

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF GEORGIA  
ROME DIVISION**

PUBLIC EMPLOYEES' RETIREMENT  
SYSTEM OF MISSISSIPPI, individually  
and on behalf of all others similarly  
situated,

Plaintiff,

v.

MOHAWK INDUSTRIES, INC. and  
JEFFREY S. LORBERBAUM,

Defendants.

Civ. A. No. 4:20-cv-00005-VMC

**DECLARATION OF JOHN C. BROWNE IN SUPPORT OF  
(I) LEAD PLAINTIFF'S MOTION FOR FINAL APPROVAL OF  
CLASS ACTION SETTLEMENT AND PLAN OF ALLOCATION  
AND (II) LEAD COUNSEL'S MOTION FOR ATTORNEYS' FEES  
AND LITIGATION EXPENSES**

JOHN C. BROWNE declares as follows:

**I. INTRODUCTION**

1. I, John C. Browne, am a partner in the law firm of Bernstein Litowitz Berger & Grossmann LLP (“BLB&G” or “Lead Counsel”). BLB&G is Lead Counsel and Counsel for Lead Plaintiff Public Employees’ Retirement System of Mississippi (“MissPERS” or “Lead Plaintiff”) in the above-captioned action (the “Action”).<sup>1</sup> I have personal knowledge of the matters set forth herein based on my active participation in the prosecution and settlement of the Action.

2. I respectfully submit this Declaration in support of: (a) Lead Plaintiff’s Motion for Final Approval of Class Action Settlement and Plan of Allocation (the “Final Approval Motion”); and (b) Lead Counsel’s Motion for an Award of Attorneys’ Fees and Payment of Litigation Expenses (the “Fee and Expense Motion”).

3. The proposed Settlement provides for the resolution of the Action in exchange for a \$60 million cash payment. The proposed Settlement represents an extraordinary result, providing a substantial payment to Class Members while avoiding the significant risk and expense of continued litigation, including the risk

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<sup>1</sup> Unless otherwise defined herein, all capitalized terms have the meanings set forth in the Stipulation and Agreement of Settlement dated January 13, 2023 (the “Stipulation” or “Stipulation of Settlement”) previously filed with the Court. *See* ECF No. 119-1.

that the Class could recover nothing or less than the amount of the Settlement after years of additional litigation, appeals, and delay.

4. As discussed in more detail below, the highly favorable Settlement was achieved in considerable part due to the substantial litigation efforts of Plaintiff's Counsel, including:

- (i) conducting a comprehensive investigation of the claims and potential claims against Defendants, which involved a comprehensive review of the voluminous public record, including relevant accounting standards, Mohawk's SEC filings, analyst reports, news articles, and transcripts of investor calls, as well as contacting more than 100 former Mohawk employees as potential witnesses, including more than a dozen whose accounts were cited in the Amended Complaint and the Court's motion to dismiss order;
- (ii) drafting the 193-page Consolidated Class Action Complaint (the "Amended Complaint");
- (iii) successfully opposing Defendants' motion to dismiss, which included researching and drafting a 35-page brief in opposition to the more than 100 pages of briefing and exhibits submitted by Defendants;
- (iv) aggressively pursuing discovery, including obtaining and reviewing nearly a million pages of documents from Defendants and third parties;
- (v) successfully seeking certification of the action as a class action and appointment of Lead Plaintiff as class representative, including by submitting more than 450 pages of briefing and exhibits, with Defendants submitting more than 150 pages of briefing and exhibits in opposition;
- (vi) taking or defending seventeen depositions of current and former Mohawk executives, Lead Plaintiff representatives, and experts regarding loss causation, damages, and market efficiency;

- (vii) drafting and filing a highly contested motion seeking issuance of a letter rogatory in order to seek the deposition of a foreign witness, including the retention of foreign counsel; and
- (viii) engaging in extended arm's-length settlement negotiations, which included the submission of fulsome mediation briefing and a full-day mediation session with the Honorable Layn R. Phillips (U.S.D.J. (Ret.)), one of the nation's preeminent mediators of securities class actions and other complex litigations.

Due to these efforts, Lead Plaintiff and Lead Counsel were well-informed of the strengths and weaknesses of the claims and defenses in this Action at the time they achieved the proposed settlement.

5. The \$60 million Settlement was based on a mediator's recommendation made on a "double-blind" basis by Judge Phillips following several additional months of arm's-length settlement negotiations after the mediation session.

6. Lead Plaintiff is a sophisticated institutional investor that actively participated in the Action, closely supervised the work of Plaintiff's Counsel, and strongly endorses the approval of the Settlement. *See* Declaration of Tricia Beale, Special Assistant Attorney General, Legal Counsel to the Public Employees' Retirement System of Mississippi, in Support of: (i) Lead Plaintiff's Motion for Final Approval of Class Action Settlement and Plan of Allocation; and (ii) Lead Counsel's Motion for Attorneys' Fees and Litigation Expenses (the "Beale Decl."), attached as Exhibit 1, at ¶¶ 6-9.

7. As discussed in further detail below, the proposed Plan of Allocation, which was developed with the assistance of Lead Plaintiff's damages expert, provides for the equitable distribution of the Net Settlement Fund to Class Members who submit Claim Forms that are approved for payment by the Court on a *pro rata* basis fairly based on losses attributable to the alleged fraud.

8. For its efforts in achieving the Settlement, Lead Counsel requests a fee of 25% of the Settlement Fund, net of Court-approved Litigation Expenses. As discussed below and in the Memorandum of Law in Support of Lead Counsel's Motion for Attorneys' Fees and Litigation Expenses ("Fee Memorandum"), Plaintiff's Counsel prosecuted this case on a fully contingent basis, incurring significant litigation expenses while bearing all risk of an unfavorable result. Moreover, as detailed in the Fee Memorandum, a 25% fee is the "benchmark" in this Circuit and is consistent with fees that courts in this Circuit have awarded in similar securities and other complex class actions.

9. The requested fee also represents a "multiplier" of just 1.01 on Plaintiff's Counsel's lodestar. Plaintiff's Counsel's lodestar is derived by multiplying the hours spent by each attorney and paraprofessional by their current hourly rate, and the lodestar multiplier is calculated by dividing the total requested fee award by Plaintiff's Counsel's total lodestar. Here, the requested fee of 25% of the \$60 million Settlement (net of expenses) equates to approximately \$14,819,000,

while Plaintiff's Counsel's total lodestar is approximately \$14,605,900, resulting in a lodestar multiplier of just 1.01.

10. For all of the reasons set forth herein, including the excellent result obtained and the quality of work performed, I respectfully submit that the Settlement and Plan of Allocation are "fair, reasonable, and adequate" in all respects, and that the Court should approve them pursuant to Federal Rule of Civil Procedure Rule 23(e) and applicable law. For similar reasons, and for the additional reasons set forth below, I respectfully submit that Lead Counsel's request for attorneys' fees and payment of Litigation Expenses, which includes the requested PSLRA award to Lead Plaintiff, are also fair and reasonable, and should be approved.

## **II. PROSECUTION OF THE ACTION**

### **A. Filing The Initial Complaint And Appointment Of Lead Plaintiff And Lead Counsel**

11. On January 3, 2020, MissPERS filed the initial complaint in this Action. ECF No. 1. On March 3, 2020, MissPERS moved the Court for appointment as Lead Plaintiff and approval of BLB&G as Lead Counsel, which was unopposed. ECF No. 15. On March 18, 2020, the Court granted Lead Plaintiff's motion. ECF No. 18. On March 30, 2020, the parties submitted a joint schedule for the filing of the amended complaint and the briefing on motions to dismiss. ECF No. 24. The Court entered the parties' joint schedule on April 2, 2020. ECF No. 26. On April 29,

2020, the Court granted a consent motion modifying the scheduling order and setting the deadline to file the operative complaint on June 29, 2020. ECF No. 28.

**B. Lead Counsel's Investigation And Filing The Amended Complaint**

12. After the Court appointed MissPERS as Lead Plaintiff and BLB&G as Lead Counsel, Lead Counsel deepened its already ongoing investigation and began drafting a consolidated amended complaint. Pursuant to that investigation, Lead Counsel reviewed voluminous materials authored, issued, or publicly presented by Mohawk, including Mohawk's SEC filings, conference call transcripts, registration statements, prospectuses, press releases, investor presentations, and other communications issued publicly during the Class Period and beyond. Lead Counsel also comprehensively reviewed news articles, securities analyst reports, and items of market commentary concerning Mohawk issued before, during, and after the Class Period, in order to analyze the impact of Mohawk's statements and revelations about Mohawk on market participants' views about the Company. Given that Mohawk was followed by numerous analysts and Mohawk's financial results garnered significant analyst and media attention during the Class Period, the volume of these materials was substantial.

13. Lead Counsel also identified 428 former employees of Mohawk and third parties with potentially relevant information and contacted 132 of them as potential witnesses. These former employees provided valuable insight and

background that aided Lead Counsel in its investigation and in formulating the theory of the case and the allegations in the Amended Complaint. In addition to this factual research, Lead Counsel thoroughly researched relevant case law applicable to the claims asserted and Defendants' potential defenses thereto.

14. On June 29, 2020, Lead Plaintiff filed the Amended Complaint, bringing claims under Section 10(b) of the Exchange Act and SEC Rule 10b-5 promulgated thereunder against all Defendants, and claims against Section 20(a) of the Exchange Act against Defendant Jeffrey S. Lorberbaum as a control person of Mohawk. ECF No. 37. The Amended Complaint included 193 pages of detailed allegations drawn from Lead Counsel's thorough review of Mohawk's financial reports, SEC filings, and public statements, as well as reports of security analysts who covered the Company. The Amended Complaint also included the accounts of 14 former Mohawk employees, including those of senior Mohawk executives who reported being directly involved in events at issue in the Amended Complaint's allegations.

### **C. Defendants' Motion To Dismiss The Amended Complaint**

15. On October 27, 2020, Defendants filed a motion to dismiss the Amended Complaint, which was supported by more than 100 pages of briefing and exhibits. ECF No. 54. Defendants challenged the sufficiency of the Amended Complaint with respect to the elements of falsity, scienter, and loss causation.



16. Defendants made several arguments regarding “falsity,” arguing that the Amended Complaint failed to allege an actionable misstatement or omission. First, Defendants argued that the Amended Complaint did not allege with sufficient particularity that any financial results were inaccurate or that any purportedly inflated revenues or margins were materially inflated. ECF No. 54-1 at 11-12. Defendants pointed out that Mohawk never issued a restatement, arguing that this undermined any inference that its accurately reported financial information was misleading and further that there is no duty to disclose conditions which might make future financial results less favorable. *Id.* at 13-14.

17. Second, with regard to the “Saturday Scheme” alleged in the Amended Complaint, Defendants contended that the pleadings were deficient because Lead Plaintiff failed to allege with particularity the specific transactions involved in the scheme and the quantity of revenue purportedly improperly recognized as a result of those transactions, as Defendants argued was required in the Eleventh Circuit. *See id.* at 17-19. Defendants further argued that Lead Plaintiff had failed to allege facts establishing that the former employees, whose accounts supported the “Saturday Scheme” allegations, had insight into Mohawk’s accounting practices. *Id.* at 15-16.

18. Third, as to alleged false statements concerning the quality and market acceptance of Mohawk’s LVT, *e.g.*, that “[w]ith their superior design and performance, our flexible, rigid and commercial LVT collections are being well

accepted across all channels,” Defendants argued that such statements were non-actionable puffery, and, in any event, that the Amended Complaint only included certain anecdotal observations from former employees and failed to plead the falsity of such statements with requisite particularity. *Id.* at 19-21.

19. Defendants also advanced several arguments regarding “scienter.” Defendants argued that the Amended Complaint failed to adequately plead scienter under the heightened pleading standards of Rule 9 and the PSLRA. Among other things, Defendants challenged the allegations drawn from the accounts of former Mohawk employees. Defendants contended that Lead Plaintiff’s allegations relied on the accounts of 14 former employees who were not alleged to have any involvement in the Company’s accounting practices or the preparation of its public filings. *Id.* at 22-23. Further, Defendants contended that the former employees’ accounts regarding the “(i) the purpose of the alleged Saturday quarter-end pushes and corresponding effect on revenue, (ii) the ramifications of the alleged quality issues with the U.S. LVT, and (iii) the perceived overproduction of certain products on the Company’s financials [were] impermissibly conclusory.” *Id.* at 23-24. With respect to the account provided by a former employee who recounted a meeting in which Defendant Lorberbaum was confronted with the purportedly fraudulent conduct of Brian Carson, Mohawk’s President of the Flooring North America segment, Defendants argued that this account did not support any inference of

scienter, and, in any event, could only support scienter after September 2018, when the meeting was alleged to take place. *Id.* at 29-31.

20. Defendants also argued that the alleged magnitude of the “Saturday Scheme” and the size and scope of Mohawk’s “scrap” LVT buildup could not support scienter because the financial impact of those practices was not quantified in the Amended Complaint. *Id.* at 24-25. Similarly, with regard to Lead Plaintiff’s allegation that Mohawk’s Flooring North America segment was “the Company’s most important business segment,” Defendants argued that such a “core business” inference is “disfavored” in the Eleventh Circuit. *Id.* at 27-28.

21. Defendants further argued that, even if the Amended Complaint pleaded facts showing Mr. Carson’s knowledge of any alleged schemes, his knowledge could not be imputed to Defendant Lorberbaum. *Id.* at 25-26. Defendants similarly argued that the Amended Complaint’s allegations concerning Defendant Lorberbaum’s role as Chief Executive Officer and Chairman of the Board of Mohawk, and his access to reports and data and attendance at meetings, did not support scienter, particularly because the Amended Complaint failed to include specific allegations regarding how the information he had access to through those means contradicted the reported financials or rendered any specific statement of his false and misleading. *Id.* at 26-27. Defendants also contended that there were no allegations that Defendant Lorberbaum had a plausible motive to engage in the

purported fraud because the Amended Complaint did not plead he received a financial windfall from the purported schemes or received compensation that deviated from his historical compensation or from the compensation of similarly situated executives. *Id.* at 28-29.

22. Defendants further contended that the Amended Complaint failed to plead loss causation because it did not allege how the purported fraudulent schemes were revealed by the alleged corrective disclosures. *Id.* at 32-33.

23. On December 28, 2020, Lead Plaintiff filed a 35-page brief in opposition to Defendants' motion to dismiss. ECF No. 56. Researching and drafting Lead Plaintiff's opposition was a substantial undertaking, requiring that Lead Counsel comprehensively research the law on numerous issues related to the falsity, scienter, and loss causation arguments noted above (and others), as well as on the reliability of allegations attributed to former employees.

24. In the opposition brief, Lead Plaintiff successfully countered Defendants' key arguments. With respect to falsity, Lead Plaintiff argued that Defendants' statements that Mohawk was "selling all of [the LVT] we could have" and that LVT sales were subject to "capacity constraints" were actionable given allegations of Mohawk's LVT production problems and customer reactions to them. *Id.* at 10-12. Lead Plaintiff also argued that Mohawk's statement that LVT was "being well accepted across all channels" was not puffery, including because the

Amended Complaint alleged that Mohawk customers were, in fact, returning Mohawk's LVT products due to defects. *Id.* at 12-14. Lead Plaintiff further argued that allegations that Defendants failed to disclose Mohawk's overproduction of products and refused to write down defective and obsolete products carried in inventory were sufficient to plead the misleading nature of statements to investors concerning the reasons for Mohawk's "record" margins. *Id.* at 14-15. And Lead Plaintiff argued that Defendants misled investors regarding the true reasons for Mohawk's rising inventory by failing to disclose that there was a substantial amount of unsalable LVT in Mohawk's warehouses and refusing to write such inventory down. *Id.* at 15-16. Regarding the "Saturday Scheme" allegations, Lead Plaintiff argued that the Amended Complaint pleaded numerous details concerning the alleged scheme, which were derived from the accounts of well-placed former Mohawk employees. *Id.* at 17-18, 21-23.

25. Lead Plaintiff argued that the Amended Complaint sufficiently pleaded scienter, including because it alleged that a senior executive whose knowledge could be attributed to the Company personally directed the schemes and was terminated because of his involvement in them (*id.* at 24-25), and Defendant Lorberbaum was directly confronted with certain relevant facts and had access to and received relevant reports and information (*id.* at 26-29).

26. Finally, Lead Plaintiff also argued that the Amended Complaint sufficiently pleaded loss causation at the pleading stage. *Id.* at 32-35.

27. On January 27, 2021, Defendants filed their reply brief, which included 20 pages of additional briefing, responding to Lead Plaintiff's arguments in opposition and reinforcing Defendants' argument from their opening brief. ECF No. 57.

**D. The Court's Opinion Denying Defendants' Motions To Dismiss**

28. On September 29, 2021, the Court issued a 58-page Order largely denying Defendants' motion to dismiss. ECF No. 60. The Court scrutinized the Amended Complaint's former employee allegations and determined that it was appropriate to credit them at the pleading stage. *Id.* at 16-18. The Court then analyzed those accounts and other allegations in the Amended Complaint and determined that the Amended Complaint adequately alleged the falsity of all but one of the challenged statements, dismissing Defendant Lorberbaum's statement that Mohawk's LVT possessed "superior design and performance" as nonactionable puffery. *Id.* at 37-39. The Court also rejected Defendants' arguments that several of their alleged misrepresentations were immaterial, recognizing that materiality is typically an improper basis for dismissal of securities fraud claims on a 12(b)(6) motion. *Id.* at 24-30, 36-37. The Court further held that each Defendant's scienter and loss causation were adequately pleaded. *Id.* at 44-48, 52-56.

29. On November 12, 2021, Defendants filed their answer to the Amended Complaint, denying its allegations and asserting numerous defenses including a “truth-on-the-market” defense, that “fraud on the market” reliance was not sufficiently pleaded, and that forward-looking statements are barred by the “Bespeaks Caution Doctrine” and the “Safe Harbor Provision” of the Private Securities Litigation Reform Act of 1995. ECF No. 64.

**E. Lead Plaintiff’s Extensive Discovery Efforts**

30. From October 2021 through November 2022, Lead Plaintiff aggressively pursued discovery. The discovery process was highly contested, and numerous disputes arose among the Parties regarding the scope of discovery, the appropriate set of custodians for Defendants’ search for electronically-stored information, and the appropriate central repositories of documents and data to collect and search. To resolve these disputes, the Parties engaged in extensive correspondence and several meet-and-confers to negotiate the scope of discovery.

31. Through their efforts, Lead Counsel obtained more than 150,000 documents from Defendants and numerous third parties, totaling nearly 1 million pages. As described below, Lead Counsel reviewed and analyzed those documents and Defendants’ written discovery responses in order to engage experts, prepare for and conduct depositions, and ultimately develop the record for trial. Lead Plaintiff also moved the Court to issue a letter rogatory in order to obtain the testimony of a

former senior executive of Mohawk who was involved in key issues alleged in the Amended Complaint, including the Company's domestic manufacturing of LVT. These discovery efforts provided Lead Counsel with a thorough understanding of the strengths and weaknesses of Lead Plaintiff's claims and assisted Lead Counsel in considering and evaluating the fairness of the Settlement. A summary of Lead Counsel's discovery efforts follows.

**F. Document Discovery From Defendants And Third Parties**

32. As noted above, Lead Plaintiff obtained and reviewed nearly 1 million pages of documents from Defendants and third parties in this Action. Lead Plaintiff served its first set of requests for production of documents on Defendants on November 12, 2021.<sup>2</sup> After Defendants served their responses and objections to Lead Plaintiff's document requests on December 13, 2021, the Parties met and conferred extensively to negotiate the scope and parameters of Defendants' document collection and production. Lead Plaintiff served its second set of requests for production of documents on Defendants on August 3, 2022, and served their third set of requests for production of documents on Defendants on September 27, 2022. Defendants served their responses and objections to Lead Plaintiff's second and third sets of document requests on September 2, 2022 and October 27, 2022, respectively.

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<sup>2</sup> The Parties prepared and exchanged initial disclosures pursuant to Federal Rule 26(a)(1) on November 29, 2021.



33. In addition, during fact discovery, the Parties served eighteen document subpoenas on third parties, including several former Mohawk employees who allegedly participated in the fraudulent schemes alleged in the Amended Complaint. Lead Counsel met and conferred extensively with counsel for many of these third parties to negotiate the scope and terms of their respective document productions. In total, Lead Counsel obtained nearly 200,000 pages of documents from third parties.

34. Lead Counsel developed a thorough and efficient process to manage the review of the documents it obtained from Defendants and third parties. At the outset of the review, Lead Counsel developed a detailed review protocol and coding manual, with explanatory notes covering: (i) the key facts at issue in the Action; (ii) relevance coding instructions; and (iii) “tags” covering relevant issues and sub-issues. Lead Counsel also assembled a team of experienced attorneys to review and analyze the documents received in discovery. This team of staff attorneys reported directly to associates, senior counsel, and partners at Lead Counsel, circulating detailed notes on “hot” documents on a weekly basis and participating in regular meetings to discuss their findings and share knowledge throughout the team. Through these efforts, Lead Counsel developed a thorough understanding of the evidentiary record, which they used to identify key issues for further analysis and inform Lead Plaintiff’s theories of liability.

35. Beyond these formal processes, the attorneys involved in reviewing and analyzing documents for this matter communicated frequently among themselves to ensure that coding decisions were applied consistently and that all team members were apprised of important developments with respect to the document review and development of case theories. In addition, these attorneys were responsible for preparing presentations and memoranda on key factual issues and potential deponents, as well as preparing deposition kits identifying candidate deposition exhibits.

**G. Document Discovery From Lead Plaintiff**

36. Lead Plaintiff also responded to document requests from Defendants. Defendants served forty-eight document requests on Lead Plaintiff on December 16, 2021. Lead Plaintiff timely served responses and objections to Defendants' document requests on January 18, 2022. The Parties met and conferred extensively over the scope and parameters of Lead Plaintiff's document productions in response to Defendants' requests. In responding to Defendants' document requests, Lead Plaintiff performed diligent and reasonable searches and document collections, reviewed a broad universe of relevant documents for responsiveness and privilege, and produced over 100,000 pages of documents to Defendants.

## **H. Written Discovery**

37. Lead Plaintiff also served requests for written discovery on Defendants. Lead Plaintiff served a set of eight interrogatories on Defendants on December 8, 2021, to which Mohawk and Defendant Lorberbaum each, respectively, served written, verified responses and objections on January 7, 2022. Lead Plaintiff's analyses of these written discovery responses informed their approaches later in the litigation, including in negotiating the scope of document discovery and preparing for depositions.

38. Lead Plaintiff also responded to written discovery propounded by Defendants. On December 16, 2021, Mohawk served a set of interrogatories on Lead Plaintiff consisting of thirteen total interrogatories, to which Lead Plaintiff served written responses and objections on January 18, 2022, after performing all the research and review necessary to provide such responses.

## **I. Depositions**

39. Lead Counsel carefully reviewed and analyzed the documents produced by Defendants and third parties, as well as all written discovery responses Defendants provided. Bringing these voluminous materials to bear, Lead Counsel deposed twelve fact witnesses, including, among others, senior executives in Mohawk's LVT manufacturing business, Mohawk's COO (who is also a Mohawk director), the Presidents of Mohawk's Flooring – Rest of World and Flooring North

America segments, and Brian Carson, the former President of Mohawk's Flooring North America segment who was alleged to be heavily involved in the matters at issue in the Amended Complaint.

40. Lead Counsel devoted substantial time to preparing for and taking these depositions, including by conducting a comprehensive review of "hot" documents sent by or to each deponent and preparing deposition kits and memoranda summarizing key facts and themes to structure the depositions. This analysis, and the subsequent depositions, informed Lead Counsel about the strengths and weaknesses of the evidentiary record supporting the allegations and the testimony that could likely be obtained at trial, and thus also helped to inform key litigation strategy issues.

41. Additionally, on November 11, 2022, Lead Plaintiff moved the Court to seek issuance of a letter rogatory in order to secure the deposition testimony of a former Mohawk senior executive witness located in Belgium, whom Lead Counsel had identified through the course of discovery as being heavily involved in Mohawk's domestic manufacture of LVT. ECF No. 108. In connection with the motion, Lead Counsel also researched processes for seeking testimony from witnesses in Belgium (which is not a signatory to the Hague evidence convention) and engaged Belgian counsel to advise on Belgian legal issues. Defendants opposed Lead Plaintiff's letter rogatory motion on November 25, 2022, and Lead Plaintiff

filed a detailed reply brief in support of the motion on December 2, 2022. ECF Nos. 111, 114. The motion was still pending at the time the Parties entered an agreement to settle the case, and Lead Plaintiff withdrew it on December 15, 2022. ECF No. 118.

**J. Lead Counsel's Work with Respect to Experts and Consultants**

42. Lead Counsel also worked extensively with experts and consultants in this Action.

43. Lead Counsel retained and worked with Michael L. Hartzmark, Ph.D., President of Hartzmark Economics Litigation Practice, LLC, who provided expert opinions in connection with class certification and advised on loss causation and damages merits issues. Dr. Hartzmark's class certification expert report, which covered topics including the efficiency of the market for Mohawk common stock and a model for measuring classwide damages in accordance with Lead Plaintiff's theory of liability, was submitted to the Court along with Lead Plaintiff's Class Certification Motion on January 26, 2022. ECF No. 78-2. Lead Counsel prepared and defended Dr. Hartzmark at his deposition on February 25, 2022, and took the deposition of Defendants' expert, Lucy P. Allen, a managing director at renowned economic consultancy NERA, on May 19, 2022. Dr. Hartzmark also evaluated Ms. Allen's expert report, and, in coordination with Lead Plaintiff's filing of its reply

brief in further support of its Class Certification Motion, he submitted a rebuttal expert report on June 8, 2022. ECF No. 100-4.

