



INVESTIGATIVE REPORT

David Cook, Inspector General

OFFICE: OFFICE OF THE INDIANA ATTORNEY GENERAL (OAG)
TITLE: CONTINGENCY FEE CONTRACT
CASE ID: 2023-10-0384
DATE: OCTOBER 23, 2023

After examination and review, Office of Inspector General Senior Staff Attorney Mark Mader reports as follows:

The purpose of this Report is to fulfill the statutory requirements of Ind. Code § 4-6-3-2.5 regarding contingency fee contracts. This statute requires the Inspector General (IG) to review proposed contingency fee contracts for possible conflicts of interests and potential Code of Ethics violations. Under this statute, an agency may not enter into a contingency fee contract unless the IG has made a written determination that entering into the contract would not violate the Code of Ethics, set forth in Ind. Code 4-2-6 and 42 IAC 1-5, or an agency rule concerning conflicts of interests.

On October 17, 2023, the Office of the Indiana Attorney General (OAG) notified the Indiana Office of Inspector General (OIG) that it wished to enter into a contingency fee contract (Agreement) with Salim Beasley, LLC (Counsel), a law firm. The term of this Agreement shall begin upon approval of the last State signatory and be effective for a period of three (3) years. This Agreement may be renewed for a period not to exceed the original term upon written agreement by both parties.

The purpose of the Agreement is to assist the State of Indiana in evaluating and pursuing potential causes of action against organizations or individuals who are alleged to be improperly inflating consumer prices for drugs such as “insulin” (“Defendants”). The OAG submits that Counsel holds significant experience in pursuing intricate litigation of this nature and will represent the State in noted causes which require specialized subject matter expertise.

The State will compensate Counsel through a contingency fee contract. The parties have agreed to the following contingency fees, which do not exceed the maximum percentages permitted by Ind. Code § 4-6-3-2.5(g):

- (1) Zero percent (0%) of any recovery that is two million dollars (\$2,000,000) or less.
- (2) Twenty-five percent (25%) of any recovery that exceeds two million dollars (\$2,000,000) and that is not more than ten million dollars (\$10,000,000).
- (3) Twenty percent (20%) of any part of a recovery of more than ten million dollars (\$10,000,000) and not more than fifteen million dollars (\$15,000,000).
- (4) Fifteen percent (15%) of any part of a recovery of more than fifteen million dollars (\$15,000,000) and not more than twenty million dollars (\$20,000,000).
- (5) Ten percent (10%) of any part of a recovery of more than twenty million dollars (\$20,000,000) and not more than twenty-five million dollars (\$25,000,000).
- (6) Five percent (5%) of any part of a recovery of more than twenty-five million dollars (\$25,000,000).

Pursuant to Ind. Code § 4-6-3-2.5(b) an agency is required to make a written determination before entering into the contract that the contingency fee representation is cost effective and in the public interest. The OAG must consider five factors when making this determination as outlined by Ind. Code § 4-6-3-2.5(c). Those factors are as follows:

- (1) Whether the agency has sufficient and appropriate legal and financial resources to handle the matter.
- (2) The time and labor required to conduct the litigation.
- (3) The novelty, complexity and difficulty of the questions involved in the litigation.
- (4) The expertise and experience required to perform the attorney services properly.

(5) The geographical area where the attorney services are to be provided.

The OAG made such a determination and considered all the factors outlined in the statute. The OAG explains that the matter to be handled by Counsel is based on work from the OAG's Complex Litigation Division (Complex Litigation), which is staffed by two full-time Deputy Attorneys General. Complex Litigation already has numerous active litigation and investigative matters pending on behalf of the State of Indiana.

According to the OAG, Complex Litigation possesses the knowledge and skills necessary to pursue consumer protection claims arising from Defendants' actions; however, the State's interests are best served by the efficient and specialized services of Counsel in a complex area of the law. The potential causes of action stem across various organizations with a presence in and outside of Indiana, and the OAG believes Counsel's services will be necessary to address a number of claims that may arise in the investigation. The OAG also notes that the legal services Counsel will perform require a detailed understanding of federal and state drug pricing regulations. The OAG believes the State's interests will be better served if assisted by Counsel who possesses specialized knowledge and practice in the area of pharmaceutical sales and distribution, governmental price controls for routinely utilized drugs, such as insulin, and consumer product litigation.

The OAG asserts the following: Counsel does not employ any state employees, no OAG employee or immediate family member of an OAG employee has a financial interest in Counsel or the Agreement, and no OAG employee is contracting with or will be supervising the work of a business entity in which a relative is a partner, executive officer or sole proprietor. The OAG also asserts that neither Counsel nor any employee of Counsel has a conflict of interests that would

violate either the Code of Ethics or any ethics rule of the Indiana Supreme Court or any statute or agency rule concerning conflict of interests.

Based on the information provided and after careful review and examination, the IG finds that entering into this contingency fee contract will not violate the Code of Ethics or any statute or agency rule concerning conflicts of interests. This Report is issued in compliance with the above noted statutory requirements.

Dated: October 23, 2023

APPROVED BY:

A handwritten signature in cursive script that reads "David Cook". The signature is written in black ink and is positioned above a horizontal line.

David Cook, Inspector General