

by plaintiffs and 60% jointly by defendants in these NYCAL proceedings. The assessment and collection of such compensation shall be the responsibility of RDF, based upon the following information which shall be submitted to RDF by plaintiffs on or before May 15 in each calendar year:

- a) allocations among plaintiffs for their 40% share, including names and addresses of all of such plaintiffs' counsel;
- b) lists of all active defendants in NYCAL, including names and addresses of all of such defendants' counsel;
- c) for purposes of this Section III of the CMO, 'active' defendants shall be deemed to mean all those defendants who are included in the *in extremis* docket, as discussed and defined in Sections XIII and XIV of this CMO, as well as all those defendants who are included in the activated and clustered FIFO docket;
- d) the defendants' active list shall be updated and/or modified regularly to account for any new defendants.

(3) Upon receipt of such information, RDF shall calculate each affected plaintiff's and each affected defendant's share of the Special Master's annual compensation as provided for in the Special Master designation, and shall promptly email invoices of same to all named plaintiffs' counsel and all named defendants' counsel. In respect of the year 2013 only,

a. all plaintiffs' counsel shall remit to RDF, on or before February 15, 2013, payments totaling \$24,000.00 representing plaintiffs' 40% share of the Adequacy Order Special Master's total compensation in the sum of \$60,000.00 as set forth in paragraph III.A. of the Special Master designation;

b. all plaintiffs' counsel shall remit to RDF, on or before June 15, 2013, payments totaling \$123,200.00 representing plaintiffs' 40% share of the Discovery Special Master's compensation for 2013 in the sum of \$308,000.00 as set forth in paragraph III.D. of the Special Master designation;

c. all defendant's counsel shall remit to RDF, on or before April 15, 2013, payments totaling \$36,000.00 prorated in relation to the payments established by the provisions of paragraph (6) hereof, representing defendants' 60% share of the Adequacy Order Special Master's total compensation in the sum of \$60,000.00 as set forth in paragraph III.A. of the Special Master designation;

d. all defendants; counsel shall remit to RDF, on or before August 15, 2013, payments totaling \$184,800.00 in the manner established by the provisions of paragraph (6) hereof (as modified by subparagraph c. above), representing defendants' 60% share of the Discovery Special Master's compensation for 2013 in the sum of \$308,000.00 as set forth in paragraph III.D. of the Special Master designation.

The designation of an individual Special Master shall be accomplished by separate order issued on or before January 1, 2014, which designation shall reflect such Special Master's 2014 compensation to be \$368,000.00 for the entire calendar year, as to which RDF shall collect 40% thereof (i.e., \$147,200.00) on behalf of all affected plaintiffs, and 60% thereof (i.e., \$220,800.00) on behalf of all affected defendants. Such order and all succeeding orders shall reflect payment schedules as agreed to by the parties.

(4) At the time payments are made to RDF, each plaintiff's counsel and each defendant's counsel shall identify to RDF the names of the persons or entities on whose behalf such payments are being remitted. Each plaintiff's payment and each defendant's payment shall constitute a one-time fee for the calendar period at issue. In no event shall any such payment be sent directly to a Special Master. All such payments shall be made directly to RDF. All such payments made to RDF by each plaintiff's counsel and each defendant's counsel may be recouped by such counsel in the form of client disbursements to be reimbursed to such counsel in the ordinary course of business.

(5) The contributions collected by RDF in respect of any Special Master's compensation shall be deposited by RDF in a separate bank account established exclusively for that purpose. RDF shall pay the Special Master's annual compensation from such account to the designated Special Master in such installments as are set forth in the Special Master designation and all succeeding orders. No Special Master will be required to submit invoices in order to receive such installments, but shall be paid automatically. RDF

shall arrange directly with each Special Master the manner in which such installments shall be remitted.

(6) As the number of NYCAL defendants involved is historically difficult to calculate, each defendant's allocation is hereby fixed at \$725.00 per affected defendant for each period at issue, which \$725.00 shall be inclusive of the NYCAL defendants' combined 60% share of the Special Master's annual compensation as well as such defendants' combined share of RDF's annual retainer, as set forth in paragraph (7) hereof. From such payments, those amounts which exceed the defendants' combined 60% share of the Special Master's annual compensation shall be placed in a special escrow account to be maintained by RDF exclusively on behalf of NYCAL defendants, and after paying therefrom such defendants' combined share of RDF's annual retainer, the balance in such account shall be applied toward the NYCAL defendants' obligations for the next succeeding period at issue. In this context, upon establishment of historical cost and payment statistics, the NYCAL defendants may seek to adjust upward or downward the \$725.00 annual payment, as appropriate.

