

## Quick Summary & Statistics

- According to the AG's most recent 2023 report, Linda Singer (D.C. Attorney with Motley Rice LLC) and Charles R. Webb (Charleston Attorney with the Webb Law Center) received **\$36,205,050.00 in attorneys' fees in 2023**. Inconsistently, the Commissioner of the *In re Opioid* Common Benefit Fund recommended Motley Rice and Webb Law Centre receive **\$41,655,050.00** of the attorney fee fund.<sup>1</sup> This award constitutes **more than 50 times the recovery of most other recipients and more than double that of all fund recipients**.
- Troy N. Giatras of the Giatras Law Firm, PLLC, and Jesse Forbes of Forbes Law Office, PLLC, currently handle five cases on a contingency fee arrangement as outside counsel.
  - Troy N. Giatras, now practicing solo at the Troy Law Firm, will receive \$25,000 from the *In re Opioid* attorney fee fund.
  - Jesse Forbes will receive \$15,000 from the *In re Opioid* attorney fee fund.
- Paul T. Farrell, formerly based in Huntington, West Virginia, received part of a \$4,666,436.09 attorney fee award from his appointment under then-Attorney General Darrell McGraw in *GlaxoSmithKline* (2014). Now, Farrell practices in San Juan, Puerto Rico at Farrell & Fuller. Under the *In re Opioid* attorney fee fund, Powell Farrell/Fuller and Powell & Majestro stand to receive \$20,150,000.00 combined.
- In 2015, Charleston-based attorneys Lee Javins and Taylor M. Norman of Bailey Javins & Carter LC received an estimated \$4.85 million in attorney fees from their appointment in the *Mckesson* opioid litigation.
- The Law Firm of DiTrapano, Barrett, & DiPiero, PLLC received attorney fee awards over approximately \$2 million for their work on the *AmerisourceBergen & Purdue* cases.
- Over the past decade, most of the AG reports lack the transparency required by West Virginia Code §5-3-4. Morrisey appointed outside counsel in several matters identified below, but many AG reports fail to provide the attorneys' names or the attorney fees paid for such engagements, as is required under state law.<sup>2</sup>
- In total, we have identified approximately thirty-one (31) outside counsel representations that have either been reported, or should have been reported in accordance with W.Va. Code § 5-3-4 during Attorney General Morrisey's tenure of 2013-2023.<sup>3</sup>
- ***Outside counsel serving during this 10-year period have received nearly \$53 million in identified attorneys fees, with a number of awards yet to be identified.***

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<sup>1</sup> As discussed in greater detail below, Morrisey belatedly filed objections to the attorney fee proposals of the Commissioner of the common benefit fund at 4:40 P.M. on October 9, 2023, approximately two hours after Judges Moats and Swope entered a final order approving the Commissioner's recommendations at 2:33 P.M. Although Morrisey had since September 21, 2023, to file a reply, his objections came too late.

<sup>2</sup> Specifically, W.Va. Code § 5-3-4(a)(2)(A) requires the Attorney General's Office to identify all new private attorneys fee arrangements entered into during the year, including the name of the attorneys with whom the state as contracted and any amount of legal fees paid.

<sup>3</sup> While at least eight of these cases were initially appointed by previous Attorney General Darrell McGraw, the matters proceeded and/or settled during Attorney General Morrisey's tenure.

## AG Reporting Requirements on Outside Counsel Arrangements

Under WV Code § 5-3-4(a), the Attorney General (“AG”) shall, annually on or before November 1, deliver to the Governor, President of the Senate, and Speaker of the House an annual report detailing the “state and condition” of the several causes of action in which the state is a party. W. VA. CODE § 5-3-4(a). In pertinent part, § 5-3-4(a)(2) requires the Attorney General to provide in the report, “[t]he use of any fee arrangements as provided in subsection (h), section three-a of this article with private attorneys in the preceding year.” *Id.* at § 5-3-4(a)(2).