44. Lead Counsel also retained and worked with Brian Duffy of Friedman LLP, an advisory firm with deep expertise in revenue, inventory and cost accounting.<sup>3</sup> Specifically, Lead Counsel consulted with Mr. Duffy in analyzing issues related to GAAP, inventory accounting, inventory turnover, and per-unit cost accounting and worked with him to develop expert analysis related to accounting issues and Mohawk's inventory-related disclosures.

45. In addition, Lead Counsel retained and worked closely with Mark Oliff, an industry expert with more than 50 years of experience in the flooring industry who has served as a director of two large privately-held flooring distributors. In connection with Lead Counsel's document and deposition discovery efforts, Mr. Oliff provided expert analysis and guidance regarding various issues related to Lead Plaintiff's LVT-related allegations, including relating to LVT product quality, manufacturing, inventory, and business strategy issues.

#### **K. Lead Plaintiff's Class Certification Motion**

46. While continuing to pursue merits discovery, Lead Plaintiff filed its Class Certification Motion on January 26, 2022. ECF No. 78. As noted above, the Class Certification Motion was supported by a market efficiency and damages

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<sup>3</sup> Friedman LLP merged with Marcum LLP in September 2022.

methodology report prepared by Lead Plaintiff's expert, Dr. Hartzmark, who opined that Mohawk common stock traded in an efficient market during the Class Period and that damages for both Lead Plaintiff's Section 10(b) claims and Section 20(a) claims could be calculated on a class-wide basis utilizing a common methodology.

47. Defendants opposed the Class Certification Motion on April 13, 2022. ECF No. 88. In their opposition, Defendants challenged certification on several grounds, including typicality, adequacy, and predominance. Among other things, Defendants argued that predominance was not met because (i) Lead Plaintiff could not show that Mohawk stock traded in an efficient market and thus could not invoke the presumption of reliance under *Basic Inc. v. Levinson*, 485 U.S. 224 (1988), and (ii) even if the *Basic* presumption did apply, Defendants rebutted it by establishing that the alleged misstatements at issue in the case did not impact Mohawk's stock price. Defendants supported their arguments with an expert report from Ms. Allen, who critiqued Dr. Hartzmark's report and provided her own rebuttal analysis. *See generally* ECF No. 88-2.

48. In connection with the Class Certification Motion, Lead Plaintiff produced documents and Defendants deposed two representatives from MissPERS on March 2, 2022. On April 6, 2022, Defendants also deposed a representative of Eagle Capital Management, LLC, a third-party investment advisor to Lead Plaintiff.

Defendants deposed Dr. Hartzmark on February 25, 2022, and Lead Counsel deposed Ms. Allen on May 19, 2022.

49. Following Ms. Allen’s deposition, Lead Plaintiff filed a reply in further support of the Class Certification Motion, including a rebuttal expert report from Dr. Hartzmark, on June 8, 2022. ECF Nos. 100, 100-4. The reply brief and rebuttal report responded to arguments and criticisms in Defendants’ opposition briefing.

50. On November 28, 2022, the Court granted Lead Plaintiff’s Class Certification Motion—finding, among other things, that Lead Plaintiff was entitled to rely on the *Basic* presumption and that Lead Plaintiff had carried its burden to establish that it was an appropriate representative for the Class. ECF No. 113.

### **III. THE SETTLEMENT NEGOTIATIONS AND MEDIATION**

#### **A. The Parties’ Settlement Negotiations and Mediation**

51. To facilitate the potential resolution of the Action, the Parties retained as mediator a former United States District Judge, the Honorable Layn R. Phillips, who is one of the nation’s foremost mediators of complex litigation—including specifically securities class actions.

52. On June 8, 2022, the Parties participated in a full-day in-person mediation session before Judge Phillips. The mediation was attended by Lead Counsel, representatives of MissPERS, counsel for each of the Defendants, representatives of Mohawk, and representatives from Defendants’ insurance



carriers. In advance of the mediation, the Parties prepared and exchanged over sixty-seven pages of detailed written mediation submissions, together with hundreds of pages of exhibits. In their submissions, each side articulated the strengths of their positions and the weaknesses of the other side's arguments, informed by the voluminous evidentiary record developed in the course of discovery. At the mediation, the Parties responded to detailed merits- and damages-related questions developed by Judge Phillips and his staff following a review of the submissions and numerous pre-mediation calls with both Parties. Although the Parties made substantial progress during the mediation session, they remained too far apart in their respective positions on several issues to reach agreement that day, and agreed to continue their settlement negotiations with Judge Phillips and his staff over emails and phone calls in the months to come. *See generally* Declaration of Layn R. Phillips in Support of Motion for Final Approval of Settlement ("Phillips Decl."), attached as Exhibit 2, at ¶¶ 7-12.

53. As discovery continued throughout the summer and autumn of 2022, the Parties also continued discussions and arm's-length negotiations with the assistance and oversight of Judge Phillips. On December 12, 2022, Judge Phillips issued a "mediator's recommendation" for the parties to resolve the matter for \$60 million. Phillips Decl. ¶ 11. On December 13, 2022, the Parties accepted the

mediator's recommendation on a "double-blind" basis and reached an agreement in principle to settle the Action.

**B. Preparation of Settlement Documentation and Motion for Preliminary Approval of Settlement**

54. After the Parties reached their agreement in principle to settle the Action, they spent additional weeks negotiating the final terms of the Stipulation of Settlement, the Exhibits thereto, and the Supplemental Agreement, and exchanged multiple drafts of these documents.

55. During this same time, Lead Counsel requested and reviewed detailed bids obtained from several organizations specializing in class action notice and claims administration, and conducted follow-up communications with certain of these organizations. As a result of this bidding process, Lead Counsel selected JND Legal Administration ("JND") to serve as the Claims Administrator for the Settlement. Lead Counsel also worked closely with Lead Plaintiff's damages expert to develop the proposed Plan of Allocation. *See infra* Section V.

56. Thereafter, on January 20, 2023, Lead Plaintiff filed its Unopposed Motion and Memorandum of Law in support of an Order Preliminarily Approving Class Action Settlement and Authorizing Dissemination of Notice of Settlement ("Preliminary Approval Motion"), which included a copy of the Stipulation, a memorandum in support, and copies of the proposed notice materials to be sent to Class Members to inform them of the Settlement and their options to participate in

it, exclude themselves from the Class, or object. ECF No. 119. On January 27, 2023, the Court held a telephonic conference where it requested modifications to the notice materials. On January 30, 2023, Lead Counsel filed a revised Preliminary Approval Motion to comply with the Court’s instructions provided during the January 27, 2023 telephonic conference. ECF No. 121.

57. On February 3, 2023, the Court entered an order granting the Preliminary Approval Motion, finding that “the proposed settlement satisfies the criteria of Federal Rule of Civil Procedure 23(e) such that the Court will likely be able to approve the proposed settlement as fair, reasonable, an adequate.” ECF No. 122, at 4-5. The Court set the Settlement Hearing for May 31, 2023, at 10:00 a.m. *Id.* at 6.

#### **IV. RISKS OF CONTINUED LITIGATION**

58. The Settlement provides an immediate and certain benefit to the Class in the form of a \$60 million cash payment. Lead Plaintiff and Lead Counsel believe that the proposed Settlement is a fair and favorable result for the Class.

59. As explained below, Lead Plaintiff faced meaningful risks with respect to proving liability and recovering full damages in this case. Absent the Settlement, in order to obtain a recovery for the Class, Lead Plaintiff would have had to prevail at several stages, including defeating Defendants’ anticipated motion for summary judgment and winning at trial. Even after any trial, Lead Plaintiff likely would have

faced post-trial motions, including a potential motion for judgment as a matter of law, as well as further appeals that might have prevented Lead Plaintiff from successfully obtaining any recovery at all—let alone a recovery of the magnitude of the Settlement—for the Class, and at minimum would have delayed any recovery for years.

**A. General Risks in Prosecuting Securities Class Actions**

60. Many securities class actions are dismissed at the pleading stage or fail to achieve certification. Those that survive those hurdles frequently face significant further challenges at subsequent stages of litigation. For example, district courts have dismissed certain securities class actions at the summary judgment stage. *See, e.g., Murphy v. Precision Castparts Corp.*, 2021 WL 2080016, at \*1 (D. Or. May 24, 2021), *aff'd sub nom. AMF Pensionsforsakring AB v. Precision Castparts Corp.*, 2022 WL 2800825 (9th Cir. July 18, 2022); *Fosbre v. Las Vegas Sands Corp.*, 2017 WL 55878, at \*28 (D. Nev. Jan. 3, 2017), *aff'd sub. nom. Pompano Beach Police & Firefighters' Ret. Sys. v. Las Vegas Sands Corp.*, 732 F. App'x 543 (9th. Cir. 2018); *In re Omnicom Grp., Inc. Sec. Litig.*, 541 F. Supp. 2d 546, 554-55 (S.D.N.Y. 2008), *aff'd*, 597 F.3d 501 (2d Cir. 2010); *In re Xerox Corp. Sec. Litig.*, 935 F. Supp. 2d 448, 496 (D. Conn. 2013), *aff'd sub. nom. Dalberth v. Xerox*, 766 F.3d 172 (2d Cir. 2014).

61. And even cases that have survived summary judgment can be dismissed prior to trial in connection with *Daubert* motions. See, e.g., *Bricklayers & Trowel Trades Int'l Pension Fund v. Credit Suisse First Boston*, 853 F. Supp. 2d 181, 197-98 (D. Mass. 2012), *aff'd*, 752 F.3d 82 (1st Cir. 2014) (granting summary judgment *sua sponte* in favor of the defendants after finding that the event study offered by plaintiffs' expert was unreliable and that there was accordingly no evidence that the market reacted negatively to disclosures).

62. Even when securities class action plaintiffs successfully overcome multiple substantive and procedural hurdles pre-trial, there remain significant risks that a jury will not find the defendants liable or award expected damages. For instance, a jury recently found in *In re Tesla Inc. Securities Litigation* that none of the defendants had violated the federal securities laws, even though the plaintiffs had previously obtained summary judgment on the critical elements of falsity and scienter. See Verdict Form, *In re Tesla., Inc. Sec. Litig.*, No. 3:18-cv-04865 (N.D. Cal. Feb. 3, 2023), ECF No. 671.

63. Further, post-trial motions, based on a complete record, also present substantial risks. For example, in *In re BankAtlantic Bancorp, Inc.*, following a jury verdict in the plaintiffs' favor, the district court granted the defendants' motion for judgment as a matter of law and entered judgment in favor of the defendants on all claims. 2011 WL 1585605, at \*14-22 (S.D. Fla. Apr. 25, 2011), *aff'd*, 688 F.3d 713

(11th Cir. 2012) (holding that there was insufficient trial evidence to support a finding of loss causation).

64. Intervening changes in the law may also impact a successful trial verdict. For example, in *Precision Castparts*, a district court in Oregon reconsidered its order denying defendants' motion for summary judgment and granted the motion more than a year later based on a new decision by the Ninth Circuit. *See Precision Castparts*, 2021 WL 2080016, at \*6. Indeed, the Supreme Court has heard several securities cases in recent years, often announcing holdings that defendants have argued dramatically changed the law in the middle of long-running cases. *See, e.g., Goldman Sachs Grp., Inc. v. Arkansas Teacher Ret. Sys.*, 141 S. Ct. 1951 (2021); *Omnicare, Inc. v. Laborers Dist. Council Constr. Indus. Pension Fund*, 135 S. Ct. 1318 (2015); *Halliburton Co. v. Erica P. John Fund, Inc.*, 573 U.S. 258 (2014); *Comcast Corp. v. Behrend*, 569 U.S. 27 (2013); *Janus Cap. Grp., Inc. v. First Derivative Traders*, 564 U.S. 135 (2011); *Morrison v. Nat'l Austl. Bank Ltd.*, 561 U.S. 247 (2010). As a result, hard-fought cases have been lost after thousands of hours have been invested. *See, e.g., In re Vivendi Universal, S.A. Sec. Litig.*, 765 F. Supp. 2d 512, 524, 533 (S.D.N.Y. 2011) (after trial verdict for class plaintiffs, granting judgment for defendants on majority of claims following the *Morrison* decision).

65. Securities class actions thus face serious risks of dismissal and non-recovery at all stages of litigation.

**B. Specific Risks Concerning This Action**

66. Lead Plaintiff and Lead Counsel believe the claims asserted against Defendants in this action are meritorious. They recognize, however, that this action presented several serious risks to establishing Defendants' liability and to proving the Class's damages.

**1. Risks to Establishing Falsity and Materiality**

67. Lead Plaintiff faced significant risks in establishing that Defendants made material false and misleading statements.

68. Among other things, the Amended Complaint included allegations regarding the so-called "Saturday Scheme." This alleged effort consisted of Mohawk's senior executives instructing employees to attempt to deliver customer orders on the last Saturday of each quarter, regardless of whether customers actually requested or could accept delivery at that time, and to record those attempted deliveries as sales within the quarter regardless of whether delivery was actually accomplished.

69. Defendants would have challenged those allegations on several grounds. Defendants were expected to argue that any pushes Mohawk made to get products delivered at the end of each quarter were an appropriate and typical sales

practice, and that, critically, Mohawk did not improperly recognize any revenues associated with products that were not, in fact, delivered. Defendants also likely would have argued that they had financial controls in place to avoid recognizing revenue on undelivered orders, that their financial controls and financial statements were audited, and that despite that scrutiny, Mohawk has never restated its financials. In addition, consistent with arguments they raised in their class certification opposition and associated expert report, Defendants were expected to argue that, even if anything similar to the “Saturday Scheme” allegations actually did occur at the Company, the amounts of revenue allegedly recognized by virtue of such misconduct would have been far too small to materially impact Mohawk’s overall reported financials or the price of Mohawk’s publicly-traded securities. Had the Court or a jury credited these arguments, the Saturday Scheme allegations—and associated alleged false statements and damages—could have been removed from the case entirely.

70. Defendants would also have mounted a meaningful challenge to the allegations that Mohawk misrepresented the quality of and market reception to its domestically-produced LVT products. Defendants likely would have pointed to several disclosures about LVT production issues they made during earnings calls throughout the Class Period to argue that they promptly and truthfully disclosed problems Mohawk experienced with its domestic LVT production. Defendants also



likely would have argued that any problems Mohawk encountered in manufacturing LVT were to be expected given that Mohawk was starting up a new manufacturing process, and thus that investors could not reasonably have been misled to think that Mohawk would not encounter the problems that actually occurred. Defendants likely would have further argued that the production issues alleged in the case were immaterial to investors, because Mohawk's domestic LVT production represented only a small fraction of total Company-wide sales, and alleged defects only a further fraction of total domestic LVT production. If the Court or a jury were to have credited such arguments, it could have reduced or even eliminated any recovery for investors related to Mohawk's alleged LVT quality misrepresentations.

71. As for allegations that Defendants concealed the true reasons for Mohawk's growing inventories during the Class Period, which the Amended Complaint alleges were due (at least in part) to Mohawk's accumulation of defective LVT and LVT scrap and intentional overproduction of goods, Defendants would have contended that their disclosures were accurate. Defendants also likely would have argued that Mohawk's domestic LVT represented only a small portion of Mohawk's inventory, defective LVT and scrap represented an even smaller portion, and Mohawk did not intentionally overproduce products to reduce per-unit costs. Defendants further would have likely argued that Mohawk's growing inventory numbers during the Class Period were overwhelmingly driven by other product

categories—like ceramics—that are not implicated in the Amended Complaint’s allegations. Consistent with such arguments, Defendants also likely would have argued that Mohawk employed appropriate rules to determine when and how to write down inventory during the Class Period, and that such rules, as well as Mohawk’s inventory results, were reviewed and approved by Mohawk’s outside auditors. Had such arguments proven persuasive to the Court or a jury, Defendants could have reduced or even eliminated damages associated with the alleged inventory-related misrepresentations as well.

72. In challenging all of the alleged misrepresentations, Defendants also likely would have argued that investigations into the allegations in the Amended Complaint initiated by the U.S. Attorney’s Office for the Northern District of Georgia and the SEC have not resulted in any adverse action against Company.

73. In short, Defendants likely would have raised significant challenges to Lead Plaintiff’s allegations that Defendants made materially false and misleading statements that, if successful, could have removed from the case some or all of the misrepresentations alleged in the Amended Complaint. While Lead Plaintiff believes that it had strong arguments to make in response, the settlement avoids the risks such challenges posed, and provides for a significant recovery for the Class.

## **2. Risks to Establishing Scienter**

74. Even if Lead Plaintiff had succeeded in establishing that Defendants made certain materially false and misleading statements, Defendants would have mounted a significant challenge to Lead Plaintiff's attempts to establish that those misrepresentations were made with the requisite culpable state of mind.

75. To start, Defendants would have argued that Defendants had no motive to inflate Mohawk's stock price by making any of the misrepresentations alleged in the Amended Complaint. In support, Defendants likely would have pointed to the facts that Defendant Lorberbaum has been and remains Mohawk's single largest shareholder, including throughout the Class Period and after, and made no suspicious stock sales during the Class Period. Defendants also were expected to highlight that Mohawk announced a \$500 million stock repurchase program during the middle of the Class Period, in October 2018, which Defendants would have likely argued was inconsistent with the allegation that they knew that Mohawk's stock price was inflated—and, if anything, suggests that Mohawk insiders thought the very opposite.

76. In addition, with respect to alleged misrepresentations of financial information, including sales, margins, and inventories, Defendants likely would have argued that Mohawk had internal controls in place to promote accurate financial reporting and that its financial reporting was in fact audited and approved

by outside auditors. With respect to allegations that Mohawk improperly failed to write down defective LVT and manufacturing scrap sitting in the Company's inventory, Defendants were expected to argue that they applied appropriate rules to determining write-downs over time, and that their approach to accounting for inventory was thoroughly audited. Defendants likely would have argued that such controls and external validation strongly undermines any inference that they knowingly misled investors as to their financial reporting.

77. With respect to "Saturday Scheme" allegations in particular, Defendants were expected to argue that the presence of internal controls specifically targeted at backing out from financial reporting any "sales" associated with undelivered goods undermines any inference that Defendants knowingly used such a scheme to inflate Mohawk's publicly reported financial results. In addition, Defendants likely would have pointed to allegations that Defendant Lorberbaum "launched an investigation into [Mr.] Carson's schemes" and terminated Mr. Carson at the conclusion of the investigation (§ 24) as showing that, far from condoning any of the alleged schemes, Defendant Lorberbaum acted swiftly and decisively to terminate their alleged perpetrator when he became aware of them—which Defendants may have argued is inconsistent with an intent to defraud.

78. As for allegations concerning Defendants' concealment of problems with LVT manufacturing, Defendants were expected to argue that the problems were

small in scale and wholly expected given that Mohawk was starting up a new manufacturing process. Defendants likely would have contended that they took LVT production issues seriously and made significant improvements to Mohawk's domestic LVT production over the course of the Class Period, and argued that any attention they paid to production quality issues reflected a focus on achieving excellence, rather than a belief that the problems were so significant as to be material to investors. Defendants also were anticipated to argue that they made numerous timely public disclosures about domestic LVT production issues during the Class Period, and further to contend that such candor is inconsistent with an intent to deceive the market.

79. Lead Plaintiff believes it would have had meaningful arguments in response to these and other arguments Defendants could have raised. But Lead Plaintiff acknowledges that there was a risk that Defendants could have persuaded either the Court or a jury that, even if they made material misrepresentations to the market, they did not do so with scienter. Had Defendants succeeded in making these arguments, it could have reduced or even eliminated the Class's recovery. The settlement avoids these risks and provides a substantial recovery for Class Members.

### **3. Risks to Establishing Loss Causation and Damages**

80. Lead Plaintiff would have also faced significant challenges in establishing that Defendants' alleged misrepresentations caused investor losses, and in proving the quantum of those losses.

81. To start, Defendants likely would have argued that none of the stock price declines on the corrective disclosure dates alleged in the Amended Complaint could be connected to the fraud alleged therein. In their class certification papers, Defendants argued that the financial impact of the fraud alleged in the complaint was too small to drive any of the stock price declines on the alleged corrective disclosure dates.

82. In support, as they argued at the class certification stage, Defendants likely would have claimed that the total value of allegedly undelivered Mohawk products that were recorded as sales pursuant to the Saturday Scheme was worth, at most, a few million dollars in additional sales in the very first quarter in which the scheme was implemented, with a negligible impact in subsequent quarters. Defendants likewise were expected to argue that Mohawk's domestically-produced LVT represented a mere fraction of the Company's total production and sales, and allegedly defective LVT a further fraction of that amount, to support an argument that allegedly concealed facts about those topics could not have driven large declines in Mohawk's stock price.

83. Indeed, Defendants likely would have pointed out that each of the alleged corrective disclosure dates was an earnings date for Mohawk, when Defendants announced Company-wide results—including negative results related to products and regions not plausibly implicated in the fraud alleged in the Amended Complaint. Consistent with this, Defendants were expected to continue to contend that Mohawk’s LVT business was generally a relative bright spot for the Company during the Class Period, and thus that the declines on the alleged corrective disclosure dates were likely caused by the disclosure of negative information unrelated to the alleged fraud, including information concerning Mohawk’s carpet and ceramics businesses and industry-wide factors.

84. While Lead Plaintiff believes it would have had strong arguments to make in support of loss causation, if Defendants had succeeded in challenging Lead Plaintiff’s establishment of a link between the alleged fraud and each of the stock price declines on alleged corrective disclosure dates, it could have resulted in the removal of certain disclosure dates from the case and even eliminated any recovery entirely.

85. Further, even if Lead Plaintiff had been able to establish some link between each of the alleged corrective disclosures and the alleged fraud, many of the same loss causation arguments noted above would have been marshalled by Defendants to minimize recoverable damages. To argue that recoverable damages

were, at most, only a small fraction of the declines Mohawk stock experienced on those dates, Defendants were expected to cite the following facts: Mohawk's domestic LVT business was small relative to the Company overall; only a portion of Mohawk's domestically-produced LVT was allegedly defective; the Saturday Scheme was alleged only to impact a small fraction of sales; and Mohawk announced negative information unrelated to the fraud on each corrective disclosure date. For example, Defendants likely would have noted that Mohawk's North American LVT business, the focus of the allegations in the Amended Complaint, represented only approximately 4% of Mohawk's average net sales during the Class Period, and argued that any damages associated with a fraud related to the LVT business would have to be similarly limited. Had the Court or a jury accepted these arguments, Defendants could have succeeded in dramatically reducing any recovery.

86. In sum, while Lead Plaintiff believes it would have had strong arguments concerning the damages that would have been recoverable in the Action, it acknowledges that reasonably recoverable damages in the action could have been significantly limited.

\* \* \* \* \*

87. Given the meaningful litigation risks, and the immediacy and amount of the \$60 million recovery for the Class, Lead Plaintiff and Lead Counsel believe



that the Settlement is fair, reasonable, and adequate, and is in the best interest of the Class.

**V. LEAD PLAINTIFF'S COMPLIANCE WITH THE COURT'S PRELIMINARY APPROVAL ORDER REQUIRING ISSUANCE OF NOTICE**

88. The Court's Preliminary Approval Order directed that the Notice of (I) Pendency of Class Action and Proposed Settlement; (II) Settlement Hearing; and (III) Motion for Attorneys' Fees and Litigation Expenses (the "Notice") and the Proof of Claim and Release Form ("Claim Form") be disseminated to the Class. The Preliminary Approval Order also set a May 10, 2023 deadline for Class Members to submit objections to the Settlement, the Plan of Allocation, or the Fee and Expense Application or to request exclusion from the Class and set a final approval hearing date of May 31, 2023.

89. In accordance with the Preliminary Approval Order, Lead Counsel instructed JND, the Court-approved Claims Administrator, to disseminate copies of the Notice and Claim Form by mail and to publish the Summary Notice. The Notice contains, among other things, a description of the Action, the Settlement, the proposed Plan of Allocation, and Class Members' rights to participate in the Settlement, to object to the Settlement, the Plan of Allocation, or the Fee and Expense Application, or to exclude themselves from the Class. The Notice also informs Class Members of Lead Counsel's intent to apply for an award of attorneys'

fees in an amount not to exceed 25% of the Settlement Fund and for payment of Plaintiff's Counsel's Litigation Expenses in an amount not to exceed \$1,000,000, including reimbursement of the reasonable costs and expenses incurred by Lead Plaintiff directly related to its representation of the Class. To disseminate the Notice, JND obtained information from Mohawk and from banks, brokers, and other nominees regarding the names and addresses of potential Class Members. *See* Declaration of Luiggy Segura Regarding: (A) Mailing of the Notice and Claim Form; (B) Publication of the Summary Notice; and (C) Report on Requests for Exclusion Received to Date (the "Segura Decl."), attached as Exhibit 2, at ¶¶ 5-10.

90. On March 3, 2023, JND mailed 6,189 copies of the Notice and Claim Form (together, the "Notice Packet") to potential Class Members and nominees by first-class mail. *See* Segura Decl. ¶ 8. Through April 25, 2023, JND disseminated 221,509 Notice Packets. *Id.* at ¶ 11.

91. On March 14, 2023, in accordance with the Preliminary Approval Order, JND caused the Summary Notice to be published in the *Wall Street Journal* and to be transmitted over the *PR Newswire*. *See id.* at ¶ 14.

92. Lead Counsel also caused JND to establish a dedicated settlement website, [www.MohawkIndustriesSecuritiesLitigation.com](http://www.MohawkIndustriesSecuritiesLitigation.com), to provide potential Class Members with information concerning the Settlement and access to downloadable copies of the Notice and Claim Form, as well as copies of the

Stipulation, Preliminary Approval Order, Complaint, Motion to Dismiss Order, and Order Granting Class Certification. *See id.* at ¶ 15. Copies of the Notice and Claim Form are also available on Lead Counsel’s website, [www.blbglaw.com](http://www.blbglaw.com).

