

**From:** David Baltmanis  
**To:** [AG-PFASProposal](#)  
**Cc:** [Scott Entin](#); [Jay Edelson](#)  
**Subject:** PFAS Proposal - 1 of 2  
**Date:** Wednesday, June 5, 2019 4:11:30 PM  
**Attachments:** [PFAS Proposal 5.9.19-4 \(1\).pdf](#)  
[Edelson case documents.7z](#)  
[Resumes.7z](#)

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Dear Ms. Synk,

Please find attached the joint response from Miner, Barnhill & Galland P.C. and Edelson PC to the State's RFP seeking outside counsel for litigation against PFAS manufacturers. Because of the size of the attachments, a second email with additional attachments will follow. If we can provide any additional information or answer any questions, please do not hesitate to contact us.

Best regards,

David Baltmanis  
312-751-1170

**RESPONSE TO REQUEST FOR PROPOSAL FOR**  
**PFAS MANUFACTURER TORT LITIGATION**

**SUBMITTED TO THE STATE OF MICHIGAN**  
**DEPARTMENT OF ATTORNEY GENERAL**

**JUNE 5, 2019**

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**MINER  
BARNHILL  
& GALLAND**  
P.C.

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**Edelson**PC

The law firms of Miner, Barnhill & Galland P.C. (“MBG”) and Edelson PC are pleased to respond to the Request for Proposals for PFAS Manufacturer Tort Litigation to the State of Michigan. Both MBG and Edelson have significant expertise in consumer protection litigation, experience representing government clients, including state Attorneys General, extensive knowledge and insight regarding PFAS and other toxic tort litigation across the nation, and a depth of experience litigating (and negotiating settlements) in complex and multi-party matters. As described further below, MBG and Edelson have the experience, background, and resources necessary to effectively investigate and litigate claims against those entities across the PFAS manufacturing supply chain that have contributed to the PFAS crisis in Michigan.

A statement of interest follows in Section I. Responses to the specific questions posed by the RFP follow in Section II. If we can provide any additional detail or information, please feel to contact Scott Entin or Jay Edelson at:

Scott Entin  
sentin@lawmbg.com  
MINER, BARNHILL & GALLAND P.C.  
325 North LaSalle Street, Suite 350  
Chicago, Illinois 60654  
Tel: 312.751.1170

Jay Edelson  
jedelson@edelson.com  
EDELSON PC  
350 North LaSalle Street, 14th Floor  
Chicago, Illinois 60654  
Tel: 312.589.6375

## **I. Statement of Interest.**

MBG and Edelson have extensive experience and a proven track record of success in representing government clients against large corporate defendants in a wide array of industries. Our firms also know how to effectively litigate complex environmental matters that include large-scale discovery and highly technical issues. MBG recently concluded a seven-year representation in which it obtained a \$51.5 million on behalf of a class of residents pursuing common law tort claims against a large industrial polluter. We have strong ties to the environmental litigation and advocacy community, including with the state of Minnesota’s public health expert in its PFAS litigation that resulted in an \$850 million settlement on the eve of trial. Edelson is currently involved in PFAS matters, and our firms have jointly been involved in discussions with other government entities regarding potential representation related to PFAS contamination. We expect that our firms will be able to bring economies of scale and other litigation efficiencies in a collaborative partnership with the State. And on a more personal level, our firms are both headquartered in Chicago and have deep Midwestern roots, with attorneys from both firms originally hailing from Michigan and holding a deep interest in promoting the State’s interests.

Although the RFP does not explicitly request a technical proposal or litigation strategy, we briefly offer our preliminary assessment of the factual and legal landscape in Michigan with respect to PFAS. In many respects, Michigan is “ground zero” when it comes to PFAS contamination, with over 200 identified sites of contamination and a number of areas facing acute crises over the safety of drinking water, some with a clear indication of the source of contamination, others without. Yet the legal landscape for the State in seeking recovery from the parties responsible is uniquely challenging in light of various statutes that impose caps on recovery for certain types of actions, including products liability cases, *e.g.*, MCL § 600.2946a(1); create demanding standards of proof in tort cases, *e.g. id.* §§ 600.2946, 600.2948; and eliminate joint liability, § 600.2956. This, coupled with the Michigan courts’ restrictive view of statutes of limitations under *Trentadue v. Gorton*, 479 Mich. 378 (2007), and its progeny, counsels in favor of a considered, deliberate litigation strategy.

In this respect, we would recommend that the State attempt to negotiate tolling agreements with any potential defendants as soon as possible, with an eye toward investigation and potentially negotiation prior to filing suit. In particular, to the extent tolling agreements can be reached, we recommend that the Attorney General work in partnership with the Department of Environment, Great Lakes, and Energy (“DEGLE”) to engage in pre-suit investigations of PFAS manufacturers. Specifically, with regard to sites with identified or suspected PFAS contamination, DEGLE can and should exercise its authority under MCL § 324.20117 to require responsible parties to “furnish any information” about releases or potential releases. Although the scope of the investigatory power under the statute is not explicitly written into the text, nor has it apparently been litigated, the statute’s language is broad enough that it likely could afford the State pre-suit document discovery that would shed light on manufacturers’ knowledge of the timing and cause of releases and the potential dangers associated with PFAS. This information is particularly pertinent because some of the limitations on liability and caps on recovery imposed by statute can be avoided if the State can demonstrate that potential defendants had actual knowledge of that PFAS were substantially likely to cause injury. *Id.* § 600.2949a. Information gained in a pre-suit investigation would be invaluable for possible negotiation with defendants as well as in determining what claims are strongest.

After a thorough pre-suit investigation, we would collaborate with the State on the optimal litigation strategy. It is likely that the greatest potential recovery would be associated with a statewide lawsuit against all of the major manufacturers and other potentially responsible parties (3M, DuPont, Tyco, National Foam, etc.). However, if the factual and legal research in the investigation indicates that there may be significant hurdles to recovery on a broader theory, the State may consider coupling and industry-wide litigation strategy with specific actions targeted around particular defendants or sites, or staged litigation strategy focusing on the largest sources of contamination and those attributable to single sources. (The State’s suit against Wolverine World Wide, Inc., relating to PFAS contamination is a good example of a more targeted approach that could be replicated with common law claims, if the facts and law warrant.)

We believe that to the extent possible, the State would be best served with as much factual and legal information as possible prior to filing suit. In the event that potential defendants contest any investigatory authority or refused to enter into tolling agreements, we are

prepared to immediately proceed against potential targets with common law litigation. Based on publicly available information, we believe the State has viable products liability, nuisance, and negligence claims against a number of potentially responsible parties, including 3M.

## **II. Responses to the Request for Proposals.**

### **A. Bidder Contact Information.**

*1.1 Identify the bidder's contact person for the RFP process. Include name, title, address, email, and phone number.*

*1.2 Identify the person authorized to sign a contract resulting from this RFP. Include name, title, address, email, and phone number.*

The contact person at MBG for the RFP process, and the person authorized to sign a contract on MBG's behalf, is:

Scott Entin, *Shareholder*  
sentin@lawmbg.com  
MINER, BARNHILL & GALLAND P.C.  
325 North LaSalle Street, Suite 350  
Chicago, Illinois 60654  
Tel: 312.751.1170

The contact person at Edelson for the RFP process, and the person authorized to sign a contract on Edelson's behalf, is:

Jay Edelson, *Founder & CEO*  
jedelson@edelson.com  
EDELSON PC  
350 North LaSalle Street, 14th Floor  
Chicago, Illinois 60654  
Tel: 312.589.6375

### **B. Company Background Information.**

*2.1 Identify the company's legal business name, address, phone number, and website.*

MBG's legal business name is Miner, Barnhill & Galland P.C. MBG's principal office is located at 325 North LaSalle Street, Suite 350, Chicago, Illinois 60654. MBG's main telephone number is 312.751.1170. MBG also maintains offices in Madison, Wisconsin, and Los Angeles, California. MBG's website is located at: [www.lawmbg.com](http://www.lawmbg.com).

