

RECEIVED  
JUN 14 2019

TOWN OF AYER  
TOWN CLERK

9:45am  
Susan Copeland

Town of Ayer  
Board of Selectmen  
Ayer Town Hall - 1<sup>st</sup> Floor Meeting Room  
1 Main Street  
Ayer, MA 01432



**Tuesday June 18, 2019**  
**Open Session Meeting Agenda**

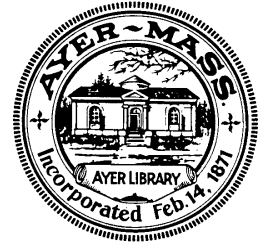
- 7:00 PM**                    **Call To Order**  
Pledge of Allegiance; Review and Approve Agenda; Announcements
- Public Input**
- 7:05 PM\***                    **Dr. Mary Malone, Superintendent, ASRSD**  
1. Field Project Update  
2. Discussion about Initial Steps for an Elementary School Project
- 7:20 PM**                    **Ms. Jessica Strunkin, Senior Vice-President- Devens**  
1. Vicksburg Square Update
- 7:35 PM**                    **Ms. Alicia Hersey, Program Manager, Comm. Development Office**  
1. Appointment of Affordable Housing Committee
- 7:40 PM**                    **Dan Van Schalkwyk, P.E., Town Engineer**  
1. MS4 Stormwater Permit Update
- 7:50 PM**                    **Ms. Susan Copeland, Town Clerk**  
1. Town Meeting and Town Election Date Discussion  
2. Reserve Fund Transfer Request
- 8:05 PM**                    **Town Manager's Report**  
1. Administrative Update/Review of Warrant(s)  
2. Appointments  
3. Town of Ayer Internet Service Provider Update  
4. Reserve Fund Transfers - *Management Support, Town Planner, FICA*  
5. Ratification of Opioid Class Action Suit
- 8:20 PM**                    **New Business/Selectmen's Questions**  
1. Utility Poles - Park Street Update (Selectman Hillman)  
2. Agenda Process (Selectman Houde)
- 8:25 PM**                    **Approval of Meeting Minutes**  
June 4, 2019
- 8:30 PM**                    **Adjournment**

*\*Agenda times are for planning purposes only and do not necessarily constitute exact time*

# Town of Ayer

## Office of Community & Economic Development

Town Hall ♦ One Main Street ♦ Ayer, MA 01432 ♦ 978-772-8221 ♦ 978-772-8208 (fax)



### MEMORANDUM

TO: Board of Selectmen

CC: Robert A. Pontbriand, Town Manager

FROM: Alicia Hersey, Community Development Program Manager

DATE: June 10, 2019

RE: Appointing members Town of Ayer's Affordable Housing Committee

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Over the past year the OCED has been working to form an Affordable Housing Committee under the defunct "Ayer Community Development Advisory Committee". This committee would be responsible for reviewing and advising the Town regarding a possible municipal housing trust, a housing production plan, master plan goals for affordable housing SHI numbers and assistance with information distribution. **The Ayer Affordable Housing Committee purpose would be to work toward guiding the process of creating more affordable housing opportunities within the community.**

Recognizing the importance of finding diverse, skilled and committed members for this committee the Office of Community Development propose the following members:

Janet Providakes	CPC, Ayer Housing Authority
Ken Diskin	Ayer Planning Board
Ron Morrison	MA Real Estate Center
Stephen Quinn	Master Plan Housing Sub Committee
Dr. Hilary Curtis	PhD, LCMHC Mental Health Counselor
Steve Wentzell	Social Worker
Karin Swanfeldt	Director of Ayer Council on Aging

**Request the Board of Selectmen vote to appoint the above citizens to the Ayer Affordable Housing Committee.**



Mark L. Wetzel, P.E., Superintendent  
Daniel Vas Schalkwyk, P.E. Town Engineer  
Pamela J. Martin, Business Manager

25 BROOK STREET  
AYER, MASSACHUSETTS 01432  
T: (978) 772-8240  
F: (978) 772-8244

## MEMORANDUM

Date: June 13, 2019  
To: Board of Selectmen  
From: Dan Van Schalkwyk, P.E., Town Engineer  
Subject: **Agenda Item for June 18, 2019 BOS Meeting**

1. **MS4 Stormwater Permit Update** – I will give a brief presentation of Year 1 of the Town's new MS4 Stormwater Permit which became effective July 1, 2018. I will discuss how the DPW is implementing and complying with the new permit requirements.

**From:** [Julie M Murray](#)  
**To:** [Carly Antonellis](#)  
**Subject:** BOS meeting  
**Date:** Friday, June 14, 2019 11:10:31 AM

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To the Board of Selectmen,

It has come to my attention that you will be discussing the format/day/time of Town Meeting with the Town Clerk at your upcoming meeting. I would love to be a part of the discussion but I am out of town. If it is a continued conversation, I will definitely join in.

I tried gathering the insights of Heather Hampson in our Town Planning department, but I have not heard back in time. I have discussed this issue with her many times and find her thoughts very valuable. She stresses the timing should take into account the arrival time of the commuter train from Boston among other things.

Carly has mentioned childcare has been offered in the past. Personally, as a parent of elementary aged children - I don't think that would help as much as it sounds like it could.

While I don't necessarily believe we will see townspeople coming in droves (which the good news is all our hard work makes for a well run town!) I do believe thinking about some of the smaller details can send a big message about inclusivity. I have reached out to a few other Massachusetts experts on the topic and am starting to gather their thoughts, many of which we already follow.

Thank you,  
Julie M. Murray



**RESERVE FUND TRANSFER REQUEST**

**Section I (Completed by Elected Official or Department Head)**

This request for a transfer from the Reserve Fund is being made in accordance with M.G.L., Chapter 40, Section 6:

- 1. Amount requested: \$2,600.00
- 2. To be transferred to:
  - A. Account Name Town Clerk, Assistant Wages
  - B. Account #: 01161-51110
- 3. Present balance in budget \$7,245.65
- 4. The amount requested will be used for (please attach supporting information):  
FY19 remaining payrolls (see attached budget report).
- 5. The expense is extraordinary or unforeseen for the following reason(s):  
The Clerical Union contract was not fully completed in time for the FY19 budget.  
At completion, the Assistant Town Clerk's pay was a much higher step than was budgeted.

Date \_\_\_\_\_ Elected Official or Department Head \_\_\_\_\_

**Section II Action by Board of Selectmen or Appointing Authority when Section I not completed by an Elected Official**

Transfer Approved: YES NO

Amount Approved: \$ \_\_\_\_\_

Date of Meeting: \_\_\_\_\_ Number Present/Voting \_\_\_\_\_

\_\_\_\_\_ Chairman

**Section III Action by Finance Committee**

Transfer Approved: YES NO

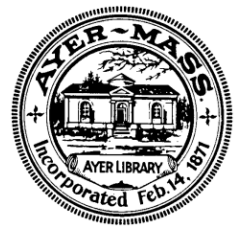
Amount Approved: \$ \_\_\_\_\_

Date of Meeting: \_\_\_\_\_ Number Present/Voting \_\_\_\_\_

\_\_\_\_\_ Chairman

**Office of the Board of Selectmen  
Office of the Town Manager**

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Town of Ayer| Ayer Town Hall| 1 Main Street| Ayer, MA 01432|978-772-8220| www.ayer.ma.us

**MEMORANDUM**

**DATE:** June 14, 2019

**TO:** Ayer Board of Selectmen

**FROM:** Robert A. Pontbriand  
Town Manager

**SUBJECT: Town Manager's Report for the June 18, 2019 BOS Meeting**

Dear Honorable Selectmen,

I am pleased to transmit to you the following Town Manager's Report for the June 18, 2019 BOS Meeting. If you have any questions prior to the meeting, please do not hesitate to contact me directly. Thank you.

Administrative Update/Review of Warrant(s):

- I will provide a brief Administrative Update at the meeting of the various activities, initiatives, and projects of the Administration since the BOS last met on June 4, 2019.

Review of Warrant(s):

- The following Town Warrant(s) have been reviewed, approved and signed since the BOS last met on June 4, 2019:

*Payroll Warrant #19-24 in the amount of \$351,682.73* was reviewed, approved and signed on June 4, 2019.

*Accounts Payable Warrant #19-24 in the amount of \$9,033,478.63* was reviewed, approved and signed on June 11, 2019.

Appointments:

- Please see the attached memo for all of the recommended Appointments/Re-Appointments by the BOS to the various Town Committees under the BOS (See attached).
- Additionally, at the meeting, the BOS should discuss who the BOS Representative on the following committees will be for the year ahead (2019-2020):

Executive Bi-Board	(currently Selectman Houde)
Capital Planning Committee	(currently Selectman Hillman)
OPEB Board of Trustees	(currently Selectman Livingston)
Rate Review Committee	(currently Selectman Livingston)

Town of Ayer Internet Service Provider Update:

- Please see the attached memo from the Town Manager regarding an update on the idea of the Town of Ayer becoming an internet service provider (See attached).

Reserve Fund Transfers:

- I am respectfully requesting BOS approval for the following Reserve Fund Transfers:

*Management Support Account #01154* in the amount of \$5,800 (See attached RFT)

*Town Planner Account #01175-55801* in the amount of \$2,100 (See attached RFT)

*FICA Medicare Account #01919-51740* in the amount of \$1,000 (See attached RFT)

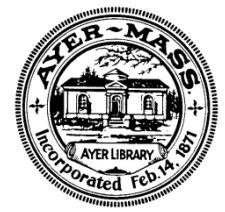
Ratification of Opioid Class Action Suit:

- On the recommendation of Town Counsel, the Town of Ayer has joined a multi-party class action civil suit against those legally responsible for the wrongful distribution of prescription opiates and damages caused thereby. The suit is being led by the law firm of *Levin, Papantonio, Thomas, Mitchell, Rafferty & Procter, PA* on a contingent fee base. There is no cost to the Town of Ayer. In the event that there is no recovery in this suit, then the Town shall not pay the Firm and Attorneys. In the event that there is a recovery, the expenses charged shall be capped at 10% of the recovery, such that fees and expenses combined will not exceed 35% of the gross recovery to the Town. Please see the attached information brochure (See attached).
- The Town of Ayer will be joining eight (80) other municipalities from Massachusetts in this class action civil suit. I will be attending an informational session in Framingham on June 19, 2019.
- I am respectfully requesting that the BOS vote to ratify the *Engagement to Represent* as signed by the Town Manager on June 6, 2019 (See attached).

Thank you.