93. As noted above, the deadline for Class Members to file objections to the Settlement, the Plan of Allocation, and/or the Fee and Expense Application, or to request exclusion from the Class, is May 10, 2023. To date, no objections to the Settlement, Plan of Allocation, or Lead Counsel’s Fee and Expense Application have been received. One request for exclusion-submitted on behalf of a group of opt-out plaintiffs who previously filed an individual action has been received. *See Segura Decl.* ¶ 18. Lead Plaintiff will file reply papers in support of final approval of the Settlement on May 24, 2023, after the deadline for submitting requests for exclusion and objections has passed, and will address all requests for exclusion and objections received.

## **VI. PROPOSED ALLOCATION OF THE PROCEEDS OF THE SETTLEMENT**

94. In accordance with the Preliminary Approval Order, and as provided in the Notice, all Class Members who want to participate in the distribution of the Net Settlement Fund (i.e., the Settlement Fund less (i) any Taxes, (ii) any Notice and Administration Costs, (iii) any Litigation Expenses awarded by the Court, (iv) any attorneys’ fees awarded by the Court, and (v) any other costs or fees approved by the Court) must submit valid Claim Forms with all required information no later than

July 5, 2023. As provided in the Notice, the Net Settlement Fund will be distributed among Class Members according to the plan of allocation approved by the Court.

95. Lead Counsel developed the proposed Plan of Allocation in consultation with Lead Plaintiff's damages expert. Lead Counsel believes that the Plan of Allocation provides a fair and reasonable method to equitably allocate the Net Settlement Fund among Class Members who suffered losses as a result of the conduct alleged in the Complaint.

96. The Plan of Allocation is included as Appendix A to the mailed Notice. *See* Notice, attached as Exhibit A to the Segura Decl., at Appendix A. As described in the Notice, calculations under the Plan of Allocation are not intended to be estimates of, nor indicative of, the amounts that Class Members might have been able to recover after trial or estimates of the amounts that will be paid to Authorized Claimants under the Settlement. Instead, the calculations under the Plan are only a method to weigh the claims of Class Members against one another for the purposes of making an equitable allocation of the Net Settlement Fund.

97. Lead Plaintiff alleges that Defendants made false statements and omitted material facts during the Class Period (*i.e.*, from April 28, 2017 through July 25, 2019, inclusive), which had the effect of artificially inflating the price of Mohawk common stock. Table A to the Plan of Allocation provides the estimated amount of alleged artificial inflation in the per share closing prices of Mohawk

common stock that was allegedly caused by Defendants' alleged misrepresentations and omissions. The estimated artificial inflation takes into account price changes in Mohawk common stock in reaction to certain public announcements allegedly revealing the truth concerning Defendants' alleged misrepresentations and omissions, adjusting for price changes that were attributable to market or industry forces. *See* Appendix A to Notice, ¶ 2.

98. Under the Plan of Allocation, a "Recognized Loss Amount" will be calculated for each purchase or acquisition of publicly traded Mohawk common stock during the Class Period that is listed in the Claim Form and for which adequate documentation is provided. The calculation of Recognized Loss Amounts will depend upon several factors, including: (a) when the shares of Mohawk common stock were purchased or otherwise acquired, and at what price; and (b) whether the Mohawk common stock shares were sold or held through the end of the Class Period or the 90-day look-back period under the PSLRA, and if the shares were sold, when and for what amounts. *Id.* at ¶¶ 3-5.

99. Claimants who purchased and sold all their shares of publicly traded Mohawk common stock before the first corrective disclosure, or who purchased and sold all their shares between two consecutive dates on which artificial inflation was allegedly removed from the price of Mohawk common stock (that is, they did not hold the shares over a date where artificial inflation was allegedly removed from the

stock price), will have no Recognized Loss Amount under the Plan of Allocation with respect to those transactions. *Id.*

100. Under the Plan of Allocation, the sum of a Claimant's Recognized Loss Amounts for all their purchases of publicly traded Mohawk common stock during the Class Period is the Claimant's "Recognized Claim," and the Net Settlement Fund will be allocated pro rata to Authorized Claimants based on the relative size of their Recognized Claims. *Id.* at ¶¶ 6, 15-16. Once the Claims Administrator has processed all submitted claims it will make the pro rata distributions to eligible Class Members, until additional re-distributions are no longer cost effective. *Id.* at ¶ 18. At such time, any remaining balance will be contributed to non-sectarian, not-for-profit, 501(c)(3) organization(s) approved by the Court. *Id.*

101. In sum, the Plan of Allocation was designed to fairly and rationally allocate the proceeds of the Net Settlement Fund among Class Members based on the losses they suffered on transactions in publicly traded Mohawk common stock that were attributable to the conduct alleged in the Complaint. Accordingly, Lead Counsel respectfully submits that the Plan of Allocation is fair and reasonable and should be approved by the Court.

102. As noted above, to date, 221,509 copies of the Notice, which contains the Plan of Allocation and advises Class Members of their right to object to the proposed Plan of Allocation, have been sent to potential Class Members and

nominees. *See Segura Decl.* ¶ 11. To date, no objections to the proposed Plan of Allocation have been received.

## **VII. THE FEE AND EXPENSE APPLICATION**

103. In addition to seeking final approval of the Settlement and Plan of Allocation, Lead Counsel is applying to the Court, on behalf of Plaintiff's Counsel, for an award of attorneys' fees in the amount of 25% of the Settlement Fund, net of Court-approved Litigation Expenses (the "Fee Application"). Lead Counsel also requests payment for expenses that Plaintiff's Counsel incurred in connection with the prosecution of the Action from the Settlement Fund in the amount of \$691,551.66 and reimbursement to Lead Plaintiff in the amount of \$32,450.00 for costs and expenses that it incurred directly related to its representation of the Class, in accordance with the PSLRA, 15 U.S.C. §78u-4(a)(4) (collectively, the "Expense Application").

104. The legal authorities supporting the requested fee and expenses are discussed in Lead Counsel's Fee Memorandum. The primary factual bases for the requested fee and expenses are summarized below.

### **A. The Fee Application**

105. For the efforts of Plaintiff's Counsel on behalf of the Class, Lead Counsel is applying for a fee award to be paid from the Settlement Fund on a percentage basis. As discussed in the accompanying Fee Memorandum, the

percentage method is the appropriate method of fee recovery because it aligns the lawyers' interest in being paid a fair fee with the Class's interest in achieving the maximum recovery in the shortest amount of time required under the circumstances and has been recognized as appropriate by the U.S. Supreme Court and the U.S. Court of Appeals for the Eleventh Circuit for cases of this nature.

106. Based on the quality of the result achieved, the extent and quality of the work performed, the significant risks of the litigation, and the fully contingent nature of the representation, Lead Counsel respectfully submits that the requested fee award is reasonable and should be approved. As discussed in the Fee Memorandum, a 25% fee award is the benchmark award for attorneys' fees in the Eleventh Circuit for common-fund cases such as this, and given the facts and circumstances of this case, is well within the range of percentages awarded in securities class actions in this Circuit and elsewhere in comparable settlements.

**1. Lead Plaintiff Has Authorized and Supports the Fee Application**

107. Lead Plaintiff MissPERS is a sophisticated institutional investor that closely supervised, monitored, and actively participated in the prosecution and settlement of the Action. *See* Beale Decl. ¶¶ 6-8, 12. Lead Plaintiff has evaluated the Fee Application and fully supports the fee requested. *Id.* at ¶ 10. After the agreement to settle the Action was reached, Lead Plaintiff reviewed the proposed fee and believes it is fair and reasonable in light of the result achieved for the Class, the work



performed by Plaintiff's Counsel, and the risks undertaken by counsel. *Id.* Lead Plaintiff's endorsement of Lead Counsel's fee request further demonstrates its reasonableness and should be given weight in the Court's consideration of the fee award.

## **2. The Time and Labor Devoted to the Action by Plaintiff's Counsel**

108. As defined above, Plaintiff's Counsel are the Court-appointed Lead Counsel BLB&G, Bondurant Mixson & Elmore LLP, liaison counsel for Lead Plaintiff and the Class, and Davidson Bowie, PLLC, additional counsel for Lead Plaintiff MissPERS.

109. As described above in greater detail, the work that Plaintiff's Counsel performed in this Action included: (i) conducting an extensive investigation into the alleged fraud, which included a detailed review of publicly-available documents such as SEC filings, analyst reports, conference call transcripts, press releases, news articles, and other publicly available sources of information concerning Mohawk; (ii) drafting the detailed 193-page Amended Complaint; (iii) successfully opposing Defendants' motion to dismiss the Amended Complaint; (iv) preparing and filing Lead Plaintiff's motion for class certification, which included the submission of an expert report on market efficiency and the availability of class-wide damages methodologies; (v) undertaking substantial fact discovery efforts, including producing over 100,000 pages of documents from Lead Plaintiff, drafting and

serving extensive discovery requests on Defendants and document subpoenas upon eighteen relevant nonparties, responding to document requests served by Defendants, serving and responding to interrogatories, engaging in several meet and confers with Defendants and third parties regarding the scope of discovery, and reviewing and analyzing nearly 1 million pages of documents produced by Defendants and third parties; (vi) taking or defending seventeen depositions of current and former Mohawk executives, Lead Plaintiff representatives, and experts regarding loss causation, damages, and market efficiency; (vii) consulting extensively throughout the litigation with experts regarding loss causation, damages, GAAP, and inventory accounting; (viii) engaging in extensive, arm's-length settlement negotiations to achieve the Settlement, including an all-day, in-person mediation session; and (ix) drafting and negotiating the Stipulation of Settlement and related settlement documentation.

110. Throughout the litigation, I, along with my partner, Jonathan D. Uslaner, maintained control of and monitored the work performed by other lawyers at BLB&G on this case. Specifically, most of the major tasks in the case—drafting sections of each pleading, discovery requests or responses, negotiating particular discovery issues with Defendants or third parties—were handled primarily by Mr. Uslaner or me, with the assistance of other lawyers on the team. More junior attorneys and paralegals worked on matters appropriate to their skill and experience

level. Throughout the litigation, Lead Counsel maintained an appropriate level of staffing that avoided unnecessary duplication of effort and ensured the efficient prosecution of the Action.

111. Attached hereto as Exhibits 4A, 4B, and 4C, respectively, are my declaration on behalf of BLB&G; the declaration of H. Lamar Mixson on behalf of Bondurant Mixson & Elmore LLP; and the declaration of John L. Davidson on behalf of Davidson Bowie, PLLC, in support of Lead Counsel's motion for an award of attorneys' fees and litigation expenses (the "Fee and Expense Declarations"). Each of the Fee and Expense Declarations includes a schedule summarizing the lodestar of the firm and the litigation expenses it incurred (if any), delineated by category. The Fee and Expense Declarations indicate the amount of time spent on the Action by the attorneys and professional support staff of each firm and the lodestar calculations based on their current hourly rates. The Fee and Expense Declarations were prepared from contemporaneous daily time records regularly maintained and prepared by the respective firms, which are available at the request of the Court. The first page of Exhibit 4 is a chart that summarizes the information set forth in the Fee and Expense Declarations, listing the total hours expended, lodestar amounts, and litigation expenses for each Plaintiff's Counsel's firm (if any), and gives totals for the numbers provided.

112. As set forth in Exhibit 4, Plaintiff's Counsel expended a total of 27,990.50 hours in the investigation, prosecution, and resolution of this Action through April 21, 2023. Lead Counsel will continue to invest substantial time and effort in this case after the April 21, 2023 cut-off imposed for its lodestar submission on this application. To date, the total lodestar is \$14,605,911.00, with the requested fee representing a "multiplier" of just 1.01. As discussed in further detail in the Fee Memorandum, the requested multiplier is at the low end of the range of fee multipliers typically awarded in comparable securities class actions and in other class actions involving significant contingency-fee risk, in this Circuit and elsewhere.

### **3. The Experience and Standing of Lead Counsel**

113. As demonstrated by BLB&G's résumé attached as Exhibit 4A-3 hereto, the Firm is among the most experienced and skilled law firms in the securities-litigation field, with a long and successful track record representing investors in cases of this kind, and is consistently ranked among the top plaintiffs' firms in the country. Further, BLB&G has taken complex cases like this to trial, and it is among the few firms with experience doing so on behalf of plaintiffs in securities class actions. I believe that this willingness and ability to take cases to trial added valuable leverage during the settlement negotiations.

#### **4. The Standing and Caliber of Defendants' Counsel**

114. The quality of the work performed by Lead Counsel in attaining the Settlement should also be evaluated in light of the quality of the opposition. Here, Mohawk was represented by Alston & Bird LLP and Defendant Lorberbaum was represented by Morvillo Abramowitz Grand Iason & Anello PC—both nationally prominent defense firms that vigorously represented their clients. In the face of this experienced, formidable, and well-financed opposition from some of the nation's top defense firms, Lead Counsel was nonetheless able to persuade Defendants to settle the case on terms that are favorable to the Class.

#### **5. The Need to Ensure the Availability of Competent Counsel in High-Risk Contingent Securities Cases**

115. The prosecution of these claims was undertaken entirely on a contingent-fee basis, and the considerable risks assumed by Lead Counsel in bringing this Action to a successful conclusion are described above. Those risks are relevant to the Court's evaluation of an award of attorneys' fees. Here, the risks assumed by Lead Counsel, and the time and expenses incurred by Lead Counsel without any payment, were extensive.

116. From the outset of its retention, Lead Counsel understood that it was embarking on a complex, expensive, and lengthy litigation with no guarantee of ever being compensated for the substantial investment of time and money the case would require. In undertaking that responsibility, Lead Counsel was obligated to ensure

that sufficient resources were dedicated to the prosecution of the Action and that funds were available to compensate staff and to cover the considerable litigation costs that a case like this requires. With an average lag time of several years for these cases to conclude, the financial burden on contingent-fee counsel is far greater than on a firm that is paid on an ongoing basis. Indeed, Lead Counsel received no compensation during the course of the Action and have incurred over \$690,000 in expenses in prosecuting the Action for the benefit of the Class.

117. Lead Counsel also bore the risk that no recovery would be achieved. As discussed above, from the outset, this case presented multiple risks and uncertainties that could have prevented any recovery whatsoever. Despite the most vigorous and competent efforts, success in contingent-fee litigation like this is never assured.

118. Lead Counsel knows from experience that the commencement and prosecution of a class action do not guarantee a settlement. To the contrary, it takes hard work and diligence by skilled counsel to develop the facts and legal arguments that are needed to sustain a complaint and win at class certification, summary judgment, and trial, or on appeal, or to cause sophisticated defendants to engage in serious settlement negotiations at meaningful levels.

119. Moreover, courts have repeatedly recognized that it is in public interest to have experienced and able counsel enforce the securities laws and regulations pertaining to the duties of officers and directors of public companies. As recognized

by Congress through the passage of the PSLRA, vigorous private enforcement of the federal securities laws can only occur if private investors, particularly institutional investors, take an active role in protecting the interests of shareholders. If this important public policy is to be carried out, the courts should award fees that adequately compensate plaintiffs' counsel, taking into account the risks undertaken in prosecuting a securities class action.

120. Lead Counsel's extensive and persistent efforts in the face of substantial risks and uncertainties have resulted in a significant recovery for the benefit of the Class.

#### **6. The Reaction of the Class to the Fee Application**

121. As stated above, through April 25, 2023, more than 221,000 Notice Packets have been mailed to potential Class Members advising them that Lead Counsel would apply for an award of attorneys' fees in an amount not to exceed 25% of the Settlement Fund. *See Segura Decl.* ¶ 11. In addition, the Court-approved Summary Notice was published in the *Wall Street Journal* and transmitted over the *PR Newswire*. *Id.* at ¶ 14. To date, no objections to the request for attorneys' fees have been received. Should any objections be submitted, they will be addressed in Lead Counsel's reply papers to be filed on May 24, 2023, after the deadline for submitting objections has passed.

## **B. The Litigation-Expense Application**

122. Lead Counsel also seeks payment from the Settlement Fund of \$691,551.66 in Litigation Expenses that were reasonably incurred by Plaintiff's Counsel in commencing, litigating, and settling the claims asserted in the Action.

123. From the outset of the Action, Lead Counsel have been cognizant of the fact that they might not recover any of their expenses, and, further, if there were to be payment of expenses, it would not occur until the Action was successfully resolved, often a period lasting several years. Lead Counsel also understood that, even assuming that the case was ultimately successful, payment of expenses would not necessarily compensate them for the lost funds advanced by them to prosecute the Action. Consequently, Lead Counsel were motivated to, and did, take significant steps to minimize expenses whenever practicable without jeopardizing the vigorous and efficient prosecution of the case.

124. As shown in Exhibit 4 hereto, Plaintiff's Counsel have incurred a total of \$691,551.66 in expenses prosecuting the Action. The expenses include, among others, charges for expert fees, mediation fees, online research, travel costs, and photocopying expenses. These expense items are incurred separately by Plaintiff's Counsel, and these charges are not duplicated in counsel's hourly rates.

125. Of the total amount of Plaintiff's Counsel's expenses, \$393,899.96, or approximately 57%, was incurred for the retention of experts. As noted above, Lead



Counsel consulted with experts in the fields of loss causation and damages during its investigation and the preparation of the Complaint, and consulted further with one of those experts during the settlement negotiations with Defendants and the development of the proposed Plan of Allocation. Lead Counsel also retained an expert analyzing issues related to GAAP, inventory accounting, inventory turnover, and per-unit cost accounting, who developed expert analysis related to accounting issues and Mohawk's inventory-related disclosures. In addition, Lead Counsel retained and worked closely with an expert in the flooring industry.

126. Another large component of the expenses for which payment is sought is Lead Plaintiff's share of the mediation costs paid to Phillips ADR for the services of Judge Phillips, which amount to \$80,713.25, or approximately 12% of the total expenses.

127. Another significant expenditure in this Action was for online legal and factual research, which was necessary to prepare the Amended Complaint, research the law pertaining to the claims asserted in the Action, oppose Defendants' motions to dismiss, and move for certification of the Class. The charges for online research amounted to \$73,288.70, or approximately 11% of the total expenses.

128. The other expenses for which Lead Counsel seek payment are the types of expenses that are necessarily incurred in litigation and routinely passed on to clients billed by the hour. These expenses include, among others, court reporting

charges, court fees, document management costs, costs of out-of-town travel, copying costs, telephone charges, and postage and delivery expenses.

129. All of the expenses incurred by Plaintiff's Counsel were reasonable and necessary to the successful litigation of the Action and have been approved by Lead Plaintiff. *See* Beale Decl. ¶ 10.

130. Additionally, Lead Plaintiff MissPERS seeks reimbursement of the reasonable costs and expenses that it incurred directly in connection with its representation of the Class. Such payments are expressly authorized and anticipated by the PSLRA, as more fully discussed in the Fee Memorandum. Lead Plaintiff seeks reimbursement of \$32,450.00 for the time expended in connection with the Action by Tricia Beale, Special Assistant Attorney General in the Office of the Attorney General of the State of Mississippi (the "OAG"), legal counsel to MissPERS, and others at the OAG and MissPERS. Throughout the course of this Action, Ms. Beale and her colleagues, including former Special Assistant Attorneys General Ta'Shia Gordon and Jacqueline H. Ray, and Special Assistant Attorney Amelia Gamble, spent a substantial amount of time communicating with Lead Counsel; reviewing and commenting on pleadings and motion papers filed in the Action; gathering and producing documents in response to discovery requests; participating in the mediation process; and consulting with Lead Counsel regarding the settlement negotiations. *See* Beale Decl. ¶ 6. Also, Ms. Gordon (former Special

Assistant Attorney General of the OAG) and Robert Clark (former Chief Investment Officer, MissPERS) were deposed in this Action in connection with Lead Plaintiff's motion for class certification, and Ms. Beale participated in the mediation session before Judge Phillips via video conference. *Id.* at ¶¶ 7-8.

131. The Notice informed potential Class Members that Lead Counsel would be seeking payment of Litigation Expenses in an amount not to exceed \$1,000,000, which might include an application for the reasonable costs and expenses incurred by Lead Plaintiff directly related to its representation of the Class. Notice ¶¶ 5, 57. The total amount requested, \$724,001.66, which includes \$691,551.66 for the expenses of Plaintiff's Counsel and \$32,450.00 for costs and expenses incurred by Lead Plaintiff, is significantly below the \$1,000,000 that Class Members were advised could be sought. To date, no objection has been raised as to the maximum amount of expenses set forth in the Notice.

132. The expenses incurred by Plaintiff's Counsel and Lead Plaintiff were reasonable and necessary to represent the Class and achieve the Settlement. Accordingly, Lead Counsel respectfully submits that the Litigation Expenses should be paid in full from the Settlement Fund.

I declare, under penalty of perjury, that the foregoing is true and correct.

Executed on April 26, 2023 in New York, New York.

*/s/ John C. Browne*

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John C. Browne

# **Exhibit 1**

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF GEORGIA  
ROME DIVISION**

PUBLIC EMPLOYEES'  
RETIREMENT SYSTEM OF  
MISSISSIPPI, individually and on  
behalf of all others similarly situated,

Plaintiff,

v.

MOHAWK INDUSTRIES, INC. and  
JEFFREY S. LORBERBAUM,

Defendants.

Civ. A. No. 4:20-cv-00005-VMC

**DECLARATION OF TRICIA BEALE, SPECIAL ASSISTANT  
ATTORNEY GENERAL, LEGAL COUNSEL TO THE PUBLIC  
EMPLOYEES' RETIREMENT SYSTEM OF MISSISSIPPI, IN  
SUPPORT OF: (I) LEAD PLAINTIFF'S MOTION FOR FINAL  
APPROVAL OF CLASS ACTION SETTLEMENT AND PLAN OF  
ALLOCATION; AND (II) LEAD COUNSEL'S MOTION FOR  
ATTORNEYS' FEES AND LITIGATION EXPENSES**

I, Tricia Beale, hereby declare under penalty of perjury as follows:

1. I submit this declaration, on behalf of the Public Employees' Retirement System of Mississippi ("MissPERS"), the Court-appointed Lead Plaintiff in this securities class action (the "Action"), in support of (i) Lead Plaintiff's motion for final approval of the proposed Settlement and approval of the proposed Plan of Allocation; and (ii) Lead Counsel's motion for an

award of attorneys' fees and Litigation Expenses, including an award to MissPERS commensurate with the time it dedicated to the Action, pursuant to the Private Securities Litigation Reform Act of 1995 (the "PSLRA").<sup>1</sup>

2. I am a Special Assistant Attorney General in the Office of the Attorney General of the State of Mississippi (the "OAG"), legal counsel to MissPERS, and I am authorized to make this declaration on behalf of MissPERS. I have personal knowledge of the matters testified in this declaration and, if called upon, I could and would testify competently thereto. The matters testified in this declaration are based on my personal knowledge and discussions with my current and former colleagues, including Special Assistant Attorneys General Ta'Shia Gordon, Jacqueline H. Ray, and Amelia Gamble, other members of the OAG, and MissPERS employees, and outside counsel and Court-appointed Lead Counsel and Class Counsel for the certified Class in the Action, Bernstein Litowitz Berger & Grossmann LLP ("BLB&G").

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<sup>1</sup> Unless otherwise defined herein, all capitalized terms have the meanings set forth in the Stipulation and Agreement of Settlement dated January 20, 2023 previously filed with the Court. *See* ECF No. 119-1.

3. MissPERS is a governmental defined-benefit pension plan qualified under Section 401(a) of the Internal Revenue Code for the benefit of current and retired employees of the State of Mississippi. MissPERS is responsible for the retirement income of employees of the State, including current and retired employees of the State's public-school districts, municipalities, counties, community colleges, state universities, libraries, and water districts. MissPERS provides benefits to over 116,000 retirees and beneficiaries, manages over \$31 billion in assets for its beneficiaries, and is responsible for providing retirement benefits to more than 236,000 current and former public employees.

4. As counsel for MissPERS, the OAG is responsible for, among other things, providing legal representation to MissPERS in securities and corporate governance litigation, including managing MissPERS's relationship with outside counsel. Under Mississippi constitutional, statutory, and common law, the OAG has the full executive authority to bring, decide, and settle cases on behalf of MissPERS.

**I. MissPERS's Oversight of the Action**

5. I am aware of and understand the requirements and responsibilities of a lead plaintiff in a securities class action, including those



set forth in the PSLRA. As legal counsel to MissPERS, I have overseen MissPERS's service as lead plaintiff in several securities class actions.

6. On behalf of MissPERS, I and my colleagues at the OAG had regular communications with BLB&G throughout the litigation. MissPERS, through my active and continuous involvement, as well as the involvement of my colleagues, closely supervised, carefully monitored, and was actively involved in all material aspects of the prosecution and resolution of the Action. The OAG received periodic status reports from BLB&G on case developments and participated in regular discussions with attorneys from BLB&G concerning the prosecution of the Action, the strengths of and risks to the claims, and potential settlement. In particular, throughout the course of this Action, I and my colleagues, including Special Assistant Attorneys General Gordon, Ray, and Gamble: (i) regularly communicated with Plaintiff's Counsel by email and telephone calls regarding the posture and progress of the case; (ii) reviewed and commented on all significant pleadings and briefs filed in the Action; (iii) oversaw MissPERS's involvement in the discovery process, including the production of over 100,000 pages of documents produced to Defendants in response to their requests; (iv) participated in the mediation process and consulted with

BLB&G concerning the settlement negotiations that occurred at, and following, the mediation session that ultimately led to the agreement in principle to settle the Action; and (v) evaluated and approved the proposed Settlement for \$60,000,000.00 in cash.

7. Ta'Shia Gordon (former Special Assistant Attorney General, Mississippi Attorney General's Office) and Robert Clark (former Chief Investment Officer, MissPERS) were deposed in this Action in connection with Lead Plaintiff's motion for class certification. Michael Lowry (Chief Technology Officer) assisted Lead Counsel in the collection of documents responsive to discovery request. Charles Nielsen (Interim Chief Investment Officer) assisted during the discovery process, including providing information to respond to interrogatory and other discovery requests.

