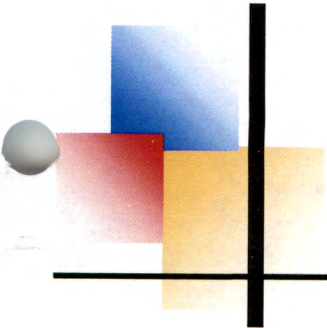




Judge Oakley

**OPIOID LITIGATION
PRESENTATION
TO
BURNET COUNTY, TX**

Presented by:
Simon Green Stone Panatier Bartlett
&
Cappolino Dodd & Krebs





CAPPOLINO | DODD | KREBS L.L.P.

312 S. Houston Avenue * Cameron, TX 76520 * 254-697-4965

www.RespectForYou.com

Ryan A. Krebs, M.D., J.D.

In Full-time Law Practice

Richard A. Dodd, L.C.

(TX, NY, AR, PA)

Craig W. Brown, P.C.

John O. Roark, J.D.

(1940-2016, In Memoriam)

Valerie S. Farwell, J.D.

Timothy R. Cappolino, P.C.

Board Certified in Civil Trial Law & Personal Injury

Trial Law by the Texas Board of Legal Specialization

and Civil Trial Law by the National Board of Trial

Advocacy

December 12, 2017

Judge Oakley
Burnet County Judge

RE: Opioid Damage Recovery

Dear Judge Oakley,

We appreciate your attention to our information and for your consideration of our proposal. As a products liability attorney for the past 35 years, I can say that the wrongdoings of the opioid manufacturers and dealers will make a compelling case. Regarding the products themselves, enclosed are a few important points. Also enclosed is information titled "Why Should We Do This?", "Why Not Wait?", an "Opioid Litigation Presentation" regarding Burnet County and, to get down to the brass, a copy of a proposed "Retention Agreement." My firm and Jeffery Simon's firm, Simon Greenstone Panatier Bartlett, PC are representing 26 counties, and many more as we progress. We have already filed the first Texas case of this kind of litigation.

These manufacturers spent hundreds of millions of dollars to change physician prescribing habits and perceptions. This included the concept that opioids for chronic pain was standard treatment. This was done by them despite the fact that research conclusively demonstrated that, because opioids are highly addictive, they are inappropriate for this treatment. This has caused counties to spend more than ever on rehab, indigent health, hospital districts, law enforcement, CPS and other services related to opioid overuse. This litigation will have implications beyond money. It will have a positive effect on your constituents.

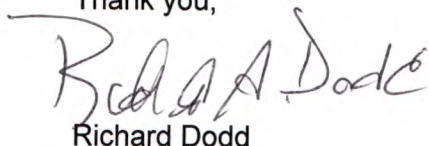
Jeffery and I are charter members of our National Trial Lawyers organization's Opioid Litigation Group and have been long time members of the AAJ (formally American Trial Lawyers Association) litigation section dealing with pharmaceutical litigation. This gives us instant access to loads of information about each product, the manufacturers and distributors along with old and new depositions of experts and corporate representatives. This allows for a listserv that offers access to other litigators like us nationwide and allows for hours of pharmaceutical and opioid litigation related legal education. In the proposed retention agreement please note the lesser of 30% or a time based charge. Because we are representing many plaintiffs, time spent on most of the universal work, which will be most of it, will be shared, thus triggering an "economy of scale" factor. This could make the fee less than 30%. Also, we have our own dedicated appellant section, which not only helps us avoid error as we proceed, but also will handle any appeal without an up charge as is common in most contingent contracts. Because of the scope of this litigation, it is safe to anticipate an appeal to be eminent.

I am proud to report, except in a couple of "sweetheart deals," that we are usually hired after due consideration is given to our presentation and proposal.

Please visit our websites, sgpblaw.com and respectforyou.com, to view our credentials, past successes, and organizational memberships. Please note our multistate and pharmaceutical litigation experience, and our peer recognition, such as Jeffery Simon being the outgoing TTLA President. Together we have a number of record verdicts and are asked to involve ourselves by other trial lawyers in litigation throughout the nation. These are good gauges of our willingness and ability to do a good job on behalf of Burnet County.

We simply ask that each of you study our proposal closely and make a decision that best benefits your constituents. We are willing to make another in person presentation should an audience be interested.

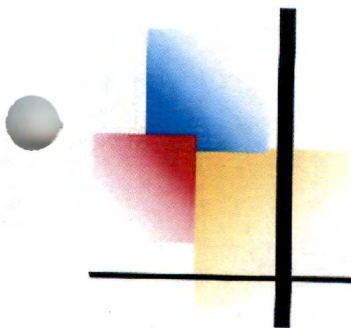
Thank you,

A handwritten signature in dark ink, appearing to read "Richard Dodd", with a stylized, cursive script.

Richard Dodd

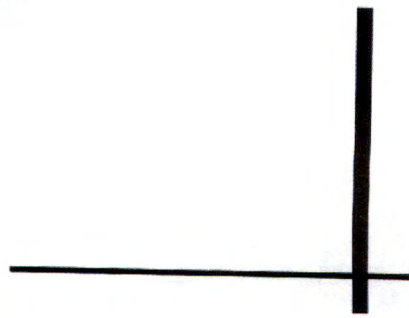
cc: Jon Don Dockery, Commissioner, Pct. 4
Russell Graeter, Commissioner, Pct. 2
Jim Luther, Commissioner, Pct. 1
Janet Parker, County Clerk
Billy Wall, Commissioner, Pct. 3

Enclosures



OPIOID LITIGATION PRESENTATION

Presented by:
Simon Green Stone Panatier Bartlett
sgplaw.com
&
Cappolino Dodd & Krebs
respectforyou.com



CAPPOLINO|DODD|KREBS, LLP

doddfirm@gmail.com

www.RespectForYou.com

Richard A. Dodd, LC, Attorney at Law

(TX, NY, PA, AR)

312 South Houston Avenue • Cameron, TX 76520

254-697-4965 • 800-460-0606

Cell Phone 254-482-0909

Top 10 Facts

*About
Opioid Use*

1

Accidental drug overdose deaths, at least 2/3 of which are opioid overdoses, are the now most leading cause of death for Americans under the age of 50. More deaths than by car crashes or by guns.

2

The annual financial cost of the opioid epidemic in America is \$60 billion a year. Roughly 45% of those costs are related to healthcare, 45% are related to lost workforce productivity, and 10% are related to criminal justice efforts.

3

The opioid epidemic is largely an American problem. Although the USA has only 5% of the world's population, we consume virtually all of the world's supply of Vicodin, and more than 80% of the world's supply of OxyContin.

4

More Americans consume prescription opioids than consume tobacco: 38% to 31% respectively.

5

More than 260 million prescriptions for opioid are written annually: enough to supply every American adult with a 30 day supply of narcotics.

6

The opioid epidemic is a recent phenomenon. Although opioids have been around forever, American consumption has more than quadrupled in the last 10 years.

7

Purdue Pharma introduced OxyContin into the market in 1996. Only 8 years later Oxy was the most abused opioid in America, and it still is.

8

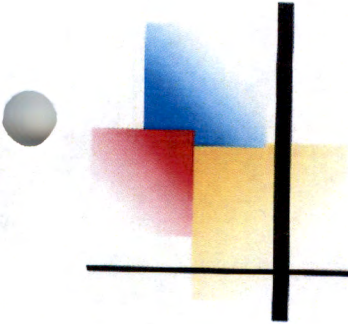
More than 2 million Americans are full-blown opioid addicts, and more than 12 million abuse opioids (take them to get high rather than for pain therapy).

