

# County Clerk's Office Richland County, Wisconsin

Derek S. Kalish  
County Clerk

Richland County Courthouse  
181 W Seminary Street  
Richland Center, Wisconsin 53581

Phone (608) 647-2197  
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August 2, 2024

## **NOTICE OF SPECIAL MEETING**

Please be advised that the Richland County Board of Supervisors will convene at 5:00 p.m., Thursday, August 8, 2024, in the County Board Room on the third floor of the Richland County Courthouse, located at 181 W Seminary Street, Richland Center, Wisconsin.

Virtual access and documents for the meeting can be found by clicking on this link:

<https://administrator.co.richland.wi.us/minutes/county-board/>

### Agenda

1. Call To Order
2. Roll Call
3. Pledge Of Allegiance
4. County Clerk Verification Of Open Meeting Laws Compliance
5. Approve Agenda
6. Approval Of A Resolution To Enter Into A Settlement Agreement With The Kroger Co And Agree To The Terms Of Addendum Two To The MOU Allocating Settlement Proceeds
7. Public Comment
8. Adjourn

## **RESOLUTION NO.**

*Authorizing Richland County to Enter Into the Settlement Agreement with The Kroger Co. and Agree to the Terms of Addendum Two to the MOU Allocating Settlement Proceeds*

**WHEREAS**, the County Board of Supervisors previously authorized the County to enter into an engagement agreement with von Briesen & Roper, s.c., Crueger Dickinson LLC and Simmons Hanly Conroy LLC (the “Law Firms”) to pursue litigation against certain manufacturers, distributors, and retailers of opioid pharmaceuticals (the “Opioid Defendants”) in an effort to hold the Opioid Defendants financially responsible for the County’s expenditure of vast money and resources to combat the opioid epidemic;

**WHEREAS**, on behalf of the County, the Law Firms filed a lawsuit against the Opioid Defendants;

**WHEREAS**, the Law Firms filed similar lawsuits on behalf of 66 other Wisconsin counties and all Wisconsin cases were coordinated with thousands of other lawsuits filed against the same or substantially similar parties as the Opioid Defendants in the Northern District of Ohio, captioned *In re: Opioid Litigation*, MDL 2804 (the “Litigation”);

**WHEREAS**, four (4) additional Wisconsin counties (Milwaukee, Dane, Waukesha, and Walworth) hired separate counsel and joined the Litigation;

**WHEREAS**, since the inception of the Litigation, the Law Firms have coordinated with counsel from around the country (including counsel for Milwaukee, Dane, Waukesha, and Walworth Counties) to prepare the County’s case for trial and engage in extensive settlement discussions with the Opioid Defendants;

**WHEREAS**, the settlement discussions with The Kroger Co. (the “Settling Defendant”) resulted in a tentative agreement as to settlement terms pending agreement from the County and other plaintiffs involved in the Litigation;

**WHEREAS**, copies of the settlement agreement relating to the Settling Defendant (“Settlement Agreement”) representing the terms of the tentative settlement agreement with the Settling Defendant has been made available at <https://nationalopioidsettlement.com/wp-content/uploads/2024/05/Kroger-Multistate-Settlement-Agreement-Circulated-to-States-March-25-2024.pdf>;

**WHEREAS**, the Settlement Agreement provides, among other things, for the payment of certain sums to Participating Subdivisions (as defined in the Settlement Agreement) upon the occurrence of certain events detailed in the Settlement Agreement;

**WHEREAS**, the County is a Participating Subdivision in the Settlement Agreement and has the opportunity to participate in the benefits associated with the Settlement Agreement provided the County (a) approves the Settlement Agreement; (b) approves the Addendum Two to the Memorandum of Understanding allocating proceeds from the Settlement Agreement (“MOU”) among the various Wisconsin Participating Subdivisions, a copy of which is attached to this Resolution (“Addendum Two”); and (c) the Legislature’s Joint Committee on Finance approves the terms of the Settlement Agreement;

**WHEREAS**, pursuant to Section 12 of the State-Local MOU entered into between the Wisconsin Participating Subdivisions and the Attorney General of the State of Wisconsin (“State-Local MOU”), the Attorney General has provided notice that the terms of the State-Local MOU shall apply to the Settlement Agreement and all proceeds of such Settlement Agreement;

**WHEREAS**, 2021 Wisconsin Act 57 created Section 165.12 of the Wisconsin Statutes relating to the settlement of all or part of the Litigation;

