



BRADFORD J. PHELPS
CHIEF DEPUTY ATTORNEY GENERAL

STATE OF ARKANSAS
THE ATTORNEY GENERAL
DUSTIN MCDANIEL

September 18, 2012

The Honorable Mary Anne Salmon
Co-Chair, Arkansas Legislative Council
State Capitol Building
Little Rock, AR 72201

The Honorable Tommy Lee Baker
Co-Chair, Arkansas Legislative Council
State Capitol Building
Little Rock, AR 72201

Dear Senator Salmon and Representative Baker:

I am writing to ask that you review the enclosed contract for legal services between the State of Arkansas, Bailey Perrin & Bailey and David Frederick, who works for the law firm of Kellogg, Huber, Hansen, Todd, Evans & Figel, P.L.L.C. The purpose of this engagement is to retain Mr. Frederick to handle the appeal for the State in the lawsuit against Janssen Pharmaceuticals and Johnson & Johnson. As you know, on April 11, 2012, the State obtained a \$1.2 billion judgment against these companies. The companies plan to appeal this matter. As you can see from the enclosed contract, the law firm of Bailey, Perrin and Bailey has agreed to pay all costs associated with this appeal. The State of Arkansas will not be required to pay any funds to Mr. Frederick or his firm. This arrangement was contemplated in 2007 when the Council approved the contract between the State and the law firm of Bailey Perrin & Bailey. Appendix C of that contract provided that Co-Counsel could be associated so long as that firm agreed to be bound by the terms of that agreement.

Our office is requesting that this contract be placed on the next available agenda for review. If you have any questions about this matter, or the specifics of the enclosed contract, please do not hesitate to contact myself or Chief of Staff, Blake Rutherford at 501-682-3632.

Our office has also submitted a copy of the enclosed contract to Governor Mike Beebe for approval.

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Many thanks for your attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "BP/CH", is written over the typed name.

Brad Phelps
Chief Deputy Attorney General

Enclosure

CC: Jillian Thayer, ALC Staff Attorney

KELLOGG, HUBER, HANSEN, TODD, EVANS & FIGEL, P.L.L.C.

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Personal and Confidential
Attorney-Client Communication

August 1, 2012

The Honorable Dustin McDaniel
Attorney General of the State of Arkansas
Office of the Attorney General
323 Center Street
Suite 200
Little Rock, Arkansas 72201

Ken Bailey, Esq.
Bailey Perrin Bailey
The Lyric Centre
440 Louisiana Street, Suite 2100
Houston, Texas 77002

Re: *State of Arkansas v. Johnson & Johnson*

Dear General McDaniel and Mr. Bailey:

This letter will confirm that our firm has undertaken to provide legal services in connection with representing plaintiff-appellee State of Arkansas in litigation on appeal from the Circuit Court of Pulaski County, Arkansas, Sixth Division in the above-referenced case. We appreciate your confidence in us. We understand that we will be providing legal services to the plaintiff-appellee, and that the firm of Bailey Perrin Bailey will be paying our fees and expenses, as set forth below. This letter will set forth, as required by the District of Columbia Bar Ethics Rules, the manner in which our services will be rendered to the State of Arkansas ("Client") and paid for by Bailey Perrin Bailey ("Third Party Payor").

A. Staffing

I will have primary responsibility for the representation and will utilize other firm lawyers and legal assistants as I believe appropriate in the circumstances. I presently charge for my

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services at an hourly rate of \$750 per hour. Depending on the nature of the research or other advice needed, I may obtain the assistance of other attorneys here, who charge at hourly rates from \$185 to \$700. I may also consult with more senior partners of the firm, whose billing rates range from \$750 to \$850 per hour. In addition to attorneys, this law firm employs staff members who are not licensed to practice law but who are capable of performing (under the supervision of a licensed attorney) legally related tasks requiring a lower level of experience or expertise to facilitate the efficient rendering of services. Ultimately, I will be responsible for assuring that the work is performed to your satisfaction. If at any time you believe our representation is not satisfactory in any regard, I encourage you to discuss any problems with me.

B. Billing

Our standard method of computing fees for legal services rendered is to record the time spent by each person performing services on a daily basis (in 1/4 hour minimum units), to total the time expended at the end of each month, and to apply to such time the particular individual's hourly rate.

The firm typically incurs costs in connection with legal representation. These costs may include such matters as long distance telephone charges, special postage, delivery charges, telecopy and photocopy charges and related expenses, travel expenses, meals and use of other service providers, such as printers. Except for specialized word processing services, we normally do not make a separate charge for secretarial work unless there is a situation that requires overtime staff work. Any normal out-of-pocket expenses advanced on the Client's behalf will be added to the statement for the month in which such expenses are recorded in our billing system. Invoices for individual expenses in excess of \$500 may be sent from time to time for immediate payment directly to our suppliers. We agree that Third Party Payor will be responsible for 100% of all out-of-pocket costs and expenses incurred in the appellate process.

