



INVESTIGATIVE REPORT

Lori Torres, Inspector General

OFFICE: OFFICE OF THE INDIANA ATTORNEY GENERAL
TITLE: CONTINGENCY FEE CONTRACT
CASE ID: 2023-10-0385
DATE: October 23, 2023

After examination and review, Office of Inspector General Staff Attorney Doreen Clark reports as follows:

The purpose of this Report is to fulfill the statutory requirements of Ind. Code §4-6-3-2.5 regarding contingency fee contracts. This statute requires the Inspector General (IG) to review proposed contingency fee contracts for possible conflicts of interests and potential Code of Ethics violations. Under this statute, an agency may not enter into a contingency fee contract unless the IG has made a written determination that entering into the contract would not violate the Indiana Code of Ethics, set forth in Ind. Code §4-2-6 and 42 IAC 1-5, or any statute or agency rule concerning conflicts of interests.

On October 17, 2023, the Indiana Office of Attorney General (OAG) notified the OIG that it wished to enter into a contingency fee contract with Taft Stettinius & Hollister LLP (Counsel), a law firm. The OAG explains that Counsel will represent the State of Indiana in pursuing potential causes of action against various manufacturers of chemicals containing per-and polyfluoroalkyl substances (PFAS). Additionally, the OAG provides that Counsel holds significant experience in pursuing intricate litigation of this nature and will represent the State in the noted causes which require specialized subject matter expertise.

Under the contingency fee contract, Counsel agrees to seek payment from any applicable fee fund established as a result of settlement or judicial action before seeking payment from the

State. The State agrees to pay Counsel a Contingency fee of any Net Recovery obtained by Counsel for the State through any PFAS Litigation Matters as follows: (1) Zero percent (0%) of any Net Recovery that is two million dollars (\$2,000,000) or less; (2) Twenty-five percent (25%) of any Net Recovery that exceeds two million (\$2,000,000) and that is not more than ten million dollars (\$10,000,000); (3) Twenty Percent (20%) of any part of a Net Recovery of more than ten million dollars (\$10,000,000) and not more than fifteen million dollars (\$15,000,000); (4) Fifteen percent (15%) of any part of a Net Recovery of more than fifteen million (\$15,000,000) and not more than twenty million dollars (\$20,000,000); (5) Ten percent (10%) of any part of a Net Recovery of more than twenty million dollars (\$20,000,000) and not more than twenty-five million dollars (\$25,000,000); (6) Five percent (5%) of any part of a Net Recovery of more than twenty-five million dollars (\$25,000,000).

Pursuant to Ind. Code §4-6-3-2.5(b), an agency is required to make a written determination before entering into the contract that the contingency fee representation is cost effective and in the public interest. The OAG must consider five factors when making this determination as outlined by Ind. Code §4-6-3-2.5(c). Those factors are as follows:

- (1) Whether the agency has sufficient and appropriate legal and financial resources to handle the matter.
- (2) The time and labor required to conduct the litigation.
- (3) The novelty, complexity and difficulty of the questions involved in the litigation.
- (4) The expertise and experience required to perform the attorney services properly.
- (5) The geographic area where the attorney services are to be provided.

The OAG made such a determination and considered all five factors outlined in the statute.

The OAG explains that the matter to be handled by Counsel is based on work from the OAG's Consumer Protection Division (CPD), specifically the Consumer Litigation Section (Section), as well as potentially other claims by the State of Indiana. According to the OAG, the

Section is currently staffed by nine full-time Deputy Attorneys General and currently has a large number of active litigation and investigative matters pending on behalf of the State of Indiana.

The OAG finds that State's interests would best be served through the efficient and specialized services of Counsel in a complex area of the law. Additionally, the OAG recognizes that its current resource level will not be able to expeditiously undertake this matter while managing its regular workload. The OAG states that the legal services performed by Counsel will require a detailed understanding of environmental laws, regulations and facts associated with PFAS manufacturers, distribution and contamination, legal theories available to seek redress of harms caused by PFAS contamination and remediation strategies and related costs for addressing the harms. The OAG provides that Counsel employs a practice area dedicated to specifically addressing usage of PFAS and contamination and has successfully represented numerous clients on this subject matter for more than two decades.

Finally, the OAG states that Counsel will perform services for the State of Indiana at its office located in Indianapolis, Indiana. Counsel will communicate and coordinate with the OAG as necessary to pursue causes across the State of Indiana and the country. Counsel also has a presence in multiple states throughout the United States. Additionally, the Defendants in this issue operate at a national and international level.

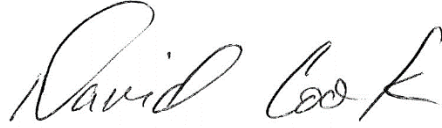
According to the OAG, Counsel does not employ any state employees. Furthermore, no OAG employee or immediate family member has a financial interest in Counsel or the contract itself. Finally, the OAG provides that no OAG employee is contracting with or will be supervising the work of a business entity in which a relative is a partner, executive officer or sole proprietor.

Based on the information provided, and after careful review and examination, the IG finds that entering into this contingency fee contract will not violate the Code of Ethics or any statute or

agency rule concerning conflicts of interests. This report is issued in compliance with the above noted statutory requirements.

Dated: October 23, 2023

APPROVED BY:

A handwritten signature in black ink that reads "David Cook". The signature is written in a cursive style with a large initial "D" and a stylized "C".

David Cook, Inspector General