Attachment(s):      Appointments/Reappointments Memo from the Assistant Town Manager  
Town of Ayer Internet Service Provider Update Memo from the Town Manager  
Management Support Reserve Fund Transfer  
Town Planner Reserve Fund Transfer  
FICA Medicare Reserve Fund Transfer  
Massachusetts Opioid Litigation Brochure  
Engagement to Represent for Opioid Litigation

**Office of the Board of Selectmen  
Office of the Town Manager**



Town of Ayer | Ayer Town Hall | 1 Main Street | Ayer, MA 01432 | 978-772-8220 | www.ayer.ma.us

**Memorandum**

To: Board of Selectmen  
Robert A. Pontbriand, Town Manager

From: Carly Antonellis, Assistant Town Manager

Date: June 14, 2019

Re: 2019 Annual Reappointments

Dear BOS,

I am respectfully requesting that the following be reappointed by the BOS:

Board / Committee	Term Label	Term Length	Current Member	Reappoint
BI-BOARD	BOS SEAT	1	Scott A. Houde	
CABLE TV ADVISORY COMMITTEE	SEAT 2	3	Douglas R. Becker	YES
CAPITAL PLANNING COMMITTEE	BOS SEAT	1	Christopher R. Hillman	
CONSERVATION COMMISSION	SEAT 3	3	George D. Bacon, Jr.	YES
CONSERVATION COMMISSION	SEAT 4	3	Mark Phillips	YES
COUNCIL ON AGING BOARD OF DIRECTORS	SEAT 5	3	Robert P. Hammond	YES
COUNCIL ON AGING BOARD OF DIRECTORS	SEAT 3	3	Janine Nichipor	YES
COUNCIL ON AGING BOARD OF DIRECTORS	SEAT 4	3	Kathryn Pfaltzgraff	YES
CULTURAL COUNCIL	SEAT 10	3	Sheila Schwabe	Not Eligible
CULTURAL COUNCIL	SEAT 8	3	Deborah A. Pelley	Not Eligible
CULTURAL COUNCIL	SEAT 3	3	Lauren Metzler-Baretta	
CULTURAL COUNCIL	SEAT 5	3		
ENERGY COMMITTEE	CITIZEN	1	Carolyn L. McCreary	YES
ENERGY COMMITTEE	CITIZEN	1	Ken Diskin	YES
HISTORICAL COMMISSION	SEAT 5	3	Ruth E. Rhonemus	YES
HISTORICAL COMMISSION	SEAT 1	3	Barry W. Schwarzel	YES
INDUSTRIAL DEVELOPMENT FINANCE AUTHORITY	SEAT 2	5	Brian T. Anderson	YES
INDUSTRIAL DEVELOPMENT FINANCE AUTHORITY	SEAT 3	5	Nicholas P. Laggis	YES
OPEB BOARD OF TRUSTEES	BOS SEAT	1	Jannice L. Livingston	
POND & DAM MANAGEMENT COMMITTEE	SEAT 3	3	Laurie Nehring	YES
RATE REVIEW COMMITTEE	BOS SEAT	1	Jannice L. Livingston	
RATE REVIEW COMMITTEE	SEAT 5	1	Mary E. Spinner	YES
RATE REVIEW COMMITTEE	SEAT 3	1	Richard W. Skoczylas	YES
RECYCLING COMMITTEE	SEAT 5	3	Janice Goodrow	YES
REGISTRARS OF VOTERS	SEAT 3	3	Carolyn L. McCreary	YES

The Cultural Council has four seats up for reappointment, however; Ms. Sheila Schwabe and Ms. Deborah Pelley are interested in reappointment, but the Commonwealth of Massachusetts limits Cultural Council terms to 2 consecutive three year terms. Therefore, Ms. Schwabe and Ms. Pelley are not eligible for reappointment. The other two members up for reappointment have

expressed that they are no longer able to serve. The Cultural Council has 9 members; unfortunately after June 30, 2019 there will not be a quorum of the Cultural Council. They are actively seeking new members.

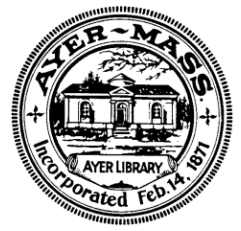
The Business Community Representative seat on the Rate Review Committee is also vacant.

Additionally, Town Moderator Tom Horgan has reappointed both Terry Harvell and Mark Smith to the Finance Committee for three (3) year terms.

Thank you!


**Office of the Board of Selectmen  
Office of the Town Manager**

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Town of Ayer | Ayer Town Hall | 1 Main Street | Ayer, MA 01432 | 978-772-8220 | www.ayer.ma.us

**MEMORANDUM**

**DATE:** June 11, 2019  
**TO:** Ayer Board of Selectmen  
**FROM:** Robert A. Pontbriand   
Town Manager  
**SUBJECT: Overview of the Establishing Ayer as a Municipal Internet Service Provider**

Dear Honorable Selectmen,

At the February 5, 2019 Board of Selectmen's meeting, I was asked by Selectman Livingston to look into the idea of Ayer becoming a municipal internet service provider (ISP). After considerable research with the I.T. Director including consultation with industry professionals and the MassBroadband Institute, I offer the following overview/feasibility of establishing Ayer as a municipal internet service provider (ISP).

Internet in Massachusetts:

- Massachusetts is the 5th most connected state in the United States. 98% of Massachusetts can get broadband internet coverage with 4% of the population underserved. 42% of Massachusetts has access to fiber-optic service (Ayer is not part of this 42% and does not have comprehensive fiber-optic service). There are 14 commercial internet options in Massachusetts which includes Comcast Xfinity (Ayer's cable provider).
- Because the Town has a ten year license agreement with Xfinity for cable television, many consumers are led to believe that Xfinity is their only choice for internet. You are able to get internet from whichever internet service provider will service your location. Comcast Xfinity offers their consumers "bundle" packages, which essentially eliminates competition relating to access to the internet. Many competitors don't view this as profitable, since the large majority of internet users statewide, choose to bundle their internet service with their cable provider.
- In terms of state government funding for broadband/internet, Massachusetts remains currently focused on funding what is called "last mile" initiatives largely in the western part of the state to connect the final underserved communities. Governor Baker vetoed legislation in 2018 which would have created a Commission to oversee internet connectivity. In his veto he stated that until all of the underserved communities are connected, Massachusetts should not make improving existing connectivity a priority. The significance is that state funding for improving Ayer's situation at this time is non-existent.

Internet in Ayer:

- Ayer is primarily served by Comcast Xfinity for the purposes of internet services. Comcast currently has the monopoly on the infrastructure (cable/wire) to service residents and businesses. In 2009, Verizon

chose two municipalities in North Central Middlesex County and Worcester County to receive FIOS service: Fitchburg (12,500 Comcast subscribers) and Ayer (3,300 Comcast Subscribers). Unfortunately Verizon subsequently ceased to initiate FIOS implementations in Ayer as a result of Verizon's unsuccessful attempt to change cable licensing laws which would have expedited and reduced the expense for Verizon to develop in Ayer.

- As a result, Comcast Xfinity is the only significant commercial internet provider in Ayer. Additionally, they own the necessary infrastructure to provide internet.

#### Ayer as a Municipal Internet Service Provider (Challenges):

- The first challenge for Ayer is technology infrastructure. The Town would need to develop and install the necessary physical infrastructure to deliver internet to all of the residences and businesses in Ayer. In the small communities in the western part of the state, the majority of state funds are being spent on this infrastructure as they are underserved communities. The costs of just the infrastructure conservatively range from \$1 million to \$20 million depending on the size of the system.
- The second challenge for Ayer is that we do not have the existing personnel, expertise, equipment, etc. to operate and maintain a municipal internet. Municipalities in Massachusetts that have become internet service providers such as Concord, Massachusetts currently have municipal light districts so some of the infrastructure, staff, and equipment already exists. Ayer unfortunately is not a municipal light district and does not have any of these existing resources. The Town would need to add the necessary personnel, equipment, and associated costs (insurance of the infrastructure) to operate and maintain the internet.
- The third challenge for Ayer (which may also be an opportunity) is changes in technology. The Town does not want to be in a position of investing millions of dollars in current internet technology only to have a technological change (i.e. widespread wireless transmission) make that investment obsolete. This also could provide an opportunity, in that technological advances may make the infrastructure more affordable as well as operations and maintenance.
- The fourth challenge for Ayer is cost. In addition to all of the initial capital costs which would be in the millions of dollars which would have to be forward funded; ongoing costs of operations and maintenance would need to be funded by subscribers/users. There is no guarantee without detailed analysis that the Ayer internet would be necessarily competitive in terms of subscriber costs with Comcast Xfinity. Competition is theoretically good but at what costs to the Town?

#### Conclusion:

- The idea of a municipal internet on face value is a good idea. The positives would be that it could create competition; an alternative; and could in the long run be cheaper to subscribers.
- The current reality is that the Town would need to expend considerable funds initially to install the infrastructure to support a municipal internet. Additionally, after those capital expenditures, the Town would need to invest in personnel, equipment, and other resources to operate and maintain the internet (think of what the Town needs to administer the water and sewer systems). Finally, the revenue from subscribers would be a key financial component for the operation and maintenance of the internet and the internet costs would need to be competitive with Comcast Xfinity and other commercial options.
- If the Town would like to seriously consider pursuing a municipal internet, the next step would be to conduct a professional feasibility study. Firms such as Magellan Communications perform such feasibility

studies which include a professional analysis of the needs, infrastructure, and costs. Such a study requires approximately 200 professional hours of work with an estimated costs of approximately \$50,000. This feasibility report would provide the Town with a specific plan and costs to implement a municipal internet.

- Moving forward, the Town will continue to monitor this idea through the Town's I.T. Committee and will also discuss in detail with APAC as the Town's cable contract will be coming up for renegotiation in the next couple of years. Perhaps an opportunity will present itself at that time.
- Pros vs. Cons of Municipal Internet:

**Pros:**

Provide options

Provide competition

Municipally owned/controlled

**Cons:**

Lack of existing infrastructure

Infrastructure Costs

Operational, Personnel and Maintenance Costs

I look forward to discussing further with the BOS.

Thank you.



**RESERVE FUND TRANSFER REQUEST**

**Section I (Completed by Elected Official or Department Head)**

This request for a transfer from the Reserve Fund is being made in accordance with M.G.L., Chapter 40, Section 6:

- 1. Amount requested: \$5,800.00
- 2. To be transferred to:
  - A. Account Name Management Support
  - B. Account #: 01154-
- 3. Present balance in budget \$1,322.43
- 4. The amount requested will be used for (please attach supporting information):  
FY19 remaining payrolls and expenses (see attached budget report and copies of held invoices)
- 5. The expense is extraordinary or unforeseen for the following reason(s):  
The following expenses were unforeseen for FY19:  
The duties of the Board of Health secretary were added to the Management Support position in April 2019. As a result, the position was re-graded and the pay was increased. The change saved the town money. In addition, printing costs have increased significantly. The FY19 cost for printing is \$8,639.78. However, the FY19 amount budgeted for printing (which was past on past actual expense) was only \$4,000.00

Date June 14, 2019 Elected Official or Department Head Robert A. Puthall  
Town Manager

**Section II Action by Board of Selectmen or Appointing Authority when Section I not completed by an Elected Official**

Transfer Approved: YES NO

Amount Approved: \$ \_\_\_\_\_

Date of Meeting: \_\_\_\_\_ Number Present/Voting \_\_\_\_\_

\_\_\_\_\_ Chairman

**Section III Action by Finance Committee**

Transfer Approved: YES NO

Amount Approved: \$ \_\_\_\_\_

Date of Meeting: \_\_\_\_\_ Number Present/Voting \_\_\_\_\_

\_\_\_\_\_ Chairman

**RESERVE FUND TRANSFER REQUEST**

**Section I (Completed by Elected Official or Department Head)**

This request for a transfer from the Reserve Fund is being made in accordance with M.G.L., Chapter 40, Section 6:

- 1. Amount requested: \$2,100.00
- 2. To be transferred to:
  - A. Account Name Town Planner, Public Hearings Expense
  - B. Account #: 01175-55801
- 3. Present balance in budget \$4,520.85
- 4. The amount requested will be used for (please attach supporting information):  
Remaining FY19 payrolls and expenses (see attached Town Planner budget report)
- 5. The expense is extraordinary or unforeseen for the following reason(s):  
There was an unforeseen significant cost increase in public hearing notices (see attached printout of Lowell Publishing costs).