**WHEREAS**, pursuant to Wis. Stat. § 165.12(2), the Legislature’s Joint Committee on Finance is required to approve the Settlement Agreement;

**WHEREAS**, pursuant to Wis. Stat. § 165.12(2), the proceeds from any settlement of all or part of the Litigation are distributed 70% to local governments in Wisconsin that are parties to the Litigation and 30% to the State;

**WHEREAS**, Wis. Stat. § 165.12(4)(b)2. provides the proceeds from the Settlement Agreement must be deposited in a segregated account (the “Opioid Abatement Account”) and may be expended only for approved uses for opioid abatement as provided in the Settlement Agreement;

**WHEREAS**, Wis. Stat. § 165.12(7) bars claims from any Wisconsin local government against the Opioid Defendants filed after June 1, 2021;

**WHEREAS**, the definition of Participating Subdivisions in the Settlement Agreement recognizes a statutory bar on claims such as that set forth in Wis. Stat. § 165.12(7) and, as a result, the only Participating Subdivisions in Wisconsin are those counties and municipalities that were parties to the Litigation (or otherwise actively litigating a claim against one, some, or all of the Opioid Defendants) as of June 1, 2021;

**WHEREAS**, the Legislature’s Joint Committee on Finance is not statutorily authorized or required to approve the allocation of proceeds of the Settlement Agreement among Wisconsin Participating Subdivisions;

**WHEREAS**, the Wisconsin Participating Subdivisions previously negotiated and approved the allocation of proceeds among themselves, which allocation is reflected in Exhibit A to the MOU, which is an agreement between all of the entities identified in the Allocation MOU as to how the proceeds payable to those entities under the Settlement Agreements will be allocated;

**WHEREAS**, the County and all other Wisconsin Participating Subdivisions agreed to and entered into that certain Addendum to the MOU (“Addendum One”) that provided for allocation of settlement proceeds from previous settlements with certain pharmacies and manufacturers according to the same percentages as that provided in the MOU;

**WHEREAS**, the County has been informed as to the deadlines related to the effective dates of the Settlement Agreement, the ramifications associated with the County’s refusal to enter into the Settlement Agreement, the form of Addendum Two and an overview of the process for finalizing the Settlement Agreements and such information, together with additional resources related to the settlement can be found at <https://nationalopioidsettlement.com/kroger-co-settlement/>;

**WHEREAS**, the County, by this Resolution, shall deposit the proceeds of the Settlement Agreement consistent with the terms of this Resolution and Wis. Stat. § 165.12(4)(b);

**WHEREAS**, pursuant to the County’s engagement agreement with the Law Firms, the County shall pay up to an amount equal to 25% of the proceeds from successful resolution of all or part of the Litigation, whether through settlement or otherwise, plus the Law Firms’ costs and disbursements, to the Law Firms as compensation for the Law Firms’ efforts in the Litigation and any settlement;

**WHEREAS**, the Law Firms anticipate making application to the national fee fund established in the Settlement Agreement seeking payment, in whole or part, of the fees, costs, and disbursements owed the Law Firms pursuant to the engagement agreement with the County;

**WHEREAS**, it is anticipated the amount of any award from the fee fund established in the Settlement Agreements will be insufficient to satisfy the County’s obligations under the engagement agreement with the Law Firms;

**WHEREAS**, the County, by this Resolution, and pursuant to the authority granted the County in the applicable Order emanating from the Litigation in relation to the Settlement Agreement and payment of attorney fees, shall authorize and direct the escrow agent responsible for the receipt and distribution of the proceeds from the Settlement Agreement to establish an account for the purpose of segregating funds to pay the fees, costs, and disbursements of the Law Firms owed by the County (the “Attorney Fees Account”) in order to fund a local “backstop” for payment of the fees, costs, and disbursements of the Law Firms;

**WHEREAS**, in no event shall payments to the Law Firms out of the Attorney Fees Account and the fee fund established in the Settlement Agreement exceed an amount equal to 25% of the amounts allocated to the County by virtue of the Addendum Two (Exhibit A to the MOU);

**WHEREAS**, the intent of this Resolution is to authorize the County to enter into the Settlement Agreement, the Addendum Two, establish the County’s Opioid Abatement Account, and establish the Attorney Fees Account; and

**WHEREAS**, the County, by this Resolution, shall authorize the County's corporation counsel to finalize and execute any other document or agreement necessary to effectuate the Settlement Agreement and the other agreements referenced herein;

**NOW, THEREFORE, BE IT RESOLVED:** the Richland County Board of Supervisors hereby approves:

1. The execution of the Settlement Agreement and any and all documents ancillary thereto and authorizes the or designee to execute same.
2. The final negotiation and execution of Addendum Two in form substantially similar to that presented with this Resolution and any and all documents ancillary thereto and authorizes the County Administrator or designee to execute same upon finalization provided the percentage share identified as allocated to the County is substantially similar to that identified in the Addendum Two provided to the Board with this Resolution.
3. The execution by the County Administrator or designee of any additional documents or agreements for the receipt and disbursement of the proceeds of the Settlement Agreement.

