

**STATE OF MINNESOTA**

**COUNTY OF RAMSEY**

**DISTRICT COURT  
SECOND JUDICIAL DISTRICT  
Case Type: Other Civil  
(Consumer Protection)**

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State of Minnesota, by its Attorney  
General, Keith Ellison

File No. 62-cv-22-3970  
Hon. Laura E. Nelson

Plaintiff,

vs.

Johnson & Johnson; Janssen  
Pharmaceuticals, Inc.; Ortho-McNeil-Janssen  
Pharmaceuticals, Inc.; and Janssen  
Pharmaceutica, Inc.,

Defendants.

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State of Minnesota, by its Attorney  
General Keith Ellison,

File No. 62-cv-22-4001  
Hon. Laura E. Nelson

Plaintiff,

vs.

McKesson Corporation, Cardinal Health,  
Inc. and AmerisourceBergen Corporation,

Defendants.

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**INTERIM MOA BACKSTOP FUND ORDER**

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The above matters are before the undersigned Special Master<sup>1</sup> pursuant to the Amended Minnesota Opioids State-Subdivision Memorandum of Agreement (initially effective July 13, 2022) (MOA)<sup>2</sup> and the captioned Consent Orders (filed July 21, 2022). More specifically, Special Master Retired Judge Van de North is awarding legal fees to counsel who have properly applied for them from the Backstop Fund created under the MOA and pursuant to guidance relating to the Fee Applications timely submitted and available on the OAG's website.

The Fee Applicants are counsel for Minnesota cities and counties who have litigated Opioid related claims in a national mass action lawsuit. Settlement of this far-ranging national litigation resolved claims against Defendant manufacturers J&J and Janssen as well as Defendant distributors McKesson, Cardinal and AmerisourceBergen.<sup>3</sup>

Counsel appearing for the Fee Applicants are: Yvonne Flaherty and David Asp of Lockridge Grindal Nauen, PLLP; Amanda Williams and Daniel Gustafson of Gustafson

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<sup>1</sup> The Special Master is the Hon. Jack Van de North, a retired Ramsey County District Court Judge appointed by Minnesota Attorney General (OAG) Keith Ellison and former Hennepin County Attorney (HCAO) Micheal Freeman pursuant to the MOA in the spring of 2022. His duties are described at Section VI of the MOA and under a May 19, 2023 Professional and Technical Services Contract with the OAG.

<sup>2</sup> The history and role of the MOA and related documents prescribing a framework for the payment of reasonable legal fees as part of the National Opioid litigation settlement are discussed in the Memorandum attached to this Order.

<sup>3</sup> Settlements involving additional defendants in the MDL and claims by the clients of the Fee Applicants are anticipated in the future. 7% of those settlements will be used to replenish the Back Stop Fund. Applications for fees from the Fund associated with those settlement distributions will be addressed in future proceedings and Orders of the Special Master. The 15% cap on fees discussed here will apply to any future Awards from the Back Stop Fund.

Gluek, PLLC; Scott Benson of Briol & Benson, PLLC and o/b/o Motley Rice; Shayna Sacks of Napoli Shkolnik, PLLC; Seth Meyer of Keller Postman, LLC (f/k/a Keller Lenkner, LLC) and o/b/o Consovoy McCarthy, PLLC (f/k/a Consovoy McCarthy Park, PLLC) and Campbell Knutson, P.A.; and Charles Crueger of Crueger Dickinson, LLC and o/b/o Simmons Hanley Conroy, LLC; von Briesen & Roper, s.c.; Sieben Polk, P.A.; and Heley Duncan & Melander, PLLP.

In addition to these counsel for the Fee Applicant law firms, Assistant Attorneys' General Eric Maloney and Evan Romanoff appeared for the State of Minnesota and Assistant Hennepin County Attorney Devonna Wells appeared for Hennepin County. The Special Master also acknowledges the assistance of his colleague at the Larson • King law firm, Patrick O'Neill, III, in the preparation and drafting of the instant order.