Date June 14, 2019 Elected Official or Department Head *Abigail Pothol*  
Town Manager

**Section II Action by Board of Selectmen or Appointing Authority when Section I not completed by an Elected Official**

Transfer Approved: YES NO

Amount Approved: \$ \_\_\_\_\_

Date of Meeting: \_\_\_\_\_ Number Present/Voting \_\_\_\_\_

\_\_\_\_\_ Chairman

**Section III Action by Finance Committee**

Transfer Approved: YES NO

Amount Approved: \$ \_\_\_\_\_

Date of Meeting: \_\_\_\_\_ Number Present/Voting \_\_\_\_\_

\_\_\_\_\_ Chairman

## RESERVE FUND TRANSFER REQUEST

### **Section I (Completed by Elected Official or Department Head)**

This request for a transfer from the Reserve Fund is being made in accordance with M.G.L., Chapter 40, Section 6:

1. Amount requested: \$1,000.00
  
2. To be transferred to:
  - A. Account Name FICA Medicare
  - B. Account #: 01919-51740
  
3. Present balance in budget \$4,350.07
  
4. The amount requested will be used for (please attach supporting information):  
Payroll Medicare expense for the payroll dated June 20, 2019
  
5. The expense is extraordinary or unforeseen for the following reason(s):  
Payroll Medicare expenses for FY 2019 are projected to exceed the FY 2019 FICA Medicare budget by less than 1% of the total budgeted amount. This \$1,000 RFT will provide enough funding to cover the projected payroll Medicare expenses for the final payroll in June.

Date: 6/14/2019

Elected Official or Department Head: 

### **Section II Action by Board of Selectmen or Appointing Authority when Section I not completed by an Elected Official**

Transfer Approved: YES NO

Amount Approved: \$ \_\_\_\_\_

Date of Meeting: \_\_\_\_\_

Number Present/Voting \_\_\_\_\_

\_\_\_\_\_  
Chairman

### **Section III Action by Finance Committee**

Transfer Approved: YES NO

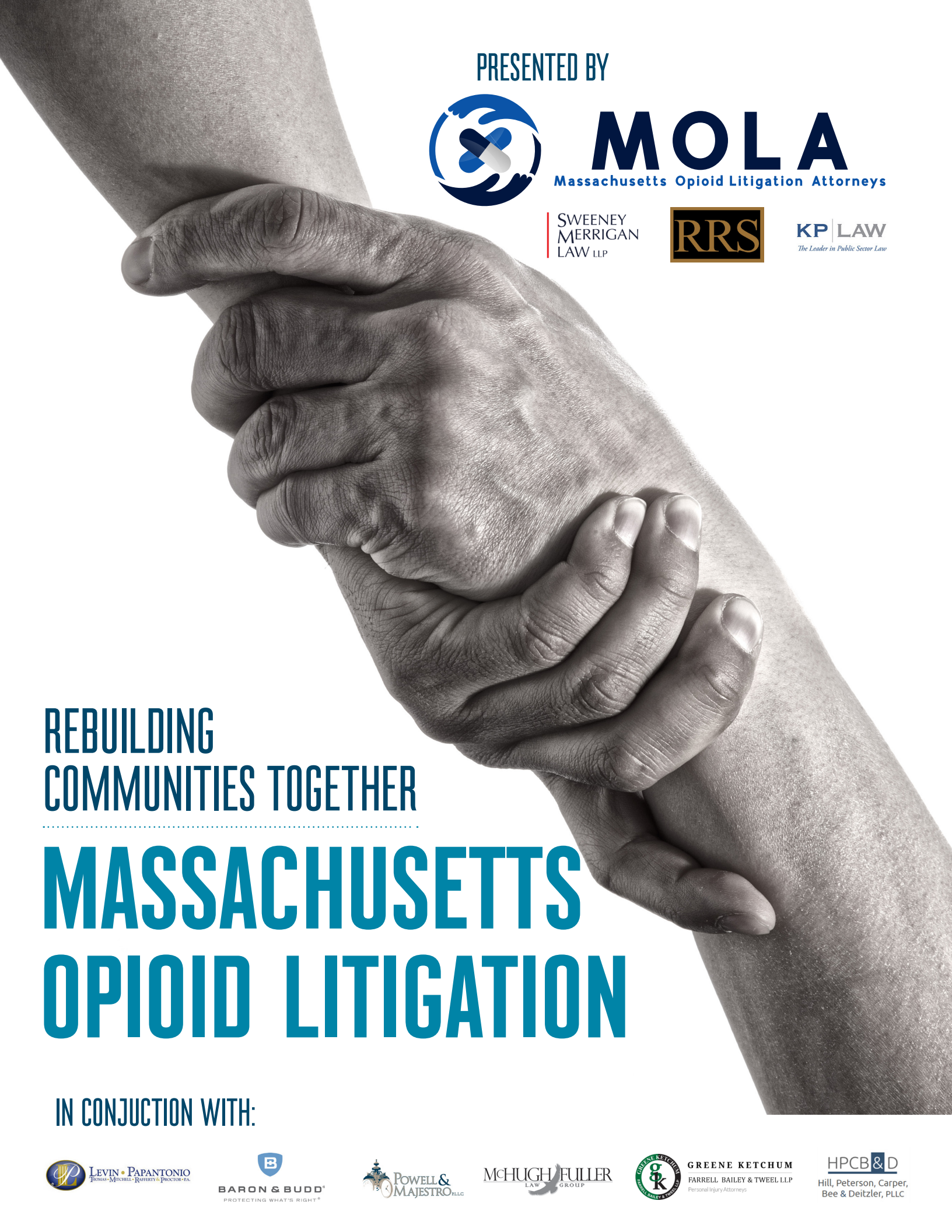
Amount Approved: \$ \_\_\_\_\_

Date of Meeting: \_\_\_\_\_

Number Present/Voting \_\_\_\_\_

\_\_\_\_\_  
Chairman





PRESENTED BY



**MOLA**  
Massachusetts Opioid Litigation Attorneys

SWEENEY  
MERRIGAN  
LAW LLP



KP | LAW  
*The Leader in Public Sector Law*

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COMMUNITIES TOGETHER

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GREENE KETCHUM  
FARRELL, BAILEY & TWEEL LLP  
Personal Injury Attorneys



HPCB & D  
Hill, Peterson, Carper,  
Bee & Deitzler, PLLC

# WHY US?

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Our country is in the midst of a public health crisis stemming from a flood of opioids pouring into our cities and counties. These opioids are destroying our families, taking the lives of our loved ones, and sapping tax dollars and resources from our communities.

This opioid epidemic has been fueled by the greed of the corporate elite which includes drug manufacturers and distributors. Despite being required by federal and state law to detect and report “suspicious” orders of opioids they **chose not** to comply.

**This has to stop. These companies need to be held accountable. We can help.**



IN 2016 THERE WERE **OVER 42,249 DEATHS**  
INVOLVING PRESCRIPTION OPIOIDS –  
**THIS IS 5X HIGHER THAN IN 1999**

[www.cdc.gov/drugoverdose/epidemic/index.html](http://www.cdc.gov/drugoverdose/epidemic/index.html)



# ABOUT OUR LEGAL TEAM

**We are unlike any other firm or attorney group. As opposed to some firms who are attempting to pursue this litigation on their own, we have formed a consortium comprised of some of the preeminent trial firms in the country that specialize in pharmaceutical litigation.**

MOLA, along with this National Consortium, was not cobbled together to fight a single battle. Recognizing that the target defendants are some of the richest corporations in the country we are prepared to go the distance and hold them accountable.

We are leaders in opioid litigation having filed some of the first cases in the country and having cases already working through the courts. Currently representing more than 240 governmental entities, our Consortium has filed more opioid cases across the country than any other group and is currently representing clients in more than ten states. Throughout this process, our firms have worked together seamlessly and successfully.

Whether large or small, we are committed to representing local governments – cities, towns, and counties – and ensuring that they each are justly compensated for the public health crisis and costs imposed on them by the



## **Sweeney Merrigan** | [sweeneymerrigan.com](http://sweeneymerrigan.com)

Boston-based Sweeney Merrigan Law brings two generations of experience to the team. Whether it is taking on some of the biggest companies in the world, or fighting for personal injury victims in Massachusetts, Sweeney Merrigan's award winning team is dedicated to protecting the communities they serve. Sweeney Merrigan has litigated many multi-million dollar cases successfully for their clients.



## **Rodman Rodman & Sandman** | [rrslaw.net](http://rrslaw.net)

During the 1970s, Rodman, Rodman, & Sandman established themselves as pioneers in asbestos litigation, representing victims of mesothelioma and the debilitating pulmonary diseases that asbestos exposure can cause. Their earliest asbestos cases involved exposures at the Boston Naval and Bethlehem Steel Shipyards, after which we began to represent workers from shipyards across the country. Through the years, Rodman, Rodman, & Sandman has taken on Big Pharma, Big Tobacco, and oil giants on behalf of their clients.



## **KP Law** | [k-plaw.com](http://k-plaw.com)

The principal expertise of KP Law is the practice of municipal law. KP Law represents over one-third of the cities and towns in the Commonwealth as their City Solicitor or Town Counsel. In addition, we provide special counsel services, including serving as labor and employment counsel, to other cities and towns, special districts, housing authorities, regional transit authorities and state agencies.



## **Levin Papantonio** | [levinlaw.com](http://levinlaw.com)

Levin Papantonio is a nationally recognized litigation firm that has built a reputation on its willingness to litigate to verdict complex disputes against some of the world's largest companies. The firm routinely litigates cases that require thousands of attorney hours and millions in expenses.



## **Baron & Budd** | [baronandbudd.com](http://baronandbudd.com)

Baron & Budd, PC was founded in 1977 and has offices in Dallas, Austin, Baton Rouge, New Orleans, Los Angeles and San Diego. Baron & Budd is one of the largest and most accomplished plaintiffs' law firms in the country.



## **Greene Ketchum** | [greeneketchum.com](http://greeneketchum.com)

Greene, Ketchum, Farrell, Bailey & Tweel LLP is considered one of the most experienced regional firms in the fields of medical malpractice and coal mining accidents. Greene Ketchum played a prominent role in the financing and litigation of thousands of asbestos cases over the past 30 years. Their skilled advocacy has returned millions of dollars in verdicts for their clients in both trial settings and settlements.



## **McHugh Fuller** | [mchughfuller.com](http://mchughfuller.com)

McHugh Fuller Law Group, established in 2006, is a trial firm that specializes in complex litigation and trials in the health and medical fields. The firm functions as an elite trial team made up of experienced litigators and legal writers. The attorneys at McHugh Fuller have tried hundreds of cases, obtaining multi-million-dollar verdicts in courts throughout the country.



## **Hill Peterson** | [hpcbd.com](http://hpcbd.com)

Founded in 1980, Hill, Peterson, Carper, Bee & Deitzler has extensive legal experience along with a broad network of resources to undertake a wide variety of complicated claims including, but not limited to Mass Torts and Class Action Litigation, Defective Drug Litigation, and Opioid Distribution Liability.




## **Powell & Majestro** | [powellmajestro.com](http://powellmajestro.com)

Founded in 2002, Powell & Majestro has been a premier resource for clients who want experienced, dynamic legal representation. The firm handles complex litigation including the representation of individuals and others who are victims of consumer fraud or are injured by defective products. Powell & Majestro attorneys are nationally recognized for their work in serious injury claims and have successfully tried numerous civil cases to verdict in state and federal courts.

# MULTI-DISTRICT LITIGATION (MDL)

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In December 2017, the cases brought against opioid manufacturers and distributors were consolidated in front of Judge Dan Polster in the Northern District of Ohio into a multi-district litigation (“MDL”). The MDL process permits the temporary transfer of civil lawsuits to one district court for pretrial consideration and/or consolidation. This creates efficiency and consistency by reducing the risk of contrary legal opinions and by allowing for coordinated discovery.



**OUR TEAM HOLDS FIVE  
KEY LEADERSHIP  
POSITIONS IN THE MDL**

Our legal team led the way toward the creation of the MDL, in the best interests of our clients. The benefits to our clients include consistency in the legal rulings and opinions of the presiding judge, an efficient and coordinated discovery process, and lower costs by preventing redundant and repetitive efforts from being made at the county’s expense.

## FOUR THINGS THAT SEPARATE OUR CONSORTIUM FROM OTHER FIRMS AND GROUPS:

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### 1. Pioneers of the Wholesale Distributor Litigation

Our Consortium was the first to pursue litigation against the wholesale distributors on behalf of municipalities and filed the motion seeking formation of an MDL proceeding on behalf of the other public entity clients we represent.

