

RESOLUTION 18-1

A RESOLUTION RECOGNIZING THE OPIOID EPIDEMIC IN THE UNITED STATES OF AMERICA AND IN ARKANSAS; AND TO ENGAGE IN LITIGATION AS A MEMBER OF THE MUNICIPAL LEGAL DEFENSE PROGRAM (MLDP) AGAINST THOSE ENTITIES AND PEOPLE RESPONSIBLE FOR THIS SOCIETAL CRISIS.

WHEREAS, our nation and the state of Arkansas have suffered substantially by virtue of the addiction and dependency on opioids, both legally prescribed and criminally secured; and,

WHEREAS, on October 26th, 2017 the President of the United States of America declared the opioid crisis to be a “public health emergency,” and;

WHEREAS, Arkansas’ hospitals and rehabilitation centers cannot keep pace with the flood of victims; and,

WHEREAS, Arkansas has been ranked as the number two state in the nation in per capita prescriptions of opioid medications in 2016; and,

WHEREAS, in 2013 the cost of prescription opioid dependence, abuse and overdose was \$78.5 billion dollars for the nation as a whole: and,

WHEREAS, in 2015 an estimated 12.131 billion dosage units (pills) were prescribed nationally equating to 97.36 pills per household; and,

WHEREAS, based upon the number of opioid prescription issued in 2016 it has been estimated that every man, woman and child, regardless of age would have 37.5 pills in hand at any given time; and,

WHEREAS, drug overdose fatalities in 2016 across the nation numbered 64,000 people while traffic fatalities for the same period number approximately, 40,200; and,

WHEREAS, municipal governments have born a substantial financial and societal burden fighting this crisis and epidemic and will face abatement costs for this nuisance for many years to come; and,

WHEREAS, Monticello is a member of the MLDP and seeks to make use of the legal services provided by the Program to hold those responsible for this crisis to the highest letter of the law; and,

WHEREAS, the MLDP in concert with the other risk management pools in Arkansas have combined resources to bring litigation against those responsible on behalf of all counties, cities and towns in the state.

NOW, THEREFORE BE IT RESOLVED BY THE (CITY/TOWN) Monticello :

_____, Arkansas recognizes the acute need to address the opioid crisis in this state and wishes to do so by joining the efforts of other MLDP members to bring litigation against those responsible as advised by the MLDP. ¹

Adopted this 23 day of JANUARY, ~~2017~~ ²⁰¹⁸.

APPROVED: _____

TITLE: _____

ATTEST: _____

¹ All facts and figures cited herein were provided by the office of the Arkansas Drug Director and the Centers for Disease Control and Prevention.

To: City and Town Officials

From: Mark R. Hayes, Director of Legal Services

Date: December 15, 2017

Subject: The Opioid Epidemic: Litigation and Solutions for Arkansas

Introduction

Virtually every one of us has been affected by the massive number of opioids that have poured into our state the past several years. I dare say that we all have personal, and very painful stories concerning this terrible epidemic. Our state has seen families ripped apart by overdoses and even deaths. Our hospitals and rehabilitation systems cannot keep pace with the flood of victims. Public safety officials are constantly engaged in training to meet the overwhelming need of taking emergency calls directly related to this national crisis. As a result, Arkansas's cities, towns and taxpayers have funded the enormous societal costs of the opioid addiction.

Arkansas and the Opioid Plague

- It is estimated that Arkansas ranks as the number two state in the nation in the per capita prescription of opioid medications.
- It is estimated that since 2011, Arkansas has suffered \$265 million dollars in societal losses due to these drugs.
- In 2016, approximately 1.7 million opioid prescriptions were issued for the 2.978 million people in our state.
- The above statistic equates to approximately 109 million pills or 38 pills for every man, woman and child-in our state regardless of age.
- In 2013, Arkansas had the highest rate of teenagers prescribed opioids of any state in our country.

National Litigation

- Approximately 66 lawsuits have been filed in federal court across the country, and that number is growing weekly.
- These suits are being brought by state and local governments and are seeking monetary and injunctive relief.
- In total, over \$75 billion is being sought against opioid manufacturers, distributors and the medical profession. This number will grow exponentially as other cases are filed.
- On December 5th, the United States Judicial Panel on Multidistrict Litigation entered an order centralizing all federally filed opioid cases in the Northern District of Ohio under the supervision of Judge Dan A. Polster.
- Judge Polster has experience in supervising Multi-District Litigation (MDL).

