ATTORNEY GENERAL DEPARTMENT OF JUSTICE



33 CAPITOL STREET CONCORD, NEW HAMPSHIRE 03301-6397



ANN M. RICE
DEPUTY ATTORNEY GENERAL

May 15, 2013

The Honorable Mary Jane Wallner, Chairman Fiscal Committee of the General Court State House Concord, NH 03301

Her Excellency Governor Margaret Wood Hassan And the Honorable Council State House Concord, NH 03301

REQUESTED ACTION

Pursuant to RSA 7:12, authorize the Department of Justice (DOJ) to accept and expend a sum not to exceed \$500,000 from funds not otherwise appropriated for the purpose of covering projected shortfalls in the general litigation expenses incurred in the defense of the State and the prosecution of criminal law effective with the approvals of the Fiscal Committee and the Governor and Council through June 30, 2013. 100% General Funds

These funds are to be budgeted in account #02-20-200010-2601 entitled "Attorney General" as follows:

Current New
Class Description Budget Request Budget
233-500769 Litigation Expense \$1,800,000 \$500,000 \$2,300,000.

EXPLANATION

The Department of Justice was originally appropriated a sum of \$350,000 for general litigation expenses for SFY 2013. The department requested an additional \$600,000 which was approved by the Fiscal Committed on November 8, 2012, FIS 12-305 and approved by the Governor and Council on November 14, 2014, item #28 and subsequently requested an additional \$850,000 which was approved by the Fiscal Committee on February 1, 2013, and approved by the Governor and Council on February 6, 2013. We currently have an available balance of \$99,753 with pending invoices of over \$165,000. We anticipate that we will be receiving additional invoices in excess of \$350,000 for services provided during the months of April and May 2013.

As we have indicated, litigation costs are very difficult to forecast. In the past, the average monthly costs for litigation have run from \$60,000 to \$90,000 per month. This year appears to be an exception. To date our monthly average cost has exceeded \$150,000 per month.

The most difficult and expensive lawsuit facing the State at this time is the challenge to the constitutionality of the State's mental health system which is currently in the discovery phase and is anticipated to have additional costs for producing a substantial amount of electronic discovery as well as legal work to contest class certification. To date, we have paid outside counsel over \$1,180,000 and anticipate that these costs will exceed an additional \$350,000 for the remainder of this fiscal year. In addition the DOJ has incurred ligation costs in the Criminal Bureau related to seven homicide cases — Dueling, Packer, Webster, Petelis, Lacombe, Marchand and Watson. Other on-going criminal cases will require the use of a translator or hiring of a forensic nurse to review more than three years of medical records for an infant death. The Civil Bureau is also anticipating that upcoming trials will cost a minimum of \$50,000. This request does not include any additional costs related to the tobacco litigation.

We have attached a list of cases and the costs to date for your review.

Please let me know if you have any questions concerning this request.

Your consideration is greatly appreciated.

Respectfully submitted,

Joseph A. Foster

Attorney General

#904346

Litigation Costs to date (May 14, 2013) Fiscal Year 2013

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<u>Bureau</u>	Case Name	Amount Paid
Consumer	Morris/Reynolds/Lorilard	\$153,257
Criminal	St. v Duling	\$5,805
Civil	Georgia Tuttle, Md et al v St	. \$52,298
Civil	Barry Ellsworth et al v NH Gov	\$1,182,884
Criminal	St v Robert Lacombe, Jr	\$12,231
Civil	Estate of Michele Walker v St	\$19,257
Criminal	St v David Carrier	\$3,548
Transportation	TLT Construction Corp.	\$95,700
Criminal	Steven Spader	\$12,427
Civil	NH DOCCC v Jeffrey A. Bettez	\$13,022
Criminal	St v Jeffrey Cook	\$5,700
Criminal	St v Myles Webster	\$7,333
Transportation	White Mnt Communications	\$10,196
Criminal	Liquor Commission	\$10,369
Transportation	Krill v Trp Feinauer/Sgt McCor	\$2,453
Civil	K Frisselle v NHDCYF EasterSeal	\$8,317
Criminal	St v Mathew Packer	\$6,750
Consumer	McNamara V Brian Schman	\$8,825
	Total	\$1,610,372
	Expended to date	\$1,705,266
	Represents cases less than \$3,000	\$94.894

