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**ISAC Executive Director**

William R. Peterson

November 21, 2017

Re: Opioid Litigation – Action Requested

Dear County Board Chair:

There has been much discussion in recent weeks at both the national, state, and local level regarding the challenges relating to the growth in the number of individuals who have become addicted to opioids and the impacts of that addiction. It has been described as a national epidemic. This is a very important issue for Iowa counties, as all entities expend significant resources in fighting this terrible problem. There is a potential for litigation against certain pharmaceutical companies to hold them responsible for their role in creating the opioid epidemic. The Iowa State Association of Counties (ISAC) Board of Directors is encouraging counties to consider joining in a statewide and nationwide litigation effort being led by the Crueger Dickinson and Simmons Hanly Conroy litigation team. The ISAC Board adopted the following resolution at its regular Board meeting on Friday, November 17, 2017:

The ISAC Board encourages their member counties to immediately support litigation proposed by Crueger Dickinson and Simmons Hanly Conroy to enjoin litigation to hold certain pharmaceutical firms responsible for damages to the public in misrepresenting the safety of using opioids. The ISAC Board encourages the boards of supervisors to sign a resolution to that effect so that Iowa counties may present a unified front at the federal level. The ISAC Board further directs ISAC staff to facilitate this process. Moved by Mark Sybesma, seconded by Burlin Matthews, approved unanimously. (Action by ISAC Board of Directors on Friday, November 17, 2017)

The ISAC Board believes it is important for counties in Iowa to join counties in other states to form a unified front on this litigation. It is their hope that Iowa counties can be an example of strength in this unified and coordinated effort.

Crueger Dickinson and Simmons Hanly Conroy is proposing to undertake this effort on behalf of the counties on a contingent fee basis. The firms will cover all costs. There will be no out-of-pocket expenditure for Iowa counties to join this effort. However, there is an understanding that counties will likely devote some staff time in assisting the firms with damages calculations and data collection. The amount of time is not exactly clear yet, but it should not be overly burdensome.

ISAC staff has been directed to assist in the facilitation of this process. Attached is a sample authorizing resolution for your county to adopt as well as information about the opioid epidemic. A sample engagement letter is also included. Please send the signed resolution to Erin Dickinson of the Crueger Dickinson firm, and Paul Hanly of the Simmons Hanly Conroy firm, [ekd@cruegerdickinson.com](mailto:ekd@cruegerdickinson.com). She will follow-up by sending a county-specific engagement letter, which will subsequently need to be signed and returned. It is important that all of these steps are completed as soon as possible.

Erin Dickinson of the Crueger Dickinson firm, and Paul Hanly of the Simmons Hanly Conroy firm, recently briefed Iowa county attorneys at their annual business meeting in early November. If your county attorney was unable to participate and you have any questions or concerns with the attached documents or the litigation in general, please reach out to Erin Dickinson at 414.210.3767. Kristi Harshbarger and I will be happy to answer questions as well.

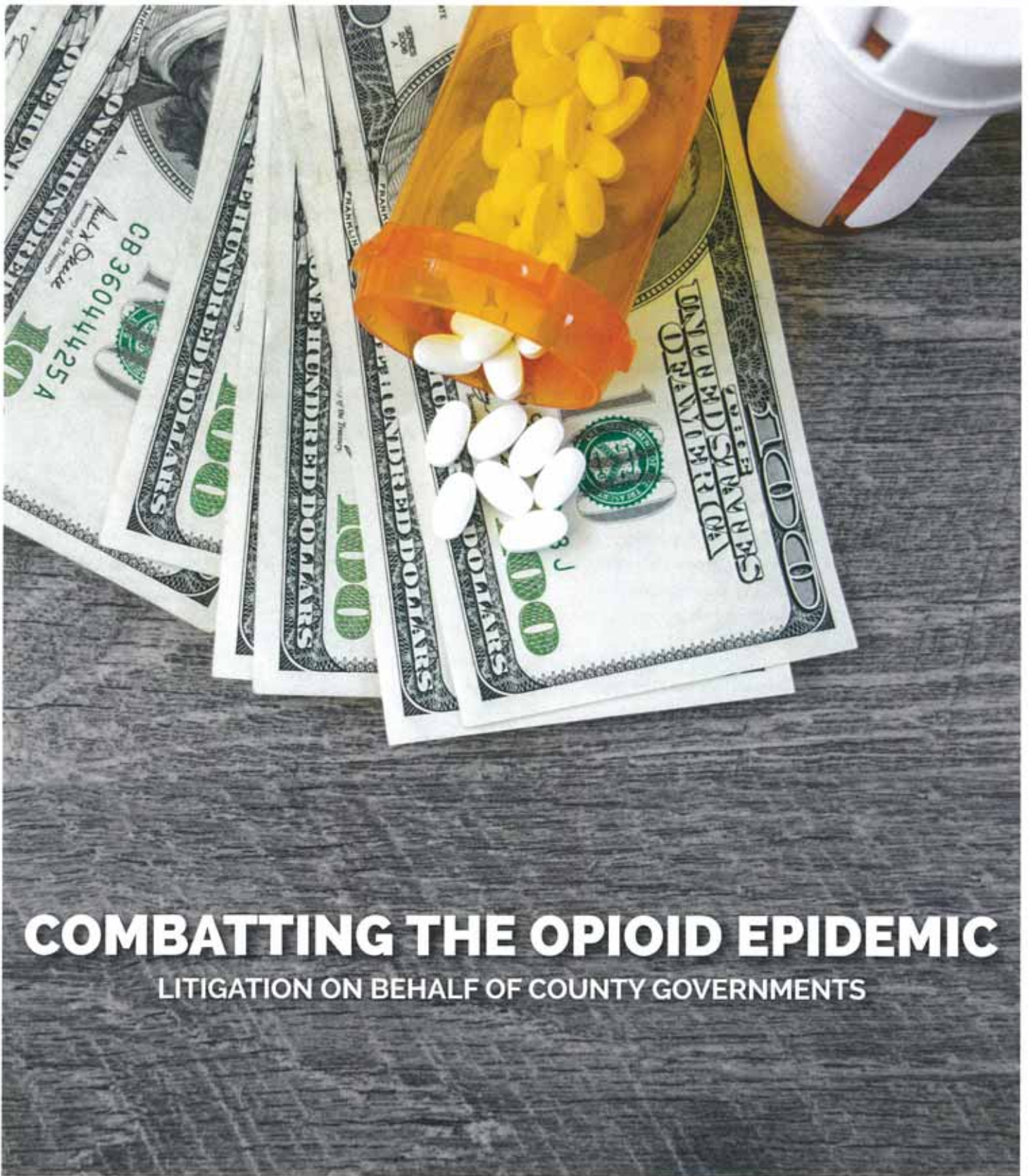
Thank you for your consideration of this critical issue. We look forward to hearing from you.

