

Opioid Justice Now for Tribes:

*In re Protection of Tribal Interests, In the Opioid Abuse & Addiction Crisis
Litigation Against Pharmaceuticals Manufacturers and Distributors*

Opioid Justice Team

(305) 632-1770. (504) 214-3400

I. Summary of the Problem

More than 600 lawsuits have been filed against as many as fifteen (15) pharmaceutical companies and manufacturers. One consent judgment has been rendered. A few cases have been filed for Tribal Governments. They appear to be headed in the direction of a Tobacco-style settlement that left Tribes out.

Our Consortium of lawyers includes lawyers with proven records of success in significant litigation for the benefit of Native Americans. In 2017 alone:

- Our Lawyers kept the TransCanada Keystone pipeline from being built as the final bulwark against this occurrence after its approval by President Trump.
- Achieved a goal four U.S. President (dating back to Chester Arthur) could not: Ended exploitive liquor sales by Nebraska vendors across the State line into South Dakota... a success recognized with a *New York Times* Lead Story, and with major awards and kind comments across the Country and beyond.

(These things were done pro bono – because they were the right things to do.)

We are focused on Opioids. We know what addiction does to many families in Indian Country. The strongest advocates are needed to earn the greatest control over the best recovery. Opponents are multiple. Some are unexpected: a) the opioid manufacturers; b) lawyers for States and c) lawyers who want a quick Settlement like the Tobacco cases – where payouts do not go to Natives but go nearly exclusively to States.

Our concern is to get funds to injured persons and local service providers. In Indian Country, this means Tribes and consortium treatment services not operated by IHS.

We have identified twenty-four (24) probable target defendants. Several have been convicted of corporate crimes already. Nearly all have paid huge federal fines.

We stand for recoveries build on two modes, they are discussed below:

Damages to Tribes and Independent Treatment Facilities	Damages to Tribal Members
<p>Elements:</p> <p>Costs for Chemically Dependent services for:</p> <ul style="list-style-type: none"> ❖ Public Safety ❖ Public Health ❖ Housing ❖ Judicial Services ❖ Prosecution in Court ❖ Defense in Court ❖ Corrections Services ❖ Juvenile Services ❖ Treatment ❖ Prevention ❖ Education ❖ Lost Productivity ❖ Part of General & Administrative Costs 	<p>Elements:</p> <p>Medical Care for past & future:</p> <ul style="list-style-type: none"> ❖ Babies & Mothers ❖ Other Addicted Persons : Opioids ❖ Co-addicted Persons ❖ Wrongful Death ❖ Domestic Violence Victims <p>Detoxification Care</p> <ul style="list-style-type: none"> ❖ Compensation for Personal Injuries Bodily Impairments ❖ Brain Injuries ❖ Psychiatric & Psychological Injuries ❖ Lost Earnings & Earnings Capacity ❖ Lost Ability to Function Normally
<p>In some instances:</p> <ul style="list-style-type: none"> ○ Past Interest ○ Punitive Damages ○ Attorneys' Fees 	<p>In some instances:</p> <ul style="list-style-type: none"> ○ Past Interest ○ Punitive Damages ○ Attorneys' Fees
<p>Proof:</p> <ul style="list-style-type: none"> ● Tribal Records ● Tribal Contracts ● Personal Interviews ● Forensic Analysis 	<p>Proof:</p> <ul style="list-style-type: none"> ● Life History ● Med Diagnoses Prognoses, Needs ● Impact on Mortality ● Impact on Supported Persons

II. Our Team's Approach



Our proven, dedicated trial team builds the case, to prove liability and require payment – the Organization.

David A. Domina is our Team's Lead Attorney

Domina has handled many of Nebraska's most high-profile cases during the past 40 years. Many impacted Native Americans directly. These include the TransCanada Keystone XL pipeline environmental litigation, the Whiteclay liquor exploitation litigation. He did this work without any compensation.

Domina has also handled antitrust national class actions for beef producers, including Native Americans (resulting in a \$1.291 Bn jury verdict), constitutional impeachments of state officials, capital case homicide defenses (no convictions), more than 350 trials to jury verdicts, and about 300 appellate arguments. Mr. Domina represents about 1,300 corn producers in litigation against Syngenta Seed Co., filed the first case by farmers against Monsanto alleging a causal link between the herbicide and non-Hodgkin's lymphoma, and leading to multidistrict litigation, and many others.



Other Consortium attorneys focusing solely on the needs of Native Americans in the crisis, have dedicated functions that ensures the most comprehensive approach is taken to build the case for Native Owned businesses.