Being the first to litigate these cases on behalf of counties and cities also means we have the most experience developing crucial evidence and litigating the common arguments being made by defendants. We have already conducted an in-depth investigation into the facts giving rise to potential liability of the opioid manufacturers and distributors and are already engaged in focus groups and mock trials to test trial strategy and defenses.

### 2. Our MDL Leadership

The six national law firms that comprise our legal team are considered giants in the MDL world and between them have been actively involved in most every major mass tort litigation since the days of asbestos. Between our six firms we have 28 lawyers across the country currently working full-time on this project, with an additional 200 attorneys and hundreds of support staff at our disposal.

This experience, combined with our extensive client list, our opioid litigation experience, and our stature within the MDL community has led to us receiving five of the twenty-two leadership roles on the Opioid MDL including Co-Lead Counsel (Paul Farrell, *Greene Ketchum*), Co-Liaison Counsel (Troy Rafferty, *Levin Papantonio*), and three Plaintiff's' Executive Committee positions (Peter Mougey, *Levin Papantonio*; Roland Tellis, *Baron & Budd*; Mike Fuller, *McHugh Fuller*). This is an incredible benefit to our clients, ensuring that their community's cries for help are heard.

### 3. Former DEA and Exclusive Preeminent Witnesses

*60 Minutes* has aired several exposes that have highlighted the nefarious conduct of the pharmaceutical distributors and featured interviews of former DEA agents that have been retained by our Consortium under agreements that they testify exclusively for our group. (*The Whistleblower, Redemption, 10/15/17*).

Additionally, we have retained many of the country's preeminent experts in the fields of addiction medicine, pain management, epidemiology, public health, urban and rural blight, the economics of addiction, and others (e.g. Presidents of Medical Schools, Universities, and Pharmacy Schools, as well as the heads of several governmental agencies), many of whom have published extensively on the subject of the opioid epidemic. These experts will help determine the amount needed to implement a strategic plan that will compensate your community for past and ongoing damages.

### 4. Experienced Trial Lawyers

The members of our Consortium are all trial law firms with unmatched experience in pharmaceutical litigation. Unlike many firms, we are staffed, experienced, and able to take our clients' cases to trial, if the need arises. No matter the case, no matter the client, we will do what's best for each of them, whether that's taking the case to trial or negotiating a settlement.

**OUR LEGAL TEAM WAS NOT CREATED  
SIMPLY TO WIN A SMALL BATTLE,**

we have created a team, a partnership, that is made to win the war, and it is a war that must be waged on the opioid crisis and those that fuel it and profit from it.

**We must hold the perpetrators of this crisis accountable and begin to rebuild our communities that have been ravaged by these drugs.**



# AN INDUSTRY CREATED EPIDEMIC

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The manufacturers and distributors of prescription opioids have created this opioid epidemic by generating a population that is physically and psychologically dependent on opioids (the demand) and conspiring to provide floods of prescription opioids which are not medically necessary and will ultimately become available for illicit use or sale (the supply).

These manufacturers and distributors have been repeatedly investigated and sanctioned by regulators for abdicating their legal duties. For example, within the last several years alone, the largest opioid distributors in the nation, as well as certain manufacturers, have been fined hundreds of millions of dollars for their failure to report suspicious orders to the DEA and prevent diversion of these dangerous drugs. Many of these same defendants have been subject to prior litigation by states and counties arising out of the prescription opioid crisis.

**However, the fines and prior litigation have not stopped the flood of opioids into our communities and have provided little - if any - relief to our communities.**

For years, the distributors and manufacturers of prescription opioids have failed to report or halt suspicious orders, while funneling millions of pills into our communities.

# MANUFACTURERS AND DISTRIBUTORS ARE RESPONSIBLE – **THEY KNEW!**

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## WHO ARE THE MANUFACTURERS?

- Purdue Pharma
- Endo Health Solutions
- Janssen Pharmaceuticals
- Mallinckrodt
- Cephalon
- Actavis
- Insys Therapeutics
- Teva Pharmaceuticals

## WHAT DO THEY MANUFACTURE?

- Oxycodone
- Hydrocodone
- Fentanyl

## WHO ARE THE DISTRIBUTORS?

### The “Big Three”

- McKesson Corporation
- Cardinal Health
- AmerisourceBergen Drug Corp.

## OTHER WHOLESALE DISTRIBUTORS

- Miami-Luken
- Masters Pharmaceuticals

## PHARMACY DISTRIBUTORS

- Wal-Mart
- CVS
- Walgreens
- Rite Aid

# OPIOID DISTRIBUTION SYSTEM – THE DISTRIBUTORS’ AND MANUFACTURERS’ RESPONSIBILITY TO PREVENT DIVERSION

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**To understand why these companies are liable for the epidemic that is crippling our country, it is helpful to know how the system of drug distribution is designed to work.**

## 1970 CONTROLLED SUBSTANCES ACT (CSA)

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Congress enacted this law to create a “closed system” for the distribution of controlled substances and designed to prevent diversion of legally produced substances into illicit markets. This act stripped the manufacturers of the ability to sell directly to retailers and created a link in the distribution chain between Big Pharma and pharmacies.

With this act, distributors and manufacturers became legally bound to identify, investigate, and report suspicious orders of opioids to authorities. These distributors and manufacturers have access to nonpublic data showing the volume and pattern of opioid sales nationwide and have a legal duty to spot and report red flags in the distribution chain to authorities and to halt suspicious orders before shipment.

These pharmaceutical companies are supposed to serve as the gatekeepers – the watch dogs – for preventing opioid abuse. However, for years, the distributors and manufacturers of prescription opioids have failed to report or halt suspicious orders, while continuously funneling millions of pills into communities.

Distributors and manufacturers of opioids systematically and fraudulently violated their statutory duties to prevent diversion of their drugs and to notify the DEA of suspicious orders. Through their scheme, the distributors and manufacturers of opioids repeatedly engaged in unlawful sales of painkillers, which, in turn, artificially and illegally increased the annual production quotas for opioids allowed by the DEA. In doing so, the manufacturers and distributors allowed hundreds of millions of pills to enter the illicit market, allowing them to generate obscene profits.

# THE DISTRIBUTOR

The pharmaceutical distributors are the first line of defense and are supposed to play the role of “beat cops” in preventing the flow of controlled substances to illegitimate uses that can lead to abuse, addiction and blight.

Distributors are legally required to be on alert for suspicious orders by pharmacies – such as unusual size, frequency, or pattern – and to report these to the relevant authorities to be investigated.



Rather than controlling the flow of pills and alerting authorities to suspicious orders, the distributors have chosen to abuse their privileged position, lining their pockets by shipping massive quantities of drugs to pharmacies and dispensaries. They have breached the very industry standards they helped enact and that has led to our present-day epidemic.

McKesson, Cardinal, and their distributor cronies admit that they are the gatekeepers for preventing opioid abuse, stating: “distributors are uniquely situated to perform due diligence in order to help support the security of the controlled substances. . . and reduce the possibility that controlled substances within the supply chain will reach locations they are not intended to reach.” The distributors make this admission in the Industry Compliance Guidelines they themselves created to comply with legal mandates – and then wholly ignored.

Federal and state laws give cities and counties the means to hold these distributors accountable for their actions and to stop the influx of these powerful drugs.



In January 2017, McKesson, the largest drug distributor in the nation, was fined a record **\$150 million** by the federal government for its blatant failure to report suspicious orders in violation of federal law. Cardinal Health, another member of the “Big Three” drug distributors, was fined **\$44 million** for its own failures to report suspicious narcotic orders to the DEA.

## THE MANUFACTURER

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Manufacturers of controlled substances are under the same legal obligations as distributors to prevent drug diversion and are also required to notify DEA of suspicious orders. But they don't.

In July of 2017, the DEA for the first time sanctioned an opioid manufacturer for failing to report suspicious opioid orders. Pursuant to a memorandum of understanding between manufacturer Mallinckrodt and the DEA, Mallinckrodt paid a \$35 million civil penalty for violating federal laws that mandate suspicious order reporting.

## CHARGEBACK SYSTEM/SCHEME

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Mallinckrodt was caught operating what is known in the industry as a “chargeback” system. Mallinckrodt sold opioids to a wholesale distributor at a higher than usual price, and then offered the distributor a substantial rebate in exchange for the distributor's downstream customer sales information or “chargeback data”. This chargeback data allows manufacturers, like Mallinckrodt, to obtain knowledge of suspicious opioid orders.

The “chargeback” system is not unique to Mallinckrodt. An investigation performed by our Consortium has discovered that this practice is widespread throughout the industry, and that manufacturers have embraced shipping suspicious orders of opioids as an integral part of their business model. Therefore, manufacturers of opioids such as Purdue Pharma, Teva, Endo, Cephalon, and Janssen may also be liable for opioid-related damages.

## FALSE AND DECEPTIVE MARKETING CLAIMS

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Before the 1990s, generally accepted standards dictated that patients should only use opioids short-term for acute pain. The use of opioids for chronic pain was discouraged or even prohibited due to evidence of patients developing a tolerance to opioids which lead to the serious risk of addiction and other side effects.

**WE BELIEVE THAT MANUFACTURERS KNEW THEIR DRUGS WERE ADDICTIVE, BUT AGGRESSIVELY MARKETED THEM FOR THE TREATMENT OF CHRONIC PAIN THROUGH DIRECT AND INDIRECT MARKETING.**

In spite of this evidence, opioid manufacturers have conducted, and continue to conduct, marketing campaigns designed to decrease the fear of prescribing opioids and to encourage and persuade doctors and patients that opioids can and should be used for chronic pain. This resulted in opioid treatment for a far broader group of patients who are much more likely to become addicted and suffer other adverse effects from the long-term use of opioids.

Manufacturers have also falsely touted the benefits of long-term opioid use, including the supposed ability of opioids to improve function and quality of life, even though no scientifically reliable evidence to support the manufacturers' claims existed.

**WHERE ARE THEY MAKING THESE CLAIMS? THEY'RE NOT JUST SELLING ADDICTION QUIETLY IN A DOCTOR'S OFFICE OR AT A MEDICAL CONFERENCE. THEY'RE IN YOUR LIVING ROOM, ON YOUR COMPUTER, AND IN YOUR MAIL. THEY'RE EVERYWHERE YOU ARE.**

**These manufacturers spend MILLIONS OF DOLLARS ON PROMOTIONAL ACTIVITIES AND MATERIALS that falsely deny or trivialize the risks of opioids while OVERSTATING THE BENEFITS of using them for chronic pain.**

**Manufacturers' false representations include:**

1. downplayed the serious risk of addiction,
2. created and promoted the concept of "pseudoaddiction" when signs of actual addiction began appearing and advocated that doctors should treat the signs of addiction with more opioids,
3. exaggerated the effectiveness of screening tools to prevent addiction,
4. claimed that it is easy to manage opioid dependence and withdrawal,
5. denied the risks of higher opioid dosages, and
6. exaggerated the effectiveness of "abuse-deterrent" opioid formulations to prevent abuse and addiction.



# CAUSES OF ACTION

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**The conduct outlined above showing the conduct of manufacturers and distributors of opioids supports several claims for damages. We propose filing lawsuits based on public nuisance, false marketing, RICO, and negligence, among other claims. Through these claims we will demand that the mega-corporations who caused this epidemic fund the clean-up efforts.**

## PUBLIC NUISANCE

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Manufacturers and distributors of opioids have created an epidemic within our cities and counties and we will demand that they fund the abatement of this nuisance.

## FALSE AND FRAUDULENT MARKETING

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Manufacturers of opioids may be held liable for their false and fraudulent marketing activities that have directly led to and exacerbated the opioid epidemic. Claims here include negligent misrepresentation, civil conspiracy, fraud and fraudulent misrepresentation.

