

Open Work Session
Opioid Litigation
July 2, 2019

Mr. Paul Wilber, County Attorney, Sheriff Mike Lewis, and Mr. Weston Young, Assistant Director of Administration, came before Council. Sheriff Lewis said this afternoon he took some notes about what he is going to say, and he expressed this to Mr. Cannon personally in their conversation about a week ago, but he has not had the opportunity to express it to the other Councilmembers since this was initially brought up about 15 months ago. He said, obviously, he remains deeply concerned regarding Wicomico County's failure to secure specialized counsel to hold these pharmaceutical manufacturers and distributors accountable, and he thinks that is probably where they are tonight. He said, with opioid litigation looming in most cities and counties across the Country, they have yet to retain experts in this field. He said their general counsel is great consultation for their daily Governmental duties, but, when they are dealing with a crisis like they have experienced in this County, they must seek experts in this field, and they need a law firm with legal experts dealing in complex litigation who are experienced in representing thousands of individuals in mass tort litigation. He said, along with County Attorney Paul Wilber, they met with what he feels is the best law firm to take on the pharmaceutical industry. He said this particular law firm has retained Jonathan Novac, the DEA whistleblower in this case who rocked this Country with his 60 Minutes interview. He said he will never forget watching him on TV the night he literally rocked this Country, which led to the lawsuits against big pharm, and this man is the star witness for this particular law firm of which he is speaking. He said this law firm already has a seat at the table, as their group holds a leadership role in this current litigation case, and their clients, which could be Wicomico County, will be the first ones paid, and will certainly get what they deserve. He said there is no doubt in his mind they will get less with any other law firm because these guys already have a seat at the table. He said they cannot expect someone with no experience in class action or multidistrict litigation cases to make an informed decision in joining this law suit on behalf of the hundreds of lives that have been lost due to opioid addiction here in Wicomico County alone. He clarified, not just those who have died, but the families that have been ripped apart over opioid abuse. He then addressed Mr. Holloway, and said just this past Saturday there was a guy they both know who pulled over on the side of the road and, in front of his 4-year-old son, stuck a needle in his arm and shot himself up with heroin, to which Mr. Holloway responded, he saw his picture, but he does not know him or know who he is. Sheriff Lewis said he knows him very well, and he has actually been to his house with his parents. He said he has tried to talk to this kid and work him through the process, but then he drove with his 4-year-old boy and overdosed, and ran off the road. He said then on Sunday morning they had another guy in Wicomico County who took out multiple mailboxes on Walston Switch Road under the influence of opioids, and he was promptly arrested by deputies and charged accordingly just like the gentlemen the day before. Mr. Holloway asked if the one in Pittsville was on opioids or heroin, to which Sheriff Lewis responded, it was heroin, which is an opioid, and the one on Sunday morning was on prescription drugs, and had been. He said these are things that continue to unfold every single day in the community and, quite honestly, he deals more with these issues than he deals with anything else right now. He said, like Council, he has constituents coming to his house all hours of the day and night, he deals with it every day at the office, and he deals with it wherever he is. He said the precedent has already been set with big tobacco, and they all know there are law firms specializing in certain facets of the law. He said he believes they have the unique opportunity tonight to retain the law firm of Ferrer, Poirot and Wansbrough, and he has that information with him because Mr. Cannon asked him to get it for Council. Mr. Holloway asked if it is the law firm that met with Council 15 months ago, to which Mr. Wilber responded, yes. Sheriff Lewis said, in his opinion, why would they wait any longer because, to him, it just defies logic. He said the individuals

in this law firm are willing and ready to accept Wicomico County's case with no cost at all to the County. He clarified, until such time the case is settled, they pay absolutely nothing, and, in fact, there will never be a dime spent on legal representation. He said Wicomico County has nothing to lose, but everything to gain. He said, when the case is settled they will get their share, but Wicomico County will certainly get the share they deserve because of the millions they have redirected of their resources to address this opioid crisis like every other city and county across the Country. He said he was in Louisville, Kentucky two weeks ago for a National Sheriff's Conference, and they were talking about this issue of opioid litigation. He said this law firm's name came up by other Sheriffs in other parts of the Country that are already on board, and he just hopes they do the right thing for Wicomico County, and for the people of Wicomico County who have suffered most, those who have lost loved ones, and those who continue to deal with the carnage of opioid addiction every day. He said that is all he wants to say.