**BE IT FURTHER RESOLVED:** all proceeds from the Settlement Agreement not otherwise directed to the Attorney Fees Account shall be deposited in the County's Opioid Abatement Account. The Opioid Abatement Account shall be administered consistent with the terms of this Resolution, Wis. Stat. § 165.12(4), and the Settlement Agreement.

**BE IT FURTHER RESOLVED:** the County hereby authorizes the establishment of an account separate and distinct from any account containing funds allocated or allocable to the County which shall be referred to by the County as the "Attorney Fees Account." An escrow agent shall deposit a sum equal to up to, but in no event exceeding, an amount equal to 20% of the County's proceeds from the Settlement Agreement into the Attorney Fees Account. If the payments to the County are not enough to fully fund the Attorney Fees Account as provided herein because such payments are made over time, the Attorney Fees Account shall be funded by placing up to, but in no event exceeding, an amount equal to 20% of the proceeds from the Settlement Agreement attributable to Local Governments (as that term is defined in the MOU) into the Attorney Fees Account for each payment. Funds in the Attorney Fees Account shall be utilized to pay the fees, costs, and disbursements owed to the Law Firms pursuant to the engagement agreement between the County and the Law Firms provided, however, the Law Firms shall receive no more than that to which they are entitled under their fee contract when considering the amounts paid the Law Firms from the fee fund established in the Settlement Agreement and allocable to the County. The Law Firms may make application for payment from the Attorney Fees Account at any time and the County shall cooperate with the Law Firms in executing any documents necessary for the escrow agent to make payments out of the Attorney Fees Account.

**BE IT FURTHER RESOLVED** that all actions heretofore taken by the Board of Supervisors and other appropriate public officers and agents of the County with respect to the matters contemplated under this Resolution are hereby ratified, confirmed and approved.

Adopted by the Richland County Board of Supervisors this \_\_\_\_ day of \_\_\_\_\_, 2024.

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County Clerk

**ADDENDUM TWO TO WISCONSIN LOCAL GOVERNMENT  
MEMORANDUM OF UNDERSTANDING**

**WHEREAS**, the undersigned local governments (“Local Governments”) entered into that certain Memorandum of Understanding relating to, among other things, the allocation of the proceeds of the settlements with McKesson Corporation, Cardinal Health, Inc., AmerisourceBergen Corporation, Johnson & Johnson, Janssen Pharmaceuticals, Inc., Ortho-McNeil-Janssen Pharmaceuticals, Inc., and Janssen Pharmaceutica, Inc. (“Original MOU”); and

**WHEREAS**, the undersigned Local Governments entered into that certain Addendum to the MOU relating to, among other things, the allocation of the proceeds of the settlements with Walgreens, Walmart, CVS, Teva, and Allergan (“Addendum 1” and, together with the Original MOU, the “MOU”); and

**WHEREAS**, the settlement discussions with The Kroger Co. has resulted in a tentative agreement as to settlement terms (“Kroger Settlement Agreement”) pending agreement from the State of Wisconsin, the Local Governments and other parties involved in the Litigation; and

**WHEREAS**, the Local Governments intend this Addendum Two to the MOU (“Addendum Two”) to effectuate the terms of the Kroger Settlement Agreement and allocate the proceeds of the Kroger Settlement Agreement to each of the Local Governments in the same manner and same percentages as set forth in the MOU and Exhibit A to the Original MOU, a copy of which is appended to this Addendum Two with the elimination of the dollar amounts attributable to the settlements referenced in the Original MOU.

**NOW, THEREFORE**, the Local Governments enter into this Addendum Two upon the terms described herein.

1. The Local Governments ratify, confirm and agree to in all respects the MOU. By this Addendum Two, the Local Governments agree that any and all proceeds of the Kroger Settlement Agreement shall be distributed, allocated and otherwise disposed of in the same manner and same percentages as set forth in the MOU and Exhibit A to the Original MOU. Terms not defined in this Addendum Two shall be given the definition ascribed to such terms in the MOU and the Kroger Settlement Agreement.
2. Nothing in this Addendum Two is intended to alter or change any Local Government’s right to pursue its own claim. Rather, the intent of this Addendum Two is to provide a mechanism for the receipt and expenditure of Opioid Funds, as that term is defined in the MOU.
3. This MOU may be executed in counterparts. Electronic signatures shall in all respects be considered valid and binding.