(7) (a) The RDF engagement letter provides for an annual retainer of \$10,000.00 based upon RDF's preferential hourly billing rates, payable to RDF by all parties on or before June 17. RDF's retainer shall be borne 40% by the NYCAL plaintiffs (i.e., \$4,000.00), and 60% by the NYCAL defendants (i.e., \$6,000.00). The affected plaintiffs' 40% share of such retainer shall be split equally among such plaintiffs' counsel involved in each particular year. Upon email advice from RDF, each affected plaintiffs' counsel shall remit to RDF its equal share of such 40% of RDF's annual retainer on or before June 17. It has been established among NYCAL plaintiffs' counsel that each such firm's payment in respect of RDF's annual retainer shall not be recouped from their clients.

(b) The NYCAL defendants' 60% share of RDF's annual retainer is included in and shall be collected by RDF from the per defendant payment of \$725.00, as provided for in paragraph (6) above.

(c) At the conclusion of each calendar year RDF shall account to all NYCAL plaintiffs' counsel and all NYCAL defendants' counsel by email regarding any unused portion of the retainer paid by them, which amount shall be credited to the next succeeding year's retainer in the proportions for which plaintiffs' counsel and defendants' counsel are responsible.

(8) RDF shall maintain detailed financial records of every transaction contemplated herein

and by the RDF engagement letter. At the conclusion of each calendar year, in terms of all of the accounts to be maintained by it hereunder, RDF shall submit detailed accountings of the monies billed and collected by it, and any and all amounts distributed and/or expended by it, to the NYCAL Liaison Counsel as heretofore defined.

Except as herein set forth, in all other respects the CMO Amendment Re: Special Master dated April 18, 2012 shall remain unchanged and in full force and effect.

DATED: 2-22-13

SO ORDERED:


SHERRY KLEIN HEITLER, J.S.C.



ROSSI DOSKOCIL & FINKELSTEIN

LLP

Certified Public Accountants & Consultants

VIA EMAIL

May 30, 2012

Robert Malaby, Esq.
Malaby & Bradley
150 Broadway, Suite 600
New York, NY 10038

Dear Mr. Malaby:

Re: New York City Asbestos Litigation

Thank you for your email to Millie, regarding engaging us to provide financial management services for the New York City Asbestos Litigation ("NYCAL"). We understand you, as well as other Liaison Counsel in the NYCAL, wish to retain us to provide cash management services regarding the payment of the NYCAL Special Master as set forth in the "CMO Amendment Re: Special Master" dated April 18, 2012 that was so ordered by Justice Sherry Klein Heitler. For purposes of this engagement letter, the Parties to the Cost Sharing Agreement will be known together as the "Group."

We very much appreciate this opportunity to describe to you, and the other members of the NYCAL Liaison Counsel, our Firm's unique experience in serving joint Counsel Groups for major litigation cases, and how we propose to serve your Group.

We presently provide the daily financial, administrative and management services and maintain accounting and business records for about 35 major joint defense or plaintiff Groups involved in environmental and other litigation, many of which are located outside the Los Angeles area. The location of the case or Group Members is immaterial to our ability to serve these Groups because we have developed forms and procedures that allow us to handle nearly any request on an overnight basis.

This letter describes the professional services our accounting Firm provides to our present joint Counsel Group clientele and which we will perform for the NYCAL. Such services are intended to meet the requirements of a typical Cost Sharing Agreement. We have been provided with a copy of the Case Management Order Section III that sets forth the services that we will be expected to perform relating to the assessment and collection of compensation for the NYCAL Special Master. It is also our understanding that Justice Heitler will issue a separate order regarding our

Robert Malaby, Esq.
MALABY & BRADLEY
May 30, 2012
Page 2 of 4

services once we have been retained. For our mutual understanding and protection, we expect all instructions regarding handling of your Group's activities and funds to be in writing.

1. We will monitor the receipt of the contributions from the various law Firms' or their Clients, including collection follow-up efforts for delinquent contributions. We will retain the funds in a separate bank account in the name of the Group. We will hold excess funds in an interest bearing account. Each bank account will be established specifically and exclusively for your Group. We will obtain a Federal Identification Number for your Group for this and other purposes.
2. We will not audit each invoice by confirmation with independent third parties, although we will be alert for errors, duplicate billings and possible noncompliance with provisions of the Cost Sharing Agreement. We will investigate and resolve any noted questionable invoices or irregularities before processing payments of any questioned invoice. If appropriate, we will promptly notify Liaison Counsel of any irregularities which may have a suspicious cause or be the result of a serious breakdown in approval procedures or expenditure criteria. The risk of illegal acts, including fraud or defalcations, can never be absolutely eliminated. However, given the low risk of such improper acts in this case, we will undertake no extraordinary efforts or procedures to detect them.
3. We will prepare checks for payment to the Special Master as is set forth in the Case Management Order Section III. My partner Al Rossi and I will be authorized bank account signers.

