

Opioids and the Law

Hawaiian Organization Retains Counsel in Opioid Litigation to Secure Restitution

Hui Huliau, a Native Hawaiian Organization (NHO), has retained Tate Grossman Kelly & Iaccarino, LLP (TGKI Law), the pre-eminent law firm in the representation of municipalities and hospitals as well as American Indian, Native Hawaiian, and Alaska Native communities against the makers and distributors of Opioids, to represent it in the ongoing Multi-District Litigation in Ohio.

“Give credit to Hui Huliau for having the foresight to recognize the impact that the reckless creation, marketing, and distribution of Opioids has had upon its community, and then seeking restitution on its community’s behalf,” said Mark Tate of TGKI Law. “By retaining our firm, it joins hundreds of

other municipalities and hospitals as well as American Indian, Native Hawaiian, and Alaska Native communities, who have been impacted by this reprehensible corporate conduct and have said enough is enough.

“Our hope, and that of our clients, is that the message will be sent to the pharmaceutical community and the business as a whole to appreciate the consequences of their decisions so that this never happens again.”

Adrian Nakea Silva, the Chairman of Hui Huliau, has a strong reputation for being proactive on societal and economic issues involving his constituency. That approach was clearly evident in the NHO’s latest decision.

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New York Township Retains ‘Opioid Crisis Recovery’ Law Firm



In November, the Huntington (N.Y.) Town Board moved to take legal action against opioid manufacturers, distributors, and sellers to recover the Town’s costs of fighting the opioid epidemic

The Town Board approved the retention of Tate Grossman Kelly & Iaccarino, LLP (TGKI Law), a firm having decades of collective experience with complex mass tort and multi-district litigation representing dozens of municipalities seeking reimbursement for monies spent addressing the opioid crisis, to represent the legal interests of the Town of Huntington and its special districts, and commence an action against the manufacturers, distributors, and sellers of opioids, and all other responsible parties, to recover all damages and costs incurred and to be incurred by the Town and its special districts in connection with the opioid crisis.

Supervisor Chad A. Lupinacci and Councilman Eugene Cook co-sponsored the resolution hiring what many describe as “The

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Welcome to *Opioids and the Law*, a Timely Newsletter

Tracking Legal Developments Involving the Opioid Crisis

Welcome to our newsletter *Opioids and the Law*, a bi-monthly electronic newsletter.

With its launch, we are committed to reporting on legal developments associated with the Opioid Crisis, arising from the economic impact that the unchecked use of Opioids has had on municipalities and hospitals as well as American Indian, Native Hawaiian, and Alaska Native communities.

Elaborating on that point, David Grossman, one of our legal editors and a name partner of TGKI (<https://www.tgkilaw.com/>), noted that “it is important to inform those entities that have suffered an egregious economic impact from the irresponsible promotion and distribution of Opioids

about what is taking place in the ongoing Multi-District Litigation. This newsletter is for those who have already enlisted TGKI to represent them and want to keep tabs on developments, as well as those who have not sought representation. It is important to let the latter group know what’s going on in the litigation so they can make an informed decision about when to retain a law firm, whether it us, or someone else.

Mark Tate, the managing partner of TGKI, added that “time is of the essence” for municipalities, hospitals and Native American communities to decide whether they will participate in the MDL.

“A determination has already been made that the pharmaceutical companies are li-

able for damages,” said Tate. “However, the court has wisely afforded a very short period of time for those entities that have suffered economic damages to retain counsel.”

It is the role *Opioids and the Law* to make sure these municipalities, hospitals and Native American communities have the best possible understanding of what their options are and make an informed decision.

The best way to do this is to focus on the actions of these entities in terms of participating in the MDL and by illuminating some of their considerations in the process of making such a decision.

Thanks for coming along for the ride in this very worthwhile endeavor. ●

Opioids and the Law

HOLT HACKNEY

Legal Editor

DAVID GROSSMAN

Legal Editor

MARK TATE

Legal Editor

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Hackney Publications

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Native Group Retains Counsel in Opioid Litigation

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“It was important for us to not only join in the fight for what our community is entitled to, but also select a firm that was one of the first such firms to take on Big Pharma and seek to hold them accountable through the courts,” said Silva.

“This law firm understands our perspective and is ready to advocate for our rights. It gives us the best chance to recoup the costs associated with the Opioid crisis and move forward as a community.”

David Grossman of TGKI Law called Hui Huliau “a leader for recognizing the opportunity to seek restitution, but the ability to act quickly.

