

RESOLUTION NO. R041718

A RESOLUTION OF NEWTON COUNTY, GEORGIA ("COUNTY") AUTHORIZING, APPROVING AND DIRECTING THE EMPLOYMENT OF A CERTAIN LAW FIRM TO REPRESENT THE COUNTY IN POTENTIAL LITIGATION AGAINST CONTRIBUTORS TO OPIOID ADDICTION AND ABUSE

WHEREAS, the County has been negatively impacted by synthetic opiate (opioid) abuse and addiction;

WHEREAS, the County may have legal claims against those responsible for the promotion of, and ready availability of, this class of drug, including opioid manufacturers, marketers and distributors; and,

WHEREAS, the County desires to retain the Law Firm identified herein to advise and represent the County regarding litigation and the award of damages from the contributors of opioids within the County.

NOW, THEREFORE, BE IT RESOLVED BY THE NEWTON COUNTY BOARD OF COMMISSIONERS, AS FOLLOWS:

Section 1. The County Board of Commissioners, as the governing body of the County, hereby authorizes and approves the employment of the law firm identified in the Legal Services Agreement, attached hereto and incorporated herein as **Exhibit "A"** (herein referred to as the "Law Firm") to represent the County in potential litigation against contributors of opioids within the County.


Section 2. The County Board of Commissioners hereby authorizes and approves the Legal Services Agreement, in the form attached hereto, and directs its Chair to execute and enter into the Legal Services Agreement with the Law Firm, setting forth the scope of the work to be performed by the Law Firm, including litigation against contributors of opioids within the County and the terms and conditions of the employment of the Law Firm.

Section 3. If any section, paragraph or provision of this Resolution shall be held to be invalid or unenforceable for any reason, the invalidity or unenforceability of such section, paragraph or provision shall not affect any of the remaining provisions of this Resolution.

Section 4. This Resolution shall be in full force and effect from and after its adoption as provided by law.

[Signatures for Resolution appear on the following page]

This Resolution was introduced, seconded and adopted at a duly convened meeting of the Newton County Board of Commissioner, held on April 17, 2018.



Marcello Banes, Chairman, Board of Commissioners

ATTEST:



Jackie Smith, County Clerk



Megan Martin, County Attorney

CERTIFICATE

I, the undersigned Clerk of Newton County, Georgia, DO HEREBY CERTIFY that the foregoing pages of typewritten matter constitute a true and correct copy of a resolution, which resolution was adopted by the County in a meeting duly called and assembled on April 17, 2018, which meeting was open to the public and at which a quorum was present and acting throughout, and that the original of said resolution and said Legal Services Agreement have been recorded in the minute book of the County which is in my custody and control in accordance with O.C.G.A. § 36-10-1.

IN TESTIMONY WHEREOF, witness my signature this 19th day of April, 2018.



Jackie Smith, County Clerk

Signature Page for Newton County, Georgia

EXHIBIT "A"

Legal Services Agreement

LEGAL SERVICES AGREEMENT

RE: Newton County, Georgia civil suit against those legally responsible for the wrongful manufacture and distribution of prescription opiates and damages caused thereby.