8. I participated via video conference in the mediation session conducted before former United States District Judge Layn R. Phillips on June 8, 2022. In addition, the OAG, on behalf of MissPERS, evaluated and approved the mediator's recommendation issued by Judge Phillips that the Action be settled for \$60,000,000.00 in cash.

## **II. MissPERS Endorses Approval of the Settlement**

9. Based on its involvement throughout the prosecution and resolution of the Action, MissPERS believes that the proposed Settlement is fair, reasonable, and adequate and in the best interest of the Class. MissPERS believes that the proposed Settlement represents an excellent recovery for the Class, particularly given the risks in continued litigation, and it endorses approval of the Settlement by the Court.

## **III. MissPERS Supports Lead Counsel's Motion for an Award of Attorneys' Fees and Litigation Expenses**

10. MissPERS also believes that Lead Counsel's request for an award of attorneys' fees in the amount of 25% of the Settlement Fund, net of Court-approved Litigation Expenses, is fair and reasonable. MissPERS has evaluated Lead Counsel's fee request in light of the work performed, the risks of the litigation, the fees awarded in similar securities class action litigation, the result achieved, the skill required and the quality of work performed, and other relevant factors. MissPERS understands that Lead Counsel will also devote additional time in the future to administering the Settlement. MissPERS further believes that the Litigation Expenses requested by counsel are reasonable, and represent the costs and expenses that were necessary for the successful prosecution and resolution of this

case. Based on the foregoing, MissPERS fully supports Lead Counsel's motion for an award of attorneys' fees and Litigation Expenses.

11. In connection with Lead Counsel's request for Litigation Expenses, MissPERS seeks reimbursement for the time that it dedicated to the representation of the Class, which was time that ordinarily would have been dedicated to the work of MissPERS and the OAG.

12. As discussed above, my colleagues and I diligently oversaw the prosecution of the Action, including producing documents, providing deposition testimony, and attending the mediation. Below is a table listing the MissPERS and OAG personnel who contributed to the litigation, together with a conservative estimate of the time that they spent and their effective hourly rates. The hourly rates are the same as (or similar to) the rates that have been accepted by courts throughout the country when MissPERS has requested reimbursement of its attorney time.

<b>Personnel</b>	<b>Hours</b>	<b>Rate</b>	<b>Total</b>
Tricia Beale – Special Asst. Attorney General	30	\$250	\$7,500
Ta' Shia Gordon – Former Special Asst. Attorney General	40	\$250	\$10,000
Jacqueline H. Ray - Former Special Asst.	15	\$250	\$3,750

<b>Personnel</b>	<b>Hours</b>	<b>Rate</b>	<b>Total</b>
Attorney General			
Amelia Gamble - Special Asst. Attorney General	25	\$250	\$6,250
Michael Lowry – Chief Technology Officer	10	\$150	\$1,500
Charles Nielsen – Chief Investment Officer	3	\$150	\$450
Robert Clarke – Former Chief Investment Officer	20	\$150	\$3,000
<b>TOTALS</b>	<b>143</b>		<b>\$32,450</b>

13. Accordingly, MissPERS seeks a total of \$32,450 for the 143 hours it dedicated to representing the Class throughout the litigation.

#### **IV. Conclusion**

14. In conclusion, MissPERS was closely involved throughout the prosecution and settlement of the claims in the Action and strongly endorses the Settlement as fair, reasonable, and adequate, and believes it represents an excellent recovery for the Class. MissPERS further supports Lead Counsel’s attorneys’ fee and expense request, in light of the work performed, the recovery obtained for the Class, and the attendant litigation risks.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct, and that I have authority to execute this declaration on behalf of MissPERS.

Executed this 26th day of April, 2023.

A handwritten signature in black ink, appearing to read 'T. Beale', written over a horizontal line.

Tricia Beale

*Special Assistant Attorney General in  
the Office of the Attorney General of  
the State of Mississippi on behalf of the  
Public Employees' Retirement System  
of Mississippi*

# **Exhibit 2**

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF GEORGIA  
ROME DIVISION**

PUBLIC EMPLOYEES’  
RETIREMENT SYSTEM OF  
MISSISSIPPI, individually and on  
behalf of all others similarly situated,

Plaintiff,

v.

MOHAWK INDUSTRIES, INC. and  
JEFFREY S. LORBERBAUM,

Defendants.

Civ. A. No. 4:20-cv-00005-VMC

**DECLARATION OF LAYN R. PHILLIPS IN SUPPORT OF  
MOTION FOR FINAL APPROVAL OF SETTLEMENT**

I, Layn R. Phillips, declare as follows:

1. I submit this declaration in my capacity as the independent mediator in the above-captioned securities class action (“Action”) and in connection with the proposed settlement of claims asserted in the Action (the “Settlement”).<sup>1</sup>

2. I submit this declaration based on personal knowledge and am competent to so testify. While the mediation process is confidential, the parties to the Settlement (the “Parties”) have authorized me to inform the Court of the matters

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<sup>1</sup> Unless otherwise defined herein, all capitalized terms have the meanings set forth in the Stipulation and Agreement of Settlement dated January 20, 2023 previously filed with the Court (the “Stipulation”). *See* ECF No. 119-1.



set forth in this declaration in support of final approval of the Settlement. My statements and those of the Parties during the mediation process are subject to a confidentiality agreement and Federal Rule of Evidence 408, and there is no intention on either my part or the Parties' part to waive the agreement or the protections of Rule 408

## **I. BACKGROUND AND QUALIFICATIONS**

3. I am a former United States District Judge, a former United States Attorney, and a former litigation partner with the firm of Irell & Manella LLP. I currently serve as a mediator and arbitrator with my own alternative dispute resolution company, Phillips ADR Enterprises ("Phillips ADR"), which is based in Corona Del Mar, California. I am a member of the bars of Oklahoma, Texas, California, and the District of Columbia, as well as the United States Courts of Appeals for the Ninth and Tenth Circuits and the Federal Circuit.

4. I earned my Bachelor of Science in Economics as well as my J.D. from the University of Tulsa. I also completed two years of L.L.M. work at Georgetown University Law Center in the area of economic regulation of industry. After serving as an antitrust prosecutor and an Assistant United States Attorney in Los Angeles, California, I was nominated by President Reagan to serve as a United States Attorney in Oklahoma, where I served for approximately four years. Thereafter, I was nominated by President Reagan to serve as a United States District Judge for the

Western District of Oklahoma. While on the bench, I presided over more than 140 federal trials and sat by designation in the United States Court of Appeals for the Tenth Circuit. I also presided over cases in Texas, New Mexico, and Colorado.

5. I left the federal bench in 1991 and joined Irell & Manella LLP where, for 23 years, I specialized in alternative dispute resolution, complex civil litigation, and internal investigations. In 2014, I left Irell & Manella LLP and found my own company, Phillips ADR, which provides mediation and other alternative dispute resolution services.

6. Over the past 27 years, I have served as a mediator and arbitrator in connection with numerous large, complex cases, including securities cases such as this one.

## **II. THE PARTIES' ARM'S-LENGTH SETTLEMENT NEGOTIATIONS**

7. On June 8, 2022, counsel for Plaintiffs and Defendants participated in a full-day, mediation session before me in New York City.

8. In advance of the mediation session, the Parties exchanged and submitted detailed mediation statements and supporting exhibits addressing issues of liability, loss causation, and damages.

9. I, along with my staff, participated in pre-mediation calls with the Parties. During the mediation, counsel for the Parties presented arguments regarding their clients' respective positions. The work that went into the mediation submissions

and competing presentations and arguments was substantial.

10. During the mediation session, I engaged in extensive discussions with counsel on both sides in an effort to find common ground between the Parties' positions. At the end of the day on June 8, 2022, it was apparent to me and the parties that a negotiated resolution would not be reached at that time. We ended the June 8, 2022 mediation session without a settlement.

11. Over the next several months, I engaged in additional communications with counsel in an ongoing effort to resolve the dispute. On December 13, 2022, the Parties accepted my recommendation on a "double-blind" basis to settle the Action for \$60,000,000.00. Thereafter, the Parties negotiated and executed the Stipulation now before the Court, which sets forth the final terms and conditions of the Settlement.


12. This was an extremely hard-fought negotiation from beginning until the end and was conducted by experienced and able counsel on both sides. Throughout the mediation process, the negotiations between the Parties were vigorous and conducted at arm's-length and in good faith. Because the Parties made their mediation submissions and arguments in the context of a confidential mediation process pursuant to Federal Rule of Evidence 408, I cannot reveal their content. I can say, however, that the arguments and positions asserted by all involved were the product of substantial work, they were complex and highly adversarial.

### III. CONCLUSION

13. Based on my experience as a litigator, a former United States District Judge, and a mediator, I believe that the Settlement represents a recovery and outcome that is reasonable and fair for the Class and all parties involved. I further believe it was in the best interests of the Parties that they avoid the burdens and risks associated with taking a case of this size and complexity to trial. In sum, I support the Court's approval of the Settlement in all respects.

14. Lastly, I found that the advocacy on both sides of this case was outstanding. I have experience with attorneys from the law firms on both sides of this case, which are nationally recognized for their work prosecuting and defending large, complex securities class actions such as this. I am familiar with the effort, creativity, and zeal they put into their work. I expected that they would represent their clients in the same manner here, as they did. All counsel displayed the highest level of professionalism in carrying out their duties on behalf of their respective clients.

I declare under penalty of perjury that the foregoing facts are true and correct and that this declaration was executed this 20th day of April, 2023.

  
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LAYN R. PHILLIPS  
Former U.S. District Judge

# **Exhibit 3**

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF GEORGIA  
ROME DIVISION**

PUBLIC EMPLOYEES' RETIREMENT  
SYSTEM OF MISSISSIPPI, individually  
and on behalf of all others similarly  
situated,

Plaintiff,

v.

MOHAWK INDUSTRIES, INC. and  
JEFFREY S. LORBERBAUM,

Defendants.

Civ. A. No. 4:20-cv-00005-VMC

**DECLARATION OF LUIGGY SEGURA REGARDING:  
(A) MAILING OF THE NOTICE AND CLAIM FORM;  
(B) PUBLICATION OF THE SUMMARY NOTICE; AND  
(C) REPORT ON REQUESTS FOR EXCLUSION RECEIVED TO DATE**

I, LUIGGY SEGURA, declare as follows:

1. I am the Vice President of Securities Operations at JND Legal Administration ("JND"). Pursuant to the Court's February 3, 2023 Order (ECF No. 122) (the "Preliminary Approval Order"), JND was appointed to supervise and administer the notice procedure as well as the processing of claims in connection with the Settlement of the above-captioned action (the "Action").<sup>1</sup> I am over 21 years

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<sup>1</sup> Unless otherwise defined herein, all capitalized terms have the meanings set forth in the Stipulation and Agreement of Settlement dated January 13, 2023 (ECF No. 119-1) (the "Stipulation").

of age and am not a party to the Action. I have personal knowledge of the facts set forth herein and, if called as a witness, could and would testify competently thereto.

2. I submit this declaration in order to provide the Court and the parties to the Action with information regarding: (i) dissemination of the Court-approved Notice of (I) Pendency of Class Action and Proposed Settlement; (II) Settlement Hearing; and (III) Motion for Attorneys' Fees and Litigation Expenses (the "Notice") and the Proof of Claim and Release Form (the "Claim Form") (collectively, the "Notice Packet"); (ii) publication of the Summary Notice of (I) Pendency of Class Action and Proposed Settlement; (II) Settlement Hearing; and (III) Motion for Attorneys' Fees and Litigation Expenses (the "Summary Notice"); (iii) establishment of the website and toll-free telephone number dedicated to this Settlement; and (iv) the requests for exclusion from the Class received to date by JND.

### **DISSEMINATION OF THE NOTICE PACKET**

3. Pursuant to the Preliminary Approval Order, JND was responsible for disseminating the Notice Packet to potential Class Members. A copy of the Notice Packet, including the front and back of the outside of the envelope, is attached hereto as Exhibit A.<sup>2</sup>

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<sup>2</sup> As shown on Exhibit A, the outside of the envelope alerts recipients of the Notice Packet that they could get a payment from a class action settlement.

4. In connection with the initiation of the notice program, JND established a settlement database for this administration (the “Settlement Database”). The Settlement Database keeps a record of each person who is mailed a copy of the Notice Packet.

5. On February 8, 2023, Lead Counsel emailed to JND a data file provided by Defendants’ Counsel containing 277 unique names and addresses of potential Class Members. The data file was loaded into the Settlement Database, and on March 3, 2023, JND caused the Notice Packet to be sent by first-class mail to the 277 potential Class Members identified in the data file.

6. As in most actions of this nature, a large majority of potential Class Members are expected to be beneficial purchasers whose securities are held in “street name,” *i.e.*, the securities are purchased by brokerage firms, banks, and other institutions (referred to as “nominees” or “records holders”) in the name of the nominee, on behalf of the beneficial purchasers. JND maintains a proprietary database with names and addresses of the largest and most common nominees that purchase securities on behalf of beneficial owners (the “Nominee Database”). At the time of the initial mailing, JND’s Nominee Database contained 4,078 records. On March 3, 2023, JND caused Notice Packets to be sent by first-class mail to the 4,078 mailing records contained in its Nominee Database.



7. JND also researched filings with the U.S. Securities and Exchange Commission (SEC) on Form 13-F to identify additional institutions or entities who may have held Mohawk common stock during the Class Period. Based on this research, 1,834 address records were added to the list of potential Class Members. On March 3, 2023, JND caused Notice Packets to be sent by first-class mail to those potential Class Members.

8. In total, 6,189 Notice Packets were mailed to potential Class Members and nominees by first-class mail on March 3, 2023.

9. The Notice directed those who purchased or otherwise acquired Mohawk common stock during the Class Period, for the beneficial interest of a person or entity other than themselves, to either (i) within seven (7) calendar days of receipt of the Notice, request from JND sufficient copies of the Notice Packet to forward to all such beneficial owners and within seven (7) calendar days of receipt of those Notice Packets forward them to all such beneficial owners, or (ii) within seven (7) calendar days of receipt of the Notice, provide a list of the names, mailing addresses, and, if available, email addresses, of all such beneficial owners to JND (which would then mail copies of the Notice Packet to those persons).

10. Through April 25, 2023, JND has received 54,370 additional names and mailing addresses, and 482 email addresses,<sup>3</sup> of potential Class Members from individuals or nominees. JND has also received requests from nominees for 160,950 Notice Packets to be forwarded directly by the nominees to their customers. All such requests have been, and will continue to be, complied with and addressed in a timely manner.

11. Through April 25, 2023, a total of 221,509 Notice Packets have been mailed to potential Class Members and nominees.

12. In order to reduce the amount of potentially undeliverable Notice Packets, after receiving a mailing list with names and addresses of potential Class Member, JND runs the list through the United States Postal Service (“USPS”) National Change of Address (“NCOA”) database.<sup>4</sup> Based on its searches of the NCOA database, JND identified updated addresses for 270 potential Class Members prior to the initial mailing of the Notice Packet to those persons.

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<sup>3</sup> In the event that both an email address and mailing address were provided for the same potential Class Member, a Notice was both emailed and mailed.

<sup>4</sup> The NCOA database is the official USPS technology product which makes change of address information available to mailers to help reduce undeliverable mail pieces before mail enters the mail stream. This product is an effective tool to update address changes when a person has completed a change of address form with the USPS. The address information is maintained on the database for 48 months.

13. Through April 25, 2023, 497 mailed Notice Packets have been returned to the USPS as undelivered as addressed. The USPS has identified an updated address for 34 of the undelivered and returned Notice Packets, and the USPS has forwarded the Notice Packet to the updated address for each of those potential Class Members. For the 463 Notice Packets where an updated address was not identified by the USPS and which were returned to JND without a forwarding address, JND took reasonable efforts to research and determine an updated mailing address through sophisticated advance searches of credit bureau databases. As a result of those advanced address searches, through April 25, 2023, updated addresses were found for 42 potential Class Members to which JND remailed the Notice Packet.

#### **PUBLICATION OF THE SUMMARY NOTICE**

14. In accordance with Paragraph 5(d) of the Preliminary Approval Order, JND caused the Summary Notice to be published in *Wall Street Journal* and released via *PR Newswire* on March 14, 2023. Copies of proof of publication of the Summary Notice in *Wall Street Journal* and over *PR Newswire* are attached hereto as Exhibits B and C, respectively. The Summary Notice released via PR Newswire has been available online since its publication on March 14, 2023.

#### **SETTLEMENT WEBSITE**

15. On March 2, 2023, JND established a website (“Settlement Website”) dedicated to the Settlement, [www.MohawkIndustriesSecuritiesLitigation.com](http://www.MohawkIndustriesSecuritiesLitigation.com). The

address for the Settlement Website is set forth in the Notice Packet and in the Summary Notice. The Settlement Website includes information regarding the Action and the proposed Settlement, including the exclusion, objection, and claim filing deadlines, and details about the Court's Settlement Hearing. Copies of the Notice and Claim Form, as well as the Stipulation, Preliminary Approval Order, Preliminary Approval Motion, Complaint, Order Granting Class Certification, and Order Denying Defendants' Motion to Dismiss, are posted on the Settlement Website and are available for downloading. The Settlement Website contains a secure online filing portal that allows Class Members to file a claim and receive an emailed confirmation that their claim has been received by the Claims Administrator. The Settlement Website also contains a page setting forth the documentation requirements for filing a claim. The Settlement Website is accessible 24 hours a day, 7 days a week. JND will update the Settlement Website as necessary through the administration of the Settlement.

### **TELEPHONE HELPLINE**

16. On March 2, 2023, JND established a case-specific, toll-free telephone helpline, 1-877-415-0648, with an interactive voice response system and live operators, to accommodate potential Class Members with questions about the Action and the Settlement. The automated attendant answers the calls and presents callers with a series of choices to respond to basic questions. Callers requiring further help

have the option to be transferred to a live operator during business hours. JND continues to maintain the telephone helpline and will update the interactive voice response system as necessary through the administration of the Settlement.

### **STATUS CALLS AND INVOICES**

17. JND has conducted, and will continue to conduct, weekly status calls with Lead Counsel to provide updates on the notice program and settlement administration. JND has also provided, and will continue to provide, monthly invoices to Lead Counsel detailing the fees and expenses incurred by JND in connection with this administration.

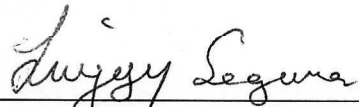
### **REPORT ON REQUESTS FOR EXCLUSION RECEIVED TO DATE**

18. The Notice informs potential Class Members that requests for exclusion from the Class are to be sent by mail or email. If submitted by mail, the request for exclusion must be postmarked no later than May 10, 2023, addressed to *Mohawk Industries Securities Litigation*, EXCLUSIONS, c/o JND Legal Administration, P.O. Box 91096, Seattle, WA 98111. If submitted by email, the request for exclusion must be submitted no later than May 10, 2023, emailed to [Info@MohawkIndustriesSecuritiesLitigation.com](mailto:Info@MohawkIndustriesSecuritiesLitigation.com), [JonathanU@blbglaw.com](mailto:JonathanU@blbglaw.com), and [Robert.Long@alston.com](mailto:Robert.Long@alston.com). Through April 25, 2023, JND has received one (1) request for exclusion. JND will submit a supplemental declaration after the May 10,

2023 deadline for requesting exclusion that will address all requests for exclusion received.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 26<sup>th</sup> day of April 2023, at New Hyde Park, New York.



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LUIGGY SEGURA

# EXHIBIT A

Dear Potential Class Member:

You have been identified as a potential current or former investor in Mohawk Industries, Inc. common stock. Enclosed is a Notice about the settlement of a class action lawsuit called *Public Employees' Retirement System of Mississippi v. Mohawk Industries, Inc., et al.*, No. 4:20-cv-00005-VMC, which is pending in the United States District Court for the Northern District of Georgia (the "Court"). You may be eligible to claim a payment from the settlement, or you may want to act on other legal rights. Important facts are highlighted below and explained in the Notice.

### Mohawk Industries, Inc. Securities Class Action Settlement

- **Security:** Mohawk Industries, Inc. ("Mohawk") common stock (CUSIP: 608190104).
- **Time Period:** Mohawk common stock purchased or otherwise acquired from April 28, 2017 through July 25, 2019, inclusive.
- **Settlement Amount:** \$60 million for investors (approximately \$0.94 per share if claims are submitted for each damaged share).
- **Reasons for Settlement:** Avoids costs, risks, and delays from continuing the lawsuit; pays money to damaged investors; and releases Defendants Mohawk and Jeffrey S. Lorberbaum from liability.
- **If the Case Had Not Settled:** The case would continue to summary judgment and, if not disposed at that stage, to trial. The Parties do not agree on the amount of damages that would be recoverable if Lead Plaintiff were to prevail at trial. Defendants do not agree that they violated the federal securities laws or that, even if liability could be established, any damages were suffered by any members of the Class as a result of their alleged conduct.
- **Attorneys' Fees and Expenses:** Court-appointed lawyers for investors will ask the Court for up to \$16 million (approximately \$0.25 per share if claims are submitted for each damaged share), to be paid out of the Settlement Fund, as fees and expenses for investigating the facts, litigating the case, and negotiating the settlement.
- **Deadlines:**
  - **Claims:** July 5, 2023.
  - **Exclusions:** May 10, 2023.
  - **Objections:** May 10, 2023.
  - **Court Hearing on Fairness of Settlement:** May 31, 2023, at 10:00 a.m.
- **More Information:** [www.MohawkIndustriesSecuritiesLitigation.com](http://www.MohawkIndustriesSecuritiesLitigation.com); or

Claims Administrator:

877-415-0648  
[info@MohawkIndustriesSecuritiesLitigation.com](mailto:info@MohawkIndustriesSecuritiesLitigation.com)

Mohawk Industries Securities Litigation  
c/o JND Legal Administration  
PO Box 91096  
Seattle, WA 98111

Lawyers for Investors:

800-380-8496  
[settlements@blbglaw.com](mailto:settlements@blbglaw.com)

Jonathan D. Uslander, Esq.  
Bernstein Litowitz Berger & Grossmann LLP  
2121 Avenue of the Stars, Suite 2575  
Los Angeles, CA 90067

Get more details in the enclosed Notice from the United States District Court for the Northern District of Georgia.



**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF GEORGIA  
ROME DIVISION**

PUBLIC EMPLOYEES' RETIREMENT  
SYSTEM OF MISSISSIPPI, individually and  
on behalf of all others similarly situated,

Plaintiff,

v.

MOHAWK INDUSTRIES, INC. and JEFFREY  
S. LORBERBAUM,

Defendants.

Civ. A. No. 4:20-cv-00005-VMC

**NOTICE OF (I) PENDENCY OF CLASS ACTION AND  
PROPOSED SETTLEMENT; (II) SETTLEMENT HEARING; AND  
(III) MOTION FOR ATTORNEYS' FEES AND LITIGATION EXPENSES**

***A Federal Court authorized this Notice. This is not a solicitation from a lawyer.***

**NOTICE OF PENDENCY OF CLASS ACTION:** Please be advised that your rights may be affected by the above-captioned securities class action ("Action") pending in the United States District Court for the Northern District of Georgia ("Court"), if you purchased or otherwise acquired the publicly traded common stock of Mohawk Industries, Inc. ("Mohawk" or the "Company") during the period from April 28, 2017 through July 25, 2019, inclusive (the "Class Period"), and were damaged thereby.<sup>1</sup>

**NOTICE OF SETTLEMENT:** Please also be advised that the Court-appointed Lead Plaintiff, Public Employees' Retirement System of Mississippi ("Lead Plaintiff" or "MissPERS"), on behalf of itself and the Class (as defined in ¶ 28 below), has reached a proposed settlement of the Action with Defendants (defined below) for **\$60,000,000** in cash that, if approved, will resolve all claims in the Action ("Settlement").

**PLEASE READ THIS NOTICE CAREFULLY. This Notice explains important rights you may have, including the possible receipt of cash from the Settlement. If you are a member of the Class, your legal rights will be affected whether or not you act.**

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<sup>1</sup> All capitalized terms used in this Notice that are not otherwise defined herein shall have the meanings ascribed to them in the Stipulation and Agreement of Settlement dated January 13, 2023 ("Stipulation"), which is available at [www.MohawkIndustriesSecuritiesLitigation.com](http://www.MohawkIndustriesSecuritiesLitigation.com).

**If you have questions about this Notice, the Settlement, or your eligibility to participate in the Settlement, please DO NOT contact the Court, the Clerk's Office, Defendants, or Defendants' Counsel. All questions should be directed to Lead Counsel or the Claims Administrator (see ¶ 75 below).**

1. **Description of the Action and the Class:** This Notice relates to the proposed Settlement of claims in a pending securities class action brought by investors against Mohawk and its Chief Executive Officer, Jeffrey S. Lorberbaum (together with Mohawk, "Defendants"). Lead Plaintiff alleges that Defendants violated the federal securities laws by making false and misleading statements and omissions about Mohawk's product quality, sales, and revenues during the Class Period. During the course of the Action, Defendants expressly denied and continue to deny that Lead Plaintiff has asserted any valid claims as to any of them, and expressly deny any and all allegations of fault, liability, wrongdoing, or damages whatsoever. A more detailed description of the Action is set forth in ¶¶ 11-27 below. The Settlement, if approved by the Court, will settle the claims of the Class, as defined in ¶ 28 below.