## RICO (RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS ACT)

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Additionally, as more information becomes available on the distribution methods of opioid distributors and manufacturers, it becomes clearer that these entities were working hand-in-hand to maximize their profits at the expense of the health and well-being of American citizens. The federal RICO statute is the perfect tool to hold them accountable for the harm they have caused.

## NEGLIGENCE

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Finally, distributors and manufacturers also face liability for negligence. Federal regulations require distributors and manufacturers of opioids to be on the lookout for, detect, and report suspicious orders of opioids. Distributors and manufacturers violated industry standards of care by breaching their duty to identify and report suspicious opioid orders to the DEA or other relevant state agencies.

There is no doubt that these violations directly contributed to the opioid epidemic that is running rampant across the nation, and without question, substantial damages have been incurred by cities and counties. These costs should be borne by the negligent distributor and manufacturer defendants.

# FOUR IN FIVE NEW HEROIN USERS STARTED OUT MISUSING PRESCRIPTION PAINKILLERS

(Jones CM. Heroin use and heroin use risk behaviors among nonmedical users of prescription opioid pain relievers - United States, 2002-2004 and 2008-2010. Drug Alcohol Depend. 2013 Sept)



## POTENTIALLY RECOVERABLE DAMAGES

The companies' known violations of these laws give rise to strong claims for significant equitable and monetary relief. Potentially recoverable damages may include:

1. Money wrongfully paid for opioids through government-payor programs including employee insurance,
2. costs for providing medical care, additional therapeutic and prescription drug purchases, and other treatments for patients suffering from opioid-related addiction or disease, including overdoses and deaths,
3. costs for providing treatment, counseling, rehabilitation services,
4. costs for providing treatment of infants born with opioid-related medical conditions,
5. costs for providing welfare or protective services for children whose parents suffer from opioid-related disability or incapacitation, and
6. costs directly associated with law enforcement and public safety relating to the opioid epidemic. Local governments may also be entitled to injunctive relief to prevent further unlawful distribution of these drugs.



# DAMAGE MODEL

## WHAT IS RECOVERABLE FOR LOCAL GOVERNMENTS?

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Our Consortium recommends pursuing a damage model that is aggressive, expansive, and encompasses both retrospective and prospective aspects. Our team of experts will help identify the impact of this crisis on your community.

**A successful outcome would include** action to address and end the current opioid crisis in addition to compensating your community for its past and ongoing damages resulting from defendants' conduct that caused the current opioid epidemic.

While they are not exact equivalents, good examples of the type of outcomes which we believe would be successful and achievable may be found in the tobacco and the California lead paint litigation. In both cases, governmental entities were awarded damages as well as ongoing relief to combat what was recognized to be a continuing crisis. Members of our Legal Team were instrumental in the tobacco litigation. The tobacco defendants continue to pay damages on an annual basis, totaling over \$200 billion, and the California lead paint defendants have been ordered to fund an abatement fund estimated to be \$600 million to \$1.15 billion in ten California counties and cities, based on the same public nuisance theory at the heart of our Legal Team's proposed case strategy.

**Retrospectively, our lawsuit will seek to recover the funds that your community has already spent addressing the crisis.** This will include funds spent on obvious and direct expenses, including:

- EMS and other first responders
- Drugs such as Naloxone (Narcan)
- Medical Examiner expenses
- Public Hospital expenses
- Increased law enforcement expenses
- Drug courts
- Increased jailing expenses
- Substance abuse programs (including education, prevention, and treatment)
- Increased expenses due to Child Welfare and Dependency docket associated with child welfare.

**Prospectively, our lawsuit will ask (and then answer at trial) the question:**

*“What will it take to put your community and its citizens back into the position it was in before the opioid crisis began – how much will it cost to clean up the mess?”*

There is no doubt that the target defendants in this litigation have created a public nuisance within your community and we will demand that these defendants foot the bill for abating that nuisance.

Our Consortium generally envisions an abatement fund covering three broad areas.

**First, we believe funding for education is**

**essential.** It is important that we get into the school systems and ensure that children understand that the pills in their parent’s cupboards are just as dangerous as a heroin needle. They also need to understand that if a needle goes into their arm one time, it won’t be the last.

**Second, funding is needed to support law enforcement and jailing** so that the community can stay safe while your community works to addressing this crisis.

**Third, and likely most importantly, to truly have a chance at rehabilitating the community** funding is needed for healthcare and additional addiction recovery facilities that will help put an end to the cycle and plague of addiction. This will require extensive resources – and deservedly so.

**NO UP-FRONT COSTS  
OUR CONSORTIUM WILL FRONT  
ALL COSTS OF THE LITIGATION.  
OUR CLIENTS PAY NO FEE  
UNLESS WE RECOVER.**



# SEVERITY OF THE OPIOID EPIDEMIC

Now that we know who and what created this epidemic, we need to understand how bad it is.

The Manufacturers' and Distributors' efforts have been wildly successful. Opioids are now the most prescribed class of drugs.

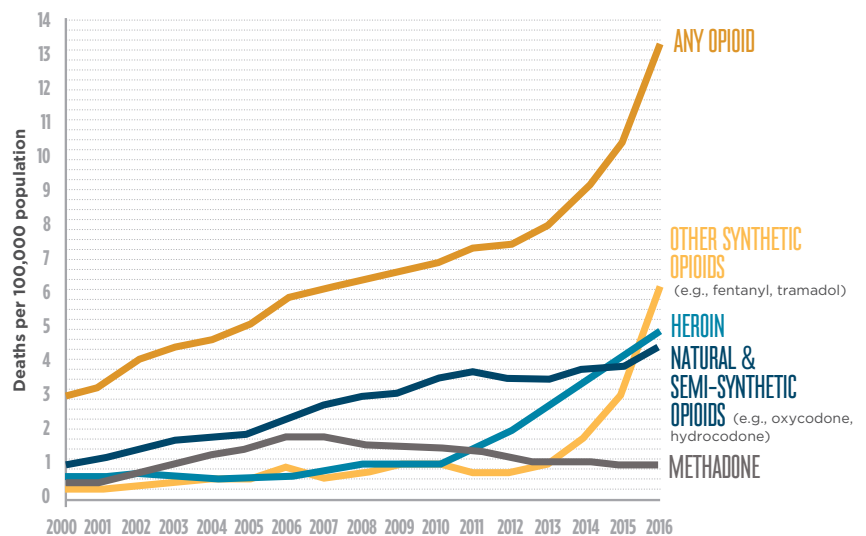
**GLOBALLY, OPIOID SALES GENERATED \$11 BILLION IN REVENUE FOR DRUG COMPANIES IN 2010**
➤
**SALES IN THE UNITED STATES EXCEEDED \$8 BILLION IN REVENUE ANNUALLY SINCE 2009**

In an open letter to the nation's physicians in August 2016, the then-U.S. Surgeon General expressly connected this "urgent health crisis" to "heavy marketing of opioids to doctors . . . [m]any of [whom] were even taught - incorrectly - that opioids are not addictive when prescribed for legitimate pain."


This epidemic has resulted in a flood of prescription opioids available for illicit use or sale and a population of patients physically and psychologically dependent on them. **When those patients can no longer afford or obtain opioids from licensed dispensaries, they often turn to the street to buy prescription opioids or even non-prescription opioids, like heroin.**

## OVERDOSE DEATHS INVOLVING OPIOIDS

by Type of Opioid, United States (2000-2016)




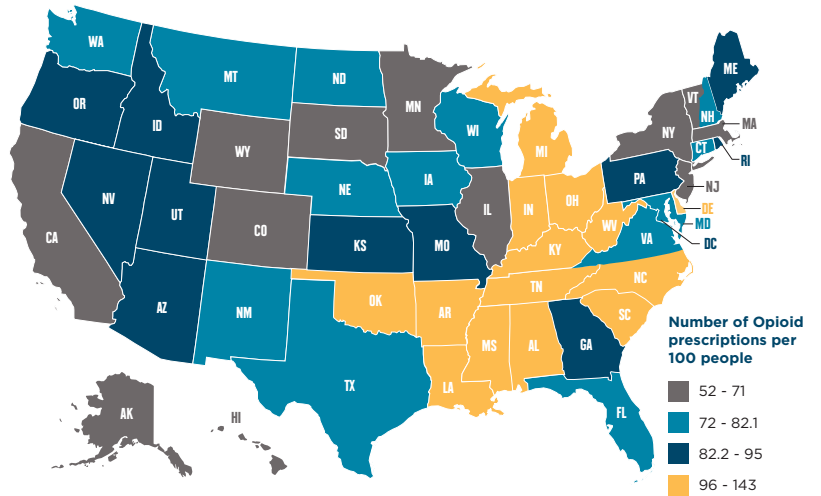
(CDC/NCHS, National Vital Statistics System, Mortality. CDC WONDER)


 According to the Massachusetts Department of Health, **more than 5 people die each day** from confirmed opioid-related causes.

**LIKE BIG TOBACCO, BIG PHARMA HAS ABSOLUTELY HAMMERED MASSACHUSETTS COMMUNITIES WITH A CONSTANT FLOOD OF OPIATES.**

# OPIOID PRESCRIBING

- We are experiencing the consequences of 25+ years of prescribing more opioids at higher doses.
- Between 1991 and 2016 sales of these prescription drugs have **QUADRUPLED**.
- During 2015, an estimated **12,462,000 PERSONS**  aged 12 years or older in the U.S. misused prescription pain relievers in the past year.




(SOURCE: IMS, National Prescription Audit (NPA), 2012)

**SOME STATES HAVE MORE OPIOID PRESCRIPTIONS PER PERSON THAN OTHERS BUT EVEN THE LOW AREAS HAVE OVER 50 PRESCRIPTIONS PER 100 PEOPLE.**

# DRUG ADDICTION AND OVERDOSE DEATHS

Prescription drug addicts are normal people. They're our neighbors, our children, our parents, our friends. The harsh reality is that anyone who takes prescription opioids can become addicted to them. **In fact, as many as one in four patients receiving long-term opioid therapy in a primary care setting struggles with opioid addiction as a result.** And once addicted, it can be hard to stop.

- Between 1999-2013 opioids claimed 175,000 lives and the sales of these prescription drugs have quadrupled.
- This pales in comparison to the **42,249 DEATHS IN 2016 ALONE.**  This is 5x higher than in 1999 - and it continues to grow - destroying lives, families, and communities. (CDC, Prescription Drug Overdose data)
- Each day **MORE THAN 1,000** people are treated in emergency departments for misuse of opioids.

# A HIGH COST TO OUR COMMUNITIES

In the United States, prescription opioid abuse costs are about \$55.7 billion annually. (CDC, Prescription Drug Overdose data)



**Half of Massachusetts' counties** have been designated as **High Intensity Drug Trafficking Areas**, facilitating the flow of drugs from Canada to New York City.



# KEY ATTORNEYS



## **Paul Farrell | Plaintiffs' Co-Lead Counsel - National Prescription Opiate Litigation MDL**

Paul Farrell, Jr. is a trial lawyer and partner at Greene, Ketchum, Farrell, Bailey & Tweel LLP. Mr. Farrell filed the first cases in the country on behalf of public entities against the wholesale distributors of prescription opiates in southern West Virginia and is focusing his efforts to abate the nationwide opioid epidemic. Mr. Farrell is recognized as a premier trial lawyer in the field of medical malpractice and appellate advocacy, making some thirty appearances before the West Virginia Supreme Court.

Mr. Farrell filed some of the first transvaginal mesh (TVM) cases in the country and served as liaison counsel on the executive committee for the 7 Pelvic Repair System Products Liability MDLs in Charleston, West Virginia. These MDLs consolidated 80,000 cases and resulted in several multi-million dollar jury verdicts. Mr. Farrell served as trial counsel for the TVM litigation, successfully trying two bellwether cases to verdicts in excess of \$20 million.