9

The opioid epidemic is growing worse: the number of opioid overdoses increases every year and the number of communities with an opioid problem also increases.

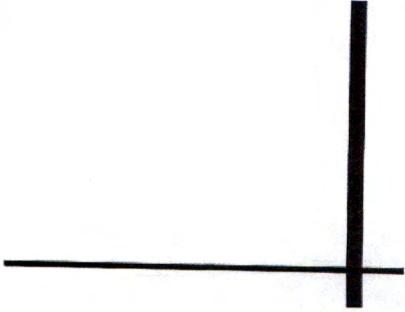
10

In addition to the harm that opioids can cause, opioids fuel increases in heroin addiction and criminality. Heroin is cheaper and easier to obtain on the street, as it is not dispensed by prescription.



OPIOID LITIGATION PRESENTATION

Presented by:
Simon Green Stone Panatier Bartlett
sgpblaw.com
&
Cappolino Dodd & Krebs
respectforyou.com



Why Should We Do This?

As Public Entities Are Paid, A Degree of Guilt is Assumed, Corporate Policy Is Changed And Public Awareness Is Increased

The opioid epidemic currently plaguing the U.S. is responsible for more fatalities than either car crashes or gun deaths. [Drug overdoses now kill more Americans than guns](#). *The New York Times* predicts that the number of overdose deaths last year exceeded 59,000. [Drug Deaths in America Are Rising Faster Than Ever](#). In addition to the loss of life, the epidemic is costing cities, counties, and states millions of dollars every year in costs ranging from additional law enforcement to healthcare and rehabilitation. [Costs of US Prescription Opioid Epidemic Estimated at \\$78.5 Billion](#). In recent years, public entities and private individuals have filed lawsuits taking pharmaceutical companies to task for their significant role in the epidemic, by misleading the public about the high risk of addiction associated with opioid prescriptions, deliberately failing to monitor and report suspicious orders, and actively encouraging physicians to over-prescribe opioids to patients. Some of these lawsuits have resulted in multi-million dollar settlements and fines levied against Big Pharma, and public entities continue to file suit against pharmaceutical companies.

Texas counties now have the burden of shouldering the economic and social costs of the epidemic. Litigation to recoup these costs not only benefits counties economically but it also changes drug company behavior in much the same way that criminal prosecution can change an individual's behavior. The use of litigation as a law enforcement tool is socially beneficial in two respects. First, plaintiffs act as sort of "private attorneys general" and thereby help to increase the number of wrongdoers who are properly "brought to justice". This assistance is important, for many serious misdeeds deserving of punishment are beyond the reach of the criminal law and the public prosecutor. Second, litigation helps to implement the various rules of substantive law. Few laws are obeyed or enforced in all instances. Violations are apt to be especially prevalent, when the unlawful activity is profitable for the violator. When other potential wrongdoers perceive a reduction in the profitability of misconduct, violations should be deterred and enforcement of the rules of substantive law improved." *David G. Owen, Punitive Damages in Products Liability Litigation, 74 Mich. L. Rev. 1257 (1976)*.

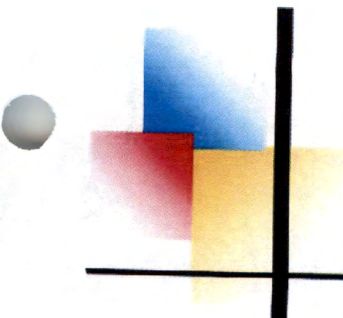
Many states and counties are now filing suit against Opioid manufacturers. Previous litigation in this area has been successful. For example, in 2012, West Virginia's Attorney General filed suit against Cardinal Health Inc., AmerisourceBergen Corp., and other healthcare distributors, alleging that these companies failed to report suspicious orders from high volume pharmacies. From the period 2007-2012, 780 million opioids were sent to West Virginia, an amount that, if divided equally, would provide each resident with 433 opioids. During the same time period, 1,728 fatal overdoses were reported. In December 2016, Defendant Cardinal Health Inc. and the State reached a \$20 million settlement. McDowell County, which has the highest rate of prescription drug abuse-related deaths in West Virginia, has a lawsuit still pending against Cardinal Health. [Cardinal Health to pay West Virginia \\$20M to settle opiates lawsuit](#)

The U.S. Department of Justice (DOJ) has also successfully brought legal action against pharmaceutical companies for failing to report suspiciously large volume opioid orders. In December 2016, Cardinal Health agreed to pay fines in the amount of \$44 million for failing to

notify the U.S. Drug Enforcement Agency (DEA) of suspicious orders. In 2008, the DEA accused McKesson, the nation's largest drug distributor, of failing to report hundreds of suspicious orders from online pharmacies in violation of Controlled Substances Act. As a result, McKesson paid \$13.25 million in fines and agreed to set up monitoring system to track suspicious orders. However, according to a 2013 DEA investigation, McKesson failed to properly design and implement a monitoring system and did not report suspicious orders during the period 2008-2012. For instance, McKesson filled 1.6 million controlled substance orders in the state of Colorado in the same period but only reported 16 orders from a single customer as suspicious. The DOJ announced in January 2017 that a settlement was reached wherein McKesson will pay \$150 million in fines, employ an independent monitor to assess compliance with tracking suspicious orders in the future, and suspend sales from four of its distribution centers (located in Colorado, Florida, Ohio, and Michigan). [McKesson, nation's largest drug distributor, to pay \\$150 million in fines in opioid settlement.](#)

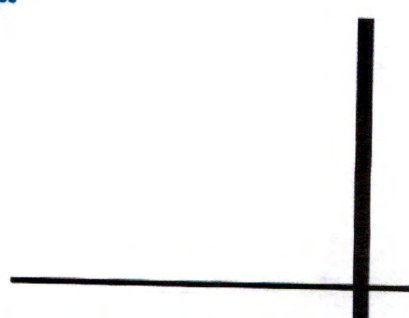
In addition to claims for failure to report suspicious orders, public entities have successfully sued opioid distributors for deceptive and/or misleading marketing practices. In 2007, former Kentucky Attorney General Greg Stumbo filed suit against Purdue Pharma alleging that the company misled the public about the addiction risks associated with the opioid OxyContin. Purdue allegedly offered the State \$500,000 to settle the lawsuit, but AG Stumbo rejected the offer, stating that case was worth \$1 billion if presented to a jury. In December 2015, Purdue agreed to a settlement paying Kentucky \$12 million plus an additional \$12 million over the course of the next eight years. The Court ordered Kentucky to use this money to fund addiction treatment centers. [Kentucky settles lawsuit with OxyContin maker for \\$24 million.](#)

The DOJ also sought recovery from Purdue Pharma over its drug OxyContin. The DOJ accused Purdue of misleading the public about the risks of dependency, claiming that OxyContin was less addictive than other painkillers. In 2007, Purdue Pharma's president, top attorney, and former chief medical officer pled guilty and agreed to pay \$634.5 million in fines. These fines were to be paid to state and federal law enforcement agencies, the federal government, federal and state Medicaid programs, a Virginia prescription monitoring program, and individual plaintiffs who sued the pharmaceutical company. In addition, at least \$5 million was set aside for a 6-year company program to monitor compliance with the agreement. In a separate 2007 case, Purdue Pharma paid \$19.5 million to 26 states and the District of Columbia for encouraging physicians to over-prescribe OxyContin. [Purdue Pharma, Execs to Pay \\$634.5 Million Fine in OxyContin Case.](#)



OPIOID LITIGATION PRESENTATION

Presented by:
Simon Green Stone Panatier Bartlett
sgplaw.com
&
Cappolino Dodd & Krebs
respectforyou.com



Why Not Wait?

