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Attorneys' Fees in the State Tobacco Litigation Cases

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Summary

In the past few years, many states have filed complaints against the tobacco industry in state court to recover Medicaid costs paid by the states to treat their citizens for tobacco related illnesses. The states are also attempting to recover other damages, such as punitive damages, against the tobacco industry. For various reasons, the states have hired private attorneys to assist the state Attorneys General in prosecuting these cases. In most cases, the retention of private counsel has included a fee agreement specifying the amount of compensation that these attorneys will receive for their services. These agreements are not uniform among the states, but most tend to provide some form of contingency fee arrangement. Some of these states have developed a sliding scale contingency fee schedule which varies with the amount of time spent on the litigation and whether a trial has begun. This report briefly summarizes the different fee agreements that the states have with private counsel.

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Attorneys' Fees in the State Tobacco Litigation Cases

Introduction

In the past few years, many states have filed complaints against the tobacco industry in state court to recover Medicaid costs paid by the states to treat their citizens for tobacco related illnesses. The states are also attempting to recover other damages, such as punitive damages, against the tobacco industry. For various reasons, the states have hired private attorneys to assist the state Attorneys General in prosecuting these cases. In most cases, the retention of private counsel has included a fee agreement specifying the amount of compensation that these attorneys will receive for their services. These agreements are not uniform among the states, but most tend to provide some form of contingency fee arrangement. Some of these states have developed a sliding scale contingency fee schedule which varies with the amount of time spent on the litigation and whether a trial has begun.

This report briefly summarizes the different fee agreements that the states have arranged with private counsel. The following summaries are derived from analyzing the actual fee agreements that the states have contracted with private counsel. In order to be consistent, this report will refer to the private counsel hired by the states, to pursue the tobacco litigation, as "Special Assistants." Although these Special Assistants have been hired by the states, they are not considered state employees.

State Attorneys Fee Agreements

Alaska

If the June 22, 1997 Settlement-in-Principle is approved by Congress and the President by June 1, 1998, the Special Assistant Attorneys General (hereinafter, the "Special Assistants") shall seek compensation only from the attorneys fee pool to be established by the defendants.

In the event the Settlement-in-Principle is not approved by June 1, 1998, the Special Assistants shall receive: (1) 10% from any judgments entered into or any settlement substantially completed during the first year from the date of contract between the state and the Special Assistants; (2) 12% if the above occurs after the first year, but before trial; and (3) 15% if the above occurs after trial begins. However, the state reserves the right to petition any court before payment to determine the reasonableness of attorney fees outlined in the contract.

In the event there are no recoveries of court awarded costs, the state shall seek a legislative appropriation in order to reimburse costs advanced by the Special Assistants. Otherwise, costs will be paid from the monies recovered by the state.

If the litigation is resolved by settlement for injunctive relief only, the state will require that the defendants compensate the Special Assistants for costs and hourly fees, including a reasonable multiplier of 1.5 to 2 times the Special Assistants' lodestar.

Arizona

The state shall pay compensation from monies recovered by the state in the tobacco litigation, whether by settlement or judgment. The Special Assistants will be paid a contingency fee of 18% of the funds recovered plus the reasonable expenses of litigation incurred by them. However, any attorneys fees that are awarded by the court and collected pursuant to a state statutory scheme shall be subject to the provisions of the state statutes.

Reimbursement for the cost and expenses of litigation is conditioned upon a specific appropriation by the legislature.

In the event that the litigation is resolved by settlement involving only injunctive relief, nonmonetary payment, the provision of goods and services, or any other "in-kind" terms, the state agrees that the Special Assistants are entitled to a mutually agreeable monetary settlement for attorneys fees and expenses and the state will not settle the case unless the defendant's agree to pay said amounts.

Arkansas

The fee agreement is pending in the legislature.

California

The state has decided not to hire Special Assistants.

Los Angeles. The city has decided not to hire Special Assistants.

