MINUTES

The Spalding County Board of Commissioners held a Special Called Meeting in Room 108 of the Spalding County Annex on Monday, May 7, 2018, beginning at 5:00 p.m. with Chairman Raymond Ray presiding. Commissioners Donald Hawbaker, Rita Johnson and Bart Miller and Gwen Flowers-Taylor were present for the meeting. Also present were County Manager, William P. Wilson Jr., County Attorney, James Fortune and Executive Secretary, Kathy Gibson, to record the minutes.

I. Opening (Call to Order) by Chairman Raymond Ray and requested that all cell phones and electronic devices be silenced.

Invocation led by Chairman Raymond Ray.

Pledge to Flag led by Commissioner Rita Johnson, District #3.

II. Agenda Items

1. County Attorney would like to arrange presentations by firms currently involved in class action suits for opioid litigation.

   Mr. Fortune advised that he has asked each presenter to limit their presentation to 10 minutes. He further advised that a decision is not on the agenda and they should not expect an answer today, but we do appreciate everyone coming in to give us a presentation.

   • Blasingame, Burch, Garrard & Ashley, PC - Athens, Georgia

   Mr. Drew Hill of Athens with the firm Blasingame, Burch, Garrard & Ashley, PC, was the first to speak and he introduced Mr. Troy Lanier from Augusta who is with Lanier Law. Mr. Hill advised that his and Mr. Lanier’s firms have been representing counties in the opioid litigation for the last four to five months.

   Mr. Hill advised that the opioid litigation is currently being handled out of Ohio by federal judge, Judge Daniel Polster, and if you file law suits in any federal court across the country, on behalf of a county, all of those cases are sent to Ohio for one Judge to handle.

   At this time, his firm is filing individual law suits on behalf of the Counties they represent. All of these cases are immediately transferred to Ohio where the Judge handles all of the discovery, depositions, document production, motions and he ultimately tries to get the cases resolved or settled at some point but they are under his umbrella.

   Mr. Hill stated that his group has been involved in MDL (Multi-District Litigation) for the last twelve years. They started in the transvaginal mesh multi-district litigation in Athens and were involved in leadership of those cases for six years, representing 4,000 women across the country and ultimately settled those cases. We were the first firm to settle all of the transvaginal mesh cases against all of the defendants.

   Mr. Hill then advised that they moved on to hernia mesh and are now involved in leadership of heading the hernia mesh, MDLs. One here in Georgia, centered in Gainesville and two in the northeast. They are also involved in the baby power/talc litigation in California. He stated that they have been actively involved in this type of litigation for the last 10-12 years.

   Mr. Hill stated that he feels their firm has the reputation in Georgia of being the best MDL firm in the State. They have handled more MDL proceedings than any other law firm in the State. Their transvaginal mesh
litigation, cases ultimately settled for $650,000 on behalf of their clients and then they assisted other law firms in getting their cases settled for approximately $2.5 billion.

Mr. Hill then advised that his firm was asked to join the opioid litigation by leadership. Paul Ferrell is one of the lead attorneys in the Ohio MDL and he asked their group to join in that litigation because of their experience in the transvaginal mesh cases.

Mr. Hill stated that his firm currently represents approximately 50 counties in this opioid litigation. He has talked to more than 100 counties and they have contracts still outstanding with other counties. They are hoping to have at least 50 more by the time they are done. Their goal is to at least represent that number of counties in the State of Georgia. They currently represent Athens/Clark County, Gainesville/Hall County, Macon/Bibb County, Bullock County, Statesboro, Lincoln, McDuffie, Jones, Daughtery, Albany, Bainbridge, Decatur, which will give you an idea of the counties and cities we are currently representing in this MDL.

Mr. Hill advised that he feels their firm is very capable of handling Spalding County’s opioid litigation case. They handle the cases on a contingency basis of 30%. They advance all of the expenses so the county does not expend any money out of its pocket. If we don’t recover, we don’t get our expenses back, if we do recover we get our 30% fee plus our expenses. This is typically the way these cases are handled.