“The Multi-District Litigation in federal court will not be open forever. We expect it to close within months, putting the onus on other American Indian, Native Hawaiian, and Alaska Native communities to seek out and procure counsel that can secure the restitution that they are entitled to.” ●

Prosecutors Say Doctor Received Huge Kickbacks

In late January, federal prosecutors in Missouri indicted a physician on 29 charges as a participant in a \$2.4 million health care fraud scheme that involved kickbacks from a pharmaceutical company.

The scheme led to Randall D. Halley, 63, becoming Missouri’s biggest prescriber of a fentanyl spray, according to a news release from the U.S. Attorney for the Western District of Missouri.

It further added that Hailey created an arrangement with a pharmaceutical company based in Arizona, enabling him to prescribe the fentanyl spray in exchange for kickbacks that were disguised as payments for fake speaking engagements.

Halley allegedly wrote more than 355 prescriptions for the fentanyl spray. He was paid \$92,225 from the pharmaceutical company, according to the government. ●

Attorney Grossman Finds Passion in Advocacy

Before he received his law degree from the Touro College Jacob D. Fuchsberg Law Center in 1994, David Grossman graduated Cum Laude from State University of New York at Stony Brook with a BA in Philosophy in 1991.

From an early age, he studied some of the greatest minds and the principles of helping others. That resonated when, immediately after law school, he began working as a public defender for the Legal Aid Society in Nassau County.

Grossman, a partner at TGKI Law Firm, was suddenly on a path that today makes him a leader in the legal field and a great candidate for the interview that follows.

Question: *What attracted you to representing parties that have been hurt through the negligence of others?*

Answer: I've always advocated for the victims. My first job after law school was at Legal Aid. I was a public defender. I've been attracted to that kind of advocacy ever since. I've always been on the side of the underdog.

Q: *You were obviously very successful in nursing home litigation. How did that experience make you a better lawyer?*

A: Those cases are, from a legal standpoint, wonderful cases and, from a human standpoint, terrible cases. You're fighting major companies, with endless resources, and you have voiceless victims who really can't tell their story. Many of them are dead from the negligence that killed them. So you have to be a detective and a lawyer and, figure out what happened, and fight the monster.

Q: *Litigating against those types of companies and their attorneys, what did you learn in that process?*

A: Well, most of the time when you sue a nursing home in New York they have insurance. So they're hiring outside lawyers that are experienced at fighting cases of this kind. They're pretty aggressive. They have endless money for experts and lawyers



David Grossman

and so you really have to work night and day to put up a good fight against them. So I think what I learned is to be a tireless advocate for my client.

Q: *Tell me how your initial involvement in opioid litigation came about? When did you have your first exposure to this area of law?*

A: Fellow partner Mark Tate contacted me. I've known him about 20 years, and he said he was wondering if I had any contacts and past clients in the Northeast who could benefit from this litigation. I did. It was that simple.

After I pulled back the covers, I learned that every level of our society has been tragically impacted by the opioid crisis. And it's just wrong that these companies have been enjoying boundless profits without paying for any of the mess they have created. So someone has to help.

Q: *Talk about the relationship with Mark. How did you guys first meet?*

A: Through a mutual friend. I met him 20 years ago in Georgia. We talked every few years. I never got to return to Georgia, but we stayed friendly. It was just a natural connection.

Q: *Why were you successful in connecting with municipalities that had been impacted by the opioid crisis? How did that come about?*

A: For many municipalities, they were under a misunderstanding. They thought they did not need to take action. All the big law firms went for counties all over the country. Literally, no one was looking to advocate for the towns and villages that sit within our counties. So I thought that was wrong because they all have been victimized as much as anybody else.

Q: *Why should a municipality retain counsel to represent it in the litigation, rather than sign up on its own?*

A: Well, there's nothing to sign up for right now. If a municipality doesn't hire a lawyer, it would be left out in the cold. And then if they don't have a lawyer representing them, even if there is a negotiation class eventually set up for all the municipalities, they have no vote in the process. They're at the mercy of others. By hiring a lawyer you have someone who's local, who will maximize their claim, who will get to know them, and get them everything they're entitled to get.

