MEMORANDUM

Agenda Item No. 14(A)(1)

TO:	Honorable Chairman Esteban L. Bovo, Jr. and Members, Board of County Commissioners	**DATE:**	February 6, 2018
FROM:	Abigail Price-Williams County Attorney	**SUBJECT:**	Resolution selecting outside counsel for the purpose of representing the County in opioid litigation at the direction of the County Attorney; directing the County Mayor to execute an agreement for retention of outside counsel; authorizing County Attorney or County Attorney's designee to exercise all provisions contained therein; and directing County Attorney or County Attorney's designee and outside counsel to pursue litigation to recover costs and other damages associated with opioid use in Miami-Dade County

The accompanying resolution was placed on the agenda at the request of the County Attorney.

Abigail Price-Williams
County Attorney

APW/cp

Memorandum

MIAMI-DADE COUNTY

Date: February 2, 2018

To: Honorable Chairman Esteban L. Bovo, Jr.
and Members, Board of County Commissioners

From: Abigail Price-Williams
County Attorney

Subject: Report in Response to Resolution No. R-1140-17 Regarding Opioid Litigation and Recommendation for Selection of Outside Counsel

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On November 21, 2017, this Board adopted Resolution No. R-1140-17 ("Resolution") in response to the crippling impact of the opioid epidemic on Miami-Dade County. Noting that states, counties and municipalities across the country have initiated litigation against manufacturers and distributors of opioids alleging a pattern and practice of unlawfully marketing and distributing opioids, the Board directed the County Attorney's Office to assess whether the County should similarly engage in litigation to recover costs and other damages associated with the opioid epidemic ("opioid litigation"). In doing so, the Board requested that the County Attorney evaluate the viability of legal claims against opioid manufacturers, distributors or other actors and culpable parties and recommend whether such claims may be similarly brought by the County. The Board further directed the County Attorney, if advisable, to identify up to three law firms that could serve as outside counsel under the direction of the County Attorney's Office for opioid litigation. The Board directed that such representation be on a contingency fee basis and at no cost to the County unless the County obtains a monetary recovery. Any payments to the outside counsel will thus come from the proceeds of the litigation itself.[1] The Board requested that the County Attorney provide this information to the Board within sixty days of the effective date of the Resolution.

Recommendation for Outside Counsel

After soliciting and evaluating proposals, I recommend the "Podhurst Team"[2] as outside counsel for opioid litigation. The Podhurst Team will provide the County with the best combination of extensive experience at the national and local level, significant leadership positions in the multidistrict opioid litigation ("MDL") currently underway in the Northern District of Ohio (where

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[1] Although the County will not be responsible for costs or attorney fees for outside counsel unless the County receives a monetary recovery, it is anticipated that the County Attorney's Office, and the County in general, will still need to expend significant resources in managing the litigation, preparing and prosecuting the claims, and responding to requests for document discovery and depositions.

[2] The Podhurst Team consists of seven firms: Podhurst Orseck PA; Levin, Papantonio, Thomas, Mitchell, Rafferty & Proctor, PA; Baron & Budd, PC; Greene, Ketchum, Farrell, Bailey & Tweel, LLP; McHugh Fuller Law Group, PLLC; Hill, Peterson, Carper, Bee & Dietzler, PLLC; and Powell & Majestro, PLLC.

County claims will be litigated), and the lowest contingency fees available (yielding the largest potential net recovery to the County). The Podhurst Team has a detailed understanding of a successful litigation strategy for opioid litigation and is appropriately staffed to handle this large, complex litigation. The Podhurst team has lawyers who specialize in pharmaceutical litigation with a history of litigating complex mass tort cases both locally and nationally. The members of the Podhurst Team currently represent more than 200 other local governments in opioid litigation, allowing for significant economies of scale in the representation of the County and the application of the most successful legal strategies in pursuing the County's claims. A copy of the executive summary of the Podhurst Team Proposal is attached hereto.