Having carefully considered the fee Applications; the entire file; and, being fully advised, the Special Master enters the following **ORDER**:

1. BrownGreer<sup>4</sup> will be directed in a Final Order to be based on this Order and input from parties to distribute funds from the Minnesota Backstop Fund for the payment of attorney fees to the Fee Applicants.

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<sup>4</sup> BrownGreer is a nationally recognized, multi-disciplinary firm specializing in the administration of class and mass action settlements. It was designated by presiding Judge Polster in National Opioid litigation entitled: National Prescription Opiate Litigation, Case No. 170-MD-02804 (MDL). BrownGreer has created a database and computerized process pursuant to which settlement funds and legal fees are being distributed to parties and their lawyers throughout the United States. It has worked with counsel for the fee Applicants, the Special Master, the OAG and the HCAO to implement the MOA and Backstop Fund.

2. Preliminary conclusions as to the distribution of the funds directed in Paragraph 1 are contained in the attached Memorandum thereto which are all incorporated as part of this Order. In addition to the amount of the fee payments to counsel, the Memorandum will address compliance with the Fee Application Guidelines and the MOA.

3. Copies of this Order will be served by appropriate means on the Fee Applicant counsel, OAG, and HCAO, and all Fee Applications and supporting documents are also available on the OAG website.

4. Pursuant to the guidance regarding the processing of Fee Applications, all Fee Applicant counsel shall have thirty (30) days from the posting of this Order on the website within which to submit comments or objections regarding its terms to the Special Master.

5. Comments, objections, and the Final Order<sup>5</sup> shall also be posted on the OAG website.

**IT IS SO ORDERED.**

Dated: April 25, 2024

*s/ John B. Van de North, Jr.*

Hon. Jack Van de North (Ret.)  
Special Master

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<sup>5</sup> Additional information regarding the distribution of payments, payment schedule, and balance of the Backstop Fund will be incorporated in the Final Order.

## MEMORANDUM

*File Nos. 62-cv-22-3970 / 62-cv-22-4001*

### A. INTRODUCTION

This Memorandum provides the rationale for the Special Master's Interim Order to which it is attached. It does so by relying, in part, on key components of important documents which include Judge Polster's August 6, 2021 Order in the MDL, the MOA and Judge Nelson's Consent Orders. Taken as a whole, these documents reflect the work of scores of public officials from the State of Minnesota and various city and county officials, judges, special masters, private attorneys, and others who have addressed claims now settled in the MDL. The social, economic and personal harm caused by Opioids has been described as a nationwide addiction epidemic, is well documented and is well known to the attorneys and others participating in the instant matter.

Those MDL settlements required Defendants to pay \$26.0 billion to compensate local units of government throughout the United States for the alleged negligent and harmful manufacture and distribution of addictive pain killers known as Opioids. Minnesota received over \$300 million of the \$26.0 billion settlement.

The MDL Court and parties also fashioned a process to be used at the national and state levels to provide for the payment of legal fees in lieu of contingent fee contracts. Counsel for Minnesota local government units involved in the MDL (Fee Applicants here) and the OAG spent months negotiating how to implement Judge Polster's fee cap and proposed fee payment framework. Eventually, a 15% payment-capped alternative to

contingent fee contracts was incorporated in the final resolution of the MDL. It calls for the payment of legal fees at the national level and expressly contemplates the creation of individual state funds to further compensate attorneys up to the 15% level.

Included in the above referenced documents is the MDL court's thorough and thoughtful discussion of the need for a fair alternative to the contingent fee agreements entered into between Plaintiff local units of government and their lawyers for the payment of legal fees generated during the years of litigation leading to its settlement. Those contingent fee agreements called for the payment of 20-33.3% of MDL settlement proceeds by participating local units of government to their counsel. Each local unit of government entered into the contingent fee agreements with the knowledge that their private attorneys would receive an agreed upon percentage of the total recovery obtained, if any. Each law firm agreed to take on the risk associated with such an agreement, litigating these complex and far-ranging claims for years without any guarantee of payment for the work performed.