Edelson's legal business name is Edelson P.C. Edelson's principal office is located at 350 North LaSalle Street, 14th Floor, Chicago, Illinois 60654. Edelson's main telephone number

is 312.589.6370. Edelson also maintains an office in San Francisco, California. Edelson's website is located at: [www.edelson.com](http://www.edelson.com).

*2.2 Identify the State your business is organized in.*

MBG and Edelson are both organized as Professional Corporations under the laws of the State of Illinois.

*2.3 Identify the location (city and state) that would have primary responsibility for this work if awarded a contract.*

MBG's Chicago, Illinois, office would have primary responsibility for performing the work awarded under this contract, although MBG anticipates participation by attorneys in its Madison, Wisconsin, and potentially Los Angeles, California, offices as well.

Edelson's Chicago, Illinois, office would have primary responsibility for performing the work awarded under this contract, although Edelson anticipates participation by attorneys in its San Francisco, California, office as well.

*2.4 Identify the practice group area, if applicable, proposed to handle the work.*

MBG is not formally organized into practice group areas, but a number of its attorneys have focused much or all of their work in the past decade on environmental matters, and its work on this matter would be performed by those attorneys.

Edelson has four primary working groups (though many people have roles in multiple groups): (i) Investigative and Case Development, (ii) Public Client and Government Affairs, (iii) Litigation, and (iv) Issues and Appeals. Edelson has several sub-specialties within its practice, including mass torts, environmental litigation, and toxic tort matters. Members from each team have developed institutional knowledge and subject matter expertise in various stages of mass tort cases, and PFAS litigation in particular. As a result, staffing of this litigation would likely include, at minimum, those attorneys from each practice group.

*2.5 Explain any partnerships and strategic relationships you have that would bring significant value to the State.*

MBG's and Edelson's experience and professional networks will provide substantial advantages representing the State in PFAS litigation.

In particular, MBG has developed over the last decade a wide-range of contacts with experts, consultants, and non-profit advocates in the environmental protection realm that it would rely on for the State's benefit. For example, MBG has a close working relationship with a professional environmental engineering firm and its principal, an environmental engineer with 40 years' experience who has served as an expert witness in over 60 matters. In other litigation, MBG has retained as an expert and worked with Dr. Phillippe Grandjean, one of the world's premier public health and toxicology experts in environmental contamination. Dr. Grandjean

served as the State of Minnesota's expert in its PFAS litigation, which settled during voir dire for \$850M. In addition, MBG has worked with environmental advocacy groups throughout the Midwest in conjunction with litigation efforts and other investigations of environmental contamination, and has contacts with a wide network of other environmental professionals.

Edelson also brings a full in-house forensics lab and discovery review team. Edelson's forensics lab is comprised of computer forensics professionals and lawyers with technology backgrounds (several of which were born and raised in Michigan). Edelson's lawyers have previously worked in technical roles inside tech companies, and in some instances, have even founded them. Its computer forensics experts have extensive resumes, including working under Top Secret clearance for a major network security company, teaching graduate level cybersecurity and forensics courses, and training some of the country's biggest companies on information security issues. It's worth noting that Edelson's combined paralegal, discovery, and forensics staff are well-versed in a wide range of software used for document management, discovery, and trial presentation, and are equipped to handle large-scale discovery in-house, including the organization and maintenance of computer databases to house, review, code, and process the millions of documents produced in complex litigation. These resources alone help to reduce expenses related to, among other things, costs in document production, database maintenance, and repository fees. They likewise increase efficiencies in investigations and litigation by keeping the workload, strategy and control of other related efforts in-house.

- 2.6 *If you intend to use subcontractors to perform the work, disclose 1) the subcontractor's legal business name, website, address, phone number, and primary contact person; 2) a description of the subcontractor's organization; 3) a complete description of the services or products it will provide; 4) information concerning subcontractor's ability to provide services; 5) whether the bidder has previous working experience of the subcontractor, and if yes, provide details of that previous relationship.*

If awarded the contract, MBG and Edelson do not currently anticipate the use of subcontractors to perform the work.

- 2.7 *Identify the name and title of the individuals you propose as key personnel. Attached resumes are CVs for each person.*

MBG's legal team on this contract will be led by partner **Scott Entin**. MBG also anticipates significant involvement of MBG partners **Sarah Siskind**, **Robert Libman**, **Deanna Pihos**, and **David Baltmanis**, and MBG associates **Matthew Owens** and **Ryan Miller**. CVs of each of these attorneys is attached. To the extent necessary, MBG may incorporate the involvement of other attorneys as well.

Edelson's legal team on this contract will be led by partner **Jay Edelson**. Edelson also anticipates significant involvement of Edelson partners **Benjamin Richman**, **Christopher Dore**, **Ari Scharg**, **Eve-Lynn Rapp**, and **David Mindell**, and Edelson associates **Sydney Janzen**, **J. Eli Wade-Scott**, and **Todd Logan**. CVs of each of these attorneys is attached. To the extent necessary, Edelson may incorporate the involvement of other attorneys as well.

**C. Experience.**

- 3.1 Describe at least three relevant experiences supporting your ability to successfully perform the work set forth in the SOW. Include a description of services provided and results obtained. Include contact information for the clients you represented.
- 3.2 Provide publicly available motions, briefs, and other documents relevant to your experience in providing the legal services sought under this RFP.

**MBG**

MBG has an innovative environmental practice and a proven track record of success using both statutory and common-law causes of action on behalf of plaintiffs injured by pollution and environmental advocacy groups.

For example, MBG recently concluded its work in ***Freeman v. Grain Processing Corporation, LACV 021232 (Muscatine Cty. Dist. Ct., Iowa)***, where MBG for seven years served as lead counsel for a class of over 10,000 current and former residents of Muscatine, Iowa, pursuing common law and statutory nuisance, negligence, and trespass claims related to a corn wet mill's air emissions. *Freeman* was twice in the Iowa Supreme Court, with MBG winning unanimous victories for plaintiffs on both occasions. The case was factually and legally complex, entailing over 100 depositions, and 20 expert witnesses running the gamut from sophisticated modeling of air emissions, complex statistical models apportioning damages to each of 2,000 individual land parcels, experts on health, pollution control, engineering, economics, and even human perception and smell. After seven years of hard-fought litigation, MBG obtained a \$51.5 million settlement on behalf of the class that affords individual class members significant monetary relief in the thousands of dollars, as well as millions of dollars of upgrades to the plant's pollution control equipment. MBG partners **Sarah Siskind** and **Scott Entin** led the litigation, with significant contributions from MBG partners **Benjamin Blustein**, **Betty Eberle**, **Deanna Pihos**, and **David Baltmanis**, and associates **Matthew Owens** and **Ryan Miller**.

Client reference: Kelcey Brackett, kelceybrackett@gmail.com, 563.316.0353.

Enclosed are the following filings and opinions from *Freeman*:

- Plaintiffs' Amended Class Action Petition;
- Plaintiffs' Amended Motion for Class Certification;
- Plaintiffs' consolidated responses to defendants' five pre-trial summary judgment motions; and



- The Iowa Supreme Court's opinions ruling in favor of plaintiffs, also available at *Freeman v. Grain Processing Corp.*, 848 N.W.2d 58 (Iowa 2014), and *Freeman v. Grain Processing Corp.*, 895 N.W.2d 105 (Iowa 2017).

MBG also currently serves as lead counsel in another large-scale, common-law class action arising from industrial pollution. In ***Hernandez v. U.S. Steel Corp.*, GD-19-005325 (Allegheny Cnty. Ct. of Common Pleas, Pa.)**, which was recently filed in Pennsylvania state court, the putative class seeks recovery for lost use and enjoyment and discomfort arising from a catastrophic fire at U.S. Steel's Clairton Coke Works, which caused the works to operate without controls for sulfur dioxide or hydrogen sulfide pollution for months. MBG's U.S. Steel team is led by **Sarah Siskind** and **Scott Entin** and also includes **David Baltmanis** and **Matthew Owens**. The case is currently pending, and the complaint in the matter is enclosed.