As the MDL asserting federal and state claims is already active and pending in federal court, federal court is the recommended venue for this litigation. In federal court, the County will be able to raise all federal and state causes of action and will benefit from collaborative litigation with other similarly situated local governments. Under the pending MDL orders, all opioid-related civil lawsuits filed in federal court will be transferred temporarily to Judge Polster in the Northern District of Ohio for pretrial consideration and discovery. The MDL process is already underway with the parties currently engaged in settlement discussions. Once the MDL process is completed, remaining cases may be referred back to the filing jurisdictions for ultimate trial and resolution.

Hiring the Podhurst Team as outside counsel will give the County direct access to all strategic decisions of the MDL litigation through the Podhurst Team's participation in key leadership positions. Paul T. Ferrell, Jr. is one of three "lead counsel" charged with formulating and presenting positions on substantive and procedural issues during the MDL and presenting written and oral arguments to the court. Roland Tellis, Michael J. Fuller and Peter J. Mougey are three of the sixteen attorneys comprising the "executive committee" assisting and advising lead counsel in the massive undertaking of coordinating and conducting pre-trial proceedings as well as carrying out a comprehensive litigation plan and oversight, accountability and coordination between all facets of the MDL. Troy Rafferty is one of three "liaison counsel" entrusted with coordinating the various attorneys working on the MDL. The Podhurst Team also has lawyers with prior experience in other MDL proceedings in similar leadership positions in prior MDL cases in front of Judge Polster.

The Solicitation Process

Pursuant to the Resolution, the County Attorney's Office issued a solicitation requesting proposals from firms or groups of firms ("Proposer") interested in serving as outside counsel to Miami-Dade County for the sole purpose of opioid litigation. The solicitation requested, among other things, that each Proposer provide by January 16, 2018: (1) a narrative detailing all potential causes of action and recoverable damages; (2) its experience and qualifications to serve as outside counsel; (3) a description and organizational chart of personnel to be assigned to opioid litigation and their tasks or responsibilities; (4) a statement pertaining to the Proposer's capability to litigate the case on behalf of the County; (5) a description of its plan to work with the County Attorney's Office; (6) contingency fee and costs proposal; (7) a draft retention agreement; (8) information related to disciplinary actions or malpractice claims; (9) malpractice insurance coverage; and (10) references.

The following Proposers submitted responses to the solicitation before the expiration of the deadline: (1) Book, Newsome, Parks and Kelley/Uustal; (2) Simmons Hanly Conroy LLC; Crueger Dickinson LLC; and von Briesen & Roper, S.C.; (3) Kozyak Tropin & Throckmorton, LLP; (4) Lash & Goldberg, LLP; (5) Motley Rice LLC; Ditrapano, Barrett, Dipiero McGinley & Simmons, PLLC; Grant Woods Law; Law Office of Julio J. Ayala, P.A.; Young Law Office, P.A.; Mike Moore Law Firm; Gelber Schachter & Greenberg, PA; McGowan, Hood & Felder, LLC; Whaley Law Firm; Law Offices of James W. Cusack, P.A.; Colson Hicks Eidson; Law Offices of P. Rodney Jackson; Harrison, Rivard, Duncan & Buzzett; Drake Martin Law Firm, LLC; and Law Office of Joseph C. Tann, PLLC: (6) Podhurst Orseck; Levin, Papantonio, Thomas, Mitchell, Rafferty & Proctor, PA; Baron & Budd, PC; Greene, Ketchum, Farrell, Bailey & Tweel, LLP; McHugh Fuller Law Group, PLLC; Hill, Peterson, Carper, Bee & Deitzler, PLLC; and Powell & Majestro, PLLC; (7) Robbins Geller Rudman & Dowd, LLP; and Lieff Cabraser Heimann & Bernstein, LLP; (8) Scott + Scott, Attorneys at Law, LLP; and Law Office of Paul M. Harden; (9) The Ferraro Law Firm and Napoli Shkolnik, PLLC; and (10) Weiss Serota Helfman Cole & Bierman; Morgan & Morgan, P.A.; Kopelowitz Ostrow Ferguson Weiselberg Gilbert; and Haliczer Pettis & Schwamm, P.A.[3]

Upon a review of those proposals, two teams stood out as superior choices for meeting the County's litigation needs: the Podhurst Team and the "Robbins Team."[4] Both teams offered a combination of national litigation presence and experience, local litigation presence and experience, a comprehensive understanding of the County's litigation needs and preferences, and a diversity of experiences and skills in the attorneys comprising their litigation teams. Both teams also offered the lowest initial contingency fee arrangement, which ranged amongst all proposals from eighteen percent (18%) to thirty-three percent (33%) of the total recovery, with most Proposers offering the County a twenty five percent (25%) contingency fee.

