uustal noted the possibility of a law being passed to prohibit municipalities from pursuing these cases. Alternatively, the State Attorney General could attempt to take control of the cases with the goal of monetary awards going to the state. These concerns have been addressed with the inclusion of a lobbyist on their legal team, Mr. Ron Book.

Mr. Uustal also commented on his firm's local pro-bono representation of St. Thomas Aquinas students as plaintiffs in litigation resulting from a boating accident. Mayor Seiler confirmed this litigation involves the City of Wilton Manors.

3. Motley Rice, LLC

Mayor Seiler recognized Dan Gelber, Esq., Gelber Schachter & Greenberg, P.A, Miami, Florida, and member of the Motley Rice MDL legal team. Mr. Gelber discussed Motley Rice's legal team efforts to address the opioid crisis over the past five years, commenting on their documented experience in addressing the opioid crisis in Santa Clara County, California, and Chicago, Illinois.

Mayor Seiler recognized Lewis S. "Mike" Eidson, Esq., Colson Hicks Eidson, Coral Gables, Florida, and member of the Motley Rice MDL legal team. Mr. Eidson discussed reasons for pursuing this litigation, compensating the City for out of pocket expenses in addition to it being a products liability case. Mr. Eidson expounded on his experience in representing clients in products liability cases. He commented on his work in tobacco litigation and Motley Rice team attorneys Joseph Rice and Linda Singer who are lead attorneys and in key roles of national MDL litigation.

Mayor Seiler recognized Mimi Liu, Motley Rice, Washington, DC, and member of the Motley Rice MDL legal team. Ms. Liu explained the opioid litigation in detail, commenting that the tobacco litigation was a coalition of states. She said the opioid litigation was instituted by a local municipality and was due to the ground level impact on first responders, primary care physicians and healthcare providers. She expounded on the amount of detailed research and interviews with these individuals at the local level who recognize the impact of the opioid crisis. Ms. Liu commented on the first two cases regarding the opioid crisis filed for the City of Chicago and Santa Clara County, California. Each complaint is unique to each jurisdiction. The work of Motley Rice will address the unique aspects of the impact on the City of Fort Lauderdale.

In response to Commissioner Trantalis' question, Ms. Lui explained the current status of the City of Chicago's case. It has been stayed and has joined the MDL litigation. In response to Mayor Seiler's question, Ms. Liu explained the lead co-counsel on the MDL includes Paul Hanly of Simmons Hanly, Joseph Rice, of Motley Rice, and Paul Farrell of West Virginia's Greene, Ketchum, Farrell, Bailey & Tweel. Linda Singer is Chair of the Manufacturers Committee. Currently, Ms. Singer is in California arguing against a Motion to Dismiss on behalf of Santa Clara County.

Ms. Liu expounded on Motley Rice's Public Practice Group and their sole representation of government entities as plaintiffs in consumer protection

matters, issues relating to the False Claims Act, public nuisance cases and high impact healthcare litigation. She commented on the experience she and Linda Singer bring to this practice group. Ms. Liu discussed their team's experience with government clients to navigate, manage and oversee interviews of government personnel and document production during discovery.

Ms. Liu discussed the issue of injunctive relief to ensure changes in conduct, commenting on the preparation of a blueprint of what conduct changes will look like, i.e., patient and provider education, addiction treatment, first responders having Narcan, and addressing the needs of sub-populations.

4. Levin, Papantonio, Thomas, Mitchell, Rafferty & Proctor, P.A.

Mayor Seiler recognized Archie Lamb, Esq, Levin, Papantonio, Thomas, Mitchell, Rafferty & Proctor, P.A., and member of this MDL litigation team. Mr. Lamb commented on this seven firm coalition (Coalition) which has four attorneys in MDL leadership positions. He expounded on the Coalition's clients, their experience in this type of action and the unique aspects of their client's first responder experiences with the opioid problem.

