

From: Elinor C. Carbone
Sent: Wednesday, September 13, 2017 12:44 PM
To: Carol Anderson <Carol_Anderson@torringtonct.org>
Cc: Jaime M. LaMere <Jaime_LaMere@torringtonct.org>; Timothy Waldron <TIM_WALDRON@torringtonct.org>
Subject: FW: Opioid litigation--Waterbury, CT

Hi Carol,

I want to add an agenda item to Monday's council meeting. I would like to discuss the prospect of Torrington signing on as an additional plaintiff in the litigation against Purdue Pharma AND vote to authorize the mayor to execute documents relative to the litigation....

The items we will send to the council for review prior to the decision are:

1. Retainer Agreement
2. Copy of the Waterbury v. Purdue Pharma complaint

Jaime, can you think of anything else we should consider on this item?

Elinor Carbone

Mayor
City of Torrington
140 Main Street
Torrington, CT 06790
Phone: 860-489-2228
Fax: 860-489-2541
Elinor_carbone@torringtonct.org

From: Jaime M. LaMere
Sent: Tuesday, September 12, 2017 10:27 AM
To: Elinor C. Carbone <Elinor_Carbone@torringtonct.org>
Subject: FW: Opioid litigation--Waterbury, CT

The retainer agreement for opioid litigation is attached. I have reviewed it and am comfortable with its terms. I would only request to change Paragraph 11 Governing Law to venue in Litchfield County, not New Haven County. If there was a contract dispute, I would prefer to be in Litchfield.

Also, you will notice in Attorney Hellman's email below that he provided some of the information they would be looking for from us.

Let's plan to talk in advance of 9/18 meeting.

Jaime M. LaMere, Esq.
Corporation Counsel
City of Torrington
140 Main Street
Torrington, CT 06790
Tel.: (860) 489-2526
Fax: (860) 489-2581

Resolution #143-17-17
September 18, 2017

Board of Councilmen
Certified Resolution
Authorizing Litigation

CERTIFICATION:

I, JOSEPH L. QUARTIERO , the City Clerk of Torrington, Connecticut do hereby certify that the following is a true and correct copy of a resolution adopted by the Board of Councilmen, at its duly called and held meeting on September 18, 2017, at which a quorum was present and acting throughout, and that the resolution has not been modified, rescinded, or revoked and is at present in full force and effect:

**RESOLVED, that the City of Torrington may enter into litigation against Purdu
Pharma as an additional plaintiff and that Elinor Carbone as Mayor of the City of
Torrington, is authorized and directed to execute and deliver any and all documents
on behalf of the City of Torrington relative to the litigation and to do and perform all
acts and things which she deems to be necessary or appropriate to carry out the terms
of such documents, including, but not limited to, executing and delivering all
agreements and documents contemplated by such documents.**

The undersigned further certifies that Elinor Carbone now holds the office of Mayor and that she has held that office since December 2, 2013.

IN WITNESS WHEREOF: The undersigned has executed this certificate this day of September, 2017.

Joseph L. Quartiero, CMC
City Clerk

RETAINER AGREEMENT

WHEREAS, the City of Torrington (“CITY”) wishes to determine the feasibility of CITY bringing an action against the manufacturers of prescription opiates for damages to CITY arising out of aggressive marketing and distribution of opiates in and to CITY; and CITY understands based upon the pendency of similar litigation pending in the United States that CITY may have various viable causes of action under state law against such manufacturers; and

WHEREAS, CITY has decided that it wishes to engage (“ATTORNEYS”) DRUBNER, HARTLEY & HELLMAN, LLC (“DHH”) and SIMMONS HANLY CONROY LLC (“SHC”), a 225-person law firm with offices in New York, Illinois, Missouri and California, to investigate the viability of and if appropriate prosecute an action against such manufacturers;

NOW THEREFORE, in consideration of the covenants, promises, and consent herein contained, the parties agree as follows; and

1. SCOPE OF REPRESENTATION

ATTORNEYS, for the consideration herein provided, agree to represent CITY in connection with investigating and if appropriate bringing an action against manufacturers of prescription opiates. At a minimum ATTORNEYS shall provide the following services: work with CITY personnel to determine the costs that CITY has incurred as a result of the over-prescription of opioids; determine the viable causes of action available to CITY; and determine which if any manufacturers that should be targeted in a lawsuit. After such identification, and only as authorized by CITY, ATTORNEYS will, on behalf of CITY, bring a lawsuit against those parties identified by ATTORNEYS and agreed to by CITY. If additional claims are

desired to be raised, a separate agreement will need to be executed between CITY and ATTORNEYS or these claims will need to be handled by another law firm.

2. TERMINATION OF REPRESENTATION

This Agreement shall cover the period from September 2017 until the termination of the litigation or termination of the legal services rendered hereunder, whichever is sooner. This Agreement may be terminated by CITY upon at least 10-days' notice, 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 CITY against the defendants subsequent to termination, ATTORNEYS shall have rights in the nature of *quantum meruit* to recover fees, costs and expenses reasonably allocable to its work prior to termination. In the event of termination of this Agreement for any reason, ATTORNEYS shall immediately return to CITY all materials and documents of every kind and nature, including but not limited to CITY documents and computer disks, relating to this Agreement and the above-mentioned matter. ATTORNEYS may withdraw as CITY's attorneys at any time if they determine, in their sole discretion, that CITY's claim lacks merit or that it is not worthwhile to pursue CITY's claim further.