Mr. Cannon asked Mr. Taylor to opine briefly on where he thinks their position could be if they were in favor of this 100 percent tonight because he thinks the main issue right now is the best route for them to take. Mr. Taylor said he will explain a couple of things, and the Sheriff may not be aware of this because he has not been sending anything to him on it, but there is what is called the National Opioid Litigation, which is pending in Federal Court in Cleveland, and is called a multidistrict case. He said there are roughly 1,800 counties, cities, hospitals and Indian tribes represented in that case by various law firms. He said, on June 14, 2019, a motion was made to convert that to what is called a class action type case, and, if that happens, and there is a good chance he thinks it will, under the way it has been proposed, essentially, each city and county will come in and there will be a formula based on various factors in terms of what their split is going to be in any settlement, but the problem with these cases is kind of manifold. He explained, first of all there are tons of plaintiffs and there are a relatively few number of defendants, but some of them are quite wealthy. He said the problem is that this is not like big tobacco, but, with these firms, even if they add Purdue Pharma and INSYs, which just declared bankruptcy and is another major opioid manufacturer, there is not that much money to go around. He said, if this Federal litigation converts to a class action, which they should know within a month or so, that is certainly an attractive way to go because all they will have to do is make their claim, and they will not need to get an attorney, so they would not be giving up a percentage on a contingency type fee arrangement with a law firm because there would be absolutely no need for that. He said he has been following this case pretty closely, and suggests Council consider at least one other, or perhaps two or three other law firms that are prominent players both in this case and in the State of Maryland's case, which was brought against the Sackler family who owns Purdue Pharma. He said he thinks this particular law firm, which will remain nameless tonight, represents six other Maryland Counties, so he thinks they represent more Maryland Counties than all the other law firms put together, and he thinks the firm the Sheriff mentioned represents one County. He clarified, he is not saying to not do litigation or hire an attorney, but he is saying to do it smartly. He said, in this National litigation, it may actually eliminate the need for an attorney, period, which, obviously, will up any net amount the County gets. He said, as he said, he thinks they ought to look at other law firms. He said he will send some emails to the Sheriff.

Mr. McCain asked Mr. Taylor if they need some kind of representation in any class action suit, to which Mr. Taylor responded, the answer to that is no. He clarified, with many class actions, a claim is filed, and this is being set up that way, so they essentially just file their claim, and that is it, and they are in the pot. Mr. McCain asked who would file that claim, to which Mr. Taylor responded, the Executive Branch.

Mr. Wilber said he thinks, as he said in an earlier email, the first question is whether Council wants to enter into this whole process. He said the process really is on two tracks, one being the litigation track, and the second being the settlement track. He said, as Mr. Taylor said, there is a motion in an Ohio

