



STATE OF ALABAMA  
OFFICE OF THE ATTORNEY GENERAL

STEVE MARSHALL  
ATTORNEY GENERAL

February 2, 2018


501 WASHINGTON AVENUE  
MONTGOMERY, AL 36130  
(334) 242-7300  
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Re: Determination of Necessity, Ala. Code § 41-16-72(1)(f)(2)  
*State of Alabama v. Purdue Pharm, L.P., et al.*

The Attorney General has determined that entering into a contingency fee contract with the Beasley Allen and Prince Glover & Hayes law firms to litigate the State's claims against Purdue Pharma is both cost-effective and in the public interest for the following reasons:

1. *Geographic Area:* The Attorney General has determined that the State should file its complaint in the federal district court for the Middle District of Alabama. This means that Alabama's case will be transferred to the federal multidistrict court in Cleveland, Ohio for pre-trial matters, including discovery, before being returned to Alabama for trial in Montgomery. Accordingly, the potential geographic area involved in this case includes the entire State of Alabama, Cleveland, Ohio, and any location of the Sixth and Eleventh Circuit Courts of Appeals.
2. *Amount of Time and Labor:* The Attorney General expects the preparation of the State's case to take a significant amount of time and labor. State and private attorneys logged tens of thousands of hours preparing to litigate the State's case against BP resulting from the 2010 Gulf Oil Spill. We expect the present litigation to require similar time and effort.
3. *AG Resources:* The Attorney General does not believe that his Office presently possesses sufficient and appropriate legal and financial resources to handle this matter without hiring private counsel on a contingency basis. It is not presently possible for the Office to handle a case of this magnitude on its own, given the requisite time, cost, and geographic scope. Nor can the Office/State afford to pay outside counsel on an hourly/periodic basis.
4. *Previous Experience:* The two firms with whom the Attorney General intends to contract have previous experience representing governments and handling complex legal matters. For example, Beasley Allen represented the Governor in the litigation against BP and worked closely with the Attorney General in preparing the State's case. Combined, the two firms possess more than 80 lawyers and 200 support staff.

The Attorney General has instructed both firms that he retains complete control over the course and conduct of the case and that the firms shall (if possible) seek payment of their contingency fees directly from the Purdue Defendants, so that the State's recovery is not diminished.

  
Corey L. Maze  
Special Deputy AG for Litigation

STATE OF ALABAMA       )  
MONTGOMERY COUNTY    )

## **PROFESSIONAL SERVICES CONTRACT**

This contract is entered into by and between Steve Marshall, Attorney General of the State of Alabama (hereinafter, "Contracting Agency" or "State"), Rhon E. Jones of the law firm of Beasley Allen Crow Methvin Portis & Miles, P.C., and Joshua P. Hayes of the law firm Prince Glover & Hayes (hereinafter "Attorneys" or "Private Counsel"). Contracting Agency and Attorneys agree as follows:

### **1. PURPOSE**

This Agreement is necessary to pursue claims for injuries and damages against Purdue Pharma, Inc., Purdue Pharma L.P. and related Purdue entities ("Defendants") related to losses and costs incurred by the State of Alabama.

### **2. DETERMINATION OF NECESSITY**

The Contracting Agency has determined that this contingency fee contract is both cost-effective and in the public interest. Pursuant to Section 41-16-72(1)(f)(2) of the Code of Alabama, the Contracting Agency has also determined:

- A. The Contracting Agency does not presently possess sufficient and appropriate legal and financial resources to handle the matter without a contingency contract.
- B. This matter is expected to take a significant amount of time and labor, and involves both novel and complex issues of law and fact.
- C. The geographic areas in which the services will be provided include, but may not be limited to, States within the Sixth and Eleventh federal circuits.
- D. Both Beasley Allen and Prince Glover & Hayes law firms have previous experience representing state governments and handling complex and novel legal matters.

### **3. SCOPE AND TERMS OF LEGAL SERVICES**

The following terms shall govern the scope and services to be provided by Attorneys and shall fulfill the addendum requirement of Section 41-16-72 of the Code of Alabama:

- A. The Attorney General shall designate at least one attorney from the Beasley Allen and Prince Glover & Hayes law firms as Deputy Attorneys General for the limited purpose of executing the duties described in this contract. All persons designated as Deputy Attorneys General in this matter shall conform to the requirements set forth in

Section 31-13-9 of the Code of Alabama and to the Attorney General's standard guidelines and requirements for Deputy Attorneys General.

- B. Notwithstanding Section 3(A), a government attorney or attorneys designated by the Attorney General will retain complete control over the course and conduct of this matter. This control shall include, but not be limited to, the following:
  - (i) A government attorney or attorneys designated by the Attorney General to have supervisory authority will be personally involved in overseeing the litigation.
  - (ii) A government attorney or attorneys designated by the Attorney General retains veto power over any decisions made by a private attorney.
  - (iii) After giving reasonable notice to private counsel, any Defendant subject to the litigation may contact the lead government attorney directly. Private counsel shall have the right to participate in such discussions with the lead government attorney.
  - (iv) A government attorney or attorneys designated by the Attorney General to have supervisory authority shall attend all settlement conferences.
  - (v) Decisions regarding settlement of the case shall be reserved exclusively to the discretion of the Attorney General or his designated government attorney.
- C. Private Counsel shall satisfy all requirements set forth in Section 41-16-72(1)(f)(9) governing the creation, retention, and inspection of records.