Sincerely,

A handwritten signature in black ink that reads "William R. Peterson". The signature is fluid and cursive, with a long horizontal line extending to the right from the end of the name.

William R. Peterson  
Executive Director  
Iowa State Association of Counties  
Email: [bpeterson@iowacounties.org](mailto:bpeterson@iowacounties.org)  
Phone: 515.244.7181

CC: Erin Dickinson, Crueger Dickinson  
County Supervisors  
County Auditor  
County Attorney  
County Sheriff



# COMBATTING THE OPIOID EPIDEMIC

LITIGATION ON BEHALF OF COUNTY GOVERNMENTS

# THE OPIOID EPIDEMIC: A PUBLIC HEALTH CRISIS

Opioid addiction and abuse have reached epidemic levels over the past decade. Indeed, on March 22, 2016, the FDA recognized opioid abuse as a "public health crisis" that has a "profound impact on individuals, families and communities across our country."<sup>1</sup>

In the last decade, the epidemic has exploded. From 1999 to 2013 the amount of opioids dispensed in the United States quadrupled.

In 2013, nearly 207 million opioid prescriptions were written. A year later, that number grew to 259 million.

Those sales are big business for the pharmaceutical companies that manufacture and sell opioids including Purdue, Teva, Janssen, Cephalon and Endo (referred to as "Pharma"). In 2015 alone, the sale of opioids generated nearly \$10 Billion in revenue for Pharma.

Sales and profits have grown dramatically over the past several decades.

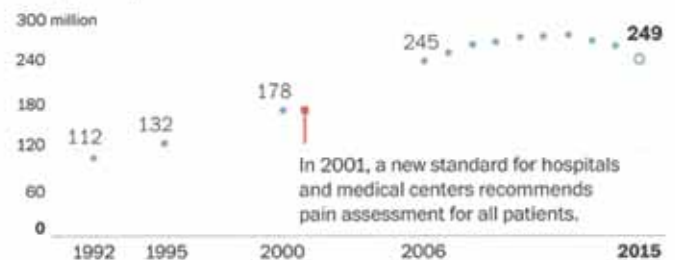


From 1999 to 2013,  
the amount of  
prescription  
opioids dispensed  
in the U.S. nearly  
**quadrupled.**

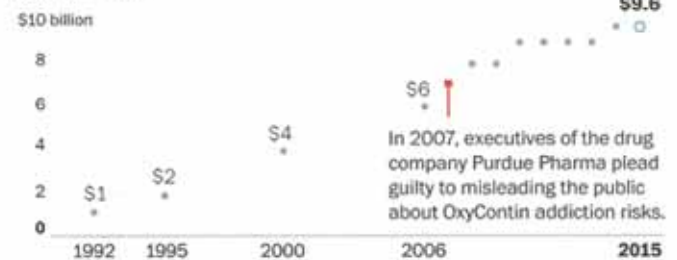
## Tracking opioid use and sales

The opioid-drug market has grown dramatically over the past 25 years.

### Total prescriptions filled in the United States



### Total U.S. sales



Source: IMS Health<sup>2</sup>

THE WASHINGTON POST

<sup>1</sup> <http://www.fda.gov/newsevents/newsroom/pressannouncements/ucm491739.htm>

<sup>2</sup> [https://www.washingtonpost.com/national/the-drug-industrys-answer-to-opioid-addiction-more-pills/2016/10/15/181a529c-8ae4-11e6-bff0-d53f592f176e\\_story.html?utm\\_term=.2d1327bf59ae](https://www.washingtonpost.com/national/the-drug-industrys-answer-to-opioid-addiction-more-pills/2016/10/15/181a529c-8ae4-11e6-bff0-d53f592f176e_story.html?utm_term=.2d1327bf59ae)

This spike in sales has had devastating and catastrophic effects. 2015 Data from the National Survey on Drug Use and Health showed that in the year 2013 over a third of the people in the United States had used prescription opioids with a significant number suffering from addiction as a result.

As described below, these dramatically increased sales and the spike in abuse and resultant deaths directly corresponds to Pharma's decision to market opioids for long-term use despite their known addictive effects.

**37.8%** Americans used prescription opioids  
(91.8 MILLION PEOPLE)

**4.7%** misused them  
(11.5 MILLION PEOPLE)

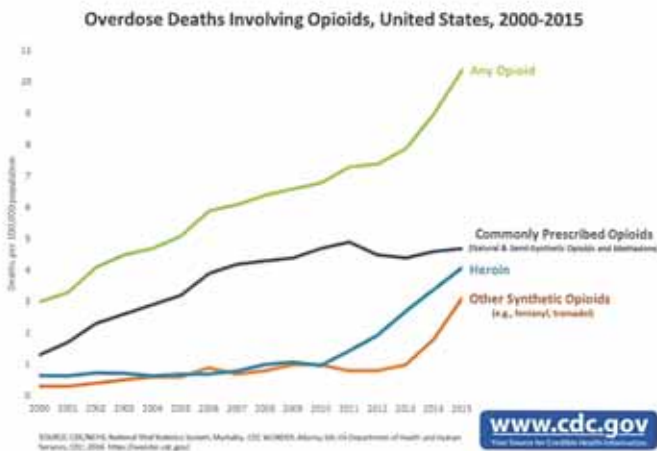
**.8%** had a use disorder  
(1.9 MILLION PEOPLE)

**PHARMA'S ROLE IN CREATING THE OPIOID EPIDEMIC**

Opioids were historically used to provide effective treatment for short-term pain management. Controlled studies of the safety and efficacy of opioids were limited to short-term use. Pharma knew the limitations of the controlled studies. However, Pharma knew that profits could sky rocket if they were able to market and sell opioids for long-term use, including to treat chronic pain. In order to expand their market and achieve a dramatic increase in profits, Pharma decided to create a false marketing campaign designed to give the medical community and the public the false impression that opioids were safe and efficacious for long-term use. This false marketing campaign began in the late 90s, but exponentially increased starting in about 2006 and continues to the present.