2. **Statement of the Class's Recovery:** Subject to Court approval, Lead Plaintiff, on behalf of itself and the Class, has agreed to settle the Action in exchange for a settlement payment of \$60,000,000 in cash ("Settlement Amount") to be deposited into an escrow account. The Net Settlement Fund (i.e., the Settlement Amount plus any and all interest earned thereon ("Settlement Fund") less: (i) any Taxes; (ii) any Notice and Administration Costs; (iii) any Litigation Expenses awarded by the Court; (iv) any attorneys' fees awarded by the Court; and (v) any other costs or fees approved by the Court) will be distributed in accordance with a plan of allocation approved by the Court, which will determine how the Net Settlement Fund shall be allocated among members of the Class. The proposed plan of allocation ("Plan of Allocation") is attached to this Notice as Appendix A.

3. **Estimate of Average Amount of Recovery Per Share:** Based on the estimated number of shares of Mohawk common stock purchased or otherwise acquired during the Class Period that may have been affected by the alleged conduct at issue in the Action, and assuming that all Class Members elect to participate in the Settlement, the estimated average recovery per eligible share of Mohawk common stock (before the deduction of any Court-approved fees, expenses, and costs as described herein) is approximately \$0.94 per share. **Class Members should note, however, that the foregoing average recovery per eligible share is only an estimate.** Class Members may recover more or less than this estimated amount depending on, among other factors: (i) when and the price at which they purchased/acquired shares of Mohawk common stock; (ii) whether they sold their shares of Mohawk common stock and, if so, when; and (iii) the total number and value of valid Claims submitted to participate in the Settlement. Distributions to Class Members will be made based on the Plan of Allocation attached to this Notice as Appendix A or such other plan of allocation as may be ordered by the Court.

4. **Average Amount of Damages Per Share:** The Parties do not agree on the amount of damages per share of Mohawk common stock that would be recoverable if Lead Plaintiff was to prevail at trial on the claims asserted against Defendants in the Action. Among other things, Defendants do not agree that they violated the federal securities laws or that, even if liability could be established, any damages were suffered by any members of the Class as a result of their alleged conduct.

5. **Attorneys’ Fees and Expenses Sought:** Plaintiffs’ Counsel<sup>2</sup> have not received any payment of attorneys’ fees for their representation of the Class in the Action and have advanced the funds to pay expenses incurred to prosecute this Action with the expectation that if they were successful in recovering money for the Class, they would receive fees and be paid for their expenses from the Settlement Fund, as is customary in this type of litigation. Prior to the final Settlement Hearing, Lead Counsel will apply to the Court for an award of attorneys’ fees on behalf of all Plaintiffs’ Counsel in an amount not to exceed 25% of the Settlement Fund. In addition, Lead Counsel will apply for payment of Litigation Expenses incurred by Plaintiffs’ Counsel in connection with the institution, prosecution, and resolution of the Action, in an amount not to exceed \$1,000,000, which amount may include a request for reimbursement of the reasonable costs and expenses incurred by Lead Plaintiff directly related to its representation of the Class. Any fees and expenses awarded by the Court will be paid from the Settlement Fund. Class Members are not personally liable for any such fees or expenses. The estimated average cost per eligible share of Mohawk common stock, if the Court approves Lead Counsel’s attorneys’ fees and Litigation Expenses application, is approximately \$0.25 per share. **Please note that this amount is only an estimate.**

6. **Identification of Attorneys’ Representatives:** Lead Plaintiff and the Class are represented by Jonathan D. Uslander, Esq. of Bernstein Litowitz Berger & Grossmann LLP, 2121 Avenue of the Stars, Suite 2575, Los Angeles, CA 90067, 800-380-8496, settlements@blbglaw.com.

7. **Reasons for the Settlement:** Lead Plaintiff’s principal reason for entering into the Settlement is the immediate cash benefit for the Class without the risk or the delays inherent in further litigation. The substantial cash benefit provided under the Settlement must be considered against the risk that a smaller recovery—or no recovery at all—might be achieved after a motion for summary judgment, a trial of the Action, and the likely appeals that would follow a trial, a process that could be expected to last several years. Defendants deny that Lead Plaintiff has asserted any valid claims as to any of them, and expressly deny any and all allegations of fault, liability, wrongdoing, or damages whatsoever, or any infirmity in the defenses that Defendants have, or could have, asserted. Defendants are entering into this Settlement solely to eliminate the uncertainty, burden, and expense of further protracted litigation.

<b>YOUR LEGAL RIGHTS AND OPTIONS IN THE SETTLEMENT:</b>	
<p><b>SUBMIT A CLAIM FORM (IF SUBMITTED BY MAIL, POSTMARKED NO LATER THAN JULY 5, 2023; IF SUBMITTED ONLINE, SUBMITTED NO LATER THAN JULY 5, 2023).</b></p>	<p>This is the only way to be eligible to receive a payment from the Settlement Fund. If you are a Class Member and you remain in the Class, you will be bound by the Settlement as approved by the Court and you will give up any Released Plaintiff’s Claims (defined in ¶ 39 below) that you have against Defendants and the other Defendants’ Releasees (defined in ¶ 40 below), so it is in your interest to submit a Claim Form.</p>

<sup>2</sup> Plaintiffs’ Counsel are Lead Counsel, Bernstein Litowitz Berger & Grossmann LLP (“BLB&G”); Bondurant Mixson & Elmore, LLP, liaison counsel for Lead Plaintiff and the Class; and Davidson Bowie, PLLC, additional counsel for Lead Plaintiff.

<b>YOUR LEGAL RIGHTS AND OPTIONS IN THE SETTLEMENT:</b>	
<p><b>EXCLUDE YOURSELF FROM THE CLASS BY SUBMITTING A WRITTEN REQUEST FOR EXCLUSION</b></p> <p><b>(IF SUBMITTED BY MAIL, POSTMARKED NO LATER THAN MAY 10, 2023; IF SUBMITTED BY EMAIL, SUBMITTED NO LATER THAN MAY 10, 2023).</b></p>	<p>If you exclude yourself from the Class, you will not be eligible to receive any payment from the Settlement Fund. This is the only option that may allow you to ever be part of any other lawsuit against Defendants or Defendants' Releasees concerning the Released Plaintiff's Claims.</p>
<p><b>OBJECT TO THE SETTLEMENT BY SUBMITTING A WRITTEN OBJECTION NO LATER THAN MAY 10, 2023.</b></p>	<p>If you do not like the proposed Settlement, the proposed Plan of Allocation, and/or the requested attorneys' fees and Litigation Expenses, you may object by writing to the Court and explaining why you do not like them. You cannot object unless you are a member of the Class and do not exclude yourself from the Class.</p>
<p><b>ATTEND A HEARING ON MAY 31, 2023, AT 10:00 A.M., AND FILE A NOTICE OF INTENTION TO APPEAR NO LATER THAN MAY 10, 2023.</b></p>	<p>Filing a written objection and notice of intention to appear by <b>May 10, 2023</b>, allows you to speak in Court, at the discretion of the Court, about the fairness of the proposed Settlement, the Plan of Allocation, and/or the request for attorneys' fees and Litigation Expenses. In the Court's discretion, the <b>May 31, 2023</b> hearing may be conducted by telephone or videoconference (<i>see</i> ¶¶ 65-66 below). If you submit a written objection, you may (but you do not have to) participate in the hearing and, at the discretion of the Court, speak to the Court about your objection.</p>
<p><b>DO NOTHING.</b></p>	<p>If you are a member of the Class and you do not submit a valid Claim Form, you will not be eligible to receive any payment from the Settlement Fund. You will, however, remain a member of the Class, which means that you give up your right to sue about the claims that are resolved by the Settlement and you will be bound by any judgments or orders entered by the Court in the Action.</p>

**These rights and options—and the deadlines to exercise them—are further explained in this Notice. Please Note: The date and time of the Settlement Hearing—currently scheduled for May 31, 2023, at 10:00 a.m.—is subject to change without further notice to the Class. It is also within the Court's discretion to hold the hearing in person or telephonically. If you plan to attend the hearing, you should check the Settlement website, [www.MohawkIndustriesSecuritiesLitigation.com](http://www.MohawkIndustriesSecuritiesLitigation.com), or with Lead Counsel as set forth above to confirm that no change to the date and/or time of the hearing has been made.**

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## WHY DID I GET THIS NOTICE?

8. The Court authorized that this Notice be sent to you because you or someone in your family or an investment account for which you serve as custodian may have purchased or otherwise acquired shares of Mohawk common stock during the Class Period. The Court has directed us to send you this Notice because, as a potential Class Member, you have the right to understand how this class action lawsuit may generally affect your legal rights. If the Court approves the Settlement and the Plan of Allocation (or some other plan of allocation), the Claims Administrator selected by Lead Plaintiff and approved by the Court will make payments pursuant to the Settlement after any objections and appeals are resolved.

9. The purpose of this Notice is to inform you of the existence of this case, that it is a class action, how you (if you are a Class Member) might be affected, and how to exclude yourself from the Class if you wish to do so. It is also being sent to inform you of the terms of the proposed Settlement and of a hearing to be held by the Court to consider the fairness, reasonableness, and adequacy of the Settlement, the proposed Plan of Allocation, and Lead Counsel's motion for an award of attorneys' fees and Litigation Expenses ("Settlement Hearing"). See ¶¶ 65-66 below for details about the Settlement Hearing, including the date and location of the hearing.

10. The issuance of this Notice is not an expression of any opinion by the Court concerning the merits of any claim in the Action, and the Court still has to decide whether to approve the Settlement. If the Court approves the Settlement and a plan of allocation, then payments to Authorized Claimants will be made after any appeals are resolved and after the completion of all claims processing. Please be patient, as this process can take some time.

## WHAT IS THIS CASE ABOUT?

11. Mohawk is a manufacturer of flooring products, including carpet, tile, stone, wood, and luxury vinyl tile (“LVT”). At all relevant times, Mohawk common stock traded on the New York Stock Exchange under the ticker symbol “MHK.” Mohawk is a Delaware corporation with its headquarters located in Calhoun, Georgia.

12. On January 3, 2020, MissPERS filed a class action complaint, styled *Public Employees’ Retirement System of Mississippi v. Mohawk Industries, Inc., et al.*, Civil Action 4:20-cv-00005 (N.D. Ga.), asserting violations of federal securities laws against Mohawk and certain of its senior executives. In accordance with the Private Securities Litigation Reform Act of 1995 (“PSLRA”), 15 U.S.C. § 78u-4, *et seq.*, notice to the public was issued stating the deadline by which putative class members could move the Court for appointment as lead plaintiff.

13. On March 3, 2020, MissPERS moved for appointment as Lead Plaintiff of this Action. On March 18, 2020, the Court entered an Order appointing MissPERS as Lead Plaintiff for the Action, and approving MissPERS’s selection of BLB&G as Lead Counsel for the proposed class.

14. On June 29, 2020, Lead Plaintiff filed and served the Consolidated Class Action Complaint for Violations of the Federal Securities Laws (the “Complaint”) asserting claims against Defendants under Section 10(b) of the Securities Exchange Act of 1934 (the “Exchange Act”) and Rule 10b-5 promulgated thereunder, and against Defendant Lorberbaum under Section 20(a) of the Exchange Act. Among other things, the Complaint alleges that Mohawk engaged in a fraudulent scheme to fabricate revenues through fictitious “sales” of products that were not delivered to customers and that Defendants made repeated false statements to mispresent and conceal the truth about the quality of Mohawk’s LVT and the reasons for the Company’s rising inventory levels and slowing inventory turnover. The Complaint further alleges that the price of Mohawk common stock was artificially inflated as a result of Defendants’ allegedly false and misleading statements and declined when the truth was allegedly revealed.

15. On October 27, 2020, Defendants filed and served a motion to dismiss the Complaint. On December 28, 2020, Lead Plaintiff filed and served a memorandum of law in opposition to Defendants’ motion to dismiss, and on January 27, 2021, Defendants filed and served reply papers in support of their motion.

16. On September 29, 2021, the Court entered an Order denying, in part, and granting, in part, Defendants’ motion to dismiss.

17. On November 12, 2021, Defendants served and filed their Answers, Defenses, and Affirmative Defenses to the Complaint.

18. Discovery in the Action commenced in November 2021. The Parties prepared and served initial disclosures, requests for production of documents, and interrogatories, exchanged correspondence concerning discovery issues, and Lead Plaintiff served document subpoenas on third parties. Defendants and third parties produced a total of over 800,000 pages of documents to Lead Plaintiff, and Lead Plaintiff produced over 100,000 pages of documents to Defendants in response to their requests.

19. On January 26, 2022, Lead Plaintiff filed its motion for class certification and supporting papers (the “Class Certification Motion”). The Class Certification Motion was

accompanied by a report from Lead Plaintiff's expert, Dr. Michael L. Hartzmark, Ph.D., which opined that Mohawk's common stock traded in an efficient market during the Class Period and that per-share damages could be measured for all Class Members using a common methodology. On April 13, 2022, Defendants filed their opposition to the Class Certification Motion, and on June 8, 2022, Lead Plaintiff filed reply papers in further support of its motion.

20. On April 11, 2022, while the Class Certification Motion was pending, the Action was transferred from Judge Eleanor L. Ross to Judge Victoria M. Calvert for all further proceedings.

21. On June 8, 2022, following the submission of written position statements and supporting exhibits, the Parties participated in an in-person, all-day mediation before former United States District Court Judge Layn R. Phillips of Phillips ADR Enterprises, P.C. At the mediation session, the Parties engaged in vigorous settlement negotiations with the assistance of Judge Phillips but were unable to agree upon the terms of a settlement.

22. Subsequently, the Parties engaged in extensive discovery, including 17 depositions. Lead Plaintiff deposed Defendants' expert witness, 12 current and former Mohawk employees, and noticed depositions of 7 additional fact witnesses. Defendants deposed Lead Plaintiff's expert witness, a representative for Lead Plaintiff, and two of Lead Plaintiff's investment managers.

23. On November 28, 2022, the Court granted the Class Certification Motion, certifying the proposed Class, appointing MissPERS as Class Representative, and appointing BLB&G as Class Counsel.

24. Periodically throughout discovery, the Parties continued to discuss the possible resolution of the Action through settlement with the assistance and oversight of the mediator, Judge Phillips.

25. On December 12, 2022, after continued discussions with the Parties, Judge Phillips issued a mediator's recommendation for Lead Plaintiff to settle the Action on behalf of the Class in return for Mohawk's payment of \$60,000,000 for the benefit of the Class, subject to certain terms and conditions and the execution of a customary "long form" stipulation and agreement of settlement and related papers. On December 13, 2022, the Parties accepted the mediator's recommendation.

26. On January 13, 2023, the Parties entered into a Stipulation and Agreement of Settlement (the "Stipulation"), which sets forth the full terms and conditions of the Settlement. The Stipulation can be viewed at [www.MohawkIndustriesSecuritiesLitigation.com](http://www.MohawkIndustriesSecuritiesLitigation.com).

27. On February 6, 2023, the Court preliminarily approved the Settlement, authorized notice of the Settlement to potential Class Members, and scheduled the Settlement Hearing to consider whether to grant final approval of the Settlement.

**HOW DO I KNOW IF I AM AFFECTED BY THE SETTLEMENT?  
WHO IS INCLUDED IN THE CLASS?**

28. If you are a member of the Class, you are subject to the Settlement, unless you timely request to be excluded from the Class. The Class certified by the Court consists of:

**all persons or entities who purchased or otherwise acquired publicly traded common stock of Mohawk during the period from April 28, 2017 through July 25, 2019, inclusive (the “Class Period”), and who were damaged thereby (the “Class”).**

Excluded from the Class are: (i) Defendants; (ii) the Officers and directors of Mohawk at all relevant times; (iii) members of the Officers’ or directors’ Immediate Families and their legal representatives, heirs, agents, affiliates, successors, or assigns; (iv) Defendants’ liability insurance carriers, and any affiliates or subsidiaries thereof; and (v) any entity in which Defendants or their Immediate Families have or had a controlling interest. Also excluded from the Class are any persons or entities that exclude themselves by submitting a request for exclusion that is accepted by the Court. *See* “What If I Do Not Want To Be A Member Of The Class? How Do I Exclude Myself,” on page 13 below.

**Please note: Receipt of this Notice does not mean that you are a Class Member or that you will be entitled to receive proceeds from the Settlement.**

**If you wish to be eligible to participate in the distribution of proceeds from the Settlement, you are required to submit the Claim Form that is being distributed with this Notice and the required supporting documentation by the deadline. If submitting the Claim Form and the required supporting documentation by mail, your mailing must be postmarked no later than July 5, 2023. If submitting the Claim Form and the required supporting documentation online, you must submit them no later than July 5, 2023.**

#### **WHAT ARE LEAD PLAINTIFF’S REASONS FOR THE SETTLEMENT?**

29. Lead Plaintiff and Lead Counsel believe that the claims asserted against Defendants have merit. They recognize, however, the significant expense and length of the continued proceedings that would be necessary to pursue their claims against Defendants through the completion of discovery, a potential appeal of the certification of the class, summary judgment, trial, and post-trial appeals, as well as the substantial risks they would face in establishing liability and damages.

30. Defendants have denied, and would continue to deny, that they violated the federal securities laws. Among other things, Defendants deny that they improperly recognized revenue associated with undelivered sales and maintain that they made truthful disclosures about Mohawk’s LVT quality and inventories. They also believe that, in any event, they did not act with “scienter,” or fraudulent intent, when they made the alleged misstatements.

31. Lead Plaintiff also faced risks relating to loss causation and damages. Defendants would continue to argue, at summary judgment and at trial, that Lead Plaintiff could not establish a causal connection between the alleged misrepresentations and the losses investors allegedly suffered, as required by law, and that even if Lead Plaintiff were able to establish such a causal connection, the damages actually associated with the revelation of the truth about the misrepresentations alleged in the Complaint is small.

32. In sum, there were a number of very significant risks attendant to the continued prosecution of the Action, including the risk of zero recovery. The Settlement eliminates these risks. It also eliminates the risk and costs attendant with the delay inherent in further litigation.

33. In light of these risks, the amount of the Settlement, and the immediacy of recovery to the Class, Lead Plaintiff and Lead Counsel believe that the proposed Settlement is fair,



reasonable, and adequate, and in the best interests of the Class. Lead Plaintiff and Lead Counsel believe that the Settlement provides a favorable result for the Class, namely \$60,000,000 in cash (less the various deductions described in this Notice), as compared to the risk that the claims in the Action would produce a smaller, or no, recovery after full discovery, an appeal of the class certification motion, summary judgment, trial, and post-trial appeals, possibly years in the future.

### **WHAT MIGHT HAPPEN IF THERE WERE NO SETTLEMENT?**

34. If there were no Settlement, and Lead Plaintiff failed to establish any essential legal or factual element of their claims against Defendants, neither Lead Plaintiff nor the other members of the Class would recover anything from Defendants. Also, if Defendants were successful in establishing any of their defenses either at summary judgment, at trial, or on appeal, the Class could recover less than the amount provided in the Settlement, or nothing at all.

### **HOW ARE CLASS MEMBERS AFFECTED BY THE ACTION AND THE SETTLEMENT?**

35. As a Class Member, you are represented by Lead Plaintiff and Lead Counsel, unless you enter an appearance through counsel of your own choice and at your own expense. You are not required to retain your own counsel, but if you choose to do so, such counsel must file a notice of appearance on your behalf and must serve copies of his or her appearance on the attorneys listed in the section entitled “When And Where Will The Court Decide Whether To Approve The Settlement?” on page 14 below.

36. If you are a Class Member and do not wish to remain a Class Member, you must exclude yourself from the Class by following the instructions in the section entitled “What If I Do Not Want To Be A Member Of The Class? How Do I Exclude Myself?” on page 13 below.

37. If you are a Class Member and you wish to object to the Settlement, the Plan of Allocation, and/or Lead Counsel’s application for an award of attorneys’ fees and Litigation Expenses, and if you do not exclude yourself from the Class, you may present your objections by following the instructions in the section entitled “When And Where Will The Court Decide Whether To Approve The Settlement?” on page 14 below.

38. If you are a Class Member and you do not exclude yourself from the Class, you will be bound by any orders issued by the Court. If the Settlement is approved, the Court will enter a judgment (“Judgment”). The Judgment will dismiss with prejudice the claims against Defendants and will provide that, upon the Effective Date of the Settlement, Lead Plaintiff and each of the other Class Members, on behalf of themselves, and their respective heirs, executors, administrators, predecessors, successors, and assigns in their capacities as such, shall be deemed to have, and by operation of law and of the judgment shall have, fully, finally, and forever compromised, settled, released, resolved, relinquished, waived, and discharged any or all of the Released Plaintiff’s Claims (as defined in ¶ 39 below) against Defendants and the other Defendants’ Releasees (as defined in ¶ 40 below), and shall forever be barred and enjoined from prosecuting any or all of the Released Plaintiff’s Claims against any of the Defendants’ Releasees.

39. “Released Plaintiff’s Claims” means all claims, rights, liabilities, and causes of action of every nature and description, whether known claims or Unknown Claims, whether arising

under federal, state, common, or foreign law, that Lead Plaintiff or any other member of the Class: (i) asserted in the Complaint, or (ii) could have asserted in any forum that arise out of or are based upon the allegations, transactions, facts, matters or occurrences, representations, or omissions involved, set forth, or referred to in the Complaint *and* that relate to the purchase or acquisition of publicly traded Mohawk common stock during the Class Period. Released Plaintiff's Claims do not include: (i) any claims asserted in *Dustin Evans v. Mohawk Industries, Inc.*, No. 20C-01-259 AML (Del. Super. Ct.), or in any ERISA or derivative action, including *In re Mohawk Industries, Inc. Derivative Litigation*, Lead Case No. 4:20-cv-00110-ELR (N.D. Ga.), *City of Southfield Fire and Police Retirement System v. Lorberbaum, et al.*, No. 21-cv-71519 (Superior Court of Gordon County of the State of Georgia), *Treibits v. Lorberbaum, et al.*, No. 21-cv-71127 (Superior Court of Gordon County of the State of Georgia), and *Taylor v. Lorberbaum et al.*, No. 2022-0224-LWW (Del. Ch.), or any cases consolidated into the foregoing actions; (ii) any claims relating to the enforcement of the Settlement; or (iii) any claims of any person or entity who or which submits a request for exclusion that is accepted by the Court.

40. "Defendants' Releasees" means Defendants and their current and former parents, affiliates, subsidiaries, officers, directors, agents, successors, predecessors, assigns, assignees, partnerships, partners, trustees, trusts, employees, Immediate Family Members, insurers, reinsurers, and attorneys.

41. "Unknown Claims" means any Released Plaintiff's Claims which Lead Plaintiff or any other Class Member does not know or suspect to exist in his, her, or its favor at the time of the release of such claims, and any Released Defendants' Claims which any Defendant does not know or suspect to exist in his or its favor at the time of the release of such claims, which, if known by him or it, might have affected his or its decision(s) with respect to this Settlement. With respect to any and all Released Claims, the Parties stipulate and agree that, upon the Effective Date of the Settlement, Lead Plaintiff and Defendants shall expressly waive, and each of the other Class Members shall be deemed to have waived, and by operation of the Judgment or the Alternate Judgment, if applicable, shall have expressly waived, any and all provisions, rights, and benefits conferred by any law of any state or territory of the United States, or principle of common law or foreign law, which is similar, comparable, or equivalent to California Civil Code §1542, which provides:

A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.

Lead Plaintiff, Defendants, and Class Members may hereafter discover facts in addition to or different from those which he, she or it now knows or believes to be true with respect to the subject matter of Released Claims, but Lead Plaintiff and Defendants shall expressly, fully, finally, and forever settle and release, and each Class Member, upon the Effective Date, shall be deemed to have, and by operation of the Judgment shall have, fully, finally, and forever settled and released, any and all Released Claims without regard to the subsequent discovery or existence of such different or additional facts. Lead Plaintiff and Defendants acknowledge, and each of the other Class Members shall be deemed by operation of law to have acknowledged, that the foregoing waiver was separately bargained for and a key element of the Settlement.

42. Pursuant to the Judgment, or the Alternate Judgment, if applicable, without further action by anyone, upon the Effective Date of the Settlement, Defendants, on behalf of themselves, and their respective heirs, executors, administrators, predecessors, successors, and assigns in their capacities as such, shall be deemed to have, and by operation of law and of the judgment shall have, fully, finally, and forever compromised, settled, released, resolved, relinquished, waived, and discharged any or all of the Released Defendants' Claims (as defined in ¶ 43 below) against Lead Plaintiff and the other Plaintiff's Releasees (as defined in ¶ 44 below), and shall forever be barred and enjoined from prosecuting any or all of the Released Defendants' Claims against any of the Plaintiff's Releasees.

43. "Released Defendants' Claims" means all claims, rights, liabilities, and causes of action of every nature and description, whether known claims or Unknown Claims, whether arising under federal, state, common, or foreign law, that arise out of or relate in any way to the institution, prosecution, or settlement of the claims asserted in the Action against Defendants. Released Defendants' Claims do not include: (i) any claims relating to the enforcement of the Settlement; or (ii) any claims against any person or entity who or which submits a request for exclusion from the Class that is accepted by the Court.

44. "Plaintiff's Releasees" means Lead Plaintiff, all other plaintiffs in the Action, and all other Class Members, and their respective current and former parents, affiliates, subsidiaries, officers, directors, agents, successors, predecessors, assigns, assignees, partnerships, partners, trustees, trusts, employees, Immediate Family Members, insurers, reinsurers, and attorneys.