San Francisco. The repayment of costs and other expenses is contingent upon a recovery being obtained. If no recovery is obtained, the city owes nothing for costs and other expenses. Compensation to the Special Assistants shall include reasonable disbursements in the litigation, plus 20% of any recovery collected up to \$25 million, and 15% of any recovery in excess of the first \$25 million.

Notwithstanding the above, the city shall pay no higher fee for compensation than is paid by any other co-plaintiff that the Special Assistants represent in the litigation or any other county and/or city that the Special Assistants represent on a contingent fee basis.

In the event that the litigation is resolved by settlement involving only injunctive relief, nonmonetary payment, the provision of goods and services, or any other "in-kind" terms, the city agrees to seek, as part of any such settlement, a mutually agreeable monetary settlement for attorneys fees and expenses.

Colorado

The state has decided not to hire Special Assistants.

Connecticut

The Special Assistants will be paid a fee of 25% of the funds recovered and collected by the state as a result of the litigation, whether by way of settlement or judgment, including any funds recovered as punitive damages. The Special Assistants shall also be reimbursed for the reasonable disbursements incurred by them in the course of litigation. Unless otherwise provided for, any and all compensation and reimbursement due to the Special Assistants is contingent upon a monetary recovery being obtained.

In the event that the litigation is resolved by settlement involving only the provision of goods and services, or any other "in-kind" terms, the state agrees to seek, as part of any such settlement, or judgment, compensation for the Special Assistants equivalent to the 25% contingency fee and disbursements which the Special Assistants would have otherwise been entitled to if the payment had been in cash. If the Attorney General is unable to obtain such compensation, he shall petition the legislature to appropriate such funds to compensate the Special Assistants.

In the event that the litigation is resolved by settlement involving only injunctive relief, the Attorney General shall seek attorneys fees and disbursements from the court or the defendants. If the Attorney General is unable to obtain such compensation, he shall petition the legislature to appropriate such funds to compensate the Special Assistants.

Florida

The state shall pay, from the total dollars recovered and collected, a 25% contingency fee which shall be shared and distributed among the Special Assistants, plus out-of-pocket costs incurred by the providers to the extent that the recovery meets or exceeds total costs, awarded in any final judgments, court orders, or negotiated settlement. The state also agrees to reimburse all costs incurred if a recovery is obtained in an amount exceeding total costs. If recovery is obtained in an amount less than the total of costs, the Special Assistants shall be entitled to recover their costs up to, but not exceeding, the recovery actually obtained and the state shall not be liable for the remaining unreimbursed costs.

Repayment of costs is contingent upon a recovery being obtained. If no recovery is made, the state owes nothing for costs.

Georgia

The state does not have Special Assistants at this time.

Hawaii

The Special Assistants will receive a contingency fee of 20% of the total amount recovered and received, less amounts recovered as costs for reimbursable expenses whether by compromise, settlement, or judgment. This provision shall be superseded by an Act of Congress. If no recovery is made no fee will be owed to the Special Assistants.

The Special Assistants agree to advance the court costs and expenses of litigation. In the event there is no recovery on this litigation, the Special Assistants waive their right to reimbursement for costs and expenses.

Idaho

If the tobacco litigation is resolved through a "Global Settlement" within the first 180 days following the retention of the Special Assistants, there is a flat fee of \$100,000. If between the 90th day and the 180th day the tobacco litigation is actively litigated by the Special Assistants, then the flat fee is \$250,000.

In the event any judgment is entered into and/or the tobacco litigation is resolved through any type of settlement after the 180th day, the fee shall be as follows: (a) 16.7% of the first \$10 million received, less costs; (b) 13.3% of the recovery, after payment of costs, above \$10 million and less than or equal to \$20 million; (c) 10% of the recovery, after payment of costs, above \$20 million and less than or equal to \$30 million; (d) 6.7% of the recovery, after payment of costs, above \$30 million and less than or equal to \$40 million; and (e) 3.3% of the recovery, after payment of costs, above \$40 million. However, the fee shall not be more than \$9 million.