Mr. Lamb confirmed the goal of generating funding to deal with the problems resulting from the opioid crisis and the Coalition's focus on distributors. The Chicago and Santa Clara cases focus on opioid manufacturers. He discussed the strategy, legal theory and jury instructions focused on distribution. He expounded on the responsibilities of manufacturers and distributors to monitor, investigate, and stop suspicious activities under the Controlled Substances Act, which has been neglected for 40 years. Mr. Lamb discussed the intention of manufacturers and distributors relating to facts in this case, including the number of pills distributed to small communities in West Virginia, the impact on families and the human toll.

Mayor Seiler recognized Jeffrey Gaddy, Esq., Levin, Papantonio, Thomas, Mitchell, Rafferty & Proctor, P.A. Mr. Gaddy discussed his firm's consortium filing the motion to originate the MDL litigation that was transferred to Judge Polster of Cleveland, Ohio. He further commented on Judge Polster's intentions of a global settlement. Mr. Gaddy said he does not share Judge Polster's optimism. His firm is preparing for trial, confirming his legal team's ability to try this case should the City reject future settlement negotiations.

Mr. Gaddy discussed getting retrospective damages. These include

economic damages to the City, i.e., reduction in workforce and increased crime rates due to addiction, and the prospective damages, i.e., the creation of a public nuisance and what will be necessary to put the City back to the position they were in before opioid pill distribution.

In response to Commissioner Trantalis' question about determining prospective damages, Mr. Gaddy gave an example discussing his client, Campbell County, West Virginia and working with experts at Marshall University in Huntington, West Virginia. The factual data generated from experts included interviews with the University President, Presidents of the Medical and Pharmacy Schools, and Chair of the Addiction Recovery Center. This model will be used to replicate the damages of their clients. Damages would address addiction recovery services, public school education, and first responder services.

The State of West Virginia, the epicenter the opioid crisis, is the only area that has iron-clad data. The data gathered will serve to determine prospective detailed damages. A program is being written to determine the number of facilities needed to treat the addicted; the locations of the facilities; the required square footage; the number of beds within each facility; and how they will be built and staffed, including the number and types of medical professionals.

Further discussions ensued on the duration of distributors ignoring state and federal reporting requirements, and information received from a confidential Drug Enforcement Agency (DEA) database. This DEA database lists every opioid pill sent and delivery address. Mr. Gaddy confirmed the focus of his team's efforts is to go after opioid distributors.

Mr. Gaddy would be filing cases in federal court, bringing Federal RICO Claims. He expounded on additional aspects of this action. He commented on the importance of being in federal court as it relates to having federal subpoena power over federal agencies.

Mr. Gaddy discussed state actions having been moved to federal court and the MDL bringing efficiency to the process. This serves to lower costs and allows for economies of scale. He confirmed his firm's contingency fee is 25 percent and will be retroactively applied to all of his firm's clients.

In response to Commissioner Rogers' question regarding an estimate of litigation costs, Mr. Gaddy reiterated the action being in federal MDL adds efficiency to the process. Mr. Gaddy reiterated the benefit of shared costs for clients versus using a boutique law firm with a smaller

amount of clients. Mr. Gaddy confirmed all claims filed by his legal team on this issue had been filed in federal court.

5. Simmons Hanly Conroy, LLC

Mayor Seiler recognized Erin Dickinson, Esq., Crueger Dickinson, Milwaukee, Wisconsin, and member of the Simmons Hanly Conroy MDL litigation team. Ms. Dickinson appeared on behalf of Paul Hanly, Jr., Esq., Simmons Hanly Conroy, LLC. Ms. Dickinson explained Mr. Hanly, as co-lead counsel in the MDL litigation, was called away to lead a Plaintiff's Executive Committee (PEC) Conference Call.

Ms. Dickinson encouraged the Commission to do their due diligence concerning their decision to retain counsel. The Simmons Hanley Conroy MDL legal team represents approximately 183 cities and counties in this litigation.