### HOW DO I PARTICIPATE IN THE SETTLEMENT? WHAT DO I NEED TO DO?

45. To be eligible for a payment from the proceeds of the Settlement, you must be a member of the Class and you must timely complete and submit the Claim Form, with adequate supporting documentation, either by mail or online. **If mailed, the Claim Form and adequate supporting documentation must be *postmarked* no later than July 5, 2023, addressed to *Mohawk Industries Securities Litigation, c/o JND Legal Administration, P.O. Box 91096, Seattle, WA 98111*. If submitted online at [www.MohawkIndustriesSecuritiesLitigation.com](http://www.MohawkIndustriesSecuritiesLitigation.com), the Claim Form and adequate supporting documentation must be *submitted* no later than July 5, 2023.** A Claim Form is included with this Notice, or you may obtain one from the website maintained by the Claims Administrator, [www.MohawkIndustriesSecuritiesLitigation.com](http://www.MohawkIndustriesSecuritiesLitigation.com), or you may request that a Claim Form be mailed to you by calling the Claims Administrator toll free at 877-415-0648, or by emailing the Claims Administrator at [Info@MohawkIndustriesSecuritiesLitigation.com](mailto:Info@MohawkIndustriesSecuritiesLitigation.com). **Please retain all records of your ownership of and transactions in Mohawk common stock, as they may be needed to document your Claim.** If you request exclusion from the Class or do not submit a timely and valid Claim Form, you will not be eligible to share in the Net Settlement Fund.

## HOW MUCH WILL MY PAYMENT BE?

46. At this time, it is not possible to make any determination as to how much any individual Class Member may receive from the Settlement.

47. Pursuant to the Settlement, Mohawk, on behalf of Defendants, shall cause to be paid \$60,000,000 in cash. The Settlement Amount will be deposited into an escrow account. The Settlement Amount plus any interest earned thereon is referred to as the “Settlement Fund.” If the Settlement is approved by the Court and the Effective Date occurs, the “Net Settlement Fund” (that is, the Settlement Fund less: (i) any Taxes; (ii) any Notice and Administration Costs; (iii) any Litigation Expenses awarded by the Court; (iv) any attorneys’ fees awarded by the Court; and (v) any other costs or fees approved by the Court) will be distributed to Class Members who submit valid Claim Forms, in accordance with the proposed Plan of Allocation or such other plan of allocation as the Court may approve.

48. The Net Settlement Fund will not be distributed to Class Members unless and until the Court has approved the Settlement and a plan of allocation, and the time for any petition for rehearing, appeal, or review, whether by certiorari or otherwise, has expired.

49. Neither Defendants, the Defendants’ Releasees, nor any other person or entity who or which paid any portion of the Settlement Amount on their behalf are entitled to get back any portion of the Settlement Fund once the Court’s order or Judgment approving the Settlement becomes Final. Defendants and the other Defendants’ Releasees shall not have any liability, obligation, or responsibility for the administration of the Settlement, the disbursement of the Net Settlement Fund, or the Plan of Allocation.

50. Approval of the Settlement is independent from approval of a plan of allocation. Any determination with respect to a plan of allocation will not affect the Settlement, if approved.

51. Unless the Court otherwise orders, any Class Member who fails to submit a Claim Form by the deadline (*i.e.*, postmarked no later than **July 5, 2023** if submitted by mail, and submitted no later than **July 5, 2023** if submitted online) shall be fully and forever barred from receiving payments pursuant to the Settlement but will in all other respects remain a Class Member and be subject to the provisions of the Stipulation, including the terms of any Judgment entered and the Releases given. This means that each Class Member releases the Released Plaintiff’s Claims (as defined in ¶ 39 above) against the Defendants’ Releasees (as defined in ¶ 40 above) and will be permanently barred and enjoined from bringing any action, claim, or other proceeding of any kind against the Defendants’ Releasees with respect to the Released Plaintiff’s Claims whether or not such Class Member submits a Claim Form.

52. Participants in and beneficiaries of any employee retirement and/or benefit plan covered by ERISA (“ERISA Plan”) should NOT include any information relating to shares of Mohawk common stock purchased/acquired through the ERISA Plan in any Claim Form they submit in this Action. They should include ONLY those eligible shares of Mohawk common stock purchased/acquired during the Class Period outside of an ERISA Plan. Claims based on any ERISA Plan’s purchases/acquisitions of Mohawk common stock during the Class Period may be made by the plan’s trustees.

53. The Court has reserved jurisdiction to allow, disallow, or adjust on equitable grounds the Claim of any Class Member.

54. Each Claimant shall be deemed to have submitted to the jurisdiction of the Court with respect to his, her, or its Claim Form.

55. Only Class Members will be eligible to share in the distribution of the Net Settlement Fund. Persons and entities who are excluded from the Class by definition or who exclude themselves from the Class pursuant to an exclusion request will not be eligible to receive a distribution from the Net Settlement Fund and should not submit Claim Forms. The only security that is included in the Settlement is public traded Mohawk common stock.

56. **Appendix A to this Notice sets forth the Plan of Allocation for allocating the Net Settlement Fund among Authorized Claimants, as proposed by Lead Plaintiff. At the Settlement Hearing, Lead Counsel will request that the Court approve the Plan of Allocation. The Court may modify the Plan of Allocation, or approve a different plan of allocation, without further notice to the Class.**

**WHAT PAYMENT ARE THE ATTORNEYS FOR THE CLASS SEEKING?  
HOW WILL THE LAWYERS BE PAID?**

57. Plaintiffs' Counsel have not received any payment for their services in pursuing claims against Defendants on behalf of the Class; nor have Plaintiffs' Counsel been paid for their litigation expenses. Before final approval of the Settlement, Lead Counsel will apply to the Court for an award of attorneys' fees for all Plaintiffs' Counsel in an amount not to exceed 25% of the Settlement Fund. At the same time, Lead Counsel also intends to apply for payment from the Settlement Fund of Plaintiffs' Counsel's Litigation Expenses and may apply for reimbursement of the reasonable costs and expenses incurred by Lead Plaintiff directly related to its representation of the Class, in a total amount not to exceed \$1,000,000. The Court will determine the amount of any award of attorneys' fees or Litigation Expenses. Such sums as may be approved by the Court will be paid from the Settlement Fund. Class Members are not personally liable for any such fees or expenses.

**WHAT IF I DO NOT WANT TO BE A MEMBER OF THE CLASS?  
HOW DO I EXCLUDE MYSELF?**

58. Each Class Member will be bound by all determinations and judgments in this lawsuit related to the Settlement, whether favorable or unfavorable, unless such person or entity submits a written request for exclusion by mail or email. If submitted by mail, the request for exclusion must be **postmarked no later than May 10, 2023**, addressed to: *Mohawk Industries Securities Litigation*, EXCLUSIONS, c/o JND Legal Administration, P.O. Box 91096, Seattle, WA 98111. If submitted by email, the request for exclusion must be **submitted no later than May 10, 2023**, emailed to [Info@MohawkIndustriesSecuritiesLitigation.com](mailto:Info@MohawkIndustriesSecuritiesLitigation.com), [JonathanU@blbglaw.com](mailto:JonathanU@blbglaw.com), and [Robert.Long@alston.com](mailto:Robert.Long@alston.com). You will not be able to exclude yourself from the Class after that date.

59. Each request for exclusion must: (i) state the name, address, and telephone number of the person or entity requesting exclusion, and in the case of entities, the name and telephone number of the appropriate contact person; (ii) state that such person or entity "requests exclusion from the Class in *Public Employees' Retirement System of Mississippi v. Mohawk Industries, Inc., et al.*, Civil Action No. 4:20-cv-00005-VMC (N.D. Ga.)"; (iii) state the number of shares of Mohawk common stock that the person or entity requesting exclusion (A) owned as of the opening

of trading on April 28, 2017, and (B) purchased/acquired and/or sold during the Class Period (from April 28, 2017 through July 25, 2019, inclusive), as well as the date, number of shares, and price of each such purchase/acquisition and sale transaction; and (iv) be signed by the person or entity requesting exclusion or an authorized representative. Lead Counsel is authorized to request from any person or entity requesting exclusion additional transaction information or documentation sufficient to prove his, her, or its holdings and trading in Mohawk common stock.

60. A request for exclusion shall not be valid and effective unless it provides all the information called for in ¶ 59 above and is received within the time stated above or is otherwise accepted by the Court.

61. If you do not want to be part of the Class, you must follow these instructions for exclusion even if you have pending, or later file, another lawsuit, arbitration, or other proceeding relating to any Released Plaintiff's Claim against any of the Defendants' Releasees. Excluding yourself from the Class is the only option that allows you to be part of any other current or future lawsuit against Defendants or any of the other Defendants' Releasees concerning the Released Plaintiff's Claims. If you exclude yourself from the Class, Defendants and the other Defendants' Releasees will have the right to assert any and all defenses they may have to any claims that you may seek to assert.

62. If you ask to be excluded from the Class, you will not be eligible to receive any payment out of the Net Settlement Fund.

63. The Company has the right to terminate the Settlement if valid requests for exclusion are received from persons and entities entitled to be members of the Class in an amount that exceeds an amount agreed to by Lead Plaintiff and the Company.

**WHEN AND WHERE WILL THE COURT DECIDE WHETHER TO APPROVE  
THE SETTLEMENT? DO I HAVE TO COME TO THE HEARING?  
MAY I SPEAK AT THE HEARING IF I DON'T LIKE THE SETTLEMENT?**

64. **Class Members do not need to attend the Settlement Hearing. The Court will consider any submission made in accordance with the provisions below even if a Class Member does not attend the hearing. You can participate in the Settlement without attending the Settlement Hearing.**

65. **Please Note:** The date and time of the Settlement Hearing may change without further written notice to the Class. In addition, the COVID-19 pandemic is a fluid situation that creates the possibility that the Court may decide to conduct the Settlement Hearing by video or telephonic conference, or otherwise allow Class Members to appear at the hearing by phone, without further written notice to the Class. **In order to determine whether the date and time of the Settlement Hearing have changed, or whether Class Members must or may participate by phone or video, it is important that you monitor the Court's docket and the Settlement website, [www.MohawkIndustriesSecuritiesLitigation.com](http://www.MohawkIndustriesSecuritiesLitigation.com), before making any plans to attend the Settlement Hearing. Any updates regarding the Settlement Hearing, including any changes to the date or time of the hearing or updates regarding in-person or remote appearances at the hearing, will be posted to the Settlement website, [www.MohawkIndustriesSecuritiesLitigation.com](http://www.MohawkIndustriesSecuritiesLitigation.com). If the Court requires or allows Class Members to participate in the Settlement Hearing by telephone or video conference, the**

**information for accessing the telephone or video conference will be posted to the Settlement website, [www.MohawkIndustriesSecuritiesLitigation.com](http://www.MohawkIndustriesSecuritiesLitigation.com).**

66. The Settlement Hearing will be held on **May 31, 2023, at 10:00 a m.**, before the Honorable Victoria M. Calvert, either in person at the United States District Court for the Northern District of Georgia, Courtroom 2105, Richard B. Russell Federal Building and United States Courthouse, 75 Ted Turner Drive, SW, Atlanta, Georgia 30303-3309, or by telephone or videoconference (in the discretion of the Court) for the following purposes: (a) to determine whether the proposed Settlement on the terms and conditions provided for in the Stipulation is fair, reasonable, and adequate to the Class, and should be finally approved by the Court; (b) to determine whether a Judgment, substantially in the form attached as Exhibit B to the Stipulation, should be entered dismissing the Action with prejudice; (c) to determine whether the proposed Plan of Allocation for the proceeds of the Settlement is fair and reasonable and should be approved; (d) to determine whether the motion by Lead Counsel for an award of attorneys’ fees and Litigation Expenses should be approved; and (e) to consider any other matters that may properly be brought before the Court in connection with the Settlement. The Court reserves the right to approve the Settlement, the Plan of Allocation, Lead Counsel’s motion for an award of attorneys’ fees and Litigation Expenses, and/or any other matter related to the Settlement at or after the Settlement Hearing without further notice to the members of the Class.

67. Any Class Member who or which does not request exclusion may object to the Settlement, the Plan of Allocation, and/or Lead Counsel’s motion for an award of attorneys’ fees and Litigation Expenses. Objections must be in writing. You must file any written objection, together with copies of all other papers and briefs supporting the objection, with the Clerk’s Office at the United States District Court for the Northern District of Georgia, Rome Division, at the address set forth below, as well as serve copies on Lead Counsel and Representative Defendants’ Counsel, at the addresses set forth below, **on or before May 10, 2023**.

Clerk’s Office	Lead Counsel	Representative Defendants’ Counsel
United States District Court Northern District of Georgia United States Courthouse 600 East First Street Rome, GA 30161-3149	Bernstein Litowitz Berger & Grossmann LLP Jonathan D. Uslander, Esq. 2121 Avenue of the Stars, Suite 2575 Los Angeles, CA 90067	Alston & Bird LLP Robert R. Long, Esq. 1201 West Peachtree Street Atlanta, GA 30309-3424

You must also **email** the objection and any supporting papers **on or before May 10, 2023**, to [JonathanU@blbglaw.com](mailto:JonathanU@blbglaw.com) and [Robert.Long@alston.com](mailto:Robert.Long@alston.com).

68. Any objections, filings, and other submissions by the objecting Class Member: (a) must identify the case name and docket number, *Public Employees’ Retirement System of Mississippi v. Mohawk Industries, Inc., et al.*, Civil Action No. 4:20-cv-00005-VMC (N.D. Ga.); (b) must state the name, address, and telephone number of the person or entity objecting and must be signed by the objector; (c) must state with specificity the grounds for the Class Member’s objection, including any legal and evidentiary support the Class Member wishes to bring to the Court’s attention and whether the objection applies only to the objector, to a specific subset of the Class, or to the entire Class; and (d) must include documents sufficient to prove membership in the Class, including the number of shares of Mohawk common stock the objecting Class Member

(A) held as of the opening of trading on April 28, 2017, and (B) purchased/acquired and/or sold during the Class Period (from April 28, 2017 through July 25, 2019, inclusive), as well as the date, number of shares, and price of each such purchase/acquisition and sale transaction. The objecting Class Member shall provide documentation establishing membership in the Class through copies of brokerage confirmation slips or monthly brokerage account statements, or an authorized statement from the objector's broker containing the transactional and holding information found in a broker confirmation slip or account statement. Lead Counsel is authorized to request from any objecting Class Member additional transaction information or documentation sufficient to prove his, her, or its holdings and trading in Mohawk common stock.

**69. You may not object to the Settlement, Plan of Allocation, and/or Lead Counsel's motion for an award of attorneys' fees and Litigation Expenses if you exclude yourself from the Class or if you are not a member of the Class.**

70. You may submit an objection without having to appear at the Settlement Hearing. You may not, however, appear at the Settlement Hearing to present your objection unless (i) you first submit a written objection in accordance with the procedures described above and (ii) you first submit your notice of appearance in accordance with the procedures described below, unless the Court orders otherwise.

71. If you wish to be heard orally at the hearing in opposition to the approval of the Settlement, the Plan of Allocation, and/or Lead Counsel's motion for an award of attorneys' fees and Litigation Expenses, and if you timely submit a written objection as described above, you must also file a notice of appearance with the Clerk's Office and serve it on Lead Counsel and Representative Defendants' Counsel at the addresses set forth in ¶ 67 above **on or before May 10, 2023**. Persons who intend to object and desire to present evidence at the Settlement Hearing must include in their written objection or notice of appearance the identity of any witnesses they may call to testify and exhibits they intend to introduce into evidence at the hearing. Such persons may be heard orally at the discretion of the Court.

72. You are not required to hire an attorney to represent you in making written objections or in appearing at the Settlement Hearing. However, if you decide to hire an attorney, it will be at your own expense, and that attorney must file a notice of appearance with the Court and serve it on Lead Counsel and Representative Defendants' Counsel at the addresses set forth in ¶ 67 above **on or before May 10, 2023**.

**73. Unless the Court orders otherwise, any Class Member who does not object in the manner described above will be deemed to have waived any objection and shall be forever foreclosed from making any objection to the proposed Settlement, the proposed Plan of Allocation, and/or Lead Counsel's motion for an award of attorneys' fees and Litigation Expenses. Class Members do not need to appear at the Settlement Hearing or take any other action to indicate their approval.**

**WHAT IF I BOUGHT SHARES OF MOHAWK COMMON STOCK  
ON SOMEONE ELSE'S BEHALF?**

74. If you purchased or otherwise acquired Mohawk common stock during the period from April 28, 2017 through July 25, 2019, inclusive, for the beneficial interest of a person or entity other than yourself, you must either (i) within seven (7) calendar days of receipt of this Notice, request from



the Claims Administrator sufficient copies of the Notice and Claim Form (“Notice Packet”) to forward to all such beneficial owners and within seven (7) calendar days of receipt of those Notice Packets forward them to all such beneficial owners; or (ii) within seven (7) calendar days of receipt of this Notice, provide a list of the names, mailing addresses, and, if available, email addresses, of all such beneficial owners to *Mohawk Industries Securities Litigation*, c/o JND Legal Administration, P.O. Box 91096, Seattle, WA 98111. If you choose the second option, the Claims Administrator will send a copy of the Notice Packet to the beneficial owners. Upon full compliance with these directions, such nominees may seek reimbursement of their reasonable expenses actually incurred, by providing the Claims Administrator with proper documentation supporting the expenses for which reimbursement is sought. Copies of this Notice and the Claim Form may be obtained from the Settlement website, [www.MohawkIndustriesSecuritiesLitigation.com](http://www.MohawkIndustriesSecuritiesLitigation.com), by calling the Claims Administrator toll-free at 877-415-0648, or by emailing the Claims Administrator at [MHKSecurities@jndla.com](mailto:MHKSecurities@jndla.com).

**CAN I SEE THE COURT FILE?  
WHOM SHOULD I CONTACT IF I HAVE QUESTIONS?**

75. This Notice contains only a summary of the terms of the Settlement. For the terms and conditions of the Settlement, please see the Stipulation available at [www.MohawkIndustriesSecuritiesLitigation.com](http://www.MohawkIndustriesSecuritiesLitigation.com). Copies of any related orders entered by the Court and certain other filings in this Action will be also posted on this website. More detailed information about the matters involved in this Action can be obtained by accessing the Court docket in this case, for a fee, through the Court’s Public Access to Court Electronic Records (PACER) system at <https://ecf.gand.uscourts.gov/>, or by visiting, during regular office hours, the Office of the Clerk, United States District Court for the Northern District of Georgia, Rome Division, United States Courthouse, 600 East First Street, Rome, GA 30161-3149.

All inquiries concerning this Notice and the Claim Form should be directed to:

<i>Mohawk Industries Securities Litigation</i>	and/or	Jonathan D. Uslander, Esq.
c/o JND Legal Administration		Bernstein Litowitz Berger &
P.O. Box 91096		Grossmann LLP
Seattle, WA 98111		2121 Avenue of the Stars
877-415-0648		Suite 2575
<a href="mailto:Info@MohawkIndustriesSecuritiesLitigation.com">Info@MohawkIndustriesSecuritiesLitigation.com</a>		Los Angeles, CA 90067
<a href="http://www.MohawkIndustriesSecuritiesLitigation.com">www.MohawkIndustriesSecuritiesLitigation.com</a>		800-380-8496
		<a href="mailto:settlements@blbglaw.com">settlements@blbglaw.com</a>

**PLEASE DO NOT CALL OR WRITE THE COURT, THE CLERK’S OFFICE,  
DEFENDANTS, OR DEFENDANTS’ COUNSEL REGARDING THIS NOTICE.**

Dated: March 7, 2023

By Order of the Court  
United States District Court  
for the Northern District of Georgia

## **APPENDIX A**

### **Proposed Plan of Allocation of Net Settlement Fund Among Authorized Claimants**

1. The objective of the Plan of Allocation is to equitably distribute the Net Settlement Fund to those Class Members who had economic losses as a result of the alleged violations of the federal securities laws. The calculations made pursuant to the Plan of Allocation are not intended to be estimates of, nor indicative of, the amounts that Class Members might have been able to recover after a trial. Nor are the calculations pursuant to the Plan of Allocation intended to be estimates of the amounts that will be paid to Authorized Claimants pursuant to the Settlement. The computations under the Plan of Allocation are only a method to weigh the claims of Claimants against one another for the purposes of making *pro rata* allocations of the Net Settlement Fund.

2. In this case, Lead Plaintiff alleges that Defendants made false statements and omitted material facts during the Class Period (*i.e.*, from April 28, 2017 through July 25, 2019, inclusive), which had the effect of artificially inflating the price of Mohawk common stock. The estimated artificial inflation in Mohawk common stock allegedly caused by Defendants' alleged misrepresentations and omissions is stated in Table A attached to the end of this Notice. The estimated artificial inflation takes into account price changes in Mohawk common stock in reaction to certain public announcements allegedly revealing the truth concerning Defendants' alleged misrepresentations and omissions, and adjusts for price changes attributable to market or industry factors. Lead Plaintiff alleges that corrective information was released to the market which partially removed the artificial inflation from the price of Mohawk common stock on July 26, 2018, October 26, 2018, and July 26, 2019.

3. Recognized Loss Amounts under the Plan of Allocation are based primarily on the difference in the amount of alleged artificial inflation in the price of Mohawk common stock at the time of purchase or acquisition and at the time of sale or the difference between the actual purchase/acquisition price and sale price. Accordingly, in order to have a Recognized Loss Amount under the Plan of Allocation, a Class Member who or which purchased or otherwise acquired Mohawk common stock prior to the first corrective disclosure on July 26, 2018 must have held his, her, or its shares of Mohawk common stock through at least July 25, 2018. A Class Member who or which purchased or otherwise acquired Mohawk common stock from July 26, 2018 through July 25, 2019 must have held those shares through at least one of the later dates where new corrective information was released to the market and partially removed the artificial inflation from the price of Mohawk common stock.

### **CALCULATION OF RECOGNIZED LOSS AMOUNTS**

4. Based on the formula stated below, a "Recognized Loss Amount" will be calculated for each purchase or acquisition of publicly traded Mohawk common stock during the Class Period that is listed on the Claim Form and for which adequate documentation is provided. If a Recognized Loss Amount calculates to a negative number or zero under the formula below, that number will be zero.

5. For each share of publicly traded Mohawk common stock purchased or otherwise acquired during the period from April 28, 2017 through July 25, 2019, inclusive, and:

- (i) Sold before July 26, 2018, the Recognized Loss Amount will be \$0.00.
- (ii) Sold from July 26, 2018 through and including July 25, 2019, the Recognized Loss Amount will be **the lesser of:** (i) the amount of artificial inflation per share on the date of purchase/acquisition as stated in Table A *minus* the amount of artificial inflation per share on the date of sale as stated in Table A; or (ii) the purchase/acquisition price *minus* the sale price.
- (iii) Sold from July 26, 2019 through the close of trading on October 23, 2019, the Recognized Loss Amount will be **the least of:** (i) the amount of artificial inflation per share on the date of purchase/acquisition as stated in Table A; (ii) the purchase/acquisition price *minus* the average closing price between July 26, 2019 and the date of sale as stated in Table B attached at the end of this Notice; or (iii) the purchase/acquisition price *minus* the sale price.
- (iv) Held as of the close of trading on October 23, 2019, the Recognized Loss Amount will be the lesser of: (i) the amount of artificial inflation per share on the date of purchase/acquisition as stated in Table A; or (ii) the purchase/acquisition price *minus* \$120.54.<sup>1</sup>

#### **ADDITIONAL PROVISIONS**

6. **Calculation of Claimant’s “Recognized Claim”:** A Claimant’s “Recognized Claim” will be the sum of his, her, or its Recognized Loss Amounts as calculated under ¶ 5 above.

7. **FIFO Matching:** If a Class Member made more than one purchase/acquisition or sale of Mohawk common stock during the Class Period, all purchases/acquisitions and sales will be matched on a First In, First Out (“FIFO”) basis. Class Period sales will be matched first against any holdings at the beginning of the Class Period and then against purchases/acquisitions in chronological order, beginning with the earliest purchase/acquisition made during the Class Period.

8. **Purchase/Sale Prices:** For the purposes of calculations under ¶ 5 above, “purchase/acquisition price” means the actual price paid, excluding any fees, commissions, and taxes, and “sale price” means the actual amount received, not deducting any fees, commissions, and taxes.

9. **“Purchase/Acquisition/Sale” Dates:** Purchases or acquisitions and sales of Mohawk common stock will be deemed to have occurred on the “contract” or “trade” date as opposed to the “settlement” or “payment” date. The receipt or grant by gift, inheritance, or

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<sup>1</sup> Pursuant to Section 21D(e)(1) of the Exchange Act, “in any private action arising under this title in which the plaintiff seeks to establish damages by reference to the market price of a security, the award of damages to the plaintiff shall not exceed the difference between the purchase or sale price paid or received, as appropriate, by the plaintiff for the subject security and the mean trading price of that security during the 90-day period beginning on the date on which the information correcting the misstatement or omission that is the basis for the action is disseminated to the market.” Consistent with the requirements of the Exchange Act, Recognized Loss Amounts are reduced to an appropriate extent by taking into account the closing prices of Mohawk common stock during the “90-day look-back period,” July 26, 2019 through and including October 23, 2019. The mean (average) closing price for Mohawk common stock during this 90-day look-back period was \$120.54.

operation of law of Mohawk common stock during the Class Period will not be deemed a purchase, acquisition, or sale of Mohawk common stock for the calculation of a Claimant's Recognized Loss Amount, nor will the receipt or grant be deemed an assignment of any claim relating to the purchase/acquisition/sale of Mohawk common stock unless (i) the donor or decedent purchased or otherwise acquired or sold such Mohawk common stock during the Class Period; (ii) the instrument of gift or assignment specifically provides that it is intended to transfer such rights; and (iii) no Claim was submitted by or on behalf of the donor, on behalf of the decedent, or by anyone else with respect to such shares of Mohawk common stock.

10. **Short Sales:** The date of covering a "short sale" is deemed to be the date of purchase or acquisition of the Mohawk common stock. The date of a "short sale" is deemed to be the date of sale of the Mohawk common stock. In accordance with the Plan of Allocation, however, the Recognized Loss Amount on "short sales" and the purchases covering "short sales" is zero.