Federal Court to convert this multidistrict litigation into a class action law suit. He said the judge is going to rule on that, and they will see what he has to say once he makes his ruling. He said, to keep talking about the litigation side of this, there are a couple of trials set in October in Ohio. He said they are what is called bellwether trials, and there is some indication to both the plaintiffs and the defendants what a jury might think of these cases, but he thinks that is the litigation posture as to where they are right now. He said yesterday he talked to one of the attorneys with the firm Sheriff Lewis mentioned, and he will share what he told him, in summary form, about settlement negotiations that are occurring. He clarified, this is the second track of this matter. He said there is an Executive Committee because, as they all know, there are many law firms all over the Country involved in this, and this litigation is probably bigger than the tobacco litigation. He said it is large companies, many plaintiffs, and many law firms, so they sort of funnel up to the top of the pyramid. He said there is an Executive Committee of these law firms, and they could say all law firms are connected to this group of attorneys one way or another, but there is this group negotiating right now with the manufacturers because the emphasis is to develop a settlement with the manufacturers. He said, in the settlement framework, no dollars are being discussed on the table right now, but they are working out a framework of how a settlement would work, and he was told that the current structure is there is a two-tier arrangement. He explained, those municipalities and counties that are in right now would be in for a higher percentage than those that come in later, so he was told, if they were interested in getting in, they should definitely try to get in this month. Mr. Cannon said he was under the impression that the degree of compensation was going to be based on how much proof they could have of the negative impact to their County, not whether they were first, second or third, but the degree of impact, to which Mr. Wilber responded, these are all parts of what is being discussed, as he understands it, in this settlement negotiation. He said what Mr. Cannon is referring to is what they talked about a year ago, which is a matrix that every municipality or county is put into which includes population, number of pills, number of deaths, and number of overdoses, and is part of determining what would be an outcome. Mr. Dodd said there is a lot of work involved of this County to get that information ready for the attorneys. Mr. Cannon asked if Mr. Wilber is saying that the pecking order as to when they got in is still an indication of their payout as a determining factor, to which Mr. Wilber responded, he was told that the discussion occurring is, if they are in by a certain date, their payout will be greater than if they are in after that date, all to be negotiated out by the Settlement Committee with the manufacturers.

Mr. Taylor said he will offer two observations. He said he thinks what Mr. Wilber is talking about is the way this Federal case is structured now as a multidistrict case, and it is because they cannot come to terms if they want to switch to the class action method. He said the reason they cannot come to terms is, even though there are roughly 1,800 plaintiffs in that case, there are 24,500 different municipalities and counties in the United States. He said they have many of the big ones, it is true, but there are a lot of smaller ones not participating. He said the defendant opioid companies realize, if they settle with 1,800, then they have thousands left they have not settled with who can still sue them. He said this has been in the press and is not any deep secret, but that is why they want to switch to the class action method because that way they will, hopefully, get everybody in, or enough to at least assure the manufacturers they are going to be pretty much out of the woods. He said that is the status right now, and that is why he suggested that, until they see how this is going to play out, and they should find that out pretty quickly, it makes sense to just wait to see what is going to happen. He said the likelihood of a settlement the way it stands now is, he thinks, pretty small because the defendants are going to ask why they should settle with some groups when they have other groups that will still be shooting at them.

Mr. Holloway asked why one of these companies would settle with a small group that was suing them when they know there are going to be more going after them, and why would they not want to be part

of that group, to which Mr. Wilber responded, if they are on the manufacturer's side of it, if they are going to settle, they want to settle and be done with it. Mr. Holloway said they would not be done if they settle, to which Mr. Wilber responded, if they go to a class action. Mr. Holloway said not necessarily. He said, if they settle with these counties, and then other counties see they settled, they will say they will sue them too, so they would go from dealing with 1,800 people to 25,000, so why would they not want to be part of the class action, to which Mr. Wilber responded, that may well be why it ends up going that way. Mr. Cannon clarified, the class action does away with that, and would be spread out among everyone. Mr. Dodd asked what the percentage would be, to which Mr. Cannon responded, it does not matter because they would not have a choice. Mr. Holloway said they will probably file bankruptcy like the other companies did, and that is what they are going to do anyway. He said the County is thinking about getting money, but they will all have gray hair by the time they get any money out of this. Mr. Wilber said, ultimately, they do not know who is going to go bankrupt or who is not because the dollars could be really large, and, of course, there are some really large companies too. Mr. Cannon said he would not want to base their decision on that at all, to which Sheriff Lewis responded, exactly. He agreed, they cannot base their decision on that.

Mr. Taylor said there is another aspect to this that he thinks is at least worth mentioning briefly, which is there are serious liability issues in this type of litigation that have not been addressed yet, at least not comprehensively. He said there are a couple courts that have thrown out opioid suits against manufacturers by municipalities, so none of this has been determined. He said a settlement, be it a normal settlement or a class action type settlement, has the benefit of eliminating these issues, but sometimes it is better to get half a loaf rather than go for a whole loaf and get none at all.

