

## RETENTION AGREEMENT

**WHEREAS**, the Attorney General has determined that claims should be made against ACE Westchester, Westchester Surplus Lines Insurance, and other unidentified entities and persons who have refused to fulfill their obligations under a contract of insurance with The University of Southern Mississippi for losses associated with Hurricane Katrina which made landfall on August 29, 2005.

**WHEREAS**, the Attorney General has authority to bring this action on its own behalf due to its authority to investigate and prosecute suit on any contract breach of contract in which the state is interested pursuant to Miss. Code Ann. § 7-5-1, *et seq.* Further, action as a constitutional officer possessing all the power and authority inherited from the common law as well as that specially conferred upon it by statute, the Attorney General has the right to institute, conduct and maintain this suit in order to enforce the laws of the State of Mississippi. Finally, the Attorney General has the right to maintain this suit as The University of Southern Mississippi is a political subdivision of the State of Mississippi.

**WHEREAS**, the Attorney General has determined that the claims include breach of contract, bad faith and tortious breach of contract, negligence, gross negligence, reckless disregard, breach of good faith and fair dealing, and waiver and estoppel, contractual benefits, prejudgment interest, consequential damages, attorney's fees and costs of litigation, extra-contractual damages, punitive, and exemplary damages.

**WHEREAS**, the Attorney General has determined that the investigation, research, and litigation of the Claims may require the expenditure of large sums of money and require the work of numerous lawyers, paralegals, and secretaries who are familiar with Hurricane Katrina

litigation, and related issues for an extended period of time; and

**WHEREAS**, the Attorney General has further determined that it is in the best interests of the State and The University of Southern Mississippi that the State retain attorneys experienced in the areas of Hurricane Katrina litigation and contract law to pursue the Claims; and,

**WHEREAS**, the below listed Law Firms are experienced in Hurricane Katrina litigation and contract law and litigation and has consented to represent the State of Mississippi, in association with the Attorney General, respecting the Claims and pursuant to the terms and conditions hereof.

**IT IS, ACCORDINGLY, AGREED** as follows:

1. The Office of the Attorney General hereby retains the following Law Firms: John W. Lee, Jr., Esquire, The Law Office of Paul T. Benton, and Dulin & Dulin, Ltd. (collectively "Law Firms") and are hereby designated as Special Assistant Attorney Generals to investigate, research and file the Claims in any appropriate Court or Courts or before any appropriate governmental agency.

2. The Attorney General does not relinquish his constitutional or statutory authority or responsibility through this Retention Agreement. The Attorney General has the sole authority to settle this litigation on behalf of the State of Mississippi and The University of Southern Mississippi. The Law Firms shall consult with the Attorney General and obtain his approval on all material matters pertinent to these Claims and any litigation arising therefrom, and the Attorney General shall cooperate with the Law Firms and use his best efforts to secure the cooperation of other State agencies, if necessary. Prior to initiating inquiries or demands to any persons or entities, the Attorney General and the Law Firms will agree upon entities to be

contacted and/or claims to be pursued; the Law Firms will thereafter be entitled to their reasonable fees and expenses, as provided below, on any recovery from such agreed-upon entity or claims. The Attorney General is not required, however, to assign any members of his staff to pursue the Claims, but may from time to time afford staff and other support services as the Attorney General deems appropriate. The Attorney General shall designate a member(s) of his staff to monitor these Claims, and the Law Firms shall keep the Attorney General and his designated staff member(s) fully informed on all matters pertaining to the Claims.

3. The Attorney General and the Law Firms 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 responsibility for the public distribution of information concerning this matter. All press inquiries shall be referred to the Attorney General for comment and response.

5. Notwithstanding the potential difficulties, the Law Firms have agreed to represent the State and The University of Southern Mississippi, and the Attorney General hereby agrees that the Law Firms will be compensated for their efforts on the following basis:

A. Fee Agreements:

*Exhibit A* - Retention Agreement - Matter Settled Prior to Initiation of Litigation

*Exhibit B* - Retention Agreement - Matter Resolved After Initiation of Litigation

B. All reasonable and necessary costs of litigation including, but not limited to, court costs, travel, witness fees, consultants, accounting, and expert fees and expenses, as shall be approved by the Attorney General, shall initially be borne entirely by the Law

Firms, but shall be reimbursed from any gross recoveries from the pursuit of such claims on a case-by-case basis;

C. The Law Firms shall receive no compensation or reimbursement other than set out above. In the event that no recovery is realized, the Law Firms shall receive no compensation or reimbursement.

6. With the approval of the Attorney General, the Law Firms may associate other attorneys at its own expense and at no cost to the State of Mississippi. Notwithstanding such association of other attorneys, this Retention Agreement is non-assignable and non-transferable, nor are the Law Firms' commitments delegable without the express, written approval of the Attorney General.

DATED this 28<sup>th</sup> day of August, 2008.