1. SCOPE OF EMPLOYMENT: Newton County, Georgia (hereinafter "Client"), by and through its County Board of Commissioners, hereby retains the law firm of Blasingame, Burch, Garrard & Ashley, P.C. ("the Firm") pursuant to the Georgia Rules of Professional Conduct and O.C.G.A. § 36-1-3, on a contingent fee basis, to pursue *all* civil remedies against the manufacturers of opioids and prescription opiates (together, hereinafter "prescription opiates") and those in the chain of distribution of prescription opiates responsible for the abuse of such drugs in Newton County, Georgia including, but not limited to, filing a claim for public nuisance to abate, enjoin, recover and prevent the damages caused thereby. Henry G. Garrard, III of the law firm Blasingame, Burch, Garrard & Ashley, P.C. shall serve as Lead Counsel. Client authorizes Lead Counsel to employ and/or associate additional counsel, with consent of Client, to assist Lead Counsel in the just prosecution of the case.
2. ATTORNEYS' FEES: In consideration, the Firm is entitled to receive thirty percent (30%) of the total recovery (gross) in favor of the Client as an attorney fee whether the claim is resolved by compromise, settlement, or trial and verdict (and appeal). The gross recovery shall be calculated on the amount obtained before the deduction of costs and expenses and shall include the value of any abatement of the opioid epidemic as discussed more fully below. Client grants the Firm an interest in a fee based on the gross recovery. If a court awards attorneys' fees in the lawsuit filed by the Firm on behalf of Client, the Firm shall receive the "greater of" the gross recovery-based contingent fee or the attorneys' fees awarded; provided that if a gross recovery-based contingent fee is owed it shall be reduced by any attorney's fees awarded. **There is no fee if there is no recovery.**

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 Firm, 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.

This litigation is intended to address a significant problem in the community. The litigation focuses on the manufacturers and wholesale distributors and their role in the diversion of millions of prescription opiates into the illicit market which has resulted in addiction, abuse, morbidity and mortality. There is no easy solution and no precedent for such an action against this sector of the industry. Many of the facts

of the case are locked behind closed doors. The billion-dollar industry denies liability. The litigation will be very expensive and the litigation expenses will be advanced by the Firm with reimbursement contingent upon a successful recovery. The outcome is uncertain, as is all civil litigation, with compensation contingent upon a successful recovery. Consequently, there must be a clear understanding between the Client and the Firm regarding the definition of a “successful recovery.”

The Firm intends to present a damage model designed to abate the public health and safety problems experienced by the Client. This damage model may take the form of money damages and/or equitable remedies (e.g., an abatement fund). The purpose of the lawsuit is to seek reimbursement of the costs incurred in the past fighting opioid abuse and/or recover the funds necessary to abate the health and safety problems caused by the unlawful conduct of manufacturers and wholesale distributors. The Client agrees to compensate the Firm, contingent upon prevailing, by paying 30% of any monetary damages received in settlement/resolution/judgment in favor of the Client. For instance, if the remedy is in the form of monetary damages, Client agrees to pay 30% of the gross amount to the Firm as compensation and then reimburse reasonable litigation expenses, up to the amount of monetary damages received. If the remedy is in the form of equitable relief (e.g., abatement fund), Client agrees that the Firm may receive from the defendant, or the abatement fund, 30% of the gross value of the equitable relief to the Firm as compensation, along with reimbursement for the Firm’s reasonable litigation expenses. To be clear, the Firm shall not be paid nor receive reimbursement from public funds unless required by law. However, any judgment arising from successful prosecution of the case, or any consideration arising from a settlement of the matter, whether monetary or equitable, shall not be considered public funds for purposes of calculating the contingent fee unless required by law.

Under no circumstances shall the Client be obligated to pay any attorneys fee or any litigation expenses except from moneys expended by defendant(s) pursuant to the resolution of the Client’s claims. If the defendant(s) expend their own resources to abate the public health and safety crisis in exchange for a release of liability, then the Firm will be paid the designated contingent fees and costs from the resources expended by the defendant(s). Client acknowledges this is a necessary condition required by the Firm to dedicate their time and invest their resources on a contingent basis to this enormous project. If the defendant(s) negotiate a release of liability, then the Firm should be compensated based upon the consideration offered to induce the dismissal of the lawsuit.

To further clarify the Client’s payment obligations, the parties agree as follows, notwithstanding any other provision of this agreement to the contrary: The only circumstance in which Client will be required to pay the Firm for its fees and

expenses is when the Client has received a direct monetary payment from the defendants without any spending conditions attached to that payment. In that circumstance, Client's obligation as to attorneys' fees and expenses is limited solely to the amount of payment received. If the defendants provide equitable relief, Client will have no obligation to pay attorneys' fees and expenses, but the Firm may obtain such fees and expenses from the defendants or from any funds set aside to provide equitable relief.