Further, § 5-3-4(2)(A)(i)—(v) requires AG reports to include the following information on outside counsel: **(i) The name of the private attorney with whom the state has contracted, including the name of the attorney’s law firm;** (ii) The nature and status of the legal matter; (iii) The name of the parties to the legal matter; (iv) The amount of the recovery; and **(v) The amount of any legal fees paid.** *Id.* at § 5-3-4(2)(A)(v) (emphasis added).<sup>4</sup> Unfortunately, only AG reports from 2013, 2014, and 2023 identify the legal fees paid to outside counsel. In 2013 and 2014, AG reports failed to identify the name or law firm of counsel retained. Despite our findings that Morrissey made such arrangements, AG reports do not identify civil cases where the AG’s office appointed outside counsel in 2015, 2016, 2017, 2018, 2019, and 2020. The 2016 and 2017 reports merely identify outside counsel for Division of Corrections cases.

In 2021 and 2022, AG reports do identify cases handled by outside counsel. In the 2021 report, six *In re Opioid* cases identified Joseph Rice and Linda Singer of Motley Rice LLC and Charles R. Webb of The Webb Law Centre as outside counsel. In the 2022 Report, outside counsel additions included Troy Giatras of the Giatras Law Firm, PLLC, Jesse Forbes of Forbes Law Office, PLLC, and Robert M. Bastress III of DiPiero Simmons McGinley & Bastress, PLLC. Finally, the 2023 AG report, issued on November 1, 2023, identifies four additional cases that Troy Giatras and Jesse Forbes are currently handling.

Overall, the AG reports largely fail to comply with WV Code § 5-3-4. Nonetheless, we have identified the following outside counsel, including some awards of attorney fees.

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<sup>4</sup> These disclosure provisions went into effect on May 9, 2016 as a result of the Legislature’s passage of as H.B. 4007 during the 2016 Regular Session. As such, they would have applied to all annual reports filed since November 2016.

## Outside Counsel Identified Through Court Filings

Entry	AG Report Year	Case	Outside Counsel	Settlement Amount	Attorney Fees Award
1	2013	SER Patrick Morrisey v. Bristol Meyers Squibb Company; Sanofi-Aventis, US, LLC [Marshall County Circuit Court 12-C-266].	Unidentified Counsel	\$3,200,000.00  (According to Morrisey Chart)	\$800,000.00
2	2013	State of West Virginia ex rel. Patrick Morrisey v. Bank of America N.A.  [Circuit Court of Mason County 09-C-113-N] [U.S. District Court Southern District of New York MDL No. 1950]	Joshua Barrett, Sean McGinley of the law firm DiTrapano Barrett & DiPiero  Robert V. Berthold (formerly worked at Berthold Tiano & O'Dell and now has his own firm Berthold Law Firm)	Morgan Stanley \$150,000  (Morrisey alleged in his Chart that Morgan Stanley's settlement was conducted entirely under McGraw)  J.P. Morgan \$400,000  Municipal Derivatives George K. Baum 70,000  Municipal Derivatives Bayerische Landesbank \$350,000  G.E. Money Bonds \$950,000  Bank of America \$1.375 Million  Royal Bank of Canada \$175,000.00	Morgan Stanley \$55,500  J.P. Morgan \$120,000  Municipal Derivatives George K. Baum 17,500  Municipal Derivatives Bayerische Landesbank \$87,500  G.E. Money Bonds \$237,500  Bank of America \$300,000  Royal Bank of Canada \$58,000

