Amendment to the Code of Ordinances
November 19, 2019

Pursuant to the authority granted to the Selectboard of the Town of Brattleboro under 24A VSA, Chapter 107 as amended, and 24 VSA §872, §1971 et seq., and §2291, Vermont Statutes Annotated, and such other general or special enactments as may be material hereto, the Selectboard of the Town of Brattleboro, does hereby amend **Appendix C (Regulations Governing the Control of Traffic)** of the Code of Ordinances in the following manner:

Article II (Parking)
Section 16-100 (No-Parking Areas)
46) *On the southerly side of Green Street*, from the ~~easterly~~ westerly boundary of the Green Street School property, westerly to the junction of Green Street with Western Avenue.

Section 16-101 (Limited-Parking Areas)
12) *On the southerly side of Green Street, in the "cut out" area directly in front of Green Street School there shall be one-hour limited parking during the hours of 8:30am and 2:15pm, with the exception of the area designated "Fire Lane."*

Article XI (One-Way Street)
Section 16-71 (One-Way Streets)
4) *Green Street*, from the junction of High Street easterly to Whipple Street, during the hours of ~~8:00am to 9:00am~~ 7:15am – 8:30am and ~~2:30pm~~ 2:15pm to 3:30pm during the week days that school is in session . . .

A copy of this Amendment may be obtained from the Brattleboro Town Manager's Office. Peter B. Elwell, Brattleboro Town Manager, 230 Main Street, Brattleboro, Vermont 05301, telephone number 251-8151 is a person with knowledge of this Amendment and who is available to answer questions in connection therewith.

This amendment shall be posted in five conspicuous places within the Town and published in the *Brattleboro Reformer* on the 23rd day of November, 2019, and shall become effective on the 18th day of January, 2020, unless a petition for a vote to disapprove the ordinance at a special or regular town meeting is signed by not less than five (5%) percent of the qualified voters of the Town of Brattleboro and filed with the Town Clerk within 44 days of the date of adoption stated above.

Passed and adopted by the Selectboard of the Town of Brattleboro this 19th day of November, 2019.

Brattleboro, Vermont

Town Clerk's Office, Brattleboro, Vermont,
_____ at
_____M. received and recorded the foregoing Amendment to the Code of Ordinances in Volume _____, Ordinances, at Page _____.

Attest:

_____
Town Clerk

BRATTLEBORO SELECTBOARD

_____
Brandie Starr, Chair

_____
Tim Wessel, Vice-Chair

_____
Elizabeth McLoughlin, Clerk

_____
David Schoales

_____
Daniel Quipp

Brattleboro Fire Department

103 Elliot Street * Brattleboro, VT 05301 * 802-254-4831 * FAX: 802-257-2323

Michael Bucossi
Fire Chief

Leonard Howard III
Assistant Chief

To: Brattleboro Selectboard
From: Michael Bucossi; Fire Chief
Via: Peter Elwell; Town Manager
Date: October 23, 2019, 2019

Re: Recommend Green St ordinance change

In June of 2019 Police Chief Michael Fitzgerald, Public Works Director Steve Barrett and I monitored several aspects of the Green St traffic after issues were raised about speeding through a school zone, illegal parking and traffic congestion during school drop off and dismissal times.

Since that time, we have been working with Mark Speno, Principal of Green St School, to make traffic flow smoother through the area, especially at drop off and dismissal times. One of the things that has been realized is when the school district changed school times several years ago, the times in the ordinance for the one-way traffic pattern on Green St was never updated.

Attached are the proposed edits to the Brattleboro Code of Ordinances, which were considered and unanimously recommended for adoption by the Traffic Safety Committee on September 19, 2019.

Ordinance Changes on Green Street Recommended by the Traffic Safety Committee

Appendix C (Regulations Governing the Control of Traffic):

Article II (Parking)
Section 16-100 (No-Parking Areas)
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Section 16-71 (One-Way Streets)
4) *Green Street*, from the junction of High Street easterly to Whipple Street, during the hours of ~~8:00am to 9:00am~~ 7:15am – 8:30am and ~~2:30pm~~ 2:15pm to 3:30pm during the week days that school is in session, beginning on the first day of the calendar school year and continuing until the last day of the calendar school year. In addition, for a one hour time period beginning at one-half hour prior to the commencement of any pre-scheduled early release from school through the next one-half hour after the commencement of such pre-scheduled early release. Finally, for a one hour time period beginning at the time of a declared emergency early release from school that has not been pre-scheduled, due to the nature of the events resulting in the emergency.

Agenda Item B under Unfinished Business
"Authorization for Town to Join in Multi-Jurisdictional Opioids Litigation and Ratification of Attorneys' Retainer Agreement"
November 19, 2019 Selectboard Meeting

The documents for this matter contain:

(a) This cover page
(b) Memorandum from Town Attorney Robert M. Fisher, dated October 29, 2019
(c) Retainer Agreement
(d) Memorandum from Town Attorney Robert M. Fisher, dated October 10, 2019
(e) Voluminous lawsuit (173 pages) filed in United States District Court, Northern District of Ohio, Eastern Division, entitled "The Town of Bennington, Vermont, Plaintiff, v. Mallinckrodt PLC, et al," Docket No. MDL 2804, Cast No. 1:17-md-2804-DAP, Member Case No. ___, Judge Dan Aaron Polster. **A copy of the Complaint and Jury Demand can be found in the Selectboard back-up materials from the October 15, 2019 meeting, on the Town's website (www.brattleboro.org) under Selectboard > Draft Minutes and Supporting Documents, or by contacting the Town Manager's Office at 251-8151 to obtain a copy.**
(f) Letter dated November 1, 2019 from Vermont Attorney General Thomas J. Donovan, Jr., re: Nationwide Class Action Lawsuit

MEMORANDUM

To: Selectboard

From: Robert M. Fisher, Esq.

Date: October 29, 2019

Re: UPDATE on Multi-District Municipal Litigation against Opioid Manufacturers, Distributors, Pharmacy Benefit Managers, and Pharmacies

As the Board is aware, the opioid litigation has been in the national news a lot in recent weeks. Some settlements have been announced and other cases are heading toward trial. To say the least, it is a dynamic topic these days. As far as the Brattleboro case, it has not been officially filed yet—in part due to the attorneys' availability resulting from the other cases' recent actions and in part due to the fact that the Town of Brattleboro needs to identify which defendants it wishes to sue. According to Attorney Joanne Cicala, the case can be ready for filing in the next two weeks.