As a result of the strength of their proposals, these two Proposers were offered an opportunity to better their proposed contingency fee charged to the County. In response, the Podhurst Team substantially reduced its initially proposed contingency fee of eighteen percent (18%) to a structured contingency fee ranging between four percent (4%) and fifteen percent (15%). Under the new offer, the contingency fee would increase based on the stage of the litigation, providing the County with a greater share of any early resolution of the claim.[5] The Robbins Team, changed

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[3] On January 24, 2018, Robert C. Gilbert transmitted a letter requesting that the County consider his team, identified in number 10, as a joint proposal with the Robbins Geller team, identified in number 7. This request was not considered as the request was submitted after the January 16, 2018 deadline and the solicitation provided that no additional proposals would be accepted after that date.

[4] The Robbins Team consists of two firms: Robbins Geller Rudman & Dowd, LLP; and Lieff Cabraser Heimann & Bernstein, LLP. The Robbins Team has similar experience to the Podhurst Team in representing local governments in opioid litigation cases and was recently selected as part of a litigation team for Broward County and the City of Fort Lauderdale to pursue opioid claims on behalf of Broward County.

[5] In addition to lowering its contingency fee, the Podhurst Team also provided a cap on the total amount of potential recovery that the team will receive as combined fees and costs, ranging from five percent (5%) to twenty-five percent (25%) of the total recovery. Consistent with the

its offer from an initially proposed contingency fee of a flat twenty percent (20%) to a structured contingency fee from between ten percent (10%) to twenty five percent (25%). This new offer from the Robbins Team potentially increases the costs to the County of litigation when compared to the Robbins Team's initial offer if the claims are resolved at a later stage and has a substantially higher cost of litigation at every stage when compared to the Podhurst Team.

After consideration of these financial offers and the value that the Podhurst Team offers to the County based on the qualifications of the firms in the team, the Podhurst Team is recommended as outside counsel for opioid litigation.

Upon approval by the Board of outside counsel, the County Attorney's Office will negotiate and finalize a retention agreement for these services.

Potential Litigation

Pursuant to the Resolution, the County Attorney's Office also reviewed the litigation initiated by counties and municipalities across the country against manufacturers and distributors of opioids and believes that the County may raise claims against opioid manufacturers and distributors under both Florida and federal laws. Potential claims include, but are not limited to, causes of action under: the Florida Deceptive Unfair Trade Practices Act ("FDUTPA"); the Civil Remedies for Criminal Practices and the Florida Racketeer Influenced and Corrupt Organization Act ("Florida RICO"); Public Nuisance, Fraud, Unjust Enrichment, and Negligence; the federal Controlled Substances Act; and the federal Racketeer Influenced and Corrupt Organization Act ("Federal RICO"). The Florida False Claims Act, the Florida Drug and Cosmetic Act, and the County's False Claims Ordinance may also be available to allege against select defendants.

Potential opioid manufacturer defendants include: Purdue Pharma L.P.; Teva Pharmaceutical Industries, Ltd.; Teva Pharmaceuticals USA, Inc. and Cephalon, Inc.; Johnson & Johnson and Janssen Pharmaceuticals, Inc.; Endo International PLC and Endo Pharmaceuticals, Inc.; Insys Therapeutics, Inc.; and Mallinckrodt PLC and Mallinckrodt Pharmaceuticals, Inc. Potential opioid distributor defendants include McKesson Corporation; Cardinal Health, Inc.; and AmerisourceBergen Corporation. Additional defendants may be uncovered during discovery.

cc: Honorable Carlos A. Gimenez, Mayor
Geri Bonzon-Keenan, First Assistant County Attorney
Cathy Jackson, Acting Commission Auditor
Christopher Agrippa, Director, Clerk of the Board

Resolution, the arrangement does not involve the direct expenditure of County funds to pay for the fees and costs of the Podhurst Team's prosecution of the County's claims.