*[Signatures on Following Page]*

**IN WITNESS WHEREOF**, the parties hereby execute this Addendum Two as of the date set forth below.

**ON BEHALF OF THE LOCAL GOVERNMENTS:**

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Ashland County  
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Columbia County

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Crawford County

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# EXHIBIT A

## Allocation of Proceeds Among the Local Governments

The following chart is agreed upon by and between the Local Governments identified below as representing the allocation of proceeds from the Settlement Agreements following (a) allocation to the Local Governments; and (b) allocation to the Attorney Fee Fund. The Local Governments shall cooperate with one another and the State in the negotiation and execution of an Escrow Agreement to effectuate the terms of the State-Local Government MOU, the Local Government MOU and the allocation set forth below. **The monetary value associated with the percentages below will be calculated consistent with the Settlement Agreements.**

Local Government Type	Wisconsin Litigating Local Government	Allocation Percentage
County	Adams County	0.327%
County	Ashland County	0.225%
County	Barron County	0.478%
County	Bayfield County	0.124%
County	Brown County	2.900%
County	Buffalo County	0.126%
County	Burnett County	0.224%
County	Calumet County	0.386%
County	Chippewa County	0.696%
County	Clark County	0.261%
County	Columbia County	1.076%
County	Crawford County	0.195%
County	Dane County	8.248%
County	Dodge County	1.302%
County	Door County	0.282%
County	Douglas County	0.554%
City	Superior	0.089%
County	Dunn County	0.442%
County	Eau Claire County	1.177%
County	Florence County	0.053%
County	Fond Du Lac County	1.196%
County	Forest County	0.127%
County	Grant County	0.498%
County	Green County	0.466%
County	Green Lake County	0.280%
County	Iowa County	0.279%

County	Iron County	0.061%
County	Jackson County	0.236%
County	Jefferson County	1.051%
County	Juneau County	0.438%
County	Kenosha County	3.712%
City	Kenosha	0.484%
City	Pleasant Prairie	0.059%
County	Kewaunee County	0.156%
County	La Crosse County	1.649%
County	Lafayette County	0.134%
County	Langlade County	0.312%
County	Lincoln County	0.350%
County	Manitowoc County	1.403%
County	Marathon County	1.259%
County	Marinette County	0.503%
City	Marinette	0.032%
County	Marquette County	0.246%
County	Menominee County	0.080%
County	Milwaukee County	25.220%
City	Cudahy	0.087%
City	Franklin	0.155%
City	Greenfield	0.163%
City	Milwaukee	7.815%
City	Oak Creek	0.166%
City	South Milwaukee	0.096%
City	Wauwatosa	0.309%
City	West Allis	0.378%
County	Monroe County	0.655%
County	Oconto County	0.336%
County	Oneida County	0.526%
County	Outagamie County	1.836%
County	Ozaukee County	1.036%
County	Pepin County	0.055%
County	Pierce County	0.387%
County	Portage County	0.729%
County	Price County	0.149%
County	Racine County	3.208%
City	Mount Pleasant	0.117%
City	Sturtevant	0.018%

City	Union Grove	0.007%
City	Yorkville Town	0.002%
County	Richland County	0.218%
County	Rock County	2.947%
County	Rusk County	0.159%
County	Sauk County	1.226%
County	Sawyer County	0.258%
County	Shawano County	0.418%
County	Sheboygan County	1.410%
County	St Croix County	0.829%
County	Taylor County	0.159%
County	Trempealeau County	0.320%
County	Vernon County	0.322%
County	Vilas County	0.468%
County	Walworth County	1.573%
County	Washburn County	0.185%
County	Washington County	1.991%
County	Waukesha County	6.035%
County	Waupaca County	0.606%
County	Waushara County	0.231%
County	Winnebago County	2.176%
County	Wood County	0.842%

## **EXHIBIT K**

### **Subdivision Participation and Release Form**

Governmental Entity: Richland County	State: WI
Authorized Official: Candace Pesch	
Address 1: 181 W. Seminary St.	
Address 2:	
City, State, Zip: Richland Center, WI 53581	
Phone: 608-649-3001	
Email: candace.pesch@co.richland.wi.us	

The governmental entity identified above (“*Governmental Entity*”), in order to obtain and in consideration for the benefits provided to the Governmental Entity pursuant to the Settlement Agreement dated March 22, 2024 (“*Kroger Settlement*”), and acting through the undersigned authorized official, hereby elects to participate in the Kroger Settlement, release all Released Claims against all Released Entities, and agrees as follows.

