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July 23, 2021

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RE: Opioid abatement fund and allocation

Dear Derek and David:

Thank you for your July 13, 2021 letter. We appreciate your clients' interest in an allocation agreement whereby the State and all Washington municipalities would join in one potential settlement with the opioid distributors and/or Johnson & Johnson, and would split the proceeds.

As the Attorney General demonstrated in the *McKinsey* matter, he is committed to preserving local governments' legal claims and letting them make their own decisions on whether to proceed with litigation or to settle. He has no intention of accepting a settlement agreement that impairs local governments' claims. Moreover, as to the State's claims, he will only consider settlement offers that direct recoveries toward addressing the opioid epidemic. Given the State's opioid response plan, this will mean that a significant portion of any recovery by the State will flow to local public health districts that are on the frontline of the crisis. His goal is a transformative change in our state's response to the crisis, and to avoid a repeat of the Big Tobacco settlement.

If there are to be settlements, we believe that the best model is for there to be separate settlements – one with the State and one or more with local governments. As with prior lawsuits and settlements involving Monsanto and current lawsuits against JUUL, the State and local governments have their own suits and potential claims. Each will have to make their own decisions on whether to proceed to trial or to settle, how recoveries will be spent, and the amount that their attorneys will be compensated. These decisions are best made by elected leaders for each jurisdiction and all may not agree on the same course such as in the Monsanto litigation.

While we believe separate settlements are appropriate, we think that it would be beneficial to all if the State and municipalities coordinate settlement negotiations with the Defendants, particularly as the State's trial dates approach. The State's case against the distributors is set for trial on

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September 7, 2021, while the State's case against Johnson & Johnson is scheduled for trial on January 10, 2022.

We suggest that all Washington municipalities organize a negotiating group for potential settlements with the opioid distributors and/or Johnson & Johnson to be prepared to do the following:

- To make, review, and tentatively accept settlement offers on behalf of all Washington municipalities;
- To agree on a formula or other allocation agreement for an intra-municipality split of settlement funds; and
- To reach an agreement on the amount of attorneys' fees that will be paid for those that have retained outside counsel, to reach an agreement on attorneys' fees if there will be a class action settlement by the municipalities, and to determine if any attorneys' fees will be owed by those municipalities with and without outside counsel to the Plaintiffs Executive Committee for the national opioid MDL.

I emphasize that the municipalities do not need to take any of these suggested actions or to participate in a coordinated negotiation effort – that is their elected leaders' decision to make.

Washington, however, will only participate in coordinated settlement negotiations if cities and counties agree on the following:

- The settlement for the cities and counties must restrict recoveries toward addressing the opioid epidemic, and must adopt a plan to ensure every municipality receiving funds adheres to that restriction.

Washington welcomes local governments' participation in coordinated negotiations if the above condition is met. If the local governments decide not to pursue coordinated negotiations, the State will preserve local governments' legal claims in the event that the State were to settle its cases.

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Please let me know how you would like to proceed with next steps.

Sincerely,

/s/ Jeffrey Rupert

JEFFREY RUPERT

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