Client reference: Linda Hernandez, lcain10406@aol.com, 412.720.2813.

MBG has served as litigation counsel for Sierra Club on multiple occasions in complex litigation under the federal Clean Air Act ("CAA"). In ***Sierra Club v. Union Electric Co. d/b/a/ Ameren Missouri*, 14-CV-408-AGF (E.D. Mo.)**, MBG acted as lead counsel for Sierra Club in a citizen suit seeking injunctive relief and civil penalties against one of the nation's largest utilities for violations of the CAA, and the utility's operating permits at three coal-fired power plants. The case involved voluminous document and written discovery and myriad complex factually and legal issues. The case included highly technical expert discovery, with nearly a dozen experts on issues ranging from complex pollution control technologies, air modeling of pollutants generated by three coal-fired power plants, the public health effects associated with those pollutants, and the economics of Missouri's public utility system, including the costs of alternatives to coal. MBG partners **Sarah Siskind**, **Benjamin Blustein**, **Scott Entin**, **Deanna Pihos**, and **David Baltmanis** were all extensively involved in the matter, which settled in mediation shortly before the close of discovery. The complaint from the matter is enclosed, as are Sierra Club's brief on a hotly-contested motion to compel and the court's ruling in Sierra Club's favor.

Sierra Club also retained MBG for purposes of trial in ***Sierra Club v. PPL Montana LLC et al.*, 13-cv-00032-DLC-JCL**, a citizen suit under the CAA against a major utility concerning violations of the EPA's Prevention of Significant Deterioration program, triggering the requirement that a coal-fired power plant utilize best available control technology to control emissions. MBG partner **Robert Libman** was brought in to specifically handle complex expert issues at trial. The case settled shortly before it was scheduled to go to trial.

Most recently, MBG represents Sierra Club as a plaintiff-intervenor in ***United States v. Ameren Missouri*, 11-cv-00077-RWS**. The United States began the litigation under the CAA in 2011 alleging violations of the EPA's Prevention of Significant Deterioration and New Source Review provisions, among other things, at a St. Louis-area coal-fired power plant. A liability finding was made in the United States favor in early 2017, and the case entered the remedy phase in which the court was to determine the best available control technology for sulfur dioxide. Sierra Club, represented by MBG, intervened as a plaintiff shortly after the liability phase to ensure that the best possible relief is ordered irrespective of the actions of the current EPA and

DOJ, which have expressed skepticism about regulation of the coal industry generally and New Source Review cases in particular. This case similarly deals with complex factual and legal issues and the testimony of many experts about the dispersion and effects of the defendants' emissions, and what constitutes the best available control technology, with considerations of efficacy, impact, and cost, among others. MBG partner **Benjamin Blustein** has been principally involved in the litigation with assistance from MBG partner **David Baltmanis**. A remedy bench trial was held in April 2019, and post-trial briefing is ongoing. Enclosed are Sierra Club's opposition to the defendant's *Daubert* motion with respect to plaintiffs' expert on health harms associated with mercury exposure, Phillippe Grandjean (who also served as the State of Minnesota's public health expert in its PFAS litigation against 3M), the court's decision denying the *Daubert* motion, and Sierra Club's posttrial proposed findings of fact and conclusions of law.

Client reference for Sierra Club matters: Sunil Bector, Staff Attorney, [sunil.bector@sierraclub.org](mailto:sunil.bector@sierraclub.org), 415.977.5759.

MBG also has a long and proven track record of success representing state governments as outside counsel. Over the past 15 years, MBG has focused on addressing unlawful practices within the pharmaceutical industry and has represented numerous states—Alaska, Hawaii, Idaho, Illinois, Indiana, Kentucky, South Carolina, and Wisconsin—in litigation against dozens of pharmaceutical manufacturers and distributors, among other entities, under state consumer protection, Medicaid fraud, false advertising, and false claims statutes in the Average Wholesale Price (“AWP”) litigation and related litigation. In these vigorously-defended and highly complex matters, MBG has recovered nearly \$1 billion on behalf of its state clients through settlements and post-trial judgments, with seven cases proceeding to multi-week trials against many of the largest defense firms in the country. In each matter, MBG has worked alongside attorneys from the Attorneys General's offices and other state personnel to work collaboratively on developing litigation strategy, managing discovery, and trying cases to verdict and on appeal. Several AWP matters involved efforts by defendants to remove cases from state court into an MDL in the District of Massachusetts, which were successfully overcome. MBG's AWP litigation team was led by partner **Robert Libman** and involved significant contributions from partners **Sarah Siskind**, **Benjamin Blustein**, **Scott Entin**, **Deanna Pihos**, and **David Baltmanis**, along with others.

Client references for AWP litigation (additional state references are available upon request):

- Brent Stratton, Chief Deputy Attorney General, Office of the Illinois Attorney General, [bstratton@atg.state.il.us](mailto:bstratton@atg.state.il.us), 312.814.4499.
- Frank Remington, Former Assistant Attorney General, Wisconsin Office of Attorney General, 608.267.2530.
- Brett DeLange and Jane Hochberg, Office of the Idaho Attorney General, [brett.delange@ag.idaho.gov](mailto:brett.delange@ag.idaho.gov), [jane.hochberg@ag.idaho.gov](mailto:jane.hochberg@ag.idaho.gov), 208-334-2400.

The following filings and rulings from MBG's work in the AWP litigation are enclosed:

- The Wisconsin Supreme Court's opinion in *State of Wisconsin v. Abbott Labs., et al.*, 2012 WI 62, ¶¶2-28, 341 Wis. 2d 510, 816 N.W.2d 145, ruling in favor of the State on certified issues during appeal of a \$9M verdict in favor the State. The Wisconsin Court of Appeals' ruling in favor of the State is also attached, and is available at 346 Wis.2d 565, 829 N.W.2d 753 (Wis. Ct. App. 2013).
- The State's brief in that appeal before the Wisconsin Supreme Court.
- The Circuit Court of Cook County's post-trial ruling in favor of the State in *People of the State of Illinois v. Abbott Labs., et al.*, finding that the State had proven causation of damages against Teva Pharmaceuticals at a bench trial. The case subsequently settled during damages briefing for roughly \$150M.

### Edelson

Edelson has been chosen by courts and other institutions to handle some of the most complex and significant issues affecting our country today. Edelson attorneys have represented collegiate and other athletes suffering from devastating effects of concussions; property owners who have lost their homes and businesses to various natural and manmade disaster; a group of public housing residents based upon contamination-related injuries; and consumers, unions, and governmental entities suffering losses due to the sale of unsafe prescriptions drugs. Edelson's founder has been recognized as one of "America's top trial lawyers" in the mass action arena (DrugWatcher, August 2018) , and in 2019 the National Law Journal named Edelson amongst the country's "Elite Trial Lawyers," including in the areas of Mass Torts (1 of only 6 firms recognized) and Consumer Protection (1 of only 7 firms recognized).

Relevant here, Edelson has a robust environmental practice, including numerous cases focused on water and air pollution on behalf of victims of corporate pollution, pursuing both statutory and common-law causes of action. For example, Edelson is currently representing hundreds of individuals and families in Washington state in litigation against major chemical manufacturers including 3M, related to ground water contaminated from PFAS. This contamination stems from the use of aqueous film forming foam at two Naval airstrips located on Whidbey Island, a community of roughly 100,000 people. Edelson is pursuing claims on behalf of individuals suffering severe health effects as well as those who have lost significant value in their property due to the permanent contamination of their land. Plaintiff's Class Action Complaint and Demand for Jury Trial is enclosed.

Client reference for the consumer PFAS matters: Krista Jackson, [dobiesrbest@hotmail.com](mailto:dobiesrbest@hotmail.com), 360.675.0963.