In the event any judgment is entered into and/or the tobacco litigation is resolved through any type of settlement more than 18 months after the retention of the Special Assistants, the fee shall be as follows: (a) 20% of the first \$10 million received, less costs; (b) 16% of the recovery, after payment of costs, above \$10 million and less than or equal to \$20 million; (c) 12% of the recovery, after payment of costs, above \$20 million and less than or equal to \$30 million; (d) 8% of the recovery, after payment of costs, above \$30 million and less than or equal to \$40 million; and (e) 4% of the recovery, after payment of costs, above \$40 million. However, the fee shall not be more than \$18 million.

In the event any judgment is entered into and/or the tobacco litigation is resolved through any type of settlement after trial begins, the fee shall be as follows: (a) 25% of the first \$10 million received, less costs; (b) 20% of the recovery, after payment of costs, above \$10 million and less than or equal to \$20 million; (c) 15% of the recovery, after payment of costs, above \$20 million and less than or equal to \$30 million; (d) 10% of the recovery, after payment of costs, above \$30 million and

less than or equal to \$40 million; and (e) 5% of the recovery, after payment of costs, above \$40 million. However, the fee shall not be more than \$27 million.

If a settlement agreement establishes a separate pool, fund or other arrangement for payment of attorneys fees, the Special Assistants, at the option of the Attorney General, shall be solely paid out of such pool, fund or other arrangement.

Reasonable costs advanced by the Special Assistants shall be paid from monies received as a result of any judgment or settlement in favor of the state. If there is no receipt of damages or other monetary relief, the Attorney General will seek legislative appropriations for reimbursement of reasonable, approved advanced costs.

If the litigation is resolved by settlement for injunctive relief only, the state will require that the defendants compensate the Special Assistants for costs and hourly fees, including a reasonable multiplier.

Illinois

The compensation to be paid shall be contingent upon recovery of monies, at law or in equity, whether by settlement or judgment. In no event shall the state be obligated to pay more than it receives in any monetary recovery. The Special Assistants shall receive 10% of the total recovery to the state, including, but not limited to compensatory or punitive damages, restitution, civil penalties, interest, and any amounts which may later be payable to the federal government under the Medicaid program.

In the event of a recovery, the state shall reimburse the Special Assistants for costs and disbursements advanced during the course of litigation, in an amount approved by the Attorney General.

In the event that the litigation is resolved by settlement involving only injunctive relief, nonmonetary payment, the provision of goods and services, or any other "in-kind" terms, the Special Assistants will receive costs and hourly fees plus a reasonable multiplier. In such an event, the state will not settle the case unless the defendant's agree to pay said amounts.

Indiana

The compensation of the Special Assistants shall be contingent upon recovery and collection of damages or a settlement distribution. The Special Assistants shall receive 13.5% of the first \$30 million of the net recovery and 10% of any remaining amount of the net recovery. If a court awards attorneys fees and costs to the state, the Special Assistants shall receive compensation which may include an hourly rate and a contingency fee.

The Special Assistants shall bear the ultimate responsibility for any costs advanced, subject to reimbursement upon recovery only.

Iowa

Compensation is to be paid contingent upon the state recovering and collecting monies in the litigation, whether by settlement or otherwise. Ness Motley shall be entitled to 6.25% of the first \$100 million of the recovery, 5% of the next \$100 million of recovery, and 2.5% of the balance in excess of \$200 million, plus reimbursement of disbursements. The Iowa Special Counsel, in the event of recovery within 120 days of the date counsel was retained, shall share 9.375% of the first \$200 million of the recovery and shall share 7.5% of the balance, plus reimbursement of disbursements. In the event of recovery after the 120 day period, the Iowa Special Counsel shall share 18.75% of the first \$100 million of the recovery and shall share 15% of the next \$100 million of the recovery and 7.5% of the balance, plus reimbursement of disbursements.

In the event that the litigation is resolved by settlement involving only the provision of goods and services, or any other "in-kind" terms, the state agrees to seek, as part of any such settlement, compensation for the Special Assistants equivalent to the contingency fee and expenses which the Special Assistants would have otherwise been entitled to if the payment had been in cash.