Due to the recent settlement negotiations with the national distributors and manufacturers, I signed the engagement letter with the attorneys such that the Town did not lose out on any potential settlements that were being negotiated. That action needs to be ratified by the Board at this upcoming meeting such that there is official Board action to enter this opioid litigation. Additionally, the Board needs to determine if it wishes to sue local pharmacies and/or national pharmacies with local branches.

The suit will be a separate lawsuit from the Bennington lawsuit, but filed as part of the multi-district opioid litigation in the Federal Court in Ohio, but with any trial being held here in Vermont Federal District Court. The plan is for the other Vermont municipalities which have recently decided to join in this litigation to consolidate their pleadings into one case. That consolidated pleading would enumerate which towns are suing which defendants such that there is clarity on the issue of the pharmacy defendants. Some towns may elect to sue all the pharmacies while other towns may elect to sue only the national chain pharmacies, while still others may elect not to sue any pharmacies. The decision making comes down to whether the towns believe that the pharmacies have failed to make and implement required policies and procedures for not filling suspicious orders. Pharmacies are obliged not to fill suspicious orders and to report suspicious prescribing practices. Separate and apart from doctors, they are obliged to have suspicious order monitoring programs in place for the drugs at issue. There is known evidence that the national chains fell far short of federal and state requirements. Therefore, the Board will need to decide whether it wishes to name all, some or none of the pharmacy defendants in the lawsuit.

On the question of damages, I am informed that "damages will be apportioned based on relative impact across towns. Impact takes into account factors such as population suffering from opioid use disorder, number of opioid deaths and opioid shipments (units and MME) into your community. Brattleboro naturally would only collect from those defendant groups it has sued." (Email from Attorney Cicala)

Attorney Cicala's office will be finalizing the Complaint over the next week and will need to know the decision of the Board as to whether to include pharmacies into the Complaint. I will be available to answer any questions on this at this upcoming meeting.

RETAINER AGREEMENT

This Retainer Agreement ("Agreement") represents the understanding between the Town of Brattleboro, Vermont ("Client") and Sanford Heisler Sharp, LLP and The Cicala Law Firm PLLC (collectively, "Attorneys") ("the Parties"). Attorneys' status is that of an independent contractor; Attorneys shall not be considered an employee of Client for any purpose.

Retention of Attorneys

1. Client hereby retains Attorneys as lead counsel to represent Client in the investigation and prosecution of any legal action against Purdue Pharma, L.P.; Purdue Pharma, Inc.; the Purdue Frederick Company, Inc.; Mallinckrodt plc; Endo Health Solutions, Inc.; Endo Pharmaceuticals, Inc.; McKesson Corporation; Cardinal Health, Inc.; AmerisourceBergen Drug Corporation; CVS Health; Walgreens Boots Alliance, Inc.; Pharmacy Benefit Managers; and, any other relevant defendants (collectively, "Defendants"), in connection with Defendants' manufacture, marketing, sale, and distribution of prescription opioid products and the harm created therefrom to Client. Collectively, these matters will be referred to herein as the "Action."

2. Attorneys are authorized to associate or consult in this representation with other counsel upon consultation with Client and with Client's consent. Notwithstanding any such association of other counsel, and unless such authority is expressly delegated by Attorneys to other counsel with Client's consent, Attorneys shall at all times retain the full authority and responsibility as Client's counsel in the investigation and prosecution of the Action.

Scope of Employment

3. Client authorizes Attorneys to investigate and, if appropriate after consultation with and authorization by Client, prosecute Client's claims for opioid-related cost recovery involving violations of the Vermont Consumer Protection Act, public nuisance, fraud, unjust enrichment, negligence/gross negligence/negligence per se, among other claims. Attorneys' representation of Client is limited to matters necessary to investigate and litigate the Action and to bring it to a conclusion. The representation described in this engagement will include a first step, involving the investigation of Client's claims against Defendants including specifically an analysis of the damages sustained by Client as a result of the opioid epidemic, followed by a Second Step, if appropriate after consultation and authorization by client, involving prosecution of Client's Action, if any, and determination of Client's share of any award or settlement in all related proceedings. Client is not hereby obligated to pursue a lawsuit regarding the matters described in this Agreement; however, to the extent permissible under Vermont law, Client hereby agrees that if it chooses to pursue a lawsuit regarding the matters described in this Agreement, Client will utilize Attorneys to do so pursuant to the terms of this Agreement. If Client chooses not to pursue a lawsuit regarding the matters described in this Agreement, in its sole discretion, there will be no costs, fees or expenses owed by the Client.

4. Attorneys do not represent Client in connection with the negotiation of the terms of this Agreement. Rather, Attorneys are acting on their own behalf. Client understands that the provisions of this Agreement are not prescribed by law but are determined by negotiation and mutual agreement.

The Parties' Obligations

5. As part of Client's representation, Attorneys shall work closely with Client and its representatives in investigating potential claims and keep Client informed about the status of the Action and shall provide advice and explanations necessary to permit Client to make informed decisions regarding their representation, and shall comply with Client's reasonable requests for information.

6. Client shall provide any and all information reasonably requested by Attorneys and shall assist fully in the investigation, including, but not limited to, gathering and sharing facts and evidence in support of the allegations; attending scheduled hearings and meetings; preserving all documents and tangible things, including electronically stored information, relevant to these matters; answering truthfully any interrogatories propounded to Client by opposing parties; appearing for and testifying at depositions; and, cooperatively participating in any judicial or other proceeding as may arise during the course of the Action.

7. In this matter, Client will have certain important document preservation responsibilities. In particular, Client must ensure that any and all information that might potentially relate to the claims is properly preserved. Such information might include communications about or with a party, research materials, and product-related materials.

Division of the Award

8. In consideration of the legal services and counsel to be rendered by Attorneys, Client agrees to pay Attorneys a contingent fee representing a percentage of the Action's settlement or judgment ("Award") which shall be calculated before reimbursement of costs and expenses pursuant to Paragraph 11 of this Agreement. Attorneys' contingent fee percentage shall be twenty-five percent (25%) of Client's recovery.

