



COUNTY OF HUMBOLDT

AGENDA ITEM NO. **I4**

For the meeting of: March 27, 2018

Date: March 12, 2018
To: Board of Supervisors
From: Jeffrey S. Blanck, County Counsel
Subject: Attorney Contingency Fee Agreement with Keller Rohrback LLP Re: Opioid Litigation

RECOMMENDATION(S):

That the Board of Supervisors:

- 1. Retain Keller Rohrback LLP to represent the County with respect to potential claims against the manufacturers and wholesalers of prescription opioid painkillers; and
- 2. Approve, and authorize the Chair to execute, the attached Attorney Engagement & Contingency Fee Agreement with Keller Rohrback LLP.

SOURCE OF FUNDING:

None

DISCUSSION:

Since the mid-1990s when OxyContin was first approved by the FDA, sales of opioids have increased almost ten-fold. In 2016, health care providers wrote 289 million prescriptions for opioids, enough for every adult in the country to have more than one bottle of pills. Profits for the drug manufacturers of opioids have skyrocketed. The health consequences have been extraordinary. Opioid overdoses are the leading cause of death in the United States, surpassing fatal car accidents.

Prepared by Jeffrey S. Blanck

CAO Approval *E. Hef*

REVIEW: Auditor _____ County Counsel *JB* Personnel _____ Risk Manager _____ Other _____

TYPE OF ITEM:
 Consent
 Departmental
 Public Hearing
 Other _____

BOARD OF SUPERVISORS, COUNTY OF HUMBOLDT
Upon motion of Supervisor _____
Seconded by Supervisor _____

Ayes
Nays
Abstain
Absent

SEE ACTION SUMMARY

PREVIOUS ACTION/REFERRAL:

Board Order No. _____

Meeting of: _____

and carried by those members present, the Board hereby approves the recommended action contained in this Board report.

Dated: _____

By: _____

Kathy Hayes, Clerk of the Board

Because of prescription opioid abuse, the rate of heroin addiction has also risen at dramatic levels. Studies conducted by the New England Journal of Medicine indicate that approximately 80% of heroin users first abused prescription opioids. This statistic should not be surprising as, on a molecular level, OxyContin and heroin are virtually indistinguishable.

Opioid use has reached crisis levels in Humboldt County. The County has the second highest average overdose rate in California, a rate that is also five (5) times higher than the state average. In 2016, Humboldt County health care providers wrote 156,444 prescriptions for opioids compared to 135,000 residents. This rate of prescription is significantly higher than the California average and mirrors rates in some of the hardest hit areas of the Midwest.

This has been described as the worst human-caused epidemic in history.

The crisis was created by deliberate and systematic practices of pharmaceutical companies in providing false and misleading information to doctors and patients about the safety and efficacy of prescription opioids. Indeed, contrary to the marketing claims of opioid manufacturers, opioids are highly addictive and are ineffective for the treatment of chronic pain. In addition, wholesale distributors have flooded the United States with pills and ignored red flags that the opioids were being diverted for illegal and illicit uses.

The Agreement before your board retains Keller Rohrback to assert claims against drug manufacturers and/or wholesale distributors of prescription opioids. The primary claims would be violations of California's Business and Professions Code section 17200, federal RICO claims, and public nuisance claims brought under California law. Over 300 lawsuits have been filed across the country by cities, counties, and states with the list growing daily. The majority of the cases have been consolidated in a Multi-District Litigation (MDL) action pending in the Federal District Court for the Northern District of Ohio (Judge Polster).

Judge Polster has appointed Keller Rohrback to a leadership position in the MDL as a member of the Plaintiff's Executive Committee. The firm is based in Seattle, but has offices in California and routinely litigates against the largest corporate defendants in the country. They currently represent a number of cities and counties in the West in similar lawsuits. Humboldt County's interests would be well-represented by Keller Rohrback.

FINANCIAL IMPACT:

No impact to the General Fund. All costs paid by outside counsel. The recommended action conforms to the Board's Strategic Framework by creating opportunities for improved safety and health.