Arkansas Litigation: the start of a solution

- For the first time ever, the three risk management pools providing nearly all legal services to cities and counties in our state have joined together to begin the process of healing from this horrid and incredibly costly epidemic.
- The League's Municipal Legal Defense Program, the Association of Arkansas Counties risk management pool and the Arkansas Public Entities Risk Management Association (APERMA) have joined forces to bring litigation on behalf of all local governments in Arkansas.
- The common goal of all three risk management pools is to represent ALL 75 counties and ALL 500 cities and towns in this litigation.
- The three pools have created a litigation team second to none in the country. The team is comprised of attorneys from law firms associated with all three of the pools: Rainwater, Holt and Sexton, Reddick Moss, Wyly-Rommel and our team leader, Cory Watson.
- Cory Watson is one of the premier MDL law firms in the country and was chosen by the Arkansas Municipal League to serve as leader.

Current State of Affairs for Cities and Towns

- The firm of Cory Watson attended the MDL hearing on behalf of the pools. As a result, they will now have a leadership role in the litigation.
- Cities and Towns that are members of the Municipal Legal Defense Program (MLDP) may choose to be represented by this group of attorneys at no cost. For your convenience, agreements are available on the League's website, www.arml.org/mldp, and can be returned via email or U.S. mail.

Summary

The League is deeply concerned about the havoc this epidemic is wreaking on our cities and towns and the welfare of the citizens of our fine state. While litigation is never to be taken lightly, we believe this to be the best route for our members. Attached you will find information about this insidious and costly epidemic and the capable team of attorneys that we believe will help your city or town abate this awful nuisance.¹

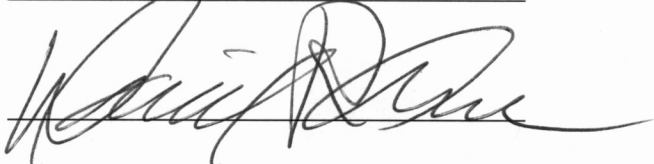
¹ All facts and figures cited herein were provided by the office of the Arkansas Drug Director and the Centers for Disease Control and Prevention.

Opioid
Litigation
Engagement
Letter

Opioid Litigation Engagement Letter

Date: 2/23/18

Name of City or Town: Monticello

Name of Mayor or authorized signatory: 

Email Address: montcity@att.net

RE: Opioid Litigation - Engagement of Cory Watson Attorneys, Reddick Moss Attorneys, and the Arkansas Municipal League/Municipal Legal Defense Program (AML/MLDP), as Counsel in Relation to Claims Against Opioid Companies

This letter ("Engagement Letter") sets out in writing the terms and conditions upon which the law firms of , Cory Watson Attorneys, Reddick Moss Attorneys, Wyly-Rommel PLLC and the AML/MLDP, collectively "Counsel," will provide legal services to the City or Town (municipality or municipalities where context dictates) in relation to the investigation and prosecution of certain claims against the following companies and other parties involved with the manufacture and/or distribution of opioid medications:

Purdue Pharma L.P., Purdue Pharma Inc., The Purdue Frederick Company, Inc., Teva Pharmaceuticals USA, Inc., Cephalon, Inc., Johnson & Johnson, Janssen Pharmaceuticals, Inc., Ortho- McNeil-Janssen Pharmaceuticals, Inc. n/k/a Janssen Pharmaceuticals, Inc., Janssen Pharmaceutica, Inc. n/k/a Janssen Pharmaceuticals, Inc.; Endo Health Solutions, Inc., Endo Pharmaceuticals, Inc., Mallinckrodt P.L.C., Insys Therapeutics, Inc., Allergan P.L.C. f/k/a Actavis P.L.C., Actavis, Inc. f/k/a Watson Pharmaceuticals, Inc., Watson Laboratories, Inc., Actavis L.L.C., Actavis Pharma, Inc. f/k/a Watson Pharma, Inc., McKesson Corporation d/b/a McKesson Drug Company, Cardinal Health, Inc., and AmerisourceBergen Corporation (collectively "Opioid Companies").

Depending upon the results of initial investigations of the facts and circumstances surrounding the potential claim(s), there may be additional parties sought to be made responsible and/or certain of the aforementioned parties may be removed from the potential claim.

This Engagement Letter shall apply solely and exclusively to the services set forth herein in relation to the investigation and Lawsuit, as defined below. This Engagement Letter does not govern, nor does it apply to, any services of Counsel unrelated thereto.