ATTORNÉY GENERAL DEPARTMENT OF JUSTICE

33 CAPITOL STREET CONCORD, NEW HAMPSHIRE 03301-6397

MICHAEL A. DELANEY
ATTORNEY GENERAL



G+C 3-6-13 # 30 ANN M. RICE EPPUTVATTORNEY GENERAL

January 7, 2013

The Honorable Mary Jane Wallner, Chairman Fiscal Committee of the General Court State House Concord, NH 03301

Her Excellency Governor Margaret Wood Hassan And the Honorable Council State House Concord, NH 03301

REQUESTED ACTION

Pursuant to RSA 7:12, authorize the Department of Justice (DOJ) to accept and expend a sum not to exceed \$850,000 from funds not otherwise appropriated for the purpose of covering projected shortfalls in the general litigation expenses incurred in the defense of the State and the prosecution of criminal law effective with the approvals of the Fiscal Committee and the Governor and Council through June 30, 2013. 100% General Funds.

These funds are to be budgeted in account #02-20-200010-2601 entitled "Attorney General" as follows:

 Class
 Description
 Budget
 Request
 Budget

 '233-500769
 Litigation Expense
 \$950,000
 \$850,000
 \$1,800,000

EXPLANATION

The Department of Justice was originally appropriated a sum of \$350,000 for general litigation expenses for SFY 2013. Subsequently, an additional \$600,000 was approved by the Fiscal Committee on November 8, 2012, FIS 12-305, and approved by the Governor and Council on November 14, 2012, item #28. We currently have an available balance of \$102,377 with pending invoices totaling in excess of \$95,000.

Litigation costs are very difficult to forecast. This year, the Department has been faced with exceptionally complex and expensive legal challenges to the State's mental health system, Medicaid disproportionate share payment system, Medicaid Enhancement Tax, Medicaid Reimbursement System, and changes to the retirement system.

The increase in expenses stems in large part from the pending *Ellsworth* lawsuit challenging the constitutionality of the State's mental health system. That case has involved the compilation and processing of an unprecedented amount of electronic documents, at a substantial cost to the State. The State also needed to retain outside litigation counsel to assist in the defense of this case. To date, we have paid outside counsel over \$500,000 and anticipate that these costs will exceed an additional \$500,000 for the remainder of this fiscal year. In addition, the DOJ continues to incur litigation costs in the Criminal Bureau for cases that include the *Addison* appeal, and seven homicide cases – *Dueling*, *Packer*, *Webster*, *Petelis*, *Lacombe*, *Marchand* and *Watson* – each of which will require a minimum of an additional \$35,000 per case. Other on-going criminal cases will require the use of a translator and the hiring of a forensic nurse to review more than three years of medical records for an infant death. The Civil Bureau is anticipating that upcoming trials will cost a minimum of \$75,000.

This request also includes anticipated costs of the tobacco litigation. The State has filed suit against the tobacco companies that are signatories to the Tobacco Master Settlement Agreement ("MSA") under which the defendants are required to make annual payments to all of the states including the State of New Hampshire. The annual payments received by New Hampshire since 2006 have been approximately \$5.0 million less than the required amount. The defendants claim that the State failed to diligently enforce the obligation of non-participating tobacco manufacturers ("NPMs") to make escrow payments as required by RSA 541-C. The tobacco companies have identified thirty-five states they claim failed to diligently enforce their obligations under the MSA, including New Hampshire. Individual state hearings began in May 2012 and will continue through 2013. It is anticipated that New Hampshire's costs through the end of this Fiscal Year will not exceed \$50,000. If New Hampshire is found not to have diligently enforced its escrow statute in 2003, New Hampshire could lose up to its entire annual payment under the MSA.

