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Executive Council of Iowa

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May 5, 2025

Mr. Leif Olson
Chief Deputy Attorney General
Attorney General's Office
Hoover Bldg.
LOCAL

Dear Mr. Olson:

The Executive Council, in a meeting held this date, approved your request for retention of special counsel Iowa Code section 13.7 to represent the State of Iowa with respect to an antitrust lawsuit against Blue Cross Blue Shield related entities for violations of state and federal antitrust laws.

Firm: Paul Hastings LLP
515 South Flower Street, 25th Floor
Los Angeles, California 90071
Rate: Contingency-fee limits waived

EXECUTIVE COUNCIL OF IOWA

Kristi Onstot

Kristi Onstot
Executive Secretary

BRENNA BIRD
ATTORNEY GENERAL

LEIF A. OLSON
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IOWA DEPARTMENT OF JUSTICE
OFFICE OF THE ATTORNEY GENERAL

April 3, 2025

Kristi Onstot
Executive Secretary
Executive Council
State Capitol
LOCAL

Re: Request to retain special counsel and waive contingency-fee limits

Dear Kristi:

Our office requests authorization under Iowa Code section 13.7 to retain the law firm of Paul Hastings LLP as special counsel. Our office further requests that the Executive Council waive the contingency-fee limits set forth in Iowa Code section 23B.3(3). We ask that this matter be placed on the Council's agenda for its May 5, 2025, meeting to satisfy the 30-day notice requirement set forth in section 23B.3(3)(c). A copy of the proposed representation agreement is attached.

A. Scope of representation.

Paul Hastings will provide legal services and representation to Iowa with respect to an antitrust lawsuit against Blue Cross Blue Shield related entities for violations of state and federal antitrust laws. Specifically, Paul Hastings will represent the University of Iowa Health Care in its claims that those entities illegally conspired to, and actually did, divide the geographic markets for reimbursement contracts to reimburse healthcare providers for services rendered to insureds, artificially depressing the amounts reimbursed to providers, such as UIHC, below the amounts that would have been reimbursed in a competitive market. Paul Hastings would be compensated through a contingency fee as described later in this request.

Kristi Onstot

Retention of special counsel and waiver of contingency-fee limits

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B. Necessity and propriety of retaining special counsel.

The Attorney General has determined that it is necessary and appropriate to retain private special counsel for this representation. Generally, the litigation will involve extensive motion practice, including on complex antitrust questions and to ensure compliance with the state's discovery requests; extensive, time-consuming discovery of multiple corporate entities, including numerous depositions; and complicated expert discovery, both for the State to prove its claims and of the defendants to rebut their defenses. Particular reasons special counsel is necessary and appropriate include:

- The litigation will involve complicated legal and factual matters that will require the dedicated attention of several personnel. Our office does not have sufficient personnel with sufficient available time to dedicate to the task.
- Discovery requests and related discovery-management obligations are likely to involve terabytes of data. This obligation alone is likely to require the full-time attention of a staff member. Our office does not have sufficient staff resources to devote to such a task, and it does not have the budget to cover the vendor- and software-related expenses of the discovery and discovery-management obligations.
- Key points in the litigation—such as depositions, summary-judgment practice, and expert reports and disclosures—will require intensive attention from large numbers of personnel. Our office does not have sufficient personnel to devote to the task without degrading the effectiveness of our representation of the office's other clients.
- The peculiar legal and factual questions regarding the national market for insurers and how Iowa's healthcare and insurance markets interact with it demand specialized legal expertise and factual development. While many facts are uniquely within UIHC's knowledge, special counsel will possess specialized legal knowledge, factual knowledge, and access to information and

resources that our office cannot duplicate without persistent, dedicated effort that is likely to consume months, if not years.

- The scope of the potential recovery demands unquestionably dedicated representation. UIHC's initial discussions with law firms regarding this case and its internal estimates suggest that its damages could be tens or hundreds of millions of dollars. Without hiring multiple lawyers and support staff dedicated almost exclusively to this dispute, the Attorney General's office cannot guarantee the complicated, on-demand representation that this litigation is likely to require. And even if that were possible, those personnel would still require the time described above to make themselves as effective in the representation as Paul Hastings already is.