Mr. Hill stated that they will work with the local county attorney if they wish to be involved and they will negotiate a fee with the county attorney. The county attorney at some point will have to assist in generating data that is needed once we have expert witnesses hired to advise what type of data is needed from each of the counties as to how the opioid epidemic has affected those counties. So, we again don’t want the county to have to expend any funds to pay the county attorney to do work on the opioid litigation, if the county attorney wants to participate in our fee then this is something we make available.

Mr. Hill stated that when determining where the opioid epidemic is effecting the county, they consult with the Sheriffs in each county as they see it in law enforcement, jail population, arrests, EMS/EMT service and you can see how this epidemic has increased those costs. Particularly, the Narcan which has to be used for overdosing. If you have drug courts, they are great if you have places to send folks for treatment, but the problem is we’re running out of treatment facilities.

Mr. Hill advised they believe what the Judge in Ohio is going to do when these cases are settled and any settlement monies awarded is to ensure these funds work their way down to the local level, where the fight is being fought on opioids. Judge Polster has indicated that he wants to look at getting funds to the local level where the fight is being fought.

Mr. Hill stated that his firm would like to represent Spalding County in this litigation. The requirement from the county will be once we know the data needed we will be coming to the county to collect that data. They will have people to come in and assist county personnel in retrieving the data. We want to put as little work as possible on the counties and they feel this is a “no lose” proposition for the counties. You will not expend any money out of pocket, the manufacturers and distributors cannot afford not to settle these cases.

- Brinson Askew Berry and Finnell Law Firms out of Rome, Georgia

Andy Davis with Brinson, Askew and Berry from Rome, Georgia and his
co-counsel is Robert Smalley who grew up in Griffin. Mr. Smalley is the County Attorney for Whitfield County and Mr. Davis is the City Attorney for Rome, Georgia.

Mr. Davis advised that one of the questions they are always asked in these presentations is “Why should we consider your firm?” He stated that his firm currently represents Spalding County, they have been representing Spalding County since 2012 in the Hotel Motel Tax litigation. Mr. Davis stated since 2012, Spalding County has received over $7,000 as a result of the litigation that they started in 2007 and it settled in 2012.

Mr. Davis stated that the opioid litigation is a little different because of the judge. If the MDL case settles, it is not going to take 5-7 years, all of the lawyers feels this case will be settled in 2-3 years.

Mr. Davis advised that he and Mr. Smalley bring something to the table that none of the other firms bring in that they understand local government, because they are local government attorneys. Mr. Davis stated there are three other attorneys working with them, they are all Georgia attorneys. They all worked on the Hotel/Motel Tax together and that is how they became involved in the opioid litigation. One of the other attorneys is from Rome, his name is Bob Finnell. He and Mr. Finnell are working together, so you will only be getting three presentations this evening.

Bill Bird and John Krungouer are also working with our firm, these gentlemen were involved in Hotel/Motel Taxes outside of Georgia as well as assisting us with Georgia.

Mr. Davis stated that both he and Mr. Smalley have Multi-District Litigation experience. At one time they actually presented against each other in the tristate crematory case which was a nationwide MDL case that was tried in Rome, Georgia. Mr. Smalley was the liaison council for all of the plaintiffs and Mr. Davis was the lead liaison council for over 50 funeral homes.

Mr. Davis stated that at some point the county attorney will be involved, the comptroller will be involved, the chief financial officer will be involved and the Sheriff will be involved. There has to be lawyers involved who understand the Service Delivery Strategy between the County and the Municipalities within the County in order to work and calculate those damages. These are things that his group brings to the table.

Mr. Davis stated that just like the Blasingame Firm they are working on a 30% contingency, they pay all expense up front. If the county or city attorney wishes to be involved, they will make arrangements for paying their fees as well. What sets their group apart is their experience in being city and county attorneys and having the experience already in working with Spalding County Administration in dealing with the Hotel/Motel Taxes. They would like to represent the County in this matter.

Mr. Davis stated that the CDC compiles data on where cities and counties rate within the state and across the United States in terms of the amount of opioid use. On a chart abusing factor of 100, anything from 90-100 is considered to be something that needs to be looked at. 90 and below is considered a marginal area. Spalding County is a 110. Spalding County is like many counties with significant rural areas which spread from large metropolitan areas, the opioid abuse is here and the Sheriff knows where those areas are. They have and expert to extrapolate what that means to different cities and counties in terms of rating. Spalding County would be in the top 20 counties in the State for opioid abuse and use. So it is considered an epidemic right here. Mr. Davis stated that his group would
like to represent Spalding County, they have a native of Spalding County as part of their group that will be involved, Mr. Robert Smalley. His family resided here, Mr. Smalley grew up in Griffin.