3	2013	<p>State of West Virginia ex rel. Patrick Morrissey, Attorney General v. Bank of America Corporation, et al</p> <p>[Civil Action No: 11-C-87-N Circuit Court of Mason County, West Virginia]</p>	<p>Guy Bucci, Timothy Bailey, L. Lee Jarvins, II</p> <p>Bucci Bailey &amp; Javins LLC (Charleston Based Firm)</p> <p>William Druckman Druckman &amp; Estep (Charleston Based Firm)</p> <p>Laura J. Baughman, S. Ann Saucer Baron &amp; Budd PC (Texas Based Firm)</p>	<p>Bank of America \$1,950,000.00</p> <p>JP Morgan Chase and Co. \$1,950,000.00</p> <p>Citibank/Citigroup, Inc. \$1,950,000.00</p> <p>GE Money Bank \$1,950,000.00</p> <p><b>In addition to previous settlement with:</b></p> <p>United National Corp. and subsidiaries First Premier Bank and Premier Bank Card \$112,500</p> <p><b>In addition to subsequent settlements with:</b></p> <p>HSBC Card Services: \$1,950,000.00</p> <p>World Financial Network Bank (WFNB) \$260,000</p> <p>Discover Financial Services \$1,950,000.00</p>	<p>Bank of America \$487,000</p> <p>JP Morgan Chase and Co. \$487,000</p> <p>Citibank/Citigroup Inc. \$487,000</p> <p>GE Money Bank \$487,000</p> <p>United National Corp. and subsidiaries First Premier Bank and Premier Bank Card \$112,500</p> <p>HSBC Card Services \$487,000.00</p> <p>World Financial Network Bank (WFNB) \$21,666.67</p> <p>Discover Financial Services \$487,000</p>
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4	2013 (appointed under McGraw)	State of West Virginia ex. rel. Patrick Morrissey, Attorney General v. First Premier Bank [Mason County Circuit Court 11-C-90-N]	Lee Javins, II Guy Bucci Bucci Bailey & Javins LC  William Druckman The Law offices of Druckman & Estep (Charleston based firm)  Laura Baughman (Baron & Budd, P.C.) (Texas based firm)	\$112,500.00	\$39,125.00
5	2013 (appointed under McGraw)	State of West Virginia ex rel. Patrick Morrissey, Attorney General v. J.P. Morgan Chase and Company, et al.  [Mason County Circuit Court No. 11-C-94-N]	Lee Javins, II Guy Bucci Bucci Bailey & Javins LC  William Druckman The Law offices of Druckman & Estep (Charleston based firm)  Laura Baughman (Baron & Budd, P.C.) (Texas based	\$1,950,000.00	\$487,000.00

6	2013 (appointed under McGraw)	State of West Virginia ex rel. Patrick Morrissey, Attorney General v. Citigroup Inc., et al [Mason County Circuit Court 22-C-89-N]	Lee Javins, II Guy Bucci Bucci Bailey & Javins LC  William Druckman The Law offices of Druckman & Estep (Charleston based firm)  Laura Baughman (Baron & Budd, P.C.) (Texas based firm)	\$1,950,000.00	\$162,500.00
7	2013 (appointed under McGraw)	State of West Virginia ex. rel. Patrick Morrissey, Attorney General v. G.E. Money Bank [Mason County Circuit Court 11-C-91-N]	Lee Javins, II Guy Bucci Bucci Bailey & Javins LC  William Druckman The Law offices of Druckman & Estep (Charleston based firm)  Laura Baughman (Baron & Budd, P.C.) (Texas based firm)	\$1,950,000.00	\$162,500.00

8	2013 (appointed under McGraw)	State of West Virginia ex rel. Patrick Morrissey, Attorney General v. HSBC Bank of Nevada, NA et al [Mason County Circuit Court 11-C-93-N]	Lee Javins, II Guy Bucci Bucci Bailey & Javins LC  William Druckman The Law offices of Druckman & Estep (Charleston based firm)  Laura Baughman (Baron & Budd, P.C.) (Texas based firm)	\$1,950,000.00	\$162,500.00
9	2013 (appointed under McGraw)	State of West Virginia ex rel. v. World Financial Network National Bank, CSI Processing, LLC, and CPP North America, LLC	Unidentified Counsel.	\$260,000.00	\$21,666.67
10	2013 (appointed under Morrissey)	State ex rel Darrell McGraw Jr. v. Nationwide Affinity Ins. Group.	William Tiano Tony O'Dell Cheryl Fisher	\$2,000,000  (35%)	\$5,700,000

11	2014	Glaxosmithkline Litigation  [Wayne County Circuit Court No. 12-0102]	Paul T. Farrell, Jr.  Greene, Ketchum, Farrell, Bailey & Tweed (Huntington WV Firm)  Laura J. Baughman S. Ann Saucer Baron & Budd, PC (Texas based firm)  Bill Robins Justin R. Kaufman Heard Robins Cloud & Black LLP (New Mexico based firm)	\$22,000,000.00	\$4,666,436.09  Note: A press release identifies the 4-billion- dollar settlement is calculated under the outside counsel policy established by Morrisey's office.  West Virginia Record, "State reaches \$22M Settlement with GlaxoSmithKline" Jun 16, 2014 by Chris Dickerson
12	2015	SER Patrick Morrisey v. Morgan Drexen, Inc., et al.  [Kanawha County Circuit Court 11-C- 829]	Matthew Stonestreet (Now an associate with Giatras Law Firm)	\$8,575,050.00	\$107,043
13	2015	State of WV ex rel., v. Pfizer et al.  [Mason County Circuit Court 13-C-1-N]	Troy N. Giatras, Fred Longer, Matthew W. Stonestreet	Unidentified award.	Unidentified award.
14	2015	State of WV ex rel., v. Cardinal Health, Inc.  [Boone County Circuit Court 12-C- 140].	James M. Cagle Cagle & Jackson (Charleston based firm)  Rudolph L. DiTrapano DiTrapano Barrett Dipiero McGinley & Simmons	\$400 Million	Unidentified award.