In another example, Edelson is currently serving as co-lead counsel in the NCAA concussion personal injury litigation, *In re: National Collegiate Athletic Association Single School/Single Sport Concussion Litig., No. 16-cv-8727, MDL No. 2492 (N.D. Ill.)*. This litigation is exceptionally complex, involving nearly 400 class action lawsuits alleging traumatic brain injuries, among other claims, as a result of the negligence of the NCAA, its conferences, and its member institutions. The litigation is considered "one of the largest actions pending in the country" according to *Law360*. Edelson became involved in this litigation—and subsequently appointed co-lead counsel in an MDL—after it filed an objection on behalf of a

former student-athlete to a proposed \$75 million settlement, arguing most current and former NCAA athletes would receive little from the settlement while giving up the right to seek personal injury damages on a class-wide basis. As a result of the objection, the NCAA was forced to improve the settlement and could not release personal injury claims as part of its initial settlement. Edelson was subsequently appointed co-lead counsel in the personal injury MDL track and is now leading the litigation of four bellwether cases. The litigation is ongoing.

Client reference for the consumer NCAA concussion personal injury litigation: Ray Griffin, raymogriff3@aol.com, 740.404.1275.

The following filings and rulings from Edelson's work in the NCAA concussion personal injury litigation are enclosed:

- Plaintiff Griffin's Class Action Complaint and Demand for Jury Trial; and
- Order on Plaintiffs Rose's and Stratton's Motion to Dismiss, allowing the crux of Plaintiffs' claims to survive the motion to dismiss phase.

Edelson is also representing the People of the State of Illinois, through the Cook County State's Attorney's Office, in an action against Facebook and Cambridge Analytica over well-publicized allegations that massive amounts of personal data were collected and shared without proper authorization. ***People of the State of Illinois, ex rel. Kimberly M. Foxx, State's Attorney of Cook County, Illinois v. Facebook Inc., SCL Group Limited and Cambridge Analytica LLC, 2018-CH-03868 (Cir. Ct. Cook Cty., Ill.)***. Edelson's case was the first filed by a government regulator over this conduct. After Facebook attempted to remove the case from state court to a federal MDL, Edelson persuaded the MDL judge to remand the action. In doing so, the court adopted Edelson's arguments that the State's Attorney had broad authority to represent the State in statewide consumer fraud enforcement actions. That complaint as well as the opinion, *In re Facebook, Inc., Consumer Privacy User Profile Litig.*, 354 F. Supp. 3d 1122 (N.D. Cal. 2019), are enclosed.

Client reference: Paul A. Castiglione, Director of Civil Appeals and Special Projects, Civil Actions Bureau, Cook County State's Attorney's Office, paul.castiglione@cookcountyil.gov, 312.603.8600.

In other examples:

- Edelson represents over 100 individuals suffering negative health effects from long-term exposure to ethylene oxide emissions in northern Illinois. In the impending litigation, Edelson will pursue claims that two commercial facilities, Medline and Vantage, have emitted dangerous levels of ethylene oxide into the air for over two decades, leading to increased rates of cancer and other issues. Edelson anticipates filing these claims in the immediate future.
- Edelson was lead counsel in ***Spokeo, Inc. v. Robins*, 136 S. Ct. 1540 (2016)**, where the United States Supreme Court rejected the argument that individuals

must allege “real world” harm to have standing to sue in federal court; instead the court recognized that intangible harms and even the “risk of future harm” can establish standing. Commentators have called *Spokeo* one of the most important consumer privacy cases to come before the Supreme Court in recent times.

- Edelson currently represents nearly 50 governmental entities, including a State Attorney General and a wide variety of political subdivisions, in nationwide litigation—both in state courts and in a federal MDL—regarding the opioid epidemic. The claims in these cases include violations of various state consumer protection statutes as well as common law claims of public nuisance, negligence, and fraud. The litigation is ongoing.
- Edelson also represents hundreds of families in litigation against Pacific Gas & Electric Company in the aftermath of the recent Northern California Camp Fire. The claims in these cases include common law claims of public nuisance, private nuisance, trespass, negligence, and violations of California’s Health and Safety Code. As a result of PG&E’s recently-declared Chapter 11 bankruptcy, the litigation is presently stayed, though Edelson anticipates the litigation will resume upon PG&E’s likely exit from Chapter 11 proceedings. In the interim, one of Edelson’s clients has been appointed to the creditor’s committee in the bankruptcy proceedings.
- Edelson represents the City of Chicago and the People of the State of Illinois, by and through the State’s Attorney of Cook County, in a privacy case against Uber related to Uber’s data security practices resulting in two major breaches of driver and customer data in 2014 and 2016. *City of Chicago, et al. v. Uber Technologies*, No. 2017-CH-15594 (Cir. Ct. Cook Cty., Ill.). Edelson successfully defeated Uber’s first motion to dismiss, convincing the Court that the City of Chicago had standing to bring claims under its own consumer fraud ordinance as a home-rule entity, and that the State’s Attorney had authority to bring claims under the state consumer fraud act. The litigation remains ongoing.

**D. Conflict of Interest.**

- 4.1 Provide detailed information regarding any prior, current, or anticipated future relationship with any manufacturer of PFAS or PFAS-containing products that could give rise to potential actual or apparent conflict of interest. Disclose such information for both the bidder and any proposed subcontractors.

Neither MBG nor Edelson has any relationship with any manufacturer of PFAS or PFAS-containing products.

- 4.2 Disclose any actual, apparent, or potential conflict of interest between the bidder and the State of Michigan.

Neither MBG nor Edelson has any actual or apparent conflict of interest with the State of Michigan, nor are there potential conflicts of interest or circumstances under which any such conflicts might be anticipated. Neither firm has ever been adverse to the State, nor have they had any positional or other conflicts with the State.

In the interest of full disclosure, MBG and Edelson are in discussions with other government entities regarding potential PFAS litigation. Should another government entity retain MBG and Edelson to pursue claims against PFAS manufacturers and others, a conflict of interest is extremely unlikely to arise. The interests of the State of Michigan and other potential PFAS plaintiff clients are all but certain to align with one another, and these concurrent representations would likely yield economies of scale with regard to discovery and other efficiencies that benefit all such clients. Both MBG's and Edelson's prior representations of multiple government entities in pharmaceutical litigation have borne out such advantages and efficiencies, and none have resulted in actual or perceived conflicts of interest between clients.

- 4.3 *With respect to any information provided in response to the questions above, provide an explanation of why an actual, apparent, or potential conflict of interest would not arise, or the measures that would be taken to avoid such a conflict.*

As discussed above, no current actual or apparent conflicts exist, and none are anticipated to arise in the future. In the exceedingly unlikely event that a conflict should arise for either MBG or Edelson, the firm will promptly inform the State and any other affected client and take any necessary steps to address it, up to and including withdrawal. In such event, there will be no interruption in work. Both firms have the capacity, resources, and knowledge to handle the proposed litigation without co-counsel. The firms' co-counsel partnership is based on a collaborative style with both firms sharing all work product, having access to all discovery, daily communication, and conferring on all major decisions such that a transition of work to one of the two firms would be seamless.

**E. SAAG Contract.**

- 5.1 *Bidder must affirm agreement with the terms of the SAAG Contract (**Attachment A**). If you do not agree, you must provide redline edits to the SAAG Contract with your proposal, and include justification for requesting deviation from the terms.*

MBG and Edelson affirm agreement with the terms of the SAAG Contract.

**F. Fee Agreement.**

- 6.1 *Bidder must submit a proposed Fee Agreement which: (1) aligns with the SAAG Contract (**Attachment A**) and (2) clearly sets forth how the bidder proposed to address payment in the event of recovery. See also SAAG Contract (**Attachment A**), Section 3, Compensation and Cost Reimbursement.*

MBG and Edelson propose that if the State of Michigan receives any recovery, settlement, and/or judgment in PFAS-related litigation, the firms recover attorneys' fees according to the following schedule:

- 10% of the net recovery if the matter is resolved pre-complaint;
- 18% of the net recovery if the matter is resolved after the complaint is filed but before summary judgment briefing is completed; and
- 20% of the net recovery if the matter is resolved after summary judgment briefing is completed.