Chairman then asked if the Board had any questions since the representative from the Beasley group was delayed due to traffic.

Commissioner Hawbaker asked how many plaintiffs there are in the litigation to this point.

Mr. Davis advised that there are over 700 lawsuits as of Friday and they are from all over. There are Attorney Generals who have joined in. He stated that one of the reasons they are involved is because at the end of the tobacco litigation the States swooped in and took the money. The real problem is local and he feels that everyone involved is trying to make sure that if there is a settlement that we get money to the local communities.

Commissioner Hawbaker then asked if there was any prediction as to where this may top out.

Mr. Hill stated that complainants are added at a rate of 10-50 every week. The Judge initially said that he wanted to get the cases settled within the first 12 months, but that was a “pie in the sky” so now he is going to let discovery take place on “fast track” and he has set some trial dates for early next year. He is keeping things moving, but it’s hard to say. He feels that once the trials start up next year the settlement wheels may start turning a lot faster.

Commissioner Hawbaker stated that if Spalding County is in the top 20 in the State of Georgia, who are some of the other counties in the 20 county group.

Mr. Hill stated that Athens, Gainesville, all the counties around Athens are in the higher categories. He then handed out the statistics for the last 10 years for Spalding County and they range from 110 prescriptions per 100 people in 2006 to 136 prescriptions per 100 people in 2016. So there are more than 1 prescription per person being written in the county. He stated that he believes that most of the counties his firm currently represents is in the top two categories according to the statistics provided by the CDC. Waycross/Ware County, surprisingly is the largest in the state with over 200 prescriptions written per 100 residents.

Commissioner Flowers-Taylor stated that the data you have provided is compiled by the CDC what type of reporting is this based on? How would they get that private information from prescriptions written by private and hospital physicians?

Mr. Hill advised that they get it through pharmacy records. The pharmacies are required to keep that type of information and that is where the CDC is able to gather the information. They don’t get the patient information from the pharmacy, they just get the number of prescriptions written.

Commissioner Flowers-Taylor then asked who would be the defendant in the Multi-District Litigation.

Mr. Hill advised that the manufacturers and the distributors. The major manufacturers and distributors are the ones currently named in the litigation in Ohio.

Mr. Davis added that the reason the distributors are included is because under federal law they were the gate keepers and they were supposed to
help protect and they have failed to do their job as gate keepers. That is why manufacturers and distributors are included in the litigation.

Mr. Davis stated that this litigation has already had some effect in that hospitals are not being completely supplied with the pain medication that they were three months ago, because it has been curtailed and cut back some. That is one of the ways that the litigation has already had an effect to address some of those concerns. There are doctors out there that are the “pill mill” doctors and they are being prosecuted.

Commissioner Flowers-Taylor then asked what affect this litigation will have on Spalding County, we don’t pay out for ambulance service, we don’t pay out for the hospital, we don’t have an EMS that provides medical services, so we don’t we don’t recoup from that. We don’t have a financial investment in the hospital system, so how is retaining you to represent Spalding County going to fulfill us as a County in helping us with this problem?

Mr. Davis stated that if Spalding County has a Drug Court, he can almost assure the Board that they are having problems finding places to send people, so they don’t see them coming back as repeat offenders. There is a lack of treatment programs. That is one of the Judge’s big concerns is that the dollars are distributed locally to help fund treatment. It is an epidemic, it’s not going away because it is generational, and it is going to take a generation of treatment and counseling to get folks un-addicted.

Commissioner Flowers-Taylor then asked how the firms present would be able to do to keep the State from swooping in to get the money, like it did with the tobacco settlement. If your firm is retained, what can you do to stop the State if there were an award?

Mr. Davis stated that the tobacco settlement was dumped into the General Fund in Atlanta. The opioid settlement money is designated, by the Judge hearing the case, to the counties and cities that are on the front line where the fight is being fought. His firm files each county as an individual lawsuit file for that county in the federal court district that the county sits in, so that you have your own court ruling on the lawsuit. It is the county suing individually, the county decides whether to settle the case and the county decides whether to proceed with the case. Whatever money is offered, the county decided whether they will accept it or not. The county money will come to the county, not to the state.

