



## COMMISSION ORDER

STATE OF MISSOURI }  
County of Franklin } ss.

Tuesday, October, 16, 2018  
Contract/Agreements

**IN THE MATTER OF APPROVING  
AND AUTHORIZING THE COUNTY  
OF FRANKLIN TO ENTER INTO  
AN AGREEMENT WITH COUNSEL  
REGARDING THE OPIOD CRISIS**

**WHEREAS**, President Donald Trump declared on October 25, 2017, that the opioid crisis is a national emergency, stating: "It is a serious problem the likes of which we have never had"; and

**WHEREAS**, The County Commission of Franklin County is the policy-determining body of Franklin County; and

**WHEREAS**, the County Commission has the authority to take action to protect the public health, safety, and welfare of the citizens of Franklin County; and

**WHEREAS**, there exists a serious public health and safety crisis involving opioid abuse, addiction, morbidity, and mortality in Franklin County; and

**WHEREAS**, the diversion of legally produced controlled substances into the illicit market causes or contributes to the serious public health and safety crisis involving opioid abuse, addiction, morbidity, and mortality in Franklin County; and

**WHEREAS**, the violation of any laws of Missouri or of the United States of America controlling the distribution of a controlled substance is inimical, harmful, and adverse of the public welfare of the citizens of Franklin County and constitutes a public nuisance; and

**WHEREAS**, the County Commission of Franklin County has the authority to abate, or cause to be abated, any public nuisance including those acts that significantly interfere with the public health, safety, and welfare of the citizens of Franklin County; and

**WHEREAS**, Franklin County expended, is expending, and will continue to expend in the future, County public funds to respond to the serious public health and safety crisis involving opioid abuse, addiction, morbidity, and mortality in Franklin County; and

**WHEREAS**, the County Commission of Franklin County may sue to obtain any money due the County; and

**WHEREAS**, the County Commission of Franklin County has received information that indicates that the manufacturers and wholesale distributors of controlled substances in Franklin County may have violated state and federal laws and regulation that were enacted to prevent the diversion of legally produced controlled substances into the illicit market and to prevent the misuse of such drugs; and

**WHEREAS**, the County Commissioners of Franklin County has an affirmative, statutory duty to take suitable and proper measures to prosecute a suit on behalf of the County:

Duty of County Commissioners of Franklin County to prosecute and defend suit. It shall be the duty of the County Commissioners of each of the counties of this State to take and order suitable and proper measures for the prosecuting and defending of all suits to be brought by or against their respective counties, and all suits which it may become necessary to prosecute or defend to enforce the collection of all taxes charged on the state assessment; and

**WHEREAS**, the County Counselor also has an affirmative duty to commence civil actions on behalf of the County where, as here, the people of Franklin County are concerned:

Powers and duties of County Counselor.

(a) The duty of each County Counselor shall be:

(1) To commence and prosecute all actions, suits, indictments and prosecutions, civil and criminal, in the circuit court, in which the people of the State or county may be concerned.

**WHEREAS**, the County Counselor has the power to procure the necessary services in fulfilling his or her mandatory statutory duties; and

**WHEREAS**, in order to fulfill these mandatory duties imposed by statute, and or ordinance we find, and the County Counselor has found, that the citizens of this County will benefit from retention of outside counsel to investigate and pursue, as appropriate, claims against the manufacturers and distributors of controlled substances in this County, on a contingent fee basis, wherein there is no attorney fee or reimbursement of litigation expenses if there is not recovery; and

**WHEREAS**, there is a substantial need for the legal services; and

**WHEREAS**, the legal services cannot be adequately performed or provided solely by the attorneys and supporting personnel of the state governmental entity or by the attorneys and supporting personnel and another state governmental entity; and

**WHEREAS**, the legal services cannot reasonably be obtained from attorneys in private practice under a contract providing only for the payment of hourly fees, without regard to the outcome of the matter, because of the nature of the matter for which the services will be obtained and because the County does not have appropriated funds available to pay the estimated amounts required under a contract providing only for the payment of hourly fees; and

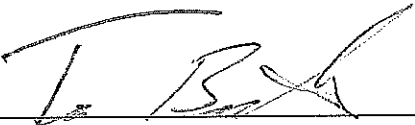
**IT IS THEREFORE ORDERED**, by the County Commission of Franklin County, Missouri that the Commission hereby declares that opiate abuse, addiction, morbidity and mortality has created a serious public health and safety crisis in Franklin County, Missouri and is a public nuisance.

