

May 29, 2024

**Via Email: [jvandenorth@larsonking.com](mailto:jvandenorth@larsonking.com)**

Judge Jack Van de North  
Larson King, LLP  
30 East Seventh Street, Suite 2800  
St. Paul, MN 55101

**Re: Minnesota Opioids Backstop Fund Fee Awards**

Dear Special Master Van de North:

At your request, we write this letter jointly to address the letter you received from Deputy Attorney General James W. Canaday dated May 15, 2024. Mr. Canaday requests that as part of the Minnesota Opioid Backstop Fund Fee Awards the Special Master should consider amounts that were awarded as part of the National Common Benefit Fund in addition to the consideration the Special Master has given to the amounts awarded from the National Contingency Fee Fund. Mr. Canaday is mistaken as to what the parties agreed to with regard to what is proper for the Special Master to consider in awarding backstop fund fees to counsel.

As Mr. Canaday correctly points out, a months-long process was involved in drafting the Minnesota Opioids State-Subdivision Memorandum of Agreement (MOA). Mr. Canaday is also correct that the Local Governments insisted on the creation of a “backstop fund” that would be used to pay outside counsel if funds received from the **Contingency Fee Fund** were insufficient to cover the amount that would be due under the contingency fee agreements with local governments subject to the 15 percent cap. Mr. Canaday is also correct to point out that there are two distinct portions of the National Attorney Fee Fund, the Contingency Fee Fund and the Common Benefit Fund.

Section VI of the MOA is very clear about the purpose of the Backstop Fund. Section VI reiterates that Judge Polster capped all of the applicable contingent fee agreements at 15 percent, reducing the amount of the contingent fee agreements that many of the attorneys in Minnesota had negotiated with their clients at a level of 25 percent or more in some cases. The MOA goes on to point out: “Judge Polster recognized that a state backstop fund can be 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.”

Section VI of the MOA is very specific when it refers to the National Attorney Fee Fund as a whole and when it refers to the Contingency Fee Fund portion of the National Attorney Fee Fund, purposely excluding the portion of the National Attorney Fee Fund that is composed of the Common Benefit Fund. Thus, in section VI D, the MOA states: “Any attorney fees paid from the Backstop Fund, together with any compensation received from the National Settlement Agreements’ **Contingency Fee Fund**, shall not exceed 15% of the total gross recovery of the Litigating Local Governments’ share of fund from the National Settlement Agreements. To avoid doubt, in no instance will Counsel receive more than 15% of the amount paid to their respective Litigating Local Government client(s) when taking into account what private attorneys receive from both the Backstop Fund and any fees received from the National Settlement Agreements’ **Contingency Fee Fund**.” (emphasis added).

Similarly, Section VI E provides: “A private attorney may seek payment from the Backstop Fund in the event that funds received by Counsel from the National Settlement Agreement’s **Contingency Fee Fund** are insufficient to cover the amount that would be due to Counsel under any contingency fee agreement with a Litigation Local Government based on any recovery Litigating Local Governments receive from the National Settlement Agreements.” (emphasis added).

With regard to what the Special Master is to consider in making an award from the Backstop Fund, Section VI G the MOA is equally clear that the Special Master is to consider what amounts private attorneys received from the Contingency Fee Fund alone. It states:

The special master will determine the amount and timing of any payment to Counsel from the Backstop Fund. The special master shall make one determination regarding payment of attorney fees to Counsel, which will apply through the term of the recovery from the National Settlement Agreements. In making such determinations, the special master shall consider the amounts that have been or will be received by the private attorney’s firm from the National Settlement Agreements’ **Contingency Fee Fund** relating to Litigating Local Governments; the contingency fee contracts; the dollar amount of recovery for Counsel’s respective clients who are Litigating Local Governments; the Backstop Fund Payment Cap above; the complexity of the legal issues involved in the opioid litigation; work done to directly benefit the Local Governments within the State of Minnesota; and the principles set forth in the Minnesota Rules of

Professional Conduct, including the reasonable and contingency fee principles of Rule 1.5.

(emphasis added). As demonstrated throughout the MOA, when the parties meant to refer to the National Attorney Fee Fund as a whole, they did so, and when they meant to refer to the portion of the National Attorney Fee Fund that included only Contingency Fee Fund, the agreement specified the Contingency Fee Fund. Here, the Special Master is tasked with only considering the amounts that have been received by the private attorneys' firms from the Contingency Fee Fund alone and that is exactly what the Special Master did in making your preliminary awards.

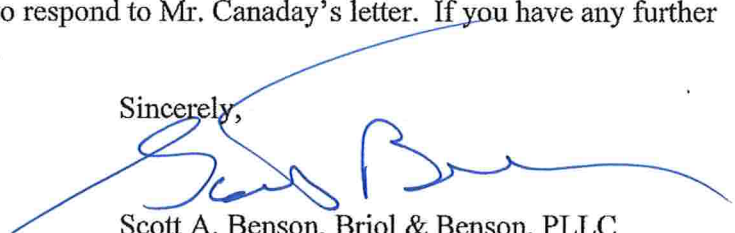
Exhibit R to the National Settlement Agreements states that when considering the amount to be awarded to attorneys under the Common Benefit Fund: "The Fee Panel may also consider additional fee recoveries the Attorney may potentially obtain, including, but not limited to, from State Back-Stop Agreements. . ." Exhibit R to the National Settlement Agreements, at Section II C(4). Fees that are awarded to attorneys from the Contingency Fee Fund and the Backstop Fund will be considered and used to limit recoveries from the Common Benefit Fund. It makes no sense for the Special Master to then again consider the recovery received from the Common Benefit Fund, which has already been reduced based on what will be received from the Backstop Fund. Consistent with Exhibit R, the parties to the MOA purposely excluded the Common Benefit Fund from consideration by the Special Master in determining the amount to be awarded by the Backstop Fund.

Finally, Mr. Canaday's letter seems to reference the final sentence of Section VI G of the MOA which states: "In the interest of transparency, Counsel shall provide information in their initial fee application about the total amount of fees that Counsel have received or will receive from the National Attorney Fee Fund related to the Litigating Local Governments." Mr. Canaday appears to believe that this would require counsel to provide the Special Master with the amount of fees that any firm anticipates it might receive from the Common Benefit Fund as well as the Contingency Fee Fund. However, the information that is required to be disclosed is the amount of fees Counsel have received or will receive **related to the Litigating Local Governments**, not any and all fees Counsel will receive from their involvement in the Opioid litigation representing other Plaintiffs. None of the Litigating Local Governments in Minnesota went to trial as a bellwether case or otherwise and so none of the fees Counsel may obtain from the Common Benefit Fund are related to the Litigating Local Governments. Moreover, there have been no Common Benefit Fund fees awarded at this time. The Minnesota firms, Briol & Benson and Campbell Knutson, have not sought any Common Benefit Fund fees for MDL work. Motley Rice, as MDL co-lead counsel, has a pending MDL Common Benefit Fund application, but it does not request fees for any of the Minnesota firms and the funds it requests are not related to any Minnesota Litigating Local Government.

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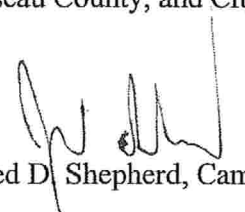
Thank you for allowing us to respond to Mr. Canaday's letter. If you have any further questions, do not hesitate to advise.

Sincerely,



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Attorneys for Hennepin County, St. Louis County,  
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cc: James Canaday, Esq (via email)  
Counsel of Record (via email)