Ms. Dickinson discussed Judge Polster's position regarding the MDL litigation and his intention of expediency in resolving this issue. She commented on Wisconsin residents' experience with tobacco litigation results. Ms. Dickinson also discussed Wisconsin residents approaching her to represent them in opioid litigation, her work with Mr. Hanly and his legal experience representing families of deceased opioid victims in the 2003-2007 timeframe.

DISCUSSION

In response to Mayor Seiler's question about legal teams wishing to comment about costs to represent the City, Mr. Gilbert on behalf of the Haliczzer Pettis legal team, discussed advancing costs on behalf of the City, citing examples of shared costs and individual costs.

In response to Commissioner Rogers' question, Mr. Gilbert clarified that this action is not a class action lawsuit at this time. In all likelihood will not be a class-action lawsuit. Because it is not a class action, there is no "lead client." The leadership group will work with the Judge and the defendants to come up with an equitable methodology to allocate past damages and future programs.

In response to Commissioner Trantalis' question, Mr. Gilbert said recovery would be actual damages and prospective/injunctive relief through a negotiated resolution.

Mayor Seiler commented on the positive impact of addressing opioid-related damages as it relates to first responders, health services

and Narcan costs. He also noted the importance of policy decisions for addressing early elementary education about the adverse effects of opioids. He confirmed these two issues would impact the type of settlement requested. Vice Mayor Roberts commented the previous “pill mill” experience and the positive nature of this type of holistic approach.

Mayor Seiler recognized John Uustal. Mr. Uustal commented on the process and those involved in the MDL, stating each city has an individual contract with their legal representation. The benefit is the costs are shared among all MDL plaintiffs, resulting in lower costs. The additional benefit is the MDL leadership team is working to create the product liability for all involved in similar situations. He commented on its effect on those outside the MDL, confirming the City is in a good position.

In response to Commissioner Rogers’ question about there being a separate percentage fee for those outside of the MDL who benefit, Mr. Uustal said the MDL leadership receives a fee out of each case including those not in the MDL. Further discussion ensued on this topic.

In response to Commissioner Trantalis’ question about hiring a law firm to file a state court action and being controlled by the result of the federal court action, Mr. Uustal responded to the benefits of this strategy stating that technically the federal court ruling is not binding on a state court. However, Broward County State Court Judges tend to give deference to those decisions.

Commissioner McKinzie asked for confirmation that there would be no cost to the City should there be no monetary recovery. All five firms confirmed that should there be no monetary recovery, there would be no cost to the City.

Mayor Seiler recognized Paul Geller from the Haliczzer Pettis team who commented on filing in state court versus federal court. He discussed his work on behalf of the City of Delray Beach, confirming their action was filed in the federal court in the Southern District of Florida with the knowledge it would be tagged to go to the MDL in Cleveland, Ohio. This decision was made based on knowledge about the MDL. Mr. Geller stated all counsel is collectively leading this case based on a consensus. He cited the example of the wide variety of stakeholders who have been invited to Judge Polster’s Comprehensive Conference on January 31, 2018.

Mayor Seiler confirmed no other legal teams present wished to add any

additional comments. He commented on the value and positive changes resulting from trial attorneys' work in protecting the interests of the public.

Discussions ensued on the benefits of a uniform fee for all plaintiffs and filing suit prior to the January 30, 2018 MDL hearing. In response to Vice Mayor Roberts' question, Mayor Seiler confirmed the ability to also file in state court at a later date.

In response to Mayor Seiler's question about the City Attorney's Office recommendation on the selection process, the ranking system for selecting a legal firm and the timeframe, City Attorney Everett commented on the reasons and importance of a ranking system. She also noted the importance of the filing timeline and questions about issues relating to recovery and being one of the last plaintiffs to file a claim. City Attorney Everett asked about the ability to tailor its claim, i.e., specific defendants, filing in state court versus federal court, etc.

Mayor Seiler commented that there was no public notice for a vote at this meeting. In response to Mayor Seiler's question, City Attorney Everett confirmed this is not a quasi-judicial decision.

Commissioner Rogers' noted the importance of hearing from the law firms about deciding to file in federal or state court. Mayor Seiler announced each law firm would be given two minutes to address their position on whether to file in state or federal court.