Kansas

If the state receives funds by reason of settlement, legislation, judgment in litigation or by any other form or process for resolution of the litigation, the "counsel fee" shall be determined by the terms of any settlement agreement or as provided in any other resolution process. However, the counsel fee shall not exceed 12.5%. If no funds are recovered by the state, no fees are due counsel.

In the event the resolution of the tobacco litigation involves the provision of goods, services or other "in-kind" payment, the state will seek compensation for the Special Assistants equal to the contingency fee and expenses that they would have been entitled to otherwise. If such compensation does not materialize, the Attorney General will petition the legislature to appropriate funds to reasonably compensate the Special Assistants for both fees and expenses.

If no recovery is made by the state, the Special Assistants will not hold the state liable for reimbursement of costs, expenses and attorneys fees, but may submit a claim to the legislature for such reimbursement.

Louisiana

The state does not have an agreement with its Special Assistants for attorneys fees. The state has requested, in the Complaint, that the court award and/or set appropriate attorneys fees.

Maine

The state is liable for compensation only if it receives monetary damages, whether by settlement or judgment. In the event that the tobacco litigation is

resolved by settlement or Act of Congress within 6 months from retention of the Special Assistants, the state shall pay expenses and compensate the Special Assistants as follows: (a) \$150 per hour for Partners and (b) \$120 per hour for Associates. However, compensation shall not exceed 13% of the total recovery to the state. An Act of Congress shall supersede the terms of this agreement.

In the event that the tobacco litigation is resolved by settlement or Act of Congress on a date more than 6 months, but less than 12 months from retention of the Special Assistants, the state shall pay expenses and compensate the Special Assistants as follows: (a) \$150 per hour for Partners and (b) \$120 per hour for Associates plus 5% of the total recovery to the state. However, compensation shall not exceed 13% of the amounts collected by the state. An Act of Congress shall supersede the terms of this agreement.

If the state recovers monies from the tobacco litigation by settlement or judgment other than as specified above, compensation is to be paid as follows: (a) 13% of the total recovery to the state; and (b) 50% of any incentive payments made to the state for the collection of monies payable to the federal government. In the event of recovery, the state shall also reimburse the Special Assistants for costs and disbursements advanced during the course of the litigation.

Notwithstanding the above, the state shall pay no higher rate of compensation than is paid by any other co-plaintiff that the Special Assistants represent in the tobacco litigation.

In the event there is no recovery, or the recovery is less than enough to cover the state's pro rata share of the costs and disbursements, the state shall not be responsible for the deficiency of its pro rata share of costs and disbursements.

Maryland

The Special Assistants will be paid a fee of 25% of the recovered funds plus the reasonable expenses of litigation incurred by them. All compensation due the Special Assistants is contingent upon a recovery being obtained. If no recovery is made, the state owes nothing to the Special Assistants.

Massachusetts

The sole contingency upon which compensation is to be paid is the recovery and collection of monies in the litigation, whether by settlement or judgment. Compensation shall be 25% of any recovery collected by the state plus reasonable disbursements made in the litigation.

Michigan

Upon the successful recovery of damages in the event of settlement, trial or appeal, the Attorney General shall petition the court for reasonable fees and expenses to be awarded to the Special Assistants. The Special Assistants shall be reimbursed

for their costs and expenses as provided for under the Michigan Rules of Professional Conduct.

Minnesota

The Special Assistants will be paid a fee of 25% of the total recovery to the state. In addition, the state shall reimburse the Special Assistants for costs and disbursements advanced during the course of litigation, in an amount to be approved by the Attorney General. All compensation due the Special Assistants is contingent upon a recovery being obtained.

Notwithstanding the above, the state shall pay no higher rate of compensation than is paid by any other co-plaintiff that the Special Assistants represent in the tobacco litigation.

Mississippi

Mississippi does not have a fee agreement with its Special Assistants. The state appears to be relying on its claim for reasonable attorneys fees and costs of the tobacco litigation, as set forth in its complaint.

Missouri

The state does not have Special Assistants at this time.