9. In the event that Defendants pay Client in a structured settlement or under any other arrangement that results in Defendants' payment being made in installments rather than in a single lump sum, the division of the Award according to the provisions of Paragraph 8 shall be applied to each payment received by Client.

Award of Costs and Expenses

10. Attorneys agree to advance all out-of-pocket costs and expenses associated with this engagement. Reasonable out-of-pocket costs and expenses that are incurred or advanced by Attorneys shall be reimbursed from the Award after deduction of Attorneys' contingent fee and before distribution of the Award. These costs and expenses may include, but are not limited to, filing fees; court costs and fees; fees for service of process; copying charges; transcription expenses; printing costs; computerized legal research; investigative, expert, and deposition costs; trial costs; exhibit preparation expenses; witness fees; and travel costs and expenses which in Attorneys' judgment are necessary to incur in the prosecution and enforcement of the Action. Attorneys agree to keep detailed records of their costs and expenses paid and/or incurred during the course of the representation.

11. Notwithstanding any other provision of this Agreement, in no event will the contingent fee plus the reimbursement of expenses combined exceed 30% of the recovery.

12. To the extent that any costs and expenses advanced or incurred by Attorneys are later awarded to Client by the Court or recovered by Client through settlement, Client hereby assigns to Attorneys 100% of the proceeds of any such costs and expenses award or settlement.

Common Representation and Potential Conflicts

13. Client is aware that Attorneys contemplate entering into the same arrangement as that set forth in this Engagement Letter with other municipalities in Vermont. Attorneys believe that the goals of Client are aligned with those of other Vermont municipalities regarding the Action. Attorneys do not believe that to achieve the goals of the Action, either Client or another municipality must take a position that is adverse to the interests of the other. However, to the extent any issue may arise in this matter about which Client disagrees with another municipality and one of you wishes to pursue a course that benefits one but is detrimental to the interest of the other, we cannot advise Client or assist Client or any other municipality in pursuing such a course. Because Client's interests and those of other municipalities are aligned, Attorneys are confident that their representation of Client will not be limited in this matter by representation of any municipality, but Client should consider these consequences of joint representation in deciding whether to waive this conflict. By signing this Retainer Agreement, Client acknowledges and agrees to the above-described representation.

14. In addition to the above, one of the consequences of joint representation of multiple clients by a law firm is the sharing of confidential information concerning the subject matter of the joint representation. Client acknowledges and agrees that communications between Attorneys and other municipalities relating to the Action will be treated as confidential and will not be disclosed outside your group without your informed consent. Client also acknowledges and agrees that any information that we receive concerning this matter, including communications from Client, may be disclosed to the other jointly represented clients during the course of the joint representation. Client further acknowledges that if a dispute arises between or among one or more of you, and Attorneys no longer represent Client in this matter, as the result of a conflict of interest or otherwise, Attorneys may nevertheless use any confidential information Attorneys have concerning this matter to the advantage of those we continue to represent in any subsequent action relating to this matter.

Termination of Representation

15. Client may discharge Attorneys at any time by providing Attorneys 30 days written notice of Client's intent to discharge.

16. In addition, if Attorneys determine at any time that it is no longer feasible or appropriate to pursue the Action, Attorneys may, by providing 30 days written notice to Client, withdraw from further representation. Under such circumstances, Attorneys will take steps, to the extent it is reasonably practicable, to protect Client's interests in a manner consistent with all rules governing professional conduct.

17. Compensation of Attorneys after discharge or termination of representation discussed in Paragraphs 15-16 will be governed by Paragraph 18 of this Agreement.

18. If Attorneys withdraw or are discharged and Client proceeds with the Action with or without substitute counsel and Client or Client's substitute counsel receives by settlement or judgement an Award or an award of costs and expenses related to the Action, Client shall pay separately to Attorneys a portion of the Award and/or award of costs and expenses as follows:

a. Attorneys' contingent fee percentage of the Award calculated as if Attorneys had not been discharged multiplied by the fraction calculated by dividing the number of hours expended by the discharged Attorneys on the Action as of the date of discharge by the total number of hours expended by all Attorneys' employees who have worked on the Action on behalf of Client and, if any, substitute counsel; and

b. the value of any Award of Costs and Expenses equal to the costs and expenses incurred by Attorneys in connection with the Action.

c. Subparagraph b. may be satisfied by providing a good faith opportunity for Attorneys to obtain reasonable costs, expenses, and Attorneys' fees from the Court or as part of any settlement agreement.

Alternative Dispute Resolution Including Waiver of Jury Trial Rights

19. Should any unresolvable dispute arise between the parties regarding fees, costs, or any other matter that relates to this agreement, the Action or the engagement of Attorneys, including, but not limited to, the quality of the services rendered, the parties agree to submit the dispute to binding arbitration before a mutually agreed-upon arbitrator, or if the parties are unable to agree upon an arbitrator and procedures, then pursuant to the then-applicable rules and procedures for commercial disputes of the American Arbitration Association ("AAA") and by arbitrator(s) selected by and through AAA. The parties agree that the arbitrator and the arbitration shall be located in Burlington, Vermont and that Vermont law will apply. The parties further agree that all reasonable costs of the arbitration, including the prevailing party's reasonable attorneys' fees, shall be borne by the unsuccessful party or non-prevailing party. Nothing in this paragraph shall prevent the parties from agreeing to submit any dispute to mediation.

Miscellaneous

20. Attorneys hereby agree that they will not negotiate or seek to resolve any claim to Attorneys' fees, costs, or expenses until an agreement in principle has been reached or a judgment has been entered on the Action's substantive allegations.

21. Attorneys shall provide upon request a certificate of Attorneys' professional liability insurance in an aggregate amount of not less than $10,000,000.

22. The entire Agreement between Client and Attorneys is contained herein. This Agreement supersedes any prior oral or written agreement concerning this representation. No other promises, inducements, or considerations have been offered, accepted, or given either by Client or

Attorneys. Client also agrees not to enter into any future agreements concerning the subject matter of this Agreement without prior notice to Attorneys.

23. This Agreement is governed by the laws of the State of Vermont and may not be modified, changed, altered, or amended in any way except in a writing signed by all parties. The parties expressly agree that no oral modification of this Agreement shall be effective, notwithstanding any provisions of the governing law that may allow for oral modification.

