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June 5, 2024

Jack Van de North  
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**VIA EMAIL**  
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**Re: Minnesota Opioids Backstop Fund Fee Awards**

Dear Special Master Van de North:

I write on behalf of the Minnesota Attorney General’s Office (“AGO”) in further support of the AGO’s May 15, 2024 letter regarding the Interim Fee Award and specifically to address certain statements in the May 29, 2024 letter from Scott Benson and Jared Shepherd, outside counsel for certain Minnesota subdivisions (the “May 29 letter”).

As a preliminary matter, the AGO appreciates that Mr. Benson and Mr. Shepherd—as well as counsel for Lockridge Grindal Nauen and Gustafson Gluek—submitted a response addressing the common benefit fee issue.<sup>1</sup> The AGO understands that Briol & Benson, Campbell Knutson, Lockridge Grindal Nauen, and Gustafson Gluek each confirmed that they are not seeking an award of common benefit fees, partially fulfilling the AGO’s request for transparency detailed in our May 15 letter.

Outside counsel, in their May 29 letter, however, argue against any requirement for all firms to disclose any common benefit fees awarded. Even if you decide not to consider common benefit fee awards—or the lack of disclosure thereof—in your evaluation of the reasonableness of the backstop fund awards, it is important that the AGO address some statements in the May 29 letter and I appreciate this opportunity to do so.

First, while Mr. Benson and Mr. Shepherd are correct that only the Contingent Fee Fund<sup>2</sup> awards count toward the 15% attorney fee recovery cap, the AGO’s position—supported by the MOA—is and has always been that counsel must disclose *all* payments from the National Attorney Fee Fund, not just contingency fee awards. Whether Minnesota clients’ cases were national “bellwether” cases is irrelevant. Common benefit fee awards earned by firms that represent Minnesota clients due to the firms’ work in national opioid litigation that was so impactful as to

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<sup>1</sup> No other law firms responded to the Special Master’s request, which is disappointing given their representation of public clients and the importance of ensuring full transparency and maximum resources for opioid abatement by Minnesota’s local governments.

<sup>2</sup> As defined in the AGO’s May 15, 2024 letter.

warrant a special fee award funded, in part, by monies that could otherwise be paid to the Minnesota clients, are most certainly “related to the Litigating Local Governments.”

Second, counsel’s statement that the parties to the MOA “purposely excluded” the common benefit fee awards from your consideration in determining backstop fund awards is wrong. The AGO believes the MOA requires its disclosure, and certainly the full fee award is relevant to your evaluation of the reasonableness of the Minnesota backstop fund awards under Minn. R. Prof. Conduct 1.5.

Third, outside counsel incorrectly argue the national fee panel’s potential consideration of fees awarded from Minnesota’s backstop fund means that it makes “no sense” for the Special Master to consider common benefit fee awards. But the common benefit fee award could not have been reduced or influenced by the Minnesota backstop fund since even your Interim Fee Award had not yet been issued when the national fee panel made preliminary common benefit fee awards. This position also ignores the MOA’s critical requirement that outside counsel must “first apply to the National Attorney Fee Fund.” MOA section VI.B. Even if the national fee panel’s criteria contemplate that state backstop funds go first, Minnesota’s MOA dictates otherwise.

Finally, and most importantly, when counsel for local governments insisted on including a backstop fund in the MOA, the AGO’s overarching interest was for the entire process to be transparent to the public.<sup>3</sup> And in the course of hard-fought negotiations over this very issue, all parties involved agreed to the transparency provision of the last sentence of section VI.G. of the MOA. It is disingenuous for counsel to now assert that they actually had no intention of disclosing common benefit fees. Outside counsel have provided no reason—and in fact there is none—not to disclose common benefit fund awards. This is particularly true given that the final awards will soon be made public by the national fee panel.

Therefore, the AGO continues to recommend that you require remaining outside counsel who did not respond to disclose their preliminary awards for common benefit fees—as well as any objections or requests to alter such awards—prior to making a final determination on attorney fees and issuing a final fee award. Alternatively, you may simply wait for the full information on common benefit fee awards to be public. To be clear, the AGO has no concern with you moving forward with final fee awards for responding firms that confirmed they are not seeking common benefit fees.

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<sup>3</sup> There is substantial public interest in the use of opioid settlement recoveries, which is appropriate. *See, e.g.,* Jessie Van Berkel, *Minnesota counties, cities slow to start spending \$50 million from opioid settlement*, STAR TRIBUNE, June 4, 2024, available at <https://www.startribune.com/minnesota-counties-cities-slow-to-start-spending-50-million-from-opioid-settlement/600370913/>; John Oliver, *Opioid Settlements*, LAST WEEK TONIGHT WITH JOHN OLIVER, HBO, May 12, 2024, available at <https://www.youtube.com/watch?v=Io0yuH1CiA0>.

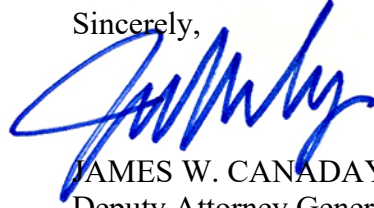
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Thank you again for your consideration, and please let me know if you have any questions or would like any additional information.

Sincerely,



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cc: Counsel of Record (via email)

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