PROPOSAL EXECUTIVE SUMMARY
PODHURST TEAM

[redacted]

EXECUTIVE SUMMARY

Legal Team

The Podhurst / Levin Papantonio Legal Team is headed by Peter Prieto of Podhurst Orseck, P.A. ("Podhurst") and Peter J. Mougey of Levin, Papantonio, Thomas, Mitchell, Rafferty & Proctor, PA ("Levin Papantonio"). Podhurst and Levin Papantonio are joined by five other national complex litigation firms: Baron & Budd, PC; Greene, Ketchum, Farrell, Bailey & Tweel, LLP; McHugh Fuller Law Group, PLLC; Hill, Peterson, Carper, Bee & Dietzler, PLLC; and Powell & Majestro, PLLC, in our proposed representation of Miami-Dade County (the "County").

We offer both local accessibility and heavyweight resources and experience. The firms comprising our Legal Team have taken on and defeated Big Tobacco, Asbestos, BP, and DuPont, as well as numerous pharmaceutical and medical device giants, including Bayer, Merck, Johnson & Johnson, Abbvie, Stryker, and Roche. Podhurst is blocks from County Attorney's office, and our entire Legal Team would be fully accessible to the County at all times.

The opioid litigation is receiving our utmost attention. Our Legal Team developed the diversion and RICO theories at the heart of the current opioid litigation, and we currently represent more than 200 governmental entities and sovereign Indian Nations in their litigation against prescription opioid manufacturers and distributors. We have investigated and filed more cases against opioid manufacturers and distributors than any other group in the country, and our attorneys occupy five leadership seats in the Opioid MDL, including Co-lead Counsel; Co-liaison Counsel; and three Plaintiffs' Executive Committee positions.

We have devoted significant manpower and financial resources to carry out this litigation from beginning to end. We routinely front thousands of attorney hours and millions of dollars in costs in exchange for being compensated via a contingency fee arrangement, under which, if the client does not obtain a recovery, the client does not pay any fees or costs. We offer this same arrangement to the County, which we will represent for a 18% flat rate contingency fee.

Legal Framework

The manufacturers and distributors of prescription opioids have created the opioid epidemic by generating a population that is physically and psychologically dependent on opioids (the demand) and conspiring to provide floods of prescription opioids which are not medically necessary and will ultimately become available for illicit use or sale (the supply).

Federal and state laws require distributors and manufacturers of prescription opioids to prevent diversion and identify, investigate, and report suspicious orders of opioids to authorities. Distributors and manufacturers have access to nonpublic data showing the volume and pattern of opioid sales nationwide and are charged with a legal duty to spot and report red flags in the distribution chain to authorities and, further, to halt suspicious orders before shipment. These pharmaceutical companies are supposed to serve as the gatekeepers – the watch dogs – for preventing opioid abuse. However, for years, the distributors and manufacturers of prescription opioids have failed to report or halt suspicious orders, while funneling millions of pills into communities without medical need.

Additionally, the opioid manufacturers conducted a marketing scheme designed to persuade doctors and patients that opioids can and should be used for chronic pain, resulting in opioid treatment for a far broader group of patients who are much more likely to become addicted and suffer other adverse effects from the long-term use of opioids.

Distributors and manufacturers of prescription opioids have aggressively sought to bolster their revenue, increase profit, and grow their share of the prescription painkiller market by unlawfully and surreptitiously increasing the volume of opioids they sell. Distributors and manufacturers of opioids systematically and fraudulently violated their statutory duties to prevent diversion of their drugs and to notify the DEA of suspicious orders. Through their scheme, the distributors and manufacturers of opioids repeatedly engaged in unlawful sales of painkillers, which, in turn, artificially and illegally increased the annual production quotas for opioids allowed by the DEA. In doing so, the manufacturers and distributors allowed hundreds of millions of pills to enter the illicit market, allowing them to generate obscene profits.