24. The parties expressly agree that if any term of provision of this Agreement is held invalid or unenforceable, every other term and provision remaining in the Agreement shall be valid and shall be enforced to the fullest extent permitted by law.

25. The parties hereby acknowledge that they have read and understand the foregoing, that they have had the opportunity to consult with independent counsel, and that they agree to the representation on the terms set forth in this Agreement.

26. This Agreement may be executed in counterparts, each of which constitutes an original and all of which constitute one and the same agreement.

27. Facsimile signatures or electronic copies thereof shall be as effective as original signatures for purposes of this Agreement.

28. This Agreement is effective as of the last date below executed.

SANFORD HEISLER SHARP, LLP

_____ Date: _____

Kevin H. Sharp

THE CICALA LAW FIRM PLLC

_____ Date: _____

Joanne Cicala

TOWN OF BRATTLEBORO

By: Robert M Fisher Date: 10/17/19

Bob Fisher

Its: Town Attorney

Jan Anderson

From:	Peter Elwell
Sent:	Thursday, October 17, 2019 2:56 PM
To:	Brandie Starr; Tim Wessel; David Schoales; Elizabeth McLoughlin; Daniel Quipp
Cc:	Jan Anderson; Patrick Moreland; Robert Fisher
Subject:	FW: Opioid Litigation by Vermont Municipalities--Joining the Bennington case--BOB FISHER TOOK EXPEDITED ACTION TODAY
Attachments:	Signed Retainer agreement.pdf
Importance:	High

Good Afternoon –
Please see the exchange of emails below between Town Attorney Bob Fisher and Joanne Cicala, who is the lead attorney on the opioids litigation we are signing onto. Here is the bottom line of this unexpected acceleration of or entry into this case:

1. Bob took this action after conferring with me because we had to retain Cicala today in order to preserve the Town's standing vs. some of the most significant defendants in the case: Purdue Pharma and the distributers.
2. We will ask the Selectboard to ratify this action on November 5.
3. Also on November 5 and thereafter, the Selectboard will retain full authority to modify the Town's position I this case vis-à-vis pharmacies, doctors, etc.
4. Joanne Cicala will be providing answers to Bob's questions so that he can include her replies in his update to the Selectboard for your consideration on November 5.

If you have any questions or require any additional information, please contact Bob or me at your convenience.
Thanks,
Peter

From: Robert Fisher <bob@fisherandfisherlaw.com>
Sent: Thursday, October 17, 2019 11:47 AM
To: Joanne Cicala <joanne@cicalapllc.com>
Cc: Peter Elwell <pelwell@brattleboro.org>; Patrick Moreland <pmoreland@brattleboro.org>
Subject: RE: Opioid Litigation by Vermont Municipalities--Joining the Bennington case

Dear Attorney Cicala:

Thank you for your email this morning. In response, please find attached the executed retainer agreement signed by me as Town Counsel.

The Town would like to be on board now in order to "have a seat at the negotiating table." The plan is to have the Selectboard ratify this and give specific authorization at its next meeting. We will work out the various questions the Board had between now and then, but for purposes of your filings, please see the engagement letter and please take the appropriate action to go forward with the Town of Brattleboro as a plaintiff against these defendants. If we need to adjust the complaint with regard to certain pharmacies, we can do that in the next several weeks.

Please get to us the answers to the questions at your earliest convenience. I recognize that there are more pressing matters for today.

Thank you for your assistance and please be in touch.

Bob Fisher

Robert M. Fisher, Esq.
Fisher & Fisher Law Offices, P.C.
114 Main St. ; PO Box 621
Brattleboro, VT 05302-0621
(802) 254-4488; fax 254-6148
bob@fisherandfisherlaw.com
and
118 Route 100; PO Box 1708
West Dover, VT 05356
(802) 464-3276; fax 464-3187

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From: Joanne Cicala <joanne@cicalapllc.com>
Sent: Thursday, October 17, 2019 8:01 AM
To: Robert Fisher <bob@fisherandfisherlaw.com>
Subject: Re: Opioid Litigation by Vermont Municipalities--Joining the Bennington case

Hi Bob- I will respond to all of your questions more fully this afternoon but for moment must share that events are moving with extraordinary speed right now on numerous fronts. Our team was in meetings all day yesterday in Dallas- and on calls late into the evening- on these subjects. No doubt you have seen recent reports of the Purdue bankruptcy and also the overnight news re the proposed $50B nationwide distributor deal. Both events now require us to firmly indicate- by tomorrow morning- who we represent. There is now a full day session tomorrow with Judge Polster regarding the distributor deal as it concerns resolution of municipal claims and tomorrow is now also a disclosure deadline in the bankruptcy court regarding who is in our group (for purposes of securing either a position on the ad hoc or Official unsecured creditor committees- opportunities we have worked hard through our bankruptcy counsel Caplin Drysdale to create).

We can absolutely continue to discuss filing suit on your behalf in two weeks after your next meeting but the consequence of that delay- so to speak- will be that Brattleboro has no seat at either the Purdue or distributors table. I am constrained to deliver this message to all of the VT communities we have met with today (except Bennington who is already on file).

If there is any opportunity to accelerate retention so that Brattleboro may take advantage of our positioning in both contexts tomorrow, that would be in your best strategic interest. Let me know if you'd like to discuss, Bob. I can jump on a call later this morning. And will circle back on your questions as well. Thanks very much.
Best, Joanne

Joanne Cicala
The Cicala Law Firm

101 College Street
Dripping Springs TX 78620
Office 512-275-6550
ll 917-860-6566

From: Robert Fisher <bob@fisherandfisherlaw.com>
Sent: Wednesday, October 16, 2019 3:31:45 PM
To: Joanne Cicala <joanne@cicalapllc.com>
Subject: RE: Opioid Litigation by Vermont Municipalities--Joining the Bennington case

Joanne:

We met with the Brattleboro Selectboard last night regarding joining this lawsuit or entering the multi-district litigation. Due to some questions from the Board members, they tabled this until their next meeting in two weeks. The Board overwhelmingly feels a "moral obligation" to take some action regarding the opioid epidemic which is just as serious here in Brattleboro as it is elsewhere in Vermont and the nation. Members of the public got up and listed off numerous deaths this year from opioid overdoses and opioid related complications. In essences, there was no one who disagreed with the Town entering the case.

The questions were more about details. So, if you can answer the following questions and/or provide me with information by which to update the Board, I would very much appreciate it.