3. ATTORNEYS' FEES AND COSTS AND EXPENSES OF LITIGATION

a. There is no fee for this representation unless a monetary recovery acceptable to CITY is obtained by ATTORNEYS in favor of CITY, whether by suit, settlement, or otherwise. SHC agrees to advance all costs associated with prosecuting the litigation. Subject to paragraph 3 (b), below, and in consideration of the legal services to be rendered by ATTORNEYS, CITY agrees that the maximum contingent attorneys' fees for this representation shall be a 33% gross fee. In the event that any suit brought on behalf of CITY in connection with this representation is brought as, or becomes, a class action, ATTORNEYS shall seek their fees and expenses exclusively by application to the court, and ATTORNEYS may make an application for a gross

fee of up to 33%. Upon the application of the applicable fee percentage to the gross amount recovered, and that dollar amount set aside as attorneys' fees to ATTORNEYS, the amount remaining shall first be reduced by the costs and disbursements that have been advanced by ATTORNEYS and approved by CITY, and that amount shall be remitted to ATTORNEYS. By way of example only, if the litigation is settled for the gross amount of \$1,000,000.00, and the approved costs and disbursements are \$100,000.00, then the fee to ATTORNEYS shall be \$330,000, the costs amount of \$100,000 shall be deducted from the balance, and the net recovery to CITY shall be \$570,000. The costs and disbursements which may be deducted from a monetary recovery acceptable to CITY that is obtained by ATTORNEYS include the following, without limitation: court fees, process server fees, transcripts fees, expert witness fees, courier service fees, appellate printing fees, necessary travel expenses of attorneys to attend depositions, interview witnesses and the like, and other appropriate out-of-pocket expenses, as determined in the reasonable discretion of CITY. In the event that any settlement, final judgment, or other resolution of the action results in a monetary recovery to CITY that is less than the amount of the costs incurred and/or disbursements made by ATTORNEYS, CITY shall not be required to pay ATTORNEYS any more than the sum of the full monetary recovery.

b. No monies shall be paid to ATTORNEYS for any work performed, costs incurred or disbursements made by ATTORNEYS in the event no monetary recovery to CITY has been obtained by ATTORNEYS. 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 the ATTORNEYS for any work performed, costs incurred or disbursements made by the ATTORNEYS. In such an event, neither party shall have any further rights against the other.

4. DISBURSEMENT OF PROCEEDS TO CLIENT

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

5. SETTLEMENT

CITY has the authority to accept or reject any final settlement amount after receiving the advice of ATTORNEYS. CITY understands settlements are a "compromise" of its claim, and that ATTORNEY's fee, as outlined in Section 3 above, applies to settlements also. For example, if a settlement is reached, and includes future or structured payments, ATTORNEYS' fees shall include their contingent portion of those future or structured payments as outlined in Section 3 above.

6. NO GUARANTEE OF RECOVERY

CITY understands and acknowledges that dispute resolution through litigation often takes years to achieve. CITY understands and acknowledges that there is no guarantee or assurances of any kind regarding the likelihood of success of CITY's claim, but that DHH and SHC attorneys will use their skill, diligence, and experience to diligently pursue our action.

7. INDEPENDENT CONTRACTOR

It is expressly agreed that ATTORNEY'S status hereunder is that of an independent contractor and the ATTORNEYS shall not be considered an employee of CITY for any purpose.

8. DUTIES AND RESPONSIBILITIES OF PARTIES

All professional work performed under this Agreement shall be performed by ATTORNEYS in accordance with existing professional standards. ATTORNEYS shall exert their best efforts and use their best judgment in review and analysis and preparation of opinions and memoranda and representation in such proceedings, CITY will cooperate with attorneys and their representatives at all times and to comply with all reasonable requests of attorneys in the prosecution of this matter on a timely basis. CITY agrees to provide whatever information is necessary (in the attorney's estimation) in a timely and competent manner, and to provide immediate information as to any change in CITY's status which may have any impact on the prosecution of this claim.

9. POTENTIAL CONFLICT

Without the prior written approval of CITY Attorney, ATTORNEYS shall not simultaneously represent other private clients in actions or proceedings against CITY, its agencies or CITY employees in their official capacity. The representation of any individual in a dispute concerning the legal relationship between the individual and CITY or its agencies would also create a conflict which could require disqualification. ATTORNEYS shall disclose to CITY the existence of any such adverse interests whether existing or potential. This duty shall continue so long as ATTORNEYS are retained on behalf of CITY or its employees. The determination as to when a conflict exists shall ultimately be made by CITY Attorney after full disclosure is obtained.

10. APPROVAL TO BIND CITY

ATTORNEYS shall not have the power to enter into any agreement binding CITY or otherwise obligating CITY without the prior written approval of CITY Attorney.

11. GOVERNING LAW

This Agreement shall be governed by and construed in accordance with the laws of the State of Connecticut, without regard to conflicts of law rules. Venue shall be designated in the Superior Court of Connecticut, in and for New Haven County, Connecticut, or in the United States District Court of Connecticut.

12. ENTIRE AGREEMENT

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

13. SEVERANCE CLAUSE

It is expressly agreed that if any term or provision of this Agreement, or the application thereof to any person or circumstance, shall be held invalid or unenforceable to any extent, the remainder of this Agreement, 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 Agreement shall be valid and shall be enforced to the fullest extent permitted by law.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the latest date written below.

SIMMONS HANLY CONROY LLC

CITY OF TORRINGTON

By: PAUL J. HANLY, JR.
Partner

Date: _____

By: _____
Title: _____

Date: _____

DRUBNER, HARTLEY & HELLMAN LLC

By: JAMES E. HARTLEY
Partner

Date:_____