

Kenai Peninsula Borough

Legal Department

MEMORANDUM

TO: Brent Hibbert, Assembly President
Members, Kenai Peninsula Borough Assembly

THRU: Charlie Pierce, Mayor *CP*

FROM: Patty Burley, Deputy Borough Attorney *PB*
Sean Kelley, Acting Borough Attorney *SK*

DATE: September 30, 2021

RE: Resolution 2021- 074, Agreeing to the Terms of the Opioid Settlement
(Mayor)

This resolution agrees to the proposed settlement in the Johnson & Johnson, Amerisource Bergen and Cardinal Health Opioid cases. These three companies have been in bankruptcy litigation for over a year now. Numerous municipalities attempted to sue which resulted in the bankruptcy filing. This settlement would distribute approximately \$26 billion per a plan developed and agreed to by a court-appointed oversight board.

As one of the original nine municipalities that expressed interest in potentially entering into the class action, the borough is eligible to become a "Primary Subdivision" and as such is eligible to enter into an Agreement with the State of Alaska and the other 8 Primary Subdivisions in order to maximize the amount of the funding to be received. Only if the 10 entities work together will maximum funding be achieved.

Payments under the settlement will be paid out over 18 years and will include both a base payment as well as incentive payments. Payment for year one is expected around March of 2022 with year two's payment to follow a few months later. Thereafter, annual payments are to be made by July 15.

In order to get the maximum funding, all nine of the Primary Subdivisions, as well as the State of Alaska, have to pass a settlement resolution. The State has already passed and submitted their resolution. Of the nine Primary Subdivisions, it is anticipated the other eight will join into the settlement.

The settlement has default provisions for allocation of the funds which call for distribution as follows:

- 15% State Fund
- 15% Subdivision Fund (split between the nine Primary Subdivisions)
- 70% Abatement Account Fund

Page 2 of 2
September 30, 2021
Re: Resolution 2021-074

The caveat is that the funds must be used for Opioid Remediation. The distribution can be altered via a written agreement between the ten entities.

Alaska's payment was hurt by its low population count. Of the \$26 billion, Alaska's population count gave it only a 0.2584550539% share of the funds or roughly a \$58 million share. Broken down that means:

15% (State)	\$8.7 million
15% (Subdivisions)	\$8.7 million
70% (Abatement)	\$40.6 million

How the \$8.7 million for the nine primary subdivisions will be allocated is not spelled out but the last update indicates it is likely by population with the KPB receiving approximately \$825,800 over 18 years.

The nine primary subdivisions need to agree, however, or the State can pass legislation regarding the distribution which would supersede.

The large pot, the abatement account (the 70%):

- Must be used solely for Opioid Remediation;
- The State must designate an opioid remediation advisory committee to provide input and recommendations regarding spending from the State's abatement account fund;
- This committee does not have to include members from the Primary Subdivisions but the State has indicated their desire to have representation from the nine Primary subdivisions;
- Regardless, the committee is mandated to have the input of the nine primary subdivisions;

If the borough agrees to settle the matter, it will be forever barred from suing the three companies listed above regarding any harms suffered as a result of the distribution of opioids.

Bottom Line: In order to get the maximum payment (if the Borough is going to settle), the borough has to cooperate with the State of Alaska and the other 8 Primary Subdivisions. A resolution by the Assembly releasing the claims needs to be passed in October and a common ground agreement needs to be reached between the State of Alaska and all 9 Primary Subdivisions by early January, 2022.

The full text of the agreement can be found at:

<https://www.opioidsettlementtracker.com/globalsettlementtracker>.