City of Duluth
Attorney's Office

411 West First Street • Room 410 • Duluth, Minnesota • 55802-1198
218-730-5490 • Fax: 218-730-5918 • www.duluthmn.gov

An Equal Opportunity Employer

April 5, 2019

Seth A. Meyer
Associate
Keller Lenkner
150 N. Riverside Plaza, Suite 4270
Chicago, IL 60606

RE: National Prescription Opiate Litigation

Dear Mr. Meyer:

Enclosed please find a fully executed copy of the March 12, 2019, Representation Agreement with the City of Duluth.

If you need anything further, please don't hesitate to contact our office.

Thank you.

Sincerely,

Stina LaPaugh
Paralegal

Enclosure

Keller | Lenkner

March 12, 2019

Gunnar Johnson, City Attorney
Room 410 City Hall
411 West First Street
Duluth, MN 55802

Re: Representation of the City of Duluth Concerning Opioid Matter

Dear Gunnar:

**1. Parties**

This agreement is between the City of Duluth ("you"), the client, and Keller Lenkner LLC, Consovoy McCarthy Park PLLC, and Hoff Barry, P.A., the attorneys.

**2. Scope of Representation**

The attorneys agree to represent you in prosecuting claims against Defendants Purdue Pharma L.P., Purdue Pharma Inc., the Purdue Frederick Company, Inc., Insys Therapeutics, Inc., Teva Pharmaceutical Industries, Ltd., Teva Pharmaceuticals USA, Inc., Cephalon, Inc., Johnson & Johnson, Janssen Pharmaceuticals, Inc., Endo Health Solutions Inc., Endo Pharmaceuticals, Inc., Actavis plc, Actavis, Inc., Watson Pharmaceuticals, Inc., and Watson Laboratories, Inc. (collectively, "Manufacturer Defendants"); McKesson Corporation, Cardinal Health, Inc., and AmerisourceBergen Corporation (collectively, "Distributor Defendants") (all together, "Defendants") arising from potential violations of law in the marketing, sale, and distribution of opioids, in turn causing economic harm to the City of Duluth (the "Matter").

The attorneys shall have no obligation to represent you in any other matter and no obligation to handle any appeal of a decision in this matter.

**3. Attorneys' Fees**

a. No Recovery, No Fee – You will not owe the attorneys anything unless there is a recovery, payment to you, or settlement in your case. This is a contingent fee agreement. The attorneys' fees described below are contingent on you receiving a recovery, payment to you, settlement or award in this case.

b. Low Value or Pick-Off Settlement Offers – You have the right to accept or not any settlement offer made to you. You also recognize that the defendant or defendants may offer you a lump sum that is less than the expenses the attorneys have invested in prosecuting your case or less than the expenses and reasonable value of the attorneys' fees incurred in prosecuting your case. Defendants sometimes do this to put pressure on attorneys or to try to escape litigation



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without properly compensating plaintiffs or their lawyers. The attorneys will inform you if the attorneys believe you have been offered such a settlement. You recognize and agree that in the event you accept such a settlement, a large portion, perhaps a very large portion, may be required to reimburse the attorneysfor expenses and attorneys' fees. The attorneys will not recommend that you accept such a settlement.

c. Contingent Fee – The fee to be paid will be a percentage of the "gross recovery." The term "gross recovery" means the total of all amounts received by settlement, arbitration award or judgment, including any award of attorney's fees. The fee will be calculated after the deduction of any costs and expenses as set forth below. The attorney's fee shall be calculated as follows: 33.33% of the gross recovery after deduction of costs and expenses attribuatable to you.

e. Fee the Result of Negotiation, Not Set By Law – You acknowledge that this fee is the result of an arm's length transaction between you and the attorneys. You recognize that the attorneys have made substantial investments of time and resources to pursue this case on your behalf and bear a substantial risk of recovering nothing at all or nothing for a substantial amount of time. You agree that that risk justifies the fees under this agreement. You acknowledge that this fee is not set by law.

g. Fee Due at Settlement or Payment – The fees and expenses described by this agreement are due as soon as any claims are settled or any payments made to you.

h. Division of Fee Among Attorneys – You understand and agree that attorneys will divide any fee among themselves, based upon the division of responsibility between the attorneys' firms: An undivided 15% will be paid to Keller Lenkner and an undivided 15% will be paid to Hoff Barry, P.A, and the remaining 70% of the contingent fee will be divided among Keller Lenkner LLC and Hoff Barry, P.A. on the basis of relative time and effort that the firms devoted to the case utilizing a modified lodestar+multiplier. The remaining 70% shall receive the same positive or negative multiplier applied to each firm's lodestar to determine its pro rata share of the fees to be paid.