OTHER AGENCY INVOLVEMENT:

None

ALTERNATIVES TO STAFF RECOMMENDATIONS:

The Board may choose not to approve the attached Attorney Engagement & Contingency Fee Agreement, however, this is not recommended as the lawsuit provides an opportunity for the County to recover some of the costs associated with the damage to the community caused by the opioid epidemic.

It is not recommended due to the opioid epidemic.

ATTACHMENTS:

1 - Attorney Engagement & Contingency Fee Agreement

ATTORNEY ENGAGEMENT & CONTINGENCY FEE AGREEMENT

It is HEREBY ACKNOWLEDGED AND AGREED by and between Humboldt County, a political subdivision of the State of California ("Client") and Keller Rohrback L.L.P. ("Attorneys") as follows:

1. **Employment.** Client hereby retains Attorneys to represent Client with respect to potential Client claims against the **manufacturers, wholesalers and distributors of prescription opioid painkillers**. Attorneys will assist Client in gathering information and data relevant to Client's potential claims. Attorneys will also advise Client with respect to those potential claims. At Client's request, Attorneys will institute proceedings to seek remedies on Client's behalf as Client and Attorneys conclude is appropriate and advisable ("the Lawsuit").
2. **Responsibility of Client.** Client will maintain control of all aspects of the litigation, including the investigation and all key decisions, including whether and how to proceed with litigation, which claims to advance, and what relief to seek. Client will determine, in its sole discretion, whether to move forward with litigation. Client will retain sole discretion concerning any settlement. Counsel for manufacturers, wholesalers and distributors of prescription opioid painkillers may directly contact Client's counsel without conferring with Attorneys. Client agrees to timely comply with any of Attorneys' requests. Client agrees to advise Attorneys of all facts, knowledge, or information relevant to Attorneys' representation of Client, including facts, knowledge, or information which come to Client's attention after execution of this Agreement. Client agrees to timely review and respond to documents and communications from Attorneys.
3. **Responsibility of Attorneys.** Although the individual attorneys listed below will be primarily responsible to represent Client in this matter, other members of Keller Rohrback may work on Client matters in accordance with their areas of practice. The primary attorneys representing Client are Derek Loeser, Juli Farris, Daniel Mensher, and Matthew Preusch. Attorneys must provide regular reports to the Client, through the Client's Representative, on the investigation, including summaries of documents and interviews, and the Client will review and approve all key documents, and will supervise all aspects of the investigation and potential litigation.
4. **Client Representative.** Client designates Humboldt County Counsel Jeffrey S. Blanck to be the Client's Representative. The Client's Representative is responsible for receiving all communications from Attorneys and transmitting all communications from Client to Attorneys. Client agrees that Attorneys may rely on Client's Representative's statements as an accurate reflection of Client's position and desires. Attorneys agree to keep the Client's Representative informed of all significant developments regarding the representation.

ATTORNEY ENGAGEMENT & CONTINGENCY FEE
AGREEMENT

Keller Rohrback L.L.P.
801 Garden Street, Suite 301
Santa Barbara, CA 93101
(805)456-1497

5. **Attorneys' Fees.** The rates set forth below are not set by law, but are negotiable between Attorneys and Client. Attorneys' compensation shall not exceed any limits on compensation imposed by law. Other than as set forth in Section 7, below, the fee that Client agrees to pay Attorneys ("Attorneys' Fee") will depend on the outcome of the Lawsuit, as set forth herein:
- a. "Sums Recovered" means all monies (and the value of any other property) actually paid in settlement of or judgment on the Lawsuit's claims (including the settlement of any demand made by Attorneys on Client's behalf before initiation of the Lawsuit), including any monies paid in settlement or judgment as an award of attorneys' fees, costs, or interest.
 - b. If the Sums Recovered is an amount less than or equal to \$20 million, the Attorneys' Fee shall be 20% of the recovery;
 - c. If the Sums Recovered is an amount greater than \$20 million but less than or equal to \$25 million, the Attorneys' Fee shall equal the amount specified in Sections 5(b) above, plus 15% of any Sums Recovered in the \$20 million to \$25 million range.
 - d. If the Sums Recovered is an amount in excess of \$25 million, the Attorneys' Fee shall equal the amount specified in Sections 5(b), and 5(c) above, plus 10% of any Sums Recovered in excess of \$25 million.
 - e. Notwithstanding anything herein to the contrary, Attorneys agree to cap the Attorneys' Fee at five times the total lodestar (number of hours times hourly rate), to be calculated at the conclusion of the Lawsuit.
 - f. If the Court awards Client a monetary judgment and an attorneys' fee, and the attorneys' fee is greater than the percentage Attorneys would be entitled to under Sections 5(b)-(d) above, then Attorneys will be entitled to the full attorneys' fee awarded by the Court.