A case filed by the State of Texas through its Attorney General should not stay a county's case **if the county case was filed first**. The law of abatement, or dominant jurisdiction, dictates that later-filed cases involving interrelated claims be abated. The key is to file the county case sooner rather than later.

Legal Analysis

The court in *In re Volkswagen Clean Diesel Litig.*, addressed whether to abate later-filed cases brought by various counties against Volkswagen to enforce the Texas Clean Air Act where the State had already filed suit against Volkswagen to enforce the Texas Clean Air Act.¹ 2017 Lexis 7070, at *4 (Tex. Ct. App. – Austin, no pet.). The court cited the general rule that the court in which the first suit is filed acquires dominant jurisdiction and the court in which a second suit is filed must abate where inherently interrelated suits are pending in two counties and venue is proper in either county. *Id.*

The court further explained that dominant jurisdiction applies where cases are “inherently interrelated because they ‘involve the *same parties and the same controversy*,’ and requires that the later-filed cases ‘be dismissed if a party to that suit called the second court’s attention to the pendency of the prior suit by a plea in abatement.’” *Id.*, citing *Curtis v. Gibbs*, 511 S.W.2d 263, 267 (Tex. 1974) (emphasis added). The first court’s jurisdiction must be exclusive because two different courts cannot have the power to make final determinations between the same controversy and the same parties. *Id.*

Although the State and the counties were arguably “different” parties, they were all seeking to enforce the same environmental law and impose penalties on the same parties for the same violations. *Id.* This identity of parties and issues sufficed for abatement to apply and the Court mentioned no priority of the State of Texas over counties other than the fact that the State filed its lawsuit first.

This case follows a similar line of reasoning found in *Boyett v. College Station* in which a later-filed case was abated even though there was a slight difference of parties and claims. 465

S.W.2d 203 (Tex. App. – Houston [1st Dist.] 1971, no pet.). In *Boyett*, A.P. Boyett, Sr. and others filed suit in Travis County against Robert S. Calvert, Comptroller of Public Accounts of the State of Texas, and six members of the City Council of the City of College Station seeking declaratory judgment as to whether the State Comptroller was prohibited by Article XVI, Section 33, of the Texas Constitution from paying people serving both as members of the faculty or staff of A&M and as members of the City Council of College Station. 465 S.W.2d at 204. Approximately one month later, a similar suit was filed in Brazos County in a class action. *Id.* The trial court overruled the plea in abatement. *Id.*

In determining that the trial court erred in overruling the plea in abatement, the Court explained that abatement does not rest solely on the idea of the “same” cause of action, but whether the judgment in the first action would dispose of the issues in the second action. *Id.* at 204. All the issues do not have to be the same, however, as long as the “crucial, determinative issues are identical”. *Id.* In other words, once jurisdiction attaches in the first suit, the pleadings may be amended to add additional claims and parties, and therefore jurisdiction cannot be taken away by a later-filed suit. *Id.*

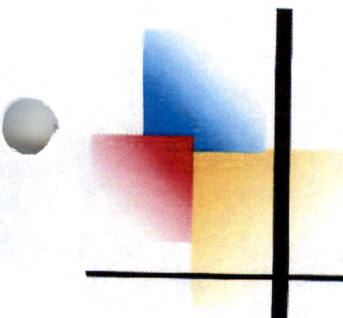
In *Boyett*, there were different defendants involved and even slightly different claims, but the essential questions raised in both cases were almost identical. 465 S.W.2d at 206. Moreover, as the Travis County District Court had proper jurisdiction, the court had the power to allow additional claims and/or defendants to be added. *Id.*

To sum this up, we truly have a race to the courthouse as the first-filed case should have dominant jurisdiction. In the *Volkswagen* case, the only difference between the first and later-filed cases involve the party bringing the suit – the State of Texas vs. several counties. The defendants were the same and the statute was the same. If Burnet County was to file a lawsuit against the manufacturers of opioids and later the State of Texas filed a lawsuit against the manufacturers of opioids relying on the exact same causes of action, the later-filed suit should be abated.

We know that the causes of action available to Burnet County and the State of Texas may differ, however, which puts the analysis more in line with *Boyett*. There are two different possibilities that could result from a later-filed case by the State of Texas: 1. The State of Texas case has claims that Burnet County cannot bring and the lawsuit filed by Burnet County has

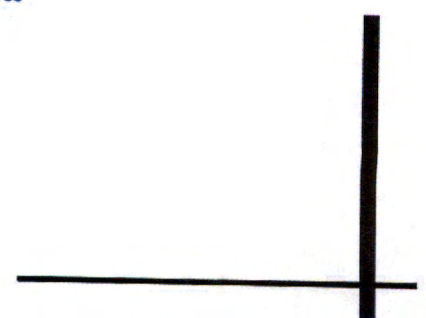
claims that the State of Texas cannot bring, and therefore the Court concludes that abatement does not apply and both lawsuits may proceed. 2. The first case filed by Burnet County has dominant jurisdiction and the case filed by the State of Texas is abated, but the Burnet County case is required to add any additional claims and/or parties necessary, including an intervention by the State of Texas for claims Burnet County cannot make. The most important aspect of abatement, however, is to file first to have the strongest argument no matter the individual facts we may face at a later date.

¹ Note that one unique aspect of this case is that the counties' later-filed suits had been placed into a MDL and the court discusses whether the fact that the suits were pending in the MDL should play a part in whether the cases should be abated. Ultimately it did not, and therefore I am not incorporating that language herein.



OPIOID LITIGATION PRESENTATION

Presented by:
Simon Green Stone Panatier Bartlett
sgpblaw.com
&
Cappolino Dodd & Krebs
respectforyou.com



Opioid Litigation Presentation

SIMON GREENSTONE PANATIER BARTLETT

TRIAL LAWYERS

Attorney Work Product
Privileged & Confidential

SIMON GREENSTONE PANATIER BARTLETT

TRIAL LAWYERS



The Opioid Epidemic

Prescription opioids: In 2012, 259 million prescriptions were written for opioids, which is more than enough to give every American adult their own bottle of opioid pills.

- Hydrocodone (e.g., Vicodin)
- Oxycodone (e.g., OxyContin)
- Oxymorphone (e.g., Opana)
- Fentanyl (e.g., Duragesic)

In 2015, there were more than 33,000 deaths from opioid overdoses nationwide. For each of those deaths, there were approximately 30 non-fatal overdoses, and thus, a total of almost 1 million opioid overdoses in 2015. (CDC).

