

Outside Legal Counsel for Pharmacy Benefit Manager Litigation – Written Determination Pursuant to Section 34.378, RSMo

Subject: Pharmacy Benefit Manager Litigation

Date: November 1, 2025

From: Maddie Green, Chief of Staff

I. Background

The Missouri Attorney General’s Office (AGO) has reviewed the potential legal action relating to the inflation of drug prices by pharmaceutical manufacturers and Pharmacy Benefit Managers (PBMs). Allegations in related litigation may include hidden profit spreads, improper rebate retention, spread pricing schemes, mail-order “black box” arrangements, restrictive audit terms, and artificially inflated consumer prices, excluding investigations into non-profit health care providers.

This determination is made pursuant to Section 34.378, RSMo. which requires the Attorney General to determine in writing that entering into a contingency fee contract with outside counsel is both cost-effective and in the public interest.

II. Determinations and Findings

(1) Availability of Legal and Financial Resources

The AGO has determined that it does not have sufficient or appropriate legal and financial resources to independently manage and litigate this matter. The litigation involves extensive economic analysis, complex pharmaceutical pricing structures, and multistate coordination. Given the breadth of discovery and data analysis involved, the AGO’s current staffing and financial capacity are insufficient to prosecute the case effectively.

(2) Time, Labor, Novelty, Complexity, and Required Skill

This litigation involves significant time and labor, as well as highly complex and novel legal questions concerning price fixing, collusion, RICO violations, breach of contract, and unfair and deceptive trade practices across multiple jurisdictions. The factual matrix involves coordination among numerous defendants and plaintiffs, detailed financial tracing, and expert testimony on pharmaceutical pricing systems and PBM contracts.

The AGO lacks the internal expertise, technical resources, and specialized experience to manage this scale of litigation effectively. Private counsel with demonstrated skill in pharmaceutical antitrust and large-scale recovery actions is necessary to ensure proper representation of the state’s interests.

(3) Geographic Considerations

The legal services required will extend beyond the State of Missouri, including participation in federal and multistate proceedings. Experienced private attorneys operating nationally in this area have the geographic reach, logistical infrastructure, and established relationships with other state and federal entities necessary for efficient coordination. The AGO does not maintain regional offices or staff capable of managing litigation across these jurisdictions.

(4) Experience and Expertise of Private Counsel

The AGO seeks private counsel with substantial experience handling pharmaceutical pricing, antitrust, and complex class or mass action litigation. The nature of this case demands attorneys who have successfully represented state governments or other public entities in recovery of overcharges from pharmaceutical manufacturers and PBMs. The prospective private attorneys possess the requisite expertise, proven track record, and resources to manage such complex litigation efficiently and cost-effectively.

III. Conclusion

Based on the foregoing findings, the Missouri Attorney General's Office concludes that:

- Engaging private counsel on a contingency fee basis is cost-effective and in the public interest;
- The AGO does not have sufficient internal expertise, time, or resources to handle the matter; and
- Retaining qualified private attorneys with demonstrated experience in this specialized area will best serve the public interest and maximize recovery for Missourians.

Accordingly, the Attorney General authorizes entering into a contingency fee contract for representation related to Pharmacy Benefit Manager Litigation.

Retention Agreement and Contingency Fee Contract

Pursuant to Section 34.378, RSMo., the State of Missouri, through the Attorney General of the State of Missouri (Attorney General), and BarbourHurst, LLC, enter into this Retention Agreement and Contingency Fee Contract (Agreement):

I. Recitals

WHEREAS, after review of the potential legal action relating to the inflation of drug prices by pharmaceutical manufacturers and Pharmacy Benefit Managers (PBMs), the Attorney General has determined the following¹:

1. That allegations in related litigation may include hidden profit spreads, improper rebate retention, spread pricing schemes, mail-order “black box” arrangements, restrictive audit terms, and artificially inflated consumer prices, excluding investigations into non-profit health care providers;
2. That claims (Claims) should be investigated and brought, if necessary, against pharmaceutical manufacturers, PBMs, and/or Group Purchasing Organizations arising from breaches of contract, the above-mentioned allegations, and/or other unlawful acts causing harm to Missourians, Missouri consumers, and/or health plans operated by the State of Missouri and/or its Agencies;
3. That the investigation, research, and litigation of the Claims, if necessary, may require the work of numerous lawyers, paralegals, and others who are familiar with the facts of this case;
4. That it is in the best interests of the State and its citizens for the State to retain attorneys with expertise in this area and significant litigation experience; and
5. BarbourHurst, LLC, is experienced in such litigation and has consented to represent the State of Missouri, in association with the Attorney General, respecting the Claims and pursuant to the terms and conditions described in this Agreement and Missouri law.