For purposes of calculating the gross value of equitable relief, there shall be a presumption against assigning value to any equitable relief that does not result in monetary payment to the Client or result in direct savings in the cost of providing public services by the Client. The Firm and the Client acknowledge that the cost incurred by a defendant in providing equitable relief is not necessarily the same as the value of the relief to the Client.

Negotiability of Fees: The rates set forth above are not set by law but are negotiable between the Firm and Client.

3. COSTS AND OTHER EXPENSES: The Firm and/or the other law firms in association with the Firm, hereinafter referred to as the "Attorneys," shall advance all necessary litigation expenses necessary to prosecute these claims. 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. Reimbursement for costs shall be limited to the value of any recovery obtained by Client (after payment of attorneys' fees); in no event will Client be required to reimburse costs that exceed the value of its recovery. If the Attorneys represent more than one client in similar opioid litigation, the Client will bear only its pro-rated (based on relative size of recovery) share of any litigation expenses that benefitted multiple clients. Costs advanced will be payable out of the Client's share of any recovery and will not affect the contingency rate or fees due to the Firm.

4. FEE SHARING WITH CO-COUNSEL: The division of fees, expenses and labor between the Attorneys will be decided by private agreement between the law firms and subject to approval by the Client. Any division of fees will be governed by the Georgia 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 has given *written* consent after full disclosure of the identity of each lawyer, that the fees will be divided, and that the division of fees will be in proportion to the services to be performed by each lawyer or that each lawyer will

assume joint responsibility for the representation; (3) except where court approval of the fee division is obtained, the *written* closing statement in a case involving a contingent fee shall be signed by the Client and each lawyer and shall comply with the terms of the Georgia Rules of Professional Conduct; and (4) the total fee is *not clearly excessive*.

5. COMMUNICATIONS WITH CLIENT; CONTROL OF LITIGATION: Lead Counsel shall appoint a contact person to keep the Client 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. Firm will not make any settlement or compromise of any nature of any of Client's claims without Client's prior approval. Client has the absolute right to accept or reject any settlement. Client will seriously consider any settlement offer Firm recommends before making a decision to accept or reject such offer.

Upon conclusion of this matter, Lead Counsel shall provide the Client 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. 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 required in Rule 1.5 of the Georgia Rules of Professional Conduct. The closing statement shall be signed by the Client and reflect the amount paid to each attorney among whom the fee is being divided.

6. REVIEW AND UNDERSTANDING OF THIS AGREEMENT: Client acknowledges review and understanding of this agreement, having read its contents in its entirety, and Client understands and agrees with all of its provisions. Client acknowledges that the Firm, its employees or agents, and the terms of this Agreement have made no promise or guarantee regarding the successful determination of Client's claim or causes of action, nor any guarantees regarding the amount of recovery or the type of relief, if any, which Client may obtain there from. 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.
7. LIMITED SCOPE OF REPRESENTATION: Firm is retained to represent the Client only with respect to the legal claims set forth above. Nothing herein will preclude Client from seeking additional legal advice and counsel from any other attorney (including the County Attorney) on subject matters within the scope of this agreement.

8. TERMINATION OF AGREEMENT: Client may discharge Firm and terminate this agreement for convenience at any time, in which case the Firm shall be entitled to equitable legal fees and recovery of costs, taking into consideration the amount of work done and costs incurred by the Firm. If the Firm terminates this agreement for convenience, it may not seek attorney's fees and expenses from the Client, and expressly waives any attorney's fee or expense lien against any amounts that may be recovered in related litigation by the Client. Nothing herein will prohibit either party from terminating this agreement for good cause and seeking any available relief for breach of this agreement. The parties agree and acknowledge that, in light of Client's right to terminate this agreement at will, this is not a "multi-year purchase agreement" contemplated by O.C.G.A. § 36-60-13.