Prescription painkillers are more widely used than tobacco, new federal study finds

Source: 2015 National Survey of Drug Use and Health conducted by the Substance Abuse and Mental Health Administration

38 percent of Americans use **prescription painkillers**



31 percent of Americans use **tobacco products**



Source: SAMHSA

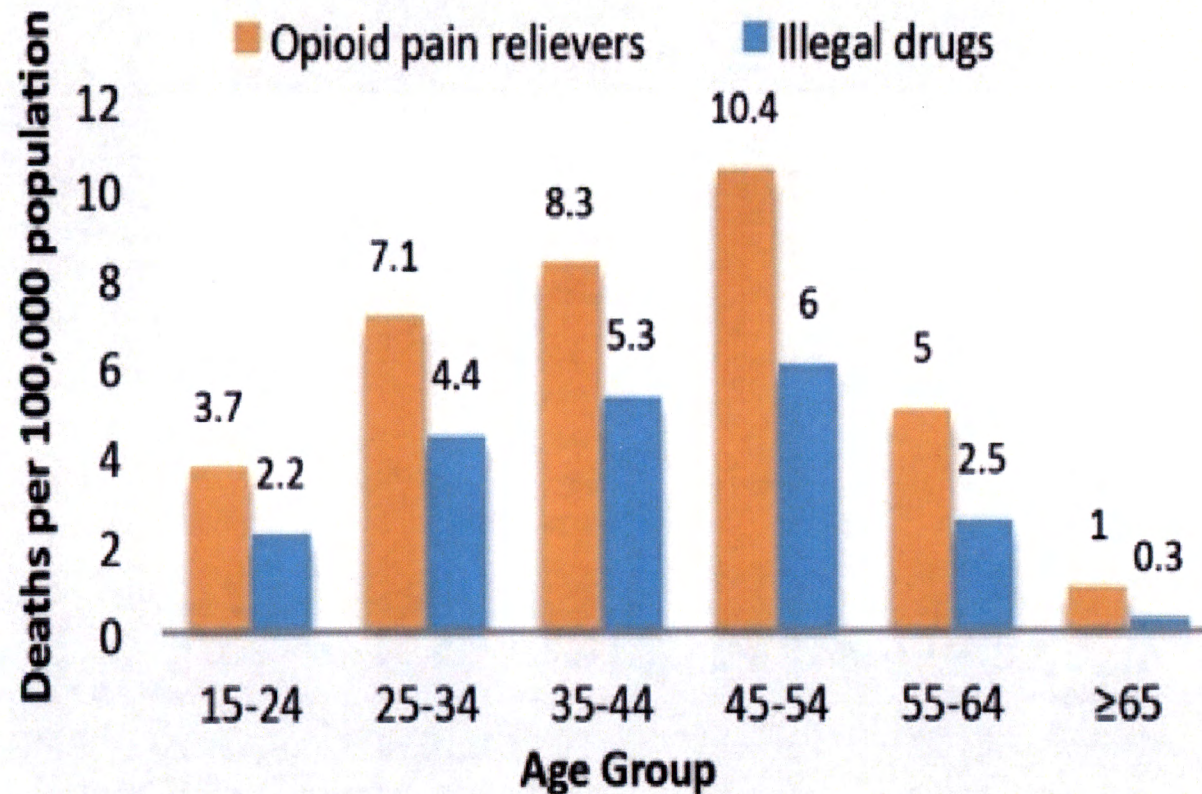
Icons by Schmidt Sergey and Majo Puterka, The Noun Project

Retrieved from

https://www.washingtonpost.com/news/wnk/wp/2016/09/20/prescription-painkillers-are-more-widely-used-than-tobacco-new-federal-study-finds/?utm_term=.7fb6e492e11f

SIMON GREENSTONE PANATIER BARTLETT
TRIAL LAWYERS

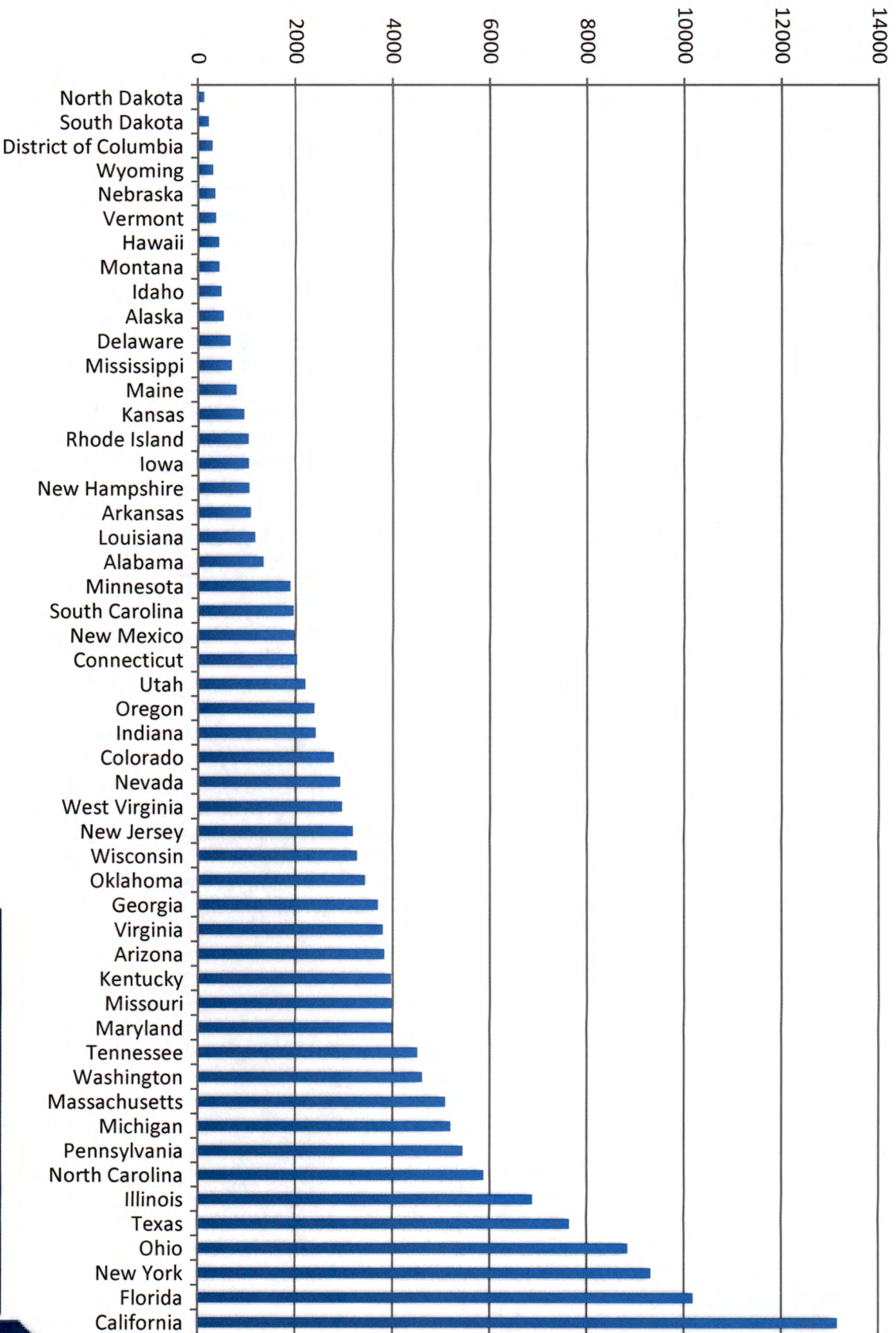
Deaths from Opioid Pain Relievers vs. All Illegal Drugs



Source: CDC, Morbidity and Mortality Weekly Report, 60(43): 1489, 2011.

