

Millions from Civil Settlements Paid to S.C. AG's Office, Outside Law Firms

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by Rick Brundrett - The Nerve

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Over the past four fiscal years, the state Attorney General's Office settled 33 civil cases against various companies for a total of nearly \$210 million, though agency records show that the proceeds typically didn't go directly to affected South Carolina consumers.

Instead, most of the money was used by lawmakers to help cover an annual list of one-time expenses by state agencies, while another \$40 million collectively went to the Attorney General's Office (AGO) and outside law firms hired in the cases, a review by The Nerve's found.

The AGO, headed since 2011 by Alan Wilson, settled 24 of the 33 cases without outside firms from fiscal 2016 through last fiscal year, keeping all of the settlement proceeds in 10 cases, agency records show. An agency spokesman said settlement funds retained by the AGO are used to help support the office's operations.

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In the nine other settlements involving outside firms, at least one of the firms hired in each case has ties to former state attorneys general Travis Medlock or Charlie Condon, or other politically connected attorneys, including S.C. Rep. Todd Rutherford, D-Richland; John White, appointed by Gov. Henry McMaster as the State Transportation Infrastructure Bank (STIB) board chairman; and Reynolds Williams, appointed by Sen. Hugh Leatherman, R-Florence, to the state Retirement System Investment Commission.

In recent written responses to The Nerve, Wilson spokesman Robert Kittle said the Attorney General's Office "doesn't make the rare decision to hire outside counsel based on positions or political connections."

"We employ the firm most qualified, with the greatest expertise and resources to best protect the public interest," Kittle said. "As the State's chief legal officer, the Attorney General must make the call as to who can represent the State most effectively with these criteria in mind."

Asked whether affected South Carolinians directly received any settlement proceeds negotiated by the AGO, Kittle replied that "sometimes money does go to South Carolina consumers," though "in most cases, we're suing on behalf of the state and the settlements go to the general fund on behalf of everyone."

"Individual SC plaintiffs who've been harmed file their own separate lawsuits," he added.

Of the \$209.7 million in settlement proceeds over the last four fiscal years, a total of about \$3 million was transferred to state agencies – mainly to state employee insurance and Medicaid programs, records show.

Some of the 33 settlements reached over the last four fiscal years involved well-known corporations, including Verizon Wireless, Sprint, Chase Bank, Wells Fargo, Volkswagen, General Motors, Uber, Target and Johnson & Johnson.

The single-largest settlement over the period was a \$148.7 million settlement reached in fiscal 2016 with Ortho-McNeil-Janssen Pharmaceuticals Inc., which is part of Johnson & Johnson, after the state alleged promotion of the anti-psychotic prescription drug Risperdal for unapproved uses. In that settlement, \$124.3 million was transferred to the state general fund, according to AGO records.

John Simmons of Columbia, a former U.S. attorney for South Carolina who also worked in the state Attorney General's Office, and the Spartanburg law firm where White, the STIB board chairman, is the managing shareholder, represented the state in that case, along with a Houston law firm, records show. Two other firms based in Alabama were used in a separate fiscal 2017 settlement.

Kittle said White was involved in the Risperdal case. Efforts to reach White for comment were unsuccessful.

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Boosting the budget

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The outside fees and costs in the Risperdal case totaled \$23.1 million – the bulk of the nearly \$27 million paid to all outside firms over the last four fiscal years, attorney general records show. During the period, the AGO retained a total of about \$13.2 million, including \$3.1 million in the 10 cases in which the office kept all the settlement proceeds.

Of the \$3.1 million, \$1.2 million was retained by the AGO in a settlement last year with Uber Technologies Inc. over a national data breach involving the ride-sharing company's drivers, records show. A news release from the AGO didn't specify that the agency was keeping all of the settlement proceeds, describing it only as "South Carolina's share," though it noted there were 5,163 affected Uber drivers in the state.

Combined, fees to the AGO and outside law firms accounted for about \$40.2 million, or 19.1% of the total \$209.7 million in settlement proceeds over the four-fiscal-year period, The Nerve's review found.

Kittle in an email said the S.C. Legislature has "encouraged our office to keep a portion of the settlement funding to replace the reduced state funding," noting that general fund revenue to the agency dropped by \$4.2 million from fiscal 2009 to fiscal 2012.

"Due to the budget decreases, the office has utilized litigation funds for stability and to carry out the mission of the agency to protect the citizens of SC," he said.

State budget records show, however, that the agency's total budget, which includes state, federal and "other" funds, has skyrocketed since Wilson took over, jumping from \$18.1 million in fiscal 2012 to \$101 million this fiscal year, which started July 1.

And, as of June 30, the agency had \$31.2 million in "other" fund reserves and a \$1.4 million general-fund surplus, according to state Department of Administration and Comptroller General's Office records.

In response, Kittle attributed the agency's budget growth to a change in state law in 2017 that required the transfer of federal funds and court fees and fines from the state departments of Administration and Public Safety to the AGO for crime victim services.