Pharma was successful.

Additionally, deaths from opioids dramatically spiked with increased sales:



**SINCE 1999**

Prescription sales of opioids have **quadrupled**

**IN 2010**

**254 million** opioid prescriptions were written

**IN 2013**

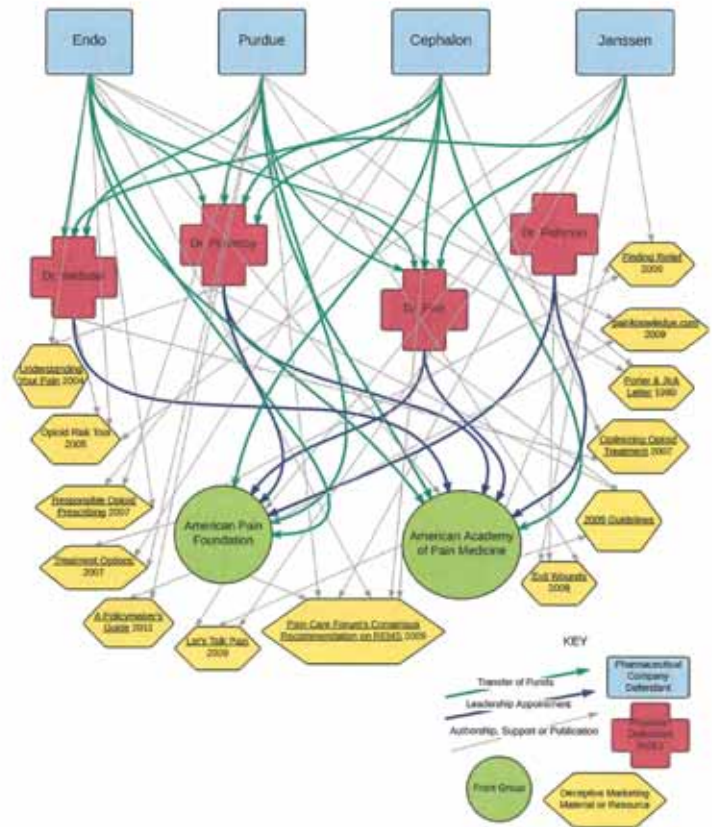
**37.4%** of the population had been prescribed Opioids

The result was a public health crisis that has had a profound impact on individuals, families and communities across the country.

The National Institute for Health ("NIH") identified Pharma as directly responsible for this crisis. In 2015, the NIH found that "several factors are likely to have contributed to the current prescription drug abuse problem. They include drastic increases in the number of prescriptions written and dispensed, greater social acceptability for using medications for different purposes, and *aggressive marketing by pharmaceutical companies.*"<sup>3</sup>

That "aggressive marketing campaign" included distorting medical and public perception of existing scientific data to create the false impression that opioids were safe and efficacious for long-term use. To accomplish this, Pharma poured money into generating articles, continuing education courses, sales groups and advocacy groups to create a phony "consensus" supporting the long-term use of opioids. Pharma and a select group of doctors and "front groups" banded together to create false legitimacy and the impression that these drugs were safe and efficacious for long-term use.

The following graphic depicts how this worked:



County of Suffolk v. Purdue Pharm L.P. et al., Case No. NYSCEF 613760/2016, Doc. No. 2, Ex. A.

**WHY DID PHARMA DO THIS?**

The answer is simple. Pharma made blockbuster profits. In 2012 alone, Pharma raked in \$8 Billion from the sale of opioids. Purdue alone made \$3.1 Billion from the sale of the opioid Oxycotin.

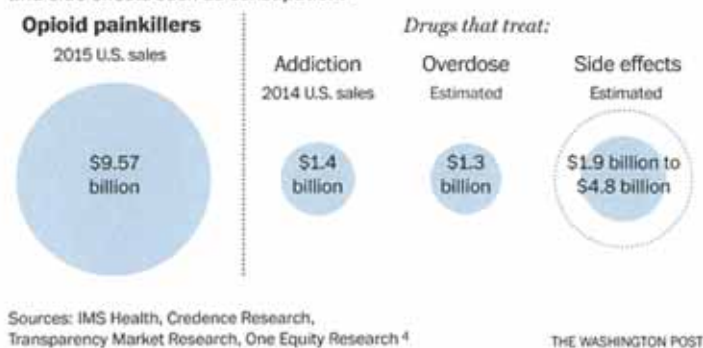
**91** Americans die every day from an **opioid overdose** (that includes prescription opioids and heroin).

<sup>3</sup> <https://www.drugabuse.gov/about-nida/legislative-activities/testimony-to-congress/2016/americas-addiction-to-opioids-heroin-prescription-drug-abuse>

Not only has the Pharma industry profited from selling opioids but companies have also profited from treating the effects. As illustrated in a recent Washington Post article, the profits have been enormous:

### Drugs to treat the effects of drugs

The nearly \$9.6 billion industry around opioid pain management has begotten a number of new billion-dollar markets for addiction, overdose and side effects such as constipation.



### COUNTIES BEAR THE COSTS

While Pharma was raking in profits, county governments have been forced to spend a significant amount of money combatting this epidemic. Costs to counties include health care costs, addiction and treatment costs, social costs, programming, training and education costs, criminal justice and victimization costs and lost productivity.