We strongly oppose "solutions" proposed by other groups:

- Like Big Tobacco – which helped States and lawyers and few others.
- Without Funds awarded specifically to Tribal Governments and Members.
- Without core Treatment and Prevent Components.
- Controlled by politicians, including political lawyers.

The path we chose is the harder path, but the best ...the only hope we see for Native People. It strives to Mend the Sacred Hoop, to include our Clients, with Justice.

Our lawyers have done things for Native People that others have not been able to do. We want to help in this crucial battle, now.



What Will We Do?

Our strategy has unique parts:

1. **File your case to assure specific focus on YOUR ORGANIZATION, and to prevent loss of identity in a large group, while using togetherness as a strength.**
2. **Stay out of class actions.**
3. **Make every effort to keep the case in a nearby court, or get it remanded to a nearby court except in unique circumstances where census or political sentiments make this ill advised. We will try to stay out of Ohio federal actions.**
4. **Refuse any settlement that does not permit the Organization to control its own financial recovery for its own individual harms.**
5. **Resist any settlement that would assign control of compensatory funds to politically controlled agencies of government at the state or national level.**

How Will We Do It?



1. **Fiercely!**
2. **With the best experts, and the strongest support from the strongest research institutions possible.**
3. **With confidence that the battle will bring a victory, the fight should be fought settlement should not be an objective unless and until victory directs its course.**
4. **Never Surrender.**
5. **Live by this Motto: Death in Battle Far Exceeds Life in Shame.**

III. Opioids

Many publications document the dramatic harm inflicted by opioids on Native Americans.

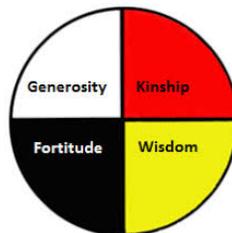
The National Indian Health Board described the problem this way:

The opioid epidemic poses one of the most significant public health threats in recent history and is particularly virulent in American Indian and Alaska Native communities. Addressing the opioid epidemic is a nationwide priority; however, access to critical opioid prevention and treatment dollars are not reaching many of the Tribal communities that are in serious need of these funds. American Indians and Alaska Natives (AI/AN) face opioid related fatalities at three times the rate for Blacks and Hispanic Whites. The Centers for Disease Control and Prevention (CDC) further reported an opioid overdose rate of 8.4 per 100,000 for AI/ANs, second only to Whites. As sovereigns, Tribal Nations are not systematically included within statewide public health initiatives such as the recent prevention and intervention efforts created through the new opioid crisis grants. Nevertheless, a national study looking at death certificate data reported that AI/AN experienced the highest prescription opioid death rate of any race from 1999-2009.

Policy Recommendations of NIHB – A Starting Place

- Establish Tribally - specific funds for specific AI/AN communities.
Tribes were not included in the 2017 State Targeted Response to the Opioid Epidemic grants, forcing many Tribes to compete with state agencies and other Tribes for these critically needed dollars. Creating funding streams specific for Tribes eliminates this issue and streamlines access to these essential funds.
- Establish trauma-informed interventions for prevention.
- Recognize the top-level priority of Tribes to resolve this problem.
- Establish a Special Behavioral Health Program for Native Americans like the existing Special Diabetes Program.

Our Consortium's simple objective is to use the law and courts to make a difference. We have the strongest lawyers. We are called to serve those most harmed. Only strength can bend the arc of history toward justice.



IV. Overview of the Legal Issues/Litigation

Compulsion to Sue

It is now widely recognized that the executive and legislative branches of the federal government cannot remediate this crisis. The Civil litigation system must do so. The Federal Judge responsible for coordination of litigation, aggressively announced a desire to address and resolve the crisis. The total damages sustained by the Tribe in any year must be studied in detail and proven with reasonable precision though not mathematical certainty. Modeling damages based on specific experience and workload will be an essential part of the litigation. This modeling is conceptually, mathematically comparable to breaking out damages in other areas of mass tort law and damages with which the Consortium lawyers are familiar.

All lawyers of our Consortium are committed to using the litigation to resolve the crisis. Our objective is to use the legal proceedings to recover control of opiate medications and achieve the financial recovery from the manufacturers and distributors who allowed it to become a runaway, and to get the money to your hands, and not those of state or federal politicians.

Tribal Claims

Tribal claims seek compensation for a broad array of losses including:

- Police, Fire, Paramedic, Ambulance, Health and Law Department services and costs.
- Expenses incurred to care for inmates in Tribal incarceration centers, and to investigate crimes associated with opioid addiction.
- Housing damages, Social Services and Educational Costs.