## **Peter Mougey | Plaintiffs' Executive Committee - National Prescription Opiate Litigation MDL**

Peter J. Mougey is a partner and head of the Securities & Business Litigation Department with Levin Papantonio. Mr. Mougey has 20 years of experience successfully litigating complex, high-profile cases including financial fraud, corporate misconduct, business torts, and securities fraud. He has represented hundreds of governmental entities, including cities, counties, pension plans, public utilities, and hospitals in addition to more than 2,500 individual victims of financial fraud.

Mr. Mougey has both an undergraduate degree in finance and an MBA with extensive experience in financial and mathematical modeling and quantitative analyses in support of complex litigation. He has taken dozens of cases to verdict in various forums. In addition, Mr. Mougey has served as counsel in a number of both class and derivative actions. He is routinely asked to lecture on all aspects of his complex litigation practice and regularly quoted in the national press. In addition, Mr. Mougey consults on various cases for governmental agencies and regulators.



## **Mike Fuller | Plaintiffs' Executive Committee - National Prescription Opiate Litigation MDL**

Mike Fuller, of McHugh Fuller, has extensive experience in nursing home, medical malpractice and criminal prosecutions and trials. He has worked with a top national law firm and the Hillsborough County State Attorney's Office in Florida, and he has litigated and tried numerous cases to verdict in jurisdictions nationwide. Part of his educational process was spent working in the White House as an intern involved with Presidential Correspondence, providing a wealth of experience with citizens, legislators, and diplomats across the United States. Mr. Fuller currently serves on the Plaintiff's Executive Committee in the National Prescription Opiate Litigation MDL.



## **Roland Tellis | Plaintiffs' Executive Committee - National Prescription Opiate Litigation MDL**

Roland Tellis' practice at Baron & Budd focuses on complex, high-profile litigation, including consumer class actions, financial fraud, business torts, corporate misconduct, automobile defect, food labeling, false advertising, securities fraud, and environmental contamination.

He holds leadership roles in numerous multi-state, complex class action cases, including *Bias v. Wells Fargo Bank*, a certified nationwide RICO class action involving millions of mortgage loans that settled for more than \$50 million; *In re: Volkswagen "Clean Diesel" Marketing, Sales Practices, and Products Liability Litigation*, a multi-state class action in the process of settling with values and fines totaling in the billions of dollars, involving hundreds of thousands of vehicles equipped with "defeat devices" designed to evade emissions laws; and *In re: Takata Airbag Products Liability Litigation*, which has received preliminary approval for a settlement valued at \$553 million.



## **Troy Rafferty | Plaintiffs' Co-Liaison Counsel - National Prescription Opiate Litigation MDL**

Troy Rafferty is a shareholder at Levin Papantonio. He litigates mass tort, pharmaceutical, and major personal injury cases throughout the country.

Mr. Rafferty has been appointed to handle some of the nation's largest pharmaceutical and mass tort cases. He has been appointed to serve on many Plaintiffs' Steering Committees including the national Vioxx Litigation which resulted in a \$4.7 billion settlement and the national Zyprexa Litigation which resulted in a \$700 million settlement. Mr. Rafferty was also one of the leading attorneys in the national Rezulin Litigation. He and his partner obtained a \$40 million judgement for a woman who took this diabetes drug. Mr. Rafferty has successfully tried numerous complex pharmaceutical cases throughout the country.



## **Thomas Merrigan**

Hon. Thomas T. Merrigan (Ret.) is a partner in Sweeney Merrigan Law, LLP. In addition to his strong background as a litigator, he also brings twelve years of experience as retired First Justice in the Orange District Court, serving from 1990 to 2002, and as an Associate Justice of the Appellate Division of the District Court from 1994 to 2002.

As a recipient of the Warren Burger Award, "Trial Court Judge of the Year," Attorney Merrigan has a rare skill-set when it comes to knowing his way around the court room. During his time on the bench, he received numerous awards and honors for his innovations in court and community collaboration, public trust and confidence in the judiciary and work in substance abuse.

In addition to his leadership as a judge, Attorney Thomas T. Merrigan is also recognized by the legal community as a dynamic litigator, headlining Massachusetts Lawyer's Weekly as one of the States "Most Powerful" attorneys.



### Richard Sandman

Richard M. Sandman is co-owner and Managing Partner of Rodman, Rodman & Sandman, P.C., and has been a practicing attorney for 30 years. Mr. Sandman is nationally recognized in the areas of asbestos litigation, toxic torts, water contamination, and complex product liability claims. He has been involved extensively in tobacco-related litigation, and worked with other personal injury attorneys throughout the country to achieve the national multibillion-dollar settlement with the tobacco industry. He has represented thousands of asbestos claimants nationwide in state and federal courts, earning millions of dollars for his clients. Mr. Sandman has played significant roles in litigations involving defective prescription drugs and other products. Recently, he represented eighty Massachusetts municipalities whose public water supplies had been contaminated by the gasoline additive methyl tertiary butyl ether (MTBE). After six years of litigation, the case settled, resulting in over \$83 million dollars to his clients.

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### Lauren Goldberg

Attorney Lauren Goldberg, managing partner of KP Law, has over 18 years of public law experience advising clients on general municipal law issues, and particularly with respect to municipal governance, municipal finance and administrative law, including the Public Records Law, Conflict of Interest Law, and Open Meeting Law. Attorney Goldberg assists numerous client towns in connection with all aspects of Town Meeting, including assisting with preparation of warrant articles, attending pre-meetings with Town officials, advising as to parliamentary procedure, and representing Towns at Town Meetings. She has extensive experience reviewing, drafting, and revising municipal charters, ordinances and bylaws, and assisting municipal clients in interpreting and

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### Mark R. Reich

Attorney Mark Reich, sharehold with KP Law, has 25 years of experience in municipal law. He specializes in environmental law, contract and construction law, board of health regulation and enforcement, and general municipal law. Attorney Reich is also an experienced litigator representing municipal boards, public agencies, and officials in state and federal courts and before administrative agencies on environmental and contracting issues.

In the area of general municipal law, Attorney Reich serves as the primary contact for several cities and towns. In this capacity, he advises in the areas of Open Meeting Law, Public Records Law, Town Meeting, and City and Town Council meetings; drafting special legislation; and analyzing and interpreting by-laws, ordinance, and charters.

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### Peter Merrigan

Peter M. Merrigan is a partner at Sweeney Merrigan Law, LLP. Named a 2015 and 2016 “Top 40 Under 40 Trial Attorney” and a 2015 “Rising Star” according to Super Lawyers, Mr. Merrigan has a reputation for producing exceptional results on behalf of his clients by way of negotiation, mediation, arbitration and trial. He is admitted to practice in the Commonwealth of Massachusetts and focuses on Motor Vehicle Accidents, Personal Injury, Maritime accidents, Wrongful Death, Defective Products, Slip or Trip and Fall incidents, Insurance Disputes, and General Liability accidents.

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### Jonathan M. Silverstein

Attorney Jonathan Silverstein, shareholder with KP Law, has more than 20 years or experience counseling clients on general municipal law, including municipal finance, conflict of interest, public records and Open Meeting Law, as well as licensing, land use, real estate, zoning, contracts and permitting.

Jonathan has represented clients in a broad range of cases, including land use, civil rights, tort, contract, education, employment, and environmental, before all levels of the Massachusetts and Rhode Island trial courts, the United States District Court (Districts of Massachusetts and Rhode Island), the Massachusetts Appeals Court and Supreme Judicial Court, the Rhode Island Supreme Court, and the United States Court of Appeals for the First Circuit.

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### Tucker Merrigan

J. Tucker Merrigan is a partner at Sweeney Merrigan Law, LLP. Mr. Merrigan is admitted to practice law in the Commonwealth of Massachusetts. His practice concentrates on cases involving personal injury, defective medical devices, dangerous drugs, wrongful death, premises liability, products liability, medical malpractice, and insurance law.

Mr. Merrigan is currently a member of the American Association for Justice, Massachusetts Academy of Trial Attorneys, the Boston Bar Association, and Massachusetts Bar Association. In both 2015 and 2016, J. Tucker Merrigan was named a Top 40 Under 40 Trial Attorney by National Trial Lawyers. He volunteers as a Big-Brother in the Big-Brother Big-Sister foundation of the greater Boston area.

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# MOLA

Massachusetts Opioid Litigation Attorneys

SWEENEY  
MERRIGAN  
LAW LLP



KP LAW  
*The Leader in Public Sector Law*

## IN CONJUNCTION WITH:



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[baronandbudd.com](http://baronandbudd.com)



[powellmajestro.com](http://powellmajestro.com)



[mchughfuller.com](http://mchughfuller.com)



GREENE KETCHUM  
FARRELL BAILEY & TWEEL LLP  
Personal Injury Attorneys

[greeneketchum.com](http://greeneketchum.com)



Hill, Peterson, Carper,  
Bee & Deitzler, PLLC

[hpcbd.com](http://hpcbd.com)

## **ENGAGEMENT TO REPRESENT**

RE: Town of Ayer, Massachusetts civil suit against those legally responsible for the wrongful distribution of prescription opiates and damages caused thereby.

**TOWN of AYER, Massachusetts** (hereinafter “CLIENT”), by and through its Town Manager, hereby retains the law firm LEVIN, PAPANTONIO, THOMAS, MITCHELL, RAFFERTY & PROCTOR, PA (“Firm”) on a contingent fee basis, to pursue all civil remedies against those in the chain of distribution of prescription opiates responsible for the opioid epidemic which is plaguing the TOWN including, but not limited to, filing a claim for public nuisance to abate, enjoin, recover and prevent the damages caused thereby.

**Peter J. Mougey** of the Firm shall serve as LEAD COUNSEL. CLIENT authorizes lead counsel to employ and/or associate additional counsel, with consent of CLIENT, to assist LEAD COUNSEL in the just prosecution of the case. CLIENT consents to the participation of the following firms (collectively referred to, herein, as “Attorneys”), if no conflicts exist, including but not limited to conflicts pursuant to the Massachusetts Ethics laws and the Massachusetts Rules of Professional Conduct:

LEVIN, PAPANTONIO, THOMAS, MITCHELL, RAFFERTY & PROCTOR, PA  
316 South Baylen Street  
Pensacola, Florida

SWEENEY MERRIGAN LAW, LLP  
268 Summer Street, LL  
Boston, Massachusetts

RODMAN, RODMAN & SANDMAN, P.C.  
442 Main Street, Suite 300  
Malden, Massachusetts

GREENE, KETCHUM, FARRELL, BAILEY & TWEEL, LLP  
419 11th Street  
Huntington, West Virginia

BARON & BUDD, PC  
3102 Oak Lawn Avenue #1100  
Dallas, Texas

HILL PETERSON CARPER BEE & DEITZLER PLLC  
500 Tracy Way  
Charleston, West Virginia



POWELL & MAJESTRO, PLLC  
405 Capitol Street, P-1200  
Charleston, West Virginia

MCHUGH FULLER LAW GROUP  
97 Elias Whiddon Road  
Hattiesburg, Mississippi

KP LAW, P.C.  
101 Arch Street, 12<sup>th</sup>  
Floor  
Boston, Massachusetts

CLIENT is retaining the Firm and Attorneys collectively and not as individuals, and attorney services to be provided to CLIENT hereunder will not necessarily be performed by any particular attorney.