Opioid Deaths, 2008 - 2014

Total = 156,573



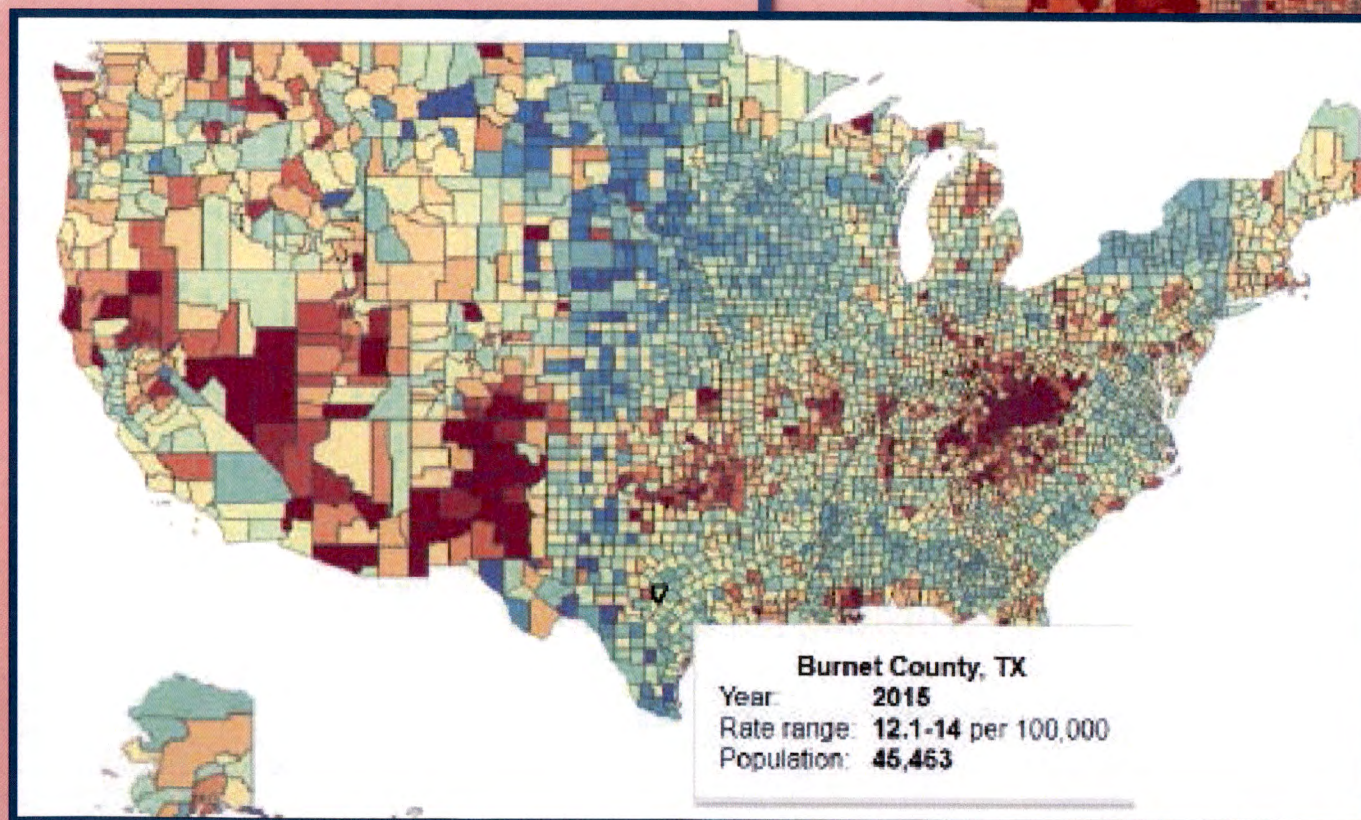
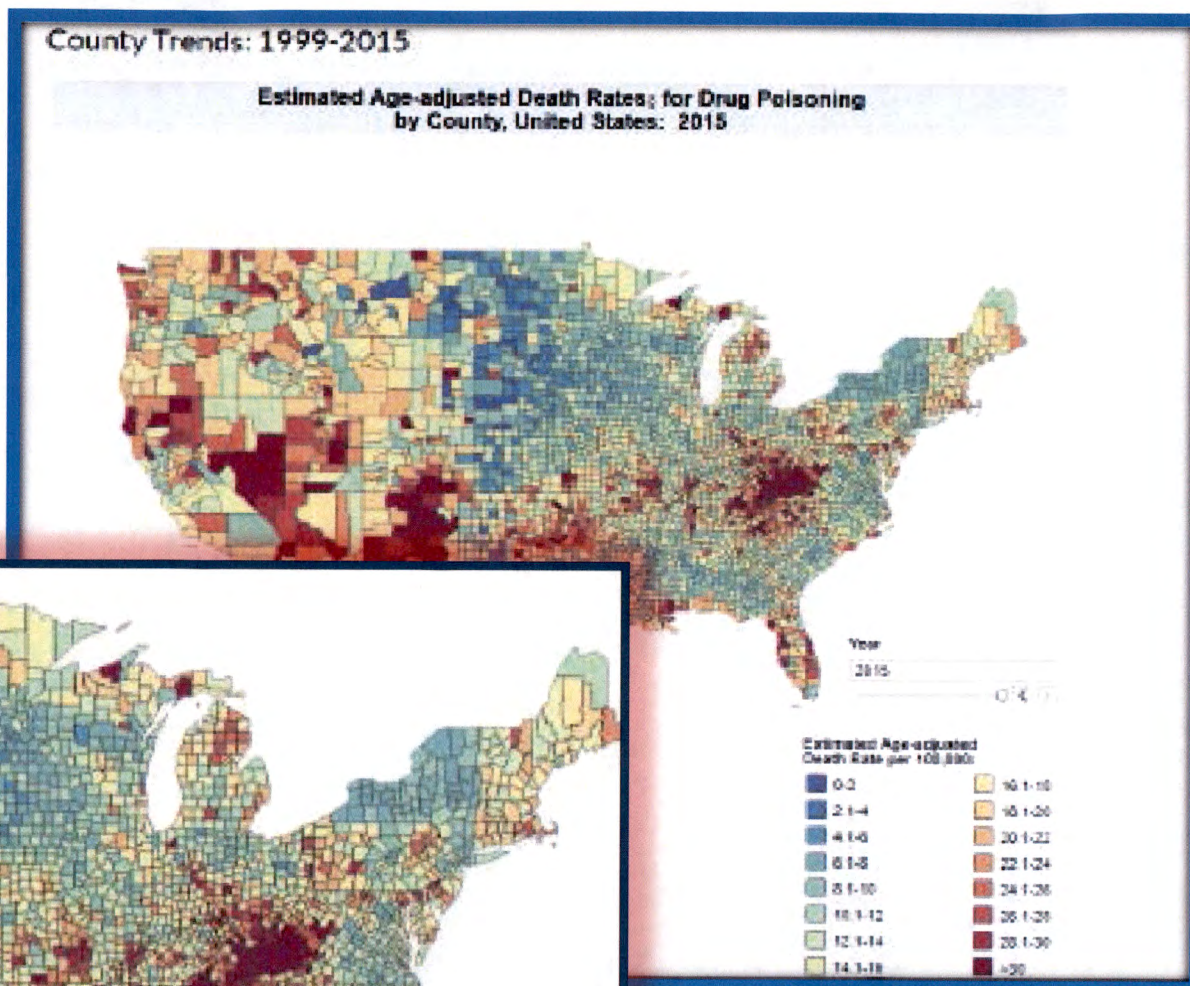
Drug Poisoning Deaths, By County, U.S.