**ATTORNEY GENERAL OF  
THE STATE OF MISSISSIPPI**

By:

Jim Hood  
JIM HOOD, ATTORNEY GENERAL *By! Gen*

**JOHN W. LEE, JR., ESQUIRE**

By:

John W. Lee, Jr.  
John W. Lee, Jr., Esquire

**LAW OFFICE OF PAUL T. BENTON**

By:

Paul T. Benton  
Paul T. Benton, Esquire

**DULIN & DULIN, LTD.**

By:

Tommy Dulin  
Tommy Dulin, Esquire

Exhibit "A"  
(Counsel Retention Agreement)  
(Matter Settled Prior to Initiation of Litigation)

For any "Matter Settled Prior to Initiation of Litigation," the following structured contingent fee schedule shall apply and govern compensation of the Attorneys:

For Recovery Up to \$25,000,000.00:

15%

For Recovery between \$25,000,000.00 and \$75,000,000.00:

13%

For Recovery between \$75,000,000.00 to \$200,000,000.00:

7%

For Recovery between \$200,000,000.00 to \$500,000,000.00:

4%

For Recovery between \$500,000,000.00 to \$1,000,000,000.00

2%

For Recovery greater than \$1,000,000,000.00:

1%

**Explanatory Note & Illustration of Fee Computation**

The structured contingent fee schedule set forth herein is intended to, and shall, operate cumulatively so that, in relation to each successive category or level of Recovery (e.g., "For Recovery Up to \$25,000,000.00," *etc.*), there shall be a specified percentage or percentages governing the amount or valuation of the aggregate contingent fee in each such category, so that the Attorneys shall be entitled to receive, and shall be paid, an aggregate sum or value equivalent computed by multiplying the percentage applicable to each such successive category or level of Recovery by the incremental dollar amount falling within each such category and the separate products so derived by multiplying these factors in each category shall be added

together to compute the aggregate fee to be paid to the Attorneys. By way of illustration only, the cumulative contingent fee structure shown on this Exhibit "A" shall be computed, utilizing the following method:

Assume Recovery of a monetary sum, benefit, or value equal to \$600,000,000.00.

The Attorneys' contingent fee will be computed by adding together the specified, applicable percentage of each category or level, as follows:

- 15% of the first \$25,000,000.00 (*i.e.*, 15% of any sums or values between 0 and \$25,000,000.00)

**PLUS**

- 13% of the next \$50,000,000.00 (*i.e.*, 13% of all sums or values between \$25,000,000.00 and \$75,000,000.00)

**PLUS**

- 7% of the next \$125,000,000.00 (*i.e.*, 7% of all sums or values between \$75,000,000.00 and \$200,000,000.00)

**PLUS**

- 4% of the next \$300,000,000.00 (*i.e.*, 4% of all sums or values between \$200,000,000.00 and \$500,000,000.00)

**PLUS**

- 2% of the next \$100,000,000.00 (*i.e.*, 2% of the difference between \$500,000,000.00 and the amount of the award greater than that sum or value, or in this example, \$600,000,000.00)

Exhibit "B"  
(Counsel Retention Agreement)  
(Matter Resolved After Initiation of Litigation)

For any "Matter Resolved After Initiation of Litigation", the following structured contingent fee schedule shall apply and govern compensation of the Attorneys:

For Recovery Up to \$25,000,000.00:

After filing complaint before discovery completed:	17%
After filing complaint after discovery complete awaiting trial:	20%
After commencement of trial:	25%

For Recovery between \$25,000,000.00 and \$75,000,000.00:

After filing complaint before discovery completed:	15%
After filing complaint after discovery complete awaiting trial:	18%
After commencement of trial:	21%

For Recovery between \$75,000,000.00 to \$200,000,000.00:

After filing complaint before discovery completed:	10%
After filing complaint after discovery complete awaiting trial:	14%
After commencement of trial:	18%

For Recovery between \$200,000,000.00 to \$500,000,000.00:

After filing complaint before discovery completed:	6%
After filing complaint after discovery complete awaiting trial:	8%
After commencement of trial:	10%

For Recovery between \$500,000,000.00 to \$1,000,000,000.00:

After filing complaint before discovery completed:	3%
After filing complaint after discovery complete awaiting trial:	4%
After commencement of trial:	5%

For Recovery over \$1,000,000,000.00:

After filing complaint before discovery completed:	2%
After filing complaint after discovery complete awaiting trial:	3%
After commencement of trial:	4%

## Explanatory Note & Illustration of Fee Computation

The structured contingent fee schedule set forth herein is intended to, and shall, operate cumulatively so that, in relation to each successive category or level of Recovery (*e.g.*, "For Recovery Up to \$25,000,000.00," *etc.*), there shall be a specified percentage or percentages governing the amount or valuation of the aggregate contingent fee in each such category, so that the Attorneys shall be entitled to receive, and shall be paid, an aggregate sum or value equivalent computed by multiplying the percentage applicable to each such successive category or level of Recovery by the incremental dollar amount falling within each such category and the separate products so derived by multiplying these factors in each category shall be added together to compute the aggregate fee to be paid to the Attorneys. By way of illustration only, the cumulative contingent fee structure shown on this Exhibit "B" shall be computed, utilizing the following method:

Assume Recovery of a monetary sum, benefit, or value equal to \$600,000,000.00, and assume further that the sum or value was derived "[a]fter filing complaint after discovery complete awaiting trial."

The Attorneys' contingent fee will be computed by adding together the specified, applicable percentage of each category or level, as follows:

- 20% of the first \$25,000,000.00 (*i.e.*, all sums or values between 0 and \$25,000,000.00)

**PLUS**

- 18% of the next \$50,000,000.00 (*i.e.*, all sums or values between \$25,000,000.00 and \$75,000,000.00)

**PLUS**

- 14% of the next \$125,000,000.00 (*i.e.*, all sums or values between \$75,000,000.00 and \$200,000,000.00)

**PLUS**

- 8% of the next \$300,000,000.00 (*i.e.*, all sums or values between \$200,000,000.00 and \$500,000,000.00)

**PLUS**

- 4% of the next \$100,000,000.00 (*i.e.*, 4% of the next sum or value greater than \$500,000,000.00 which, in this example, is \$600,000,000.00)