9. COUNTERCLAIMS: The above contingency fee contemplates the Firm's representation of Client against any counterclaims for declaratory judgment (or similar counterclaim) by manufacturers and distributors seeking to establish non-liability for the affirmative claims and allegations contemplated by this agreement.

10. INDEMNIFICATION: Notwithstanding any other provision of this agreement, Firm shall defend, indemnify, and hold harmless Client and Client's elected and appointed officials, officers, boards, commissions, employees, and representatives ("Indemnified Parties") from and against any and all claims, suits, actions, judgments, damages, losses, costs, expenses, and liability, including but not limited to attorney's fees and costs of defense, which may result from Firm's assertion of legal claims in any proceeding contemplated by this agreement. By way of example and not limitation, Firm shall defend, indemnify, and hold harmless the Indemnified Parties against any counter-claim or motion to shift attorneys' fees and costs due to allegations that an Indemnified Party: engaged in abusive litigation; asserted a claim, defense, or other position completely lacking a justiciable issue of law or fact or for purposes of delay or harassment; unnecessarily expanded legal proceedings; or engaged in discovery misconduct. This obligation shall not apply to the extent of loss or harm caused by wrongdoing on the part of the Indemnified Party. This obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this provision. This obligation shall survive expiration or termination of this agreement, provided that the claims are based upon or arise out of actions or omissions that occurred during the performance of this agreement.

11. GEORGIA LAW TO APPLY: This agreement shall be construed under and in accordance with the laws of the State of Georgia and the rights, duties and

obligations of Client and of the Firm's representation of Client and the laws of the State of Georgia shall govern regarding anything covered by this agreement. Disputes regarding this agreement shall be heard in the Superior Court of Newton County, Georgia or the US District Court for the Northern District of Georgia.

12. IMMUNITIES: Nothing contained in this agreement shall be construed to be a waiver of Client's sovereign immunity or any individual's qualified, good faith or official immunities.

13. TITLE VI: In accordance with Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and all other provisions of Federal law, Firm agrees that, during performance of this agreement, Firm, for itself, its assignees and successors in interest, will not discriminate against any employee or applicant for employment, any subcontractor, or any supplier because of race, color, creed, national origin, gender, age or disability. In addition, Firm agrees to comply with all applicable implementing regulations and shall include the provisions of this paragraph in every subcontract for services contemplated under this agreement.

14. E-VERIFY: Pursuant to O.C.G.A. § 13-10-91, Client shall not enter into a contract for the physical performance of services unless: (1) Firm shall provide evidence on Client-provided forms, attached hereto as Exhibits "A" and "B" (affidavits regarding compliance with the E-Verify program to be sworn under oath under criminal penalty of false swearing pursuant to O.C.G.A. § 16-10-71), that it and Firm's subcontractors have registered with, are authorized to use and use the federal work authorization program commonly known as E-Verify, or any subsequent replacement program, in accordance with the applicable provisions and deadlines established in O.C.G.A. § 13-10-91, and that they will continue to use the federal work authorization program throughout the contract period, or (2) Firm provides evidence that it is not required to provide an affidavit because it is an individual (not a company) licensed pursuant to Title 26 or Title 43 or by the State Bar of Georgia and is in good standing.

Firm hereby verifies that it has, prior to executing this agreement, executed a notarized affidavit, the form of which is provided in Exhibit "A", and submitted such affidavit to Client or provided Client with evidence that it is an individual not required to provide such an affidavit because it is licensed and in good standing as noted in sub-subsection (2) above. Further, Firm hereby agrees to comply with the requirements of the federal Immigration Reform and Control Act of 1986 (IRCA),

P.L. 99-603, O.C.G.A. § 13-10-91 and Georgia Department of Labor Rule 300-10-1-.02.

