

BRIOL & BENSON, PLLC

A PROFESSIONAL LIMITED LIABILITY COMPANY
ATTORNEYS AT LAW

30 SOUTH NINTH STREET | 7TH FLOOR | MINNEAPOLIS, MINNESOTA 55402

www.briollaw.com

Scott Benson

Scott@briollaw.com

Admitted in Minnesota,
Wisconsin and the District
of Columbia

TELEPHONE (612) 756-7766

FACSIMILE (612) 337-5151

December 18, 2025

Via Email: jvandenorth@larsonking.com

Judge Jack Van de North
Larson King, LLP
30 East Seventh Street, Suite 2800
St. Paul, MN 55101

Re: Minnesota Opioids Backstop Fund Fee Awards

Dear Special Master Van de North:

This letter responds to your December 12, 2025 letter requesting “additional facts and argument regarding the difference between the Wave 2 fees your clients are expecting based on estimates from the National Contingent Fee Fund and the fees being sought from the Minnesota Backstop Fund. . . I am asking counsel to submit a short (nor more than 2 pages) analysis that explains why it would be reasonable for me to award higher fees from the Minnesota Backstop Fund when the state and national applications are presumably similar (identical?).”

The short answer is that each of the three settlements in Wave 2 (CVS, Walgreens, Walmart) set forth in Exhibit R the total amount of attorneys’ fees funds that would be provided by the settling defendants. In each case, the amount was split between the Common Benefit Fund (60 percent) and the National Contingency Fee Fund (40 percent). In order to apply for funds from the Attorneys’ Fee Funds, counsel must have Qualifying Representations of Participating Litigating Subdivisions. Pursuant to Section II.G of Exhibit R, counsel had to certify yearly that they meet eligibility criteria such as waiving the enforcement of fee agreements, certifying counsel are not paying referral fees, etc.

In determining how much to award applicants from the National Contingency Fee Fund, Section II.H.7 of Exhibit R provides: “With respect to the Contingency Fee Fund, the Fee Panel



shall: a. Review the applications of all Attorneys seeking compensation from the Litigating Subdivision Fee Fund, including determining eligibility for each Attorney as set forth in Section II.G. b. Apply the Mathematical Model in Exhibit A. c. Use such allocations to determine refund amounts owed to Walgreens from the Attorney Fee Fund, and inform Walgreens and the MDL PEC of all such adjustments.” The mathematical formula provided in Exhibit A to Exhibit R provides: “In general terms, allocation of the Contingency Fee Fund shall be made by (1) determining the amount of the Settlement Fund that is attributable to each Participating Litigating Subdivision; (2) making certain adjustments to these amounts based on when the Subdivision filed suit and the terms of the applicable fee contract; and (3) dividing the Contingency Fee Fund proportionately among counsel for each Participating Litigating Subdivision based on the amounts calculated in subpart 2.” I have attached the Exhibit R to the Walgreens Settlement which is virtually the same form for the CVS and Walmart settlements.

The determination of the amount paid out of the National Contingency Fee fund is not based on any qualitative analysis of the results obtained for the clients, the novelty of the questions presented, or any other criteria other than the amount of money obtained by the Litigating Subdivision, an adjustment based on when the Subdivision filed suit and the terms of the fee contract, and the amount of money in the Contingency Fee Fund. Your question as to why it would be reasonable to award higher fees from the Minnesota Backstop seems unrelated to the process of awarding fees from the National Contingency Fee Fund. The National Contingency Fee Fund distributed money based on a purely mathematical formula influenced only by how much money was available, how much money was obtained by the Subdivision in the settlement and the provisions of the fee agreement, and when the subdivision filed suit. In that respect, the applications are not identical. Knowing that the National Contingency Fee Funds would not fully compensate attorneys up to the 15 percent contingency fee allowed by the Court (a reduction from the 25 percent contingency fee negotiated by each subdivision we represent), the parties agreed to the creation of the Minnesota Backstop fund. The fact that the National Contingency Fee Funds ran out of money before reaching the 15 percent amount was anticipated. Moreover, the fact that the National Contingency Fee Fund provided less fees than are being sought to bring the attorneys’ fees awards to the 15 percent allowed by Judge Polster is also irrelevant to a determination of how much it would be reasonable to award from the Backstop. The mathematical formula determined how much would be awarded from the National Contingency Fee Fund and “reasonableness” was not part of the equation.

Sincerely,

/s/ Scott A. Benson

Scott A. Benson, Briol & Benson, PLLC

Attorneys for Hennepin County, St. Louis County,
Dakota County, Itasca County, Winona County,
Meeker County, McLeod County, Sibley County,
Roseau County, and City of Minneapolis