

## Evan Romanoff

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**From:** Scott Benson <scott@briollaw.com>  
**Sent:** Monday, June 10, 2024 9:53 AM  
**To:** Van de North, Jack; O'Neill III, Pat  
**Cc:** Devona Wells; Eric Maloney; Joe Rice (jrice@motleyrice.com); Linda Singer (lsinger@motleyrice.com); Flaherty, Yvonne M.; Lewis, Kim; Mark Briol; jshepherd@ck-law.com; ssacks@napolilaw.com; ekd@cruegerdickinson.com; Asp, David W.; gpearson@fnlawfirm.com; James Canaday; Amanda Williams; Dan Gustafson; Evan Romanoff  
**Subject:** RE: Opioid Backstop Fund Applications - Interim Award

Judge Van de North,

I appreciate that the Attorney General's office submitted these attachments. As MDL 5476-1 makes clear, the Common Benefit Panel already considered the availability of the Minnesota backstop in awarding Common Benefit Funds, so that a further reduction would be contrary to the settlement protocols and Common Benefit process and unfairly penalize the firm in both the Funds. This is precisely why the parties agreed in the MOA to restrict what the Special Master may consider in awarding backstop Funds to consideration of the Contingency Fee Fund awards alone. Here is the pertinent language from the MDL 5476-1 – Preliminary Common Benefit Awards:

### 2. "Other" Compensation.

Another factor the Panel deemed very important is the total amount of compensation an applicant expects to receive for its work pursuing opioid claims, *other than* this Panel's Common Benefit Fee Award. This "other compensation" may include: (1) contingent fees payable in cases brought on behalf of Subdivisions and Tribes (whether through this MDL, in State court, or any other opioid litigation); (2) contingent fees payable in cases brought on behalf of States and other species of plaintiff (again, in State or federal court); (3) State court common benefit fees; (4) payments through State Back-Stops; and (5) any other compensation related to work on opioid cases. That this "other compensation" factor is important is highlighted by Exhibit R, itself, which addresses the topic at least twice. The very first eligibility criterion listed in Exhibit R mandates an applicant must make a thorough disclosure of all expected compensation connected to opioid litigation:

In connection with the process to be developed by the Fee Panel, ***any and all monies*** in attorney's fees, including referral fees, expenses paid, promises for payment, or any other Fee Entitlement, to any applicant in any opioid litigation shall be disclosed to the Fee Panel as a condition of participating in the Attorney Fee Fund and prior to an award from the Fee Panel. ***Any payment, expectation of payment or perceived entitlement*** to participate in a State Back-Stop Agreement or any other agreement reached with a Settling State or any Subdivision or any other source regarding payment of fees must be disclosed to the Fee Panel. Similarly, ***any right to payment from any other fund***, for example a fund for payment to lawyers representing Settling States or Tribal Nations or Subdivisions shall be disclosed to the Fee Panel. Exhibit R §II.G.1 at R-11-12 (emphasis added).

And the same factor is identified again in §II.C.4 at R-5:

The Fee Panel may also consider additional fee recoveries the Attorney may potentially obtain, including, but not limited to, from State Back-Stop Agreements,

representations of States or Tribal Nations, representations of other clients in opioids-related matters, or through the representation of Subdivision clients, whether they participated in the Distributor Agreement or not.

Underlying these provisions is the overarching ethical rule that “[a] lawyer shall not make an agreement for, charge, or collect an unreasonable fee.” Model Rules of Professional Conduct 1.5(a). Thus, the true measure of each applicant’s compensation is not simply the ratio of their Common Benefit Fee Award to their normalized, approved lodestar. Rather, the appropriate measure under Model Rule 1.5(a), and Exhibit R, is the Common Benefit Fee Award plus all other compensation. On the flipside, the Panel also examined the amounts that applicants *could* have received, had they not waived their contingent fee contracts. See Exhibit R §II.H.3.g at R-15 and §II.H.3.q at R-16.

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