Under this proposal, if unsuccessful or if no recovery is otherwise made, the State of Michigan would not be responsible for any fees or costs incurred by MBG and Edelson. MBG and Edelson are open to further discussion of this proposal.

# State of Michigan

## Department of Attorney General

### Request for Proposals for PFAS Manufacturer Tort Litigation

**Project Statement.** This request for proposals (RFP) is to solicit proposals from attorneys and law firms to serve as Special Assistant Attorneys General (SAAGs) to pursue common law environmental tort claims on behalf of the State of Michigan through the Department of Attorney General (DAG) (together, the State) on a contingency fee basis. This RFP is divided into the following parts:

- State Contact Information (**Table 1**), page 1
- Timeline (**Table 2**), page 1
- Proposal Instructions, pages 2-4
- Statement of Work, pages 5-7
- Proposal Contents, pages 8-9
- SAAG Contract (**Attachment A**)

**State Contact Information**  
**Table 1**

Solicitation Manager:	Email proposals to:	For RFP updates and general information, visit:
<b>Name:</b> <a href="#">AAG Polly Synk</a> <b>Phone:</b> 517.335.7664 <b>Email:</b> <a href="mailto:synkp@michigan.gov">synkp@michigan.gov</a>	PFASProposal@michigan.gov	<a href="#">PFAS Proposal</a>

**Timeline**  
**Table 2**

Event	Time	Date
RFP issue date	N/A	Thursday, May 9, 2019
Deadline for bidders to submit questions about this RFP	5:00 p.m. Eastern	Friday, May 17, 2019
Anticipated date State will answer bidder questions	5:00 p.m. Eastern	Friday, May 24, 2019
Proposals due	5:00 p.m. Eastern	Wednesday, June 5, 2019
Anticipated timeframe oral presentations will be scheduled, if any	N/A	Monday, June 24–Friday June 28
Anticipated date State will make decision	N/A	Prior to August 1, 2019



## Proposal Instructions

1. **Proposal Preparation.** Bidders must follow these Proposal Instructions. Bidders must provide the information requested in the Proposal Contents section below.
2. **State Contact Information.** The sole point of contact for the State concerning this RFP is the Solicitation Manager listed in **Table 1** above. Contacting any other State official, employee, agent, or representative about this RFP may result in disqualification.
3. **Modifications.** The State may modify this RFP at any time. Modifications will be posted on the website listed under **Table 1** above. This is the only method by which the RFP may be modified.
4. **Deficiency notice.** The State may post a notice of deficiency on the website listed under **Table 1** above if it determines that a portion of the RFP was deficient, unclear, or ambiguous. Failure to respond to a deficiency notice as specified in the notice may result in disqualification.
5. **Questions and Answers.** Questions about this RFP must be emailed to the Solicitation Manager at PFASProposal@michigan.gov no later than the time and date specified in **Table 2** above. In the interest of transparency, only written questions will be accepted. The State's answers will be posted on the website listed in **Table 1** above. Please include the RFP page number and section at issue for each question.
6. **Proposal Submission.** Bidders must email proposals including attachments to the designated email address listed in **Table 1** above. The State cannot receive email messages with a data volume greater than 25 MB. Therefore, prior to submitting your proposal, please validate that your message does not exceed that limit. This may require breaking your proposal into one or more email messages, in which case, mark your messages accordingly, e.g., "1 of 2." Proposals must be received by the State on or before the proposal due date stated in **Table 2** above.
7. **References to External Sources.** References and links to websites or external sources may not be used in lieu of providing the information requested in the RFP within a proposal.

- 8. Evaluation.** A contract will be awarded to the responsive and responsible bidder presenting the best value to the State. The State will determine best value. Best value is more than pricing alone; it includes the qualifications, experience, abilities, capacity, and cost-effectiveness of bidder proposals after reviewing actual, apparent, or potential conflicts of interest.

Designated State staff will review proposals and issue a recommendation for award to the Attorney General for the final decision. The recommendation to the Attorney General will not include the names of the bidders.

The State may utilize all bidder information to determine best value for services sought. The State may conduct an onsite visit to tour the bidder's work location; require an oral presentation of the bidder's proposal; conduct interviews, independent research, reference checks, and background checks; and request concessions at any point during the evaluation process. The State will post a notice of award on the website listed in **Table 1** above after the decision has been made.

- 9. Clarification Notice.** The State may request clarification of a proposal. Failure to respond to a clarification request as specified in the notice may result in disqualification.

- 10. Reservations.** The State reserves the right to:

- a. Discontinue the RFP process at any time for any or no reason.
- b. Conduct due diligence.
- c. Reject any and all proposals received as a result of this RFP.
- d. Disqualify a bidder for failure to follow the Proposal Instructions or other requirements of the RFP.
- e. Disqualify a bidder if the State determines an actual, apparent, or potential conflict of interest exists.
- f. Disqualify a bidder if it is determined they purposely or willfully submitted false or misleading information in response to the RFP.
- g. Consider late or disqualified proposals if deemed to be in the State's best interests.
- h. Consider prior performance with the State in making an award decision.
- i. Refuse to award a contract to a bidder that has failed to pay State taxes or has outstanding debt with the State.
- j. Negotiate with one or more bidders on price, terms, scope, or other deliverables.
- k. Award multiple, optional-use contracts.

**11. General Conditions.** The State will not be liable for any costs, expenses, or damages incurred by participation in this solicitation. The bidder agrees that a proposal is considered an offer to do business with the State in accordance with the proposal, including the SAAG Contract (**Attachment A**), and that a proposal is irrevocable and binding for a period of 180 calendar days from proposal submission date. If a contract is awarded to the bidder, the State may, at its option, incorporate any part of the bidder's proposal into a contract. This RFP is not an offer to enter into a contract. This RFP may not contain all matters upon which agreement must be reached.

**12. Freedom of Information Act.** Proposals and resulting contracts are subject to disclosure as required under Michigan's Freedom of Information Act (FOIA), MCL 15.231 *et seq.*, and other law.

## **Statement of Work (SOW)**

### **1. Introduction.**

This RFP is to solicit proposals from attorneys and law firms with experience and interest in pursuing common law environmental tort claims against manufacturers of certain hazardous substances on behalf of the State of Michigan on a contingency fee basis.

### **2. Background and Purpose.**

Michigan is one of the first states in the nation to tackle the investigation and regulation of the emerging contaminants known as PFAS – per- and polyfluoroalkyl substances, a name given to a large group of man-made chemicals used in many products. Their grease, water, and stain-resistant properties have been used in applications ranging from firefighting foam, carpet, waterproofing of fabrics and leathers, packaging materials, nonstick coatings, and industrial processes such as chrome plating.

PFAS are labeled “emerging contaminants” because scientific understanding of the effects of the chemicals on human health and the environment is still developing. Studies have confirmed that PFAS are persistent and bioaccumulate, having found links between the chemicals and increased cholesterol, changes in the body’s hormones and immune system, decreased fertility, and increased risk of certain cancers.

Using available scientific studies and toxicological information, the State has issued enforceable water quality standards and cleanup criteria for groundwater used in drinking water for two of the most well-known PFAS compounds: perfluorooctanoic acid (PFOA) and perfluorooctanesulfonic acid (PFOS). The Governor has also directed State agencies to develop drinking water standards for PFOA, PFOS, and other PFAS compounds, a process that is underway but not completed. The State is currently enforcing existing state standards against entities that are liable under state statutes, and working with users of PFAS chemicals to prevent further releases of PFAS into the environment and to address impacts from past releases.

Although DAG is enforcing the State’s regulatory program to address impacts to the environment from releases of PFAS, the regulatory framework may not extend to all entities that contributed to the creation and use of PFAS-containing materials that eventually came to be located in the environment in Michigan, including soil, surface water and groundwater, as well as wildlife and vegetation.

