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Traci N. T. Fujita, Esq.

COUNTY COUNCIL
COUNTY OF MAUI
200 S. HIGH STREET
WAILUKU, MAUI, HAWAII 96793
www.MauiCounty.us

October 28, 2019

MEMO TO: Moana M. Lutey
Corporation Counsel

Handwritten signature of Michael J. Molina in black ink.

F R O M: Michael J. Molina, Chair
Governance, Ethics, and Transparency Committee

SUBJECT: **LITIGATION MATTERS (STATUS AND SPECIAL COUNSEL
AUTHORIZATION: LITIGATION AGAINST OPIOID
MANUFACTURERS AND DISTRIBUTORS)** (GET-11(46))

May I please call your attention to the following website on the National Prescription Opiate Litigation:

<https://www.ohnd.uscourts.gov/mdl-2804>

May I please additionally call your attention to the attached document entitled "EXCLUSION REQUEST FORM."

May I request you respond to the following questions by 4:30 p.m. on **November 7, 2019**:

- If the County does not opt out of the case, what is the amount of anticipated damages to be awarded to the County?
- If the County opts out of the case, what is the amount of damages the County could reasonably recover in its own lawsuit against opioid manufactures and distributors?

To preserve options, I would like to consider introducing a resolution requesting the County opt out of the case. November 8, 2019 is the only Council meeting date prior to the opt-out deadline. Documents for the agenda must be submitted to the County Clerk by noon on November 1, 2019.

Moana M. Lutey
October 28, 2019
Page 2

Therefore, may I please request you approve as to form and legality the attached proposed resolution, entitled "OPTING OUT OF THE NEGOTIATION CLASS IN THE NATIONAL PRESCRIPTION OPIATE LITIGATION," by 4:30 p.m. on **October 31, 2019**.

Please also see the attached undated document, from Theodora & Oringher, Counselors at Law entitled "Presentation to Maui County on Potential Opioid Litigation."

To ensure efficient processing, please include the relevant Committee item number in the subject line of your response.

Should you have any questions, please contact me or the Committee staff (Shelly Espeleta at ext. 7134, David Raatz at ext. 7664, or Pauline Martins at ext. 8039).

get:ltr:011(46)01:dr

Attachments

Resolution

No. _____

OPTING OUT OF THE NEGOTIATION CLASS IN THE NATIONAL PRESCRIPTION OPIATE LITIGATION

WHEREAS, the United States District Court for the Northern District of Ohio is overseeing the class-action case called In re National Prescription Opiate Litigation, as seen on the court's website: <https://www.ohnd.uscourts.gov/mdl-2804>; and

WHEREAS, the County of Maui is currently a member of the negotiation class and will be awarded damages under a court-approved order unless the County opts out of the class by submitting a completed Exclusion Request Form by November 22, 2019; and

WHEREAS, if the County opts out, it could bring its own case against opioid manufacturers and distributors and potentially recover more damages than it would be awarded as a member of the class; and

WHEREAS, the 2019-2021 Council has not yet met on the opioid litigation, including the possible employment of special counsel with specialized expertise; now, therefore,

BE IT RESOLVED by the Council of the County of Maui:

1. That it requests the Department of the Corporation Counsel submit a completed Exclusion Request Form by November 22, 2019, to have the County of Maui opt out of In re National Prescription Opiate Litigation;
2. That the Council intends to evaluate the possible employment of special counsel with specialized expertise to represent the County in the case, which would require the adoption of another resolution by a two-thirds vote; and

Resolution No. _____

3. That certified copies of this resolution be transmitted to the Mayor and the Corporation Counsel.

APPROVED AS TO FORM AND LEGALITY

Department of the Corporation Counsel
County of Maui

get:misc:011(46)areso01:dr

**IF YOU WANT TO EXCLUDE YOUR COUNTY OR CITY
YOU MUST ACT BY NOVEMBER 22, 2019**

EXCLUSION REQUEST FORM

Read this page carefully then turn to Page 2 if you want to sign and send

Complete this form ONLY if your County or City does NOT want to remain a Class Member and does not want to share in any potential negotiated Class settlement. If your County or City does not complete and submit this form, it will be deemed to be a Class Member so long as it is a County or City in the United States as those terms are described in the Class Notice and is on the list of Class Members found at www.OpioidsNegotiationClass.info.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO

_____ X
:
In re NATIONAL PRESCRIPTION : 1:17-md-2804 (DAP)
OPIATE LITIGATION :
_____ X

Class Notice Administrator
NPO Litigation
P.O. Box 6727
Portland, OR 97228-6727

Dear Class Notice Administrator:

My County or City does **NOT** want to be a member of the Negotiation Class certified in the *In re National Prescription Opiate Litigation*. I understand that by completing the information requested on page 2, signing, and submitting a copy of this form by email (to the email address on page 2) sent on or before **November 22, 2019** OR by first-class U.S. mail (to the mailing address on page 2) post-marked on or before **November 22, 2019**, I am opting my County or City out of the Negotiation Class and it will **NOT** be a Class Member. I understand that by timely submitting this form, my County or City is foregoing the right to share in any Class settlement that may be obtained. I understand that my County or City is **NOT** guaranteed an opportunity to opt back in if there is a Class settlement, so this is our final decision. I also understand that by opting out, my County or City will not be bound by any judgment entered as part of any Class settlement.

I understand that if my jurisdiction is a Class Member and wants to remain a Class Member, it does not need to do anything now. I understand that I should **NOT** return this Exclusion Request Form if my jurisdiction wants to remain a Class Member.

I understand that, if I have any questions, I may contact Class Counsel at **1-877-221-7468**, or visit www.OpioidsNegotiationClass.info **BEFORE** I mail this form to you and **BEFORE November 22, 2019**.

**TURN TO PAGE 2 IF YOU WANT TO SIGN EXCLUSION/OPT-OUT FORM
AND FOR EMAIL AND MAILING ADDRESSES**

**IF YOU WANT TO EXCLUDE YOUR COUNTY OR CITY
YOU MUST ACT BY NOVEMBER 22, 2019**

EXCLUSION REQUEST FORM
Read Information on Page 1 carefully before signing

Having read and understood the information on page 1, the County or City (**circle one**) entitled _____ in the State of _____ hereby excludes itself from the Negotiation Class certified by the United States District Court in the Northern District of Ohio in *In re National Prescription Opiate Litigation*, MDL 2804. Under penalty of perjury and in accordance with 28 U.S.C. § 1746, I declare that I am an official or employee authorized to take legal action on behalf of my County or City.

Signature: _____

Print name: _____

Title: _____

City or County Represented: _____ (Circle one): City / County

Address: _____

City: _____ State: _____ Zip Code: _____

Phone: _____ Email: _____

Date: _____

BY NOVEMBER 22, 2019

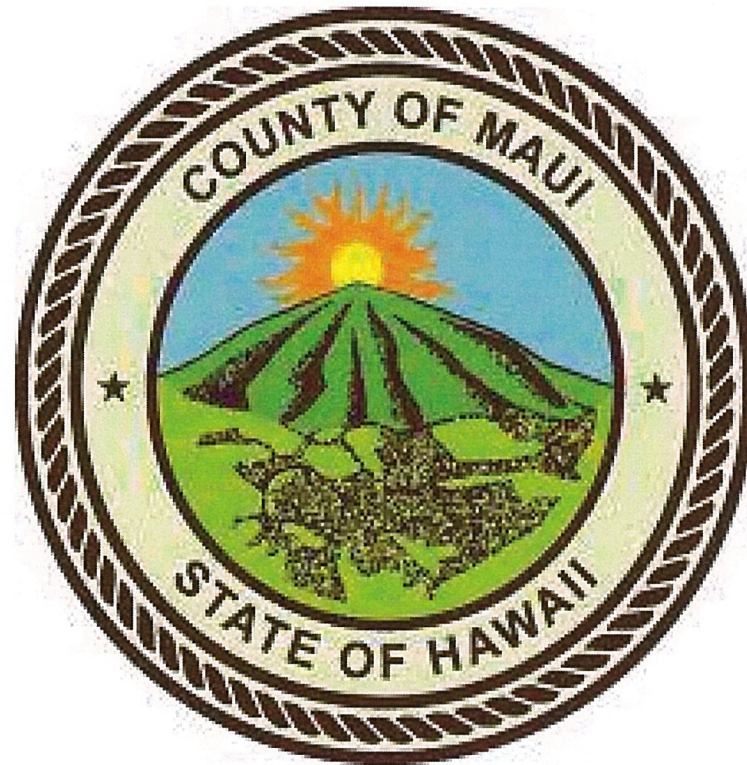
EMAIL TO:

**OR SEND BY
FIRST CLASS MAIL TO:**

info@OpioidsNegotiationClass.info

NPO Litigation
P.O. Box 6727
Portland, OR 97228-6727

Presentation to Maui County on Potential Opioid Litigation



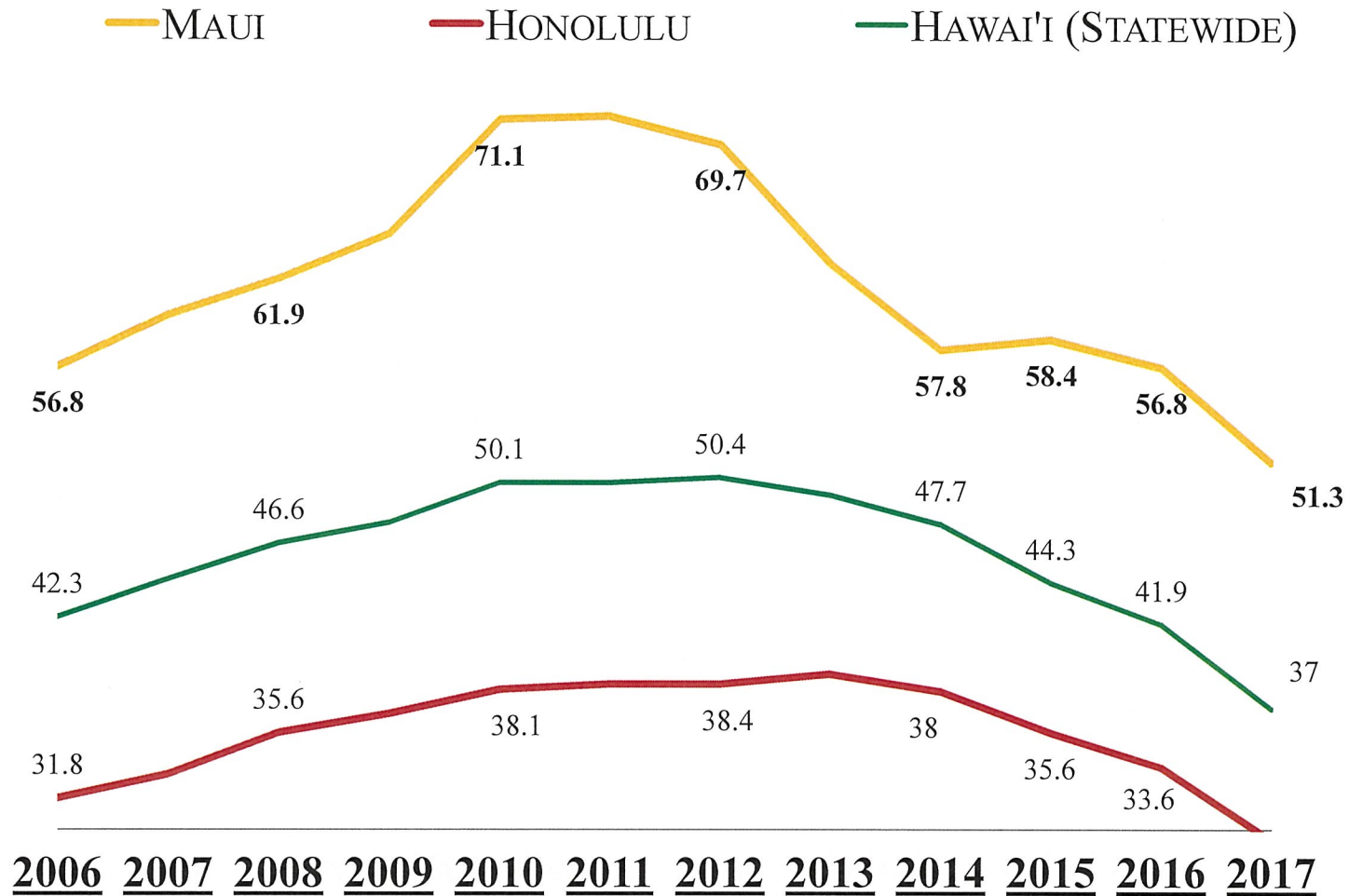
Richard de Bodo
rdebodo@tocounsel.com
(310) 251-3096