### COUNTIES AND STATES FILE LAWSUITS

A number of government entities have brought litigation against the Pharma companies for their role in creating the Opioid Epidemic. This includes the State of Kentucky, the State of Ohio, the City of Chicago and counties in New York, West Virginia and Illinois. More and more cases are filed every week. A chart summarizing the current litigation is attached in the Appendix hereto (Tab 1). Additionally, major news outlets have

been covering the opioid epidemic and resulting litigation. (Several recent examples have been included in the attached Appendix, Tab 2).

### HOLDING PHARMA ACCOUNTABLE: CLAIMS

Lawsuits seek to hold opioid manufacturers accountable for the costs communities incur as a result of the opioid epidemic.

Lawsuits have alleged that Pharma and a select group of doctors worked together to create a false impression of the safety and efficacy of opioids for long term use. Allegations are that Pharma and the doctors misled the medical community and consumers into believing that opioids were non-addictive and were a viable option for treatment of chronic pain. Legal claims have included:

- Misrepresentation
- Consumer Fraud/Violation of Consumer Protection Statutes
- False Advertising
- Nuisance
- Civil RICO

Different cases have taken different approaches, but the facts and allegations are similar. A sample of one of the Complaints, filed by Suffolk County, New York is included in the attached Appendix (Tab 3).

<sup>4</sup> [https://www.washingtonpost.com/national/the-drug-industrys-answer-to-opioid-addiction-more-pills/2016/10/15/181a529c-8ae4-11e6-bff0-d53f592f176e\\_story.html?utm\\_term=.2d1327bf59ae](https://www.washingtonpost.com/national/the-drug-industrys-answer-to-opioid-addiction-more-pills/2016/10/15/181a529c-8ae4-11e6-bff0-d53f592f176e_story.html?utm_term=.2d1327bf59ae)

## WHAT ARE THE DOLLAR FIGURES?

While it is still early in the investigation into the exact costs to counties, states and municipalities, costs of the Opioid Epidemic are staggering. Indeed, in 2016 researchers from the CDC estimated the annual economic burden of prescription opioid abuse in the U.S. at \$78.4 Billion. The study further broke down this cost as follows:

### LOST PRODUCTIVITY

**\$42 Billion** (53.3%)

### HEALTH INSURANCE

**\$26.1 Billion** (33.3%)

### CRIMINAL JUSTICE

**\$7.6 Billion** (9.7%)

### SUBSTANCE ABUSE TREATMENT

**\$2.8 Billion** (3.6%)

5

While the CDC study did not attempt to estimate damages to county governments, the economic impact is significant and, to date, unreimbursed by Pharma.

5 Florence CS, Zhou C, Luo F, Xu L. The Economic Burden of Prescription Opioid Overdose, Abuse, and Dependence in the United States, 2013. *Medical Care*, October 2016, 54(10): 901 – 906.



## FREQUENTLY ASKED QUESTIONS



### WHAT IS THE OPIOID LITIGATION AND WHY DOES IT AFFECT COUNTIES?

State and local governments around the country have begun to file lawsuits against several major manufacturers (Purdue, Janssen, Endo, Cephalon and others)(referred to as "Pharma") for their role in creating the Opioid Epidemic. These manufacturers flooded the market with highly addictive drugs, claiming they were safe and efficacious for long term use, manufactured studies to support these false claims and knowingly misrepresented the addictive nature of these drugs. As a result of these misrepresentations, millions of Americans lives have been impacted or destroyed (commonly referred to as the "Opioid Epidemic"). The Opioid Epidemic has in turn imposed huge costs on both county and state governments around the country including health care costs, substance abuse, treatment and prevention costs, criminal justice costs and productivity costs.



### WHAT IS THE ECONOMIC IMPACT OF THE OPIOID EPIDEMIC?

While it is still early in the investigation, studies have analyzed the economic impact of the Opioid Epidemic. In the most recent major study, published in 2016 by CDC researchers, the annual estimated economic burden of prescription opioid abuse in the United States was determined to be \$78.4 Billion. Of that number the economic impact broke down as follows:

#### LOST PRODUCTIVITY

**\$42 Billion (53.3%)**

#### HEALTH INSURANCE

**\$26.1 Billion (33.3%)**

#### CRIMINAL JUSTICE

**\$7.6 Billion (9.7%)**

#### SUBSTANCE ABUSE TREATMENT

**\$2.8 Billion (3.6%)**

Predictably, as the epidemic has worsened, so has the economic burden. Indeed, a similar study in 2007 found the annual economic impact was \$55.7 Billion. And a recent 2017 study funded by the U.S. Department of Health and Human Services found that more than one third of U.S. civilian, noninstitutionalized adults reported prescription opioid use, with substantial numbers reporting misuse and use disorders. As the problem has worsened since 2013, it is expected that the impact has correspondingly worsened.

<sup>6</sup> Florence CS, Zhou C, Luo F, Xu L. The Economic Burden of Prescription Opioid Overdose, Abuse, and Dependence in the United States, 2013. *Medical Care*. October 2016; 54(10): 901 - 906.


 **WHAT IS THE GOAL OF THE OPIOID LITIGATION?**

To hold Pharma responsible for their role in creating the Opioid Epidemic and to return to the counties the money spent battling the epidemic and the expense of other critical programming. While it is unrealistic to think that the lawsuit will solve the problem, Pharma should be responsible for funding solutions to a problem they created.

 **WHAT KINDS OF COSTS WOULD A LAWSUIT SEEK TO RECOVER?**

The counties would seek repayment for the costs they have expended related to the Opioid Epidemic. Those costs include but are not limited to:

- County funded healthcare costs for employees and dependents related to opioid addiction, substance abuse treatment, hospitalizations, etc.
- County funded programs for residents for prevention, treatment, health visits, substance abuse programs etc.
- Criminal Justice and law enforcement costs associated with opioids
- Loss of county employee productivity related to opioid abuse and addiction
- General societal mayhem and opioid related death costs

 **WHAT IS THE REASON THE COUNTIES SHOULD GET INVOLVED IN THE OPIOID LITIGATION?**


The only way to recover any of the significant costs the counties have faced as a result of Pharma's role in the Opioid Epidemic is to bring suit. Any county that does not get involved risks receiving no recovery. While recovery in this type of litigation is not certain, one certain way to get nothing is to stay out of the litigation.

