

**ATTORNEY ENGAGEMENT
AND
CONTINGENCY FEE AGREEMENT**

IT IS HEREBY ACKNOWLEDGED AND AGREED by and between Cochise County (“Client”) and Keller Rohrback L.L.P. (“Attorneys”) as follows:

1. **ENGAGEMENT.** Client hereby engages Attorneys to represent Client with respect to Client’s potential claims against **persons or entities involved in the manufacture or distribution of prescription opioid painkillers.**

2. **RESPONSIBILITY OF CLIENT.** This is the Client’s case. Client has engaged Attorneys to assist Client in deciding whether to assert, and, if asserted, how to assert or litigate Client’s claims. Thus, Client will maintain sole control of the investigation into the claims and make all key decisions, including whether and how to proceed with litigation, which claims to advance, and what relief to seek. If the case is litigated, Client will maintain control of the litigation, and Client will make all key decisions in connection with the litigation. Client will review and approve all key documents.

3. **RESPONSIBILITY OF ATTORNEYS.** Attorneys will, in the first instance, assist Client in gathering information and data relevant to Client’s potential claims. Attorneys will then advise Client with respect to those potential claims. At Client’s request, Attorneys will institute proceedings (“the Lawsuit”) to seek remedies on Client’s behalf as Client in its sole discretion concludes is appropriate and advisable. Attorneys will keep Client informed of all significant events and matters for decision in the Lawsuit, provide regular reports to the Client on the Lawsuit, including summaries of important documents and interviews, and will consult with Client in connection with any settlement proposal before accepting or declining same. The primary attorneys representing Client in this matter are Ron Kilgard, Gretchen Cappio, Derek Loeser, Daniel Mensher, and David Ko; however, other attorneys at Keller Rohrback may work on this matter in accordance with their areas of practice.

4. **CLIENT REPRESENTATIVE.** Client designates Christine J. Roberts, Civil Deputy County Attorney 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.

5. **ATTORNEYS' FEES.** Other than as set forth in Paragraph 8, below, the fee that Client agrees to pay Attorneys ("Attorneys' Fee") will depend on the outcome of the Lawsuit, as set forth here:
- 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), 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(a)-(d), then Attorneys will be entitled to the full attorneys' fee awarded by the Court.

NO ATTORNEYS' FEE SHALL BE PAID IF THERE IS NO RECOVERY.

6. **ADVICE CONCERNING ATTORNEYS' FEE.** Client has been informed of the alternative of employing Attorneys on an hourly fee basis. This alternative would

require the payment of a \$25,000 retainer at commencement of the representation, payment of expenses as incurred, and payment of legal fees each month for legal services. In deciding to engage Attorneys on a contingency fee basis, Client has considered the risks involved in this case, the experience and reputation of Attorneys, and the uncertainty regarding the number of hours required to prosecute the case.

7. **EXPENSES.** Attorneys will advance all “out-of-pocket” expenses, including taxable costs, incurred by Attorneys in pursuing the Lawsuit (“Expenses”). Notwithstanding the foregoing, Attorneys agree to notify and obtain Client’s consent before incurring Expenses aggregating more than \$10,000 in any single month.

Client understands that Attorneys shall seek reimbursement from the defendants for all Expenses actually expended, but that there is no guarantee that Expenses will be reimbursed by the defendants to Attorneys. Attorneys will be reimbursed for all Expenses out of any settlement or recovery in addition to any Attorneys’ Fees they receive under Paragraphs 5 or 8, as the case may be. Attorneys shall be reimbursed for Expenses first, from any monies paid by a defendant on account of Expenses reimbursement and, if such monies are insufficient, from any monies paid as part of the Sums Recovered. If there are no Sums Recovered, Client is not obligated to reimburse Attorneys any of the Expenses.

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

8. **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. Client shall have the right to discharge Attorneys at any time. In the event of withdrawal or discharge, Attorneys may seek reasonable fees for services rendered according to the terms of Paragraph 5, above.
9. **VENUE AND ATTORNEYS’ FEES.** The Parties agree that in the event any dispute should arise with respect to this Agreement, venue shall lie in Maricopa County, Arizona. Further, the prevailing party in such an action shall be awarded its reasonable attorneys’ fees and expenses.

10. **OUTCOME.** Attorneys do not guarantee or represent a particular result in the Lawsuit. Client understands the risks associated with pursuing the Lawsuit.
11. **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.
12. **GOVERNING LAW.** This Agreement and all aspects of the Parties' relationship shall be construed under the laws of Arizona, without regard to choice of law principles.
13. **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.

Cochise County

Keller Rohrback, L.L.P.

By: _____

Ann English
Chairman of Board of Supervisors

By: *Ron Skidgand*

Its: *Member*

Date: _____

Date: *March 29, 2018*

ATTEST:

APPROVED AS TO FORM:

Arlethe G. Rios
Clerk of the Board

Christine J. Roberts
Civil Deputy County Attorney

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