

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

**IN RE: NATIONAL PRESCRIPTION
OPIATE LITIGATION**

BACKSTOP FUND FEE APPLICATION SUBMISSION
LOCKRIDGE GRINDAL NAEUN PLLP and GUSTAFSON GLUEK PLLC

Introduction

Counsel from Lockridge Grindal Nauen PLLP and Gustafson Gluek PLLC (together “LGN/GG”) represent thirteen Minnesota counties—Beltrami, Carlton, Carver, Douglas, Freeborn, Morrison, Mower, Olmsted, Ramsey, Steele, Waseca, Washington, and Wright. Counsel also represents Minnesota Prairie Health Alliance, a joint powers entity created by three counties to provide health and social services. In total, these Counties will receive over \$46 million in settlement funds. Because of this result, and for the reasons stated below, LGN/GG respectfully request that Special Master award Counsel fees totaling approximately 28.67% the projected Minnesota Backstop Fund. ¹

Firm Name(s)	Lockridge Grindal Nauen PLLP Gustafson Gluek PLLC
Client(s) Represented	Beltrami County, Minnesota Carlton County, Minnesota Carver County, Minnesota Douglas County, Minnesota Freeborn County, Minnesota Morrison County, Minnesota Mower County, Minnesota Olmsted County, Minnesota Ramsey County, Minnesota Steele County, Minnesota Waseca County, Minnesota Washington County, Minnesota Wright County, Minnesota Minnesota Prairie Health Alliance
Total Settlement Amount Obtained for Each Client ²	\$32,976,940.84 (Distributors Settlement) \$13,219,553.71 (Janssen Settlement)

¹ Counsel understands that the total settlement awards will be paid over a number of years. Similarly, the amount of fees received by Counsel are currently scheduled to be paid over a number of years.

² Amounts paid and projected to each county are listed separately on Exhibits A and B, along with total amounts paid and projected from the national contingency fund.

Total Attorney Fees Claimed for Each Client	\$4,946,541.13 (15% of client recovery Distributors Settlement) \$1,982,933.06 (15% of client recovery Janssen Settlement)
Total Attorney Fees (To Be) Awarded for Each Client From the National Contingency Fee Fund	\$2,016,849.08 (Distributors) \$456,191.51 (Janssen)
Total Attorney Fees Sought From Backstop Fund for Each Client	\$2,929,692.05 (Distributors) \$1,526,741.55 (Janssen)

1. *Copies of all documents submitted in support of any application to the National Contingency Fee fund and a copy of the final award of any fees.*

Attached as Exhibit C are the documents submitted by LGN/GG to the National Contingency Fee Fund. The final amounts awarded are reflected on Exhibits A and B.

2. *Copies of any applicable contingency fee contracts with Litigating Local Governments; and, certifications that said contingency fee agreements have been waived.*

LGN/GG’s contingency fee contracts are attached as part of Exhibit A, as are counsel’s submissions to the National Contingency Fee Fund. LGN/GG agreed to waive their right to collect contingency fees under their fee contracts in exchange for the right to recover attorney fees from the National Contingency Fee Fund and State Backstop Fund.

3. *A description of the complexity of the legal issues involved in the MDL Matter, In Re National Prescription Opiate Litigation, MDL 2804 and addressed by Counsel, work done by Counsel to directly benefit their Litigating Local Government clients, and the reasonableness and appropriateness of the fees requested in light of the considerations found in Minn. R. Prof. Cond. 1.5.*

LGN/GG began investigating the opioid crisis in 2016, and were engaged by various county attorneys, county commissioners, and administrators to discuss legal strategy and options for pursuing litigation against opioid manufacturers, distributors, and others responsible for the opioid crisis. At the time, there were significant questions about the viability of potential claims

and determining the proper defendants under different theories of liability for such an action. While many local and state governments chose to only pursue claims against opioid manufacturers such as Purdue, LGN/GG developed additional liability theories which were presented to our respective clients and ultimately set forth in the individual actions filed by the LGN/GG-represented counties.

Counsel researched and analyzed federal claims as well as Minnesota state-law claims that could be uniquely asserted by Minnesota counties. This included not only the broad, more common claims of public nuisance and unjust enrichment, but also the viability of Minnesota-specific claims. For example, in assessing nuisance claims, there were significant concerns raised about causation in light of potential intervening factors, including the learned-intermediary doctrine, the compounding and often overlapping impact of other drug use, and the connection between opioid addiction and harm to local governments.