 **WHAT IF THE COUNTIES DO NOT GET INVOLVED?**

Counties who do not get involved will not get a recovery in the event that there is one.

 **WHO WILL PAY FOR THE LITIGATION?**

The counties will not be asked to bear the costs of the Opioid Litigation. The law firms proposing to represent the counties will work on a contingent fee basis (only getting paid out of a portion of the recovery if there is one) and bearing all costs of the litigation.

 **WHAT WILL BE EXPECTED OF A COUNTY BRINGING SUIT?**

Counties bringing suit will be expected to participate in some significant ways, the most major of which is document collecting and information gathering to support the county's claim for costs associated with the Opioid Epidemic. The team of private attorneys will work on site with county employees to help identify, gather and assemble this information; however, county employee time will also be necessary. Affected departments will likely be Health and Human Services, Human Resources, Medical Examiner/Coroner, District Attorney's Office, Office of the Sheriff, Circuit Courts, Department of Administration.

**WHAT IS THE REASON TO COORDINATE EFFORTS  
ACROSS COUNTIES IN THE LITIGATION?**

It will be very important to coordinate efforts both among counties in each state and between counties nationally. Government entities will face a well-financed, well-funded and coordinated defense from Pharma. Unless a critical mass of counties not only file suit and coordinate efforts, it is a safe bet that Pharma will simply continue to fight each individual case without contemplating a resolution.

**WILL THE STATE BE INVOLVED AND HOW WILL  
THAT IMPACT THE COUNTIES AND THEIR ABILITY  
TO RECOVER?**

The State of Ohio has brought suit and other states are contemplating suit. It is safe to assume that state governments will bring similar suits. The states and counties will have separate damages, however, and the counties should be able to recover even if the states bring suit. As the tobacco litigation demonstrated, there is no reason to expect that the counties can simply let the states file suit and wait for their portion of the states' recovery. The best way for the counties to protect their interests is to pursue their own litigation.

## Contact us

**ERIN DICKINSON**

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ekd@cruegerdickinson.com  
414 210 3767

**CHARLES CRUEGER**

Crueger Dickinson LLC  
cjc@cruegerdickinson.com  
414 210 3900

**PAUL J. HANLY, JR.**

Simmons Hanly Conroy LLC  
phanly@simmonsfirm.com  
212 784 6401

**ANDREW T. PHILLIPS**

von Briesen & Roper  
aphillips@vonbriesen.com  
414 287 1570

THE COUNTY AUDITOR'S SIGNATURE CERTIFIES  
THAT THIS RESOLUTION HAS BEEN FORMALLY  
APPROVED BY THE BOARD OF SUPERVISORS ON

DATE

SCOTT COUNTY AUDITOR

## R E S O L U T I O N

### SCOTT COUNTY BOARD OF SUPERVISORS

December 28, 2017

#### APPROVAL OF PURSUIT OF CLAIMS AGAINST CERTAIN OPIOID MANUFACTURERS

**WHEREAS**, Scott County is concerned with the recent rapid rise in troubles among County citizens, residents, and visitors in relation to problems arising out of the use, abuse and overuse of opioid medications, which according to certain studies, impacts millions of people across the country; and

**WHEREAS**, issues and concerns surrounding opioid use, abuse and overuse by citizens, residents and visitors are not unique to Scott County and are, in fact, issues and concerns shared by all other counties in Iowa and, for that matter, states and counties across the country, as has been well documented through various reports and publications, and is commonly referred to as the Opioid Epidemic ("Opioid Epidemic:"); and

**WHEREAS**, the societal costs associated with the Opioid Epidemic are staggering and, according to the Centers for Disease Control and Prevention, amount to over \$75 billion annually; and

**WHEREAS**, the National Institute for Health has identified the manufacturers of certain opioid medications as being directly responsible for the rapid rise of the Opioid Epidemic by virtue of their aggressive and, according to some, unlawful and unethical marketing practices; and

**WHEREAS**, certain of the opioid manufacturers have faced civil and criminal liability for their actions that relate directly to the rise of the Opioid Epidemic; and

**WHEREAS**, Scott County has spent unexpected and unbudgeted time and resources in its programs and services related to the Opioid Epidemic; and

**WHEREAS**, Scott County is responsible for a multitude of programs and services, all of which require County to expend resources generated through state and federal aid, property tax levy, fees and other permissible revenue sources; and

**WHEREAS**, Scott County's provision of programs and services becomes more and more difficult every year because the costs associated with providing the Opioid Epidemic programs and services continue to rise, yet Scott County's ability to generate revenue is limited by strict levy limit caps and stagnant or declining state and federal aid to County; and

**WHEREAS**, all sums that Scott County expends in addressing, combatting and otherwise dealing with the Opioid Epidemic are sums that cannot be used for other critical programs and services that County provides to County citizens, residents and visitors; and

**WHEREAS**, Scott County has been informed that numerous counties and states across the country have filed or intend to file lawsuits against certain of the opioid manufacturers in an effort to force the persons and entities responsible for the Opioid Epidemic to assume financial responsibility for the costs associated with addressing, combatting and otherwise dealing with the Opioid Epidemic; and

**WHEREAS**, Scott County has engaged in discussions with representatives of the law firms of Crueger Dickinson LLC, Simmons Hanly Conroy LLC, and von Briesen & Roper, s.c., (the "Law Firms") related to the potential for Scott County to pursue certain legal claims against certain opioid manufacturers; and

**WHEREAS**, Scott County has been informed that the Law Firms have the requisite skill, experience and wherewithal to prosecute legal claims against certain of the opioid manufacturers on behalf of public entities seeking to hold them responsible for the Opioid Epidemic; and

**WHEREAS**, the Law Firms have proposed that Scott County engage the Law Firms to prosecute the aforementioned claims on a contingent fee basis whereby the Law Firms would not be compensated unless County receives a financial benefit as a result of the proposed claims and the Law Firms would advance all claim-related costs and expenses associated with the claims; and