Mr. Cannon asked Mr. Wilber, if they were to decide to hire a firm and it turned into a class action, would there be any obligation to that firm, to which Mr. Wilber responded, there still would be. He said, again, the attorney he was talking to said, even if it is turned into a class action, there still is going to be a percentage taken off for attorney fees whether they file their own claim or it is a claim filed through an attorney. Mr. Cannon then asked, if they hired a firm and it became a class action, would the County receive less money than if they did not hire an attorney and waited for the class action, to which Mr. Wilber responded, in his opinion, he would recommend they have an attorney. He said this is not simple, as he said to start with, and he thinks this is probably the most complex piece of litigation the court system in this Country has seen, to which Mr. Cannon responded, there is no doubt. He then asked, if it turns into a class action, why would they need an attorney because he thought it would be distributed based on Federal guidelines, or however it would be, to which Mr. Wilber responded, he thinks they are in a posture where, even if it is a class action, it is not as simple as just filing some paperwork and getting paid, so it is not that simple. Mr. Taylor then suggested they wait and see. He said he has looked at a couple of pretty detailed articles on this, and, at least the way it looks to him, he sees no benefit of having an attorney if it becomes a class action matter, to which Mr. Cannon responded, he understands, and that leads to his second question. He then asked, if they wait until the class action decision was made, and two months from now it was decided there would not be a class action, what would their position be then, and how compromised might they be if they waited another month, or another six to eight weeks, to which Mr. Wilber responded, if the case settles as it is being explained to him with a two-tier where being in by a certain date they would get more, and being in later they get less, that is what he thinks the concern would be. He clarified, if they come to a settlement and that is the settlement agreement, then it makes a difference, but if that factor disappears, then the wait does not, theoretically, make any difference.

Mr. Holloway asked how many municipalities this law firm is representing, to which Mr. Wilber responded, he asked that question, and received an email today from the group of law firms that came in and presented. He said they have seven Counties, which are Calvert, Charles, Dorchester, Anne Arundel, Prince Georges, Talbot and Queen Anne just in Maryland, but they have others too. Mr. Holloway said he remembers them telling Council that their own County would not call them back.

Mr. Dodd said, in reference to the class action law suit, if they decide to go that route, Mr. Taylor said the Executive Branch would file the law suit, but he has a feeling the Executive Branch would hire an attorney, so an attorney would be involved, to which Mr. Taylor responded, he cannot tell them, obviously, what the Executive Branch is going to do, but the way it looks like it is being set up as a class action, they just simply file the claim, which is not unusual in class actions. Mr. Dodd said Mr. Wilber advised that an attorney would file the claim, to which Mr. Wilber responded, they would want to maximize their result. He said both he and Mr. Taylor are in a position where they are talking about what might happen if it becomes a class action. Mr. Dodd said something else Mr. Wilber talked about was the pyramid with all of the attorneys and firms that are involved, and then they are talking about the State, the municipalities, and the Counties just in Maryland, and then throughout the United States, and maybe 25,000 may be involved in this suit in the future. He said he sees a piece of the pie, but he only feels they would get crumbs, and the attorneys who were there previously said they might not see anything for 20 years. Mr. Taylor said there are a lot of moving pieces in this whole thing, and he thinks they have probably seen in the news media the suit that is going on in Oklahoma by the State, which was filed about two year ago, and took about two years to get to trial. He said the Federal Government has now come in and said they want part of the pie in that case, to which Mr. Dodd responded, then Wicomico County's crumbs would get smaller. Mr. Cannon said Wicomico County could get 10 cents, but that is okay, to which Mr. Taylor responded, he is just simply saying there are a lot of balls in the air. Mr. Cannon said he thinks they need to evaluate what the most advantageous position is for the County from the onset, period, and where the chips fall is a completely different matter, to which Mr. Taylor responded, he would say right now it looks like there is a distinct chance that this class action might be the route to go. Mr. McCain said that is still speculation, and he thinks they should have the best representation that is available, and trying to outguess how this is going to play out is not even important. He said they just should be part of this, like Sheriff Lewis said. He said this is an epidemic for which they should have their representation and share of with this, and the amount is going to be insignificant in the end, but they need the best representation they can get from the early outset.