**4. Expenses Attributable to You**

You authorize attorneys to incur reasonable expenses to pursue your potential claims. The attorneys will pay for expenses as they are incurred with the understanding that they will be repaid out of any recovery, as described above.

Expenses could include, but are not limited to, testifying and expert witness fees (including for evaluation, reports, and/or testimony), filing fees, court or arbitration costs, fees for court reporters and transcripts, deposition expenses, legal research expenses, commercial and private transportation expenses, travel expenses (including lodging and meals), consultant fees,



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postage, long-distance telephone calls, messengers, record service fees, photocopying, preparation of exhibits, investigative fees and expenses, specialized outside counsel and service fees and expenses (e.g., probate, taxation, bankruptcy), costs associated with collecting judgments, structured settlement expenses, witness fees and mileage, subpoena fees, any expenses to assist with investigating or resolving third-party liens, and all other reasonable and necessary costs and expenses that the attorneys in their professional judgment determine to be reasonably necessary in connection with prosecuting or settling your claims. If the attorneys represent more than one client with potential claims similar to yours (which the attorneys intend to do) then the attorneys will apportion joint expenses on a pro rata basis between you and similar clients if those expenses can reasonably be viewed as benefitting you and the other client or clients.

Expenses in this case could be significant.

**5. Client's Duties**

Your cooperation is critical to the successful pursuit of your claims. You agree to perform the following duties:

c. Participation in Discovery – You may be required to locate and produce documents, to answer written questions, or appear at a time and place to answer questions under oath. You agree to make yourself available to do these things on reasonable notice.

d. Participation in Hearing – You agree to make yourself available to participate in a hearing on your claims on reasonable notice.

e. Document Preservation – You must not destroy, delete, or discard documents and other information sources in your possession that are relevant to your potential claims. This includes physical, paper documents and electronic documents like email or social media posts, whether on a computer, phone, or other device.

You agree and acknowledge that your failure to fulfill any of these duties is grounds for the attorneys to stop representing you.

**6. Third-Party Liens**

Certain third parties may have, or may assert in the future, liens on any recovery you might ultimately obtain by verdict, settlement or otherwise. You recognize and understand that any liens must be resolved and satisfied before the attorneys can distribute to you your portion of recovery from any settlement, judgment, or award. You acknowledge that the attorneys may engage the services of a company that specializes in resolving these types of liens, and that any fee paid to such company will be treated as an expense or advance under this Agreement.



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Satisfaction of liens could significantly reduce, or even eliminate entirely, any net proceeds to you from this matter. If any liens on the proceeds of this matter are asserted, you authorize the attorneys to hold in trust any funds the attorneys reasonably believe are or may be subject to any liens, until such liens are resolved and released.

**7. Attorneys' Right to Withdraw**

You acknowledge that the attorneys have the absolute right to stop representing you at any time if, in their professional judgment and consistent with their ethical responsibilities, they come to believe that your potential claims are unlikely to result in a recovery for any reason, including, but not limited to, the lack of a source of funds to pay your claims. In the event that the attorneys withdraw, the attorneys shall be responsible for expenses incurred through the date of the attorneys' withdrawal. If you ultimately recover on the claims discussed herein after the attorneys withdraw, the attorneys are entitled to quantum meruit of attorneys' fees and costs incurred prior to withdrawal from that recovery.

**8. Client's Right to Terminate Attorneys**

You may terminate attorneys at any time by written notice to the Attorneys. Such termination is subject to the Attorneys' Fees and Expenses provisions of this agreement.

**9. No Guarantee**

You acknowledge that the attorneys have not and will not provide any guarantee about the outcome of your claims.

**10. Potential Conflicts**

The attorneys intend to represent many clients with claims similar to yours. At this time, your interests and the interests of other clients align. The attorneys know of no conflicts of interest that would have an adverse impact on our representation of you. It is, however, possible that conflicts may arise in the future, including:

a. The attorneys discover that there is a limited pool of assets from which recovery is reasonably likely (for example, an insurance policy), and those assets are insufficient to pay all of our clients the full value of their claims.

b. A defendant offers an aggregate or "lump sum" settlement to all of our clients that does not specify the amount each client will receive.

c. A defendant offers to settle, but only if a certain percentage, or even all, of our clients accept the proposed settlement.



