

RESOLUTION NO. 2018-15


A RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH KELLEY & FERRARO, LLP TO ENGAGE IN ACTIVELY PURSUING POTENTIAL PRESCRIPTION OPIOID-RELATED CLAIMS ON BEHALF OF THE CITY OF HURON

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF HURON, OHIO:

SECTION 1: That the City Manager be, and he hereby is, authorized and directed to enter into an agreement with Kelley & Ferraro, LLP to pursue potential prescription opioid-related claims on behalf of the City of Huron for the recovery of any and all costs, damages or losses sustained as a result of the provision of care, services and/or supplies, which Agreement shall be in substantially the form of Exhibit "A" attached hereto and made a part hereof.

SECTION 2: That this Council hereby finds and determines that all formal actions relative to the adoption of this Resolution were taken in an open meeting of this Council and that all deliberations of this Council and of its Committees, if any, which resulted in formal action, were taken in meetings open to the public in full compliance with applicable legal requirements, including O.R.C. §121.22

SECTION 3: That this Resolution shall be in full force and effect immediately upon its adoption.



Trey Hardy, Vice Mayor

ATTEST: 
Clerk of Council

ADOPTED: FEB. 27, 2018

**KELLEY & FERRARO, LLP
FEE AGREEMENT**

This Agreement ("Agreement") is made this 28 day of February, 2018, between: the City of Huron (herein referred to as "Client" and **KELLEY & FERRARO LLP** ("Attorneys"). In consideration of the mutual promises herein contained, the parties herein agree as follows:

I. Purpose of Representation

Client agrees to retain Kelley & Ferraro LLP to investigate and prosecute any potential claim(s) Client may have against the drug manufacturers and/or pharmaceutical companies, pharmacy retailers, sellers and/or distributors of prescription opioid pain medications for the recovery of any and all costs, damages or loss, including but not limited to, any subrogation and/or reimbursement claims and/or any other claims that may be brought by Client in equity or under the applicable Federal or State law, related to the provision of care, services and/or supplies including the delivery of prescription opioid medications, treatments, hospitalizations, addiction and rehabilitation treatment, overdose or other opioid-related health-care services.

II. Services

Attorney agrees to perform legal services reasonably required to prosecute Client's claim to judgment in a trial court in Ohio, or any other jurisdiction which Attorney believes would be in Client's best interest.

III. Attorneys' Fee

In consideration of Attorneys' services rendered and to be rendered as set out above, it is agreed that Kelley & Ferraro LLP shall receive twenty five percent (25%) of any settlement, verdict, judgment and/or recovery of any kind obtained for or on behalf of Client, as its legal fee.

Client understands that the Attorney fee stated above, is of the total recovery or settlement before any costs, expenses, or disbursements are deducted. The Client understands and agrees that all costs, expenses, and disbursements are paid out of the Client's portion of the recovery, and not out of the Attorneys' fee.

The interest assigned and conveyed to Attorneys is based upon the total amount recovered, and the fact that some portion of the amount recovered may be designated as "attorneys fees" by the Court or settling party will not limit the compensation to be paid under this Agreement.

It is understood and agreed that the Client is employing Attorney as set forth herein, and that if no recovery is made, Client will not owe Attorney any sums whatsoever as Attorneys' fees or expenses.

IV. No Guarantee of Results

It is understood and agreed that Attorneys cannot warrant or guarantee the outcome of the case, and Attorneys have not represented to the Client that the Client will recover any damages, compensation or other funds so desired. The Client has also been informed that obtaining a judgment does not guarantee that the opposing parties will be capable or willing to satisfy the judgment.

V. Court Costs and Expenses

Attorneys may advance any or all of the court costs and expenses that appear to the Attorneys to be reasonably necessary for the investigation, preparation, trial, and/or settlement of this matter. The Client agrees that all other such costs and expenses advanced or incurred by the Attorneys shall be deducted from any recovery obtained for the Client by Kelley & Ferraro on any matter which Kelley & Ferraro represents the Client. The Attorneys' contingency fee shall be computed on the total recovery without deduction for costs, expenses, disbursements or subrogation reductions.

The terms "court costs" and "expenses" include, without limitation, filing fees, court costs, expert fees (regarding, without limitation, evaluation, reports and/or testimony), consultant fees, court reporter fees, record service fees, photocopying, postage, telephone, messenger and delivery charges, travel expenses, computer research fees, preparation of exhibits and photographs, investigative fees and expenses, court-mandated expenditures, specialized outside counsel fees and expenses (*i.e.*, probate, taxation, bankruptcy), any expenses of a structured settlement, medical records, subpoenas, and all other reasonable and necessary costs and expenses which the Attorneys in their professional judgment, determine to be reasonably needed to the prosecution and/or settlement of the Claims of the Client.