Montana

Compensation shall be contingent upon recovery and collection of damages or monetary penalties, whether by settlement or judgment. Compensation will be as follows: (a) if the tobacco litigation is resolved in a global settlement within the first 90 days of retaining the Special Assistants, their fee is based on an hourly rate or a flat fee of \$100,000, whichever is greater; (b) 10% of any recovery obtained, because of any judgments entered and any settlement substantially completed (whether through federal legislation or in any other manner) after the 90 day period, but during 365 days of retaining the Special Assistants; (c) 12% of any recovery obtained, because of any judgments entered and any settlement substantially completed (whether through federal legislation or in any other manner) after 365 days of retaining the Special Assistants but before trial; and (d) 15% of any recovery obtained, because of any judgments entered and any settlement substantially completed (whether through federal legislation or in any other manner) after trial begins. The state reserves the right to petition the court before payment to determine the reasonableness of attorney fees outlined in the fee agreement. If as a result of a global settlement a separate pool for attorneys fees is created, the Special Assistants shall be paid solely out of that pool.

Reimbursement by the state for any costs advanced is subject to recoveries or court awarded costs in the lawsuit. However, in the event there are no recoveries or court awarded costs, the Attorney General will seek a legislative appropriation to reimburse such costs.

In the event that the litigation is resolved by settlement involving only injunctive relief, nonmonetary payment, the provision of goods and services, or any other "in-kind" terms, the Special Assistants will receive costs and hourly fees plus a reasonable multiplier. In such an event, the state will not settle the case unless the defendants agree to pay said amounts.

Nevada

The state shall pay the Special Assistants on a contingency fee basis provided that the state realizes a recovery. Upon recovery, the state shall pay the following: (a) if the tobacco litigation is resolved in a global settlement within the first 90 days after approval of the agreement retaining the Special Assistants, the fee is based on an hourly rate or a flat fee of \$100,000, whichever is greater; (b) 10% of any recovery obtained, because of any judgments entered and any settlement substantially completed (whether through federal legislation or in any other manner) after the 90 day period, but during 365 days of retaining the Special Assistants; (c) 12% of any recovery obtained, because of any judgments entered and any settlement substantially completed (whether through federal legislation or in any other manner) after 365 days of retaining the Special Assistants but before trial; and (d) 15% of any recovery obtained, because of any judgments entered and any settlement substantially completed (whether through federal legislation or in any other manner) after trial begins.

Regardless of the outcome of the case, the state shall be liable for reasonable expenses and disbursements of the litigation. However, the Special Attorney must apply to the court for the recovery of all costs and expenses.

New Hampshire

The state has not provided any information regarding Special Assistants.

New Jersey

The state has not provided any information regarding Special Assistants.

New Mexico

Upon the successful recovery of damages, the Attorney General agrees that the Special Assistants shall be entitled to petition the court for reasonable fees, costs and expenses to be awarded to the Special Assistants. The Special Assistants shall be reimbursed for their costs and expenses as provided for under the New Mexico Rules of Professional Conduct.

If there is federal legislation that resolves the litigation in whole or in part and a legislative appropriation or authorization of funds to cover fees, costs and expenses for the litigation, the Special Assistants shall petition the court for the recovery of fees, costs and expenses for whatever part of the litigation that has been resolved by such legislation.

New York

The fee agreement is pending approval.

Ohio

Fees shall not be paid to the Special Assistants unless a recovery is awarded and collected by the state. The Special Assistants shall be paid as follows: (a) from April 28, 1997 to August 1, 1997, the Special Assistants shall be paid the greater amount of \$150,000 or \$95 per hour; (b) after August 1, 1997, the Special Assistants shall be paid 10% of any amount recovered; (c) from April 28, 1997 until December 31, 1997, and if the Attorney General on or before August 1, 1997, declares in writing that a settlement in principal has been achieved, the Special Assistants shall be paid the greater of \$1 million or \$200 per hour. If by December 31, 1997, no settlement has been executed or ratified the Special Assistants shall be paid 10% of any amount recovered. If the Attorney General, after issuing the above written statement of settlement, requests the Special Assistants to continue to prosecute the tobacco litigation, then the Special Assistants shall be paid 10% of any amount recovered. The state reserves the right to petition the court before any payment to the Special Assistants to determine the reasonableness of the fees and costs.