Leading Causes of Fatal Injuries

Hawaii Residents (1997-2016)

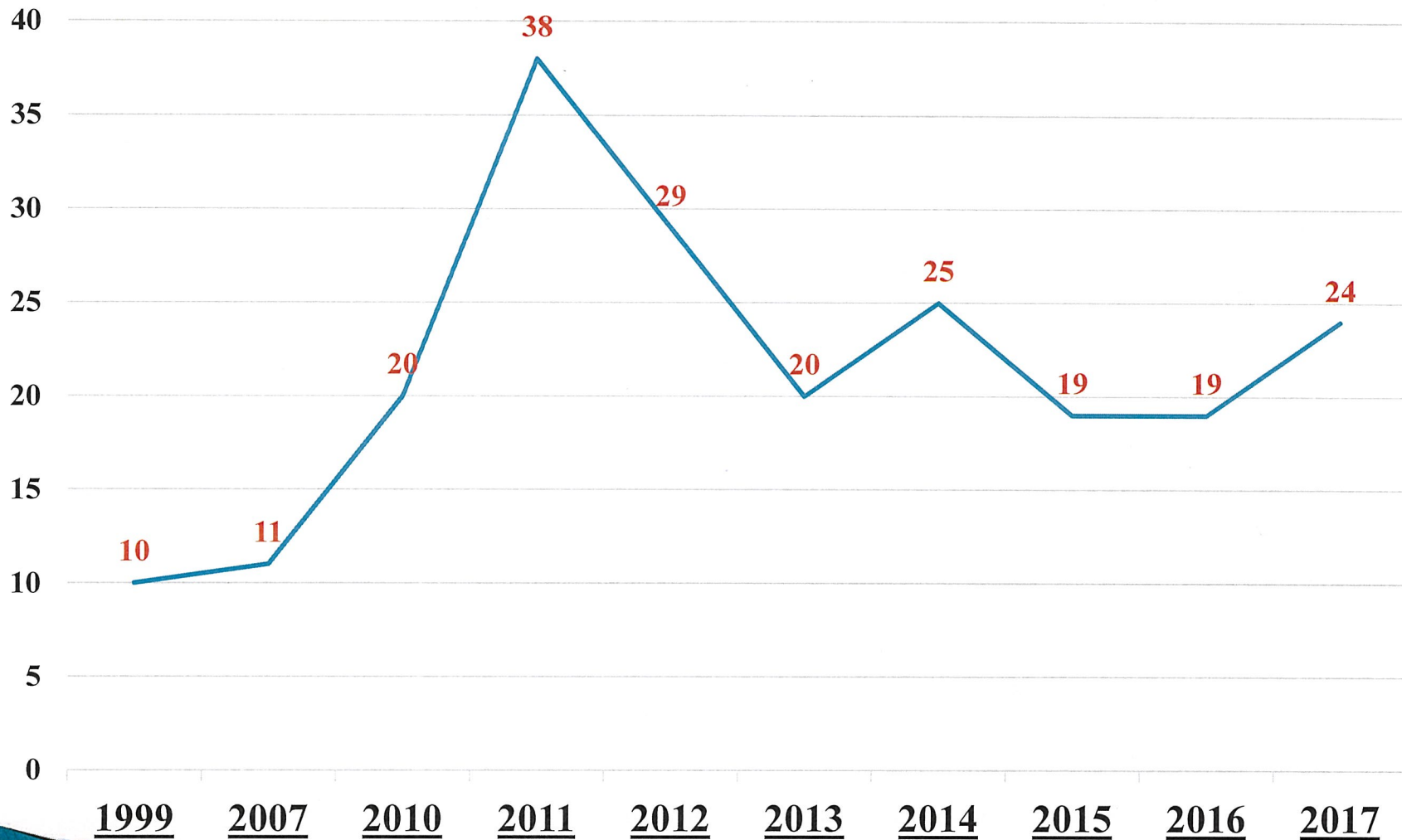
	1997-2001	2002-2006	2007-2011	2012-2016
1	motor vehicle (628)	motor vehicle (703)	DRUG POISONING (774)	DRUG POISONING (782)
2	suffocation (407)	DRUG POISONING (536)	falls (630)	falls (773)
3	falls (391)	falls (525)	motor vehicle (578)	suffocation (570)
4	DRUG POISONING (378)	suffocation (453)	suffocation (557)	motor vehicle (565)
5	firearm (233)	drowning (178)	firearm (205)	firearm (235)
6	drowning (175)	firearm (173)	drowning (202)	drowning (194)
7	cut/pierce (62)	poisoning (46)	poisoning (72)	cut/pierce (66)
8	poisoning (44)	cut/pierce (39)	cut/pierce (61)	poisoning (47)
9	fires and burns (38)	fires and burns (29)	other transport (29)	other transport (37)
10	other transport (27)	other transport (16)	fires and burns (24)	fires and burns (29)

