



# San Bernardino County

## Legislation Text

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**File #: 4913, Agenda Item #: 28**

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### **REPORT/RECOMMENDATION TO THE BOARD OF SUPERVISORS OF SAN BERNARDINO COUNTY AND RECORD OF ACTION**

**October 5, 2021**

#### **FROM**

**MICHELLE D. BLAKEMORE, County Counsel**

**VICTOR TORDESILLAS, Director, Department of Risk Management**

#### **SUBJECT**

Agreement with Reed Smith LLP for Specialized Legal Services

#### **RECOMMENDATION(S)**

1. Approve Agreement with Reed Smith LLP for specialized legal services in connection with insurance recovery relating to six recent settlements for an amount not to exceed \$1,250,000 for the period of October 5, 2021 through October 4, 2023 (Four votes required).
2. Authorize the County Counsel or a Principal Assistant County Counsel to amend Exhibit A to the Agreement to change or add attorneys, paralegals or other legal staff as needed.
3. Approve Waiver of Conflict of Interest that approves the waiver of an actual conflict of interest arising out of Reed Smith LLP's proposed representation of San Bernardino County and Reed Smith LLP's representation of a party adverse to the County.
4. Authorize the County Counsel or a Principal Assistant County Counsel to execute the Waiver of Conflict of Interest.

(Presenter: Michelle D. Blakemore, County Counsel, 387-5455)

#### **COUNTY AND CHIEF EXECUTIVE OFFICER GOALS & OBJECTIVES**

**Operate in a Fiscally-Responsible and Business-Like Manner.**

#### **FINANCIAL IMPACT**

This item will not result in the use of additional Discretionary General Funding (Net County Cost). The costs for the identified legal services to obtain insurance coverage are included in the Risk Management-General Liability Fund (7310004096). Sufficient appropriation and revenue are included in the 2021-22 budget.

#### **BACKGROUND INFORMATION**

##### **Legal Agreement**

Approval of this item will allow the County to utilize Reed Smith LLP (Reed Smith) for legal services associated with filing litigation and pursuing insurance coverage in connection with recent litigation and/or settlements reached in the following matters:

*Colonies Partners, L.P. v. County of San Bernardino, et al., Case No. 5:18-cv-19-00420;*  
*Jeffrey Burum v. County of San Bernardino, et al., Case No. 5:18-cv-19-000672;*

*James Erwin v. County of San Bernardino, et al.*, Case No. 5:18-cv-19-01216;  
*Mark Kirk v. County of San Bernardino, et al.*, Case No. 5:18-cv-19-01597;  
*Paul Biane v. County of San Bernardino, et al.*, Case No. 5:18-cv-19-02202; and  
*John DeFazio v. County of San Bernardino, et al.*, Case No. 5:19-cv-19-00554.

The legal services required to perform this work is to be performed in stages and the first stage will involve filing one or more lawsuits and/or arbitration proceedings and participation in discovery. It is anticipated this item will return to the Board of Supervisors (Board) if additional funds are needed to pursue this litigation through additional stages.

#### Conflict Waiver

In considering this representation of the County, Reed Smith LLP has identified a conflict of interest from its representation of Blue Cross of California dba Anthem Blue Cross and Anthem Blue Cross Life and Health Insurance Company (Blue Shield) in connection with an action filed by the County entitled *County of San Bernardino dba Arrowhead Regional Medical Center v. Blue Cross of California dba Anthem Blue Cross, et al.* Case No. CIVDS1723565. This Blue Shield action involves various alleged underpayments for certain medical services at the County-owned hospital. The legal issues in the Blue Shield matter are unrelated to the legal services to be provided to the County regarding the insurance recovery services discussed above. No client information received or expected to be received by Reed Smith LLP in the course of its representation of the County in this insurance recovery matter is material to its representation of a party that is adverse to the County in the Blue Shield matter. Furthermore, in conformance with the Professional Rules of Responsibility that govern an attorney's representation of clients, appropriate ethical screens have been instituted by Reed Smith LLP to ensure that no confidential information pertaining to the County will be shared with Blue Cross or the attorneys acting to represent Blue Cross. Additionally, Reed Smith LLP's attorneys and staff working on the Blue Shield matter will not perform any work, discuss or have access to documents or information related to the County's insurance recovery matter. Similarly, Reed Smith LLP's attorneys and staff working on this matter will not perform any work, discuss or have access to documents or information related to the Blue Shield matter.

County Counsel has reviewed the Waiver of Conflict of Interest and believes that as a result of the ethical walls in place, Reed Smith LLP will minimize the risk of prejudice to the County in its representation of the County in this matter.

#### PROCUREMENT

On August 12, 2020, Reed Smith participated in a competitive procurement process completed by County Counsel and Risk Management for similar legal services to be provided in connection with insurance recovery relating to the Chino Airport volatile organic compound plume located generally in the City of Chino at the County's Chino Airport. Seventeen law firms were invited to participate in this process, six law firms submitted a proposal, and three were interviewed by an evaluation committee consisting of representatives from County Counsel, Risk Management, and the Department of Airports. Reed Smith was selected due to their availability and experience with similar legal matters.

On March 2, 2021, pursuant to County Code section 12.1908, the County Counsel's Office requested a non-competitive purchase order (Contract No. 4100186407) in the amount of \$150,000 to retain Reed Smith to advise on a strategy for procuring insurance coverage in these matters. On March 26, 2021, Contract No. 4100186407 was increased by \$50,000 from \$150,000 to \$200,000. On June 8, 2021 (Item No. 41), the Board approved an increase to Contract No. 4100186407 by \$40,000, from \$200,000 to \$240,000.

On July 27, 2021, the Board approved a litigation strategy with Reed Smith for procuring coverage for these matters.

Pursuant to Title 1, Division 2, Chapter 19, Section 12.1908 of the County Code, County Counsel is authorized

to select and retain through a purchase order, specialized counsel for a particular matter not to exceed \$200,000 per fiscal year. Contracts for services in excess of that amount require the Board's approval.

**REVIEW BY OTHERS**

This item has been reviewed by County Counsel (Laura L. Crane, Supervising Deputy County Counsel, 387-5455, and Robin Simon, Chief of Administration, 387-5455) on September 16, 2021; Department of Risk Management (Victor Tordesillas, Director, 386-8623); Purchasing Department (Leo Gomez, Purchasing Manager, 387-2063) on September 16, 2021; Finance (Carl Lofton, Administrative Analyst, 387-5404) on September 20, 2021; and County Finance and Administration (Robert Saldana, Deputy Executive Officer, 387-5423) on September 20, 2021.