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The attorneys may also be required by the applicable rules of professional conduct to share material information about your claims and negotiating position with our other clients with similar claims. While the attorneys will try to avoid these issues if it is practical to do so, they might still occur. If any conflict of interest affecting you does arise, the attorneys will inform you promptly and work with you on how best to proceed in accordance with the applicable rules of professional conduct.

It is possible that during the course of this representation, one or more of our present or future clients will have disputes or transactions with you or otherwise engage in activity that conflicts with your interests. Except as to matters that are substantially related to our work for you, you agree that the attorneys may continue to represent or may undertake future representations of current or new clients, even if the interests of those clients are directly adverse to your own interests.

**11. Data Privacy**

In the course of representing you, the attorneys may learn facts about you, the defendants, or other parties, that could later be helpful in identifying or bringing a claim on behalf of another client or potential client. You agree that, so long as the attorneys adhere to the requirements of the Minnesota Government Data Practices Act, Minn. Stat. §§ 13.01, *et seq.*, the claim is not adverse to you, the attorneys adhere to the applicable rules of professional conduct, and the attorneys do not disclose your identity to anyone other than our employees, agents, or service providers, the attorneys may use information gained through their representation of you to identify or pursue a legal claim on behalf of another party.

**12. Association of Counsel**

You acknowledge that the attorneys will likely associate with other counsel to assist with your potential claims and authorize the attorneysto do so. You authorize the attorneysto associate other counsel as the attorneys see fit. As discussed above, it may be necessary to retain specialized outside counsel to assist with specialized questions such as probate, taxation, or bankruptcy. In that event, fees and expenses of these counsel will be treated as expenses advanced for your benefit. On the other hand, if the attorneys choose to associate other counsel to pursue the merits of your case, you agree that the attorneys may do so, the attorneys will be responsible for paying the associated counsel, and your fees will not increase as a result of any association with other counsel. If the attorneys intend to associate with other counsel in your case for either purpose, the attorneys will let you know promptly.

**13. Entire Agreement and Choice of Law**



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This Agreement contains the entire agreement of the parties. It cannot be modified or canceled except in writing signed by all parties. This Agreement will be construed in accordance with the laws of the State of Minnesota (including Minnesota choice-of-law principles).

**14. Venue**

In the event of any dispute, controversy, or claim between the attorneys (or their respective heirs, successors, assigns, or affiliates) arising out of, relating to, or in connection with your engagement of the attorneys (any of the foregoing, a "dispute"), you and the attorneys irrevocably and unconditionally agree that any such dispute shall be venued in the courts in the state of Minnesota.

**16. Power of Attorney**

No settlement shall be made without your approval and permission. Consistent with the attorney ethics rules and other requirements for powers of attorney, you grant the attorneysthe power of attorney to execute all documents connected with your claims, including pleadings, contracts, checks or drafts, settlement agreements, deposit of settlement funds in a trust account and disbursement of those funds, compromises, releases, verifications, dismissals, and orders, as well as all other documents that you could properly execute.

**17. No Tax or Benefit Advice**

It is possible that resolution of this case may result in a monetary payment to you. You acknowledge and agree that the attorneys cannot and will not provide legal advice regarding the tax and government benefit implications of receiving any settlement or sum of money.

**18. Authority to Sign**

You acknowledge that you have read this Agreement in its entirety, that you fully understand the terms and conditions of same, and that you agree to abide by its terms.

**19. Professional Liability Insurance**

The attorneys shall procure and maintain continuously in force professional malpractice liability insurance in an amount not less than $1,000,000.00 combined single limit in any year; and if the "Accord Form" of certificate is used, the words "endeavor to" shall be stricken therein. In the event that the professional malpractice liability insurance is in the form of "claims made" insurance, sixty (60) days' notice before any cancellation of modification shall be required; and in such event the attorneys agree to provide you with either evidence of new insurance coverage conforming to the requirements of this Paragraph which will provide unbroken protection to you, or, in the alternative, to purchase, at the attorneys' own cost, extended coverage under the old



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Keller | Lenkner

policy for the period the statute of repose runs; the protection to be provided by said "claims made" insurance shall remain in place until the running of the statute of repose for claims related to services provided under this agreement.