15	[2015 Report?]	<p>State ex. rel. Morrissey v. Minnesota Mining and Manufacturing Co., Mine Safety Appliances Co. and American Optical</p> <p>[U.S. District Court S.D. of WV 2:03-2161]</p> <p>[Remanded to Lincoln County Circuit Court 03-C-109]</p>	<p>Alva A. Hollon, Jr. John O. Hollon SAMS &amp; HOLLON 7835 Bayberry Road Jacksonville, FL 32256</p> <p>Joshua I. Barrett Rudolph L. DiTrapano Sean P. McGinley DITRAPANO BARRETT &amp; DIPIERO</p> <p>Michael T. Gallagher Russell Serafin THE GALLAGHER LAW FIRM Bank of America Center 700 Louisiana, 40th Floor Houston, TX 77002</p>	Unidentified award.	<p>Strangely, this case was remanded to the Lincoln County Circuit Court in 2005 for fee assessment yet appears on 2015 AG report.</p> <p>Unidentified award.</p>
16	2015	<p>State of West Virginia, ex rel Patrick Morrissey v. McKesson Pharmaceutical</p> <p>[Circuit Court of Boone County 14-P-479]</p>	<p>L. Lee Javins II</p> <p>Taylor M. Norman</p> <p>Bailey Javins &amp; Carter LC</p>	<p>\$37,000,000</p> <p>[May 1, 2019 Settlement Agreement and Release]</p>	<p>Outside counsel to receive an estimated \$4.85 million</p>

17	2015	State of WV, ex rel v. Amerisourcebergen Drug Corp.  [Boone County Circuit Court 12-C- 141]	James M. Cagle Cagle & Jackson  Rudolph L. DiTrapano Sean P. McGinley Robert M. Bastress III Ditrapano, Barrett, DiPiero, McGinley & Simmons, PLLC	\$2,500,000	\$833,250 + \$101,362.78 in costs and fees = \$935,212.78
18	2017	SER Patrick Morrisey et al. v. CRH, plc, et al.  [Kanawha County Circuit Court 17- C-41]	Benjamin L. Bailey Benjamin J. Hogan Eric B. Snyder Bailey & Glasser LLP & Robinson & McElwee PLLC  Michael B. Hissam Issac R. Forman J. Zak Ritchie Hissam, Forman, Donovan, Ritchie, PLLC  Charles Webb of the Webb Law Centre	\$101.3M Settlement according to Governor Justice's October 30, 2020 press release available <a href="#">here</a> .  Morrisey's Definitive Report identifies \$96,951,410.00	\$7,847,570.50 paid in attorney fees
19	2019	SER Patrick Morrisey v. Purdue Pharma, L.P. a Delaware limited partnership, Purdue Pharma Inc., a New York corporation, and Richard Sackler, M.D.	Rudolph L. DiTrapano, Joshua I. Barrett, and Sean P. McGinley (DiTrapano, Barrett, & DiPiero, PLLC) Richard S. Lewis, Stephen D. Annand, Esq	\$10,000,000	\$3.3 Million