[Terms follow on next page]

¹ The Attorney General’s Written Determination pursuant to Section 34.378, RSMo. is incorporated into this Agreement. A copy of the Written Determination is attached. *See Exhibit A.*

II. Terms

THEREFORE, on this January 12, of 2016, it is agreed as follows:

1. The Missouri Attorney General's Office hereby retains BarbourHurst, LLC, and its associated lawyers ("Law Firm") who are hereby designated as Special Assistant Attorneys General, to investigate, research, and prepare claims, if warranted, for the Missouri Attorney General's Office to file in any appropriate court or before any appropriate government agency.
2. The Attorney General does not relinquish constitutional or statutory authority to settle this litigation on behalf of the State of Missouri and its citizens, and the Law Firm shall timely apprise the Attorney General, or the Attorney General's designee(s), of all settlement offers. The Law Firm shall consult with the Attorney General, or the Attorney General's designee(s), and obtain approval on all material matters pertinent to the Claims and any litigation arising therefrom; including whether and how to proceed with any litigation, which claims to advance, what relief to seek, and whether or on what terms to settle. The Attorney General, and/or the Attorney General's designee(s), shall cooperate with the Law Firm and use their best efforts to secure the cooperation of other State agencies. However, the Attorney General is not required to assign any member of staff to pursue the claims, but may from time to time afford staff and other support services as the Attorney General deems appropriate, and the Law Firm shall keep the Attorney General and any designated staff member(s) fully informed on all matters pertaining to the claims. The decision whether to appeal rests solely in the authority of the Attorney General, and the decision not to appeal an unfavorable decision, or a denial of a monetary remedy, does not entitle outside counsel to recover from the State of Missouri and/or Attorney General. The Attorney General's Standard Addendum under Section 34.378, RSMo., outlining the expectations of the parties including, but not limited to, those expectations described in this paragraph, is incorporated into this Agreement. A copy of the Standard Addendum is attached. *See Exhibit B.*
3. The Attorney General and the Law Firm both recognize that the Claims present numerous factual and legal obstacles, and that no assurance of success on the Claims has or can be made.
4. The Attorney General shall maintain sole responsibility for the public distribution of information concerning this matter. All press inquiries shall be referred to the Attorney General's Communications Team and shall be approved and authorized by the Attorney General, or the Attorney General's designee(s). The Attorney General may require information and supporting documents from the Law Firm for preparation of a press release.

5. Notwithstanding the potential difficulties, the Law Firm has agreed to represent the State on a fully contingent basis, and the Attorney General agrees that the Law Firm will be compensated for monetary recoveries received by the State of Missouri on the following basis:
- a. **Recovery of Attorneys' Fees:** The sole contingency upon which the Law Firm shall be compensated is a monetary recovery in this litigation, whether by settlement or judgment. Any fee that the Law Firm wishes to request from opposing parties shall be subject to the consent of the Attorney General, or the Attorney General's designee(s). The contingency fee shall in no way be based on any penalties or civil fines awarded or any amounts attributable to penalties or civil fines.
 - b. **Reasonable and Necessary Costs and Expenses:** The Law Firm shall advance all costs and expenses related to the Claims including those related to depositions or any other legal proceedings advised by the Law Firm to attend. The State of Missouri and/or the Attorney General will not pay any costs and expenses incurred in connection with the investigation and prosecution of the Claims. Recovery of any costs and expenses by the Law Firm is contingent upon a monetary recovery being obtained. Reasonable and necessary costs and expenses include, but are not limited to, those relating to court fees, travel, depositions, investigators, paralegals, computer research, experts, consultants, accounting, and the retention of additional temporary support counsel, as needed. Such costs and expenses shall be approved by the Attorney General, or the Attorney General's designee(s), and shall initially be borne entirely by the Law Firm, which may seek reimbursement from the Court from any gross recoveries secured through pursuit of the Claims.
 - c. The Law Firm shall receive no compensation or reimbursement other than as set out in this Agreement. In the event that no monetary recovery is realized, the Law Firm shall receive no compensation or reimbursement.
 - d. The State of Missouri, through the Attorney General, has the right to terminate this Agreement for any reason, with or without cause, by notifying Law Firm in writing of such termination. In the event of such termination, Law Firm shall, unless otherwise mutually agreed upon in writing, cease all services immediately. Upon termination of this Agreement, Law Firm shall, subject to Law Firm's professional obligations, immediately transfer to the Attorney General, all