**IT IS FURTHER ORDERED**, that the County Commissioners of Franklin County, Missouri hereby authorize to the extent necessary the County Counselor to retain John Garvey of the Law firm Carey Danis & Lowe, 8235 Forsyth Blvd., Ste. 1100, St. Louis, MO 63105, Charles Hurth of Franklin County, Derrick Good of Jefferson County and such other legal counsel as needed, as Counsel to represent the County and where appropriate the State, to investigate and if appropriate, pursue in state or federal court all civil remedies which may be afforded under law as against the manufacturers and distributors in the chain of distribution of controlled substances who have caused or contributed to the public nuisance and serious public health and safety crisis involving opioid abuse, addiction, morbidity, and mortality in the County of Franklin, with the compensation therefore on a contingent fee basis, in

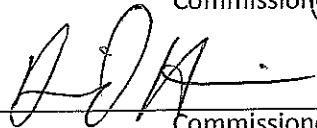
concert with the contingent fee agreement that is designated as "Authority to Represent" and for which all members of the Commission of Franklin County are authorized to execute the afore stated contingent fee agreement, the same of which is identified as Exhibit A and attached hereto and made a part hereof in its entirety.

**IT IS FURTHER ORDERED**, that the County Commission of the County of Franklin, Missouri hereby finds and determines that all formal actions relative to the passage of this Order were taken in an open meeting of this Commission, and that all deliberations of this Commission which resulted in formal action, were taken in meetings open to the public, in full compliance with all applicable legal requirements.

**IT IS FURTHER ORDERED**, that the County shall, and the officials, agents and employees of the County are hereby authorized and directed to, take such further action, and execute and deliver such other documents, certificates and instruments as may be necessary or desirable to carry out and comply with the intent of this Order and that a copy of this Order be provided to Debbie Door, County Clerk, Mark Piontek, County Counselor, Jack Garvey Attorney at Law, Charles A. Hurth, III, Attorney at Law, and Derrick Good, Attorney at Law.

  
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Presiding Commissioner

  
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Commissioner of 1<sup>st</sup> District

  
\_\_\_\_\_  
Commissioner of 2<sup>nd</sup> District

## AUTHORITY TO REPRESENT

RE: **Franklin County, Missouri civil suit against those legally responsible for the wrongful distribution of prescription opiates and damages caused thereby.**

Franklin County MISSOURI (hereinafter "Client") hereby retains the law firm of CAREY, DANIS & LOWE, on a contingent fee basis, to pursue all civil remedies against those in the chain of distribution of prescription opiates responsible for the opioid epidemic which is plaguing Franklin County, Missouri, including, but not limited to, filing a claim for public nuisance to abate the damages caused thereby, failure to warn, negligence, negligence per se, civil conspiracy and that the Defendants worked in concert with each other. John F. Garvey, Esq. (MO Bar # 35879) of the law firm CAREY, DANIS & LOWE, shall serve as Lead Counsel. Client authorizes lead counsel to employ and/or associate additional counsel, with consent of Client, to assist Lead Counsel in the just prosecution of the case. Client consents to the participation of the following firms:

Carey Danis & Lowe  
8235 Forsyth Blvd., Ste. 1100  
St. Louis, MO 63105

Charles Hurth  
301 E. Main St.  
Union, MO 63084

Derrick Good  
301 Main Street  
Hillsboro, MO 63050

In consideration, Client agrees to pay twenty-five percent (25%) of the total recovery (gross) in favor of the Client as an attorney fee whether the claim is resolved by compromise, settlement, or trial and verdict (and appeal). The gross recovery shall be calculated on the amount obtained before the deduction of costs and expenses. Client grants Attorneys an interest in a fee based on the gross recovery. If a court awards attorneys' fees, Attorneys shall receive the "greater of" the gross recovery-based contingent fee or the attorneys' fees awarded. There is no fee if there is no recovery.

CAREY DANIS & LOWE, hereinafter referred to as the "Attorneys," agree to advance all necessary litigation expenses necessary to prosecute these claims. All such litigation expenses, including the reasonable internal costs of electronically stored information (ESI) and electronic discovery generally or the direct costs incurred from any outside contractor for those services, will be deducted from any recovery after the contingent fee is calculated. There is no reimbursement of litigation expenses if there is no recovery.

The Client acknowledges this fee is reasonable given the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly, the likelihood this employment will preclude other employment by the Attorneys, the fee customarily charged in the locality for similar legal services, the anticipated (contingent) litigation expenses and the

anticipated results obtained, the experience, reputation, and ability of the lawyer or lawyers performing the services and the fact that the fee is contingent upon a successful recovery.