20	2019	SER Patrick Morrisey v. Johnson & Johnson, a New Jersey Corporation; Ethicon, Inc., a subsidiary of Johnson & Johnson; and Ethicon US, LLC, a subsidiary of Johnson and Johnson [Monongalia County Circuit Court 19-C-286]	Unidentified Counsel	\$3,900,000	\$97,500
21	2023	SER Patrick Morrisey v. Teva Pharmaceuticals USA, Inc., and Cephalon, Inc. [Boone County Circuit Court 19-C-104]	Linda Singer of Motley Rice LLC and Charles R. Webb of The Webb Law Centre	Teva: \$83.3 Million over 15 years. Allergan: \$51.2 Million over 5 years. An additional amount of Most Favored Nations money if a national settlement is reached.	Attorney Fees in the amount of \$6,216,550 have been awarded from the Teva settlement and \$4,610,000 from the Allergan settlement.
22	2023	SER Patrick Morrisey v. Janssen Pharmaceuticals, Inc., and Johnson & Johnson [Boone County Circuit Court 19-C-05]	Joseph Rice and Linda Singer of Motley Rice LLC and Charles R. Webb of The Webb Law Centre	\$99,000,000	\$7,000,000
23	2023	SER Patrick Morrisey v. CVS Health Corporation, et al.	Joseph Rice and Linda Singer of Motley Rice LLC and Charles R. Webb of The Webb Law Centre	\$82.5 Million, consisting of \$52.5 Million initial payment and \$30 Million over 10 years. An additional amount of Most Favored Nations money if a national settlement is reached.	Attorney Fees of \$6,175,000 have been awarded
24	2023	SER Patrick Morrisey v. Walmart, Inc. f/k/a Wal-Mart Stores, Inc., a Delaware Corporation [Circuit Court of Putnam County CC-40-2020-C-132]	Joseph Rice and Linda Singer of Motley Rice LLC and Charles R. Webb of The Webb Law Centre	\$ 65,070,000.	Attorney Fees of \$5,303,500 have been awarded.

25	2023	SER Patrick Morrisey v. Walgreens Boots Alliance, Inc., a Delaware corporation, Walgreen Co., an Illinois corporation, and Walgreen Eastern Co., Inc., a New York corporation [Circuit Court of Mason County 12-C-122]	Joseph Rice and Linda Singer of Motley Rice LLC and Charles R. Webb of The Webb Law Centre	A settlement was reached for a total of \$83,000,000	Attorney Fees of \$6,200,000 have been awarded.
26	2023	SER Patrick Morrisey v. Rite Aid Corporation, a Delaware Corporation, and Rite Aid of Maryland, Inc. d/b/a Rite Aid Mid-Atlantic Customer Support Center, a Maryland Corporation [Circuit Court of Putnam County CC-40-2020-C-83]	Joseph Rice and Linda Singer of Motley Rice LLC and Charles R. Webb of the Webb Law Centre	Up to \$30 Million.	Attorney Fees have been awarded based upon the \$5 million guaranteed settlement value: \$700,000.
27	2023	SER Patrick Morrisey v. Intersections Insurance Services, Inc. [Circuit Court of Mason County 12-C-122]	Troy N. Giatras of The Giatras Law Firm, PLLC and Jesse Forbes of Forbes Law Office, PLLC	None to date.	None to date.
28	2023	SER Patrick Morrisey v. Center Partners, Inc. [Circuit Court of Mason County 12-C-123]	Troy N. Giatras of The Giatras Law Firm, PLLC and Jesse Forbes of Forbes Law Office, PLLC	None to date.	None to date.
29	2023	SER Patrick Morrisey v. Sitel Corporation [Circuit Court of Mason County 12-C-124]	Troy N. Giatras of The Giatras Law Firm, PLLC and Jesse Forbes of Forbes Law Office, PLLC	None to date.	None to date.

30	2023	SER Patrick Morrisey v. Sykes Enterprises, Inc. [Circuit Court of Mason County 12-C-125]	Troy N. Giatras of The Giatras Law Firm, PLLC and Jesse Forbes of Forbes Law Office, PLLC	None to date.	None to date.
31	2023	SER Patrick Morrisey v. Stonebridge Life Insurance [Circuit Court of Mason County 12-C-126]	Troy N. Giatras of The Giatras Law Firm, PLLC and Jesse Forbes of Forbes Law Office, PLLC	None to date.	None to date.
32	2023 [Originally reported in 2015]	SER Patrick Morrisey, Attorney General v. Pfizer, Inc., et al.	Troy N. Giatras of The Giatras Law Firm, PLLC and Jesse Forbes of Forbes Law Office, PLLC	None to date.	None to date.
33	2023	SER Patrick Morrisey v. Minnesota Mining and Manufacturing Co., Mine Safety Appliances Co., and American Optical Corp.	Robert M. Bastress III of DiPiero Simmons McGinley & Bastress, PLLC	None to date.	None to date.