In the event it is necessary for the Attorneys to advance costs, such advancements may be taken in its entirety out of the Client's initial settlements or awards and/or out of any settlement or award obtained on the Client's behalf.

VI. Cooperation of Client

Client agrees to cooperate with Attorneys at all times. Client further agrees to keep Attorneys advised of Client's whereabouts (and provide changes of address and telephone numbers), shall appear on reasonable notice, shall appear for all depositions and court appearances upon reasonable notice, and shall comply with all reasonable requests of Attorneys in connection with the preparation and presentation of the aforesaid Claims and causes of action of the Client.

Attorneys may, at their option, withdraw from the case and cease to represent Client should Client fail to comply with any portion of this Agreement or should Attorneys decide that they cannot continue to be involved in the Claim.

VII. Power of Attorney/Proxy

No settlement of said claims shall be made by the undersigned except by and through the Attorney. Client hereby gives Attorney the power and authority to execute any and all pleadings, claims, contracts, settlements, drafts, checks, compromises, releases, dismissals, deposits, orders and other papers which Client could properly execute, and to receive in the name and stead of Client any monies or other things of value which may properly be payable to deliverable to Client on account of any judgment recovered or any settlement agreed to in connection with the claims described herein. Client hereby expressly gives Attorney the power, authority, and proxy to vote in their stead in any and all bankruptcy matters.

VIII. Association of or Assignment to Other Attorneys

Attorneys may associate any other attorney in the representation of the claims. Further, Attorneys may assign this matter and this Agreement to other attorneys of their choice upon notice to and consent of the Client. Client understands that the attorneys of **KELLEY & FERRARO LLP** may be sharing attorneys' fees and expenses with other lawyers or law firms and Client consents to any such fee and expense sharing agreement. Client further understands that any such fee and expense sharing agreement reached between the attorneys of Kelley & Ferraro, LLP and any other lawyers or law firms will NOT change in any manner the contractual obligation as detailed in this Agreement.

IX. Technology-Related Confidentiality Issues

Client understands and acknowledges that, like most practicing attorneys, Kelley & Ferraro, or Attorney uses many available technologies. These include email, electronic databases of important information, including client confidential information, as well as the Internet for factual and legal research, storage, access to, and sharing of documents and information among authorized persons. Although Kelley & Ferraro, or Attorney takes all reasonable precautions to preserve and maintain the confidentiality of our clients' information, in light of the constantly changing technological environment, Attorney cannot guarantee that some of that information will not be intercepted, accessed by, or revealed to unauthorized persons, without Attorney's knowledge. By accepting legal assistance from Kelley & Ferraro or Attorney, the Client understands and accepts these risks and undertakes to raise any concerns about this aspect of our representation with Attorney working on the Matter.

X. Termination of Representation

Client may, at any time and for any reason, discharge Kelley & Ferraro from representing

them. Attorney may terminate this Agreement and cease representation of Client if Client does not meet his or her responsibilities in this Matter, as outlined herein. Attorney may also terminate this Agreement if, in Attorney's determinations, it would be infeasible to continue representation. Attorney will provide Client with reasonable advance notice before any termination of this Agreement.

Client understands that Attorney will not be responsible for any work on the Matter after the Representation Period, except as may be required by the Rules of Professional Conduct and/or an order of the court in which Client has a pending case. Client authorizes Attorney to move to withdraw from representation if the Matter involves pending litigation at the end of the Representation Period, and Client specifically consents to such withdrawal, provided that Attorney takes all action reasonably necessary to ensure that Client's case is not compromised and that Client has an adequate opportunity to obtain new representation.

If the Representation Period ends for any reason and Client notifies Attorney that Client has engaged a new attorney or otherwise notifies Attorney that Client has obtained a new attorney to represent Client in connection with the Matter, that notification will constitute authorization for Attorney to provide the succeeding attorney with full access to Client's file from Attorney, including all confidential and privileged information contained therein and to communicate freely with the attorney and attorney's employees about the Matter. Client agrees that Attorney has a claim for expenses of litigation and unpaid Attorney fees which will become due upon receipt of clients' termination notification.

IX. Prior Agreements Superseded

This Agreement constitutes the sole and only agreement of the parties hereto and supersedes any prior understandings or written or oral agreements between the parties with respect to its subject matter.

Client certifies and acknowledges that Client has had the opportunity to read this five (5) page Agreement, has been provided a copy of this Agreement, and has knowingly and voluntarily entered into this Agreement fully aware of its terms and conditions. Client further certifies and acknowledges that the decision to pursue these claims and to employ these particular Attorneys are solely Client's independent decisions after carefully considering the matters.

EXECUTED on the day and year noted above.

CLIENT SIGNATURES:

ATTORNEY SIGNATURE:

ANDREW D. WHITE

Printed Name:

Andrew D. White

Signature

CITY MANAGER

Title



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