Please let me know if you have any questions concerning this request.

Your consideration is greatly appreciated.

Respectfully submitted

Michael A. Delaney

Attorney General

ATTORNEY GENERAL DEPARTMENT OF JUSTICE

33 CAPITOL STREET CONCORD, NEW HAMPSHIRE 03301-6397

MICHAEL A. DELANEY ATTORNEY GENERAL



ANN M. RICE

September 28, 2012

Representative Ken Weyler, Chairman Fiscal Committee of the General Court State House Concord, NH 03301

His Excellency, Governor John H. Lynch
And the Honorable Council
State House
Concord, NH 03301

REQUESTED ACTION

Pursuant to RSA 7:12, authorize the Department of Justice to accept and expend a sum not to exceed \$600,000 from funds not otherwise appropriated for the purpose of covering projected shortfalls in the general litigation expenses incurred in the defense of the State and the prosecution of criminal law effective with the approvals of the Fiscal Committee and the Governor and Council through June 30, 2013.

These funds are to be budgeted in account #02-20-200010-2601, entitled "Attorney General" as follows:

•		Current		new
<u>Class</u>	<u>Description</u>	<u>Budget</u>	Request	Budget
233-500769	Litigation Expense	\$350,000	\$600,000	\$950,000

EXPLANATION

This Department was appropriated the sum of \$350,000 for general litigation expenses for SFY 2013. As of September 26, 2012, we have expended a total of \$272,412. We currently have an available balance of \$77,588 for the remainder of this fiscal year.

Litigation costs are very difficult to forecast due to the inability to estimate the complexity and type of cases the office may be handling. The monthly costs have been averaging from \$60,000 to \$90,000 per month. Using the medium range, the department would need approximately \$600,000

(\$75,000 per month x 8) for the remainder of SFY 2013.

Some of the extraordinary cases for which we have incurred and continue to incur litigation costs in the Criminal Bureau include: the Addison appeal, and seven homicide cases—Dueling, Packer, Webster, Petelis, Lacombe, Marchand and Watson—each of which will require at a minimum, an additional \$35,000 per case. Other on-going criminal cases will require the use of a translator and the hiring of a forensic nurse to review more than three years of medical records for the infant death case. The Civil Bureau is anticipating that upcoming trials will cost a minimum of \$100,000. Additionally, the lawsuit challenging the constitutionality of the state's mental health system is in the discovery phase and is anticipated to have costs for producing a substantial amount of electronic discovery as well as legal work to contest the certification of a class.

This request also includes the anticipated costs of the tobacco litigation. The State has filed suit against the tobacco companies that are signatories to the Tobacco Master Settlement Agreement ("MSA") under which the defendants are required to make annual payments to all of the states, including the State of New Hampshire. The annual payments received by New Hampshire since 2006 have been approximately \$5.0 million below the required amount. The defendants claim that the State failed to diligently enforce the obligation of non-participating tobacco manufacturers ("NPMs") to make escrow payments as required by RSA 541-C. The tobacco companies have identified thirty-five states they claim failed to diligently enforce their obligations under the MSA, including New Hampshire. The arbitration began April 23, 2012 with a presentation of facts and issues common to all the individual state cases. Individual state hearings began in May 2012 and will continue at least through early 2013. It is anticipated that New Hampshire's costs through the end of arbitration will be approximately \$75,000 - \$150,000. If New Hampshire is found not to have diligently enforced its escrow statute in 2003, New Hampshire could lose up to its entire annual payment under the MSA.

Please let me know if you have any questions concerning this request.

Your consideration is greatly appreciated.

Respectfully submitted

Michael A. Delaney

Attorney General

MAD/k #812381