



STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL

LETITIA JAMES
ATTORNEY GENERAL

DIVISION OF STATE COUNSEL

November 9, 2022

Caitlin Heim, Esq.
Assistant Counsel
Office of State Comptroller
110 State Street
Albany, New York 12236

Re: **Public Officers Law §17 – Amended Letter**
Lavine v. State of New York, et al. (for Heastie, Ortt, Stewart-Cousins, Barclay)
Sup. Ct., Onondaga County, Index No. 7623/2022

Dear Ms. Heim:

Pursuant to Public Officers Law Section 17(2)(b), this office has reviewed the presently available facts and circumstances relating to the above matter. Based on this review, we have determined for the purposes of representation only, and without any determination as to the ultimate merits, that representation by the Attorney General of defendants **Assembly Speaker Carl Heastie; Senate Minority Leader, Robert Ortt; Senate Majority Leader, Andrea Stewart-Cousins; and Assembly Minority Leader, William Barclay**, would be inappropriate. The defendants were employed by the State of New York at the time in question.

I, therefore, certify that defendants **Assembly Speaker, Carl Heastie; Senate Minority Leader, Robert Ortt; Senate Majority Leader, Andrea Stewart-Cousins; and Assembly Minority Leader, William Barclay** are entitled to be **jointly** represented by separate private counsel, in accordance with the provisions of Section 17 of the Public Officers Law, in the following groups:

Assembly Speaker, Carl Heastie to be represented by the separate private counsel.

Senate Majority Leader, Andrea Stewart-Cousins to be represented by the separate private counsel.

Senate Minority Leader, Robert Ortt and Assembly Minority Leader, William Barclay are to be represented by the same private counsel.

Very truly yours,

John V. Cremo
JOHN V. CREMO
Deputy Attorney General

cc: Jill Faber, Deputy Attorney General
Tim Mulvey, Assistant Attorney General



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November 9, 2022

Hon. Andrea Stewart-Cousins
Majority Leader, New York State Senate
Legislative Office Building 907
Albany, New York 12247

**Re: Lavine v State of New York, et. al.
Index No. 007623/2022 (Onondaga Co.)**

Dear Majority Leader Stewart-Cousins:

The Office of the Attorney General (“Office”) has reviewed your request for Attorney General representation pursuant to N.Y. Public Officers Law Section 17 (“POL § 17”) in *Lavine v State of New York, et. al.* (“the Lawsuit”). The defense and indemnification of State officers and employees are subject to the terms and conditions of POL §§ 17 and 17-a¹ and this letter.

Certification of Private Counsel to Represent You

Based on the information currently available to this Office, we have determined that it would be inappropriate for the Attorney General to represent you in the Lawsuit. We are, however, certifying to the State Comptroller under POL § 17 that you are entitled to be represented by private counsel in the Lawsuit.

Upon this Office’s certification to the State Comptroller, the State will pay reasonable attorneys’ fees and litigation expenses to such private counsel during the pendency of the Lawsuit, subject to (1) certification by the head of your employing agency the New York State Senate that you are entitled to representation under POL § 17, and (2) the audit and warrant of the State Comptroller. We suggest that you share this letter with your attorney and that your attorney contact Assistant Counsel Caitlin Heim in the Office of the State Comptroller at (518) 408-0068.

¹ For your review and consideration, enclosed are copies of POL §§ 17 and 17-a.

Approval of Settlements and Indemnification of Settlements and Judgments

POL §§ 17 and 17-a set forth the conditions under which the State will indemnify you or pay a judgment or settlement. Your attention is called to subdivision 3(a) of POL § 17, which provides that the State will indemnify you in the amount of any judgment obtained against you in any state or federal court, or in the amount of any settlement of a claim, or will pay such judgment or settlement, provided that the act or omission from which the judgment or settlement arose occurred while you were acting within the scope of your public employment or duties and did not result from intentional wrongdoing on your part. In the event the State indemnifies you or pays a judgement or settlement on your behalf, you will be deemed to have released the State, its agencies, officers, and employees from any claims for indemnification or payment you might have under POL §§ 17 and 17-a.

Subdivisions 3(b) and 3(d) of POL § 17 set forth the procedures for review and approval of a settlement or judgment that may be subject to indemnification or payment by the State. When a settlement is proposed, POL § 17(3)(b) requires you to submit the proposed settlement to the New York State Senate for review and certification. If the proposed settlement is consistent with the provisions of POL § 17, the New York State Senate will certify the proposed settlement and submit such proposed settlement and the agency certification to this Office for review and approval. Therefore, should you and your private counsel wish to consider settlement, you must contact the New York State Senate before any settlement is finalized.

Within thirty days of entry of a final judgment or settlement of a claim, POL § 17(3) (d) provides that you are required to serve a copy of the final judgment or settlement upon the New York State Senate. ~~If the judgment or settlement is consistent with the provisions of POL § 17, the New York State Senate, will certify the judgment or settlement for payment. The New York State Senate then submits its certification to this Office. If this Office concurs with the New York State Senate's certification, payment will be made following the audit and warrant of the State Comptroller.~~

Conditions for Interposing a Compulsory Counterclaim

If private counsel who represents you under POL § 17 determines that it would be legally appropriate, beneficial to your defense, and in the interest of the State to interpose a counterclaim on your behalf, your counsel may do so, subject to the following conditions.

1. In order for your private counsel to represent you on such a compulsory counterclaim, you must agree that if presented with a proposed settlement of the action against you and you reject the settlement, you waive any claims for indemnification or payment you might have under POL § 17 for the amount of any judgment, costs, and attorneys' fees awarded against you in excess of the amount of the proposed settlement.
2. You must assign to the State any damages awarded to you on the counterclaim up to an amount equal to any judgment, costs, and attorneys' fees awarded to the

plaintiff against you. If there is an award in your favor in excess of any award, including costs and attorneys' fees, to the plaintiff, that excess amount will belong to you. And in the event that your private counsel is successful on your counterclaim and the plaintiff is denied any recovery, the entire amount of the judgment will belong to you.

3. Finally, if the plaintiff withdraws the claims against you in the Lawsuit or the claims against you are dismissed before trial but your counterclaim remains pending, private counsel will no longer represent you at State expense on the counterclaim and you waive any claims for indemnification or payment you might have under POL § 17 for the amount of any judgment, costs, and attorneys' fees awarded against you.

This letter and the provisions of POL §§ 17 and 17-a should be carefully reviewed by you and can be explained to you by your private counsel. It is important that all procedures be followed.

Sincerely,



Jill F. Faber
Deputy Attorney General for Regional Affairs
28 Liberty Street
New York, NY 10005
212-416-8166

Enclosure