



The State Energy &
Environmental Impact Center
NYU School of Law

THE HEALTH & ENVIRONMENTAL SETTLEMENTS PROJECT: CALL FOR EXPERT ASSISTANCE

OVERVIEW

State attorneys general have played an important role in helping to develop fair, effective and enduring resolutions of major health and environmental liability and compensation claims involving tobacco use, the cleanup of legacy environmental contamination, and others. Each of these matters involved major, broad-based health and environmental threats that challenged traditional judicial or legislative processes. They required lawyers and policy-makers to develop creative settlement approaches that matched the unique socially and fiscally significant claims and compensation issues involved in each case.

The NYU School of Law's State Energy and Environmental Impact Center (NYU State Impact Center) is launching a **Health & Environmental Settlements Project** ("Settlements Project") to evaluate mechanisms that have been used by state attorneys general, the U.S. Congress, and others to address and resolve the toughest large-scale health and environmental liability and compensation challenges over the last fifty years. The goal of the Project is to provide a comprehensive, independent analysis of prior judicial and legislative settlement structures, including an evaluation of settlement approaches that, with the advantage of hindsight, worked well and achieved their purposes, and those that did not.

The State Impact Center is undertaking this project because of the likelihood that state attorneys general and other public and private lawyers and policy-makers will be drawn into future cases that, like tobacco, hazardous waste cleanup activity, vaccines and other matters, will have major financial, public health and environmental implications. It is vitally important that all interested parties have the benefit of prior experience when considering how to construct strong and enduring settlements in future cases.

As described more fully below, the State Impact Center is seeking expert assistance to complete the Settlements Project. Experts will receive appropriate compensation for their participation in one or both phases of the Settlements Project. The State Impact Center requests the submittal of expressions of interest regarding participation in the project by December 14, 2018.

EVALUATION OF PRIOR SETTLEMENT STRUCTURES

Case Examples

The Settlements Project will focus on a limited number of major health and/or environmental threats that have triggered mass tort-type claims for compensation that challenged traditional judicial or legislative mechanisms for resolution. The Project will focus at the outset on the following matters:

- The Tobacco Master Settlement Agreement;
- The Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA, commonly known as “Superfund”);
- The National Childhood Vaccine Injury Act;
- The Volkswagen Emissions Settlement;
- The Gulf Oil Spill Settlement;
- Diethylstilbestrol and other drug settlements.

The Settlements Project solicits input regarding additional contexts in which settlement structures have been developed to address complex and pervasive liability and compensation situations, including in contexts unrelated to health and environmental issues.

Common Legal/Legislative Issues Evaluated for Each Matter

The Settlements Project will organize its settlement-specific analyses around several common elements that typically are involved in shaping settlements for large and complex health and environmental claims. Elements that are likely to be evaluated for each matter reviewed include:

- **Societal Context:** nature and scope of the claims for which relief is sought.
- **Liability/Causation:** how liability and causation issues are addressed/resolved in the settlement, including level of factual proof needed for claims, strength of causal connection required for recovery, etc.
- **Payouts:** structures used to identify, facilitate and finance current and potential future payouts.
- **Retrospective evaluation of settlement structure:** lessons learned regarding settlement mechanisms that worked well, and those that did not.

CALL FOR EXPERT ASSISTANCE

The NYU State Impact Center is seeking the assistance of experts who will participate in one or both two phases of the Settlements Project.

Phase 1: Convening of Experts

The State Impact Center will host a **convening of experts at the NYU School of Law in March 2019**. The convening, which will be open to the public, will include panel discussions led by experts who will discuss (1) key aspects of settlements developed and implemented in specific cases (including, but not necessarily limited to, the case examples identified above); and (2) recurring cross-cutting legal and legislative issues that arise in these types of matters, and different ways in which they have been addressed.

Phase 2: Preparation of a Final Report

Second, the Settlements Project will release an independent and authoritative **final report** by the end of 2019 or early 2010 that (1) sets forth information and analyses on settlement structures and their relative successes, or failures, in achieving fair and enduring settlements of a discrete number of representative matters; and (2) provides cross-cutting analyses on ways in which legal/legislative issues that often arise in such settlements have been successfully (or less successfully) addressed.

Identifying Experts

The NYU State Impact Center is soliciting independent experts, researchers, and writers with direct experience in or knowledge of settling large and complex health and environmental claims to participate in one or both phases of the Settlements Project. More specifically, the State Impact Center is looking for individuals who can lead or participate in panel discussions during the convening at the NYU School of Law in March 2019, and who may be interested and able to assist in the drafting of the public report that will be completed and released in the fall of 2019.

Experts will receive appropriate compensation for their participation in one or both phases of the Settlements Project.

If you are interested in participating as an expert in the Settlements Project, or if wish to recommend other candidates for potential participation, please submit your CV and a short statement regarding the nature of the expertise that you could offer to the project (or, in the case of a recommendation, contact information regarding such individual(s)) to stateimpactcenter@nyu.edu by December 14, 2018.