**WHEREAS**, all of the costs and expenses associated with the claims against certain of the opioid manufacturers would be borne by the Law Firms; and

**WHEREAS**, the Law Firms have prepared an engagement letter, which is submitted as part of this Resolution ("Engagement Letter") specifying the terms and conditions under which the Law Firms would provide legal services to Scott County and otherwise consistent with the terms of this Resolution; and

**WHEREAS**, Scott County is informed that the Iowa State Association of Counties (ISAC) has engaged in extensive discussions with the Law Firms and

has expressed a desire to assist the Law Firms, Scott County and other counties in the prosecution of claims against certain of the opioid manufacturers; and

**WHEREAS**, the Scott County Board of Supervisors would participate in the prosecution of the claim(s) contemplated in this Resolution and the Engagement Letter by providing information and materials to the Law Firms and, as appropriate, the Iowa State Association of Counties as needed; and

**WHEREAS**, the Scott County Board of Supervisors believes it to be in the best interest of Scott County, its citizens, residents, visitors and taxpayers to join with other counties in and outside Iowa in pursuit of claims against certain of the opioid manufacturers, all upon the terms and conditions set forth in the Engagement Letter; and

**WHEREAS**, by pursuing the claims against certain of the opioid manufacturers, Scott County is attempting to hold those persons and entities that had a significant role in the creation of the Opioid Epidemic responsible for the financial costs assumed by Scott County and other public agencies across the country in dealing with the Opioid Epidemic.

**NOW, THEREFORE, BE IT RESOLVED:**

The Scott County Board of Supervisors authorizes, and agrees to be bound by, the Engagement Letter and hereby directs the appropriate officer of the County to execute the Engagement Letter on behalf of the County; and

**BE IT FURTHER RESOLVED:**

Section 1: Scott County Board of Supervisors shall endeavor to faithfully perform all actions required of Scott County in relation to the claims contemplated herein and in the Engagement Letter and hereby directs all County personnel to cooperate with and assist the Law Firms in relation thereto.

Section 2: The County Administrator shall forward a copy of this Resolution, together with the signed Engagement Letter, to the Law Firms at Erin Dickinson, Crueger Dickinson LLC, 4532 N. Oakland Ave., Whitefish Bay, WI 53211.

October \_\_\_\_\_, 2017

VIA EMAIL

[NAME OF COUNTY]

**RE: *Engagement of Simmons Hanly Conroy LLC, Crueger Dickinson LLC, and von Briesen & Roper, s.c. as Counsel in Relation to Claims Against Opioid Manufacturers***

Dear [NAME OF COUNTY]:

The purpose of this letter (“Engagement Letter”) is to set out in writing the terms and conditions upon which the law firms of Simmons Hanly Conroy LLC, Crueger Dickinson LLC and von Briesen & Roper, s.c., (collectively “Counsel”) will provide legal services to [NAME OF COUNTY] (“County”) in relation to the investigation and prosecution of certain claims against the following manufacturers and other parties involved with the manufacture of opioid medications: Purdue Pharma L.P., Purdue Pharma Inc., The Purdue Frederick Company, Inc., Teva Pharmaceuticals USA, Inc., Cephalon, Inc., Johnson & Johnson, Janssen Pharmaceuticals, Inc., OrthoMcNeil-Janssen Pharmaceuticals, Inc. n/k/a Janssen Pharmaceuticals, Inc., Janssen Pharmaceutica, Inc. n/k/a Janssen Pharmaceuticals, Inc.; Endo Health Solutions Inc., Endo Pharmaceuticals, Inc. (collectively “Opioid Manufacturers”). Depending upon the results of initial investigations of the facts and circumstances surrounding the potential claim(s), there may be additional parties sought to be made responsible and/or certain of the aforementioned parties may be removed from the potential claim.

This Engagement Letter shall apply solely and exclusively to the services set forth herein in relation to the investigation and Lawsuit, as defined below. This Engagement Letter does not govern, nor does it apply to, any services of either Counsel unrelated thereto.

### **SCOPE OF SERVICES**

Counsel will work with County in the collection of information necessary to form a good faith basis for filing a claim against the Opioid Manufacturers. County hereby authorizes Counsel to file a lawsuit against one or all of the Opioid Manufacturers (“Lawsuit”) upon the terms and conditions set forth herein.

### **RESPONSIBILITIES**

Counsel will prosecute the Lawsuit with diligence and keep County reasonably informed of progress and developments, and respond to County’s inquiries. County understands and agrees that all fees paid to Counsel shall be as set forth in this Engagement Letter. County agrees to cooperate with Counsel in the gathering of information necessary to investigate and prosecute the Lawsuit. County further understands and agrees that the law firm of von Briesen & Roper, s.c., shall not be identified on any pleading as counsel of record for County in relation to the Lawsuit, but shall be available to assist County and Counsel in relation to the Lawsuit.

The following additional terms apply to the relationship between County and Counsel:

- A. Counsel shall remain sufficiently aware of the performance of one another and the performance to ascertain if each firm’s handling of the Lawsuit conforms to the Rules



of Professional Conduct. Counsel shall be available to County regarding any concerns on the part of County relating to the performance of Counsel. Counsel shall at all times remain ethically and financially responsible to the County for the services of Counsel set forth herein.

- B. As set forth below, County's responsibility for attorney fees and expenses is contingent upon the successful outcome of the Lawsuit, as further defined below. Counsel have agreed in writing as to the appropriate split of attorney fees and expenses. Specifically, in the event of a Recovery (as defined below), the attorney fees will be split between the law firms as follows:

<u>Firm Name</u>	<u>Percentage of Fees if Successful</u>
Local Counsel	5%
von Briesen & Roper, s.c.	10%
Crueger Dickinson LLC	42.5%
Simmons Hanly Conroy LLC	42.5%

The split of attorneys' fees between Counsel may be subject to change. In the event of such an amendment, the County will be notified in writing of that amendment.

- C. Counsel and County understand and agree that Counsel will all be considered attorneys for County. As such, each and all of Counsel will adhere to the Rules of Professional Responsibility governing the relationship between attorney and client.