In the event that the litigation is resolved by settlement involving only injunctive relief, nonmonetary payment, the provision of goods and services, or any other "in-kind" terms, the Special Assistants shall receive costs and an hourly fee for legal services provided, plus a reasonable multiplier.

Expenses incurred in the performance of the Special Assistants duties are only reimbursable pursuant to terms specified by the parties.

Oklahoma

The Special Assistants shall receive a 15% contingency fee of the amount recovered as a result of the tobacco litigation. If the state agrees to accept an "in-kind" settlement, then it shall negotiate a mutually agreeable lawful settlement of attorneys fees and expenses.

All costs advanced by the Special Assistants shall be deducted from any recovery by the state and payable to the Special Assistants in addition to the above compensation. If no recovery is made, neither the state nor the Attorney General owes anything for costs, expenses or attorneys fees.

Oregon

The state has not provided any information regarding Special Assistants.

Pennsylvania

The Special Assistants shall be compensated from the proceeds of any recovery in the tobacco litigation as follows:

(a) In the event the state receives a recovery in the litigation more than 2 years after the date on which the Complaint is filed, the fee shall be as follows: (a) 20% of the first \$100 million recovered; (b) 15% from a recovery of \$100 million to \$400 million; (c) 10% from a recovery of \$400 million to \$500 million; and (d) no additional fee based on a recovery in excess of \$500 million.

(b) In the event the state receives a recovery in the litigation more than 1 year but within 2 years after the date on which the Complaint was filed, the fee shall be as follows: (a) 20% of the recovery up to \$100 million; (b) 15% from a recovery of \$100 million to \$300 million; and (c) no additional fee based on a recovery in excess of \$300 million.

(c) In the event the state receives a recovery in the litigation more than 6 months but within 1 year after the date on which the Complaint was filed, the fee shall be as follows: (a) 20% of the recovery up to \$100 million; (b) 10% from a recovery of \$100 million to \$150 million; and (c) no additional fee based on a recovery in excess of \$150 million.

(d) In the event the state receives a recovery in the litigation within 6 months after the date on which the Complaint was filed, the fee shall be as follows: (a) 20% of the recovery up to \$50 million; and (b) no additional fee based on a recovery in excess of \$50 million.

(e) In the event the state receives a recovery from a settlement concluded within 1 year after the date on which the Complaint was filed, the Special Assistants shall be paid the lesser of the contingent fee payable pursuant to (c) and (d) or a fee based on time spent on the litigation and reported to the Attorney General pursuant to a rate specified in the fee agreement.

The Attorney General shall agree to no settlement of the litigation that provides only for non-monetary relief unless the settlement also provides reasonably for the compensation of the Special Assistants by the defendants to the litigation.

The Special Assistants shall be reimbursed for all reasonable, actual, or ordinary and necessary direct nonlabor costs incurred in the litigation. Reimbursement is subject to the state receiving a recovery from which such reimbursement may be made.

Puerto Rico

The state has not provided any information regarding Special Assistants.

Rhode Island

The state does not have Special Assistants at this time.

South Carolina

The state agrees to pay the Special Assistants a contingent fee which is to be set by the court and which, in no instance shall exceed 25% of the gross amount recovered or received, whether by compromise, settlement, judgment, or otherwise or whether or not statutory ratification is required. However, if the litigation is settled within 90 days of the date on which the Special Assistants were retained, the court set fee may not exceed 15% of the gross amount.

The Special Assistants shall be reimbursed for court costs and expenses of litigation if the state receives a recovery.

South Dakota

The state has not reached an agreement with its Special Assistants at this time.

Texas

The Special Assistants shall be paid a contingency fee of 15% of the total recovery to the state. If the state agrees to accept an "in-kind" settlement, then the state shall negotiate a mutually agreeable settlement of attorneys fees and expenses.

The repayment of costs to the Special Assistants is contingent upon a recovery being obtained. If no recovery is made, the state owes nothing for costs.