## Outside Counsel Identified Through AG Requests for Proposals

- AG Request for outside counsel proposals #26<sup>5</sup>
  - July 28, 2014, “seeking assistance in the bankruptcy matter filed by Freedom Industries which is currently pending in the Southern District of West Virginia.”
  - On July 30, 2014, Cambell Woods, PLLC, a Charleston based firm, appointed as outside counsel.<sup>6</sup>
- *AG Request for outside counsel proposals #36*<sup>7</sup>
  - July 22, 2015, seeking the assistance of outside counsel to “facilitate the recognition and collection, in the State of California, a judgment obtained pursuant to the West Virginia Consumer Credit and Protection Act. More specifically, the WVAGO is seeking legal assistance to obtain recognition, in the State of California, of a judgment that has been obtained against CashCall, Inc. in order for WVAGO to collect on that judgment.”
  - On September 03, 2015, Pettit Kohn Ingrassia & Lutz were appointed. Both are attorneys based in San Diego, California.<sup>8</sup>

<sup>5</sup> RFP #26 can be accessed [here](#).

<sup>6</sup> The Written Determination can be accessed [here](#).

<sup>7</sup> RFP #36 can be accessed [here](#).

<sup>8</sup> The Written Determination can be accessed [here](#).

## In re Opioid Outside Counsel & Attorney Fee Awards

On September 21, 2023, the Common Benefit Fund Commissioner issued recommendations regarding attorney fees and expenses related to the Opioid Litigation and Resulting Settlements. *In re Opioid Litigation*, COMMON BENEFIT FUND COMMISSIONER'S RECOMMENDATIONS REGARDING ATTORNEY FEES AND EXPENSES, 1 (Sept. 21, 2023).

As reported in the AG's 2022 report, Motley Rice (and Webb Law Centre) served as lead counsel in the Manufacturer and Pharmacy cases in its capacity as the Attorney General's outside "special counsel." *Id.* at 21.

The following passage from the Commissioner's recommendations describes their distribution:

Motley Rice agreed to perform all needed legal services on a contingency fee basis capped at 14% of the first \$20 Million recovered and thereafter in accordance with subsection I of the Attorney General's Policy on Outside Counsel, which provides for: ten percent (10%) of any portion of the recovery between \$20 million and \$25 million; plus five percent (5%) of any portion of the recovery exceeding \$25 million. Webb Law Centre was also appointed as special outside counsel pursuant to the Written Determinations and agreed to the above terms. Applying this formula to each of the Manufacturer and Pharmacy settlements in this litigation, the Commissioner recommends that Motley Rice and Webb Law Centre **receive an aggregate contingency fee in this case of \$41,655,050.00** from the 72.5% portion of the Attorney Fee Fund.

*Id.* at 22. The Commissioner's recommendations further provide under W. Va. Code § 5-3-3A(h), the aggregate total of Motley Rice's and Webb Law Centre's total attorney fees across this litigation is capped at \$50 Million as it arises from a single event or occurrence. *Id.* at 22-23. Thus, neither Motley Rice nor Webb Law Centre will receive fees from the common benefit fund. *Id.* at 23.

The Commissioner recommended distributions from the common benefit funds as follows: (1) Allen, Chesson & Grimes (Anna Majestro): \$50,000.00; (2) Chafin Law Firm: \$850,000.00; (3) Farrell Fuller / Powell Majestro: \$20,150,000.00; (4) Fitzsimmons Law Firm: \$22,500,000.00; (5) Forbes Law Firm: \$15,000.00; (6) George & Lorenson: \$25,000.00; (7) Harry Bell: \$25,000.00; (8) Harris & Holmes: \$1,000,000.00; (9) Irpino, Avin & Hawkins: \$2,000,000.00; (10) Linkous Law: \$1,850,000.00; (11) Lisa Ford: \$46,927.50; (12) Mullens & Mullens: \$100,000.00; (13) Morgan & Morgan: \$500,000.00; (14) Napoli Shkolnik: \$1,250,000.00; (15) Robert L. White: \$25,000.00; (16) Skinner Law Firm: \$250,000.00; (17) Troy Law Firm: \$25,000.00; (18) Warner Law Offices: \$25,000.00; (19) Warren McGraw Law Firm: \$250,000.00; (20) Wooton, Davis, Hussell & Johnson: \$250,000.00. *Id.* at pg. 29-30.