FEES AND EXPENSES

A. Contingent Fee: In consideration of the legal services to be rendered by Counsel, the contingent attorneys' fees for the services set forth in this Engagement Letter shall be a total gross fee of 25% of the Recovery, which sum shall be divided among Counsel.

B. No Fee if No Recovery: There is no fee for the services provided herein unless a monetary recovery acceptable to the municipality is obtained by Counsel in favor of the municipality, whether by suit, settlement, or otherwise ("Recovery").

C. City or town understands and agrees that a Recovery may occur in any number of different fashions such

as final judgment in the Lawsuit, settlement of the Lawsuit, or appropriation to City or Town following a nationwide settlement or extinguishing of claims in lawsuits and matters similar to the Lawsuit.

1. Costs to be Advanced by Attorneys: Counsel agree to advance all costs and expenses of Counsel, and the Lawsuit associated with investigating and prosecuting the Lawsuit provided, however, that any costs and expenses associated with City or Town cooperating with Counsel in conjunction with the Lawsuit and otherwise performing its responsibilities under this Engagement Letter are the responsibility of City or County.

2. Costs to be Paid from Recovery, if Any: After the application of the applicable fee percentage to the gross Recovery, and that dollar amount set aside as attorneys' fees to Counsel, the amount remaining shall first be reduced by the costs and disbursements that have been advanced by Counsel, and that amount shall be remitted to Counsel. By way of example only, if the gross amount of the Recovery is \$1,000,000.00, and costs and disbursements are \$100,000.00, then the fee to Counsel shall be \$250,000.00, the costs amount of \$100,000.00 shall be deducted from the balance of \$750,000.00, and the net balance owed to City or Town shall be \$650,000.00.

3. Explanation of Costs: The costs and disbursements which may be deducted from a Recovery include, but are not limited to, the following, without limitation: court fees, process server fees, transcript fees, expert witness fees and expenses, courier service fees, appellate printing fees, necessary travel expenses of attorneys to attend depositions, interview witnesses, attend meetings related to the scope of this Engagement Letter and the like, and other appropriate matter related out-of-pocket expenses.

4. Contingency Fee Only: In the event that any Recovery results in a monetary payment to City or Town that is less than the amount of the costs incurred and/or disbursements made by Counsel, City or Town shall not be required to pay Counsel any more than the sum of the full Recovery.

D. Nature of Contingent Fee: No monies shall be paid to Counsel for any work performed, costs incurred or disbursements made by Counsel in the event no Recovery to municipality has been obtained. In the event of a loss at trial due to an adverse jury verdict or a dismissal of the Lawsuit by the court, no monies shall be paid to Counsel for any work performed, costs incurred or disbursements made by Counsel. In such an event, neither party shall have any further rights against the other.

E. Disbursement of Recovery Proceeds to City or Town: The proceeds of any Recovery on City's or Town's behalf under the terms of this Engagement Letter shall be disbursed to City or Town as soon as reasonably practicable after receipt by Counsel. At the time of disbursement of any proceeds from a Recovery, City or Town will be provided with a detailed disbursement sheet reflecting the method by which attorney's fees have been calculated and the expenses of litigation that are due to Counsel from such proceeds. Counsel are authorized to retain out of any moneys that may come into their hands by reason of their representation of City or Town the fees, costs, expenses and disbursements to which they are entitled as determined in this Engagement Letter.

SCOPE OF SERVICES: Counsel will work with City or County in the collection of information necessary to form a good faith basis for filing a claim against the Opioid Companies. City or County hereby authorizes Counsel to file a lawsuit against one or all of the Opioid Companies ("Lawsuit") upon the terms and conditions set forth herein.

RESPONSIBILITIES OF LEGAL COUNSEL: Counsel will prosecute the Lawsuit with diligence and keep City or Town reasonably informed of progress and developments, and respond to City's or Town's inquiries. City or Town understands and agrees that all fees paid to Counsel shall be as set forth in this Engagement Letter. City or Town agrees to cooperate with Counsel in the gathering of information necessary to investigate and prosecute the Lawsuit. The following additional terms apply to the relationship between the municipality and Counsel:

A. Counsel shall remain sufficiently aware of the performance of the legal counsel team and the performance of one another to ascertain if each firm's handling of the Lawsuit conforms to the Rules of Professional Conduct. Counsel shall be available to City or Town regarding any concerns on the part of the municipality relating to the performance of Counsel. Counsel shall at all times remain ethically and financially responsible to the City or Town for the services of Counsel set forth herein.