This litigation is intended to address a significant problem in the community. The litigation focuses on the wholesale distributors and their role in the diversion of millions of prescription opiates into the illicit market which has resulted in opioid addiction, abuse, morbidity and mortality. There is no easy solution and no precedent for such an action against this sector of the industry. Many of the facts of the case are locked behind closed doors. The billion dollar industry denies liability. The litigation will be very expensive and the litigation expenses will be advanced by the Attorneys with reimbursement contingent upon a successful recovery. The outcome is uncertain, as is all civil litigation, with compensation contingent upon a successful recovery. Consequently, there must be a clear understanding between the Client and the Attorneys regarding the definition of a "successful recovery."

The Attorneys intend to present a damage model designed to abate the public health and safety crisis. This damage model may take the form of money damages or equitable remedies (e.g., abatement fund). The purpose of the lawsuit is to seek reimbursement of the costs incurred in the past fighting the opioid epidemic and/or recover the funds necessary to abate the health and safety crisis caused by the unlawful conduct of the wholesale distributors. The Client agrees to compensate the Attorneys, contingent upon prevailing, by paying 25% of any settlement/resolution/judgment, in favor of the Client, whether it takes the form of monetary damages or equitable relief. For instance, if the remedy is in the form of monetary damages, Client agrees to pay 25% of the gross amount to Attorneys as compensation and then reimburse the reasonable litigation expenses. If the remedy is in the form of equitable relief (e.g., abatement fund), Client agrees to pay 25% of the gross value of the equitable relief to the Attorneys as compensation and then reimburse the reasonable litigation expenses. To be clear, Attorneys shall not be paid nor receive reimbursement from public funds. However, any judgment arising from successful prosecution of the case, or any consideration arising from a settlement of the matter, whether monetary or equitable, shall not be considered public funds for purposes of calculating the contingent fee. Under no circumstances shall the Client be obligated to pay any Attorneys fee or any litigation expenses except from moneys paid by defendant(s) pursuant to the resolution of the Client's claims. If the defendant(s) expend their own resources to abate the public health and safety crisis in exchange for a release of liability, then the Attorneys will be paid the designated contingent fee from the resources expended by the defendant(s). Client acknowledges this is a necessary condition required by the Attorneys to dedicate their time and invest their resources on a contingent basis to this enormous project. If the defendant(s) negotiate a release of liability, then the Attorneys should be compensated based upon the consideration offered to induce the dismissal of the lawsuit.

The division of fees, expenses and labor between the Attorneys will be decided by private agreement between the law firms and subject to approval by the Client. Any division of fees will be governed by the Missouri Rules of Professional Conduct including that: (1) the division of fees is in proportion to the services performed by each lawyer or, by written agreement with the client, each lawyer assumes joint responsibility for the representation; (2) the Client is advised of and does not object to the participation of all the lawyers involved; and (3) the total fee is reasonable. In the event that the contingent fee portion of this agreement is determined to be unenforceable for any reason or the Attorneys are prevented from representing Client on a contingent fee basis, Client agrees to pay a reasonable fee for

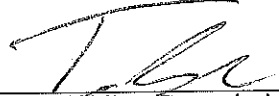


the services rendered, but only from and in an amount that does not exceed the moneys paid by defendant(s) pursuant to the resolution of the Client's claims.

Lead Counsel shall appoint a contact person to keep the Client reasonably informed about the status of the matter in a manner deemed appropriate by the Client. The Client at all times shall retain the authority to decide the disposition of the case and maintain absolute control of the litigation.

Upon conclusion of this matter, Lead Counsel shall provide the Client with a written statement stating the outcome of the matter and, if there is a recovery, showing the remittance to the client and the method of its determination. The closing statement shall specify the manner in which the compensation was determined under the agreement, any costs shall not exceed fifty percent (50%) of the overall award to Franklin County either through settlement or verdict and judgment. The closing statement shall be signed by the Client and each attorney among whom the fee is being divided.

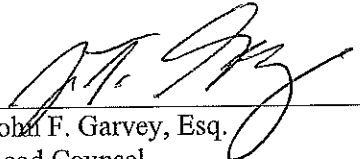
Nothing in this Agreement and nothing in the Attorneys' statement to the Client may be construed as a promise or guarantee about the outcome of this matter. The Attorneys make no such promises or guarantees. Attorneys' comments about the outcome of this matter are expressions of opinion only and the Attorneys make no guarantee as to the outcome of any litigation, settlement or trial proceedings.

SIGNED this 16<sup>th</sup> day of OCTOBER, 2018.

  
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Presiding Commissioner  
  
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First District Commissioner  
  
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Second District Commissioner

Accepted:

CAREY, DANIS & LOWE

By:   
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John F. Garvey, Esq.  
Lead Counsel

10-22-18  
Date