In consideration, CLIENT agrees to pay twenty-five percent (25%) of the total recovery (gross) in favor of CLIENT as an attorney fee whether the claim is resolved by compromise, settlement, or trial and verdict (and appeal). The gross recovery shall be calculated on the amount obtained before the deduction of costs and expenses. CLIENT grants the Firm an interest in a fee based on the gross recovery. If a court awards attorneys' fees, the Firm shall receive the "greater of" the gross recovery-based contingent fee or the attorneys' fees awarded. **CLIENT shall not pay to the Firm and Attorneys a fee of any kind or nature if there is no recovery.**

The Firm and the Attorneys shall advance all necessary litigation expenses necessary to prosecute these claims. All such litigation expenses, including the reasonable internal costs of electronically stored information (ESI) and electronic discovery generally or the direct costs incurred from any outside contractor for those services, will be deducted from any recovery after the contingent fee is calculated and shall be paid to the Firm and Attorneys. **CLIENT shall not be required to reimburse the Firm and Attorneys for litigation expenses of any kind or nature if there is no recovery. If there is a recovery, the expenses charged shall be capped at 10% of the recovery, such that fees and expenses combined will not exceed 35% of the gross recovery to the Town.**

CLIENT acknowledges this fee is reasonable given the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly, the likelihood this retention will preclude other retention by the Firm, the fee customarily charged in the locality for similar legal services, the anticipated (contingent) litigation expenses and the anticipated results obtained, the experience, reputation, and ability of the lawyer or lawyers performing the services and the fact that the fee is contingent upon a successful recovery.

Attorneys shall have the right to represent other municipalities, governmental agencies or governmental subdivisions in other opioid related actions or similar litigation, subject to the requirements of the Massachusetts Rules of Professional Conduct relating to conflicts of interest, and CLIENT consents to such multiple representation. CLIENT has determined that it is in its own best interests to waive any and all potential or actual conflicts of interest which may occur as the result of Attorneys' current and continuing representation of other entities in similar litigation.

This litigation is intended to address a significant problem in the TOWN. The litigation focuses on the wholesale distributors and manufacturers of opioids and their role in the diversion of millions of prescription opiates into the illicit market which has resulted in opioid addiction, abuse, morbidity and mortality. There is no easy solution and no precedent for such an action against this sector of the industry. Many of the facts of the case are locked behind closed doors. The billion-dollar industry denies liability. The litigation will be very expensive and the litigation expenses will be advanced by the Firm with reimbursement contingent upon a successful recovery. The outcome is uncertain, as is all civil litigation, with compensation contingent upon a successful recovery.

The Firm intends to present a damage model designed to abate the public health and safety crisis. This damage model may take the form of money damages and/or equitable remedies (e.g., an abatement fund). The purpose of the lawsuit is to seek reimbursement of the costs incurred in the past fighting the opioid epidemic and/or recover the funds necessary to abate the health and safety crisis caused by the unlawful conduct of the wholesale distributors and manufacturers of opioids. CLIENT agrees to compensate the Firm, wholly contingent upon prevailing, by paying 25% of any settlement/resolution/judgment, in favor of CLIENT, whether it takes the form of monetary damages or equitable relief. For instance, if the remedy is in the form of monetary damages, CLIENT agrees to pay 25% of the gross amount to Firm as compensation and then reimburse the reasonable litigation expenses. If the remedy is in the form of equitable relief (e.g., abatement fund), CLIENT agrees to pay 25% of the gross value of the equitable relief to the Firm as compensation and then reimburse the reasonable litigation expenses, subject to appropriation of funds therefore and the applicable provisions of Massachusetts law. To the extent that the remedy includes both monetary damages and equitable relief, 25% of the monetary value of the equitable relief together with 25% of the monetary damages will be deducted from the total monetary damages as compensation for the Firm. If such compensation exceeds the total amount of the monetary damages awarded, payment of the additional compensation amount shall be subject to appropriation of funds therefor. To be clear, however, the Firm shall not be paid nor receive reimbursement from public funds unless required by law. However, any judgment arising from successful prosecution of the case, or any consideration arising from a settlement of the matter, whether monetary or equitable, shall not be considered public funds for purposes of calculating the contingent fee unless required by law. Under no circumstances shall CLIENT be obligated to pay any attorneys' fee or any litigation expenses except from moneys expended by defendant(s) pursuant to the resolution of CLIENT's claims. If the defendant(s) expend their own resources to abate the public health and safety crisis in exchange for a release of liability, then the Firm will be paid the designated contingent fee from the resources expended by the defendant(s). CLIENT acknowledges this is a necessary condition required by the Firm to dedicate their time and invest their resources on a contingent basis to this enormous project. If the defendant(s) negotiate a release of liability, then the Firm should be compensated based upon the consideration offered to induce the dismissal of the lawsuit.

The division of fees, expenses and labor between the Attorneys will be decided by private agreement between the law firms and subject to approval by CLIENT. Any division of fees will be governed by the Massachusetts Rules of Professional Conduct including: (1) the division of fees is in proportion to the services performed by each lawyer or each lawyer assumes joint responsibility for the representation and agrees to be available for consultation with CLIENT; (2) CLIENT has given *written* consent after full disclosure of the identity of each lawyer, that the fees will be divided, and that the division of fees will be in proportion to the services to be performed by each lawyer or that each lawyer will assume joint responsibility for the representation; (3) except where court approval of the fee division is obtained, the *written* closing statement in a case

involving a contingent fee shall be signed by CLIENT and each lawyer and shall comply with the terms of the Massachusetts Rules of Professional Conduct; and (4) the total fee is not clearly excessive.

The Firm and Attorneys will perform the legal services called for under this Agreement, keep CLIENT informed of progress and developments, and respond promptly to CLIENT's inquiries and communications. CLIENT will be truthful and cooperative with the Firm and Attorneys, disclose to the Firm and Attorneys all facts relevant to the claim, keep the Firm and Attorneys reasonably informed of developments, and be reasonably available to attend any necessary meetings, depositions, preparation sessions, hearings, and trial as reasonably necessary.

LEAD COUNSEL shall appoint a contact person to keep CLIENT reasonably informed about the status of the matter in a manner deemed appropriate by CLIENT. CLIENT at all times shall retain the authority to decide the disposition of the case and personally oversee and maintain absolute control of the litigation, including but not limited to whether to settle the litigation and on what terms.

CLIENT may discharge the Firm and Attorneys at any time by written notice effective when received by LEAD COUNSEL. Unless specifically agreed by the Firm and CLIENT, the Firm and Attorneys will provide no further services and advance no further costs on CLIENT's behalf with respect to the litigation after receipt of the notice. If the Firm is CLIENT's attorney of record in any proceeding, CLIENT will execute and return a substitution-of-attorney form immediately on its receipt from the Firm.

Upon conclusion of this matter, LEAD COUNSEL shall provide CLIENT with a written statement stating the outcome of the matter and, if there is a recovery, showing the remittance to the client and the method of its determination. The closing statement shall specify the manner in which the compensation was determined under the agreement, any costs and expenses deducted by the lawyer from the judgment or settlement involved, and, if applicable, the actual division of the lawyers' fees with a lawyer not in the same firm. The closing statement shall be signed by the CLIENT and each attorney among whom the fee is being divided.

At the conclusion or termination of services under this Agreement, the Firm and Attorneys will release promptly to CLIENT all of CLIENT's papers and property. "CLIENT's paper and property" includes correspondence, deposition transcripts, exhibits, experts' reports, legal documents, physical evidence, and other items reasonably necessary to CLIENT's representation, whether CLIENT has paid for them or not.

Nothing in this Agreement and nothing in the Firm and Attorneys' statement to CLIENT may be construed as a promise or guarantee about the outcome of this matter. The Firm and Attorneys make no such promises or guarantees. The Firm and Attorneys' comments about the outcome of this matter are expressions of opinion only and the Firm and Attorneys make no guarantee as to the outcome of any litigation, settlement or trial proceedings.

The relationship to CLIENT of the Firm and Attorneys, and any associate counsel or paralegal provided through them, in the performance of services hereunder is that of independent contractor and not that of employee of CLIENT, and no other wording of this Agreement shall stand in derogation of this paragraph. The fees and costs paid to the Firm and Attorneys hereunder shall be deemed revenues of their law office practice and not as a remuneration for individual employment apart from the business of that law office.

Accepted:

RODMAN, RODMAN & SANDMAN, P.C.  
442 Main Street, Suite 300  
Malden, Massachusetts

By \_\_\_\_\_  
Richard M. Sandman  
*Massachusetts Counsel*

\_\_\_\_\_ Date

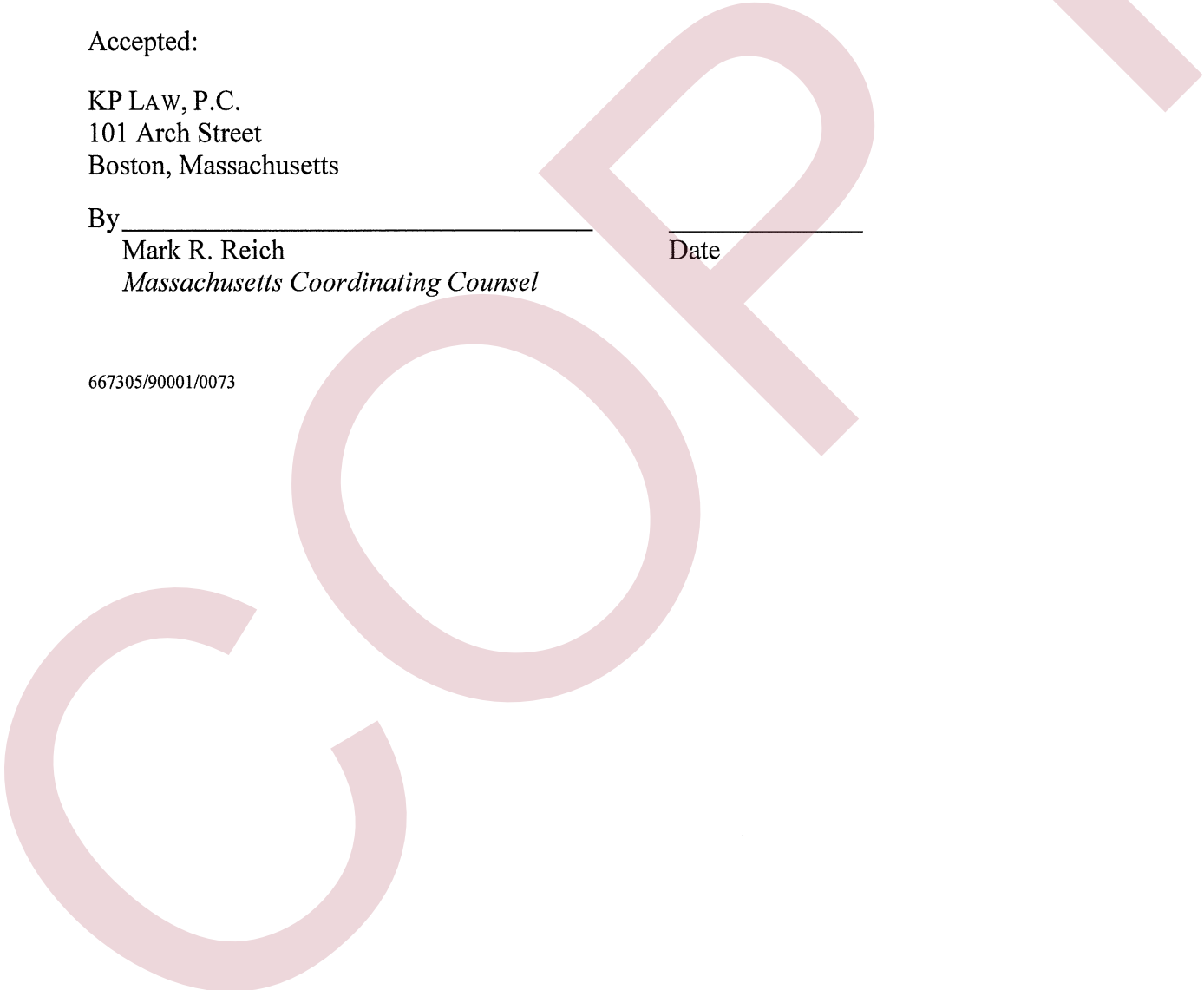
Accepted:

KP LAW, P.C.  
101 Arch Street  
Boston, Massachusetts

By \_\_\_\_\_  
Mark R. Reich  
*Massachusetts Coordinating Counsel*

\_\_\_\_\_ Date

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This Agreement contains the entire agreement of the parties. No other agreement, statement, or promise made on or before the effective date of this Agreement will be binding on the parties. This Agreement may be modified by subsequent agreement of the parties only by an instrument in writing signed by both of them or an oral agreement to the extent that the parties carry it out.