11. In the event that a Claimant has an opening short position in Mohawk common stock, the earliest purchases or acquisitions of Mohawk common stock during the Class Period will be matched against such opening short position, and not be entitled to a recovery, until that short position is fully covered.

12. **Common Stock Purchased/Sold Through the Exercise of Options:** Option contracts are not securities eligible to participate in the Settlement. With respect to Mohawk common stock purchased or sold through the exercise of an option, the purchase/sale date of the security is the exercise date of the option and the purchase/sale price is the exercise price of the option.

13. **Market Gains and Losses:** The Claims Administrator will determine if the Claimant had a "Market Gain" or a "Market Loss" with respect to his, her, or its overall transactions in Mohawk common stock during the Class Period. For purposes of making this calculation, the Claims Administrator will determine the difference between (i) the Claimant's Total Purchase Amount<sup>2</sup> and (ii) the sum of the Claimant's Total Sales Proceeds<sup>3</sup> and the Claimant's Holding Value.<sup>4</sup> If the Claimant's Total Purchase Amount minus the sum of the Claimant's Total Sales Proceeds and the Holding Value is a positive number, that number will be the Claimant's Market Loss; if the number is a negative number or zero, that number will be the Claimant's Market Gain.

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<sup>2</sup> The "Total Purchase Amount" is the total amount the Claimant paid (excluding any fees, commissions, and taxes) for all shares of Mohawk common stock purchased/acquired during the Class Period.

<sup>3</sup> The Claims Administrator shall match any sales of Mohawk common stock during the Class Period first against the Claimant's opening position in Mohawk common stock (the proceeds of those sales will not be considered for purposes of calculating market gains or losses). The total amount received (not deducting any fees, commissions, and taxes) for sales of the remaining shares of Mohawk common stock sold during the Class Period is the "Total Sales Proceeds."

<sup>4</sup> The Claims Administrator will ascribe a "Holding Value" of \$128.84 to each share of Mohawk common stock purchased/acquired during the Class Period that was still held as of the close of trading on July 25, 2019.

14. If a Claimant had a Market Gain with respect to his, her, or its overall transactions in Mohawk common stock during the Class Period, the value of the Claimant's Recognized Claim will be zero, and the Claimant will in any event be bound by the Settlement. If a Claimant suffered an overall Market Loss with respect to his, her, or its overall transactions in Mohawk common stock during the Class Period but that Market Loss was less than the Claimant's Recognized Claim calculated pursuant to ¶¶ 5-6 above, then the Claimant's Recognized Claim will be limited to the amount of the Market Loss.

15. **Determination of Distribution Amount:** If the sum total of Recognized Claims of all Authorized Claimants who are entitled to receive payment out of the Net Settlement Fund is greater than the Net Settlement Fund, each Authorized Claimant will receive his, her, or its *pro rata* share of the Net Settlement Fund. The *pro rata* share will be the Authorized Claimant's Recognized Claim divided by the total of Recognized Claims of all Authorized Claimants, multiplied by the total amount in the Net Settlement Fund.

16. If the Net Settlement Fund exceeds the sum total amount of the Recognized Claims of all Authorized Claimants entitled to receive payment out of the Net Settlement Fund, the excess amount in the Net Settlement Fund will be distributed *pro rata* to all Authorized Claimants entitled to receive payment.

17. If an Authorized Claimant's Distribution Amount calculates to less than \$10.00, no distribution will be made to that Authorized Claimant.

18. After the initial distribution of the Net Settlement Fund, the Claims Administrator will make reasonable and diligent efforts to have Authorized Claimants cash their distribution checks. To the extent any monies remain in the Net Settlement Fund after the initial distribution, if Lead Counsel, in consultation with the Claims Administrator, determines that it is cost-effective to do so, the Claims Administrator, no less than six (6) months after the initial distribution, will conduct a re-distribution of the funds remaining after payment of any unpaid fees and expenses incurred in administering the Settlement, including for such re-distribution, to Authorized Claimants who have cashed their initial distributions and who would receive at least \$10.00 from such re-distribution. Additional re-distributions to Authorized Claimants who have cashed their prior checks may occur thereafter if Lead Counsel, in consultation with the Claims Administrator, determines that additional re-distributions, after the deduction of any additional fees and expenses incurred in administering the Settlement, including for such re-distributions, would be cost-effective. At such time as it is determined that the re-distribution of funds remaining in the Net Settlement Fund is not cost-effective, the remaining balance will be contributed to non-sectarian, not-for-profit, 501(c)(3) organization(s), to be recommended by Lead Counsel and approved by the Court.

19. Payment pursuant to the Plan of Allocation, or such other plan of allocation as may be approved by the Court, will be conclusive against all Authorized Claimants. No person shall have any claim against Lead Plaintiff, Plaintiff's Counsel, Lead Plaintiff's damages or consulting experts, Defendants, Defendants' Counsel, or any of the other Plaintiff's Releasees or Defendants' Releasees, or the Claims Administrator or other agent designated by Lead Counsel arising from distributions made substantially in accordance with the Stipulation, the plan of allocation approved by the Court, or further Orders of the Court. Lead Plaintiff, Defendants, and their respective counsel, and all other Defendants' Releasees, shall have no responsibility or liability whatsoever for the investment or distribution of the Settlement Fund or the Net Settlement Fund; the plan of

allocation; the determination, administration, calculation, or payment of any Claim or nonperformance of the Claims Administrator; the payment or withholding of Taxes; or any losses incurred in connection therewith.

20. The Plan of Allocation stated herein is the plan that is being proposed to the Court for its approval by Lead Plaintiff after consultation with its damages expert. The Court may approve this plan as proposed or it may modify the Plan of Allocation without further notice to the Class. Any Orders regarding any modification of the Plan of Allocation will be posted on the Settlement website, [www.MohawkIndustriesSecuritiesLitigation.com](http://www.MohawkIndustriesSecuritiesLitigation.com).

**TABLE A**

**Estimated Artificial Inflation in Mohawk Common Stock  
from April 28, 2017 through July 25, 2019**

<b>Transaction Date Range</b>	<b>Artificial Inflation Per Share</b>
April 28, 2017 through July 25, 2018	\$102.74
July 26, 2018 through October 25, 2018	\$62.56
October 26, 2018 through July 25, 2019	\$28.16
July 26, 2019 or later	\$0.00

**TABLE B****90-Day Look-Back Table for Mohawk Common Stock  
(Average Closing Price: July 26, 2019 - October 23, 2019)**

<b>Date</b>	<b>Average Closing Price Between 7/26/2019 and Date Shown</b>	<b>Date</b>	<b>Average Closing Price Between 7/26/2019 and Date Shown</b>
7/26/2019	\$128.84	9/11/2019	\$117.78
7/29/2019	\$126.66	9/12/2019	\$118.00
7/30/2019	\$126.19	9/13/2019	\$118.22
7/31/2019	\$125.82	9/16/2019	\$118.34
8/1/2019	\$125.13	9/17/2019	\$118.44
8/2/2019	\$124.34	9/18/2019	\$118.56
8/5/2019	\$123.47	9/19/2019	\$118.71
8/6/2019	\$122.73	9/20/2019	\$118.82
8/7/2019	\$122.25	9/23/2019	\$118.89
8/8/2019	\$121.82	9/24/2019	\$118.92
8/9/2019	\$121.36	9/25/2019	\$119.00
8/12/2019	\$120.74	9/26/2019	\$119.06
8/13/2019	\$120.29	9/27/2019	\$119.16
8/14/2019	\$119.73	9/30/2019	\$119.26
8/15/2019	\$119.11	10/1/2019	\$119.31
8/16/2019	\$118.62	10/2/2019	\$119.30
8/19/2019	\$118.36	10/3/2019	\$119.35
8/20/2019	\$118.06	10/4/2019	\$119.45
8/21/2019	\$117.95	10/7/2019	\$119.54
8/22/2019	\$117.87	10/8/2019	\$119.59
8/23/2019	\$117.59	10/9/2019	\$119.66
8/26/2019	\$117.41	10/10/2019	\$119.73
8/27/2019	\$117.20	10/11/2019	\$119.81
8/28/2019	\$117.03	10/14/2019	\$119.88
8/29/2019	\$117.02	10/15/2019	\$119.97
8/30/2019	\$117.09	10/16/2019	\$120.06
9/3/2019	\$116.99	10/17/2019	\$120.15
9/4/2019	\$116.92	10/18/2019	\$120.23
9/5/2019	\$116.95	10/21/2019	\$120.32
9/6/2019	\$117.01	10/22/2019	\$120.41
9/9/2019	\$117.15	10/23/2019	\$120.54
9/10/2019	\$117.42		

# PROOF OF CLAIM AND RELEASE FORM

## *Mohawk Industries Securities Litigation*

Toll-Free Number: 1-877-415-0648

Email: [Info@MohawkIndustriesSecuritiesLitigation.com](mailto:Info@MohawkIndustriesSecuritiesLitigation.com)

Website: [www.MohawkIndustriesSecuritiesLitigation.com](http://www.MohawkIndustriesSecuritiesLitigation.com)

To be eligible to receive a share of the Net Settlement Fund in connection with the Settlement of this Action, you must complete and sign this Proof of Claim and Release Form (“Claim Form”) and submit it, together with the required supporting documentation, either by mail or online. If you choose to submit by **mail**, you must send the Claim Form, together with the required supporting documentation, by first-class mail to the address below, and your mailing must be **postmarked no later than July 5, 2023**.

**Mail to:** *Mohawk Industries Securities Litigation*  
c/o JND Legal Administration  
P.O. Box 91096  
Seattle, WA 98111

If you choose to submit the Claim Form, together with the required supporting documentation, **online**, you must do so at [www.MohawkIndustriesSecuritiesLitigation.com](http://www.MohawkIndustriesSecuritiesLitigation.com), **no later than July 5, 2023**.

Failure to submit your Claim Form by the date specified will subject your claim to rejection and may preclude you from being eligible to receive a payment from the Settlement.

**Do not mail or deliver your Claim Form to the Court, Lead Counsel, Defendants’ Counsel, or any of the Parties to the Action. Submit your Claim Form only to the Claims Administrator, JND Legal Administration, at the address set forth above.**

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MOHAWK COMMON STOCK (TICKER: MWK, CUSIP: 608190104)
- 08** IV. RELEASE OF CLAIMS AND SIGNATURE

Questions? Visit [www.MohawkIndustriesSecuritiesLitigation.com](http://www.MohawkIndustriesSecuritiesLitigation.com), call 877-415-0648,  
or email [Info@MohawkIndustriesSecuritiesLitigation.com](mailto:Info@MohawkIndustriesSecuritiesLitigation.com)

To view JND’s privacy policy, please visit <https://www.jndla.com/privacy-policy>



# PART I – CLAIMANT INFORMATION

The Claims Administrator will use this information for all communications regarding this Claim Form. If this information changes, you MUST notify the Claims Administrator in writing at the address above. Complete names of all persons and entities must be provided.

Beneficial Owner's First Name	MI	Beneficial Owner's Last Name
<input type="text"/>	<input type="text"/>	<input type="text"/>

Joint Beneficial Owner's First Name (if applicable)	MI	Joint Beneficial Owner's Last Name (if applicable)
<input type="text"/>	<input type="text"/>	<input type="text"/>

If this claim is submitted for an IRA, and if you would like any check that you MAY be eligible to receive made payable to the IRA, please include "IRA" in the "Last Name" box above (e.g., Jones IRA).

Entity Name (if the Beneficial Owner is not an individual)

Name of Representative, if applicable (executor, administrator, trustee, c/o, etc.), if different from Beneficial Owner

Last 4 digits of Social Security Number or Taxpayer Identification Number

<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
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Street Address 1

Street Address 2

City	State/Province	Zip Code
<input type="text"/>	<input type="text"/>	<input type="text"/>

Foreign Postal Code (if applicable)	Foreign Country (if applicable)
<input type="text"/>	<input type="text"/>

Telephone Number (Day)	Telephone Number (Evening)
<input type="text"/>	<input type="text"/>

Email Address (email address is not required, but if you provide it you authorize the Claims Administrator to use it in providing you with information relevant to this claim)

Account Number

**Type of Beneficial Owner:** (Specify one of the following):

- |  |                                      |  |                              |                                      |
|--|--------------------------------------|--|------------------------------|--------------------------------------|
| <input type="checkbox"/> Individual(s) | <input type="checkbox"/> Corporation | <input type="checkbox"/> UGMA Custodian          | <input type="checkbox"/> IRA | <input type="checkbox"/> Partnership |
| <input type="checkbox"/> Estate        | <input type="checkbox"/> Trust       | <input type="checkbox"/> Other (describe): _____ |                              |                                      |

# PART II – GENERAL INSTRUCTIONS

1. It is important that you completely read and understand the Notice of (I) Pendency of Class Action and Proposed Settlement; (II) Settlement Hearing; and (III) Motion for Attorneys' Fees and Litigation Expenses (the "Notice") that accompanies this Claim Form, including the Plan of Allocation of the Net Settlement Fund set forth in the Notice. The Notice describes the proposed Settlement, how Class Members are affected by the Settlement, and the manner in which the Net Settlement Fund will be distributed if the Settlement and Plan of Allocation are approved by the Court. The Notice also contains the definitions of many of the defined terms (which are indicated by initial capital letters) used in this Claim Form. By signing and submitting this Claim Form, you will be certifying that you have read and that you understand the Notice, including the terms of the releases described therein and provided for herein.

2. By submitting this Claim Form, you will be making a request to receive a payment from the Settlement described in the Notice. **IF YOU ARE NOT A CLASS MEMBER** (see the definition of the Class on page 8 of the Notice, which sets forth who is included in and who is excluded from the Class), **OR IF YOU, OR SOMEONE ACTING ON YOUR BEHALF, SUBMITTED A REQUEST FOR EXCLUSION FROM THE CLASS, DO NOT SUBMIT A CLAIM FORM. YOU MAY NOT, DIRECTLY OR INDIRECTLY, PARTICIPATE IN THE SETTLEMENT IF YOU ARE NOT A CLASS MEMBER.** **THUS, IF YOU ARE EXCLUDED FROM THE CLASS, ANY CLAIM FORM THAT YOU SUBMIT, OR THAT MAY BE SUBMITTED ON YOUR BEHALF, WILL NOT BE ACCEPTED.**

3. **Submission of this Claim Form does not guarantee that you will be eligible to receive a payment from the Settlement. The distribution of the Net Settlement Fund will be governed by the Plan of Allocation set forth in the Notice, if it is approved by the Court, or by such other plan of allocation as the Court approves.**

4. Use the Schedule of Transactions in Part III of this Claim Form to supply all required details of your transaction(s) in, and holdings of, the publicly traded common stock of Mohawk Industries, Inc. ("Mohawk"). On this schedule, provide all of the requested information with respect to your holdings, purchases, acquisitions, and sales of publicly traded Mohawk common stock (including free transfers and deliveries), whether such transactions resulted in a profit or a loss. **Failure to report all transaction and holding information during the requested time periods may result in the rejection of your claim.**

5. **Please note:** Only publicly traded Mohawk common stock purchased during the Class Period (i.e., from April 28, 2017 through July 25, 2019, inclusive) is eligible under the Settlement. However, sales of Mohawk common stock during the period from July 26, 2019 through and including the close of trading on October 23, 2019, will be used for purposes of calculating your claim under the Plan of Allocation. Therefore, in order for the Claims Administrator to be able to balance your claim, the requested purchase/acquisition and sale/disposition information during this period must also be provided.

6. You are required to submit genuine and sufficient documentation for all of your transactions in and holdings of publicly traded Mohawk common stock as set forth in the Schedule of Transactions in Part III of this Claim Form. Documentation may consist of copies of brokerage confirmation slips or monthly brokerage account statements, or an authorized statement from your broker containing the transactional and holding information found in a broker confirmation slip or account statement. The Parties and the Claims Administrator do not independently have information about your investments in Mohawk common stock. **IF SUCH DOCUMENTS ARE NOT IN YOUR POSSESSION, PLEASE OBTAIN COPIES OF THE DOCUMENTS OR EQUIVALENT DOCUMENTS FROM YOUR BROKER. FAILURE TO SUPPLY THIS DOCUMENTATION MAY RESULT IN THE REJECTION OF YOUR CLAIM. DO NOT SEND ORIGINAL DOCUMENTS. Please keep a copy of all documents that you send to the Claims Administrator. Also, do not highlight any portion of the Claim Form or any supporting documents.**

7. Use Part I of this Claim Form entitled "CLAIMANT INFORMATION" to identify the beneficial owner(s) of the Mohawk common stock. The complete name(s) of the beneficial owner(s) must be entered. If you held the Mohawk common stock in your own name, you were the beneficial owner as well as the record owner. If, however, your shares of Mohawk common stock were registered in the name of a third party, such as a nominee or brokerage firm, you were the beneficial owner of the stock, but the third party was the record owner. The beneficial owner, not the record owner, must sign this Claim Form to be eligible to participate in the Settlement. If there were joint beneficial owners, each must sign this Claim Form and their names must appear as "Claimants" in Part I of this Claim Form.

8. **One Claim should be submitted for each separate legal entity or separately managed account.** Separate Claim Forms should be submitted for each separate legal entity (e.g., an individual should not combine his or her IRA holdings and transactions with holdings and transactions made solely in the individual's name). Generally, a single Claim Form should be submitted on behalf of one legal entity including all holdings and transactions made by that entity on one Claim Form. However, if a single person or legal entity had multiple accounts that were separately managed, separate Claims may be submitted for each such account. The Claims Administrator reserves the right to request information on all the holdings and transactions in Mohawk common stock made on behalf of a single beneficial owner.

9. Agents, executors, administrators, guardians, and trustees must complete and sign the Claim Form on behalf of persons represented by them, and they must:

- (a) expressly state the capacity in which they are acting;
- (b) identify the name, account number, last four digits of the Social Security Number (or taxpayer identification number), address, and telephone number of the beneficial owner of (or other person or entity on whose behalf they are acting with respect to) the Mohawk common stock; and
- (c) furnish herewith evidence of their authority to bind to the Claim Form the person or entity on whose behalf they are acting. (Authority to complete and sign a Claim Form cannot be established by stockbrokers demonstrating only that they have discretionary authority to trade securities in another person's accounts.)

10. By submitting a signed Claim Form, you will be swearing that you:

- (a) own(ed) the Mohawk common stock you have listed in the Claim Form; or
- (b) are expressly authorized to act on behalf of the owner thereof.

11. By submitting a signed Claim Form, you will be swearing to the truth of the statements contained therein and the genuineness of the documents attached thereto, subject to penalties of perjury under the laws of the United States of America. The making of false statements, or the submission of forged or fraudulent documentation, will result in the rejection of your claim and may subject you to civil liability or criminal prosecution.

12. If the Court approves the Settlement, payments to eligible Authorized Claimants pursuant to the Plan of Allocation (or such other plan of allocation as the Court approves) will be made after any appeals are resolved, and after the completion of all claims processing. The claims process will take substantial time to complete fully and fairly. Please be patient.

13. **PLEASE NOTE:** As set forth in the Plan of Allocation, each Authorized Claimant shall receive his, her, or its *pro rata* share of the Net Settlement Fund. If the prorated payment to any Authorized Claimant

calculates to less than \$10.00, it will not be included in the calculation and no distribution will be made to that Authorized Claimant.

14. If you have questions concerning the Claim Form, or need additional copies of the Claim Form or the Notice, you may contact the Claims Administrator, JND Legal Administration, at the above address, by email at [Info@MohawkIndustriesSecuritiesLitigation.com](mailto:Info@MohawkIndustriesSecuritiesLitigation.com), or by toll-free phone at 877-415-0648, or you can visit the Settlement website, [www.MohawkIndustriesSecuritiesLitigation.com](http://www.MohawkIndustriesSecuritiesLitigation.com), where copies of the Claim Form and Notice are available for downloading.

15. **NOTICE REGARDING ELECTRONIC FILES:** Certain claimants with large numbers of transactions may request, or may be requested, to submit information regarding their transactions in electronic files. To obtain the **mandatory** electronic filing requirements and file layout, you may visit the Settlement website at [www.MohawkIndustriesSecuritiesLitigation.com](http://www.MohawkIndustriesSecuritiesLitigation.com) or you may email the Claims Administrator's electronic filing department at [MHKSecurities@JNDLA.com](mailto:MHKSecurities@JNDLA.com). **Any file not in accordance with the required electronic filing format will be subject to rejection.** The **complete** name of the beneficial owner of the securities must be entered where called for (see ¶ 7 above). No electronic files will be considered to have been submitted unless the Claims Administrator issues an email to that effect. **Do not assume that your file has been received until you receive this email. If you do not receive such an email within 10 days of your submission, you should contact the electronic filing department at [MHKSecurities@jndla.com](mailto:MHKSecurities@jndla.com) to inquire about your file and confirm it was received.**

#### **IMPORTANT: PLEASE NOTE**

**YOUR CLAIM IS NOT DEEMED FILED UNTIL YOU RECEIVE AN ACKNOWLEDGEMENT POSTCARD (IF YOU SUBMITTED THE CLAIM FORM AND REQUIRED SUPPORTING DOCUMENTATION BY MAIL) OR EMAIL (IF YOU SUBMITTED THE CLAIM FORM AND REQUIRED SUPPORTING DOCUMENTATION ONLINE). THE CLAIMS ADMINISTRATOR WILL ACKNOWLEDGE RECEIPT OF YOUR CLAIM FORM WITHIN 60 DAYS OF YOUR SUBMISSION. IF YOU DO NOT RECEIVE AN ACKNOWLEDGEMENT POSTCARD OR EMAIL WITHIN 60 DAYS, CONTACT THE CLAIMS ADMINISTRATOR TOLL FREE AT 877-415-0648.**

# PART III – SCHEDULE OF TRANSACTIONS IN PUBLICLY TRADED MOHAWK COMMON STOCK

Use this section to provide information on your holdings and trading of publicly traded Mohawk common stock during the requested time periods. Mohawk common stock trades on the New York Stock Exchange under the ticker symbol “MHK” and the CUSIP number for the security is 608190104. Please be sure to include proper documentation with your Claim Form as described in detail in Part II – General Instructions, ¶ 6 above. Do not include information regarding securities other than Mohawk common stock.

<b>1. HOLDINGS AS OF APRIL 28, 2017</b> – State the total number of shares of publicly traded Mohawk common stock held as of the opening of trading on April 28, 2017. (Must be documented.) If none, write “zero” or “0.”				Confirm Proof of Holding Position Enclosed <input type="checkbox"/>
<b>2. PURCHASES/ACQUISITIONS FROM APRIL 28, 2017 THROUGH JULY 25, 2019, INCLUSIVE</b> – Separately list each and every purchase/acquisition (including free receipts) of publicly traded Mohawk common stock from after the opening of trading on April 28, 2017 through and including the close of trading on July 25, 2019. (Must be documented.)				
Date of Purchase/Acquisition (List Chronologically) (Month/Day/Year)	Number of Shares Purchased/Acquired	Purchase/Acquisition Price Per Share	Total Purchase/ Acquisition Price (excluding fees, commissions, and taxes)	Confirm Proof of Purchase/ Acquisition Enclosed
/ /		\$	\$	<input type="checkbox"/>
/ /		\$	\$	<input type="checkbox"/>
/ /		\$	\$	<input type="checkbox"/>
/ /		\$	\$	<input type="checkbox"/>
/ /		\$	\$	<input type="checkbox"/>
<b>3. PURCHASES/ACQUISITIONS FROM JULY 26, 2019 THROUGH OCTOBER 23, 2019, INCLUSIVE</b> – State the total number of shares of publicly traded Mohawk common stock purchased/acquired (including free receipts) from after the opening of trading on July 26, 2019 through and including the close of trading on October 23, 2019. (Must be documented.) If none, write “zero” or “0.” <sup>1</sup>				
<div style="border: 1px solid black; width: 200px; height: 20px; margin: 0 auto;"></div>				

<sup>1</sup> **Please note:** Information requested with respect to your purchases/acquisitions of publicly traded Mohawk common stock from after the opening of trading on July 26, 2019 through and including the close of trading October 23, 2019, is needed in order to perform the necessary calculations for your claim; purchases/acquisitions during this period, however, are not eligible transactions and will not be used for purposes of calculating Recognized Loss Amounts under the Plan of Allocation.

<b>4. SALES FROM APRIL 28, 2017 THROUGH OCTOBER 23, 2019, INCLUSIVE –</b> Separately list each and every sale/disposition (including free deliveries) of publicly traded Mohawk common stock from after the opening of trading on April 28, 2017 through and including the close of trading on October 23, 2019. (Must be documented.)				<b>IF NONE, CHECK HERE</b> <input type="checkbox"/>
Date of Sale (List Chronologically) (Month/Day/Year)	Number of Shares Sold	Sale Price Per Share	Total Sale Price (not deducting any fees, commissions, and taxes)	Confirm Proof of Sale Enclosed
/ /		\$	\$	<input type="checkbox"/>
/ /		\$	\$	<input type="checkbox"/>
/ /		\$	\$	<input type="checkbox"/>
/ /		\$	\$	<input type="checkbox"/>
/ /		\$	\$	<input type="checkbox"/>
<b>5. HOLDINGS AS OF OCTOBER 23, 2019 –</b> State the total number of shares of publicly traded Mohawk common stock held as of the close of trading on October 23, 2019. (Must be documented.) If none, write “zero” or “0.”				Confirm Proof of Holding Position Enclosed <input type="checkbox"/>

IF YOU REQUIRE ADDITIONAL SPACE FOR THE SCHEDULE ABOVE, ATTACH EXTRA SCHEDULES IN THE SAME FORMAT. PRINT THE BENEFICIAL OWNER'S FULL NAME AND LAST FOUR DIGITS OF SOCIAL SECURITY/TAXPAYER IDENTIFICATION NUMBER ON EACH ADDITIONAL PAGE. IF YOU DO ATTACH EXTRA SCHEDULES, CHECK THIS BOX.

