

# PBC taxpayers might not get full protection against costs in drug suit

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All of the law firms that have agreed to help Palm Beach County sue drug makers and distributors have extensive and diverse experience, winning hundreds of millions for their clients in complex, high-profile cases in recent years.

For county taxpayers, that's the good news.

The bad news is that taking on drug makers and distributors, as financially and politically potent a set of adversaries as any, might not be the risk-free ride some county officials have sought.

The team of firms that will represent the county has pledged to work on a contingency basis and pay any costs the county might face as a result of the case. But some lawyers — including at least one who serves on the County Commission, Dave Kerner — are convinced such a pledge isn't legally enforceable.

The dispute is no esoteric, moot court debate.

If the pledge to shield the county from all costs does violate Florida Bar ethics rules, county taxpayers could end up paying the legal fees of the drug makers and distributors the county is looking to sue.

A judge — siding with the drug companies and deeming the county's suit to be frivolous — could order the county to pay the legal fees of the drug companies as punishment. Or, the county could lose the case and be

ordered to pay court costs and legal fees, which could be hundreds of thousands or even millions of dollars.

Both scenarios are unlikely, according to lawyers familiar with opioid cases and the county's deliberations.

Some opioid suits are moving forward, having survived motions to have them dismissed. And county officials have been clear that any legal action the county pursues would be undertaken to get back some of the money spent combating the opioid crisis. That fact reduces the likelihood that county officials would reject a significant settlement offer, lawyers said.

Still, commissioners have sought to shield the public from any risk in a potential opioid suit, a requirement some lawyers said would require a violation of ethics rules aimed, in part, at making sure plaintiffs are invested in cases they pursue.

Commissioner Hal Valeche was less than pleased when he learned that two of the three teams of firms seeking to represent the county had refused to agree to fully indemnify the county.

"I know my comment was we were interested in full indemnification," Valeche said on Tuesday, when commissioners got presentations from the competing teams. "Proceeding without it seems to go counter to what the board envisioned."

County Attorney Denise Nieman, who requested outside legal help because her office does not have the detailed expertise to handle a case against drug makers or distributors, said two teams of firms declined to offer the county full indemnification only after they had been named finalists in the bidding process.

“It was only after the selection, when the three were advanced, did the firms then said, ‘We’re not going to do the indemnification that you had requested,’” Nieman said.

Nieman, who has been with the county attorney’s office for 29 years, said the full indemnification the county sought does not violate ethics rules. She told commissioners they were free to insist on full indemnification.

“I as county attorney would be derelict in my duties if I recommended anything less than 100 percent indemnification,” she said. “This should be at no cost to the taxpayers. I thought that’s how we were proceeding.”

Henry Handler of Weiss, Handler and Cornwell, one of the firms that told the county that ethics rules prevent it from providing a complete guarantee against costs, said the firm has sought an advisory opinion on the matter from the Florida Bar. That opinion is expected in the next week or two.

It’s not clear how the county would proceed if the opinion backs up assertions that the full indemnification the county sought would have firms violate ethics rules.

The county could amend its agreement with the team of firms that won the bid to weaken the indemnification requirement. Or, one of the four commissioners who voted in favor of the winning bidder could seek to have a new vote.

On Tuesday, Handler provided commissioners with a summary of his inquiry to the bar, which advised Handler not to agree to the indemnification language because it would create “an unwavable conflict” between the firm and the county and because the language “seems to go beyond the permissible limits” of bar’s ethics rule on indemnification.

Paul Napoli of Napoli Shkolnik, part of the three-firm team that won the bid, said ethics rules do not prohibit his team from offering the full indemnification the county wants.

“Every day, we risk our own money to prosecute cases on behalf of individuals and municipalities,” he said. “That’s why we had no problem whatsoever signing the indemnification agreement.”

Paul Geller of Robbins Geller Rudman and Dowd, a Boca Raton firm that was among the unsuccessful bidders, told commissioners his team of firms wanted to offer full indemnification but could not do so because of ethics rules.

He noted that his firm represents Delray Beach and Broward County in their opioid suits and that both municipalities agreed to something less than full indemnification. Those municipalities agreed to be indemnified the fullest extent permissible, language Geller was unsuccessful in getting Palm Beach County commissioners to consider.

In an interview with The Palm Beach Post on Friday, Geller said he is disappointed the county did not select the team of firms that included Geller Rudman and Dowd.

He said his team of firms did not refrain from mentioning its concerns over the indemnification issue so it could become a finalist.

The team, Geller said, responded to the request for proposal by laying out its experience and expertise, figuring terms of the attached contract with the indemnification requirement could be negotiated after the county selected a team.

Not agreeing to the full indemnification upfront, however, proved decisive for several commissioners.

“The county had the right to say no, and that’s what they did,” he said. “I wish them nothing but the best. This is about an epidemic ravaging the country and Palm Beach County, where I work, where my children went to school.”

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