#### 4. EXPENSES AND FEES

- A. The Attorneys shall be reimbursed for fees and expenses arising from their work from any recovery, by settlement or judgment. If no recovery is obtained, the State will not owe Attorneys fees, expenses, or any other compensation. Attorneys waive the ability to seek monthly litigation expenses from the State as provided in Section 41-16-72(1)(f)(4).
- B. If Attorneys obtain settlement or judgment for the State, the State will pay to Attorneys the following fee:
  - (i) Twenty-two percent of any recovery of up to ten million dollars (\$10,000,000); plus
  - (ii) Twenty percent of any portion of such recovery between ten million dollars (\$10,000,000) and twenty-five million dollars (\$25,000,000); plus
  - (iii) Sixteen percent of any portion of such recovery between twenty-five million dollars (\$25,000,000) and fifty million dollars (\$50,000,000); plus

- (iv) Twelve percent of any portion of such recovery between fifty million dollars (\$50,000,000) and seventy-five million dollars (\$75,000,000); plus
- (v) Eight percent of any portion of such recovery between seventy-five million dollars (\$75,000,000) and one hundred million dollars (\$100,000,000); plus,
- (vi) Seven and one-tenth (7.1) percent of any portion of such recovery exceeding one hundred million dollars (\$100,000,000).

Notwithstanding the foregoing percentages, the aggregate fee paid to Attorneys from any recovery paid by Defendants shall not exceed fifty-three and one-third percent of the statutory maximum imposed by Section 41-16-72 of the Code of Alabama.

- C. If this agreement is terminated before the case is resolved, Contracting Agency gives Attorneys a lien against any subsequent recovery in this case in an amount sufficient to reasonably compensate Attorneys for their time and expenses. Under no circumstance can the award under this paragraph exceed the fee limitations imposed by Section 4(B) of this Agreement.
- D. If a settlement amount has been negotiated by Attorneys on behalf of Contracting Agency at the time that this agreement is terminated, Attorneys will have a lien upon any subsequent recovery equal to the applicable percentage in the fee schedule contained in paragraph 4(B), plus expenses incurred or an amount sufficient to reasonably compensate Attorneys for their time spent on the case and expenses. Under no circumstance can the award under this paragraph exceed the fee limitations imposed by Section 4(B) of this Agreement.
- E. In the event that an agreement to settle the State's case occurs within 180 days from the date that this contract is signed by the Contracting Agency, Attorneys shall be entitled to one half of the fee percentages specified in paragraph 4(B), plus payment of Attorneys' outstanding costs and expenses. In the event that an agreement to settle the State's case occurs between 181 days from the date that this contract is signed by Contracting Agency and the last day of calendar year 2018, Attorneys shall be entitled to three-quarters of the fee percentages specified in paragraph 4(B), plus payment of Attorneys' outstanding costs and expenses. Under no circumstance can the award under this paragraph exceed the fee limitations imposed by Section 4(B) of this Agreement.
- F. It is understood that Attorneys have made no promises or guarantees to Contracting Agency regarding the potential outcome or success of the case. Attorneys have explained the risks that are an inherent part of litigation and Contracting Agency understands that such risks exist.

- G. As used in paragraph 4, "Recovery" means the total recovery (after expenses/costs) whether by settlement, arbitration award, court judgment following trial or appeal, or otherwise. "Net recovery" shall include, without limitation, the following: (1) the then present value of any monetary payments made to the Contracting Agency; and (2) the fair market value of any non-monetary property and services to be transferred and/or rendered for the benefit of Contracting Agency; and (3) any attorney's fees recovered by Contracting Agency as part of any cause of action that provides a basis for such an award. "Recovery" may come from any source, including, but not limited to, the adverse parties to the action and/or their insurance carriers and/or any third party, whether or not a part of the action. The payment of legal fees from (2) above would be subject to agreement between Contracting Agency and Attorneys. If Contracting Agency and Attorneys disagree as to the fair market value of any non-monetary property or services as described above, Attorney and Contracting Agency agree that a binding appraisal will be conducted to determine this value.
- H. If possible, Attorneys shall seek payment of the fees and expenses described herein directly from Defendant(s), separate from and/or in addition to the State's recovery, via agreement or court order. If Defendants do not pay the entirety of Attorneys' fees and expenses via agreement or court order, any remaining fees or expenses due to Attorneys pursuant to this Agreement shall be paid from the State Treasury from the funds recovered as a result of this Agreement, within thirty days of receipt thereof.

5. MODIFICATIONS

Termination of the Attorneys' services under this Agreement must be made in writing and be signed by both the Attorney General and the Governor. Any other changes or modifications to this Agreement must be made in writing and have the consent of both the Attorney General and the Attorneys.

6. NOT TO CONSTITUTE A DEBT OF THE STATE

It is agreed that the terms and commitments contained herein shall not be constituted as a debt of the State of Alabama in violation of Article 11, Section 213 of the Constitution of Alabama, 1901, as amended by Amendment No. 26. It is further agreed that if any provision of this Contract shall contravene any statute or Constitutional provision or amendment, either now in effect or which may, during the course of this Contract, be enacted, then that conflicting provision in the Contract shall be deemed null and void.

7. CONTRACTOR NOT ENTITLED TO MERIT SYSTEM BENEFITS

Under no circumstances shall the Attorneys be entitled to receive the benefits granted to state employees under the Merit System Act.

2/2/18  
DATE

Steve Marshall  
Attorney General Steve Marshall

2/2/18  
DATE

Rhon E. Jones  
Rhon E. Jones, on behalf of Beasley, Allen, Crow, Methvin, Portis & Miles, P.C.

02/02/18  
DATE

Joshua R. Hayes  
Joshua R. Hayes, on behalf of Prince Glover & Hayes