

RETENTION AGREEMENT

WHEREAS, the Attorney General has determined that claims should be made against certain pharmaceutical companies selling products in the State of Mississippi, including, but not limited to, Janssen Research & Development, LLC, Janssen Pharmaceutical, Inc., Johnson and Johnson Company, and Mitsubishi Tanabe Pharma Corp. The claims against these pharmaceutical companies including improper off label marketing, failure to properly warn of dangerous side effect, including ketoacidosis, urinary tract infections, acute kidney injury, increased risk of leg and foot amputations and increased risk of death.

WHEREAS, the State of Mississippi, through Medicaid expenditures, and the citizens of the State of Mississippi, through deductibles, have serious life threatening damages and injuries as a result of the use of the drug Canagliflozin (Invokana). Citizens of the State of Mississippi have died as a result of the side effects of said drugs.

WHEREAS, the Attorney General has the authority to bring this action to protect the State and its citizens as consumers, pursuant to Miss. Code Ann. Sections 75-24-1, *et seq.* In addition, the Attorney General has the authority, pursuant to Miss. Code Ann. Section 7-5-55, to bring this action on her own behalf to recover taxes and state revenues improperly expended due to the action of the said companies. Further, acting as a constitutional officer possessing all power and authority inherited from the common law, as well as that specially conferred upon him 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, preserve order, and protect the public's right to Medicaid and Medicare benefits. Finally, the Attorney General has the right to maintain this suit as a *parens patriae* capacity due to the State's quasi-sovereign interest in the economic well-being of its residents.

WHEREAS, the Attorney General has determined that the Claims include fraud, suppression, breach of agreement, unjust enrichment, various state Medicaid violations, interest, prejudgment interest, penalties, and attorney fees for intentionally violating the statutes of the State of Mississippi and refund of funds which should not have been paid by the State or the citizens of the State of Mississippi (the "Claims");

WHEREAS, the Attorney General has determined that the investigation, research, and litigation of the Claims will require the expenditure of large sums of money and require extensive work by numerous lawyers, paralegals, accountants, and secretaries who are experienced in civil recoupment litigation and Medicaid and health law 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 of Mississippi and its citizens that the State retain attorneys experienced in civil recoupment litigation and Medicaid and health law to pursue the Claims; and,

WHEREAS, the below listed Law Firms are experienced in civil recoupment litigation and health law and has consented to represent the State of Mississippi, in association with the Attorney General, regarding 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 Dogan & Wilkinson, PLLC, Pascagoula, Mississippi, and its principal member, Robert W. Wilkinson, and Reeves & Mestayer, PLLC, Biloxi, Mississippi, and its principal member, Matthew G. Mestayer, ("Law Firms"), and Law Firms 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 her 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 its citizens. The Law Firms shall consult with the Attorney General and obtain her 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 her best efforts to secure the cooperation of other State agencies. 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 its reasonable fees and expenses, as provided below, on any recovery from such agreed-upon entity or claims discovered as a consequent of the Law Firms' inquiry or demand. The Attorney General is not required, however, to assign any members of her 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 her staff to monitor these Claims, and the Law Firms shall keep the Attorney General and her 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 Attorney General hereby agrees that the Law Firms will be compensated for their efforts on the following basis:

- a. Fee Agreements: See attached Exhibit "A" – Retention Agreement; and,
- 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; and,

- 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-transferrable, nor are the Law Firms' commitments delegable without the express, written approval of the Attorney General.

DATED, THIS the 20th day of October, 2020.

ATTORNEY GENERAL OF THE
STATE OF MISSISSIPPI

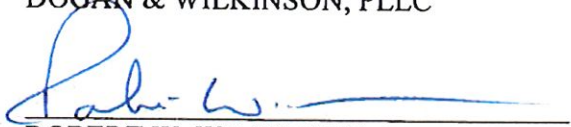
BY:



TRICIA L. BEALE,
SPECIAL ASSISTANT ATTORNEY GENERAL

DOGAN & WILKINSON, PLLC

BY:



ROBERT W. WILKINSON