Sincerely,

Ashley Keller (Mar 26, 2019)

Keller Lenkner LLC

Will Consovoy (Mar 26, 2019)

Consovoy McCarthy Park PLLC

Jared Shepherd
Jared Shepherd (Mar 26, 2019)

Hoff Barry, P.A.

**AGREED AND ACCEPTED**

The City of Duluth

By [its Mayor]: _____

Attest [City Clerk]: _____

Countersigned [City Auditor]: _____

Approved as to form [City Attorney]: _____

Date: 4/4/19



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# 2019-03-12 Duluth Retainer [SAM]

Final Audit Report 2019-03-26

| | |
|---|---|
| Created: | 2019-03-26 |
| By: | Seth Meyer (sam@kellerlenkner.com) |
| Status: | Signed |
| Transaction ID: | CBJCHBCAABAAzAPrzuUZ-u_-lhHFhhG_cJZdATvmXod_ |

## "2019-03-12 Duluth Retainer [SAM]" History

Document created by Seth Meyer (sam@kellerlenkner.com)
2019-03-26 - 2:12:20 PM GMT- IP address: 47.44.84.3

Document emailed to Ashley Keller (ack@kellerlenkner.com) for signature
2019-03-26 - 2:13:15 PM GMT

Document viewed by Ashley Keller (ack@kellerlenkner.com)
2019-03-26 - 2:15:31 PM GMT- IP address: 67.53.60.247

Document e-signed by Ashley Keller (ack@kellerlenkner.com)
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Document emailed to Jared Shepherd (jshepherd@hoffbarry.com) for signature
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Document viewed by Jared Shepherd (jshepherd@hoffbarry.com)
2019-03-26 - 2:47:08 PM GMT- IP address: 23.25.147.25

Document e-signed by Jared Shepherd (jshepherd@hoffbarry.com)
Signature Date: 2019-03-26 - 2:49:01 PM GMT - Time Source: server- IP address: 23.25.147.25

Signed document emailed to Seth Meyer (sam@kellerlenkner.com), Ashley Keller (ack@kellerlenkner.com), Will Consovoy (will@consovoymccarthy.com), and Jared Shepherd (jshepherd@hoffbarry.com)
2019-03-26 - 2:49:01 PM GMT

Adobe Sign

# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY): 3/6/2019

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER
GCG Risk Management Consultants LLC
Three Parkway North
Suite 500
Deerfield IL 60015

CONTACT NAME: Amy Nelson
PHONE (A/C, No, Ext): (847) 457-3000 FAX (A/C, No): (847) 457-3100
E-MAIL ADDRESS: amy.nelson@gcgfinancial.com

| INSURER(S) AFFORDING COVERAGE | NAIC # |
|---|---|
| INSURER A: Twin City Fire Insurance Company | |
| INSURER B: Sentinel Insurance Company | |
| INSURER C: Endurance American Specialty Insurance | |
| INSURER D: Admiral Insurance Company | |
| INSURER E: | |
| INSURER F: | |

INSURED
Keller Lenkner LLC
150 N Riverside Plz, 42nd Floor
Chicago IL 60606

COVERAGES CERTIFICATE NUMBER: CL193607720 REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