Mr. Holloway said Mr. McCain said they should have the best. He then asked Mr. Wilber how many Counties in Maryland are involved in a lawsuit. He clarified, he knows it was said that this group is representing seven Counties, to which Mr. Wilber responded, he does not know the answer to that question. Mr. Holloway said he thinks that would be interesting to find out because this may not be the best law firm. Sheriff Lewis said they are the only law firm that has retained the whistleblower from the DEA, who is a lawyer himself in this particular case. He said he is with them at the table, and this guy is the one who was on 60 Minutes and blew this story wide open. He said he remembers watching it clear as day, and he and Mr. Wilber both met with him. He said this lawyer has been to Wicomico County a number of times, and he was the whistleblower with the DEA who blew this wide open. He said he thinks they all can agree that every Governmental entity, whether it is a municipality or a County that joins on board will give their attorneys much more bargaining power at the table. He clarified, they are dealing right now solely with the manufacturers, but once they finish with the manufacturers, they are going after the distributors. Mr. Holloway clarified, he is saying there are 24 other Counties in the State. He then asked if there are other Counties that are involved in law suits with other firms because he thinks that is something they need to know, to which Mr. Wilber responded, he does not know exactly

how to pull that information together, but they could call. Mr. Holloway said he knows the State filed suit, to which Mr. Taylor responded, they filed a consumer protection action so far thinking they are going to get faster action. He said he will also add for the Sheriff, in the National case, most of the major distributors, if not all, are defendants, such as CVS, Walgreens, and Johnson and Johnson, so they are already in that. Mr. Wilber clarified, the attorney told him yesterday that the discussions right now are with the manufacturers, and they are trying to strike a settlement with the manufacturers, but then they will move on to the distributors, which is phase 2.

Mr. Cannon said the only discrepancy he has seen so far tonight is Mr. Wilber suggested they will need an attorney if this goes to a class action, and Mr. Taylor is suggesting they will not need an attorney if this goes to a class action. He then asked if that is correct, to which Mr. Wilber responded, yes, that would be his recommendation. Mr. Holloway said they are sitting here discussing how bad opioids are, and they are, and nobody is going to argue that, but he was reading in the paper where the State of Maryland has set up a committee to study legalized marijuana, so that will be more problems.

Mr. Cannon asked, if they wait until they have a decision on the class action in the next eight weeks, and it turns out there is no class action, how much of a compromise will that be to their position as a County, to which Mr. Wilber responded, if the two-tier settlement comes into play and becomes reality and they are on the wrong side of the dateline, which the attorney believes a date will be set in July, the court or the Settlement Committee will look at that date, and if they came in after that, they are going to get a lower settlement. He clarified, there is no settlement in black and white at this point. He said they are moving towards one, but it is not there yet, and he thinks where they are for Council and the Executive is this is the status of things as they sit here today. He said, if Council is inclined to move forward now, great, but, if Council wants to wait, he understands. He said it is not like there is a precise roadmap here, but they are just looking at all the factors, and asking which way they want to jump on this, but he thinks the County should participate to see what eventually becomes of this as opposed to not participating.