Still, before the law took effect, the AGO's state and "other" funds grew collectively by \$5.8 million and \$3.8 million, respectively, from fiscal 2012, state budget records show.

Of the \$31.2 million in "other" fund reserves to start this fiscal year, \$12 million "can be used for all operational purposes across the office," while the approximately \$19.2 million balance is "restricted to special programs," such securities registration and enforcement, Kittle said, adding none of that amount can be used by the agency's consumer protection section.

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A collective \$166.6 million, or 79.4% of the total \$209.7 million in settlement proceeds over the last four fiscal years was transferred to the state's general fund, according to AGO records.

Lawmakers in recent years through a budget proviso have combined the "Litigation Recovery Account" with other state surplus money to fund a list of one-time expenses by state agencies – some of which The Nerve has questioned.

In this fiscal year's budget, for example, \$1.25 million under the proviso was funneled to the 46-member Senate chamber. After The Nerve in May submitted a formal open-records request for details on how the money was intended to be spent, Senate clerk Jeff Gossett in a written response said only there were "no records responsive to this request."

Ties to the AG's Office

Under current contracts approved by Wilson, the maximum allowed fee for outside law firms is 21% of the settlement proceeds – compared to the 10% fee set by his predecessor, McMaster, according to Sonny Jones, a senior assistant deputy attorney general who heads the agency's consumer protection and antitrust section. Typically, private lawyers in civil cases can receive fees ranging from 30% to 40% of the total settlement if they win, he said.

Wilson has the discretion to cut the 21% fee in half if a case settles before the filing of a lawsuit or settles shortly after the filing of the suit, Jones said, though the office couldn't immediately provide The Nerve with a breakdown of how often that has happened.

As for fees retained by the Attorney General's Office, Jones said there is no set rate, adding that the judge in the case approves fees awarded to the office and outside lawyers hired by Wilson.

Records provided to The Nerve show that former state attorney general Medlock and Chad McGowan of the McGowan, Hood & Felder firm, which has offices in Columbia, Charleston and Rock Hill; and Greenville attorney N. Heyward Clarkson III participated in three settlements totaling \$10.3 million in fiscal 2016 involving liquid crystal display (LCD) companies. Ex-attorney general Condon, who has a Mt. Pleasant office, represented the state in a separate \$2.1 million settlement the same fiscal year involving the biopharmaceutical company Amgen Inc.

Outside fees and costs in those four cases totaled more than \$2.3 million, AGO records show. Efforts by The Nerve to reach Medlock, who was the state attorney general from 1983-1995, were unsuccessful. Contacted Tuesday, Condon, who served as the state attorney general from 1995-2003, declined to discuss specifics of his case – in which \$221,462 in fees and costs were awarded to his firm – referring all questions to Wilson's office.

"While some of the outside firms we've hired do have ties to the AG's office, there are others that have no ties or connections, as well as cases that are pitched to us that we turn down," Kittle said in an earlier email response.

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Asked why Medlock and Gordon were hired by the AGO, Jones replied in part: "It has to do with control over outside counsel. Any document that's filed, we have to review. ... Any court hearing, we're there. We have input, and a lot of firms don't understand that. ... Former AGs or firms we have worked with understand that."

Jones also said when a law firm "brings a case to us, and it's something we think we can resolve ourselves in-house ... we tell them, 'We get a crack at it first.'"

In other cases involving outside attorneys hired by the AGO, records show that current state Rep. Rutherford and Columbia attorney Kenneth Suggs received a collective \$1.4 million in fees and costs out of a \$6 million settlement in fiscal 2016 involving Cephalon Inc., which was accused in a lawsuit filed by Wilson in 2011 on behalf of the state alleging the company promoted drugs covered by the state health plan for unapproved uses.

Also, in fiscal 2017, the Willcox, Buyck & Williams law firm, which has offices in Florence and Myrtle Beach, was one of three firms representing the state in a \$300,000 settlement with Sunoco, records show. Outside fees and costs in that case, which also involved two Alabama law firms, totaled \$62,122. Williams, the state Retirement System Investment Commission member, is the CEO at his firm.

Williams said when contacted Tuesday he was not directly involved with that case, adding any details about the settlement could be found in the "public record."

In some cases, Wilson has joined other state attorneys general in agreeing to multimillion-dollar settlements with major companies. For example, he recently signed onto multistate settlements with Johnson & Johnson involving its transvaginal surgical mesh devices, and Purdue Pharma, the maker of the painkiller OxyContin. Each case involved allegations of deceptive marketing practices by the companies.

It's unclear whether South Carolina consumers who suffered damages in those cases will receive any of the settlement money.

Brundrett is the news editor of The Nerve (www.thenerve.org). Contact him at 803-254-4411 or rick@thenerve.org. Follow him on Twitter @RickBrundrett. Follow The Nerve on Facebook and Twitter @thenervesc.