As part of the overall MDL settlements, \$640 million was set aside to compensate private attorneys nationwide, creating a National Attorney Fee Fund. To opt into the national fund, private attorneys representing local governments were required to waive their individual contingent fee contracts. In addition to requiring the attorneys to waive their contractual agreements, Judge Polster, presiding over the MDL, capped **all** fee recoveries, national and state, at 15%, finding that:

...Contingent fees in excess of 15% of the participant's Award under the Settlement Agreements is [sic] presumptively unreasonable. Accordingly, the Court caps all applicable contingent fee agreements at 15%.

[August 6, 2021 Polster Order at 1.] In support of the reasonableness of the 15% cap on all fees, Judge Polster highlighted the significance of the waiver of the contingent fee arrangements by those attorneys he had appointed to the Plaintiffs' Executive Committee (PEC) in compliance with his judicially imposed cap:

[The PEC attorneys] who have actually shouldered the enormous load in obtaining the Settlement Agreements (and expended well over \$100 Million in out-of-pocket expenses) have committed to waiving all of their contingent fee contracts and accepting instead the amount of contingent fees available from the Attorney Fee Fund. This amount is almost certain to be less than 10%.

[August 6, 2021 Polster Order at 4.] Notably, those PEC attorneys include the Motley Rice and Napoli Scholnik firms who are among the Fee Applicants in the present proceedings. Judge Polster also recognized that some states, including Minnesota, put Backstop Funds in place "designed to further incentivize [private attorneys] to waive their right to enforce contingent fee contracts and instead apply to the Attorney Fee Fund, by making additional funds available to compensate [those private attorneys.]" [*Id.*] The Minnesota Backstop Fund was one such fund, designed to "incentivize private attorneys to waive their right to enforce contingent fee agreements and instead apply to the National Attorney Fee Fund, with the goals of achieving greater subdivision participation and higher ultimate payouts to both states and local governments." [MOA at 9.] The Minnesota Backstop Fund has been and continues to be funded with a 7% share of each payment made to the "Local

Abatement Funds” from the National Settlement Agreements [MOA at 9.] The 7% funding mechanism for the MOA was stipulated to by the Fee Applicants herein and the OAG on behalf of the State of Minnesota.

To be eligible for payment from the Backstop Fund, the MOA requires that counsel submitting Fee Applications to the Special Master must (1) repudiate their contingent fee agreements with local government clients; (2) certify that they have already sought payment from the National Fee Fund; (3) received less than 15% of the total recovery; and (4) provide the Special Master with sufficient information to evaluate the reasonableness of the fee awards under Minn. R. Prof. Cond. 1.5. Counsel for all Fee Applicants in the present case have done so. Some applications were more robust and comprehensive than others. However, the Special Master has determined that all Fee Applicants have substantially complied with the requirements of the Fee Application Guidelines and the MOA.

**B. EXPLANATION OF DISTRIBUTIONS FROM THE BACKSTOP FUND IN RESPONSE TO THE PENDING FEE APPLICATIONS OF COUNSEL**

The Fee Applicants are legal counsel for seven Minnesota cities and 26 Minnesota counties, home to hundreds of thousands of Minnesotans affected by the opioid epidemic. In total, the Fee Applicants are responsible for delivering \$138,634,758.22 in total settlement funds for use in combatting the opioid epidemic and its effects in Minnesota. Additional distributions to other Minnesota cities and counties were in part a byproduct of the work done by the Fee Applicants on behalf of their clients. The total



amount of fees sought from the Backstop Fund by all Fee Applicants is a combined \$13,609,125.24. As of the date of this order, funds available in the Backstop Fund total \$4,137,541.90 and are projected to reach \$15,403,292.68 by July of 2038. Percentage based awards will be distributed in accordance with the existing settlement payment schedule.