Legal Theories

The litigation will likely pursue these most prominent legal theories of recovery:

- The Doctrine of Public Nuisance;
- Negligence including negligent failure to discharge specific federal statutory and regulatory responsibilities;
- Fraud and Misrepresentation;
- Violation of Consumer Protection Acts and Fair-Trade Practices Act;
- Racketeer Influenced & Corrupt Organization Acts claims;
- Unjust Enrichment.

The doctrine of public nuisance is the principle cause of concern among manufacturers and distributors at this early stage. "Public nuisance" is an offense against the state or its political subdivisions, and is subject to abatement, remediation, or prosecution by the affected governmental agency; it consists of conduct or omissions which offend, interfere with, or cause damage to the public in the exercise of rights common to all, in a manner such as to offend public morals, interfere with use by the public of a public place, or endanger or injure the property, health, safety, or comfort of a considerable number of persons. The distributors who are targeted are at risk for their failure to design and operate a protocol to expose and report suspicious orders of controlled substances, including opioids, as required by 21 CFR § 1301.74 (b) and parallel state laws in several states.

Generally, it will be alleged that offending conduct interferes with rights commons to the general public in a Tribe, and interference with and jeopardizing of, judicial costs, public safety costs, incarceration costs, and treatment for those forced into to Tribal care by their circumstances. Your Complaint is likely to allege, in connection with public nuisance theory of recovery, that distributors acting on behalf of manufacturers, or manufacturers who engaged in self-distribution of products, were responsible for compliance with 21 CFR § 1301.74 (b) and failed to comply. Negligence and other theories are expected to be asserted in your Complaint as well.

A. Damages

No estimate of damages has yet been made for your Tribe. However, interviews of law enforcement personnel have begun with others, and damages are likely to include enhanced costs for Tribal fire, ambulance, police, health and legal services. General "ballpark" estimates have placed the annual costs in these budget sectors at as much as 25% - 33% of total costs in some governments. Interviews of your key personnel, and study of your official data will be required. In recent days, other Tribes have filed or announced plans to file suit.

The Native American Tribe's experience with the Tobacco Settlements is especially important for Tribal governments to note. There, the Tribes got nothing or nearly so. Virtually all money recovered went to State politicians. Much was used for tax cuts and budget deficits. More egregiously, recent orders emanating from the tobacco settlements, have continued to steer settlement funds and relief away from Native-owned businesses. This must not happen again! But, many are headed in that direction. Not us!

Furthermore, the Federal Government has never been more lacking on fulfilling its Trust Responsibilities to Tribes, and major budgetary cuts are proposed by the U.S. Government to critical healthcare programs, despite the fact that the IHS Budget is only about 9% of the identified need. But, days ago, the U.S. Attorney General asked to be included in discussions to settle the Big Pharma wrongdoing. This redoubles the need for prompt action by the Tribe now.

B. Probable Defendants

We have identified twenty-four (24) probable target defendants. They include drug manufacturers, distributions, pharmacy chains, and subsidiaries. Many of the companies operate in a corporate maze. We figured out who is who! We have not yet seen a suit that does so comprehensively. Ours will ... to the best of our ability.

V. Program Organization and Management: Tribal Justice Team and Experts

The Consortium is proposed to perform all work necessary for your claim and does not anticipate taking time away from the Office of Tribal Attorney. In fact, Our Opioid Litigation Group is the only group taking cases in the Country, with a team of experts sufficient to single-handedly prove your case, allowing the Tribal Attorney office to focus on its undoubtedly busy internal docket. We have arrangements in place with Doctors, Nurses, other care providers, accounting and Third-Party Administrators of health finance companies.

The Group has engaged the services of a third-party administrator (TPA) that is assisting with data collecting (data mining); calculating past, present and future damages, including modeling and program development; and organizing the information to assist both you and the justice system to understand precisely the costs necessary to compensate your damages.

Our work will create jobs among your people. We will ensure that Native Americans are assisting Native Americans to assemble and understand your data.

Most importantly, the TPA has agreed to safeguard and protect all data received for the benefit of the Opioid Litigation Group clients. A designated lawyer will protect all privileged information in accordance with his duties as a fiduciary and a licensed lawyer. Opioid Litigation Group clients will be protected from all requests for discovery in an attempt to bypass attorney-client and attorney work product privilege.

You will have the benefit of service by the battle-proven lawyers of our Opioid Justice Team, and support personnel. **We want your voice and your input into the recovery program for other effected Native American groups as well. Together, in solidarity, is how Organizations need to stand with the population it serves, and how great healing will begin.**