



Maryland Transportation Authority

SPECIAL MAY BOARD MEETING

MONDAY, MAY 13, 2024
4:00 P.M.

VIRTUAL VIA MICROSOFT TEAMS
AND LIVESTREAM



**MARYLAND TRANSPORTATION AUTHORITY
BOARD MEETING**

VIRTUAL via Microsoft Teams

MAY 13, 2024 4:00 PM

This meeting will be livestreamed on the [MDTA Board Meeting Page](#)

NOTES:

- This is a Virtual Open Meeting being conducted via Microsoft Teams and being livestreamed on the MDTA webpage.
- The public is welcomed to watch the meeting at the link above.
- *If you wish to comment on an agenda item please email your name, affiliation, and the agenda item to nhenson@mdta.state.md.us no later than 5:00 p.m. on May 12th. You **MUST** pre-register in order to comment.* Once pre-registered, all pertinent information will be emailed to you.

AGENDA

OPEN SESSION – 4:00 PM

Call Meeting to Order

1. **Approval – Contingent Fee Provision in Assistant Counsel Contract with the Office of the Attorney General for Litigation Services for the Francis Scott Key Bridge disaster** Attorney General Anthony G. Brown 10 min.
Assistant Attorney General Kimberly A. Millender

Vote to Adjourn Meeting

TAB 1



MEMORANDUM

TO: MDTA Board
FROM: Principal Counsel Kimberly A. Millender
SUBJECT: Legal Representation with Contingent Fee
DATE: May 13, 2024

PURPOSE OF MEMORANDUM

To approve the Attorney General's proposal to include a contingent fee provision in a contract for Assistant Counsel related to litigation for the Francis Scott Key Bridge disaster.

SUMMARY

The Attorney General seeks to award a contract to external law firms to serve as Assistant Counsel for the Francis Scott Key Bridge litigation. The firms will be paid on a contingent fee basis with the amount based on a sliding scale depending on the stage of litigation where recovery is obtained. *See*, attached for additional information.

ANALYSIS

Approval of a payment on a contingent fee basis requires approval of the MDTA Board as part of its fiduciary responsibilities for monies pledged and received under the MDTA Trust Agreement. The Attorney General will also be seeking approval from the Maryland Board of Public Works.

REQUESTED ACTION

Approve the contingent fee provision in the contract for Assistant Counsel for the Francis Scott Key Bridge disaster litigation.

ATTACHMENT

- Attorney General's Proposal to include a contingent fee provision in a contract for Assistant Counsel related to litigation for the Francis Scott Key Bridge disaster

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ATTORNEY GENERAL

Legal Representation with Contingent Fee

Recommendation: That the MDTA Board approve the Attorney General’s proposal to include a contingent fee provision in a contract for Assistant Counsel. This contract would compensate an external law firm with a portion of the monetary recovery, if any, that the MDTA receives in litigation for damages resulting from the Francis Scott Key Bridge disaster.

Contractors: Kelley Drye & Warren LLP, Houston TX
Liskow & Lewis APLC, Houston TX
Downs Ward Bender Herzog & Kintigh PA, Hunt Valley MD
The Lanier Law Firm, New York NY
Partridge LLC, New Orleans LA

Contract Description: Assistant Counsel – Francis Scott Key Bridge Litigation. The contract is for Assistant Counsel to the Attorney General, pursuant to State Government Code, §6-105(b), with approval from Governor Moore, by letter dated 3/28/24.

Amount:

Attorney Fees. The Contractor will be paid for services rendered under this Contract on a contingent fee basis. The amount of fees to be paid will be based on the stage of the matter at which any recovery is obtained. The Contractor will receive attorney’s fees for the sums recovered, not including the \$350 million insurance recovery, based on the percentages in the following fee matrix.

Table with 4 columns: Cumulative Net Recovery, Stage A (Vessel owner successfully limits liability), Stage B (No Limitation and all other parties; from commencement through close of discovery), Stage C (After discovery closes, through trial). Rows show percentages for recovery amounts up to \$150M, \$150M-\$500M, \$500M-\$1B, and \$1B+.

The column headed “Stage A” applies to the vessel owner, Grace Ocean, and purported owner, Synergy, only if each is successful in the limitation of liability action. Otherwise, the columns headed “Stage B” or “Stage C” apply, as they do for all other tortfeasors.