NO ATTORNEYS' FEES OR COSTS SHALL BE PAID IF NO RECOVERY IS MADE.

6. **Costs.** Attorneys will advance all "out-of-pocket" costs, fees, and expenses incurred by Attorneys in pursuing the Lawsuit ("Costs"). Client will not be responsible for payment or reimbursement of Costs, except as described below in the event of a recovery, or to the extent required by law. Notwithstanding the foregoing, Attorneys agree to notify and obtain Client's consent before incurring Costs aggregating more than \$10,000 in any single month.

Client is aware that Attorneys are representing multiple clients and that said costs shall be dispersed among all Attorney's clients except those costs specifically incurred on behalf of Client (Humboldt County).

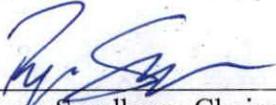
Client understands that Attorneys shall seek reimbursement from defendants for all Costs actually expended, but that there is no guarantee that Costs will be reimbursed by the defendants to Attorneys. Attorneys will be reimbursed for all Costs out of any settlement or recovery in addition to any Attorneys' Fees they receive under Sections 5 or 7, as the case may be. Attorneys shall be reimbursed for Costs first, from any monies paid by a defendant on account of Cost reimbursement and, if such monies are insufficient, from any monies paid as part of the Sums Recovered.

Attorneys may, with Client's prior consent which shall not unreasonably be withheld, hire any expert or consultant whose services Attorneys advises Client is necessary for the evaluation or prosecution of any of the claims within the scope of the Lawsuit.

7. **Withdrawal or Discharge.** Subject to Court rules and other applicable laws, Attorneys shall have the right to withdraw from representation of Client upon giving reasonable notice of the intention to withdraw. In the event of withdrawal of Attorneys or discharge of Attorneys by Client, Attorneys may seek reasonable fees for services rendered prorated according to the terms of Section 5, above, if there is a recovery by Client. If there is no recovery then Attorneys shall not be entitled to any attorneys fees or costs. Client shall have the right to discharge Attorneys at any time. If Client discharges Attorneys, Attorneys retain the right to seek reasonable prorated fees for services rendered as set forth herein.
8. **Venue and Attorneys' Fees.** The Parties agree that in the event any dispute should arise with respect to this Agreement, venue shall lie in Humboldt County, California. Any dispute shall be submitted to binding arbitration subject to the rules of the American Arbitration Association. Said arbitration costs shall be split equally by the parties.
9. **Outcome.** Attorneys do not guarantee or represent a particular result in this Lawsuit. Client understands the risks associated with pursuing this Lawsuit.
10. **No Other Agreements.** Client has read this contract, has received a copy of it, and agrees to its terms and conditions. There are no oral or other agreements between Client and Attorneys. This Agreement when signed below by Client replaces any prior understandings or oral agreement between Client and Attorneys.
11. **Governing Law.** This Agreement and all aspects of the Parties' relationship shall be construed under the laws of the State of California, without regard to choice of law principles.

12. **Other Provisions.** This Agreement may be executed in one or more counterparts and transmitted by mail, overnight delivery service, and/or email, each one of which shall constitute an original and all of which shall constitute one and the same document.

Humboldt County Board of Supervisors



Ryan Sundberg, Chairperson

Dated: 3/27/18

ACCEPTED: Keller Rohrback L.L.P.

By: _____

Dated: _____

4852-3445-9488, v. 1

ATTORNEY ENGAGEMENT & CONTINGENCY FEE
AGREEMENT

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