On October 9th, at 2:33 P.M., Judge Allen D. Moats entered an ***Order Approving Common Benefit Fund Commissioner's Recommendations Regarding Attorney Fees and Expenses.***

## AG Office’s Late Objection to Attorney Fees

On October 9, 2023, at 4:40 PM, Deputy Attorney Generals Ann L. Haight, Laurel K. Lackey, and Abby G. Cunningham filed the *Office of the West Virginia Attorney General’s Objections to the Order Approving the Common Benefit Fund Commissioner’s Recommendations Regarding Attorney Fees and Expenses*, just two hours after Judge Moats Order of approval.<sup>9</sup> In its objections, the AG’s Office argues the recommended 15% of gross settlements for aggregate attorney fees are excessive in light of additional proceeds that some recipients received in earlier settlements with the opioid distributors. The Office shed light on the settlement with McKesson, AmerisourceBergen, and Cardinal for \$400,000,000. According to the AG office’s objections, “[t]his amount does not include the additional MDL assessment of 7.5% of the \$400 million aggregate settlement reached with the distributors. Taken together, the real amount being paid in fees and costs for this litigation becomes \$171,057,900.” Thus, distributor settlement attorney fees for the “Big Three” (AmerisourceBergen, Cardinal Health, and McKesson) were approximately \$30,000,000, although entirely unreported. On October 11, 2023, Judge Moats and Judge Swope “[f]ound] the objections to be without merit” and denied them.<sup>10</sup>

## Morrisey’s “At-Glance” “Definitive Chart” Decoded and Debunked

On January 4, 2024, AG Patrick Morrisey published a “Definitive Chart Showing Dramatically Lower Outside Counsel Fees Under General Patrick Morrisey” to accompany an article responding to WV CALA’s research efforts to provide transparency the citizens of West Virginia deserve.<sup>11</sup> Nonetheless, Morrisey’s “at-glance” “definitive chart” lacks important details that are necessary to fully vet his claims. His chart identifies cryptic case captions, listing just shorthand names of the defendant companies without identifying civil action numbers or the outside counsel appointed for such matters, which are similarly absent from the AG’s annual reports to the Governor. Morrisey’s cryptic chart misreads readers to believe multiple entries constitute different cases with different outside counsel. However, as identified in a snapshot of Morrisey’s chart below, we believe the following entries constitute the same case, with presumably the same outside counsel.

Case	Settlement Amount	Attorney Fees Paid
Bristol Myers Squibb	\$ 3,200,000.00	\$ 800,000.00
Municipal Dervatives George K. Baum	\$ 70,000.00	\$ 17,500.00
Municipal Dervatives Bayerische Landestb	\$ 350,000.00	\$ 87,500.00
G.E. Money Bonds	\$ 950,000.00	\$ 237,500.00
Bank of America (Municipal Derivatives)	\$ 1,375,000.00	\$ 300,000.00
Chase	\$ 1,950,000.00	\$ 487,000.00
Bank of America (Credit Cards)	\$ 1,950,000.00	\$ 487,000.00
Citigroup	\$ 1,950,000.00	\$ 487,000.00
G.E. Money Bank	\$ 1,950,000.00	\$ 487,000.00
Discover	\$ 1,950,000.00	\$ 487,000.00
HSBC	\$ 1,950,000.00	\$ 487,000.00
WFNB	\$ 260,000.00	\$ 65,000.00
<b>Totals:</b>	<b>\$ 17,905,000.00</b>	<b>\$ 4,429,500.00</b>

Each of these two sets of entries constitute two cases with multiple defendants, rather than eleven separate cases as presented: (1) *State of West Virginia ex rel. Patrick Morrisey v. Bank of America N.A.* and (2) *State of West Virginia ex rel. Patrick Morrisey, Attorney General v. Bank of America Corporation, et al.*

<sup>9</sup> The AG Office’s Objections can be found [here](#). The Order approving Commissioner’s Recommendations can be found [here](#).

<sup>10</sup> The Order Denying the AG Office’s Objections can be found [here](#).

<sup>11</sup> Morrisey’s January 4, 2024 chart can be accessed [here](#).