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Remarks:

Background about the Francis Scott Key Bridge Litigation

On March 26, 2024, a container ship, M/V DALI, allided with the Francis Scott Key Bridge (Key Bridge), resulting in its collapse. Eight construction workers were on the Key Bridge at the time, two of whom were injured, and six died. The shipping channel was blocked, and all ship traffic was halted to/from that portion of the Port of Baltimore, located northwest of the former Key Bridge and encompassing the majority of marine terminals. The collapse of the bridge, which carried I-695, and the close of the shipping channel caused immediate and ongoing harm to the State of Maryland, county and local jurisdictions, and individuals and businesses in Maryland and nationwide.

The Key Bridge collapse has necessitated a massive response by more than 15 State agencies, all of which are represented by the OAG, including but not limited to:

- Maryland Department of Transportation (MDOT)
- Maryland Transportation Authority (MDTA) – owns/operates the bridge
- Maryland Port Administration (MPA) – owns/operates public marine terminals in the Port
- State Highway Administration (SHA)
- Maryland Department of Labor (MDOL)
- State Treasurer’s Office (STO)
- Board of Public Works (BPW)
- Maryland Department of Emergency Management (MDEM)
- Maryland Insurance Administration (MIA)
- Department of Commerce (COMM)
- Department of Natural Resources (DNR)
- Department of the Environment (MDE)
- Maryland Environmental Service
- Department of Budget and Management
- Maryland State Police (MSP)
- Maryland Lottery and Gaming (MLGCA)
- Department of Human Services (DHS)

Numerous Federal agencies, such as the National Transportation Safety Board (NTSB), the US Army Corps of Engineers (USACE), the US Navy (USN), and the US Coast Guard (USCG), as well as county governments have also been mobilized.

The Attorney General intends to identify and hold accountable the parties responsible for the Key Bridge collapse and to recover compensation for the damages and other harm suffered by the State. The Assistant Counsel will support the OAG’s representation of the State of Maryland, its agencies, and instrumentalities in evaluating and pursuing potential litigation. This will include advice and representation in connection with the pending maritime limitation of

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liability action filed by the ship owner, *In the Matter of the Petition of Grace Ocean Private Limited et al for Exoneration from or Limitation of Liability*, case no. 1:24-cv-00941, United States District Court for the District of Maryland.

Assistant Counsel Contract

The law firms, listed above as contractor, were selected to serve as Assistant Counsel to the Attorney General, pursuant to State Government Code, §6-105(b), for purposes of the Key Bridge litigation. As required by statute, the Attorney General sought prior approval from Governor Moore to procure the services of an Assistant Counsel. Governor Moore approved the Attorney General’s request by letter dated 3/28/24. Compensation under the contract is by contingent fee.

Counsel Selection. After receiving the Governor’s approval to retain Assistant Counsel on 3/28/24, the OAG issued a Request for Proposals (RFP) on 4/5/24, with a deadline of 4/17/24. The RFP was widely distributed by posting on the RFP page of the OAG website, and by email to 23,660 people subscribed to the RFP email list, 27 attorneys/firms that requested to receive notice of bridge-related RFPs, 24 attorneys/firms identified from the MDOT Directory of Certified Firms, and 10 minority bar/legal associations and organizations.

The OAG received 34 proposals, 14 of which proposed joint ventures of multiple firms, involving a total of 63 firms. After narrowing the field, the OAG conducted interviews of six firms/joint ventures on 4/22/24, and now recommends a joint venture composed of the five firms, listed above as contractors, to serve as Assistant Counsel for purposes of this litigation.

Fee Arrangement. The Attorney General seeks to compensate Assistant Counsel on a contingent fee basis, with a percentage of recovery as described above in the **Amount** field. This is a unique matter, and it is difficult to compare the fee schedule to that used in other litigation. The fee schedule is favorable compared to the arrangements offered by other firms which were considered for this engagement. It is also similar to the fee schedules in other Assistant Counsel contingent fee contracts that have been approved. If the State recovers less than \$350 million, the law firm will not be entitled to any compensation from the State.

Fund Source: Litigation Recovery

Resident Business: Kelley Drye & Warren LLP - No
Liskow & Lewis APLC - No
Downs Ward Bender Herzog & Kintigh PA - Yes
The Lanier Law Firm - No
Partridge LLC - No