- Beasley Allen Law Firm - Montgomery, Alabama

Ron Jones with Beasley Allen Law Firm advised that they currently represent numerous counties in Alabama and the State of Alabama in the opioid litigation. His firm currently represents Douglas and Catoosa Counties in the State of Georgia and there are several other counties in Georgia they are currently under consideration they will be presenting to the Attorney General of Georgia in the coming months.

Mr. Jones advised that he is very familiar with the litigation, he will be in Cleveland next week at the MDL court held there. He believes that they will do a good job for Spalding County. He then asked if the Board would like to ask questions.

Commissioner Hawbaker asked the number of entities that Beasley Allen is currently representing.

Mr. Jones advised that it would be about 80 at this time mostly Alabama cities and counties. We represent one county in Tennessee. Our focus given that we have an Atlanta Office and we have been in Montgomery
since 1978, will be on Alabama and Georgia.

Commissioner Hawbaker then asked if their fee base is also 30%.

Mr. Jones stated that their fee base varies, it is a contingency and there is no risk to the county whatsoever. If we are unsuccessful, they would eat the cost if they are successful then the expenses would come out of the settlement. Generally, they are in the 30% range, but there is some flexibility there.

Mr. Jones stated that they would sit down with the county to determine if a State court action or a Federal court action would be best. There are some counties and cities who believe they have in State defendants who want to proceed in State Court. The vast majority of the counties and cities who have filed suit, nearing 500 that have been transferred to the MDL court have been filed in Federal Court.

Mr. Jones stated that most often they look at the larger manufacturers and the three largest distributors and those are usually who are named. There are two or three legal theories from a deceptive marketing standpoint on the part of the manufacturers and for the distributors. It is a little more statutory based, they have obligations to report suspicious orders. Some of the distributors have been distributing massive amounts of opioids to locations in Alabama and Georgia and they have a duty to report when that happens and they are not doing it. The primary cases are against the manufacturers and distributors, there are a few localities that have sued pharmacies as well. There are some pharmacy defendants as well, but generally when he sits down with a county or a city the focus is on the manufacturers and the distributors.

James Fortune, County Attorney, then stated that we are talking about hundreds of millions of dollars potentially, maybe even billions of dollars potentially. Who is going to pay this? Insurance wouldn’t cover something like this. He doesn’t doubt you will get some huge verdicts, but how do you collect it.

Mr. Jones then advised that when companies like this normally have insurance coverage disputes, they normally handle it privately, often times in an arbitration or mediation. Especially, publically traded companies, they would rather that not be discussed out in the open. As to the insurance there are some things that we don’t know yet, but as to the manufacturers and distributors, the general thought is that the manufacturers have less money than the distributors do. Some of the distributors are gigantic companies and some of the manufacturers are very big companies as well. He feels it is likely that one manufacturer will reach an agreement this year, this of course is speculation.

Mr. Jones stated that his prediction is that when the first manufacturer settles there will be a fund established that could be payable in a lump sum by one defendant or it could be payable over time. The reason he feels it is important to be here for counties is there is going to come a day when this is going to be Federal Government Money because the DOJ has filed what call a “Friend of the Court” brief or filing and they have made it clear that they plan to have some of the funds come their way. There are 19 states as of today that have filed suit, the remainder are watching on the sidelines and will join in and then there are hundreds of counties and cities that will be involved.

Mr. Jones stated that the reason Spalding County needs to retain counsel is to analyze where the county stands as it relates to the State of Georgia.
There will be a discussion at some point on how to apportion that money and that will be very important and it will be important that you have counsel that can work through the process with you.

Chairman Ray advised that he would have to end the meeting at this point as we have another meeting that will start at 6:00 p.m. He thanked all of the firms who participated in the meeting.

III. Adjournment

*Motion/Second by Hawbaker/Miller to adjourn the meeting at 5:51 p.m. Motion carried unanimously by all.*

/s/ Raymond Ray, Chairman

/s/ William P. Wilson, Jr., Clerk