The State seeks to build on the ongoing regulatory enforcement being undertaken by DAG by retaining SAAGs to determine whether to pursue additional tort or other common-law-based causes of action that potentially exist against the manufacturers of PFAS compounds that came to be located in the environment in Michigan. The work to be performed consists of assisting the DAG in conducting needed investigations, determining what claims will be brought, drafting the complaints (as appropriate), conducting affirmative and defensive discovery, taking and defending depositions, motion practice, and preparing for and conducting any trials that may proceed. Without limitation to the above, the DAG will direct the role of Local Counsel. The DAG, at all times, will direct the litigation in all respects, including but not limited to, whether and when to initiate litigation, against whom actions will be taken, the claims to be brought in said litigation, approval and rejection of all settlement offers, and the amount and type of damages and injunctive relief to be sought.

### **3. In Scope.**

The scope of work includes providing all necessary personnel, labor, materials, services, equipment, supplies, time, travel, effort, skill, and supervision required to examine, investigate, recommend, and litigate the State's possible tort and other applicable common law claims against manufacturers of per- and polyfluoroalkyl substances (PFAS), including but not limited to perfluorooctanoic acid (PFOA) and perfluorooctanesulfonic acid (PFOS).

SAAGs will be appointed to represent the State in common-law-based litigation against manufacturers of PFAS and PFAS-containing materials that were sold to Michigan users or distributed to Michigan-based entities, and which eventually came to be located in Michigan's environment. SAAGs will develop and propose a litigation strategy to the Attorney General or her designees, including:

- Identifying viable claims and causes of action against PFAS manufacturers.
- Identifying possible defendants.
- Pursuing all claims and actions in connection with an approved litigation strategy against defendants approved by the Attorney General.
- Handling all appeals that may arise out of the litigation, subject to prior approval by the Attorney General.

Prior to providing any legal services on behalf of the State, an attorney must be appointed by the Attorney General as a SAAG. SAAGs must consult in advance with and advise the Attorney General's designated representatives regarding all substantive issues affecting the litigation, as set forth in more detail in the SAAG Contract (**Attachment A**).

#### **4. Out of Scope.**

The work does not include regulatory enforcement or claims under State or federal environmental laws not specifically and expressly agreed to by the Attorney General.

## Proposal Contents

Bidders must submit a detailed proposal addressing each section below. Proposals need not be submitted in the table format, but if that format is not used, please re-state the information requested and the section number prior to your response. Attach any necessary supplemental information and appropriately reference it within your proposal.

“You” and “your” means the bidder.

#	Information Requested	Bidder Response
<b>1</b>	<b>Bidder Contact Information</b>	
1.1	Identify the bidder’s contact person for the RFP process. Include name, title, address, email, and phone number.	
1.2	Identify the person authorized to sign a contract resulting from this RFP. Include name, title, address, email, and phone number.	
<b>2</b>	<b>Company Background Information</b>	
2.1	Identify the company’s legal business name, address, phone number, and website.	
2.2	Identify the State your business is organized in.	
2.3	Identify the location (city and state) that would have primary responsibility for this work if awarded a contract.	
2.4	Identify the practice group area, if applicable, proposed to handle the work.	
2.5	Explain any partnerships and strategic relationships you have that would bring significant value to the State.	
2.6	If you intend to use subcontractors to perform the work, disclose: (1) the subcontractor’s legal business name, website, address, phone number, and primary contact person; (2) a description of subcontractor’s organization; (3) a complete description of the services or products it will provide; (4) information concerning subcontractor’s ability to provide the services; (5) whether the bidder has a previous working experience with the subcontractor, and if yes, provide details of that previous relationship.	
2.7	Identify the name and title of the individuals you propose as key personnel. Attach resumes or CVs for each person.	



<b>3</b>	<b>Experience</b>	
<b>3.1</b>	Describe at least 3 relevant experiences supporting your ability to successfully perform the work set forth in the SOW. Include a description of services provided and results obtained. Include contact information for the clients you represented.	<u>Reference 1:</u>  <u>Reference 2:</u>  <u>Reference 3:</u>
<b>3.2</b>	Provide publicly available motions, briefs, and other documents relevant to your experience in providing the legal services sought under this RFP.	
<b>4</b>	<b>Conflict of Interest</b>	
<b>4.1</b>	Provide detailed information regarding any prior, current, or anticipated future relationship with any manufacturer of PFAS or PFAS-containing products that could give rise to potential actual or apparent conflict of interest. Disclose such information for both the bidder and any proposed subcontractors.	
<b>4.2</b>	Disclose any actual, apparent, or potential conflict of interest between the bidder and the State of Michigan.	
<b>4.3</b>	With respect to any information provided in response to the questions above, provide an explanation of why an actual, apparent, or potential conflict of interest would not arise, or the measures that would be taken to avoid such a conflict.	
<b>5</b>	<b>SAAG Contract</b>	
<b>5.1</b>	Bidder must affirm agreement with the terms of the SAAG Contract ( <b>Attachment A</b> ). If you do not agree, you must provide redline edits to the SAAG Contract with your proposal, and include justification for requesting deviation from the terms.	
<b>6</b>	<b>Fee Agreement</b>	
<b>6.1</b>	Bidder must submit a proposed Fee Agreement which: (1) aligns with the SAAG Contract ( <b>Attachment A</b> ) and (2) clearly sets forth how the bidder proposes to address payment in the event of recovery. See also SAAG Contract ( <b>Attachment A</b> ), Section 3, Compensation and Cost Reimbursement.	



## **Attachment A—SAAG Contract**

### **State of Michigan Department of Attorney General**

#### **PFAS Environmental Tort Litigation**

DANA NESSEL, Attorney General of the State of Michigan (Attorney General), and the Department of Attorney General (the Department) retain and appoint the **[name of firm]**, to provide legal services through the appointment of the following individuals as Special Assistant Attorneys General (SAAGs):

[list names]

The legal services provided to the State of Michigan will be pursuant to the following terms and conditions in this Contract:

#### **1. PARTIES/PURPOSE**

1.1 Parties. The parties to this Contract are the Department of Attorney General and the [SAAG/firm]. No other attorney may engage in the practice of law on behalf of the State of Michigan under this Contract without the Department's prior approval, a Contract amendment, and a SAAG appointment from the Attorney General.

1.2 Purpose. The Department and the [SAAG/firm] agree that the SAAG will provide legal services relative to the PFAS environmental tort litigation. The SAAG is to work only on the PFAS environmental tort litigation and all case resolutions are to be approved in advance by the Department [if necessary, modify to add the state agency that is a party to this contract].

1.3 Work Product. The SAAG understands that all work product is subject to review by the Department. The Department reserves the right to deny payment for any work product deemed unacceptable. Delivery of such a deficient work product may also result in Contract termination under paragraph 9 of this Contract.

#### **2. TERM OF CONTRACT**

The initial term of this Contract is [month/day/year] through [month/day/year]. This Contract may be extended at the option of the Department upon thirty (30) calendar days written notice.

### 3. **COMPENSATION AND COST REIMBURSEMENT**

3.1 Compensation and the repayment of costs and disbursements shall be contingent upon a successful recovery of funds being obtained from Defendant(s) in the litigation pursued under the terms of this Contract (whether through settlement or final non-appealable judgment).

3.2 If no recovery is made, the State owes nothing for costs incurred by SAAGs and is not obligated to reimburse the SAAGs for any costs.

3.3 If a recovery is obtained, the costs incurred by SAAG will be deducted prior to the calculation of the fee set forth in the Fee Agreement. The SAAG will be required to submit a monthly statement to the Department of Attorney General setting forth in detail any potentially reimbursable costs incurred with respect to this appointment, together with a running total of costs accumulated since the execution of the Fee Agreement.

### 4. **REPRESENTATIONS**

4.1 **Qualifications.** The SAAG, by signing this Contract, attests that [he/she] is qualified to perform the services specified in this Contract and agrees to faithfully and diligently perform the services consistent with the standard of legal practice in the community.