Accordingly, identified outside counsel Guy Bucci, Timothy Bailey, L. Lee Javins, II, William Druckman (Charleston, West Virginia-based attorneys), and Laura J. Baughman and S. Ann Saucer (Dallas, Texas-based attorneys) presumably received all attorney fees for *State of West Virginia ex rel. Patrick Morrissey v. Bank of America N.A.* and *State of West Virginia ex rel. Patrick Morrissey, Attorney General v. Bank of America Corporation, et al.*, including: \$487,000 (Bank of America Credit Cards); \$487,000 (Chase); \$487,000 (Citigroup); \$487,000.00 (G.E. Money Bank); \$487,000 (Discover); \$487,000 (HSBC); \$21,667.00 (WFNB). In total, outside counsel on the Bank of America (Credit Cards) litigation received \$2,943,667.67 in addition to attorney fees from First Premier Bank for \$112,500 (identified as a case handled by McGraw). ***This amount constitutes approximately 24.4% of the overall award.***

As to *State of West Virginia ex rel. Patrick Morrissey v. Bank of America N.A.*, identified outside counsel Joshua Barrett and Sean McGinley of the law firm DiTrapano Barrett & DiPiero and Robert V. Berthold, former attorney for Tiano & O’Dell now practicing solo, received all attorney fees for the matter, including: (1) \$17,500.00 (Municipal Derivatives George K. Baum); (2) \$87,500.00 (Municipal Derivatives Bayerische Landensbank); (3) \$237,500.00 (G.E. Money Bonds); and (4) \$300,000.00 (Bank of America Municipal Derivatives). Thus, in sum, outside counsel received a total of \$642,500 in attorney fees. ***This constitutes approximately 23% of the overall award.***

Moreover, Morrissey’s own 2014 report identifies he handled settlements with JP Morgan and Morgan Stanley, yet Morrissey claims these cases were handled by McGraw alone in his “Determinative Chart.”

In 2014, settlements were reached with J.P. Morgan in the amount of \$400,000.00; Morgan Stanley in the amount of \$150,000.00; and G.E. Funding in the amount of \$950,000.00. Discovery continues with respect to the remaining Defendants.

As a whole, Patrick Morrissey’s “Determinative Chart” ***fails to provide a full picture of the nearly \$68.5 million dollars in outside attorney fees*** the Attorney General’s Office has paid out over Patrick Morrissey’s ten-year tenure, with multiple awards remaining to be unveiled. This total nearly ***triples the \$28 million dollars*** Morrissey identifies were paid out under McGraw in the chart he published.

Case	Settlement Amount	Attorney Fees Paid
Nationwide Affinity	\$ 5,750,000.00	\$ 2,045,246.22
Morgan Stanley	\$ 150,000.00	\$ 55,500.00
JP Morgan	\$ 400,000.00	\$ 120,000.00
Glaxosmithkline	\$ 22,000,000.00	\$ 4,666,436.09
First Premier Bank	\$ 112,500.00	\$ 39,125.00
Miami Luken	\$ 2,500,000.00	\$ 825,000.00
Anda	\$ 1,800,000.00	\$ 594,000.00
Harvard	\$ 1,000,000.00	\$ 333,333.33
Associated Pharmaceuticals	\$ 850,000.00	\$ 283,333.33
J.M. Smith	\$ 400,000.00	\$ 133,333.33
Keysource	\$ 250,000.00	\$ 83,333.33
Quest	\$ 250,000.00	\$ 83,333.33
Top Rx	\$ 200,000.00	\$ 66,666.67
Maters	\$ 200,000.00	\$ 66,666.67
H.D. Smith	\$ 3,500,000.00	\$ 1,166,666.67
Cardinal	\$ 20,000,000.00	\$ 6,666,666.67
AmerisourceBergen	\$ 16,000,000.00	\$ 5,333,333.33
Wells Fargo	\$ 8,000,000.00	\$ 3,200,000.00
Nationwide Affinity	\$ 5,750,000.00	\$ 2,045,246.22
Morgan Stanley	\$ 150,000.00	\$ 55,500.00
First Premier Bank	\$ 112,500.00	\$ 39,125.00
Totals:	\$ 89,375,000.00	\$ 27,901,845.20

Cases with Outside Counsel Retained By AG McGraw