



# INVESTIGATIVE REPORT

David Cook, Inspector General

OFFICE: OFFICE OF THE INDIANA ATTORNEY GENERAL  
TITLE: CONTINGENCY FEE CONTRACT  
CASE ID: 2021-08-0247  
DATE: AUGUST 24, 2021

*After examination and review, the Office of the Inspector General reports as follows:*

The purpose of this Report is to fulfill the statutory requirements of Ind. Code §4-6-3-2.5 regarding contingency fee contracts. This statute requires the Inspector General (IG) to review proposed contingency fee contracts for possible conflicts of interests and potential Code of Ethics violations. Under this statute, an agency may not enter into a contingency fee contract unless the IG has made a written determination that entering into the contract would not violate the Indiana Code of Ethics, set out on Ind. Code §4-2-6 and 42 IAC 1-5, or any statute or agency rule concerning conflict of interests.

On August 12, 2021, the Office of the Indiana Attorney General (OAG) notified the IG that it wished to enter into a contingency fee contract with Keller Lenkner, LLC and The Lanier Law Firm, P.C. (the "Law Firms"). The OAG explains the Law Firms will represent Indiana in the anti-trust action, *State of Texas, et al. v. Google LLC*, 4:20-cv-00957 (E.D. Tex) to pursue the State's legal rights to recover equitable relief, damages, compensation, fines penalties, fees, and costs to which the State of Indiana may be entitled.

The State will compensate the Law Firms only for legal services rendered and for costs and expenses incurred only if the Law Firms obtain any recovery for the State under the following contingency fee terms: (1) 25% of any recovery exceeding two million dollars (\$2,000,000) and that is not more than ten million dollars (\$10,000,000); or (2) 20% of any

recovery exceeding ten million dollars (\$10,000,000) but not more than fifteen million dollars (\$15,000,000); or (3) 15% of any recovery exceeding fifteen million dollars (\$15,000,000) and not more than twenty million dollars (\$20,000,000); or (4) 10% of any recovery exceeding twenty million dollars (\$20,000,000) and not more than twenty-five million dollars (\$25,000,000); or (5) 5% of any recovery exceeding twenty-five million dollars ((\$25,000,000)).

Pursuant to Ind. Code §4-6-3-2-2.5(b), an agency is required to make a written determination before entering into the contract that the contingency fee representation is cost effective and in the public interest. The OAG must consider five (5) factors when making this determination as outlined by Ind. Code §4-6-3-2.5(c). Those factors are as follows:

- (1) Whether the agency has sufficient and appropriate legal and financial resources to handle the legal matter in question.
- (2) The time and labor required to conduct the litigation.
- (3) The novelty, complexity and difficulty of the questions involved in the litigation.
- (4) The expertise and experience required to perform the attorney services properly.
- (5) The geographic area where the attorney services are to be provided.

The OAG has made such a determination and considered all the factors outlined in the statute. The OAG explains that the Law Firms have contingency arrangements with other co-plaintiffs states and are the firms recommended by the state leading this investigation.

The OAG's determination provides that this litigation involves copious volumes of discovery, complex damage calculations and factually and legally complex claims in an anticipated trial by jury. The OAG employs only one full time attorney to litigate antitrust matters and there are many pending matters that require that attorney's attention. Given the OAG's limited resources and the time commitment and legal demands required for the anti-trust

litigation at issue, the OAG determined that it is in Indiana's best interests to have veteran counsel who has the time and resources required to pursue Indiana's claims with maximum effect.

The OAG points out that that present OAG staff would be overloaded due to the extraordinary demands of this unique litigation. The OAG could not effectively litigate important pending State anti-trust matters and successfully prosecute the aforementioned action at the same time. The OAG writes that the State's interests are best protected by the specialized services of counsel of the Law Firms.

The OAG provides the following:

This action involves condemning a \$1.8 trillion technology firm for a wide array of actions allegedly affecting multiple relevant markets related to the complex technologies that support the many billions of digital display ads served daily to web and mobile app users via real-time, automated auctions. This litigation is uniquely complex and raises many novel issues as to the application of the relevant law – issues which the defendant will be incentivized and able to contest hotly. It will also raise complex issues of damages, different for each plaintiff. Therefore, it is necessary to contract with counsel able to devote the attorney resources appropriate to the novelty and complexity of these issues.

The OAG further provides that the issues presented in the litigation will require attorneys with expertise and experience in complex litigation – the OAG found that the Law Firms trial counsel has the expertise and trial experience to best protect and advance Indiana's interest.

The OAG notes that this litigation has been transferred into MDL No. 3010 in the United States District Court for the Southern District of New York with the eventual trial anticipated in the United States District Court for the Eastern District of Texas. Considerable time and expense would be required to attend the required hearings in these locations were the OAG denied the ability to employ the Law Firms.

Finally, the OAG has determined that requesting proposals from private attorneys is not feasible under the circumstances of this litigation. The Law Firms have been retained by the State of Texas which is leading this litigation and by additional co-plaintiff states. The OAG found that the Law Firms are uniquely situated because they have already invested extensive time in understanding and preparing this complex case and are already designated as lead trial counsel. Indiana will benefit from having common representations with the lead plaintiff and other go-plaintiff states.

The OAG has asserted that no OAG employee or immediate family member has any financial interest in the Law Firms. Likewise, no OAG employee or OAG immediate family member has any financial interest in the contract itself. Furthermore, the Law Firms do not employ any state employees, including OAG personnel involved in the contracting decisions. Finally, the OAG provides that no OAG employee is contracting with or will be supervising the work of a business entity in which a relative is a partner, executive officer or a sole proprietor.

Based on the information provided and after careful review and examination, the OIG finds that entering into this contingency fee contract will not violate the Indiana Code of Ethics or any statute or agency rules concerning conflict of interests. This Report is issued in compliance with the above noted statutory requirements.

Dated: August 24, 2021

APPROVED BY:



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David Cook, Inspector General