1. Why has the lawsuit not included practicing doctors? Members of the Board and the Public added doctors into the "fault" group due to the doctors not taking care to prescribe opioid painkillers in a more restrained and cautious manner (as the regulations are now requiring). One doctor, an E.R. doctor, spoke to his belief that yes there are some doctors who should be de-licensed due to their ineptitude in caring for their patients, but opined that the great majority of doctors prescribe these opioid medications carefully and that none of the doctors derive extra profit from making these prescription. I am sure you know more about the statistics than I do, so please let me know why doctors have been omitted from the defendants. One guess that I made was that the malpractice elements of proof are quite different from the elements for these other torts and that the mixing of a malpractice case with the general delivery of opioids might not work well. But, let me know the reasons if you can.
2. Is there any evidence in Vermont, specifically Brattleboro, that would show violations by Hotel Pharmacy and/or Brattleboro Pharmacy? The Board is somewhat averse to suing its locally owned and operated pharmacies. The Board is split then as to whether it wishes to sue some pharmacies and not others. I believe it wishes to do an all or nothing approach when it comes to pharmacies. Many of the Board members indicated that the pharmacy was simply filling a prescription that was sent to it by a doctor, and how could that act be wrongful? The Complaint speaks to pharmacies filling fake or suspicious prescriptions and failing to stem the delivery of opioids to suspicious patients. However, is there any proof of that in Brattleboro? How would we find out?
3. Would the Brattleboro lawsuit be a separate action? Or joining the Bennington case? If joining the Bennington case, then how do we deal with the different pharmacies in the different towns? Please give me an explanation of what the Complaint would look like.
4. On damages, let's assume, for example, that Brattleboro elects not to sue all pharmacies, but does elect to sue the rest of the defendants. What is the process for calculating damages? What is the process for allocating damages between towns?
5. What is the relationship between doctors and pharmacies? What discretion does the pharmacy have to not fill a prescription?
6. In Brattleboro, we have the local hospital, Brattleboro Memorial Hospital, and also the Brattleboro Retreat (a large mental health hospital). Each prescribes and delivers a certain amount of opioid medications, but the ratios are quite low compared to the pharmacies. We assume these institutions are not named in the lawsuit. Correct? And Why not? (Presumably because they are both at the forefront of treating opioid addiction.)

Please let me know what you have in response to the above questions and then I'll take it back to the Board for authorization to file the suit. As I said above, the next meeting is two weeks from last night.

Thanks,

Bob

Robert M. Fisher, Esq.
Fisher & Fisher Law Offices, P.C.
114 Main St. ; PO Box 621
Brattleboro, VT 05302-0621
(802) 254-4488; fax 254-6148
bob@fisherandfisherlaw.com
and
118 Route 100; PO Box 1708
West Dover, VT 05356
(802) 464-3276; fax 464-3187

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MEMORANDUM

To: Selectboard

From: Robert M. Fisher, Esq.

Date: October 10, 2019

Re: Multi-District Municipal Litigation against Opioid Manufacturers, Distributors, Pharmacy Benefit Managers, and Pharmacies

The VLCT hosted an Opioid Action Forum at which the attorneys for the multiple district litigation provided a background of the lawsuits against the opioid manufacturers, distributors, pharmacies, and benefit managers. These lawsuits seek to hold accountable those entities who have created and fostered this epidemic by seeking injunctive relief designed to halt the flow of opioids, to recover money damages which will be used toward treatment and prevention efforts at the local level, and to direct reimbursement of the costs that local governments have incurred in fighting this epidemic. These lawsuits, unlike some state level lawsuits, sue not only the manufacturers, but also the pharmacies, the distributors and those companies that manage the flow of these drugs. This last group of defendants are companies are called pharmacy benefit managers and they provide reimbursement/payment to the pharmacies from the health insurance companies based on formulas that they create and negotiate with the insurers and the drug companies. Rather than attack just certain manufacturers, such as Purdue Pharma, these municipal suits cast a wide net in terms of the defendants.

The Town of Bennington was the first Vermont municipality to institute a lawsuit against these defendants. The counts, as set forth in the Complaint in which the Town of Bennington is the plaintiff, include public nuisance, unjust enrichment, fraud, negligence, conspiracy, and racketeering, among others. I have attached a copy of the voluminous complaint filed by the Town of Bennington because it is this lawsuit to which the Town of Bennington and the attorneys bringing the case would like to add other municipalities.

This case is brought in federal court in Ohio as part of a multi-district litigation and is under the management of Judge Polster. In the event of a trial, the trial would be here in Vermont Federal District Court. The case is on a contingent fee basis, meaning that the attorneys do not get paid unless there is a settlement or court verdict in favor of the plaintiffs. The attorneys are fronting all of the costs associated with bringing the litigation. The initial burden on the Town is minimal in terms of filing and it is likely that the case will not proceed to the "discovery" (document production and depositions) for at least a year or two.

The forum hosted by the VLCT was an introduction to this type of litigation and broadly defined the litigation. Further factual inquiry into the statistics in Brattleboro have shown that the

