

RESOLUTION NO. _____ OF 2018

RESOLUTION DECLARING THAT THE UNLAWFUL DISTRIBUTION OF
PRESCRIPTION CONTROLLED SUBSTANCES HAS CREATED A PUBLIC
NUISANCE AND A SERIOUS PUBLIC HEALTH AND SAFETY CRISIS FOR
THE CITIZENS OF THE CITY OF NANTICOKE

WHEREAS, the City Council of the City of Nanticoke is the policy-determining body of the City; and

WHEREAS, the City Council of the City of Nanticoke has the authority to take action to protect the health, safety and welfare of the citizens of the City of Nanticoke; and

WHEREAS, there exists a serious public health and safety crisis involving opioid abuse, addiction, treatment, morbidity and mortality in the City of Nanticoke; and

WHEREAS, the diversion of legally produced controlled substances into the illicit market causes, contributes or increases the risk of harm to the serious public health and safety crisis involving opioid abuse, addiction, treatment, morbidity and mortality in the City of Nanticoke; and

WHEREAS, the violation of any laws of the Commonwealth of Pennsylvania or of the United States of American controlling the distribution of a controlled substance is inimical, harmful, and adverse to the public welfare of the citizens of the City of Nanticoke and constitutes a public nuisance; and

WHEREAS, the City Council of the City of Nanticoke 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 the City of Nanticoke; and

WHEREAS, the City Council of the City of Nanticoke has expended, is expending and will continue to expend in the future City public funds to respond to the serious public health and

safety crisis involving opioid abuse, addiction, treatment, morbidity and mortality in the City of Nanticoke; and

WHEREAS, the City Council of the City of Nanticoke may institute litigation to recover any money due to the City as a result of the serious public health and safety crisis involving opioid abuse, addiction, treatment, morbidity and mortality in the City of Nanticoke; and

WHEREAS, the City Council of the City of Nanticoke has received information that indicates that the wholesale distributors of controlled substances in the City of Nanticoke may have violated Federal laws and regulations that were enacted to prevent the diversion of legally produced controlled substances into the illicit market; and

WHEREAS, the citizens of the City of Nanticoke will benefit from the retention of special outside counsel to investigate and pursue, if appropriate, the City's claims against the wholesale distributors of controlled substances in the City of Nanticoke, on a contingent fee basis, wherein there is no attorney fee or reimbursement of litigation expenses if there is no recovery; and the City Council of the City of Nanticoke authorizes its Mayor to enter into such an arrangement with special outside counsel.

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Nanticoke and it is hereby resolved by the authority of the same as follows:

SECTION I

That the City Council of the City of Nanticoke hereby declares that opiate abuse, addiction, treatment, morbidity and mortality has created a serious public health and safety crisis in the City of Nanticoke and is a public nuisance.

SECTION II

That the City Council of the City of Nanticoke hereby authorizes its Mayor in accordance with the Rules of Professional Conduct and laws of the Commonwealth of Pennsylvania to retain the firms of BARON & BUDD, PC, FELLERMAN & CIARIMBOLI LAW, PC, and PUGLIESE, FINNEGAN, SHAFFER & FERENTINO LLC and other such legal counsel as needed, as Special Counsel to represent the City of Nanticoke to investigate and, if appropriate, pursue all civil remedies which may be afforded under the laws of the Commonwealth of Pennsylvania as against the wholesale 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, treatment, morbidity and mortality in the City of Nanticoke, with the compensation therefore on a contingent fee basis, in concert with the contingent fee agreement that is designated as “Authority to Represent” which the City Council of the City of Nanticoke authorizes its Mayor to execute on behalf of the City of Nanticoke, the same of which is identified as Exhibit A and attached hereto and made part hereof in its entirety.

SECTION III

That the City Council of the City of Nanticoke hereby finds and determines that all formal actions relative to the passage of this Resolution were taken in an open meeting of the Council, and that all deliberations of this Council and its Committees, if any, which resulted in formal action, were taken in meetings open to the public, in full compliance with all applicable legal requirements of the Charter of the City of Nanticoke and the laws of the Commonwealth of Pennsylvania.

RESOLVED, this _____ day of _____ 2018, by the City Council of the City of Nanticoke, Luzerne County, Pennsylvania.