4.2 **Conflict of Interest.** Prior to entering into this Contract, the SAAG and the SAAG's law firm must identify and disclose to the Department any matter in which the SAAG or any member of the SAAG's law firm is involved in which is adverse to the State of Michigan. The SAAG represents that [he/she] has conducted a conflicts check prior to entering into this Contract and no conflicts exist with the proposed legal services. The SAAG [or name of the firm and each SAAG] agrees to not undertake representation of a client if the representation of that client is related to the subject matter of this Contract or will be adverse to the State of Michigan, unless the SAAG obtains prior written approval to do so from both the [name of department or agency] and the Department.

With respect to potential conflicts of interest, other lawyers in the SAAG's firm must be advised of the SAAG's representation of [name of department or agency], and that the firm has agreed not to accept, without prior written approval from [name of department or agency] and the Department, any employment from other interests related to the subject matter of this Contract or adverse to the State of Michigan. [insert name of firm] must carefully monitor any significant change in the assignments or clients of the firm in order to avoid any situation which might affect its ability to effectively render legal services to [name of department or agency].

4.3 Services to be Confidential. The SAAG must keep confidential all services and information, including records, reports, and estimates. The SAAG must not divulge any information to any person other than to authorized representatives of the Department and [name of department or agency], except as required by testimony under oath in judicial proceedings, or as otherwise required by law. The SAAG must take all necessary steps to ensure that no member of the firm divulges any information concerning these services. This includes, but is not limited, to information maintained on the SAAG's computer system.

All files and documents containing confidential information must be filed in separate files maintained in the office of [name of firm] with access restricted to each SAAG and needed clerical personnel. All documents prepared on the [name of firm] computer system must be maintained in a separate library with access permitted only to each SAAG and needed clerical personnel.

4.4 Assignments and Subcontracting. The SAAG must not assign or subcontract any of the work or services to be performed under this Contract, including work assigned to other members or employees of the SAAG firm, without the prior written approval of the Department. Any member or employee of the SAAG firm who received prior approval from the Department to perform services under this Contract is bound by the terms and conditions of this Contract.

4.5 Facilities and Personnel. The SAAG has and will continue to have proper facilities and personnel to perform the services and work agreed to be performed.

4.6 Advertisement. The SAAG, during the term of appointment and thereafter, must not advertise [his/her] position as a SAAG to the public. The SAAG designation may be listed on the SAAG's resume or other professional biographical summary, including resumes or summaries that are furnished to professional societies, associations, or organizations. Any such designation by the SAAG must first be submitted to and approved by the Department, after consultation with [name of department or agency].

4.7 Media Contacts. The SAAG may not engage in any on or off the record communication (written or spoken) with any member of the media without advance approval and appropriate vetting by the Director of Communications of the Department of Attorney General.

4.8 Records. As set forth in Paragraph 3.3 of this Contract, the SAAG must submit a monthly statement to the designated representative(s) of the Attorney General, setting forth in detail any potentially reimbursable costs incurred with respect to this appointment, together with a running total of costs accumulated since the execution of the Fee Agreement. These invoices shall be considered confidential and not be subject to discovery in the litigation brought under the

Scope of Work. The records must be kept in accordance with generally accepted accounting practices and sound business practices. The Department and [name of department or agency], or their designees, reserve the right to inspect all records of the SAAG related to this Contract.

4.9 Non-Discrimination. The SAAG, in the performance of this Contract, [and his/her law firm] agree(s) not to discriminate against any employee or applicant for employment, with respect to their hire, tenure, terms, conditions or privileges of employment, or any matter directly or indirectly related to employment, because of race, color, religion, national origin, ancestry, age, sex, height, weight, marital status, physical or mental disability unrelated to the individual's ability to perform the duties of the particular job or position. This covenant is required by the Elliott-Larsen Civil Rights Act, MCL 37.2101 *et seq.*, and the Persons with Disabilities Civil Rights Act, MCL 37.1101 *et seq.*, and any breach of the Act may be regarded as a material breach of the Contract. The SAAG agrees to comply with the provisions of the Federal Civil Rights Act of 1964, 42 USC §2000d, in performing the services under this Contract.

4.10 Unfair Labor Practices. The State will not award a contract or subcontract to any employer, or any subcontractor, manufacturer, or supplier of the employer, whose name appears in the current register compiled pursuant to 1980 PA 278, MCL 423.321 *et seq.* The State may void this Contract if after the award of the Contract, the name of the SAAG or [his/her] law firm appears in the register.

4.11 Compliance. The SAAG's activities under this Contract are subject to applicable State and Federal laws and to the Rules of Professional Conduct applicable to members of the Michigan Bar Association. In accordance with MCL 18.1470, DTMB or its designee may audit Contractor to verify compliance with this Contract.

4.12 Independent Contractor. The relationship of the SAAG to the [name of department or agency] in this Contract is that of an independent contractor. No liability or benefits, such as workers compensation rights or liabilities, insurance rights or liabilities, or any other provisions or liabilities, arising out of or related to a contract for hire or employer/employee relationship, must arise, accrue or be implied to either party or either party's agent, subcontractor or employee as a result of the performance of this Contract. The SAAG [and his/her law firm] will be solely and entirely responsible for [his/her/its] acts and the acts of the [SAAG's firm] agents and employees during the performance of this Contract. Notwithstanding the above, the relationship is subject to the requirements of the attorney-client privilege.

## 5. MANAGEMENT OF CASES

5.1 Notifications. The SAAG must direct all notices, correspondence, inquiries, billing statements, pleadings, and documents mentioned in this Contract to the attention of the Department's Environment, Natural Resources, and Agriculture (ENRA) Division. The Division Chief of the ENRA Division is the Contract Manager, unless notice of another designation is received from the Attorney General. The Division Chief may designate an Assistant Attorney General in the Division to oversee the day to day administration of the Contract.

For the Department:

[Division Chief's name], Division Chief  
Michigan Department of Attorney General  
[Division name]  
P.O. Box [Number]  
[City], MI [Zip Code]  
[Office telephone number]  
[Office fax number]

For the SAAG:

[SAAG name]  
[SAAG address]  
[Firm name if applicable]  
[Firm address]  
[SAAG phone number]  
[SAAG fax number]  
[SAAG e-mail address]

5.2 The SAAG must promptly inform the Contract Manager of the following developments as soon as they become known:

A. Favorable actions or events that enable meeting time schedules and/or goals sooner than anticipated.

B. Delays or adverse conditions that materially prevent, or may materially prevent, the meeting of the objectives of the services provided. A statement of any remedial action taken or contemplated by the SAAG must accompany this disclosure.

For every case accepted, the SAAG must:

A. Promptly undertake all efforts, including legal proceedings, as directed by the [insert division name], and must prosecute any case to its conclusion unless directed to the contrary by the [insert division name].

B. Provide copies of all pleadings filed in any court by the SAAG, or by the opposing party, to the [insert division name].

5.3 Motions. Before any dispositive motion is filed, the supporting brief must be submitted to the [insert division name] for review and approval for filing with the court.

5.4 Investigative Support. All claims will be vigorously pursued and prepared for filing. If authorized by the Contract Manager, use of investigative subpoenas must be thorough and aggressive. The [insert division name] may request investigative subpoenas in addition to what the SAAG has filed.

5.5 Discovery Requests. The SAAG must consult with Contract Manager and assist in the preparation of answers to requests for discovery. The SAAG must indicate those requests to which [he/she] intends to object.

5.6 Witness and Exhibit Lists. At least ten (10) calendar days before the day a witness list or an exhibit list is due, the Contract Manager must receive a preliminary witness list or exhibit list for review and recommendation of additional names of witnesses or additional exhibits.

5.7 Mediation. Fifteen (15) calendar days before any mediation, the mediation summary must be submitted to the Contract Manager for review and recommendation. Immediately following mediation, the SAAG must submit a status memorandum indicating the amount of the mediation and a recommendation to accept or reject the mediation.