B. As set forth above, City's and Town's responsibility for attorney fees and expenses is contingent upon the

successful outcome of the Lawsuit, as further defined below. The total contingent fee of 25% will be divided by and between Counsel. The City or Town agrees that the fee may be divided by agreement between lawyers who are not in the same firm and understands that each of the lawyers are assuming joint responsibility for the representation.

C. Counsel and municipality understand and agree that Counsel will all be considered attorneys for City or Town, that each and all of Counsel will adhere to the Rules of Professional Responsibility governing the relationship between attorney and client, and that each law firm assumes joint responsibility for the representation.

ACTUAL AND POTENTIAL CONFLICTS OF INTEREST AND WAIVER OF CONFLICT: As City or Town is aware, Counsel contemplate entering into the same arrangement as that set forth in this Engagement Letter with other Arkansas counties. As City or Town is also aware, some Counsel contemplate entering into a similar arrangement with Arkansas municipalities. Counsel believe that the goals and objectives of City or Town are aligned with the goals and objectives of all other counties and municipalities with respect to the Lawsuit. Counsel do not believe that to achieve the goals of the Lawsuit, either City or Town or another county or municipality must take a position that is adverse to the interests of the other. However, to the extent any issue may arise in this matter about which City or Town disagrees with another county or municipality, and one of you may wish to pursue a course that benefits one but is detrimental to the interest of the other, we cannot advise City or Town or assist City or Town or any other county or municipality in pursuing such a course. That is to say, Counsel cannot advocate for the municipalities individual interests at the expense of the other counties or municipalities that Counsel represent in a Lawsuit. Counsel do not believe that this poses a problem because City's and Town's interests are currently aligned with the other counties and municipalities that are or may be in the Lawsuit. Counsel are confident that their representation of the municipality will not be limited in this matter by representation of any other county or municipality, but City or Town should consider these consequences of joint representation in deciding whether to waive this potential conflict. In addition to the material limitation discussed above, there are other consequences for City or Town in agreeing to joint representation. Because each county or municipality would be a client of Counsel, Counsel owe equal duties of loyalty and communication to each client. As such, Counsel must share all relevant information with all counties and municipalities who are clients in relation to the Lawsuit and Counsel cannot, at the request of one county or municipality, withhold relevant information from the other client. That is to say, Counsel cannot keep secrets about this matter among the counties and municipalities who are clients of Counsel with respect to the Lawsuit. Also, lawyers normally cannot be forced to divulge information about communications with their clients because it is protected by the attorney-client privilege. However, because City or Town would be a joint client in the same matter with other counties and municipalities, it is likely that were there to be a future legal dispute between County and other counties or municipalities that engage Counsel about this matter, the attorney-client privilege would not apply, and each would not be able to invoke the privilege against the claims of the other. Further, while City or Town's position is in harmony with other counties and municipalities presently, and the conflict discussed above is waivable, facts and circumstances may change. For example, County may change its mind and wish to pursue a course that is adverse to the interests of another county or municipality and the conflict may become unwaivable. In that case, depending upon the circumstances, Counsel may have to withdraw from representing either City or Town or another county or municipality and City or Town would have to bear the expense, if City or Town chooses, of hiring new lawyers who would have to get up to speed on the matter. City or Town is not required to agree to waive this conflict, and municipality may, after considering the risks involved in joint representation, decline to sign this Engagement Letter. By signing this Engagement Letter, City or Town is signifying its consent to waiving the potential conflict of interest discussed herein. Other than the facts and circumstances related to the joint representation of numerous counties and municipalities, Counsel are unaware of any facts or circumstances that would prohibit Counsel from providing the services set forth in this Engagement Letter. However, it is important to note that it is possible that some present and future clients of Counsel will have business relationships and potential or actual disputes with City or Town. Counsel will not knowingly represent clients in matters that are actually adverse to the interests of City or Town without City or Town's permission and informed consent. Counsel respectfully requests that City or Town consent, on a case by case basis, to counsel's representation of other clients whose interests are, or maybe adverse to, the interests of City or Town in circumstances where City or Town has selected other counsel and where counsel has requested a written conflict waiver from City or Town after being advised of the circumstances of the potential or actual conflict and City or Town has provided informed consent.