ATTEST:

CITY OF NANTICOKE:

Jennifer Polito, City Clerk

William Brown, Council President

EXHIBIT “A”

LEGAL SERVICES AGREEMENT

RE: CITY OF NANTICOKE, PENNSYLVANIA civil suit against those parties legally responsible for the wrongful distribution of prescription opiates and the deleterious effects it has had on LUZERNE COUNTY, PENNSYLVANIA for which such parties have collectively been fined and paid over \$200 million in civil penalties.

CITY OF NANTICOKE, PENNSYLVANIA (hereinafter “CLIENT”) hereby retains outside counsel, pursuant to the Pennsylvania Rules of Professional Conduct, 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 CITY OF NANTICOKE, PENNSYLVANIA including, but not limited to, filing a claim for public nuisance to abate the damages caused thereby. Client consents to the participation of the following firms:

BARON & BUDD, PC
3102 Oak Lawn Avenue #1100
Dallas, Texas

FELLERMAN & CIARIMBOLI LAW, PC
183 Market Street
Kingston, PA

PUGLIESE, FINNEGAN, SHAFFER & FERENTINO, LLC
575 Pierce St
Kingston, PA

LEVIN, PAPANTONIO, THOMAS, MITCHELL, RAFFERTY & PROCTOR, PA
316 South Baylen Street
Pensacola, Florida

GREENE, KETCHUM, FARRELL, BAILEY & TWEEL, LLP
419 11th Street
Huntington, West Virginia

HILL PETERSON CARPER BEE & DEITZLER PLLC
500 Tracy Way
Charleston, West Virginia

McHUGH FULLER LAW GROUP
97 Elias Whiddon Rd
Hattiesburg, Mississippi

FELLERMAN & CIARIMBOLI will serve as liaison between CLIENT and the firms listed above.

In consideration, CLIENT agrees to pay thirty percent (30%) of the total recovery (gross) as an attorney fee whether the claim is resolved by compromise, settlement, or trial and verdict (and appeal). 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 lawyer(s), 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. **There is no fee if there is no recovery.**

This fee applies to any sums, benefit or value obtained on your behalf, whether monetary or non-monetary, including equitable remedies including abatement, and whether recovered by award, judgment, settlement, bankruptcy proceedings, government-imposed reparations proceedings, regulatory relief/settlement, non-monetary remedial benefit provided by defendants or otherwise. Gross recovery is the value, at the time of settlement or collection (whichever confers the greater value), of any sums, benefit or value obtained on your behalf, as set out above. 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.

The division of fees, expenses and labor between the law firms will be decided by private agreement between the law firms which shall be subject to review by the CLIENT, and any division of fees will be governed by the Pennsylvania Rules of Professional Conduct including: (1) the division of fees is in proportion to the services performed by each lawyer or each lawyer assumes joint responsibility for the representation and agrees to be available for consultation with the CLIENT; (2) the CLIENT agrees to the arrangement and the agreement is confirmed in writing; 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.

The law firms agree to advance all necessary litigation expenses necessary to prosecute these claims, and the CLIENT shall have no obligation to advance any costs or to make any financial contribution to the lawsuit while the litigation is pending. 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.**

Funds that are recovered on behalf of CLIENT shall flow through the _____ and may be expended on education, law enforcement and jails, healthcare, or in any other way that the _____ deems appropriate.

The Client shall be kept 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 personally oversee and maintain absolute control of the litigation.

Upon conclusion of this matter, the CLIENT shall be provided 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 as required by the Pennsylvania Rules of Professional Conduct. The closing statement shall specify the manner in which the compensation was determined under the agreement, any costs and expenses deducted by the lawyer from the judgment or settlement involved, and, if applicable, the actual division of the lawyers' fees with a lawyer not in the same firm, as contemplated by the Pennsylvania Rules of Professional Conduct.

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.

Further, the execution of this Agreement by _____ is specifically conditioned upon the _____ passing a Resolution authorizing this Agreement and the execution by the _____.

SIGNED, this _____ day of _____, 2018.

CITY OF NANTICOKE:

RICHARD WIATEROWSKI, MAYOR

Accepted:

Baron & Budd
3102 Oak Lawn Avenue #1100
Dallas, Texas

By: _____
Burton LeBlanc, Esq

Date

Fellerman & Ciarimboli
183 Market Street
Kingston, PA

By: _____ Date _____
Edward J. Ciarimboli, Esq

By: _____ Date _____
Gregory E. Fellerman, Esq

Pugliese, Finnegan, Shaffer & Ferentino
575 Pierce Street
Kingston, PA

By: _____ Date _____
Jarrett J. Ferentino, Esq