

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

IN RE: NATIONAL PRESCRIPTION)	CASE NO. 1:17-MD-2804
OPIATE LITIGATION)	
)	David R. Cohen
THIS DOCUMENT RELATES TO:)	Hon. Layn Phillips
<i>“All Tribe Cases”</i>)	
)	
)	<u>TRIBAL ALLOCATION ORDER NO. 1</u>
)	

Native American Indian Tribes have resolved their Opioid litigation with nine different defendants through the following seven Master Settlement Agreements: (1) the Allergan MSA; (2) the Teva MSA; (3) the Janssen MSA; (5) the Big Three Distributors MSA; (5) the CVS MSA; (6) the Walgreens MSA; and (7) the Walmart MSA.¹ Each of these seven MSAs provides that the undersigned are “Tribal Allocation Appointees” who are in charge of allocating the settlement funds amongst the Tribes.² The Directors of the respective Tribal Abatement Fund Trust (“TAFT”) then make “Abatement Distributions” to each Participating Tribe from that Tribe’s settlement fund allocation.³

¹ These seven MSAs are all available at www.TribalOpioidSettlements.com. The Tribes also reached settlements with Purdue and Mallinckrodt in bankruptcy, but this Order does not address those two settlements.

² *See, e.g.*, Allergan MSA §V.D.1 at 16 (“David R. Cohen and Layn Phillips in their capacities as Tribal Allocation Appointees are responsible to jointly determine the final inter-tribal allocation resulting in each Tribe’s Tribal Allocation Distribution Percentage for this settlement and for all other settlements between the TLC, the manufacturers, distributors, and pharmacies.”).

³ *See, e.g.*, Allergan MSA, Exhibit D “TAFT VII Trust Agreement” §4.1 (“The Directors shall make Abatement Distributions”); *id.* §4.2(b) (“Abatement Distributions shall be made to Participating Tribes in accordance with the Tribal Allocation Distribution Percentages”).

Accordingly, the Tribal Allocation Appointees now rule that settlement payments received by the operative TAFT under the seven MSAs shall be allocated as follows.

Payments Received by the TAFT in Calendar Year 2023

- 87.5% of all settlement payments received by the TAFT in Calendar Year 2023 are hereby allocated according to the June 18, 2021 Tribal Allocation Matrix, also known as the “Purdue Allocation.”⁴ The Directors may begin making Abatement Distributions from these payment shares at any time.
- Regarding the other 12.5% of the settlement payments received by the TAFT in Calendar Year 2023, the Appointees will allocate those payments according to various factors, including: (1) information provided by Tribes in their previously-submitted Allocation Briefs; and (2) updates to the data sets used in the Purdue Allocation. The Appointees expect to announce these allocations of the other 12.5% of the settlement payments in the next 180 days.

⁴ The Purdue Allocation may be found at Allergan MSA, Exhibit C (“List of Tribes and Tribal Allocation Voting Percentages”). It is also available in Excel Format at www.mdlcentrality.com/nato/.

Note, however, that Cherokee Nation settled separately with CVS, Walgreens, Walmart, and the Big Three Distributors. Therefore, Cherokee Nation does not get any allocation under those Master Settlement Agreements, and the other Tribes receive an “Adjusted Purdue Allocation.” *See, e.g.,* Big Three Distributors MSA §I.B at 1 (referring to the “Adjusted Purdue Tribal Allocation Percentage”); *id.* §I.R at 3 (“The aggregate Final Tribal Allocation Distribution Percentages of all Tribes, excluding the Cherokee Nation, shall equal 100%.”); *id.* Exhibit L (listing Adjusted Purdue Tribal Allocation Percentages for all Tribes).

In sum: (A) 87.5% of all settlement payments received by the TAFT for the Allergan, Teva, and Janssen MSAs in Calendar Year 2023 are hereby allocated according to the Purdue Allocation; and (B) 87.5% of all settlement payments received by the TAFT for the CVS, Walgreens, Walmart, and Big Three Distributors MSAs in Calendar Year 2023 are hereby allocated according to the Adjusted Purdue Allocation.

- A Tribe’s total allocation for Calendar Year 2023 – that is, the allocation of the 87.5% share plus any additional allocation from the 12.5% share – shall be that Tribe’s “Initial Annual Allocation,” or “IAA.”

Payments Received by the TAFT in Later Calendar Years

- 92.5% of all settlement payments received by the TAFT in Calendar Years 2024 and later are hereby allocated according to the Initial Annual Allocation. The Directors may begin making Abatement Distributions from those payment shares at any time.
- Regarding the other 7.5% of the settlement payments received by the TAFT in Calendar Years 2024 and later, the Appointees will allocate those payments annually according to various factors, including: (1) information provided by Tribes in future Allocation Briefs; and (2) updates to the data sets used in the Purdue Allocation. The Appointees expect to announce these allocations of the other 7.5% of the settlement payments in the first quarter of each Calendar Year.
- The Appointees adopt this procedure of annual reassessment in order to address any changed circumstances. The Appointees may simply conclude that the 7.5% share should be allocated according to each Tribe’s IAA.

Use of Abatement Distributions

The seven MSAs each provide that all Tribes must use any Abatement Distributions made

by the Directors from the TAFT only for “Approved Uses.”⁵ These uses do not and may not include payment of attorney fees.⁶ To ensure proper use of settlement funds: (1) each Tribe must report to the Directors annually regarding its Opioid Remediation Expenditures; (2) the Directors must aggregate these Tribal reports and then, in turn, report annually to the Defendant and the Special Master; and (3) the Directors are authorized to monitor Tribal spending as it occurs.⁷

Accordingly, if the Appointees learn that a Tribe has used its Abatement Distributions for an unapproved use, the Appointees may immediately modify that Tribe’s allocation, including dropping the allocation to zero.

IT IS SO ORDERED.

/s/ David R. Cohen
Layn Philips

March 22, 2023

⁵ See, e.g., Allergan MSA, Exhibit D “TAFT VII Trust Agreement,” Exhibit 4 at 33 (noting that at least 95% of Abatement Distributions must be used for “Approved Tribal Opioid Abatement Uses,” and no more than 5% may be used for “Approved Administrative Expenses,” all of which are defined).

⁶ See, e.g., Allergan MSA §V.B.1 (“85% of [settlement] funds shall be paid to TAFT VII for distribution to Participating Tribes to use for Opioid Remediation . . . ; and 15% of such funds shall be set aside by the Special Master for the Attorney Fee Fund subject to Section VII to pay attorneys’ fees and litigation costs.”); *id.* §V.B.4 (“In no event may less than 85% of Allergan’s Compensatory Restitution Payments to the Allergan Settlement Trust be spent on Opioid Remediation. The Parties acknowledge and agree that the payments disbursed to the Tribes from TAFT VII in accordance with this Section V and Schedules B and D of the TAFT VII TDP are exclusively for Opioid Remediation.”).

⁷ See, e.g., Allergan MSA §V.F.2 at 18 (“The TAFT VII Directors shall, in consultation with the TLC, design and implement a system of annual reporting by Participating Tribes relating to Opioid Remediation expenditures made using funds received from TAFT VII. The TAFT VII Directors shall provide an annual Tribal Opioid Abatement Report to Allergan and the Special Master...”); *id.* Exhibit D “TAFT VII Trust Agreement” §2.1(c)(viii) (“The Directors shall have the power to: * * * supervise and administer the Trust in accordance with the Trust Documents, including without limitation monitor the Abatement Distribution recipients’ compliance with the TAFT VII TDP requirements for Approved Tribal Opioid Abatement Uses and Approved Administrative Expenses”).