### **Briol & Benson<sup>6</sup>**

Of the Fee Applicants, B&B represented the largest number of Minnesotans communities: (1) Dakota County; (2) Hennepin County; (3) Itasca County; (4) McLeod County; (5) Meeker County; (6) the City of Minneapolis; (7) Roseau County; (8) St. Louis County; (9) Sibley County, and (10) Winona County. B&B agreed with each individual unit of government to receive a 25% share of any total recovery from the MDL lawsuit. B&B committed significant firm resources to litigating the claims and representing each client through the years long pleading, discovery, motion practice, expert retention and identification, and settlement discussions. All told, B&B recovered \$74,346,631.38 on behalf of its ten clients. Its contingent fee agreement with its clients would have generated fees of \$18,586,657.85. Its total fee claim, capped at 15% of the total recovery, amounts to \$11,151,994.67. Of that potential recovery, B&B received \$4,297,745.26 from the National Fee Fund. B&B now seeks to recover \$6,854,249.41 from the Backstop Fund. In

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<sup>6</sup> Briol & Benson and Motley Rice submitted a joint Fee Application (collectively "B&B"). In total, dozens of attorneys and legal professionals at both law firms performed legal work on behalf of the ten Minnesota-based clients.

recognition of the significant and complex work performed by B&B on behalf of its ten clients and the successful recovery of over \$74 million, the Special Master grants B&B's request for attorney fees in full. This award amounts to 44% of the current Backstop Fund balance and projected balance through 2028.

### **Lockridge Grindal Nauen<sup>7</sup>**

LGN represented counties and cities across Minnesota, including (1) Beltrami County; (2) Carlton County; (3) Carver County; (4) Douglas County; (5) Freeborn County; (6) Morrison County; (7) Mower County; (8) Olmsted County; (9) Ramsey County; (10) Steele County; (11) Waseca County; (12) Washington County; (13) Wright County; and (14) Minnesota Prairie County Alliance.<sup>8</sup> LGN agreed with each of these local units of government to receive 25% of any final recovery from the MDL lawsuit. LGN traveled across the state to discuss litigation strategy prior to suit, worked to devise the legal theories employed by both LGN and public attorneys representing the state, participated in the discovery process, and also played a primary role in negotiating the settlement and the creation of the Backstop Fund itself. In total, LGN recovered \$46,196,494.55 for its clients. Its total fee claim, capped at 15% of the total recovery, amounts to \$6,929,474.19.

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<sup>7</sup> Lockridge Grindal Nauen and Gustafson Gluek submitted a joint Fee Application (collectively "LGN"). Five attorneys from each firm, including associates, partners, and senior counsel, performed work on behalf of the 13 municipalities.

<sup>8</sup> Minnesota Prairie County Alliance is a community and health services organization serving the counties of Dodge, Steele, and Waseca. Minnesota Prairie County Alliance did not receive a direct award of damages from the settlements, but will be responsible for administering many of the programs these counties employ to combat the opioid epidemic and its effects.

Of that, LGN received \$2,473,040.59 from the National Fee Fund, approximately 6% of the possible 15% maximum they would be entitled to. LGN now seeks \$4,456,433.60 from the Backstop Fund. In recognition of LGN's successful representation of its clients in the complex and historic MDL settlement, the Special Master grants LGN's request for attorney fees in full. This amount is still over \$2 million less than it would have been entitled to under its contingent fee contracts with its clients. This award amounts to 28.93% of the current Backstop Fund and projections.

### **Crueger Dickinson<sup>9</sup>**

Crueger Dickinson represented Anoka County in the MDL. Anoka is Minnesota's fourth most populous county with nearly 400,000 citizens. Crueger Dickinson contracted with Anoka County to receive 25% of the total proceeds awarded in the MDL in exchange for its legal services. Crueger Dickinson commenced suit on behalf of Anoka County on January 9, 2018 and represented its individual client through all phases of litigation, up to and including negotiation of the national settlement and the creation of the Backstop Fund. Crueger Dickinson recovered \$10,527,596.90 on behalf of Anoka County. Under the original contingent fee agreement, Crueger Dickinson would be entitled to \$2,631,899.23. Its total fee claim, capped at 15% of the total recovery, amounts to \$1,579,139.54. Of that, Crueger Dickinson received \$601,387.37 from the National Fee Fund, representing

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<sup>9</sup> Crueger Dickinson submitted a joint Fee Application, together with Simmons Hanly, Briesen Roper, Heley Duncan and Sieben Carey (collectively "Crueger Dickinson"). In total, 23 attorneys from the various firms worked on the claims brought on behalf of the city of Anoka.

approximately 1/3 of the total fees available. Crueger Dickinson now seeks \$977,752.17 from the Backstop Fund. In recognition of Crueger Dickinson's successful representation of Anoka County in the complex and historic MDL settlement, the Special Master grants Crueger Dickinson's request for attorney fees in full. The award also recognizes its leading role in assuring that all Minnesota counties benefitted from the MDL settlements. This award amounts to 6.34% of the current Backstop Fund and projections.