2015

Burnet County, TX

12-14 deaths per 100,000

Population: 45,463



Data from:

<https://www.cdc.gov/nchs/data-visualization/drug-poisoning-mortality/>

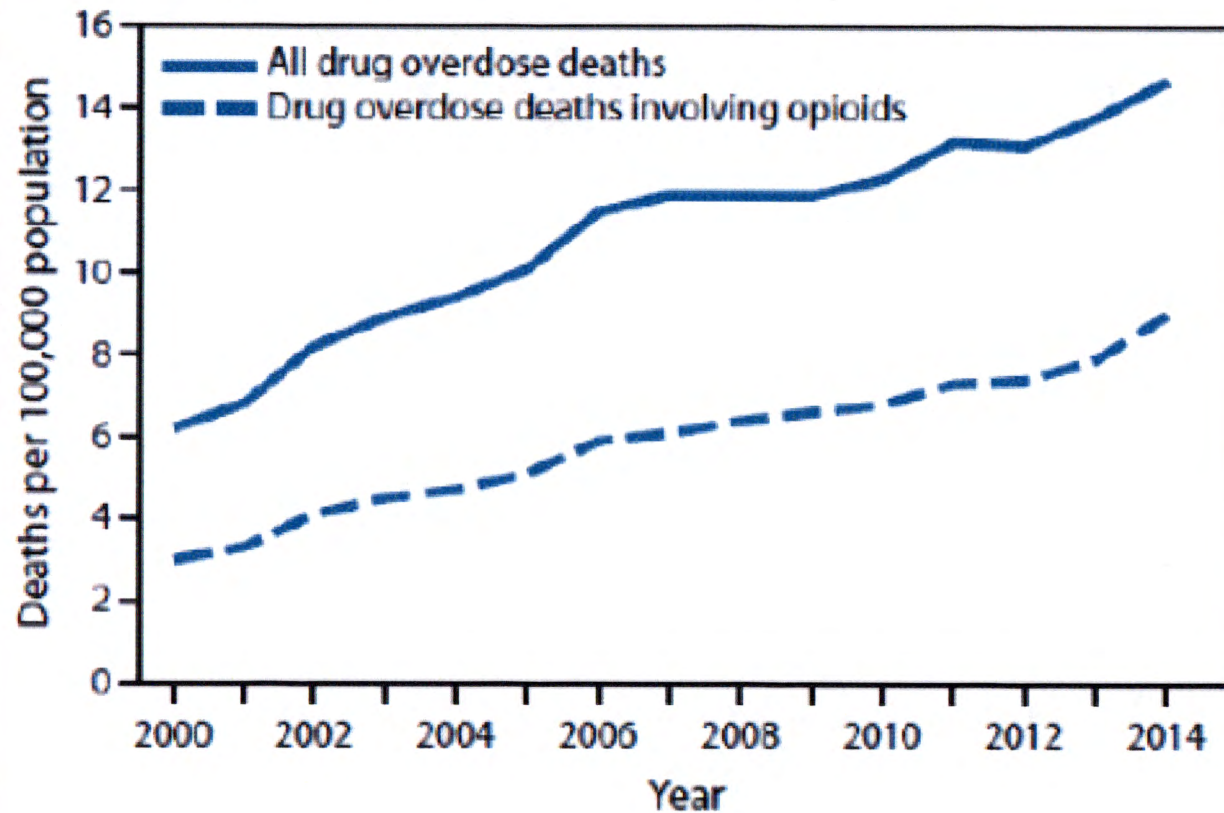
SIMON GREENSTONE PANATIER BARTLETT

TRIAL LAWYERS

DRUG OVERDOSE DEATHS & DRUG OVERDOSE DEATHS INVOLVING OPIOIDS

UNITED STATES, 2000 - 2014

FIGURE 1. Age-adjusted rate* of drug overdose deaths† and drug overdose deaths involving opioids§,¶ — United States, 2000–2014



Source: *National Vital Statistics System*, Mortality file and appearing *Center for Disease Control and Prevention Morbidity and Mortality Weekly Report*, January 1, 2006 / 64(50); 1378-82, *Increases in Drug and Opioid Deaths – United States, 2000-2014*.

SIMON GREENSTONE PANATIER BARTLETT
TRIAL LAWYERS

GATEWAY TO HEROIN

80% of heroin abusers began their addictions as prescription opioid users.

Source: <https://www.drugabuse.gov/publications/drugfacts/heroin>

Costs of Opioid Epidemic

In the United States, prescription opioid abuse costs are about **\$78.5 billion *annually***.

(Source: <http://wolterskluwer.com/company/newsroom/news/2016/09/costs-of-us-prescription-opioid-epidemic-estimated-at-usd78.5-billion.html>).

Of this amount:

- 45% to healthcare costs (e.g., abuse treatment)
- 9% to criminal justice costs
- 46% is attributable to workplace costs (e.g., lost productivity)

Healthcare Costs for an Opioid Addict

An epidemiological study on the excess cost of opioid abuse determined that healthcare for an opioid addict is **\$11,000** a year more than for a non-addict.

Source:

<http://www.ajmc.com/journals/issue/2017/2017-vol23-n5/drivers-of-excess-costs-of-opioid-abuse-among-a-commercially-insured-population>

SIMON GREENSTONE PANATIER BARTLETT
TRIAL LAWYERS

How Are Communities Seeking to Hold Opioid Manufacturers Accountable?

- Counties seek legal damages related to opioid addiction abuse and the opioid epidemic, such as
 - Health care costs
 - Criminal justice and victimization costs
 - Social costs
 - Lost productivity costs
- Lawsuits empower communities to hold drug companies responsible for their role in the addiction crisis at the community level

Who Built the Epidemic?

- Corporate defendants
 - Purdue Pharma Entities (including The Purdue Frederick Co., Inc. of New York State)
 - Teva Pharmaceuticals USA, Inc.
 - Cephalon, Inc.
 - Johnson & Johnson
 - Janssen Pharmaceuticals Entities
 - Endo Pharmaceuticals Entities

How Did These Defendants Build the Epidemic?

- Front group messaging
 - Created front groups, such as APF and AAPM
 - “The risks of addiction are . . . small and can be managed”
 - Physician messaging
 - Targeted “new” practice areas, such as dentistry and sports medicine
 - Dispelled studies indicating addiction was occurring
- Unbranded ad messaging
 - Such as “long experience with opioids shows that people who are not predisposed to addiction are very unlikely to become addicted to opioid pain medications”

Pharmaceutical Representatives' Promotions to Sell More Opioids



SIMON GREENSTONE PANATIER BARTLETT
TRIAL LAWYERS

Defendants

- Manufacturers and marketers of prescription opioids including Purdue, Endo Pharma and Johnson and Johnson.
- Distributors of prescription opioids including: McKesson, Cardinal and AmerisourceBergen.

Claims Against The Manufacturers

- Falsely and fraudulently marketing opioid pain medications as safe and non-addictive.
- Failing (actually refusing) to perform proper long term studies regarding the effects of their drugs.
- Promoting to the medical community a false perception of the safety and efficacy of opioids.

Claims Against The Distributors

- Defendants' conduct in dispensing, supplying and/or selling prescription opioids without adequate safeguards to prevent abuse.
- Defendants' conduct in failing to report suspicious orders as required by law.
- Conduct proximately caused injuries to Burnet County and its citizens.

Claims Available to Burnet County

Best Claims:

Violations of Texas Controlled Substances Act Texas [Health & Safety Code 481.128(e)]

Public Nuisance [*Lake Travis Independent School District v. Lovelace*, 243 S.W.3d 244 (Tex. App.—Austin 2007, no pet.)]