1. The Governmental Entity is aware of and has reviewed the Kroger Settlement, understands that all terms in this Participation and Release Form have the meanings defined therein, and agrees that by executing this Participation and Release Form, the Governmental Entity elects to participate in the Kroger Settlement and become a Participating Subdivision as provided therein.
2. The Governmental Entity shall promptly, and in any event no later than 14 days after the Reference Date and prior to the filing of the Consent Judgment, dismiss with prejudice any Released Claims that it has filed. With respect to any Released Claims pending in *In re National Prescription Opiate Litigation*, MDL No. 2804, the Governmental Entity authorizes the Plaintiffs’ Executive Committee to execute and file on behalf of the Governmental Entity a Stipulation of Dismissal with Prejudice substantially in the form found at [\[website link to national settlement website to be provided\]](#).
3. The Governmental Entity agrees to the terms of the Kroger Settlement pertaining to Participating Subdivisions as defined therein.
4. By agreeing to the terms of the Kroger Settlement and becoming a Releasor, the Governmental Entity is entitled to the benefits provided therein, including, if applicable, monetary payments beginning after the Effective Date.
5. The Governmental Entity agrees to use any monies it receives through the Kroger Settlement solely for the purposes provided therein.
6. The Governmental Entity submits to the jurisdiction of the court in the Governmental Entity’s state where the Consent Judgment is filed for purposes limited to that court’s role as provided in, and for resolving disputes to the extent provided in, the Kroger Settlement. The Governmental Entity likewise agrees to arbitrate before the National Arbitration Panel

as provided in, and for resolving disputes to the extent otherwise provided in, the Kroger Settlement.

7. The Governmental Entity has the right to enforce the Kroger Settlement as provided therein.
8. The Governmental Entity, as a Participating Subdivision, hereby becomes a Releasor for all purposes in the Kroger Settlement, including without limitation all provisions of Section XI (Release), and along with all departments, agencies, divisions, boards, commissions, districts, instrumentalities of any kind and attorneys, and any person in their official capacity elected or appointed to serve any of the foregoing and any agency, person, or other entity claiming by or through any of the foregoing, and any other entity identified in the definition of Releasor, provides for a release to the fullest extent of its authority. As a Releasor, the Governmental Entity hereby absolutely, unconditionally, and irrevocably covenants not to bring, file, or claim, or to cause, assist or permit to be brought, filed, or claimed, or to otherwise seek to establish liability for any Released Claims against any Released Entity in any forum whatsoever. The releases provided for in the Kroger Settlement are intended by the Parties to be broad and shall be interpreted so as to give the Released Entities the broadest possible bar against any liability relating in any way to Released Claims and extend to the full extent of the power of the Governmental Entity to release claims. The Kroger Settlement shall be a complete bar to any Released Claim.
9. The Governmental Entity hereby takes on all rights and obligations of a Participating Subdivision as set forth in the Kroger Settlement.
10. In connection with the releases provided for in the Kroger Settlement, each Governmental Entity expressly waives, releases, and forever discharges any and all provisions, rights, and benefits conferred by any law of any state or territory of the United States or other jurisdiction, or principle of common law, which is similar, comparable, or equivalent to § 1542 of the California Civil Code, which reads:

**General Release; extent.** A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release that, if known by him or her would have materially affected his or her settlement with the debtor or released party.

A Releasor may hereafter discover facts other than or different from those which it knows, believes, or assumes to be true with respect to the Released Claims, but each Governmental Entity hereby expressly waives and fully, finally, and forever settles, releases and discharges, upon the Effective Date, any and all Released Claims that may exist as of such date but which Releasors do not know or suspect to exist, whether through ignorance, oversight, error, negligence or through no fault whatsoever, and which, if known, would materially affect the Governmental Entities' decision to participate in the Kroger Settlement.

11. Nothing herein is intended to modify in any way the terms of the Kroger Settlement, to which Governmental Entity hereby agrees. To the extent this Participation and Release Form is interpreted differently from the Kroger Settlement in any respect, the Kroger Settlement controls.

I have all necessary power and authorization to execute this Participation and Release Form on behalf of the Governmental Entity.

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_