After we are satisfied as to the reasonable propriety of each invoice, we will prepare the check, which one of us will sign, and send it directly to the Special Master. Each check would normally be accompanied by:

- Copy of the invoice(s) being paid,

All invoices must be approved in writing via email or fax and must state that all members are have been advised of such invoice and agree to the payment of same.

4. We will directly obtain the monthly bank statements from the bank, together with canceled checks, bank advices, and the like. Each bank account will be promptly reconciled to the balance on the Group's books. This will be done by our personnel who have no duties related to collection or disbursement of funds for this Group, in order to enhance our internal controls over your Group's funds.
5. We will perform monthly bookkeeping for the Group's cash receipts and disbursements, using a chart of accounts designed for this purpose. A sample is attached, which may be modified depending on any specific requirements of your case.

6. If segregating Recoverable Costs is applicable in this case, we will include a Check Request form section for the Counsel Group personnel to identify this aspect of the costs, and we will maintain a record of those costs for future recovery.
7. We will prepare annual financial statements on a calendar year basis as well as a spreadsheet containing a breakdown of the monies billed and collected. It is expected that the number of defendants who make payments to the Special Master may change over time and the spreadsheet will be revised quarterly to reflect these changes. We will also prepare any monthly reports required by the Cost Sharing Agreement, other reports or summaries as may be requested by Liaison Counsel. All financial statements and reports would normally be sent to all members of the Group unless you direct that certain reports be sent only to Liaison Counsel.

It is our mutual understanding that these financial statements are for the use of Group Members only and are not intended for and will not be distributed to any third parties. The financial statements we prepare are expected to be in a form similar to the sample attached.

8. As required, we will prepare annual Federal and state trust income tax returns for the Group. We understand that the contributions to the trust account and related expenditures from the trust account are not considered to be taxable income or deductions by the trust.
9. If the Group's cash funds near depletion and as provided in the Cost Sharing Agreement, we will advise the Liaison Counsel of the advisability of calling for additional contributions from the participating Firms. If you request, we would assist you in the development of projections of future expenditures and needed assessments. Upon approval, we will send billings to the Firms based on their respective participation ratios, and we will monitor collections, as mentioned in 1 above.
10. During the course of your Group, we will retain either hard copy or optical images of Group records. At the conclusion of your Group, we will, if notified to do so, deliver all such records to a Group Member who requests them. If not so notified, we will schedule the destruction of all Group documents no later than 5 years after we have completely terminated the Group's activities.

Fees for our services will be at our preferential client billing rates, which for these services presently are \$185 per hour for partners, \$145 per hour for staff CPAs, \$90 to \$145 per hour for accounting and bookkeeping staff, plus out-of-pocket expenses. Our invoices are due and payable on presentation. We reserve the right to terminate our services on 30-day notice if we are not paid in a timely manner. Our billings will vary from month-to-month based on the extent of services provided. We will of course advise you in advance of any hourly fee changes.

Based on our experience with other Joint Counsel Groups and if the number of carriers is indicative of the number of Group Members, I estimate our annual fees will approximately be \$10,000. Since your Group is a little different than the "typical" defense Group, we will start with a \$10,000 annual retainer that is payable on or before June 17, 2012. We can re-evaluate our

Robert Malaby, Esq.
MALABY & BRADLEY
May 30, 2012
Page 4 of 4

services, if necessary, within six to nine months. If there are very few bills to be paid and assessments to collect, and if you do not require any special financial statements or reports, our monthly fees should be at or below that amount.

In summary, our accounting, administrative and cost sharing management services for other major joint Counsel litigation Groups gives us the insight and experience to provide efficient and cost effective services to the NYCAL.

After we have responded to any questions you and other Members may have, we will if necessary modify this letter to better describe our services for your Group. If, on the other hand, this letter correctly expresses your understanding of our services and you wish to engage us for them, please sign the copy of this letter, as a Member of the NYCAL, and return it to me via email in pdf format to millies@rdcpas.com.

Again, thank you for the opportunity to make this proposal. Our Firm is dedicated to providing reliable, efficient and cost effective services to joint Counsel Groups. We look forward to serving your Group. Please call me if you have any questions.

Sincerely,
Rossi Dorskocil & Finkelstein LLP

Brad Dorskocil
Partner

APPROVED BY:

Charles M. Ferguson / RCH
Charles M. Ferguson, Esq.

Robert C. Malaby
Robert C. Malaby, Esq.

Jordan Fox / RCH
Jordan Fox, Esq.

Judith A. Yavitz / RCH
Judith A. Yavitz, Esq.

Date: May 30, 2012