

MEMORANDUM

RE: Emergency Procurement of Outside Counsel for Utah Insurance Department
Litigation

DATE: February 14, 2025

The purpose of this memorandum is to provide the written documentation required by Utah Code § 63G-6a-803 (emergency procurement) and Utah Admin. Code R105-1 and R33-108-401 in the hiring of outside counsel for the Utah Insurance Department (“UID”).

Section 63G-6a-803 allows the Attorney General to authorize an emergency procurement without using a standard procurement process if the procurement is necessary to, among other things: (a) mitigate a negative impact on public health, safety, welfare, or property; or (b) protect the legal interests of a public entity. In making that authorization, the Attorney General is required to: (a) ensure the procurement is made with as much competition as reasonably practicable while protecting the aforementioned interests; and (b) make publicly available within 14 days (i) a written document describing the specific emergency, (ii) the name of the highest ranking government official that approved the emergency procurement, and (iii) each written contract related to the procurement. In addition, R33-108-401 requires written documentation laying out the basis for the emergency and selection of the procurement item be kept in the contract file.

Basis for the emergency. As part of its responsibilities under the Utah Insurance Code, UID routinely examines insurers licensed in Utah. These examinations, among other things, ensure that insurers have sufficient assets to cover the claims of their policyholders, thus, protecting policyholders, creditors, and the public at large.

In early 2024, following the initiation of an ongoing examination of Utah insurer(s), UID took administrative action. Following continued examinations of the insurer(s)’ financial assets, UID took additional administrative action in December 2024. The insurer(s) challenged these administrative actions which are pending in a consolidated administrative proceeding at UID. At the same time, it is anticipated that UID will take additional regulatory action in the very near future.

The current administrative proceeding, and potential related actions, are necessarily on a fast track to protect the interests of the policyholders, creditors and the public at large. They also involve complex valuation issues. The speed of the litigation, and litigation of this complexity, are not typical for UID.

UID is represented full-time by two Assistant Attorneys General and part-time (40%) by one Assistant Attorney General. For the current litigation, an Assistant Attorney General from

another section has been assisting on top of his normal non-UID caseload. At the same time, the insurer(s) are represented by multiple large law firms.

The complexity and the lack of experience in this type of litigation, and resources currently available to those representing UID support retention of outside counsel. The speed of the litigation since the insurer(s) appealed the December 2024 administrative action, including hearings beginning in March and depositions that have just begun, the need for outside counsel to get up to speed in these fastmoving matters, and the potential for imminent harm to policyholders, creditors, and the public at large if the insurer(s) cannot cover their debts, have created an emergency. Given these circumstances, immediate retention of outside counsel is necessary to protect the public welfare and the legal interests of UID.

Basis for the selection of the procurement item. The procurement requested is outside counsel with experience in complex insurance litigation. Given the emergency, the Attorney General's Office discussed potential outside counsel with UID and identified two potential candidates.

Selection. The appointment of Scott Lilja of Fabian Vancott is in the best interests of the state in light of the resources of the Attorney General's Office. First, Scott Lilja of Fabian Vancott and his team do not have any conflicts. Second, Fabian Vancott's hourly rates are lower.

A copy of the written contract is attached.

Dated February 14, 2025

Attorney General or designee