#### **ACTUAL AND POTENTIAL CONFLICTS OF INTEREST AND WAIVER OF CONFLICT**

As County is aware, Counsel contemplate entering into the same arrangement as that set forth in this Engagement Letter with other counties and municipalities in Wisconsin and elsewhere. Counsel believe that the goals and objectives of County are aligned with the goals and objectives of all other counties and municipalities with respect to the Lawsuit. Counsel do not believe that to achieve the goals of the Lawsuit, either County or another county or municipality must take a position that is adverse to the interests of the other. However, to the extent any issue may arise in this matter about which County disagrees with another county or municipality, and one of you may wish to pursue a course that benefits one but is detrimental to the interest of the other, we cannot advise County or assist County or any other county or municipality in pursuing such a course. That is to say, Counsel cannot advocate for County's individual interests at the expense of the other counties or municipalities that Counsel represent in a Lawsuit. Counsel do not believe that this poses a problem because County's interests are currently aligned with the other counties and municipalities that are or may be in the Lawsuit. Counsel are confident that their representation of County will not be limited in this matter by representation of any other county or municipality, but County should consider these consequences of joint representation in deciding whether to waive this conflict.

In addition to the material limitation discussed above, there are other consequences for County in agreeing to joint representation. Because each county or municipality would be a client of Counsel, Counsel owe equal duties of loyalty and communication to each client. As such, Counsel must share

all relevant information with all counties and municipalities who are clients in relation to the Lawsuit and Counsel cannot, at the request of one county or municipality, withhold relevant information from the other client. That is to say, Counsel cannot keep secrets about this matter among the counties and municipalities who are clients of Counsel with respect to the Lawsuit. Also, lawyers normally cannot be forced to divulge information about communications with their clients because it is protected by the attorney-client privilege. However, because County would be a joint client in the same matter with other counties and municipalities, it is likely that were there to be a future legal dispute between County and other counties or municipalities that engage Counsel about this matter, the attorney-client privilege would not apply, and each would not be able to invoke the privilege against the claims of the other.

Further, while County's position is in harmony with other counties and municipalities presently, and the conflict discussed above is waivable, facts and circumstances may change. For example, County may change its mind and wish to pursue a course that is adverse to the interests of another county or municipality and the conflict may become unwaivable. In that case, depending upon the circumstances, Counsel may have to withdraw from representing either County or another county or municipality and County would have to bear the expense, if County chooses, of hiring new lawyers who would have to get up to speed on the matter.

County is not required to agree to waive this conflict, and County may, after considering the risks involved in joint representation, decline to sign this Engagement Letter. By signing this Engagement Letter, County is signifying its consent to waiving the conflict of interest discussed herein.

Other than the facts and circumstances related to the joint representation of numerous counties and municipalities, Counsel are unaware of any facts or circumstances that would prohibit Counsel from providing the services set forth in this Engagement Letter. However, it is important to note that the law firm of von Briesen & Roper, s.c., is a relatively large law firm based in Wisconsin and represents many companies and individuals. It is possible that some present and future clients of von Briesen & Roper, s.c., will have business relationships and potential or actual disputes with County. von Briesen & Roper, s.c., will not knowingly represent clients in matters that are actually adverse to the interests of County without County's permission and informed consent. von Briesen & Roper, s.c., respectfully requests that County consent, on a case by case basis, to von Briesen & Roper, s.c.'s representation of other clients whose interests are, or maybe adverse to, the interests of County in circumstances where County has selected other counsel and where von Briesen & Roper, s.c., has requested a written conflict waiver from County after being advised of the circumstances of the potential or actual conflict and County has provided informed consent.

## **FEES FOR LEGAL SERVICES AND RESPONSIBILITY FOR EXPENSES**

### **A. Calculation of Contingent Fee**

There is no fee for the services provided herein unless a monetary recovery acceptable to County is obtained by Counsel in favor of County, whether by suit, settlement, or otherwise ("Recovery"). County understands and agrees that a Recovery may occur in any number of different fashions such as final judgment in the Lawsuit, settlement of the Lawsuit, or appropriation to County following a nationwide settlement or extinguishing of claims in lawsuits and matters similar to the Lawsuit. Counsel agree to advance all costs and expenses of Counsel, and the Lawsuit associated with investigating and prosecuting the Lawsuit provided, however, that the costs and expenses associated with County cooperating with Counsel in conjunction with the Lawsuit and otherwise performing its responsibilities under this Engagement Letter are the responsibility of County. In consideration of the legal services to be rendered by Counsel, the contingent attorneys' fees for the services set forth in this

Engagement Letter shall be a gross fee of 25% of the Recovery, which sum shall be divided among Counsel as set forth in the above chart.

Upon the application of the applicable fee percentage to the gross Recovery, and that dollar amount set aside as attorneys' fees to Counsel, the amount remaining shall first be reduced by the costs and disbursements that have been advanced by Counsel, and that amount shall be remitted to Counsel. By way of example only, if the gross amount of the Recovery is \$1,000,000.00, and costs and disbursements are \$100,000.00, then the fee to Counsel shall be \$250,000, the costs amount of \$100,000 shall be deducted from the balance of \$750,000.00, and the net balance owed to County shall be \$650,000. The costs and disbursements which may be deducted from a Recovery include, but are not limited to, the following, without limitation: court fees, process server fees, transcript fees, expert witness fees and expenses, courier service fees, appellate printing fees, necessary travel expenses of attorneys to attend depositions, interview witnesses, attend meetings related to the scope of this Engagement Letter and the like, and other appropriate matter related out-of-pocket expenses. In the event that any Recovery results in a monetary payment to County that is less than the amount of the costs incurred and/or disbursements made by Counsel, County shall not be required to pay Counsel and any more than the sum of the full Recovery.

B. Nature of Contingent Fee

No monies shall be paid to Counsel for any work performed, costs incurred or disbursements made by Counsel in the event no Recovery to County has been obtained. In the event of a loss at trial due to an adverse jury verdict or a dismissal of the Lawsuit by the court, no monies shall be paid to Counsel for any work performed, costs incurred or disbursements made by Counsel. In such an event, neither party shall have any further rights against the other.