C. Retaining Paul Hastings as special counsel.

1. Paul Hastings vs. other firms.

In accordance with Iowa Code section 13.7, UIHC has recommended Paul Hastings as special counsel. We agree that Paul Hastings is qualified and suitable for the representation. Paul Hastings has assembled a team experienced in major healthcare antitrust litigation. In particular, it has represented major clients comparable to UIHC in the previous class-action suit against the Blue Cross Blue Shield entities, and it represents several clients with claims similar to UIHC's in private antitrust suits against those entities. It has already begun working to model damages attributable to the anti-competitive actions of the Blue Cross Blue Shield entities and is prepared to do so to calculate UIHC's damages attributable to those actions.

Before recommending Paul Hastings, UIHC contacted other national law firms with recognized antitrust practices. Most of those firms indicated the capability of representing the State in this litigation but proposed hourly fee engagements whose blended billing rates per lawyer were roughly \$1,000 per hour. UIHC indicated that its budget does not allow for the millions of dollars per month in litigation expenses that this would likely cost. One other national law firm proposed a contingency-fee engagement similar to that proposed by Paul Hastings.

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That firm's proposal, however, was non-negotiable and required a higher percentage of recovery than does Paul Hastings's proposal. Further, our office does not believe that the level of responsiveness and client service offered by that firm matches that offered by Paul Hastings.

2. Contingency-fee engagement.

a. Propriety of contingency fee.

The Attorney General has concluded, in accordance with Iowa Code section 23B.3(1), that hiring Paul Hastings on a contingency-fee basis is cost-effective and in the public interest. As described above, our office does not have sufficient legal and financial resources to undertake the representation given the time and labor required and the complexity and difficulty of the questions involved. More, given the nationwide distribution of the Blue Cross Blue Shield defendants, there is a strong possibility that the litigation would be filed in or be transferred to a court outside of Iowa, and the need to travel to take depositions and obtain documents is likely to require personnel to spend a significant amount of time outside of Iowa. Finally, as described above, this case requires the particular kind of services and experience that Paul Hastings can provide.

Paul Hastings is willing to accept the standard addendum our office has developed in accordance with section 23B.3(4).

b. Propriety of non-capped contingency fee.

Our office also recommends that the Council waive the contingency-fee limits set forth in section 23B.3(3). Almost all firms approached for this potential representation indicated a willingness to accept the engagement only for a blended billing rate of roughly \$1,000 per hour. As already described above, the likely monthly bills resulting from such an engagement are outside of UIHC's budget to pursue this matter. Beyond that, UIHC estimates that, given the complexity of the representation and the likely length of the litigation, the fees paid as part of any of those engagements would likely exceed the \$50 million cap set by section 23B.3(3)(b).

Further, neither firm that was willing to accept representation on a contingency basis was willing to do so for the rates set forth in section

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23B.3. While Paul Hastings was willing to accept the representation at a lower rate than was the other firm, it is not willing to do so at the statutory rates. The lack of other firms interested in accepting the engagement at the statutory rates suggests that Paul Hastings's proposal is at the prevailing market rate. The likely alternatives to declining to waive the caps are accepting less-qualified representation; engagement on an hourly basis that is likely to stress UIHC's budget and consume much of the potential recovery (perhaps in excess of the \$50 million contingency-fee cap); or representation by our office under the less-than-ideal circumstances described above.

Even at uncapped rates, a contingency fee is likely to be a better value for the state than hourly representation. For one, Paul Hastings will bear the risk of a loss; should the state not prevail in the lawsuit, it will not have expended valuable budgeted dollars to recover nothing. And, as described above, an hourly fee is likely to consume as much of a gross recovery as is a contingency fee, and it will do so while imposing budgetary stress on UIHC that a contingency fee would not. Finally, the contingency fee proposed by Paul Hastings, while still in excess of the statutory caps, is superior to the fee proposed by the other firm. Paul Hastings's proposed fee scales with the amount of work put into the case, and it will discount its fee based on the total recovery of all of its clients in pursuing these claims against the Blue Cross Blue Shield entities.

D. Conclusion.

The Attorney General's office requests that the Executive Council approve the hiring of Paul Hastings LLP as special counsel to represent the state; that it approve doing so on a contingency basis; and that it approve the waiver of the contingency-fee limits for that representation.

Yours truly,



Leif Olson

Chief Deputy Attorney General