In the event Firm employs or contracts with any subcontractor(s) in connection with the covered contract, Firm agrees to secure from such subcontractor(s) attestation of the subcontractor's compliance with O.C.G.A. § 13-10-91 and Rule 300-10-1-.02 by the subcontractor's execution of the subcontractor affidavit, the form of which is attached hereto as Exhibits "B", which subcontractor affidavit shall become part of the Firm/subcontractor agreement, or evidence that the subcontractor is not required to provide such an affidavit because it is an individual licensed and in good standing as noted in sub-subsection (2) above. If a subcontractor affidavit is obtained, Firm agrees to provide a completed copy to Client within five (5) business days of receipt from any subcontractor. Firm and Firm's subcontractors shall retain all documents and records of their respective verification process for a period of five (5) years following completion of the contract.

Firm agrees that the employee-number category designated below is applicable to Firm.

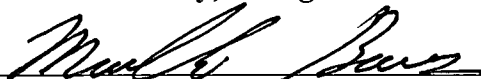
- 500 or more employees.
- 100 or more employees.
- Fewer than 100 employees.

Firm hereby agrees that, in the event Firm employs or contracts with any subcontractor(s) in connection with this agreement and where the subcontractor is required to provide an affidavit pursuant to O.C.G.A. § 13-10-91, Firm will secure from the subcontractor(s) such subcontractor(s)' indication of the above employee-number category that is applicable to the subcontractor. The above requirements shall be in addition to the requirements of state and federal law, and shall be construed to be in conformity with those laws.

[SIGNATURES ON FOLLOWING PAGES]

SIGNED, this 19th day of April 2018.

Newton County, Georgia

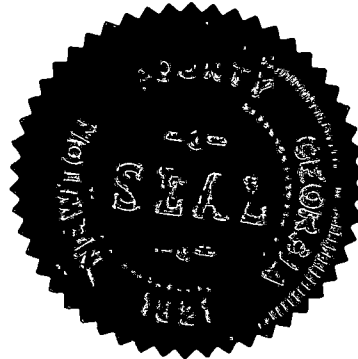


Marcello Banes, Chair, County Board of
Commissioners

Attest:



Jackie Smith, County Clerk



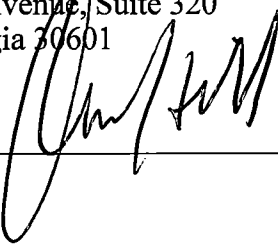
Approved as to Form:



Megan Martin, County Attorney

Accepted:

BLASINGAME, BURCH, GARRARD & ASHLEY, P.C.
440 College Avenue, Suite 320
Athens, Georgia 30601

By  _____

5/9/18
Date _____

EXHIBIT "A"

STATE OF _____
COUNTY OF _____

CONTRACTOR AFFIDAVIT AND AGREEMENT

By executing this affidavit, the undersigned contractor verifies its compliance with O.C.G.A. § 13-10-91, stating affirmatively that the individual, firm, or corporation which is engaged in the physical performance of services on behalf of the Newton County, Georgia has registered with, is authorized to use and uses the federal work authorization program commonly known as E-Verify, or any subsequent replacement program, in accordance with the applicable provisions and deadlines established in O.C.G.A. § 13-10-91. Furthermore, the undersigned contractor will continue to use the federal work authorization program throughout the contract period and the undersigned contractor will contract for the physical performance of services in satisfaction of such contract only with subcontractors who present an affidavit to the contractor with the information required by O.C.G.A. § 13-10-91(b).

Contractor hereby attests that its federal work authorization user identification number and date of authorization are as follows:

Federal Work Authorization User Identification
Number

Date of Authorization

Blasingame, Burch, Garrard & Ashley, P.C.
Name of Contractor

Synthetic Opiate Litigation
Name of Project

Newton County, Georgia
Name of Public Employer

I hereby declare under penalty of perjury that
the foregoing is true and correct.