C. Third-Party Payment

We understand, and the Client explicitly agrees, that eighty percent (80%) of all legal fees and 100% of all expenses incurred in connection with our representation of the Client in this matter will be advanced by the Third Party Payor, in accordance with our normal monthly invoices. Although the Third Party Payor will be paying the Client's legal expenses, we have advised you and the Third Party Payor and you both agree that the State of Arkansas is our client and we will perform services on the State's behalf. Under the District of Columbia Bar rules, an attorney may accept payment of his fees from someone other than his client so long as (1) the client consents after consultation and full disclosure, (2) the third party does not interfere with the lawyer's independence or professional judgment or with the client-lawyer relationship, and (3) the lawyer preserves client confidences in accordance with the ethical duty of confidentiality. Although we have discussed this, and you have consented to this arrangement, please do not hesitate to raise this issue with me if you have any additional questions or comments. By executing this engagement letter, the Client and the Third Party Payor agree to the foregoing and acknowledge that the Third Party Payor in its capacity as co-counsel to the State of Arkansas and Kellogg, Huber, Hansen, Todd & Evans, P.L.L.C. ("Kellogg Huber") owe a duty of loyalty to the

Client and to it alone, and not to each other. In addition, the Third Party Payor has incurred an obligation to pay the fees and expenses of Kellogg Huber under the terms of this agreement.

D. Contingency Fee Arrangement

In addition to the fee arrangement set forth above, the Client and the Third Party Payor agree that Kellogg Huber shall receive a fee of one (1%) percent of the total recovery (including any interest) in the case obtained through entry of any judicial order or settlement. Kellogg Huber's contingency fee amount shall be paid out of the Third Party Payor's share of the total recovery. Such contingency fee shall be payable promptly upon transmittal of funds by the defendants. This contingency condition shall take effect upon execution of this agreement, regardless of the stage of proceedings that has occurred.

E. Advice About Possible Outcomes

Either at the commencement or during the course of our representation, we may express opinions or beliefs concerning the litigation or various courses of action and the results that might be anticipated. Any such statement made by any partner or employee of our firm is intended to be an expression of opinion only, based on information available to us at the time, and should not be construed by you as a promise or guarantee.

F. Conflicts

We represent many other companies and individuals. It is possible that during the time we are representing you, some of our present or future clients will be engaged in transactions, or encounter disputes, with you. You agree that we may continue to represent, and may undertake in the future to represent, existing or new clients in any matter that is not substantially related to our work for you even if the interests of such clients in those matters are directly adverse to you. We agree, however, that your advance consent to conflicting representations contained in the preceding sentence shall not apply in any instance where, as a result of our representation of the Client, we have obtained proprietary or other confidential information of a nonpublic nature that, if known to such other client, could be used in any such other matter by such client to the Client's material disadvantage.

G. Termination of Representation

This engagement consists of our representing plaintiff-appellee in *State of Arkansas v. Johnson & Johnson* in the appeal from the Circuit Court of Pulaski County, Arkansas, Sixth Division. We agree that our representation will terminate upon the final termination of the case through judgment, order, or settlement. Of course, we would be happy to represent the Client in any subsequent proceeding as to any other adverse party, but we would consider any such representation to be a separate matter for which a new engagement agreement would be necessary.

The Client may terminate our representation at any time by notifying us. Such termination of our services will not affect the Third-Party Payor's responsibility for payment of

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outstanding statements and accrued fees and expenses incurred before termination or incurred thereafter in connection with an orderly transition of the matter. If such termination occurs, your papers and property will be returned to you promptly upon receipt of payment for outstanding fees and costs. Our own files pertaining to the matter will be retained. These firm files include, for example, firm administrative records, time and expense reports, personnel and staffing materials, and credit and accounting records; and internal lawyers' work product such as drafts, notes, internal memoranda, and legal and factual research, including investigative reports, prepared by or for the internal use of lawyers.

We may withdraw from representation if you fail to fulfill your obligations under this agreement as permitted or required under any applicable standards of professional conduct or rules of court, or upon our reasonable notice to you. We expressly provide that nonpayment of our services by the Client will not be a sufficient reason for withdrawal. Any nonpayment by the Firm will be separately actionable as a breach of contract action governed by the laws of the District of Columbia, and the Third Party Payor expressly agrees to waive any jurisdictional or venue challenge to suit brought in the District of Columbia for nonperformance of the contract. The Third Party Payor also agrees that monthly billing statements will be incorporated into the contract for services by Kellogg, Huber, Hansen, Todd, Evans & Figel, P.L.L.C.

We look forward to working with you on the basis set forth in this letter. Should you have any questions about our practices and procedures, please let me know.

For your convenience, we have enclosed multiple originals of the letter. Please sign and return one of the originals, and keep the other for your records. Thank you.

Very truly yours,

KELLOGG, HUBER, HANSEN, TODD,
EVANS & FIGEL, P.L.L.C.

BY: David C. Frederick
David C. Frederick

Agreed to and accepted by:

Dustin McDaniel, Attorney General of Arkansas (Date)

Ken Bailey for Bailey Perrin Bailey (Date)