TEXAS LAW ALLOWS THESE CLAIMS.

OPIOID DRUG MANUFACTURERS AND DISTRIBUTORS HAVE PAID SUCH CLAIMS IN OTHER STATES.

Potential Claims (Fact-Specific Circumstances):

Negligence [for acts of direct contact between Defendant(s) and employees of Burnet County]

Fraud [for acts of direct contact between Defendant(s) and employees of Burnet County]

SIMON GREENSTONE PANATIER BARTLETT
TRIAL LAWYERS



Public Nuisance

Public nuisance exists where Defendants subvert public health. Unlike private nuisance, public nuisance does not require interference with use or enjoyment of land.

Defendants have created and continue to perpetrate a public nuisance to citizens through massive sales and ubiquitous distribution of millions of doses of highly addictive, commonly abused prescription pain killers.

Relief Sought

- Civil Penalties;
- Compensatory damages;
- Punitive damages; and,
- Attorneys' fees and costs.

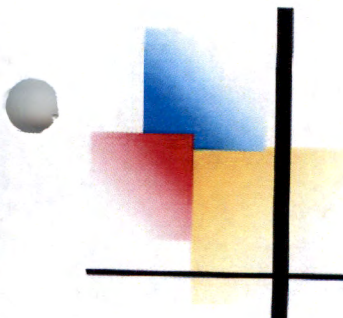
PRINCIPAL OFFICE

3232 McKinney Ave., Suite 610
Dallas, TX 75204

SIMON GREENSTONE PANATIER BARTLETT

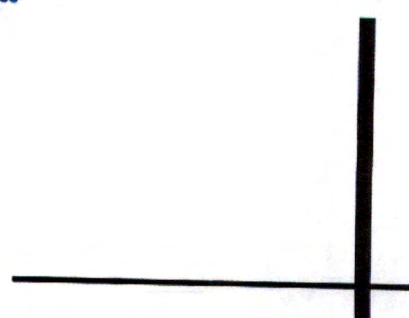
TRIAL LAWYERS





OPIOID LITIGATION PRESENTATION

Presented by:
Simon Green Stone Panatier Bartlett
sgpblaw.com
&
Cappolino Dodd & Krebs
respectforyou.com



STATE OF TEXAS

COUNTY OF BURNET

Consider and take action to approve Resolution for approval of bringing suit on behalf of Burnet County, Texas, vs. various drug manufacturers, developers, suppliers and others of a class of pharmaceutical class of drugs commonly referred to as opioids and approval of Professional Services Agreement for Special Counsel.

WHEREAS, it reasonably appears from public information that there exists in Burnet County an epidemic of opioid drug abuse created and/or fueled by misconduct of opioid manufacturers and distributors in their improper promotion and over-supply of those drugs, thus creating a public nuisance within Burnet County; and

WHEREAS, Burnet County is empowered by law to seek recompense for its expenditures to combat public nuisance; and

WHEREAS, enforcement of the law regarding public nuisance requires Burnet County to institute civil legal proceedings requiring legal services, and the Burnet County Commissioners Court finds as follows:

- (1) there is a substantial need for the legal services;
- (2) the legal services cannot be adequately performed by the attorneys and supporting personnel of Burnet County or by the attorneys and supporting personnel of another governmental entity; and
- (3) the legal services cannot reasonably be obtained from attorneys in private practice under a contract providing only for the payment of hourly fees, without regard to the outcome of the matter, because of the nature of the matter for which the services will be obtained and because Burnet County does not have appropriated funds available to pay the estimated amounts required under a contract providing only for the payment of hourly fees; and

WHEREAS, Burnet County is empowered to employ Special Counsel to prosecute lawful reimbursement of monies spent by Burnet County to combat the opioid epidemic in Burnet County and has selected the legal team of Simon Greenstone Panatier Bartlett, P.C. and Richard A. Dodd, L.C. to serve as Special Counsel.

THEREFORE, BE IT HEREBY RESOLVED that:

1. The Commissioner's Court approves Resolution to bring suit on behalf of Burnet County, Texas, versus various drug manufacturers, developers, suppliers and others of a class of

pharmaceutical class of drugs commonly referred to as opioids and approval of Professional Services Agreement for Special Counsel.

2. The Commissioners Court selects the legal team of Simon Greenstone Panatier Bartlett, P.C. and Richard A. Dodd, L.C. to serve as Special Counsel and approves and adopts the terms and conditions of employment of such counsel as set out in the attached Professional Services Agreement. Special Counsel will work under the oversight and approval of the Burnet County District Attorney or her designee.

3. The Commissioners Court authorizes the District Attorney or her designee and Special Counsel to file such claims and litigation as Special Counsel deems necessary against various drug manufactures, developers, suppliers and others of a class of pharmaceutical class of drugs commonly referred to as opioids

4. The Burnet County Judge or his designee is authorized to execute on behalf of Burnet County an agreement with Special Counsel (hereinafter the "Agreement") containing terms and provisions substantially similar to those contained in the attached agreement because the Court finds that there is a substantial need for the legal services of Special Counsel which cannot adequately be performed by attorneys and supporting personnel of Burnet County or another public agency, nor can the legal services reasonably be obtained from attorneys in private practice under a contract providing only for payment of hourly fees without regard to the outcome of the matter because of the nature of the representation.

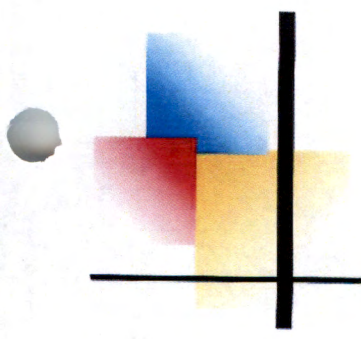
5. All fees to be paid to Special Counsel are contingent upon the recovery of the penalties, attorneys' fees and costs as provided for in the Agreement and shall be paid only from such recovery and no money shall be due or paid from the General Fund or any special fund under the Agreement.

6. All Burnet County officials and employees are authorized to do any and all things necessary or convenient to accomplish the purposes of this order.

THIS RESOLUTION WAS ADOPTED this ____ day of December, 2017, by Commissioners' Court of Burnet County, Texas.

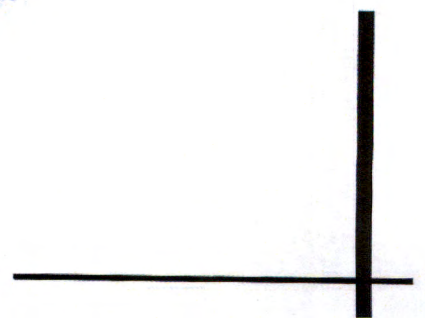
County Judge

Attested: _____
County Clerk



OPIOID LITIGATION PRESENTATION

Presented by:
Simon Green Stone Panatier Bartlett
sgpblaw.com
&
Cappolino Dodd & Krebs
respectforyou.com