| INSR LTR | TYPE OF INSURANCE | ADDL INSD | SUBR WVD | POLICY NUMBER | POLICY EFF (MM/DD/YYYY) | POLICY EXP (MM/DD/YYYY) | LIMITS | |
|---|---|---|---|---|---|---|---|---|
| A | X COMMERCIAL GENERAL LIABILITY<br>CLAIMS-MADE / X OCCUR<br>GEN'L AGGREGATE LIMIT APPLIES PER:<br>X POLICY / PRO-JECT / LOC<br>OTHER: | | | 83SBAAA6497 | 2/8/2019 | 2/8/2020 | EACH OCCURRENCE | $ 1,000,000 |
| | | | | | | | DAMAGE TO RENTED PREMISES (Ea occurrence) | $ 1,000,000 |
| | | | | | | | MED EXP (Any one person) | $ 10,000 |
| | | | | | | | PERSONAL & ADV INJURY | $ 1,000,000 |
| | | | | | | | GENERAL AGGREGATE | $ 2,000,000 |
| | | | | | | | PRODUCTS - COMP/OP AGG | $ 2,000,000 |
| | | | | | | | | $ |
| A | AUTOMOBILE LIABILITY<br>ANY AUTO<br>ALL OWNED AUTOS / SCHEDULED AUTOS<br>X HIRED AUTOS / X NON-OWNED AUTOS | | | 83SBAAA6497 | 2/8/2019 | 2/8/2020 | COMBINED SINGLE LIMIT (Ea accident) | $ 1,000,000 |
| | | | | | | | BODILY INJURY (Per person) | $ |
| | | | | | | | BODILY INJURY (Per accident) | $ |
| | | | | | | | PROPERTY DAMAGE (Per accident) | $ |
| | | | | | | | | $ |
| A | X UMBRELLA LIAB / X OCCUR<br>EXCESS LIAB / CLAIMS-MADE<br>DED / X RETENTION $ 10,000 | | | 83SBAAA6497 | 2/8/2019 | 2/8/2020 | EACH OCCURRENCE | $ 5,000,000 |
| | | | | | | | AGGREGATE | $ 5,000,000 |
| | | | | | | | | $ |
| B | WORKERS COMPENSATION AND EMPLOYERS' LIABILITY<br>ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) Y/N<br>If yes, describe under DESCRIPTION OF OPERATIONS below | N/A | | 83WECAB2FPH | 2/8/2019 | 2/8/2020 | X PER STATUTE / OTH-ER | |
| | | | | | | | E.L. EACH ACCIDENT | $ 1,000,000 |
| | | | | | | | E.L. DISEASE - EA EMPLOYEE | $ 1,000,000 |
| | | | | | | | E.L. DISEASE - POLICY LIMIT | $ 1,000,000 |
| C | Professional Liability | | | LPL10014355600 | 2/8/2019 | 2/8/2020 | Each Claim/Aggregate | 5,000,000 |
| D | Excess Professional Liability | | | PLX1729806P1 | 2/8/2019 | 2/8/2020 | Aggregate | 5,000,000 |

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
Proof of Insurance

Approved as to Form:

CERTIFICATE HOLDER
Keller Lenkner LLC

CANCELLATION
SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE
Steve Felker/ANE

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The ACORD name and logo are registered marks of ACORD

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# City of Duluth

411 West First Street
Duluth, Minnesota
55802

## Certified Copy

## Resolution: 19-0188R

RESOLUTION APPROVING AN AGREEMENT WITH KELLER LENKNER LLC, CONSOVOY MCCARTHY PARK PLLC, AND HOFF BARRY, P.A. FOR LEGAL SERVICES REPRESENTING THE CITY IN REGARD TO FEDERAL MULITDISTRICT LITIGATION INVOLVING POTENTIAL VIOLATIONS OF LAW IN THE MARKETING, SALE, AND DISTRIBUTION OF OPIOIDS.

CITY PROPOSAL:

RESOLVED that the proper city officials are hereby authorized to execute an agreement, substantially the same as that attached hereto as Exhibit A, with Keller Lenkner LLC, Consovoy McCarthy Park PLLC, and Hoff Barry, P.A. under which the firms will represent the city in regard to federal multidistrict litigation involving potential violations of law in the marketing, sale and distribution of opioids by numerous pharmaceutical companies. Attorneys' fees and expenses will be paid from any funds recovered on behalf the city on a one-third contingency basis, payable from fund no. 610-036-1651-5304 (self-insurance fund, insurance accounts, general city, legal services).

This Resolution was adopted unanimously.
Absent: Councilor Fosle.

I, Chelsea Helmer, City Clerk of the City of Duluth, Minnesota, do hereby certify that I have compared the foregoing passed by the city council on 3/25/2019, with the original approved and that the same is a true and correct transcript therefrom.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the corporate seal of said city of Duluth.

Chelsea Helmer, City Clerk

By: _____

Duluth, Minnesota

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First Class Mail
ComBasPrice

U.S. POSTAGE PITNEY BO

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02 1W
0001403121 APR 05 20

THE CITY OF DULUTH MINNESOTA

CITY OF DULUTH ATTORNEY'S OFFICE
CITY HALL, ROOM 410
411 WEST FIRST STREET
DULUTH, MN 55802

Seth A. Meyer
Associate
Keller Lenkner
150 N. Riverside Plaza, Suite 4270
Chicago, IL 60606

PRESC
FIRST

ZIP 55802 $ 000.20
02 4W
0000337216 APR 05 2019