The links between over-prescription and distribution of prescription opioids and opioid abuse, and between opioid abuse and addiction and ultimate heroin and/or fentanyl abuse and addiction have long been known to opioid

manufacturers and distributors. They should be held liable for their role in creating and fueling this epidemic and all its attendant harms.

Defendants

We propose that the County initially sue the "Big Three" opioid distributors: McKesson Corporation, Cardinal Health, and AmerisourceBergen; and the six major manufacturers of prescription opioids, Purdue Pharma, Cephalon, Janssen, Endo, Activis, Mallinckrodt, as well as their subsidiary, parent, and sister corporations. Other distributors would be added as defendants after we obtain discovery of the "ARCOS" data, which is necessary to discover these defendants' identities.

Causes of Action

We propose filing an action against the manufacturers and distributors of prescription opioids in federal court for violating their duties under federal and Florida drug laws. The primary causes of action would be public nuisance (which provides for prospective relief in the form of abatement) and federal RICO (which provides for treble damages), and we would also allege claims of negligence and negligent misrepresentation, fraud and fraudulent misrepresentation, civil conspiracy, and violations of the Florida Deceptive and Unfair Trade Practices Act.

Experts and Discovery

We have retained and begun working with numerous seasoned veterans of the DEA with experience and knowledge of the breach of legal duties at the heart of the opioid epidemic, in addition to many of the country's preeminent experts in the fields of addiction medicine, pain management, epidemiology, public health, urban and rural blight, and the economics of addiction. Our litigation tactics are aggressive and effective: we are the first and only group to have secured a federal subpoena for the critical and nonpublic "ARCOS" data that will reveal all shipments and sales of prescription opioids.

Damages

We will seek to recover the funds the County has already spent addressing the crisis through expenses related to substance abuse education, prevention, and treatment, first responders, medical examiner's office, public hospitals, law enforcement and incarceration, and child welfare, as well as seek to recover for categories of damages, such as urban or rural blight and lost tourism revenues. We will also address damages in a prospective manner, because the County will need resources for years to come in order to abate the opioid epidemic. We will ask (and then answer) the question: "How much money will it take to put Miami-Dade County back into the position that it was in before the opioid crisis began?" Our proposed damage model seeks to fund education, law enforcement, and addiction treatment on a going forward basis.

Settlement Strategies

The presiding MDL judge, Judge Polster, has made it clear that he would like to see the defendants enter into an early and global settlement of the opioid epidemic actions. Because of our strong leadership position in the MDL and our extensive research on the opioid epidemic to date, we are in a position to protect the interests of our clients and make sure that any proposed settlement adequately and fairly provides the necessary relief. However, we are well aware that in prior opioid litigation, some cases have been resolved too quickly and for little meaningful relief. Well researched, comprehensive damage models will show the defendants how significant their exposure is and ensure that any settlement offer is evaluated on its true merits.

MEMORANDUM

(Revised)

TO: Honorable Chairman Esteban L. Bovo, Jr.
and Members, Board of County Commissioners

DATE: February 6, 2018

FROM: Abigail Price-Williams
County Attorney

SUBJECT: Agenda Item No. 14(A)(1)

Please note any items checked.

_____	**"3-Day Rule" for committees applicable if raised**
_____	**6 weeks required between first reading and public hearing**
_____	**4 weeks notification to municipal officials required prior to public hearing**
_____	**Decreases revenues or increases expenditures without balancing budget**
_____	**Budget required**
_____	**Statement of fiscal impact required**
_____	**Statement of social equity required**
_____	**Ordinance creating a new board requires detailed County Mayor's report for public hearing**
✓	**No committee review**
_____	**Applicable legislation requires more than a majority vote (i.e., 2/3's ____, 3/5's ____, unanimous _____) to approve**
_____	**Current information regarding funding source, index code and available balance, and available capacity (if debt is contemplated) required**

Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 14(A)(1)
2-6-18

RESOLUTION NO. _____

RESOLUTION SELECTING OUTSIDE COUNSEL FOR THE PURPOSE OF REPRESENTING THE COUNTY IN OPIOID LITIGATION AT THE DIRECTION OF THE COUNTY ATTORNEY; DIRECTING THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO EXECUTE AN AGREEMENT FOR RETENTION OF OUTSIDE COUNSEL; AUTHORIZING COUNTY ATTORNEY OR COUNTY ATTORNEY'S DESIGNEE TO EXERCISE ALL PROVISIONS CONTAINED THEREIN; AND DIRECTING COUNTY ATTORNEY OR COUNTY ATTORNEY'S DESIGNEE AND OUTSIDE COUNSEL TO PURSUE LITIGATION TO RECOVER COSTS AND OTHER DAMAGES ASSOCIATED WITH OPIOID USE IN MIAMI-DADE COUNTY

WHEREAS, on November 21, 2107 this Board adopted Resolution No. R-1140-17 directing the County Attorney to (i) assess whether Miami-Dade County should engage in litigation to recover costs and other damages associated with the opioid epidemic; (ii) evaluate the viability of legal claims against opioid manufacturers, distributors or other actors and culpable parties; (iii) identify up to three law firms that could serve as outside counsel for possible litigation related to recovering costs and other damages associated with the opioid epidemic under the direction of the County Attorney and on a contingency fee basis with no cost to the County if the County does not prevail in litigation; and (iv) report back to the Board within 60 days of the effective date of Resolution No. R-1140-17 with such recommendations; and

WHEREAS, the County Attorney has complied with the direction of the Board as detailed in the accompanying memorandum, a copy of which is incorporated herein by reference; and

WHEREAS, pursuant to Section 5.06 of the Miami-Dade County Home Rule Charter, the Board desires to employ outside counsel for the specific need of pursuing litigation to recover costs and other damages associated with opioid use in Miami-Dade County,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that this Board selects the litigation team consisting of Podhurst Orseck PA; Levin, Papantonio, Thomas, Mitchell, Rafferty & Proctor, PA; Baron & Budd, PC; Greene, Ketchum, Farrell, Bailey & Tweel, LLP; McHugh Fuller Law Group, PLLC; Hill, Peterson, Carper, Bee & Deitzler, PLLC; and Powell & Majestro, PLLC as outside counsel for the purpose of representing the County in opioid litigation at the direction of the County Attorney; directs the County Mayor or County Mayor's designee to execute, on behalf of Miami-Dade County, a retention agreement for legal services in substantially the same form attached to the litigation team's proposal for the provision of legal services and as further negotiated and approved by the County Attorney or County Attorney's designee; authorizes the County Attorney or County Attorney's designee to exercise all provisions contained therein on behalf of Miami-Dade County; and directs the County Attorney or County Attorney's designee and outside counsel to pursue litigation to recover costs and other damages associated with opioid use in Miami-Dade County.

The Sponsor of the foregoing resolution is County Attorney Abigail Price-Williams. It was offered by Commissioner , who moved its adoption. The motion was seconded by Commissioner and upon being put to a vote, the vote was as follows:

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Esteban L. Bovo, Jr., Chairman
Audrey M. Edmonson, Vice Chairwoman

Bruno A. Barreiro	Daniella Levine Cava
Jose "Pepe" Diaz	Sally A. Heyman
Barbara J. Jordan	Joe A. Martinez
Jean Monestime	Dennis C. Moss
Rebeca Sosa	Sen. Javier D. Souto
Xavier L. Suarez	

The Chairperson thereupon declared the resolution duly passed and adopted this 6th day of February, 2018. This resolution shall become effective upon the earlier of (1) 10 days after the date of its adoption unless vetoed by the County Mayor, and if vetoed, shall become effective only upon an override by this Board, or (2) approval by the County Mayor of this Resolution and the filing of this approval with the Clerk of the Board.

MIAMI-DADE COUNTY, FLORIDA

BY ITS BOARD OF
COUNTY COMMISSIONERS

HARVEY RUVIN, CLERK

By:_____
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.

Oren Rosenthal
Shanika A. Graves