

Tribes Reach \$590 Million Opioid Settlement With J. & J. and Distributors

Money from the tentative deal would go toward addiction and treatment and would be overseen by Native American tribal leaders.



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By Jan Hoffman
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Hundreds of Native American tribes that have suffered disproportionately high addiction and death rates during the opioid epidemic agreed on Tuesday to a tentative settlement of \$590 million with Johnson & Johnson and the country's three largest drug distributors.

Together with a deal struck last fall between the distributors and the Cherokee Nation for \$75 million, the tribes will be paid a total of \$665 million. Purdue Pharma has already committed at least tens of millions more to the tribes in a settlement that is in mediation.

"We are not solving the opioid crisis with this settlement, but we are getting critical resources to tribal communities to help address the crisis," said Steven Skikos, a top lawyer for the tribes.

Native Americans have endured disproportionately high opioid-related overdose deaths, by many metrics. In 2016, for example, Oglala Lakota County in South Dakota, home to the Oglala Lakota tribe, had an opioid-related death rate of 21

people per 100,000, more than twice the state average. According to one study, pregnant American Indian women were as much as 8.7 times more likely than pregnant women from other demographic groups to be diagnosed with opioid dependency or abuse.

The contours of the new settlement, announced in the U.S. District Court in Cleveland, the seat of the national opioid litigation, are similar to an agreement that the companies struck with state and local governments last summer.

If, as expected, most tribes sign on, the deal would be notable for its size as well as its acknowledgment of the 574 federally recognized tribes as a distinct litigating entity. Their voices have traditionally been excluded or downplayed in earlier national settlements involving the states, such as the landmark settlement with the big tobacco companies in the 1990s.

Roughly 15 percent of the total will go toward legal fees and other litigation costs, but the bulk will be directed to addiction treatment and prevention programs, to be overseen by tribal health care experts.

“My tribe has already committed to use any proceeds to confront the opioid crisis,” said Chairman Aaron Payment of the Sault Ste. Marie tribe of Chippewa in Michigan, which has 45,000 members. “The impact of the opioid epidemic is pervasive, such that tribes need all the resources we can secure to make our tribal communities whole once again.”

A signature development in this deal is the timetable, which is far faster than the one tentatively agreed to last summer with states and local governments. Johnson & Johnson will pay the tribes its \$150 million portion over two years, starting as soon as the deal is finalized; the distributors — AmerisourceBergen, Cardinal Health and McKesson — will pay \$440 million over six and a half years.

By contrast, the drug manufacturer will pay thousands of local governments and states \$5 billion over nine years, with the distributors paying \$21 billion over 18 years.

The distributors did not respond to requests for comment or declined to speak about the settlement. Johnson & Johnson said that the settlement did not represent an admission of wrongdoing. The company said that it would continue to defend itself in other cases.

Although about 175 tribes filed cases against these and other pharmaceutical industry companies, the rest of the 574 tribes will benefit as well. Tribes range in population size from roughly 400,000 to a mere handful of people. According to 2018 census data, 6.8 million people identify as American Indian or Alaska Native, or 2.1 percent of the American population, of which slightly less than half live on or near tribal lands and are probably eligible to receive tribal services such as health care.

The agreement will go forward after an overwhelming majority of the tribes that sued have signed on. Then money will be allocated to all tribes, regardless of whether they filed a case.

Lloyd B. Miller, a lead lawyer for the tribes, said that the settlement “provides outsized funding as compared to the states on a per-capita basis because the opioid disaster caused outsized and disproportionate devastation across tribal communities.”

Geoffrey Strommer, a lawyer for the tribes, said the tribes were determined that the bitter outcome of the Big Tobacco litigation more than two decades earlier not be repeated in the opioid litigation.

In the Big Tobacco litigation, a court blocked the tribes from suing. And though states used tribal population and the impact of cigarettes on tribal health during negotiations with tobacco companies, Mr. Strommer said that the states never set aside money from the Big Tobacco funds for the tribes themselves.

So the question of whether tribes would get their own seat at the negotiating table against the pharmaceutical companies or would be excluded altogether was vigorously debated, according to several lawyers familiar with the talks.

Judge Dan Aaron Polster, who is presiding over thousands of opioid cases merged in Federal District Court in Cleveland, insisted the tribes had an equal right to bring their own cases, independent of the states.

Jan Hoffman writes about behavioral health and health law.