Q: *So, what in your mind is a successful outcome in this litigation?*

A: Well, like any other case, you got to get reasonable compensation, or you get enough money for the municipalities to recover the harm that they suffered as a result of the opiate crisis. And you get enough from the defendants so that they're not hurt, but hesitant to ever make the same mistake again. We don't want to put anybody out of business. This isn't about punishment. I sort of look at it like an oil spill case when Getty has an oil spill in the Gulf of Mexico off Texas they pay for the cleanup. They come in with their equipment and they pay the penalties and they clean up their mess. So, that's what we want the opiate manufacturers to do, to pay to clean up their mess. ●

Opioid Overdoses Cost U.S. Hospitals \$11 Billion Annually

A recent study by a healthcare improvement company has found that total care for patients who experienced an opioid overdose resulted in \$1.94 billion in annual hospital costs across 647 healthcare facilities nationwide.

The company, Premier Inc. (NASDAQ: PINC), reported that the costs were concentrated among nearly 100,000 opioid overdose patients with nearly 430,000 total visits across emergency department (ED), inpatient and other care settings. Sixty-six percent of the patients were insured by public programs (33 percent Medicare and 33 percent Medicaid), 16 percent used a commercial payer, 14 percent were uninsured, and 3 percent were covered under other programs, such as workers' compensation.

Annual hospital care for overdose patients represents a significant portion of healthcare expenditures and can be detrimental to providers in regions with high addiction rates. For instance, by extrapolating the cost trends the research team identified in its analysis the total added costs to the U.S. healthcare system are estimated to amount to \$11.3 billion annually, or 1

percent of all hospital expenditures. If the payer mix remained constant, \$7.4 billion of the expense would be borne by the federal Medicare and Medicaid programs.

"Opioid addiction has been a public health problem for some time, but we've yet to show exactly how hospitals—the entities that treat most of these patients—are financially impacted," said Roshni Ghosh, MD, MPH, Vice President and Chief Medical Information Officer, Premier. "This analysis shows that on top of losing family members and friends to this epidemic, it's costing consumers and taxpayers, as well as hospitals.

The study above should not surprise anyone who has followed the space. Other research is out there.

Rise in Hospitalizations and Costs Associated with Opioid Abuse Noted

New research by clinicians at Beth Israel Deaconess Medical Center and the VA Boston Healthcare System, published a few years ago in the May issue of the journal *Health Affairs*, suggested a significant

impact of the trend on opioid-related hospitalizations, infectious complications and health care costs.

Using discharge data from a nationally representative sample of U.S. inpatient hospitalizations, the authors found that hospitalizations related to opioid abuse/dependence increased significantly between 2002 and 2012. While the total number of hospitalizations nationwide remained largely consistent over that period, opioid-related hospitalizations rose 72 percent to 520,275 and opioid-related hospitalizations with serious infection rose 91 percent to 6,535.

"The downstream consequences of opioid abuse and dependence, including serious infection, are severe—for individual patients and their loved ones, caregivers, hospital systems and the federal government," said co-author Shoshana Herzig, MD, MPH, a hospitalist and Director of Hospital Medicine Research at BIDMC and Assistant Professor of Medicine at Harvard Medical School. ●

New York Township Retains 'Opioid Crisis Recovery' Law Firm

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Opioid Crisis Recovery Law Firm."

"Given the specialized nature of this litigation, hiring TGKI Law will benefit the Town and our residents, not only from their expertise in this area, having represented other municipalities fighting the opioid crisis, including those on Long Island," said Supervisor Chad A. Lupinacci, "but in sharing the costs for their expert consultants with those other municipalities, reducing the litigation costs for our residents, to ensure those who helped create this public health and safety crisis are made responsible for the costs of fighting it."

Councilman Cook added that "it is extreme-

ly important that the Town of Huntington retain Tate Grossman Kelly & Iaccarino, LLP to handle this complex litigation to recover the financial costs of the opioid crisis, to the Huntington community against the manufacturers, distributors, and sellers of these opioid medications. Unfortunately, this lawsuit will not recover the harm and heartbreak this crisis has brought to the victims and their families who suffer or lost their life to opioids.

"This is a necessary first step to hold the pharmaceutical companies responsible for the monies spent on health care, substance abuse programs, public education, Narcan

training and supplies and the criminal justice costs associated with the misuse of these prescription drugs."

TGKI Partner David Grossman, who has personally signed up hundreds of other municipalities in the northeast to participate in the cost recovery exercise, said the Town should be commended.

"Its elected and appointed officials understand the important role they have in retaining a law firm experienced in these matters, who can help them recover what is rightly due to the Town's citizens," Grossman said. ●