Washington County Attorney Pete Orput was particularly interested in pursuing litigation as a tool to address the opioid crisis, and engaged with attorneys Yvonne Flaherty, David Asp, and Amanda Williams in 2017 to discuss theories relating to the roles of others in the opioid supply chain, such as drug distributors. County Attorney Orput was the “catalyst” for counties pursuing litigation in this area and engaged with LGN/GG to move the cases forward. *See* Kevin Featherly, *Meet the ‘catalyst’ behind the opioid the lawsuits*, Minnesota Lawyer, www.minnlawyer.com/2017/12/11/meet-the-catalyst-behind-the-opioid-lawsuits (Dec. 11, 2017); Exhibit D.

Counsel also traveled across the state to discuss the opioid crisis and legal strategies with county attorneys, law enforcement, public health officials, county administrators, and others. Each of these meetings required hours of preparation and advance research regarding the impact of the opioid crisis and abatement options for the individual county and its surrounding areas. In many

instances, this work involved multiple meetings with several county officials, followed by sessions with the respective county boards.

Following numerous individual meetings, Counsel presented a coordinated litigation approach and strategy for all interested Minnesota County Attorneys at the offices of the Hennepin County Attorney in October 2017. Following this meeting, individual counties made decisions on their individual representation and strategies and LGN/GG earned the privilege of representing thirteen Minnesota Counties in this important litigation.

LGN/GG worked with their clients to draft extensive Complaints detailing the effects that the opioid crisis had on each of the counties and setting forth the legal causes of action against the defendants. LGN/GG represented Ramsey County, Washington County, and Mower County in filing the first opioid complaints on behalf of *any* Minnesota government entity in November of 2017.

On December 12, 2017, the JPML determined that these cases should be centralized under 28 U.S.C. § 1407, and chose the United States District Court for the Northern District of Ohio to be home for this MDL. As a result, each of the Court ultimately transferred each of the Minnesota cases to the Northern District of Ohio for pretrial purposes.

Despite the sprawling nature of this matter, the MDL Court worked quickly and efficiently. As MDL cases moved into discovery, each Plaintiff (in this instance the individual litigating Minnesota Counties) was required to complete a Plaintiff Fact Sheet (PFS) which required detailed information from each municipality asserting claims in this matter. Counsel met with county representatives, interviewed department heads, and examined numerous data points and budgets to facilitate responses to the PFS and minimize any litigation burden to the counties.

LGN/GG also prepared periodic updates and attended meetings with the represented counties throughout the tenure of the litigation. With numerous defendants, multiple litigation tracks, bankruptcies, and, ultimately many separate settlement groupings, the litigation was complex. LGN/GG provided their clients' county attorneys and administration with tools to successfully navigate the complexities of this litigation and ultimately make recommendations to the boards. Indeed, tracking the motions, arguments, and orders for information relevant to the Minnesota counties' claims, translating the detail of the extensive court filings, and analyzing the specific impact of the orders for each county, was no small feat. Counsel utilized their decades of complex-litigation experience to parse through the massive court filings and, eventually, settlement agreements, to advise the counties. LGN/GG spent thousands of hours over the course of several years – all with no guarantee of payment – to ensure that the counties were fully apprised of their legal rights, updated on the litigation, and educated on the impact of the eventual settlements and abatement terms.

LGN/GG also provided resources to and educated the Association of Minnesota Counties (AMC) on the national litigation, abatement tools, and implications to non-represented Minnesota Counties. This work benefited not only LGN/GG's represented counties, but also counties throughout Minnesota that elected not to individually litigate their claims. Additionally, as settlements approached, LGN/GG spent significant amounts of time assisting AMC Executive Director Julie Ring and her staff in navigating the terms and benefits of settlement participation and coordinating information to be distributed to all counties throughout the State of Minnesota.

As settlements approached, the Minnesota Legislature enacted legislation that governed the distribution and use of opioid settlement funds that came to the State of Minnesota. Thus, LGN/GG worked in tandem with counsel for other government entities and with AMC toward the

goal of maximizing the ultimate recovery for *all* counties in Minnesota. LGN/GG spent many hours meeting with interested parties, including representatives from client counties and other non-litigating entities, to discuss the nuances of the proposed settlements and discuss options and how to best maximize the recovery for *all* counties.