If any provision of this Agreement is held in whole or in part to be unenforceable, void, or voidable for any reason, the remainder of that provision and of the entire Agreement will be severable and remain in effect.

This Agreement shall be governed by, construed and enforced in accordance with the laws of the Commonwealth of Massachusetts and the parties hereto submit to the jurisdiction of any of its appropriate courts for the adjudication of disputes arising out of this Agreement.

SIGNED, this 6<sup>th</sup> day of June, 2019.

**Town of Ayer, Massachusetts  
Town Manager**



**Robert A. Pontbriand**

Accepted:

LEVIN, PAPANTONIO, THOMAS, MITCHELL, RAFFERTY & PROCTOR, PA  
316 South Baylen Street  
Pensacola, Florida

By \_\_\_\_\_ Date \_\_\_\_\_  
Peter J. Mougey  
*Lead Counsel*

Accepted:

SWEENEY MERRIGAN LAW, LLP  
268 Summer Street, LL  
Boston, Massachusetts

By \_\_\_\_\_ Date \_\_\_\_\_  
Peter M. Merrigan  
*Massachusetts Counsel*

**Town of Ayer  
Board of Selectmen  
Ayer Town Hall – 1<sup>st</sup> Floor Meeting Room  
Ayer, MA 01432**



*Broadcast and Recorded by APAC*

**Tuesday June 4, 2019**  
**Open Session Meeting Minutes**

**BOS Present:** Jannice L. Livingston, Chair; Christopher R. Hillman, Vice Chair; Scott A. Houde, Clerk

**Also Present:** Robert A. Pontbriand, Town Manager

**Call to Order:** J. Livingston called the meeting to order at 7:00 PM.

**Pledge of Allegiance:** BOS members and meeting attendees stood and recited the Pledge of Allegiance.

**Announcements:** J. Livingston announced the following:

- There will be a Special Town Meeting on Monday June 10, 2019 at 7:00 PM in the High School Auditorium to consider: Non-Retail Marijuana Zoning and the Form Based Code in current Downtown Business District

**Approval of Agenda:** There were no amendments to the agenda.

**Motion:** A motion was made by S. Houde and seconded by C. Hillman approve the agenda as posted.

**Public Input:** Mary Spinner addressed the BOS about changing the Town's Bylaw so that the Annual Town Meeting is on the last Saturday in April at 10am followed by the Annual Town Election on the second Saturday in May at 10am. Additionally, the Town Clerk could shorten the hours the polls are open for the Town Election as is done in many Towns since there are not as many positions being elected. She would also like the BOS to consider putting the proposed Bylaw Article on the Special Fall Town Meeting Warrant this October. She further stated that the average Annual Town Meeting has been three hours and thus it could be done in one Saturday and that many seniors do not drive at night and do not like the parking lot at the high school at night.

R. Pontbriand stated that the Town Clerk is currently doing some research with respect to this and suggested that the Town Clerk come to the next BOS meeting on June 18, 2019 to discuss further with the BOS. The BOS concurred.

**Chief William A Murray:**

*Introduction of New Police Personnel:* Police Chief William A. Murray appeared before the BOS to present the newly appointed Police Personnel since the Town went to a Town Manager form of government. He presented the following personnel to meet the BOS:

- Ericka Trinque: Records Clerk, Appointed February 2019
- Monica Maciel: Communicator, Appointed February 2018
- Michael Nicolo: Patrol Officer, Appointed October 2018
- Timothy Ialeggio: Patrol Officer, Appointed April 2019

Chief Murray explained that the Town is very selective and competitive with its hiring process and procedures and the Town is getting the best qualified candidates as exemplified by this group here tonight. The Chief said that he will continue to come back periodically with any newly appointed Police Personnel to meet the BOS.

*Public Safety Radio Project Update:* Chief Murray provided the BOS with an update of the Public Safety Radio Project Update. He advised that the DPW and Fire components of the project have been successfully completed and that the final testing of the Police radios is underway. He anticipates convening the Radio Project Team for final testing and project sign-off in the next few weeks. The project has been very successful and has improved the Town's public safety radio infrastructure, signal, and transmission.

M. Wetzel stated that from the DPW perspective, the project has been very successful. He used to lose radio signal in Littleton, now he can hear the radio from his driveway in Reading.

C. Hillman stated that he had discussed the project with Deputy Gill recently at the St. Mary's Lawn Party and that he understands the transmission challenge with the uniform radios.

Chief Murray stated that there is always a challenge with clarify of reception with uniform radios. It is best to use the handheld unit when possible. This is the case for all Police.

*Update on Downtown Cameras:* Chief Murray provided a status update on the idea of Downtown Cameras. He advised that the project would be cost prohibitive costing approximately \$40,000 for start-up costs and then further maintenance/operational costs. He advised that more and more Downtown businesses are installing security cameras and the Police Department has a good relationship with the businesses regarding their cameras. At this time, the Police Department is looking to purchase some pole cameras which can be strategically places and moved by the Department.

J. Livingston asked the Chief if there have been any issues with Downtown Parking since the construction of the MART Project and implementation of the Resident Only Parking.

Chief Murray advised that there have been no major issues. Parking citations have increased some which was to be expected. He advised that the relevant Town Departments will be meeting shortly to review the implementation of the Resident Only Parking.

C. Hillman asked if the Police Department had a full staff of Officers at this time and when the Traffic Division would be implemented.

Chief Murray advised that all of the Police Officer positions are finally filled. However two Officers are currently out on medical issues. Once they return and he is fully staffed, his intention is to implement the Traffic Division.

The BOS thanked the Chief for his presentations.

**DPW Superintendent Mark Wetzel:**

*Wastewater Treatment Plant Upgrade Change Order No. 3:* Superintendent Wetzel presented Change Order No. 3 in the amount of \$78,715.54 for the Wastewater Treatment Plant Upgrade project. Change Order No. 3 covers eight items including a police radio communications system, repairs to existing floor drains and miscellaneous HVAC and electrical changes.

**Motion:** A motion was made by S. Houde and seconded by C. Hillman to approve Change Order No. 3 in the amount of \$78,715.54 for the Wastewater Treatment Plant Upgrade. **Motion passed 3-0.**

C. Hillman asked what the timeframe for the Rotary project will be.

M. Wetzel advised that the dig safe has been completed and that he would need to call MassDOT to follow up.

C. Hillman asked about the status of the W. Main Street Culvert?

M. Wetzel advised that the delays have been with the engineering design between the engineering consultant and MassDOT's bridge engineer. Additionally, it is not worth bidding this project during the middle of the summer/bidding season.

### **Town Manager's Report**

R. Pontbriand provided an Administrative Update of the various activities, initiatives, and projects of the Administration for the period of time since the BOS last met on May 21, 2019. The Administrative update including a review of the Town Warrant(s) approved by the Town Manager for the period of time since the BOS last met on May 21, 2019. He advised that the Town is prepared for the Special Town Meeting on June 10, 2019 for the Marijuana Zoning Bylaw and the Form Based Code Bylaw. The Town has replaced the tree on the Columbia Street side of Town Hall which had been hit by a car previously with a new flowering magnolia. The Town Hall chiller has failed. Facilities is working on an interim repair until the project goes out to bid for replacement as approved by the Annual Town Meeting. The Treasurer is preparing the next round of tax titles and has been very proactive with this. There will be a Transfer Station promotional flyer in the next tax bills going out.

*ASRSD Request to Approve Amended FY 2020 Budget and 45 Day Waiver:* R. Pontbriand stated that Dr. Malone sends her regrets that she could not appear before the BOS as the School Committee is also meeting this evening at this time. She is respectfully requesting that the BOS vote to approve the FY 2020 ASRSD Budget as amended by the School Committee on May 15, 2019 for the purposes of properly recording the transfers from Excess & Deficiency in the FY 2020 Budget. These transfers do not impact the assessment to each Town. Additionally, she is requesting that the BOS approve waiving the 45-day requirement so that these transfers can be made before the end of the fiscal year.

**Motion:** A motion was made by S. Houde and seconded by C. Hillman to approve the FY 2020 ASRSD Budget as amended by the School Committee on May 15, 2019 and to waive the 45-day requirement. **Motion passed 3-0.**

*BOS Summer Meeting Schedule Discussion:* The BOS discussed and reviewed the 2019 BOS Summer Meeting Schedule and agreed as follows: June 18, 2019; July 16, 2019; and tentatively August 13, 2019 (to be confirmed at a future meeting). The BOS is available to meet additionally if needed.

*Designation of Selectman Representative for Devens Framework Committee:* The BOS discussed the Devens Framework Committee and the local Ayer Devens Disposition Study Committee. R. Pontbriand advised that the Devens Framework Committee is to consist of a Selectman, the Town Manager, and one other representative from each of the three Towns. He further advised that efforts to recruit and form the local Ayer Devens Disposition Study Committee remain underway.

S. Houde stated that he would like to be the BOS representative on the local Ayer Devens Disposition Study Committee. J. Livingston stated that she would volunteer to be the Ayer BOS representative on the Devens Framework Committee. C. Hillman stated that he had no issues and that he would be willing to fill in for either if they could not make it.

**Motion:** A motion was made by C. Hillman and seconded by J. Livingston to appoint S. Houde as the BOS representative to the local Ayer Devens Disposition Study Committee and to appoint J. Livingston as the Ayer BOS representative to the Devens Framework Committee. **Motion passed 3-0.**



**New Business/Selectmen's Questions:**

C. Hillman asked about the Town looking into having the utility poles on Park Street put underground where the proposed Form Based Code is to be. He stated that he talked to Mr. Ken Diskin of the Planning Board who brought this issue up.

R. Pontbriand stated that he would look into it and advise back.

J. Livingston mentioned that the memo for the Town becoming an Internet Service Provider (ISP) is due at the next meeting on June 18, 2019.

R. Pontbriand stated that the memo will be in the June 18, 2019 BOS Meeting Packet.

**Approval of Meeting Minutes:**

**Motion:** A motion was made by S. Houde and seconded by J. Livingston to approve the meeting minutes from May 21, 2019. **Motion passed 3-0.**

**Reorganization of the Board of Selectmen:**

**Motion:** A motion was made by J. Livingston and seconded by C. Hillman to appoint S. Houde the BOS Chair for the upcoming year. S. Houde stated that he would accept. **Motion passed 3-0.**

**Motion:** A motion was made by S. Houde and seconded by J. Livingston to appoint C. Hillman as the BOS Clerk for the upcoming year. C. Hillman stated that he did not want to be Clerk. **Motion passed 2-1** (C. Hillman; No)

**Motion:** A motion was made by S. Houde and seconded by J. Livingston to appoint J. Livingston as the BOS Vice Chair for the upcoming year. J. Livingston stated that she would accept. **Motion passed 2-1** (C. Hillman; No)

**Adjournment:**

**Motion:** A motion was made by J. Livingston and seconded by S. Houde to adjourn at 8:03 PM. **Motion passed 3-0.**

Minutes Recorded and Submitted by Robert A. Pontbriand, Town Manager

**Date Minutes Approved by BOS:** \_\_\_\_\_

**Signature Indicating Approval:** \_\_\_\_\_