Mr. Cannon asked what the process is for the County if Council decides at some point in time that they want to hire legal counsel. He asked what the formal process is they would have to go through, and would it be at a Work Session, such as what they are having today. He said he assumes they would have to do a separate Resolution to authorize the hiring of the legal counsel, to which Mrs. Hurley responded, that is correct. Mr. Cannon said they could not do that until the 16th of July, to which Mr. Wilber responded, the statement to him was sometime during July. Mr. Cannon then asked, hypothetically, if Council was willing to consider this, would it be something as simple as a Resolution to authorize hiring legal counsel, to which Mrs. Hurley responded, they are working on the Resolution as far as whether or not they need to name the actual law firm rather than a blanket Resolution, so they would have to decide who they wanted to hire. Mr. Taylor said he will offer another thought. He said, if they do that, they might want to negotiate the contingent fee because he understands some cities and counties have been pretty successful, and he thinks the State's contingent fee is between 3 and 8 percent. Mr. Cannon said that is a good point, but that would certainly be the responsibility of the Executive Branch, to which Mr. Taylor responded, also the retainer agreement too. Mr. Wilber said they went through this a year ago. Mr. Taylor said one thought would be to have a bifurcated type retainer agreement whereas, if it went to a class action matter, the fee would be much, much lower. Mr. McCain asked if they would even have a retainer agreement with this, to which Mr. Wilber responded, it is a contingency fee. He said they had three groups approach them last year, and they had contingency fee agreements from all of them, and he will be glad to resend that email to everybody. Mr. Cannon said he honestly thinks, with all due respect, that would be an Executive decision. He said he does not think that is something for Council to decide, and it has to be an Executive decision as to who the best law firm would be to represent the

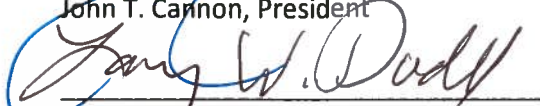
County, if they decide to go that direction. Mr. Wilber said he has not talked to the Executive recently about this as far as a law firm, but, in last year's Resolution, he named a law firm.

Mr. Cannon said the question is whether Council wants this on the Agenda for their July 16 meeting, to which Mr. McCain responded, yes. Mr. Hastings agreed, and Mr. Dodd said it does not matter to him. Mr. Cannon said he has to have an opinion, to which Mr. Dodd responded, yes. Mr. Davis agreed, but Mr. Holloway said he wants to wait for the class action. Mr. Cannon said they have five in agreement informally, since it is only a Work Session, but they will have this on the Agenda for their next meeting on July 16, and they will go from there. He asked Mr. Wilber to think of anything between now and then that he may want to elaborate on as far as the questions in the dialogue tonight, to which Mr. Wilber responded, before that meeting he will try to speak again with the attorney who is much closer to this than any of them to see if there are any developments. Mr. Cannon said he appreciates that, and they need to keep in mind what Mrs. Hurley said regarding the format of the Resolution, and they will need some specifics at that time. Sheriff Lewis said, through the Maryland Sheriff's Association, he will try to determine how many Counties are actively involved with law firms seeking opioid litigation. He said there are 160-some municipalities in Maryland, and he can go through the Maryland Chief's Association to try to get that figure for Council as well, to which Mr. Cannon responded, they appreciate that.

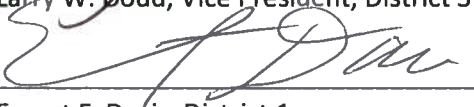
Mr. Taylor said he has one question for Mr. Wilber. He then asked if the lead firm in the group of law firms Mr. Wilber is dealing with is Motley Rice, to which Mr. Wilber responded, yes. He said Attorney Joe Rice is one of the individuals on this Executive Committee negotiating with the manufacturers. Mr. Taylor said he will also add that he is one of the ones who is pushing the class action matter, to which Mr. Wilber responded, he is one of the ones that it follows up to, and this group they have been talking about funnels up to Joe Rice. He said he was one of the lead attorneys on the tobacco settlement, so he is about as experienced as they can get. There was no further discussion.




John T. Cannon, President



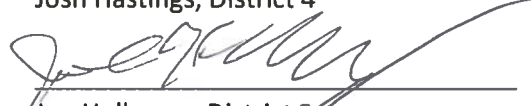
Larry W. Dodd, Vice President, District 3




Ernest F. Davis, District 1



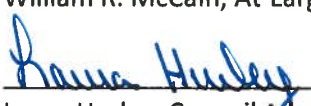
Josh Hastings, District 4



Joe Holloway, District 5



William R. McCain, At-Large



Laura Hurley, Council Administrator