RETENTION AGREEMENT

WHEREAS, Burnet County has determined that claims should be made against Purdue Pharma, L.P., Purdue Pharma, Inc., The Purdue Frederick Company, Inc., Teva Pharmaceutical Industries USA, Ltd., Cephalon, Inc., Johnson & Johnson, Janssen Pharmaceuticals, Inc., Janssen Pharmaceutica, Inc. n/k/a Janssen Pharmaceuticals, Inc., Ortho-McNeil-Janssen Pharmaceuticals, Inc. n/k/a Janssen Pharmaceuticals, Inc., Endo Health Solutions Inc., Endo Pharmaceuticals, Inc., Allergan, PLC f/k/a Actavis, PLC, Actavis, Inc. f/k/a Watson Pharmaceuticals, Inc., Watson Laboratories, Inc., Actavis, LLC, and Actavis Pharma, Inc. f/k/a Watson Pharma, Inc., McKesson Corporation, AmerisourceBergen Corporation, and any other entities which have engaged in violations of the Texas Controlled Substances Act and other violations of law in the fraudulent marketing and sales of certain highly addictive, opiate-derived painkillers for purposes for which they are neither safe nor effective; and

WHEREAS, Burnet County has determined that the investigation, research, and litigation of the claims may require the expenditure of large sums of money and require the work of numerous lawyers, paralegals, and other who are familiar with Defendants' wrongful actions and/or inactions and related issues for an extended period of time; and

WHEREAS, it is estimated that the amount of recovery will exceed \$100,000, including multiple recoveries; and

WHEREAS, Burnet County has further determined that it is in the best interests of the County and its citizens that the County retain attorneys with significant litigation experience; and

WHEREAS, Simon Greenstone Panatier Bartlett, P.C. and Richard A. Dodd, L.C. are experienced at such litigation and consented to represent Burnet County in association with the Attorney General, respecting the claims and pursuant to the terms and conditions hereof.

IT IS, ACCORDINGLY, AGREED as follows:

1. Burnet County hereby retains Simon Greenstone Panatier Bartlett, P.C. and Richard A. Dodd, L.C. and their lawyers ("Law Firms"), who are hereby designated to investigate, research, and prepare claims or complaint(s) for Burnet County to file in any appropriate Court or before any appropriate governmental agency.
2. Burnet County does not relinquish authority or responsibility through this Retention Agreement. Burnet County has the sole authority to settle this litigation on behalf of the County and its citizens, and the Law Firms shall inform the County Judge of all settlement offers. The Law Firms shall consult with Burnet County and obtain approval on all material matters pertinent to the claims and any litigation arising therefrom; including whether and how to proceed with litigation, which claims to advance, what relief to seek, and whether and on what terms to settle. Burnet County shall cooperate with the Law Firms and use best efforts to secure the cooperation of other State and County agencies. Burnet County is not required, however, to assign any member of staff to pursue the claims, but may from time to time afford staff and other support services as deemed appropriate. Burnet County shall designate one or

more members of staff to monitor these claims, who will be available directly to the parties in this matter as needed, and the Law Firms shall keep Burnet County and the designated staff member(s) fully informed on all matters pertaining to the claims.

3. Burnet County and the Law Firms both recognize that the claims present numerous factual and legal obstacles and that no assurance of success on the claims has or can be made.
4. Burnet County shall maintain responsibility for the public distribution of information within Burnet County concerning this matter.
5. Notwithstanding the potential difficulties, the Law Firms have agreed to represent Burnet County and Burnet County hereby agrees that the Law Firms will be compensated for any monies recovered by Burnet County on the following basis:
 - a. Recovery of Attorneys' Fees: Burnet County may request that the Court, to the extent permitted by applicable law, award the County and the Law Firms reasonable attorneys' fees.
 - b. The amount of the contingent fee and reimbursement of expenses under the contract will be paid and limited in accordance with Subchapter C, Chapter 2254 of the Texas Government Code, and all other applicable sections.
 - c. For and in consideration of the services performed under this Agreement, Client agrees to pay Counsel as fees the **lesser** of: (i) 30% of Client's Recovery; or (ii) four times Counsel's base fee, as that term is used in Texas Government Code § 2254.106. The base fee will be computed pursuant to Chapter C, Section 2254 of the Texas Government Code. The computation of the base fee does not include hours or costs attributable to work performed by a person who is not a contracting attorney or a partner, shareholder, or employee of a contracting law firm- as such hours or costs are expenses under Section 5(d) herein. Counsel's reasonable hourly rate for the work performed under the Agreement is \$750 an hour for shareholders and partners, \$500 an hour for senior level associates practicing 10 years or more; \$450 per hour for other attorneys, and \$200 per hour for paralegals or law clerks consistent with the relevant experience, demonstrated ability, and standard hourly billing rates for these attorneys, paralegals, and law clerks. These rates apply to the subcontracted work performed, if any, by an attorney, law clerk, or paralegal, which are expenses as set forth under Section 5(d) herein. Because of the expected difficulties in performing the work under this Agreement, the amount of expenses expected to be risked by Counsel, the expected risk of no recovery, and the expected long delay in recovery, a

reasonable multiplier for the base fee in this matter is four. Counsel's fee as set forth in this paragraph is the same regardless of whether the litigation is settled, tried, or tried and appealed.

- d. Any subcontracted legal or support services performed by a person who is not a contracting attorney or a partner, shareholder, or employee of Counsel or a contracting law firm is an expense subject to reimbursement only in accordance with Subchapter C, Chapter 2254 of the Texas Government Code and all other applicable sections.
 - e. All reasonable and necessary costs of litigation including, but not limited to, court costs, travel, witness fees, consultants, accounting, and expert fees and expenses, as shall be approved by Burnet County, shall be borne entirely by the Law Firms, but shall be reimbursed from any gross recoveries from the pursuit of the claims.
 - f. The Law Firms shall receive no compensation or reimbursement other than set out above, and all within conformity of State law. In the event that no recovery is realized, the Law Firms shall receive no compensation or reimbursement.
- 6. The Law Firms shall keep current and complete written time and expense records in accordance with §2254.104(a) of the Texas Government Code. At any time upon request, the Law Firms shall permit Client's attorney, Client's governing body, other governing officials, the State Auditor, or any other appropriate official, to inspect or obtain copies of the time and expense records kept as required by § 2254.104(b) of the Texas Government Code.
 - 7. All time and expense records kept in accordance with this agreement are public information subject to required disclosure under Chapter 552 of the Texas Government Code, and all applicable sections.
 - 8. Upon conclusion of the matter for which Counsel was retained, Counsel shall provide Client with a complete written statement that describes the outcome of the matter, states the amount of any recovery, shows Counsel's computation of the amount of the contingent fee, and contains the final complete time and expense records, as required by Section 2254.104(c) Texas Government Code. The complete written statement required under this section is public information under Chapter 552 of the Texas Government Code and may not be withheld from a requester under that chapter under Section 552.103 or any other exception from required disclosure.
 - 9. With approval of Burnet County, the Law Firms may associate other attorneys at its own expense and at no costs to the County. Notwithstanding such association of other attorneys, this Retention Agreement is non-assignable and non-transferable, nor are the Law Firms'

commitments delegable without the express, written approval of Burnet County.

10. The term of this Agreement begins on the effective date of the Agreement, upon which the Comptroller approves and executes the Agreement, and continues until the Representation is concluded.

DATED this the _____ day of _____, 2017.

BURNET COUNTY

BY: _____
County Judge

**SIMON GREENSTONE
PANATIER BARTLETT,
P.C.**

BY: _____
Jeffrey Simon, Shareholder

RICHARD A. DODD, L.C.

BY: _____
Richard A. Dodd

APPROVED BY:

OFFICE OF THE TEXAS COMPTROLLER OF PUBLIC ACCOUNTS:

By: Deputy Comptroller or his/her designee

Date: _____