Additionally, LGN/GG and Briol & Benson engaged the Attorney General to negotiate a separate settlement agreement in which *all* Minnesota counties (collectively) would receive a higher percentage of settlement funds from the State in exchange for their participation in the distributor and Janssen settlements. As a result, all counties received (and will continue to receive) larger sums from the settlements and the State of Minnesota was able to maximize its receipt of settlement funds because it had satisfied all settlement incentives in the national settlement agreements – all without running afoul of the Minnesota statute regarding opioid settlements. Indeed, the unification of the counties and the State produced an award of \$296 million for the cities, counties, and State of Minnesota. And, as a result of the afore-mentioned negotiations and extensive work by LGN/GG, the Minnesota counties (both represented and unrepresented) now receive 75% of all opioid settlement monies that come into the State of Minnesota.

In order to maximize the settlement awards to counties (both represented and unrepresented) LGN/GG (and the Briol firm) had numerous meetings with the State Attorney General Office regarding the county vs. State allocation of funds. Included in these negotiations were discussions regarding attorney fees. Indeed, all counsel had contingent fee contracts with the litigating counties. Also, the national settlements contained provisions for the payment of (1) common benefit and (2) an unknown amount of contingency fees, the latter of which would be available through a National Contingency Fee Fund – rather than being directly deducted from the counties' share of the settlement. However, during the course of negotiations with the State, and

in order to increase the percentage of funds going to the counties, counsel negotiated an agreement with the State regarding fees (i.e., the “Back Stop Agreement”). In sum, the Back Stop Agreement provided that Counsel could apply for fees from the National Contingency Fee Fund and, to the extent that Counsel did not receive a sum equal to 15% of its clients’ overall recovery, Counsel could seek further fees (not to exceed 15% in the aggregate) through the Back Stop Agreement. The Back Stop Agreement benefited the litigating counties in that any attorney fees awarded by the Special Master would effectively be borne by all counties (and not just the counties that retained counsel and/or litigated) as all counties received the benefit of the additional negotiations among LGN/GG, Briol & Benson, and the State of Minnesota.

LGN/GG clients will receive \$32,976,940.84 from the Distributor Settlement and \$13,219,553.71 from the Janssen settlement, for a total of \$46,196,494.55. However, based on projections from the National Contingency Fee Fund, LGN/GG will receive 6% in fees from the Distributor Settlement and 3% from the Janssen settlement. The Minnesota Backstop Fund is projected to total \$15,540,887 at the conclusion of all settlement payments. Thus, LGN/GG respectfully request an additional payment of 28.67% (in the aggregate) of the Minnesota Backstop Fund. This will result in a total payment equal to 15% of the recovery for LGN/GG clients. LGN/GG’s request for payment from the Minnesota Backstop Fund is reasonable and appropriate under Minnesota Rule of Professional Conduct 1.5. The rule expressly recognizes that the parties may agree to a contingent fee. Minn. R. Prof. Cond. 1.5 (a)(8). LGN/GG took the risk of investing significant time as well as expenses with the possibility of no recovery. LGN/GG’s work led to a meaningful recovery for Minnesota counties. Each client agreed to a contingent fee at twenty-five percent of the client’s recovery. Based on the ruling of Judge Polster in the MDL, the fees for all lawyers throughout the country were ultimately capped at 15%. Later, Counsel consented to

waive their contingent fee contracts in exchange for participation in the National Contingency Fee Fund and the Minnesota Backstop Agreement. Counsel are proud of the results obtained for the Minnesota Counties and state as a whole.

4. *The identity of the lawyers or legal professionals within Counsel’s firm who performed the work described in (3) above and;*

Firm	Name	Position
LGN	Yvonne Flaherty	Partner
LGN	David Asp	Partner
LGN	Charles Nauen	Partner
LGN	G. Ted Grindal	Partner
LGN	Elizabeth Peterson	Senior Counsel
GG	Daniel Gustafson	Partner
GG	Karla Gluek	Partner
GG	Amanda Williams	Partner
GG	David Goodwin	Partner
GG	Erick Taubel	Associate

5. *Any other information required for the Special Master’s assessment of the fee application under Section VI.G of the MOA or otherwise deemed relevant by Counsel.*

LGN/GG seek an award from the backstop fund that results in 15% of their county clients’ recoveries. The amount requested by LGN/GG is reasonable based on the work performed, as described above, risk inherent in this complex litigation, the novel legal theories, and the scope of counsel’s representation in this case. Moreover, LGN/GG assisted other counties (by working with the Association of Minnesota Counties, and, ultimately aided in securing an increased award for all counties and the State of Minnesota.

Dated: March 13, 2024

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and Wright County, Minnesota***