5.8 Trial Dates. The SAAG must advise the Contract Manager immediately upon receipt of a trial date.

5.9 Settlements. All settlements are subject to approval by the Department. The SAAG must immediately communicate any plea/settlement proposal received along with a recommendation to accept, reject, or offer a counter-proposal to any offer received to the Department's Contract Manager. "Settlement" includes, but is not limited to, the voluntary remand of a case to the trial court or by way of stipulation or motion.

5.10 Experts. The SAAG must provide advance notice to the Contract Manager prior to the selection of experts or consultants, and the Attorney General shall have the right to reject proposed experts or consultants. The SAAG shall cooperate with the Department of Attorney General and make all records and

documents relevant to the tasks as described in the Scope of Work available to the Department through the Contract manager or his or her designee in a timely fashion.

5.11 Money. A SAAG must only accept payment by an opposing party under the following terms:

A. The SAAG must immediately inform the Contract Manager upon receipt of any funds by the SAAG as payment on a case, whether pursuant to court order, settlement agreement, or other terms. Following the deduction of reimbursable costs, calculation of the fee under the Fee Agreement, and approval of the calculated fee by the Department, the SAAG shall deduct the Department-approved eligible costs, the Department-approved fee, and shall make payment of the remainder of the recovery to the State of Michigan as follows:

- i. payment must be made by check, certified check, cashier's check, or money order;
- ii. payable to the "State of Michigan" or as otherwise specified by the Contract Manager;
- iii. include the tax identification number/social security number of the payer; and
- iv. include the account to which the remittance is to be applied.

5.12 File Closing. The SAAG must advise the Contract Manager, in writing, of the reason for closing a file (e.g., whereabouts unknown, no assets, bankruptcy, payment in full, or settlement).

## 6. INDEMNIFICATION

The SAAG agrees to hold harmless the State of Michigan, its elected officials, officers, agencies, boards, and employees against and from any and all liabilities, damages, penalties, claims, costs, charges, and expenses (including, without limitation, fees and expenses of attorneys, expert witnesses and other consultants) which may be imposed upon, incurred by, or asserted against the State of Michigan for either of the following reasons:

A. Any malpractice, negligent or tortious act or omission attributable, in whole or in part, to the SAAG or any of [his/her/its] employees, consultants, subcontractors, assigns, agents, or any entities associated, affiliated, or subsidiary to the SAAG now existing, or later

created, their agents and employees for whose acts any of them might be liable.

B. The SAAG's failure to perform [his/her] obligation either expressed or implied by this Contract.

## 7. **INSURANCE**

7.1 **Errors and Omissions.** The SAAG or [his/her] law firm must maintain professional liability insurance sufficient in amount to provide coverage for any errors or omissions arising out of the performance of any of the professional services rendered pursuant to this Contract.

7.2 **Certificates of Insurance.** Certificates evidencing the purchase of insurance must be furnished to the Department's [insert division name], upon request. All certificates are to be prepared and submitted by the insurance provider and must contain a provision indicating that the coverage(s) afforded under the policies will not be cancelled, materially changed, or not renewed without thirty (30) calendar days prior written notice, except for ten (10) calendar days for non-payment of premium, and any such notice of cancellation, material change, or non-renewal must be promptly forwarded to the Department upon receipt.

7.3 **Additional Insurance.** If, during the term of this Contract changed conditions should, in the judgment of the Department, render inadequate the insurance limits the SAAG will furnish, on demand, proof of additional coverage as may be required. All insurance required under this Contract must be acquired at the expense of the SAAG or [his/her] law firm, under valid and enforceable policies, issued by insurers of recognized responsibility. The Department reserves the right to reject as unacceptable any insurer.

## 8. **APPEALS**

The SAAG agrees that no appeal of any order(s) of the Michigan Court of Claims, any Michigan Circuit Court, the Michigan Court of Appeals, or any United States District Court will be taken to the Michigan Court of Appeals, the Michigan Supreme Court, or any United States Circuit Court of Appeals, without prior written approval of the Michigan Solicitor General, Department of Attorney General. Further, the SAAG agrees that no petition for certiorari will be filed in the United States Supreme Court without prior written permission of the Michigan Solicitor General, Department of Attorney General.



## 9. TERMINATION OF CONTRACT AND APPOINTMENT

9.1 SAAG Termination. The SAAG may terminate this Contract upon sixty (60) calendar day's prior written notice (Notice of Termination). Upon delivery of such notice, the SAAG must continue all work and services until otherwise directed by the [insert division name]. The SAAG will be paid only as set forth in the contingency fee arrangement specified under the Fee Agreement.

9.2 Attorney General Termination. The Department may terminate this Contract and SAAG appointment, at any time and without cause, by issuing a Notice of Termination to the SAAG.

9.3 Termination Process and Work Product. Upon receipt of a Notice of Termination, and except as otherwise directed by the Attorney General or her designee, the SAAG must:

- A. stop work under the Contract on the date and to the extent specified in the Notice of Termination;
- B. incur no costs beyond the date specified by the Department;
- C. on the date the termination is effective, submit to the Contract Manager all records, reports, documents, and pleadings as the Department specifies and carry out such directives as the Department may issue concerning the safeguarding and disposition of files and property; and
- D. submit within thirty (30) calendar days a closing memorandum and final billing.

Upon termination of this Contract, all finished or unfinished original (or copies when originals are unavailable) documents, briefs, files, notes, or other materials (the "Work Product") prepared by the SAAG under this Contract, must become the exclusive property of the Department, free from any claims on the part of the SAAG except as herein specifically provided. The Work Product must promptly be delivered to the [insert division name]. The SAAG acknowledges that any intentional failure or delay on its part to deliver the Work Product to the Department will cause irreparable injury to the State of Michigan not adequately compensable in damages and for which the State of Michigan has no adequate remedy at law. The SAAG accordingly agrees that the Department may, in such event, seek injunctive relief in a court of competent jurisdiction. The Department must have full and unrestricted use of the Work Product for the purpose of completing the services. In addition, each party will assist the other party in the orderly termination of the Contract.

The rights and remedies of either party provided by the Contract are in addition to any other rights and remedies provided by law or equity.

## 10. **GENERAL PROVISIONS**

10.1 **Governing Law and Jurisdiction.** This Contract is subject to and will be constructed according to the laws of the State of Michigan, and no action must be commenced against the Department or the Attorney General, his designee, agents or employees [add client agency, if applicable] for any matter whatsoever arising out of the Contract, in any courts other than the Michigan Court of Claims.

10.2 **No Waiver.** A party's failure to insist on the strict performance of this Contract does not constitute waiver of any breach of the Contract.

10.3 **Additional SAAGs.** It is understood that during the term of this Contract, the Department may contract with other SAAGs providing the same or similar services.

10.4 **Other Debts.** The SAAG agrees that [he/she] is not, and will not become, in arrears on any contract, debt, or other obligation to the State of Michigan, including taxes.

10.5 **Invalidity.** If any provision of this Contract or its application to any persons or circumstances to any extent is judicially determined to be invalid or unenforceable, the remainder of this Contract will not be affected, and each provision of the Contract will be valid and enforceable to the fullest extent permitted by law.

10.6 **Headings.** Contract section headings are for convenience only and must not be used to interpret the scope or intent of this Contract.

10.7 **Entire Agreement.** This Contract represents the entire agreement between the parties and supersedes all proposals or other prior agreements, oral or written, and all other communications between the parties.

10.8 **Amendment.** No Contract amendment will be effective and binding upon the parties unless it expressly makes reference to this Contract, is in writing, and is signed by duly authorized representatives of all parties and all the requisite State approvals are obtained.

10.9 **Issuing Office.** This Contract is issued by the Department, and is the only state office authorized to change the terms and conditions of this Contract.

10.10 **Counterparts.** This Contract may be signed in counterparts, each of which has the force of an original, and all of which constitute one document.

Dated: \_\_\_\_\_

\_\_\_\_\_  
[Attorney's Name]

Dated: \_\_\_\_\_

\_\_\_\_\_  
Dana Nessel, Attorney General  
or her Designee  
Michigan Department of Attorney  
General