Mayor Seiler recognized Jeffrey Gaddy. Mr. Gaddy confirmed the City's complaint would be tailored specifically to the City of Fort Lauderdale and the surrounding areas. The City has control of whether to file in state or federal court. He confirmed that all of his cases had been filed in federal court. They are proponents of filing in federal court. Mr. Gaddy also commented on additional aspects of MDL. His legal team is filing against distributors and manufacturers. The City has the option of choosing their defendants. In response to Commissioner Rogers' question, he confirmed they are open to filing in state court, commenting on the negative behavior of distributors located in the State of Florida.

Mayor Seiler recognized Mimi Liu. Ms. Liu confirmed the team's flexibility to filing in state court or the federal MDL case. She recommended preparing and filing the state court complaint. A decision could be made later about joining the MDL. Ms. Liu commented on Judge Polster's not hearing remand motions. Those decisions have been very selective, noting the limitations this will impose. She also commented on the Florida Attorney General's position about pursuing

litigation and the importance of timing.

In response to Commissioner Trantalis' question, Ms. Liu confirmed that the State Attorney General filing an action on this issue would not preempt the City from filing in state court. She commented on the political considerations and strategies to be taken into consideration for cases filed in state court.

Mayor Seiler recognized John Uustal. Mr. Uustal confirmed their flexibility on filing in federal or state court. He said the MDL is in the discovery stage and would recommend waiting to see what happens before deciding where to try the proceeding. In response to City Attorney Everett's question about waiting to file both in federal and state court, Mr. Uustal confirmed.

Mayor Seiler recognized Elizabeth Cabraser on behalf of the Pettis MDL legal team. Ms. Cabraser confirmed their team has been built to be equally comfortable filing in state court or federal court. Due to how quickly events in the MDL have transpired, they recommend filing in the federal MDL proceeding. Ms. Cabraser commented on the timeline to file, stating more will be known after Judge Polster's Comprehensive Conference on Thursday, January 31, 2018. She confirmed flexibility is key. She discussed the legal strategy which will be utilized and naming both the distributors and manufacturers as defendants.

Ms. Cabraser noted the importance of watching the MDL closely, being constantly engaged in this process, listening carefully to Judge Polster and participating on behalf of their clients with cases in the MDL. She said a decision about where the City should file should be made sooner rather than later.

Mayor Seiler recognized Erin Dickinson. Ms. Dickinson concurred with Ms. Cabraser comments, stating her team would be flexible about filing in state or federal court. She commented on the benefits of filing in federal court, including timing. She commented about advantages of having attorney/client privilege as it relates to future settlement discussions. Limited private settlement discussion information will be able to be conveyed to clients who are not part of the MDL.

In response to Mayor Seiler's question about including the Florida Unfair Claims Settlement Practices Act and the Florida Deceptive and Unfair Trade Practices Act into the MDL, the legal teams confirmed they would.

In response to Commissioner Rogers' question, Ms. Dickinson

commented on the benefits of a possible global settlement resolution. The remedy would focus on the abatement of the problem. Ms. Dickinson confirmed all parties, including the defendants, are currently at the table.

Mayor Seiler recommended adding this issue to the Commission Regular Meeting Agenda scheduled for tonight, Tuesday, January 23, 2018, to rank and vote on a legal team to represent the City's claim in opioid litigation. There was Commission consensus on this recommendation.

Mayor Seiler asked that any of the legal teams submitting communications or information to a member of the Commission, to also submit to each Commission member, the City Attorney, City Clerk, City Auditor and City Manager. Alternatively, it can be submitted to City Clerk Jeffrey Modarelli for distribution to members of the Commission, the head of each Charter Office and others as deemed necessary by the City Attorney.

Commissioner Rogers' asked City Attorney Everett to provide her recommendation before tonight's 6:00 p.m. Commission Regular Meeting. City Attorney Everett confirmed.

ADJOURNMENT

Mayor Seiler adjourned the Commission Special Meeting at 2:25 p.m.