Executed on _____, 20__ in
_____ (city), _____
(state).

Signature of Authorized Officer or Agent

Printed Name and Title of Authorized Officer
or Agent

SUBSCRIBED AND SWORN BEFORE ME
ON THIS THE _____ DAY OF
_____, 20__.

NOTARY PUBLIC

[NOTARY SEAL]

My Commission Expires:

EXHIBIT "B"

STATE OF _____
COUNTY OF _____

SUBCONTRACTOR AFFIDAVIT

By executing this affidavit, the undersigned subcontractor verifies its compliance with O.C.G.A. § 13-10-91, stating affirmatively that the individual, firm or corporation which is engaged in the physical performance of services under a contract with Blasingame, Burch, Garrard & Ashley, P.C. on behalf of Cherokee County, Georgia has registered with, is authorized to use and uses the federal work authorization program commonly known as E-Verify, or any subsequent replacement program, in accordance with the applicable provisions and deadlines established in O.C.G.A. § 13-10-91. Furthermore, the undersigned subcontractor will continue to use the federal work authorization program throughout the contract period, and the undersigned subcontractor will contract for the physical performance of services in satisfaction of such contract only with sub-subcontractors who present an affidavit to the subcontractor with the information required by O.C.G.A. § 13-10-91(b). Additionally, the undersigned subcontractor will forward notice of the receipt of an affidavit from a sub-subcontractor to the contractor within five (5) business days of receipt. If the undersigned subcontractor receives notice that a sub-subcontractor has received an affidavit from any other contracted sub-subcontractor, the undersigned subcontractor must forward, within five (5) business days of receipt, a copy of the notice to the contractor.

Subcontractor hereby attests that its federal work authorization user identification number and date of authorization are as follows:

Federal Work Authorization User Identification
Number

Date of Authorization

Name of Subcontractor

Synthetic Opiate Litigation
Name of Project

Newton County, Georgia
Name of Public Employer

I hereby declare under penalty of perjury that the foregoing is true and correct.

Executed on _____, 20__ in _____
(city), _____
(state).

Signature of Authorized Officer or Agent

Printed Name and Title of Authorized Officer
or Agent

SUBSCRIBED AND SWORN BEFORE ME
ON THIS THE _____ DAY OF
_____, 20__.

NOTARY PUBLIC

[NOTARY SEAL]

My Commission Expires:



BLASINGAME › BURCH › GARRARD & ASHLEY, P.C.
Attorneys at Law

W. SEABORN ASHLEY
1947-2001

J. RALPH BEAIRD
1925-2014

E. DAVISON BURCH
of counsel

LEANNA B. PITTARD
of counsel

GARY B. BLASINGAME

HENRY G. GARRARD III

ANDREW J. HILL III

THOMAS H. ROGERS JR.

MICHAEL A. MORRIS

JAMES B. MATTHEWS III

RICHARD W. SCHMIDT

EVAN W. JONES

GEORGE W. BROWN III

DAVID A. DISMUKE

MOLLY K. TALLEY

JOSH B. WAGES

THOMAS F.
HOLLINGSWORTH III

ALVIN L. BRIDGES

LEE S. ATKINSON

MICHAEL RUPPERSBURG

PATRICK H. GARRARD

SARA E. SCHRAMM

THOMAS I. JEFFORDS

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PLEASE REPLY TO
ATHENS ADDRESS

Shannon L. Hill
Email: shill@bbga.com

May 15, 2018

Jackie Smith, County Clerk
Newton County Board of Commissioners
1124 Clark Street
Covington, GA 30014

Re: Opioids – Newton County

Dear Ms. Smith:

As requested, enclosed is a signed original resolution/contract.

Please call with any questions.

Sincerely,

Shannon L. Hill
Legal Secretary to Andrew J. Hill, III

Enclosure