Utah

The state agrees to pay the Special Assistants a contingent fee of 25% of the gross amount recovered or received, whether by compromise, settlement, judgment, or otherwise. If no recovery is received, the state will owe no fees.

In the event that recovery is limited to injunctive or nominal damages, and attorney fees are awarded, the Special Assistants are entitled to retain the attorneys fees to the extent the award is based on the services provided by them.

The repayment of costs to the Special Assistants is contingent upon a recovery being obtained.

Vermont

Compensation shall be contingent upon recovery and collection of damages or monetary penalties, whether by settlement or judgment. Compensation will be as follows: (a) if the tobacco litigation is resolved in a global settlement within the first 180 days of retaining the Special Assistants, their fee will be a flat fee of \$100,000, which shall constitute payment in full for all fees and costs; (b) if the tobacco litigation is resolved in a global settlement within the first 180 days of retaining the Special Assistants, and between the 90th and 180th day the tobacco litigation is actively litigated by the Special Assistants, their fee will be a flat fee of \$200,000, which shall constitute payment in full for all fees and costs; (c) 10% of any recovery

obtained, because of any judgments entered and any settlement substantially completed (whether through federal legislation or in any other manner) during the first 365 days after the expiration of the 180 day period; (d) 12% of any recovery obtained, because of any judgments entered and any settlement substantially completed (whether through federal legislation or in any other manner) after the 365 day period, above, but before trial; and (e) 15% of any recovery obtained, because of any judgments entered and any settlement substantially completed (whether through federal legislation or in any other manner) after trial begins. The state reserves the right to petition the court before payment to determine the reasonableness of attorney fees outlined in the fee agreement. If as a result of a global settlement a separate pool for attorneys fees is created, the Special Assistants shall, at the option of the Attorney General, be paid solely out of that pool.

Reimbursement for any reasonable costs advanced by the Special Assistants is: (1) contingent upon receipt of damages or other monetary relief; and (2) subject to preapproval as to reasonableness by the Attorney General. However, in the event there is no receipt of damages or other monetary relief the Attorney General will seek a legislative appropriation to reimburse such reasonable costs.

In the event that the litigation is resolved by settlement involving only injunctive relief, nonmonetary payment, the provision of goods and services, or any other "in-kind" terms, the Special Assistants will receive costs and hourly fees plus a reasonable multiplier. In such an event, the state will not settle the case unless the defendants agree to pay said amounts.

Washington

Compensation shall be contingent upon recovery and collection of damages. If there is a recovery and collection of damages or penalties for the state, the amount of compensation to the Special Assistants will be as follows: (a) 25% of all amounts recovered from any source for the first \$20 million; (b) 20% of all amounts recovered from any source for the next \$20 million; (c) 10% of all amounts recovered for the next \$60 million; (d) 3% of all amounts recovered above \$100 million. 10% of the total fees paid to the Luvera law firm will be contributed to a specified charity.

Reimbursement by the state for any costs advanced by the Special Assistants is subject to recoveries or court awarded costs in the lawsuit or legislative appropriation. In the event there is no receipt of penalties, damages or court awarded attorney fees, the Attorney General will seek a legislative appropriation to reimburse such costs.

In the event the resolution of the tobacco litigation involves the provision of goods, services or other "in-kind" payment, the state will seek compensation for the Special Assistants equal to the prevailing hourly rate and expenses that they would have been entitled to otherwise. If such compensation does not materialize, the Attorney General will petition the legislature to appropriate funds to reasonably compensate the Special Assistants for both fees and expenses.

West Virginia

The Special Assistants have agreed to litigate this case pro bono.

Wisconsin

The Special Assistants shall receive a contingency fee of 10% for monies recovered by the state plus reasonable disbursements, if recovered by settlement or judgment entered into within 180 days of the commencement of litigation. If a settlement or judgment is entered into between 180 and 360 days the contingency fee is 15%. Thereafter, the contingency fee is 20%. If the Governor finds that such a payment would be unreasonable, he may apply to the court to modify the amount of compensation due the Special Assistants.