information and associated work product prepared by Law Firm to the extent requested by the Attorney General. Should the Attorney General subsequently obtain a monetary remedy in the legal matter, the terminated Law Firm may seek a reasonable portion of the recovery, based on their percentage of work in the matter and the stage in litigation in which they represented the State. This fee shall not exceed half of the contingency fee the Law Firm would have obtained had they continued representation to settlement or judgment in favor of the State, based on the fee scale attached to this Agreement. *See Exhibit C.*

6. Except as otherwise provided in this Agreement including but not limited to paragraph 5d, the Law Firm shall receive a contingency fee on any recovery as outlined in Section 34.378.7 – 34.378.10, RSMo. A copy of the Contingency Fee Recovery Schedule outlined in the statute is attached as *Exhibit C* and is incorporated into this Agreement.
7. With the approval of the Attorney General, or the Attorney General's designee(s), the Law Firm may associate other attorneys at its own expense and at no cost to the State of Missouri. Notwithstanding such association of other attorneys, this Agreement is non-assignable and non-transferrable, nor are the Law Firm's commitments delegable without the express, written consent of the Attorney General.
8. The Law Firm and any other attorneys with which it associates shall, from the date hereof until not less than four (4) years after this litigation is determined, maintain detailed current records, including documentation of all expenses, disbursements, charges, credits, underlying receipts and invoices, and other financial transactions that concern the provision of attorney services related to the Claims and shall follow applicable Attorney General retention policies. In addition, the Law Firm shall maintain detailed contemporaneous time records for the attorneys and paralegals working on this matter in increments of not greater than one-tenth (1/10th) of an hour, and shall promptly provide these records to the Attorney General upon request. Any request under chapter 610 for inspection and copying of such records shall be served upon and responded to by the Missouri Attorney General's Office.

Dated: January 12, 2016

Signature Page

Missouri Attorney General's Office
State of Missouri

By: Maddie Green Date: 1-12-26
Maddie Green
Chief of Staff

BarbourHurst, LLC

By: Paul Hurst Date: 12/30/25
Paul Hurst
Manager

EXHIBIT A

Attorney General's Written Determination (Written Determination) dated
November 1, 2025, is incorporated into this Agreement.

A copy of the Written Determination is attached to this Agreement for reference.

EXHIBIT B

The Attorney General's Standard Addendum for Contingency Fee Contracts (Addendum) is incorporated into this Agreement.

A copy of the Addendum is attached to this Agreement for reference.

EXHIBIT C

Contingency Fee Recovery Schedule

The Law Firm shall receive a contingency fee on any recovery as outlined in Sections 34.378.7-34.378.10, RSMo., which are set forth below:

34.378.7 Except as otherwise provided in subsection 8 of this section, a retained private attorney shall not be entitled to a fee, exclusive of any costs and expenses described in subsection 8 of this section, of more than:

(1) Fifteen percent of that portion of any amount recovered that is ten million dollars or less;

(2) Ten percent of that portion of any amount recovered that is more than ten million dollars but less than or equal to fifteen million dollars;

(3) Five percent of that portion of any amount recovered that is more than fifteen million dollars but less than or equal to twenty million dollars; and

(4) Two percent of that portion of any amount recovered that is more than twenty million dollars.

34.378.8 The total fee payable to all retained private attorneys in any matter that is the subject of a contingency fee contract shall not exceed ten million dollars, exclusive of any costs and expenses provided by the contract and actually incurred by the retained private attorneys, regardless of the number of actions or proceedings or the number of retained private attorneys involved in the matter.

34.378.9 A contingency fee:

(1) Shall be payable only from moneys that are actually received under a judgment or settlement agreement; and

(2) Shall not be based on any amount attributable to a fine or civil penalty.

34.378.10 As used in this section, "**amount recovered**" does not include any moneys paid as costs.