C. Disbursement of Recovery Proceeds to County

The proceeds of any Recovery on County's behalf under the terms of this Engagement Letter shall be disbursed to County as soon as reasonably practicable after receipt by Counsel. At the time of disbursement of any proceeds from a Recovery, County will be provided with a detailed disbursement sheet reflecting the method by which attorney's fees have been calculated and the expenses of litigation that are due to Counsel from such proceeds. Counsel are authorized to retain out of any moneys that may come into their hands by reason of their representation of County the fees, costs, expenses and disbursements to which they are entitled as determined in this Engagement Letter.

## **TERMINATION OF REPRESENTATION**

This Engagement Letter shall cover the period from the date first indicated below until the termination of the legal services rendered hereunder, unless earlier terminated as provided herein. This Engagement Letter may be terminated by County at any time, and in the event of such termination, neither party shall have any further rights against the other, except that in the event of a Recovery by County against the Opioid Manufacturers subsequent to termination, Counsel shall have a statutory lien on any such recovery as provided by applicable law and further maintain rights in the nature of *quantum meruit* to recover fees, costs and expenses reasonably allocable to their work prior to termination. Counsel may withdraw as County's attorneys at any time for the following reasons:

- A. If Counsel determine, in their sole discretion, that County's claim lacks merit or that it is not worthwhile to pursue the Lawsuit further; or

- B. For Good Cause. For purposes of this Paragraph, Good Cause may include County's failure to honor the terms of the Engagement Letter, County's failure to follow Counsel's advice on a material matter, or any fact or circumstance that would, in the view of Counsel, impair an effective attorney-client relationship or would render continuing representation unlawful or unethical. If terminated for Good Cause, County will take all steps necessary to free Counsel of any obligation to perform further, including the execution of any documents (including forms for substitution of counsel) necessary to complete withdrawal provided, however, that Counsel shall have a statutory lien on any Recovery as provided by applicable law and further maintain rights in the nature of *quantum meruit* to recover fees, costs and expenses reasonably allocable to their work prior to termination.

### **SETTLEMENT**

County has the authority to accept or reject any final settlement amount after receiving the advice of Counsel. County understands settlements are a "compromise" of its claim(s), and that Counsel's fee, as set forth above, applies to settlements also. For example, if a settlement is reached, and includes future or structured payments, Counsel's fee shall include its contingent portion of those future or structured payments.

### **NO GUARANTEE OF RECOVERY**

County understands and acknowledges that dispute resolution through litigation often takes years to achieve. County understands and acknowledges that there is no guarantee or assurances of any kind regarding the likelihood of success of the Lawsuit, but that Counsel will use their skill, diligence, and experience to diligently pursue the Lawsuit.

### **LIMITED LIABILITY**

von Briesen & Roper, s.c., and Crueger Dickinson LLC are limited liability entities under Wisconsin law. This means that if Counsel fails to perform duties in the representation of County and that failure causes County damages, the firms comprising Counsel and the shareholder(s) or principals directly involved in the representation may be responsible to County for those damages, but the firm's other shareholders or principals will not be personally responsible. Counsel's professional liability insurance exceeds the minimum amounts required by the Wisconsin Supreme Court for limited liability entities of similar size.

### **COMMUNICATION BY E-MAIL**

Counsel primarily communicates with its clients via unencrypted internet e-mail, and this will be the way in which communications occur with County. While unencrypted e-mail is convenient and fast, there is risk of interception, not only within internal networks and the systems used by internet service providers, but elsewhere on the internet and in the systems of our clients and their internet service providers.

### **FILE RETENTION AND DESTRUCTION**

In accordance with Counsel's records retention policy, most paper and electronic records maintained are subject to a 10-year retention period from the last matter activity date or whatever date deemed appropriate. Extended retention periods may apply to certain types of matters or pursuant to County's specific directives.

After the expiration of the applicable retention period, Counsel will destroy records without further notice to County, unless County otherwise notifies in writing.

### **MISCELLANEOUS**

This Engagement Letter shall be governed by and construed in accordance with the laws of the State of Wisconsin, without regard to conflicts of law rules. In the event of any dispute arising out of the terms of this Engagement Letter, venue for any such dispute shall be exclusively designated in the State of Wisconsin Circuit Court for Milwaukee County, Wisconsin, or in the United States District Court for the Eastern District of Wisconsin.

It is expressly agreed that this Engagement Letter represents the entire agreement of the parties, that all previous understandings are merged in this Engagement Letter, and that no modification of this Engagement Letter shall be valid unless written and executed by all parties.

It is expressly agreed that if any term or provision of this Engagement Letter, or the application thereof to any person or circumstance, shall be held invalid or unenforceable to any extent, the remainder of this Engagement Letter, or the application of such term or provision to persons or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby; and every other term and provision of this Engagement Letter shall be valid and shall be enforced to the fullest extent permitted by law.

The parties acknowledge that they have carefully read and fully understand all of the provisions of this Engagement Letter, and that they have the capacity to enter into this Engagement Letter. Each party and the person signing on behalf of each party, represents that the person signing this Engagement Letter has the authority to execute this document and thereby bind the party hereto on whose behalf the person is signing. Specifically, County acknowledges that it is bound by this Engagement Letter, has satisfied all conditions precedent to execution of this Engagement Letter and will execute all the necessary documents that may be required by its governing statutes and/or code.

### **CONCLUSION**

Counsel are pleased to have this opportunity to be of service to County. If at any time during the course of representation you have any questions or comments about our services or any aspect of how we provide services, please don't hesitate to call one or all of the individuals listed below.

Very truly yours,

**CRUEGER DICKINSON LLC**

**SIMONS HANLY CONROY LLC**

Erin K. Dickinson

Paul J. Hanly

**von BRIESEN & ROPER, s.c.**

Andrew T. Phillips

[NAME OF COUNTY] agrees to retain the services of Counsel all upon the terms and conditions specified above.

By:

Title:

Date:

DRAFT