Opioid RXs Dispensed Each Year, Per 100 Persons (2006-2017)



Opioid Overdoses Per Year*

Maui Residents (1999-2017)



Who Is Responsible for The Crisis?

▶ Opioid Manufacturers

- Purdue Pharma
- Janssen/Johnson & Johnson
- Teva/ Cephalon
- Endo Pharmaceuticals
- Mylan
- Ethex/ AMAG
- Sandoz
- Indivior
- Allergan
- SpecGX
- Hospira
- KVK-Tech
- AbbVie
- Sun Pharmaceutical
- Baxter Healthcare
- Glenmark
- Hawthorn
- AAI Pharma

▶ Opioid Distributors

- AmerisourceBergen
- McKesson Corp.
- Cardinal
- Walgreen Co.
- Wal-Mart
- Allscripts
- Mallinckrodt
- Anda
- CVS

Multidistrict Opioids Litigation (MDL)

- ▶ All federal opioid-related lawsuits (over 2,400) have been consolidated into a multi-district litigation (MDL).
- ▶ The MDL Court established a Negotiation Class of all cities and counties to negotiate a class-wide settlement with 13 opioid manufacturer and distributor defendants.
 - (1) Purdue, (2) Cephalon, (3) Endo, (4) Mallinckrodt, (5) Actavis, (6) Janssen, (7) McKesson, (8) Cardinal, (9) AmerisourceBergen, (10) CVS Rx Services, Inc., (11) Rite-Aid Corporation, (12) Walgreens, and (13) Wal-Mart.
- ▶ Counties and Cities have a one-time opportunity to opt out and exclude themselves from the Negotiation Class before **November 22, 2019**; otherwise, they will be bound by the class settlement.

Maui County Has Automatically Been Included In The Negotiation Class

- ▶ Even though it did not file a lawsuit, Maui County is included in the Negotiation Class, and it will remain in the Class if it does nothing.
- ▶ This means Maui County will be bound by a class settlement unless it affirmatively opts out before November 22, 2019.
 - Here is the list of Negotiation Class members:

State	City/ County Name	Within County	Population in 2012	Census ID
Hawaii	Hawaii County		188,946	12100100100000
Hawaii	Kalawao		94	15005
Hawaii	Kauai County		68,553	12100300300000
Hawaii	Maui County		158,432	12100400400000
Hawaii	Urban Honolulu CDP	URBAN HONOLULU	351,792	15111715500

Maui County's Opioid Claims Are Separate and Distinct From the Hawaii Attorney General's Opioid Claims

- ▶ Maui County's opioid claims are separate and distinct from the Hawaii AG's opioid claims.
 - The harms and damages suffered by Maui County due to opioids are different from those suffered by the State of Hawaii.
 - The Hawaii AG cannot recover for Maui County's harms and damages.
 - As past cases make clear, there is no assurance that the AG's lawsuit will result in any recovery for Maui County.

What Are Maui County's Options?

Option 1: Do Not Take Action.

Option 2: Remain in the MDL, But Proactively Try To Improve Maui's Allocation.

or

Option 3: Opt out of the MDL and litigate in Hawaii State Court.