TERMINATION OF REPRESENTATION: This Engagement Letter shall cover the period from the date first indicated below until the termination of the legal services rendered hereunder, unless earlier terminated as provided herein. This Engagement Letter may be terminated by City or Town at any time, and in the event of such termination, neither party shall have any further rights against the other, except that in the event of a Recovery by City or Town against the Opioid

Companies subsequent to termination, Counsel shall have a statutory lien on any such recovery as provided by applicable law and further maintain rights in the nature of quantum meruit to recover fees, costs and expenses reasonably allocable to their work prior to termination. Counsel may withdraw as City's or Town's attorneys at any time for the following reasons:

A. If Counsel determine, in their sole discretion, that City or Town's claim lacks merit or that it is not worthwhile to pursue the Lawsuit further; or

B. For Good Cause. For purposes of this Paragraph, Good Cause may include City or Town's failure to honor the terms of the Engagement Letter, City's or Town's failure to follow Counsel's advice on a material matter, or any fact or circumstance that would, in the view of Counsel, impair an effective attorney-client relationship or would render continuing representation unlawful or unethical. If terminated for Good Cause, City or Town will take all steps necessary to free Counsel of any obligation to perform further, including the execution of any documents (including forms for substitution of counsel) necessary to complete withdrawal provided, however, that Counsel shall have a statutory lien on any Recovery as provided by applicable law and further maintain rights in the nature of quantum meruit to recover fees, costs and expenses reasonably allocable to their work prior to termination.

SETTLEMENT: City or Town has the authority to accept or reject any final settlement amount after receiving the advice of Counsel. City or Town understands settlements are a "compromise" of its claim(s), and that Counsel's fee, as set forth above, applies to settlements also. For example, if a settlement is reached, and includes future or structured payments, Counsel's fee shall include its contingent portion of those future or structured payments.

NO GUARANTEE OF RECOVERY: City or Town understands and acknowledges that dispute resolution through litigation often takes years to achieve. City or Town understands and acknowledges that there is no guarantee or assurances of any kind regarding the likelihood of success of the Lawsuit, but that Counsel will use their skill, diligence, and experience to diligently pursue the Lawsuit.

LIMITED LIABILITY: Reddick Moss Attorneys, and Cory Watson Attorneys are limited liability entities under Arkansas law. This means that if Counsel fails to perform duties in the representation of the municipality and that failure causes City or Town's damages, the firms comprising Counsel and the shareholder(s) or principals directly involved in the representation may be responsible to City or Towns for those damages, but the firm's other shareholders or principals will not be personally responsible. Counsel's professional liability insurance exceeds the minimum amounts required by the Arkansas Supreme Court for limited liability entities of similar size.

COMMUNICATION BY E-MAIL: Counsel primarily communicates with its clients via unencrypted internet e-mail, and this will be the way in which communications occur with City or Town. While unencrypted e-mail is convenient and fast, there is risk of interception, not only within internal networks and the systems used by internet service providers, but elsewhere on the internet and in the systems of our clients and their internet service providers.

FILE RETENTION AND DESTRUCTION: In accordance with Counsel's records retention policy, most paper and electronic records maintained are subject to a 10-year retention period from the last matter activity date or whatever date deemed appropriate. Extended retention periods may apply to certain types of matters or pursuant to County's specific directives. After the expiration of the applicable retention period, Counsel will destroy records without further notice to City or Town, unless City or Town otherwise notifies in writing.

MISCELLANEOUS: This Engagement Letter shall be governed by and construed in accordance with the laws of the State of Arkansas, without regard to conflicts of law rules. In the event of any dispute arising out of the terms of this Engagement Letter, venue for any such dispute shall be exclusively designated in the State of Arkansas, Circuit Court for Pulaski County, Arkansas, or in the United States District Court for the Eastern District of Arkansas. It is expressly agreed that this Engagement Letter represents the entire agreement of the parties, that all previous understandings are merged in this Engagement Letter, and that no modification of this Engagement Letter shall be valid unless written and executed by all parties. It is expressly agreed that if any term or provision of this Engagement Letter, or the application thereof to any person or circumstance, shall be held invalid or unenforceable to any extent, the remainder of this Engagement Letter, or the application of such term or provision to persons or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby; and every other term and provision of this Engagement Letter shall be valid and shall be enforced to the fullest extent permitted by law. The parties acknowledge that they