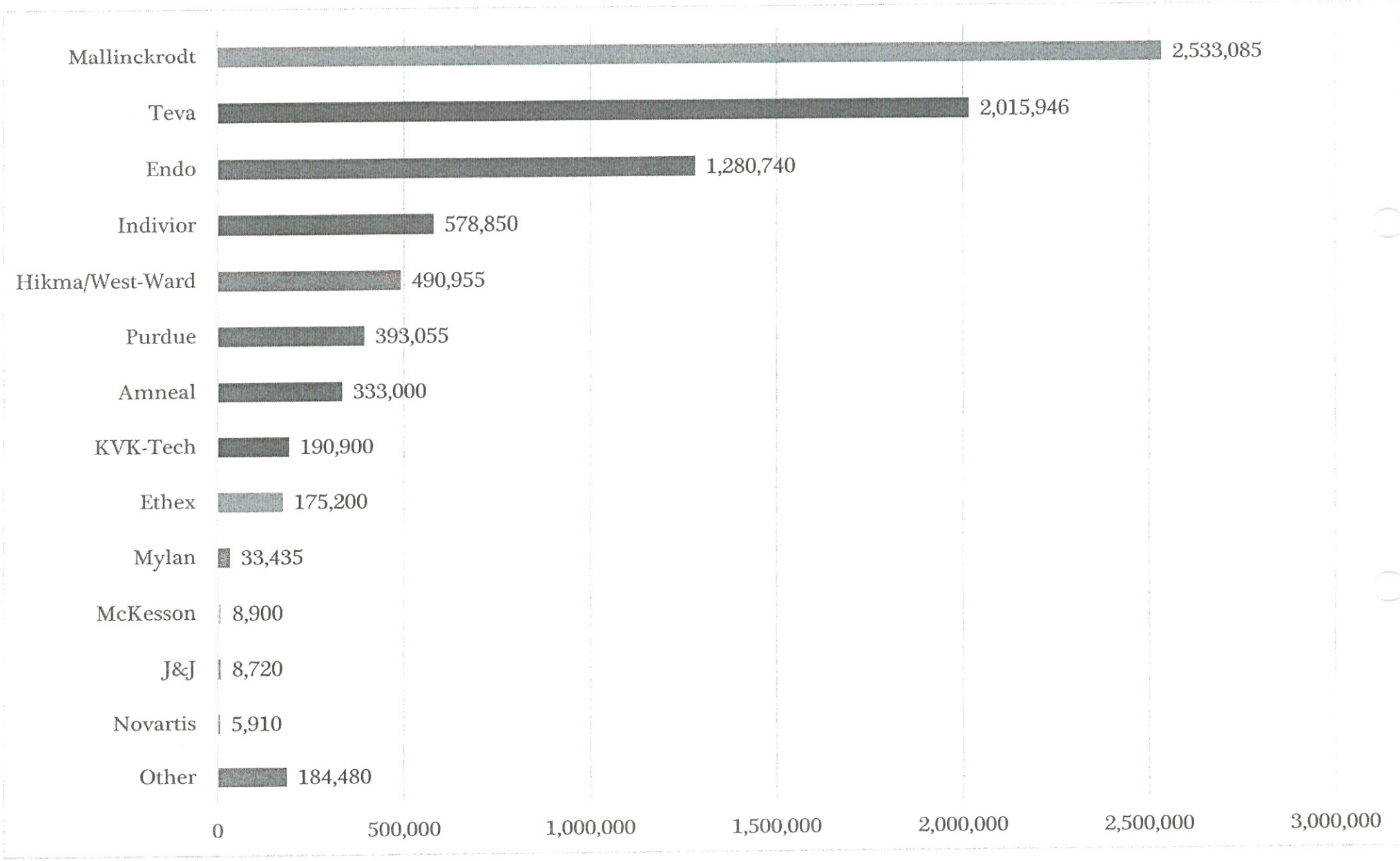
number of opioid related deaths has dramatically increased over the last five years. The opioid epidemic has been front and center for emergency first responders and the local health system. Based on the information presented at the forum, review of the Bennington case filing, and review of the particular data regarding opioid distribution in Brattleboro, the Board is asked to approve the Town's joinder into the Bennington litigation.

Of course, there are many questions that will need to be answered as the case progresses, such as: What are the measure of damages? How to prove damages that Brattleboro has incurred? How do the settlement proceeds (assuming a settlement) get allocated among municipalities? What will be the administrative burden on the Town? How much of any verdict actually goes to prevention and treatment? What are the elements of proof as to each claim? What happens if a defendant company goes into bankruptcy, like Purdue Pharma? How does the Town link its damages to each of the defendants? Are there local pharmacies which the Board would want to exclude from this litigation? How does the State litigation affect these municipality suits? Town Counsel is in contact with the litigation attorneys on this case regarding these questions. However, given the long period of time it will take for the case to mature toward a trial, these are questions that can be answered while the case is pending.

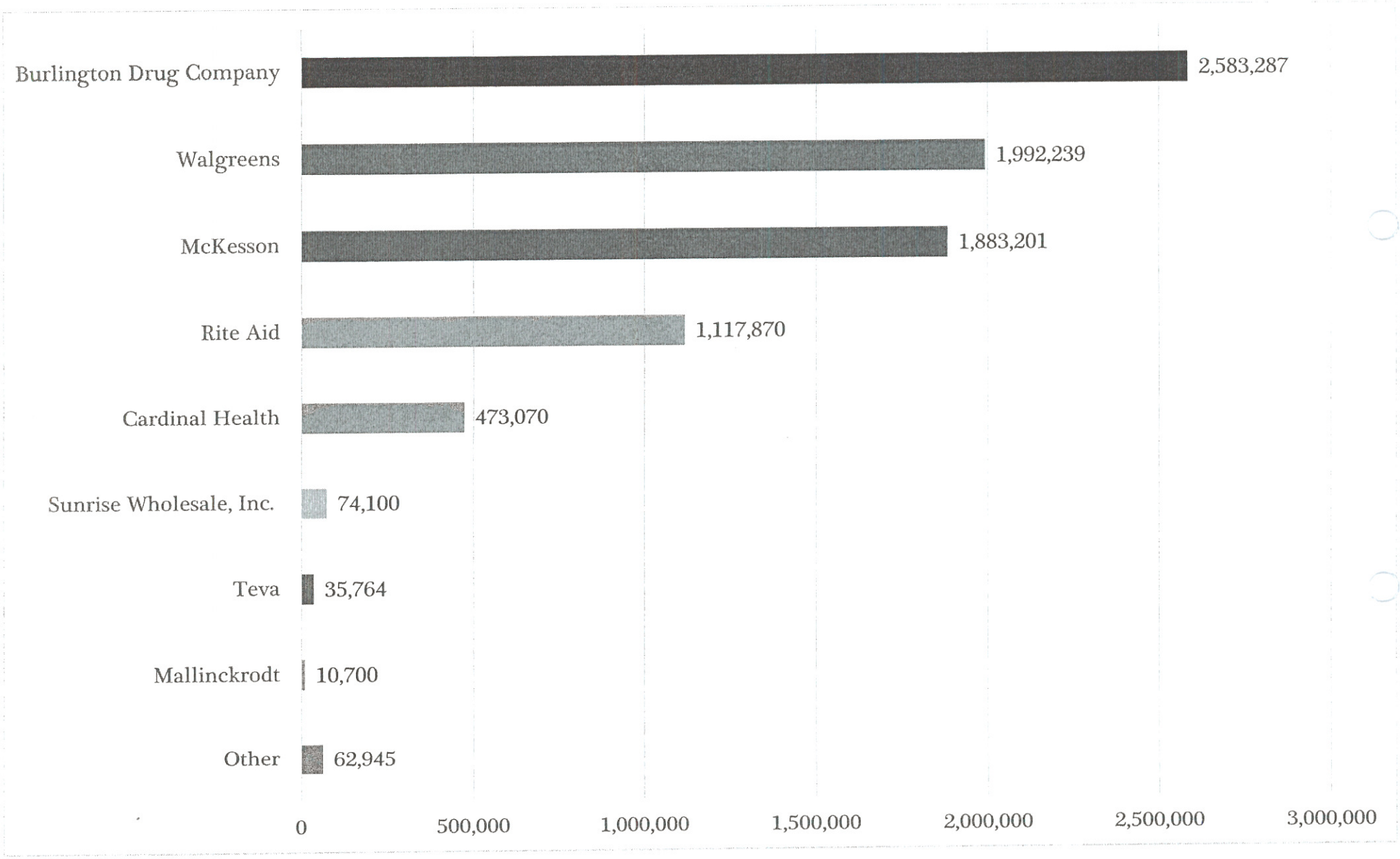
The following are attachments to this summary:

1) ARCOS reports for the Town of Brattleboro from 2006-2012
2) Bennington's Complaint as filed recently

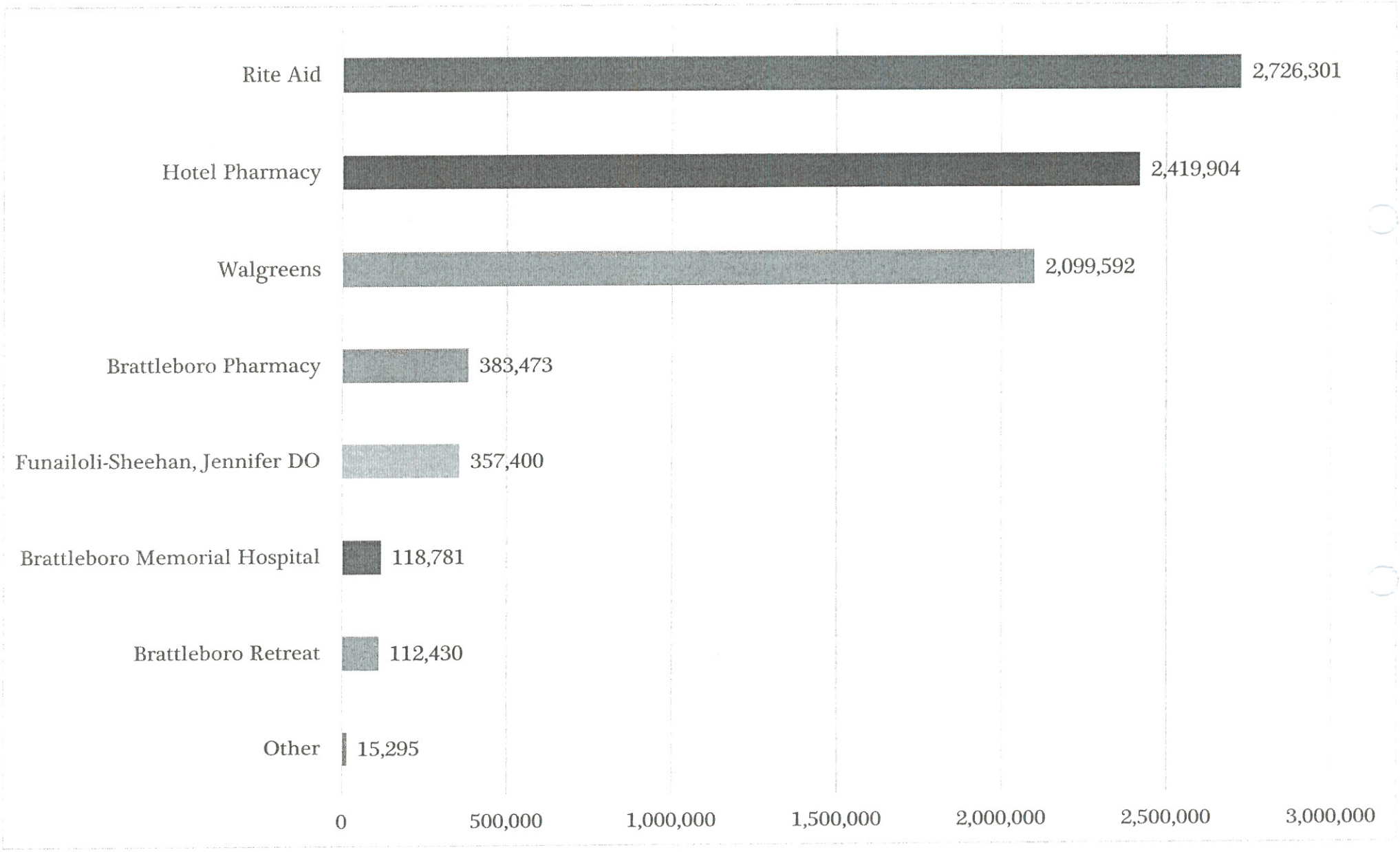
Town of Brattleboro, Vermont
ARCOS 2006-2012
MANUFACTURERS
Dosage Units