Option 1: Do Not Take Action

- ▶ If Maui County does not take action and opt out, it will be bound by any class settlement that is agreed to.
- ▶ Maui County's settlement amount would be its Default Allocation, which is low compared to other U.S. counties and cities.
- ▶ Allocations are determined by three factors, weighted equally (1/3-1/3-1/3):
 - (1) the amount of opioids shipped to the county;
 - (2) the number of opioid deaths that occurred in the county; and
 - (3) the number of people who suffer opioid use disorder in that county.

Problems with Option 1:

- ▶ Maui County's default allocation numbers are low compared to other U.S. cities.
- ▶ The County's allocation numbers overlook the vast number of tourists who visit Maui County (3 million/year) and other factors.
- ▶ If the County does nothing and rests on its default allocation, it will not receive a fair award of damages.

County	Per Capita Value
Maui County, HI	\$1.50
Honolulu County, HI	\$1.08
Maricopa County, AZ (Phoenix)	\$3.20
Clark County, NV (Las Vegas)	\$3.64
Philadelphia County, PA	\$4.21
Baltimore City, MD	\$5.99
Kanawha County, WV (Charleston)	\$6.43
Fayette County, KY (Lexington)	\$4.35

"Per Capita Value" refers to the amount the county would receive per resident based on a hypothetical \$1 billion gross settlement for Counties and Cities. The per capita value was calculated by dividing the allocation to the county by the county's population.

Option 2: Remain in MDL, But Proactively Try To Improve Allocation

- ▶ Maui County can remain in the MDL but apply to the MDL's Special Needs Fund "to obtain additional relief for any local impact of the opioids crisis that is not captured by the Class Member's allocation."
- ▶ The County can seek to prove its damages in detail, including showing the unique impact of tourists and visitors and other factors set forth below.
- ▶ A court-appointed Special Master will rule upon such applications.
- ▶ The Special Needs Fund will provide the County with some opportunity, but the County may still not obtain a fair settlement amount, given the low initial allocation the County has received.

Option 3: Opt out of the MDL and litigate in Hawaii State Court

- ▶ Litigating in Hawaii State Court may take longer than reaching a settlement in the MDL, but it creates the potential to obtain higher damages or a more favorable settlement.
- ▶ The County would have the opportunity to present its damages claims in a local Maui court before judges and possibly jurors familiar with Maui's unique issues and to introduce evidence and testimony from local Maui witnesses.

Benefits of Litigating In State Court

- Lessons from the Tobacco Litigation of the '90s
 - **Master Settlement Agreement (“MSA”)—46 States Joined**
 - \$206 billion settlement (~\$4.5 billion per state, \$902.92 per capita)
 - **4 States Held Out, Settled for More**
 - Minnesota, Mississippi, Florida and Texas (\$9 billion average per state, \$1,014.34 average per capita)

Benefits of Litigating In State Court

➤ Early results in opioid cases:



▪ **\$270 million** settlement to avoid trial in Oklahoma.



▪ **\$85 million** settlement to avoid trial in Oklahoma.

Proving Maui County's Opioid Damages

▶ **We Will Work With County Personnel To Identify the Portions of the County's Budget Expended Relating to Opioids:**

- Public Safety: \$50M -\$110M/year
- Police: \$30M -\$55M/year
- Fire and Public Safety: \$15M-\$35M/year
- Prosecuting attorney: \$5M/year
- Department of corporate counsel: \$5M/year
- Social welfare: \$10M - \$20M/year

(Health- And Crime-Related General Fund Expenditures, Data available at <https://www.mauicounty.gov/1896/Budget-Documents-Ordinances>)

▶ **Additional Opioid Damages And Drain on County Resources Due To Tourists and Visitors**

Proving Maui County's Opioid Damages

▶ Loss of Productivity in the Maui Community

- Labor Participation Costs
- Specialty Treatment Costs
- Hospitalization Costs
- Incarceration Costs
- Premature Mortality

▶ Additional Crime Costs

- Criminal Justice System
- Crime Victim Costs
- Other Crime Costs

▶ Additional Health Costs

- Specialty Treatment
- Hospital and Emergency Dept.
- Insurance Administration
- Prevention and Research

▶ Damages Experts and Their Analysis