### **Napoli Shkolnik**

Napoli Shkolnik represented the City of St. Paul in the MDL. Napoli Shkolnik contracted with the City of St. Paul to receive 20% of the total proceeds awarded in the MDL in exchange for its legal services. St. Paul is Minnesota's capitol and second most populous city with over 300,000 citizens. Napoli Shkolnik represented the City of St. Paul through all phases of litigation, up to and including negotiation of the national settlement and the creation of the Backstop Fund. Napoli Shkolnik also represented other members of the class action and served on the MDL Plaintiffs' Executive Committee. Along with Motley Rice, the firm appears to have played a major role in pre-settlement litigation of test cases and settlement discussions at the national level that led to the favorable outcome for all cities and counties in Minnesota. Napoli Shkolnik recovered \$7,893,182.70 on behalf of the City of St. Paul. Its total fee claim, capped at 15% of the total recovery, amounts to \$1,183,977.40. Of that, Napoli Shkolnik received \$357,827.80 from the National Fee Fund. Napoli Shkolnik now seeks \$826,149.60 from the Backstop Fund. In

recognition of Napoli Shkolnik's significant contributions to the MDL as a whole and its advocacy on behalf of the City of St. Paul, the Special Master grants its fee request in its entirety. This award amounts to 5.36% of the total Backstop Fund and projections.

**Keller Postman<sup>10</sup>**

Keller Postman represented (1) City of Coon Rapids; (2) City of Duluth; (3) City of North St. Paul; (4) City of Proctor; (5) City of Rochester; (6) Pine County; and (7) Yellow Medicine County in the MDL. Keller Postman contracted with its various clients for a 33.3% share of any final recovery in exchange for its legal services. Keller Postman represented its seven clients from 2018 through final settlement and the creation of the Backstop Fund. Keller Postman agreed to waive its contingency fee contract and to receive less than half of the 33.3% recovery it contracted for. Keller Postman recovered \$6,780,852.69 on behalf of its seven clients. Its total fee claim, capped at 15% of the total recovery, amounts to \$1,017,127.90. Of that total, Keller Postman received \$522,587.44 from the National Fee Fund. Keller Postman now seeks to recover \$494,540.46 from the Backstop Fund. Keller Postman's waiver represents the most significant change in compensation, reducing its percentage recovery by 18.3%. In recognition of the degree of success Keller Postman achieved on behalf of its seven clients and the nature and complexity of the work involved in representing Keller Postman's seven clients, the Special Master grants Keller Postman's

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<sup>10</sup> Keller Postman submitted a joint Fee Application along with Consovoy McCarthy and Campbell Knutson (collectively "Keller Postman"). All told, eight attorneys and legal professionals at the various firms assisted in the representation of the seven Minnesota clients.

fee request in its entirety. This award amounts to 3.21% of the total Backstop Fund and projections.

### **CONCLUSION**

The Special Master endorses the wisdom and propriety of the 15% cap on fees to be awarded from the National Contingent Fee and Minnesota Backstop Funds as directed by Judge Polster. The cap and settlement-funded payment of fees in lieu of contingent fee contracts fairly compensates attorneys for their essential work in prosecuting the risky, complex, novel, and fiercely contested issues in the MDL. Judge Polster's approach, adopted here, also complies with the legal requirement that any fees awarded be reasonable under all the applicable facts of the case.

The Special Master recognizes the significant accomplishments of the Fee Applicants and the historic results obtained in the MDL on behalf of their individual clients and all Minnesotans.

J.B.V.