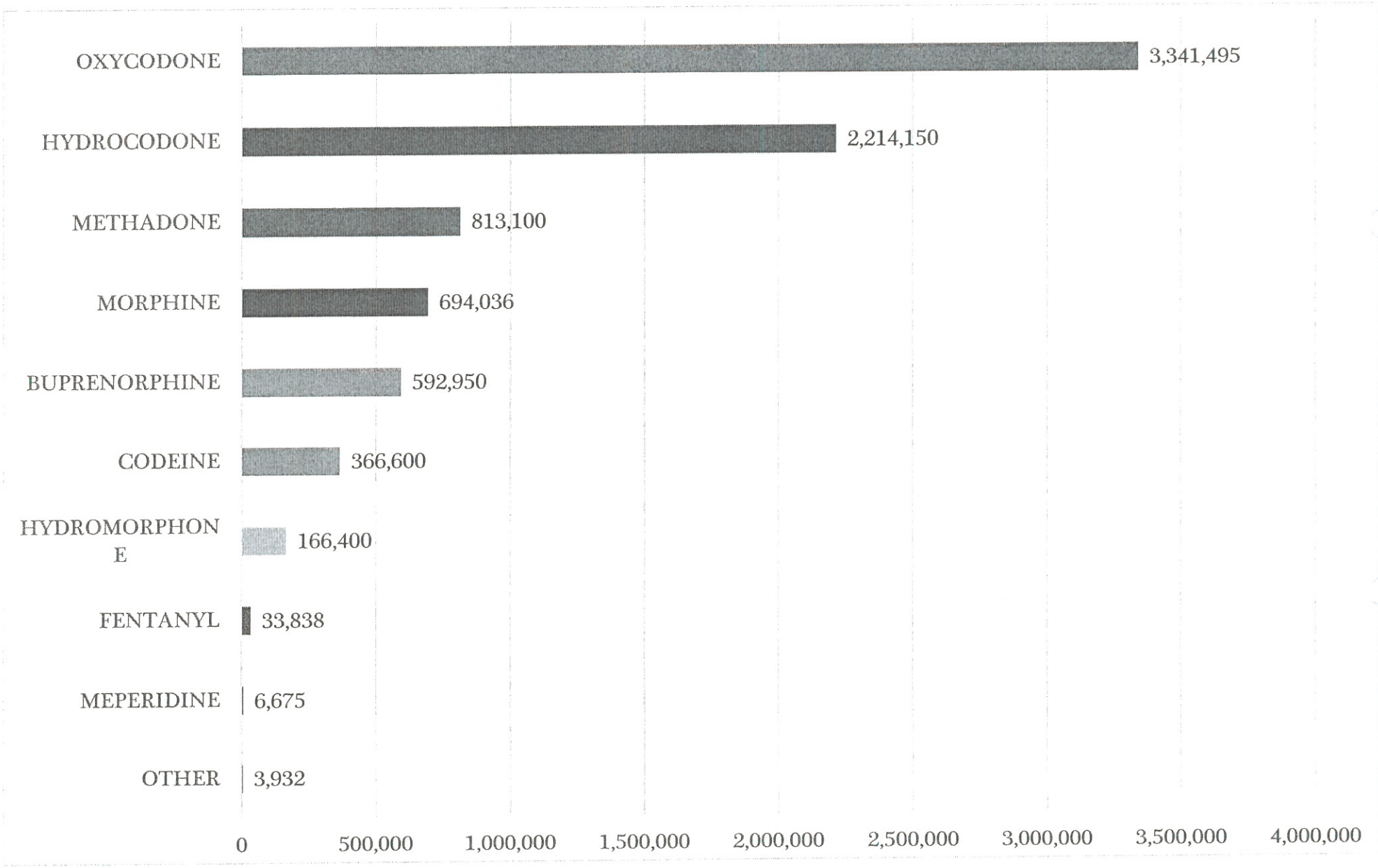
Town of Brattleboro, Vermont
ARCO[illegible]06-2012
DISTRIBUTORS
Dosage Units



Town of Brattleboro, Vermont
ARCOS 2006-2012
RETAILERS
Dosage Units



Town of Brat boro, Vermont
ARCO 06-2012
OPIOIDS
Dosage Units



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05609-1001

November 1, 2019

VIA E-MAIL

Vermont League of Cities and Towns
Attn: Vermont Mayors, Town Managers and Selectboard Members
89 Main Street, Ste. 4
Montpelier, VT 05602

Re: Opioid Litigation

Dear Vermont Mayors, Town Managers and Selectboard Members:

I am writing to address recent questions arising from a notice inviting Vermont cities and towns to join a Negotiation Class involving opioid related litigation. We believe Vermont cities and towns should seriously consider joining the Negotiation Class because it provides a way to participate in recent efforts to settle on-going litigation against the manufacturers, distributors, and large pharmacies that created the opioid epidemic. The Negotiation Class provides the opportunity to participate without having to file a lawsuit, hire attorneys, and incur additional attorneys' fees. Vermont cities and towns will be automatically enrolled in the Negotiation Class, unless they opt out by November 22, 2019. Answers to frequently asked questions related to the Negotiation Class can be found at https://www.opioidsnegotiationclass.info/Home/FAQ.

Many of you are dealing with the enormous fallout from the opioid epidemic. The harm to our communities has been staggering. The opioid crisis has caused a devastating loss of life in Vermont. Families have been torn apart, and many lives left in ruin. We have expended precious, limited resources to care for victims and the aftermath of addiction. This includes medical treatment, mental health care, family services, first responders such as police and rescue, and so many others.

It has been my number one priority as Attorney General to hold accountable those who have caused the opioid epidemic. We have sued opioid manufacturer Purdue Pharma, its owners the Sackler family, and the pharmaceutical distributors to bring those responsible for this epidemic to justice. I anticipate more lawsuits will follow. It is our intention that recoveries

from these lawsuits will be utilized to address the opioid crisis across Vermont. And, I know many of Vermont's cities and towns would also like to take part in these efforts.

Many of you have been asked to take part in the Negotiation Class as part of the multi-district litigation or "MDL" in the United States District Court for the Northern District of Ohio. This MDL has gathered thousands of cases brought by other cities and towns across the country. The MDL essentially is the federal court's way of consolidating all these cases before a single court to efficiently address all these claims. The judge in the MDL authorized the creation of a Negotiation Class as a means for all cities and towns across the country to participate in the fruits of any settlement activity arising out of this court. You can participate without having to file your own case or hire your own attorneys.

To see the how monies might be divided across the country, and in your particular community, you can go to www.OpioidsNegotiationClass.info. You will automatically be included in this Negotiation Class unless you provide notice of your decision to "opt-out" by November 22, 2019.

It is my recommendation that Vermont cities and towns seriously consider participating in this Negotiation Class. As stated above, you can participate in the potential fruits of a settlement without having to file a lawsuit, hire attorneys, and most important incur additional attorneys' fees and costs.

I respect that each municipality will consider their individual needs and determine the best path for their community. Regardless how you may choose, the Vermont Attorney General's Office will continue to seek justice for the entire State of Vermont and hold those accountable who created and profited from the opioid crisis.

Sincerely,

Thomas J. Donovan, Jr.
Vermont Attorney General