# PART IV – RELEASE OF CLAIMS AND SIGNATURE

**YOU MUST ALSO READ THE RELEASE AND CERTIFICATION BELOW  
AND SIGN ON PAGE 9 OF THIS CLAIM FORM.**

I (we) hereby acknowledge that, pursuant to the terms set forth in the Stipulation and Agreement of Settlement dated January 13, 2023, without further action by anyone, upon the Effective Date of the Settlement, I (we), on behalf of myself (ourselves) and my (our) (the claimant(s)') heirs, executors, administrators, predecessors, successors, and assigns in their capacities as such, shall be deemed to have, and by operation of law and of the judgment shall have, fully, finally, and forever compromised, settled, released, resolved, relinquished, waived, and discharged any or all of the Released Plaintiff's Claims against Defendants and the other Defendants' Releasees, and shall forever be barred and enjoined from prosecuting any or all of the Released Plaintiff's Claims against any of the Defendants' Releasees.

## **CERTIFICATION**

By signing and submitting this Claim Form, the claimant(s) or the person(s) who represent(s) the claimant(s) agree(s) to the release above and certifies (certify) as follows:

1. that I (we) have read and understand the contents of the Notice and this Claim Form, including the releases provided for in the Settlement and the terms of the Plan of Allocation;
2. that the claimant(s) is a (are) Class Member(s), as defined in the Notice, and is (are) not excluded by definition from the Class as set forth in the Notice;
3. that the claimant(s) did **not** submit a request for exclusion from the Class;
4. that I (we) own(ed) the Mohawk common stock identified in the Claim Form and have not assigned the claim against any of the Defendants or any of the other Defendants' Releasees to another;
5. that, in signing and submitting this Claim Form, I (we) have the authority to act on behalf of the owner(s) thereof;
6. that the claimant(s) has (have) not submitted any other claim covering the same purchases of Mohawk common stock and knows (know) of no other person having done so on the claimant's (claimants') behalf;
7. that the claimant(s) submit(s) to the jurisdiction of the Court with respect to claimant's (claimants') claim and for purposes of enforcing the releases set forth herein;
8. that I (we) agree to furnish such additional information with respect to this Claim Form as Lead Counsel, the Claims Administrator, or the Court may require;
9. that the claimant(s) waive(s) the right to trial by jury, to the extent it exists, and agree(s) to the determination by the Court of the validity or amount of this claim, and waives any right of appeal or review with respect to such determination;
10. that I (we) acknowledge that the claimant(s) will be bound by and subject to the terms of any judgment(s) that may be entered in the Action; and

11. that the claimant(s) is (are) NOT subject to backup withholding under the provisions of Section 3406(a)(1)(C) of the Internal Revenue Code because (i) the claimant(s) is (are) exempt from backup withholding or (ii) the claimant(s) has (have) not been notified by the IRS that he, she, or it is subject to backup withholding as a result of a failure to report all interest or dividends or (iii) the IRS has notified the claimant(s) that he, she, or it is no longer subject to backup withholding. **If the IRS has notified the claimant(s) that he, she, it, or they is (are) subject to backup withholding, please strike out the language in the preceding sentence indicating that the claim is not subject to backup withholding in the certification above.**

UNDER THE PENALTIES OF PERJURY, I (WE) CERTIFY THAT ALL OF THE INFORMATION PROVIDED BY ME (US) ON THIS CLAIM FORM IS TRUE, CORRECT, AND COMPLETE, AND THAT THE DOCUMENTS SUBMITTED HEREWITH ARE TRUE AND CORRECT COPIES OF WHAT THEY PURPORT TO BE.

\_\_\_\_\_  
Signature of claimant

\_\_\_\_\_  
Date

\_\_\_\_\_  
Print claimant name here

\_\_\_\_\_  
Signature of joint claimant, if any

\_\_\_\_\_  
Date

\_\_\_\_\_  
Print joint claimant name here

***If the claimant is other than an individual, or is not the person completing this form, the following also must be provided:***

\_\_\_\_\_  
Signature of person signing on behalf of claimant

\_\_\_\_\_  
Date

\_\_\_\_\_  
Print name of person signing on behalf of claimant here

\_\_\_\_\_  
Capacity of person signing on behalf of claimant, if other than an individual, e.g., executor, president, trustee, custodian, etc. (Must provide evidence of authority to act on behalf of claimant – see ¶ 9 on page 4 of this Claim Form.)



# REMINDER CHECKLIST



1. Sign the above release and certification. If this Claim Form is being made on behalf of joint claimants, then both must sign.



2. Attach only **copies** of acceptable supporting documentation as these documents will not be returned to you.

3. Do not highlight any portion of the Claim Form or any supporting documents.

4. Keep copies of the completed Claim Form and documentation for your own records.

5. If you submit the Claim Form and required supporting documents by mail, the Claims Administrator will acknowledge receipt of your Claim Form by postcard within 60 days of your submission. If you submit the Claim Form and required supporting documents online, the Claims Administrator will acknowledge receipt of your Claim Form by email within 60 days of your submission. Your claim is not deemed filed until you receive an acknowledgement postcard. **If you do not receive an acknowledgement postcard or email within 60 days, please call the Claims Administrator toll free at 877-415-0648.**



6. If your address changes in the future, or if this Claim Form was sent to an old or incorrect address, you must send the Claims Administrator written notification of your new address. If you change your name, inform the Claims Administrator.

7. If you have any questions or concerns regarding your claim, contact the Claims Administrator at the address below, by email at [Info@MohawkIndustriesSecuritiesLitigation.com](mailto:Info@MohawkIndustriesSecuritiesLitigation.com), or by toll-free phone at 877-415-0648, or you may visit [www.MohawkIndustriesSecuritiesLitigation.com](http://www.MohawkIndustriesSecuritiesLitigation.com). DO NOT call Mohawk or its counsel with questions regarding your claim.



THIS CLAIM FORM MUST EITHER BE MAILED TO THE CLAIMS ADMINISTRATOR BY FIRST-CLASS MAIL **POSTMARKED NO LATER THAN JULY 5, 2023, OR SUBMITTED ONLINE AT [WWW.MOHAWKINDUSTRIESSECURITIESLITIGATION.COM](http://WWW.MOHAWKINDUSTRIESSECURITIESLITIGATION.COM) NO LATER THAN JULY 5, 2023.** IF MAILED, THE CLAIM FORM SHOULD BE ADDRESSED AS FOLLOWS:

***Mohawk Industries Securities Litigation***  
**c/o JND Legal Administration**  
**P.O. Box 91096**  
**Seattle, WA 98111**

A Claim Form received by the Claims Administrator shall be deemed to have been submitted when posted, if a postmark date on or before July 5, 2023, is indicated on the envelope and it is mailed First Class and addressed in accordance with the above instructions. In all other cases, a Claim Form shall be deemed to have been submitted when actually received by the Claims Administrator.

You should be aware that it will take a significant amount of time to fully process all Claim Forms. Please be patient and notify the Claims Administrator of any change of address.

Mohawk Industries Securities Litigation  
c/o JND Legal Administration  
P.O. Box 91096  
Seattle, WA 98111

Presorted  
First Class Mail  
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Permit No. 5634

Notice to those who purchased or otherwise acquired publicly traded  
Mohawk Industries, Inc. common stock  
from April 28, 2017 through July 25, 2019, inclusive.

If you purchased or otherwise acquired publicly traded Mohawk Industries, Inc. common stock from April 28, 2017 through July 25, 2019, inclusive, you could get a payment from a class action settlement.

# EXHIBIT B

BUSINESS NEWS

McKinsey Advised Opioid Makers, VA at Same Time

By Alexander Gladstone

Since at least 2009, McKinsey & Co. has been a consultant to the U.S. Department of Veterans Affairs, the federal agency that oversees health care for millions of retired military service members. During part of that time, the consulting giant also advised some of the world's biggest opioid producers to target the agency for sales of their products, according to newly released documents.

The firm advised opioid companies including Purdue Pharma LP and Endo International PLC on how to increase sales to the VA through both new and existing channels, the documents show. Meanwhile, McKinsey earned at least \$117 million consulting for the VA, primarily on matters related to healthcare services for veterans, according to government records.

Purdue and Endo both filed for bankruptcy in recent years to shield themselves from mass lawsuits alleging they fueled the opioid crisis, while McKinsey's work for those companies and others subjected it to litigation of its own.

The firm in 2021 reached a \$642 million settlement of opioid-related lawsuits from all 50 state attorneys general, in which it didn't admit wrongdoing. It agreed in the settlement to make public certain documents concerning its past work for opioid companies and began releasing records last year.

The documents establish that McKinsey identified the VA as an important sales target for its corporate clients in the opioid industry, at a time that the firm also did consulting work for the agency.

A McKinsey spokesman said that the firm advised the VA on matters related to opioid procurement and denied that the firm's simultaneous work for opioid manufacturers was a conflict of interest.

While its consulting work for the VA was ongoing, McKinsey during the 2010s wrote presentations for its pharmaceutical clients that recommended they aim for the agency to accept their new opioid products to prescribe to veterans or to increase sales of their opioid products that the agency had already accepted.

The McKinsey spokesman said that "we follow robust policies and comply with the relevant laws and regulations, including those pertaining to procurement and conflicts."

Mike Quinn, a lawyer who represents a group of opioid victims in Purdue's bankruptcy case, said the recently released documents show McKinsey's dual role advising the VA and the opioid makers raise the question "who was McKinsey really serving here? The VA or Purdue? They need to pick a lane."

McKinsey clients Purdue, Endo, Mallinckrodt PLC and Actavis Generics accounted for 90% of opioid pills sold in the U.S. between 2006 and 2014, according to data compiled by the Food and Drug Administration. Purdue, Endo and Mallinckrodt didn't respond to requests for comment. Teva Pharmaceutical Industries Ltd., which acquired Actavis Generics in 2016, also didn't respond to a request for comment.

The McKinsey spokesman said the firm no longer works with those companies and stopped all work on opioid-specific business in 2019.



McKinsey denied that the work represented a conflict of interest.



The fast-fashion company known for its ultralow prices is accused of paying a lower tariff rate that was intended for individual buyers.

Clothes Retailer Shein Probed Over South Africa Complaints

Union, industry groups allege company evades tariffs by sending items in small packages

By Alexandra Wexler

JOHANNESBURG—South Africa's government said Monday that it is investigating fast-fashion company Shein following complaints from the local textile union and industry association that it may be exploiting tax loopholes to gain an unfair advantage in Africa's most developed economy.

A spokesman for the Department of Trade, Industry and Competition declined to provide details on the investigation, but he said that it was initiated in response to concerns raised by labor and industry groups. The issues raised by the South African groups resemble complaints by manufacturers and unions in the U.S. that claim that Shein

and other Chinese retailers are taking advantage of an exception in U.S. customs law that allows them to import goods without paying tariffs.

The South African probe is the first time a government has confirmed an official investigation into Shein's import practices. Closely held Shein, which was founded in China but is now based in Singapore, has become one of the world's largest online fashion retailers by shipping ultralow-priced merchandise from China directly to consumers in more than 150 countries. Women's tops on Shein's website sell for as little as \$2 and some dresses can be purchased for less than \$5.

The Southern African Clothing and Textile Workers' Union and the National Clothing Retail Federation of South Africa allege that Shein deliberately sends its goods in small packages of lesser value to reduce import duties. Those duties have been put in place to help local industry compete

against cheap imports.

"The initial indications that we've seen based on import documents is that the company uses a loophole that is really intended for individual customers," said Etienne Vlok, the union's national industrial policy officer. "Below a certain value threshold, you don't have to pay the same taxes as someone importing tens of thousands of garments."

The South African government normally charges tariffs of between 40% and 45% on imported clothing, depending on the value, but Shein may be paying as little as 10% to 20%, Mr. Vlok said.

"If that is the case, we should be looking at a way to close that loophole," he said. Shein "doesn't seem to be playing by the rules others are playing by."

A Shein spokesperson said the company is committed to complying with local laws and regulations of the markets in which it operates. Groups in the U.S., such as

the Coalition for a Prosperous America, which includes U.S. manufacturers and labor associations, have raised similar concerns about a law, known as the *de minimis* rule. This law allows American tourists to bring back souvenirs from overseas duty-free and is now being used by companies to avoid paying billions of dollars in tariffs.

The law allows U.S. retailers that sell Chinese imports and Chinese companies that sell directly to American consumers to avoid tariffs as long as goods are packaged and addressed to individual buyers and fall below an \$800 cap.

"The fact of Shein having a presence in the U.S. is in low-price points is kind of a worldwide phenomenon," said Michael Lawrence, executive director of the National Clothing Retail Federation of South Africa. "It's not just my membership that is trying to get their heads around what allows for such aggressively low price points."

AI Food Startup Hires Activision Marketer

By Patricia Coffee

The Not Co. or NotCo, a Chilean startup that uses artificial-intelligence technology to produce plant-based foods that mimic dairy and meat products, has hired Fernando Machado as chief marketing officer. He succeeds Flavia Buchmann, who left the company in late 2022.

Mr. Machado had been CMO at videogame company Activision Blizzard Inc. since April 2021 and previously led marketing for fast-food chain Burger King and its parent company, Restaurant Brands International Inc. Mr. Machado will develop a marketing plan to help NotCo break through into the U.S. market, said Matias Muchnick, its co-founder and chief executive. NotCo has also brought on an unnamed U.S. general manager to work alongside Mr. Machado and will announce that hire in the coming weeks, according to a company spokesman.

Other makers of plant-based foods, such as Impossible Foods Inc. and Beyond Meat Inc., have attempted to establish a steady presence in the market by catering to a consumer interest in meat substitutes. But sales of meat substitutes in U.S. grocery stores fell in 2022, and Impossible Foods and Beyond Meat each recently hired new heads of marketing to more actively promote their products.

NotCo is looking to learn from these companies' challenges, said Mr. Muchnick. It has entered a range of product categories and signed deals with larger food brands while using its tech as a point of dif-

ferentiation. In addition to selling its own branded products, NotCo also licenses its proprietary AI technology so other manufacturers can produce plant-based foods.

Marketing efforts will incorporate the machine-learning tools that NotCo uses to create plant-based alternatives for products such as mayonnaise, fried chicken and ice cream, said Mr. Muchnick.

The best use of NotCo's AI tools to date came in 2021, when fast-casual chain Shake Shack Inc. tasked the startup with creating a dairy-free replica of its frozen custards and shakes. In three weeks, according to Mr. Muchnick, the chain later began selling the resulting product at locations in New York and Miami, and Shake Shack co-founder Danny Meyer became an investor in NotCo through private-equity fund Enlightened Hospitality Investments, Mr. Muchnick said.

NotCo will lean on its partnerships with packaged-goods conglomerate Kraft Heinz Co. and quick-service chains such as Starbucks Corp. and Burger King, as well as its distribution deals with retailers including Whole Foods Market and Kroger Co. Its messaging will focus on promoting a range of products rather than producing high-level campaigns explaining how its AI tools work, Mr. Machado said. NotCo, which maintains a relatively small marketing budget, also will run campaigns promoting co-branded products, such as Kraft Heinz's NotCheese, created in partnership with that company and others, according to Mr. Machado.

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Advertisement containing multiple sections: 'CAREERS' with a job listing for a business broker; 'LEGAL NOTICE' with a court notice regarding a settlement; and 'CLASS ACTION' with a notice for a class action lawsuit.

# EXHIBIT C

# Bernstein Litowitz Berger & Grossmann LLP Announces Notice of Pendency and Proposed Settlement of Class Action Involving Persons or Entities who Purchased or Otherwise Acquired Publicly Traded Common Stock of Mohawk Industries Inc. from April 28, 2017 through July 25, 2019, inclusive

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NEWS PROVIDED BY  
**JND Legal Administration** →  
Mar 14, 2023, 09:24 ET

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SEATTLE, March 14, 2023 /PRNewswire/ --

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF GEORGIA  
ROME DIVISION**

PUBLIC EMPLOYEES' RETIREMENT  
SYSTEM OF MISSISSIPPI, individually and  
on behalf of all others similarly situated,

Plaintiff,

v.

MOHAWK INDUSTRIES, INC. and JEFFREY  
S. LORBERBAUM,

Defendants.

Civ. A. No. 4:20-cv-00005-VMC

**SUMMARY NOTICE OF (I) PENDENCY OF CLASS ACTION AND PROPOSED SETTLEMENT; (II) SETTLEMENT HEARING; AND (III) MOTION FOR ATTORNEYS' FEES AND LITIGATION EXPENSES**

**TO: All persons or entities who purchased or otherwise acquired publicly traded common stock of Mohawk Industries, Inc. ("Mohawk") during the period from April 28, 2017 through July 25, 2019, inclusive (the "Class Period"), and who were damaged thereby (the "Class").**

Certain persons and entities are excluded from the Class by definition, as set forth in the full printed Notice of (I) Pendency of Class Action and Proposed Settlement; (II) Settlement Hearing; and (III) Motion for Attorneys' Fees and Litigation Expenses (the "Notice").

**PLEASE READ THIS NOTICE CAREFULLY. YOUR RIGHTS MAY BE AFFECTED BY A CLASS ACTION LAWSUIT PENDING IN THIS COURT.**

YOU ARE HEREBY NOTIFIED, pursuant to Rule 23 of the Federal Rules of Civil Procedure and an Order of the United States District Court for the Northern District of Georgia (the "Court"), that the above-captioned litigation (the "Action") is pending in the Court.

YOU ARE ALSO NOTIFIED that Lead Plaintiff, Public Employees' Retirement System of Mississippi, has reached a proposed settlement of the Action for \$60,000,000 in cash (the "Settlement") on behalf of the Class, that, if approved, will resolve all claims in the Action.



A hearing will be held on **May 31, 2023, at 10:00 a.m.**, before the Honorable Victoria M. Calvert, either in person at the United States District Court for the Northern District of Georgia, Courtroom 2105, Richard B. Russell Federal Building and United States Courthouse, 75 Ted Turner Drive, SW, Atlanta, Georgia 30303-3309, or by telephone or videoconference (in the discretion of the Court) for the following purposes: (a) to determine whether the proposed Settlement on the terms and conditions provided for in the Stipulation and Agreement of Settlement dated January 13, 2023 (the "Stipulation") is fair, reasonable, and adequate to the Class, and should be finally approved by the Court; (b) to determine whether a Judgment, substantially in the form attached as Exhibit B to the Stipulation, should be entered dismissing the Action with prejudice; (c) to determine whether the proposed Plan of Allocation for the proceeds of the Settlement is fair and reasonable and should be approved; (d) to determine whether the motion by Lead Counsel for an award of attorneys' fees and Litigation Expenses should be approved; and (e) to consider any other matters that may properly be brought before the Court in connection with the Settlement.

**If you are a member of the Class, your rights will be affected by the pending Action and the Settlement, and you may be entitled to share in the Settlement Fund.** If you have not yet received the Notice and Proof of Claim and Release Form ("Claim Form"), you may obtain copies of these documents by contacting the Claims Administrator by mail at *Mohawk Industries Securities Litigation*, c/o JND Legal Administration, P.O. Box 91096, Seattle, WA 98111; by telephone at 877-415-0648; or by email at [info@MohawkIndustriesSecuritiesLitigation.com](mailto:info@MohawkIndustriesSecuritiesLitigation.com). Copies of the Notice and Claim Form can also be downloaded from the website maintained by the Claims Administrator, [www.MohawkIndustriesSecuritiesLitigation.com](http://www.MohawkIndustriesSecuritiesLitigation.com).

If you are a member of the Class, in order to be eligible to receive a payment under the proposed Settlement, you must submit a Claim Form either by mail or online, in accordance with the instructions set forth in the Claim Form. If mailed, the Claim Form **must be postmarked no later than July 5, 2023**. If submitted online at [www.MohawkIndustriesSecuritiesLitigation.com](http://www.MohawkIndustriesSecuritiesLitigation.com), the Claim Form **must be submitted no later than July 5, 2023**. If you are a Class Member and do not submit a proper Claim Form, you will not be eligible to share in the distribution of the net proceeds of the Settlement, but you will nevertheless be bound by any releases, judgments, or orders entered by the Court in connection with the Settlement.

If you are a member of the Class and wish to exclude yourself from the Class, you must submit a request for exclusion either by mail or email, in accordance with the instructions set forth in the Notice. If mailed, the request for exclusion **must be postmarked no later than May 10, 2023**. If submitted by email, the request for exclusion **must be submitted no later than May 10, 2023**. If

you properly exclude yourself from the Class, you will not be bound by any judgments or orders entered by the Court in the Action and you will not be eligible to share in the proceeds of the Settlement.

Any objections to the proposed Settlement, the proposed Plan of Allocation, or Lead Counsel's motion for an award of attorneys' fees and Litigation Expenses, must be filed with the Court and delivered to Lead Counsel and Representative Defendants' Counsel **no later than May 10, 2023**, in accordance with the instructions set forth in the Notice.

**Please do not contact the Court, the Clerk's office, Defendants, or their counsel regarding this notice.** All questions about this notice, the proposed Settlement, or your eligibility to participate in the Settlement should be directed to Lead Counsel or the Claims Administrator.

Inquiries, other than requests for the Notice and Claim Form, should be made to Lead Counsel:

Jonathan D. Uslaner, Esq.  
Bernstein Litowitz Berger & Grossmann LLP  
2121 Avenue of the Stars, Suite 2575  
Los Angeles, CA 90067

800-380-8496  
settlements@blbglaw.com

Requests for the Notice and Claim Form should be made to:

*Mohawk Industries Securities Litigation*  
c/o JND Legal Administration  
P.O. Box 91096  
Seattle, WA 98111

877-415-0648  
info@MohawkIndustriesSecuritiesLitigation.com  
www.MohawkIndustriesSecuritiesLitigation.com

By Order of the Court

SOURCE JND Legal Administration

# Exhibit 4

**EXHIBIT 4**

*Public Employees' Retirement System of Mississippi v. Mohawk Industries, Inc., et al.*, No. 4:20-cv-00005-VMC

**SUMMARY OF PLAINTIFF'S COUNSEL'S  
LODESTAR AND EXPENSES**

<b>Ex.</b>	<b>FIRM</b>	<b>HOURS</b>	<b>LODESTAR</b>	<b>EXPENSES</b>
4A	Bernstein Litowitz Berger & Grossmann LLP	27,780.00	\$14,471,750.00	\$689,840.96
4B	Bondurant Mixson & Elmore LLP	105.00	\$97,236.00	\$1,710.70
4C	Davidson Bowie, PLLC	105.50	\$36,925.00	\$0.00
	<b>TOTALS:</b>	27,990.50	\$14,605,911.00	\$691,551.66

# **Exhibit 4A**

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF GEORGIA  
ROME DIVISION**

PUBLIC EMPLOYEES'  
RETIREMENT SYSTEM OF  
MISSISSIPPI, individually and on  
behalf of all others similarly situated,

Plaintiff,

v.

MOHAWK INDUSTRIES, INC. and  
JEFFREY S. LORBERBAUM,

Defendants.

Civ. A. No. 4:20-cv-00005-VMC

**DECLARATION OF JOHN C. BROWNE  
IN SUPPORT OF LEAD COUNSEL'S MOTION FOR  
ATTORNEYS' FEES AND LITIGATION EXPENSES, FILED ON  
BEHALF OF BERNSTEIN LITOWITZ BERGER & GROSSMANN LLP**

I, John C. Browne, declare pursuant to 28 U.S.C. § 1746 as follows:

1. I am a partner in the law firm of Bernstein Litowitz Berger & Grossmann LLP ("BLB&G"). My firm serves as Lead Counsel for Lead Plaintiff and the Class in the above-captioned action (the "Action"). I submit this declaration in support of Lead Counsel's application for an award of attorneys' fees in connection with services rendered in the Action, as well as for payment of expenses

incurred by my firm in connection with the Action.<sup>1</sup> I have personal knowledge of the facts stated in this declaration and, if called upon, could and would testify to these facts.

2. My firm, as Court-appointed Lead Counsel in the Action, was involved in all aspects of the prosecution and resolution of the Action, as set forth in the Declaration of John C. Browne in Support of (i) Lead Plaintiff's Motion for Final Approval of Class Action Settlement and Plan of Allocation and (ii) Lead Counsel's Motion for Attorneys' Fees and Litigation Expenses, filed herewith.

3. The schedule attached hereto as Exhibit 1 is a summary indicating the amount of time spent by each BLB&G attorney and professional support staff employee involved in this Action who devoted ten (10) or more hours to the Action from its inception through and including April 21, 2023 and the lodestar calculation for those individuals based on their current hourly rates, which are set in accordance with paragraph 7 below. The schedule was prepared from contemporaneous daily time records regularly prepared and maintained by BLB&G.

4. Partners responsible for supervising BLB&G's work on this case reviewed these time and expense records to prepare this declaration. The purpose of this review was to confirm both the accuracy of the time entries and expenses and

---

<sup>1</sup> Unless otherwise defined herein, all capitalized terms have the meanings set forth in the Stipulation and Agreement of Settlement dated January 20, 2023 previously filed with the Court. *See* ECF No. 119-1.



the necessity for, and reasonableness of, the time and expenses committed to the litigation. As a result of this review, reductions were made in the exercise of counsel's judgment. In addition, all time expended in preparing this application for fees and expenses has been excluded.

5. Following this review and the adjustments made, I believe that the time reflected in the firm's lodestar calculation and the expenses for which payment is sought as stated in this declaration are reasonable in amount and were necessary for the effective and efficient prosecution and resolution of the litigation. The expenses are all of a type that courts have routinely approved in similar class action cases.

6. The hourly rates for BLB&G attorneys and professional support staff employees have been accepted by courts for lodestar cross-checks in other securities class action litigation fee applications. *See, e.g., In re Equifax Inc. Sec. Litig.*, 1:17-cv-03463-TWT (N.D. Ga. 2020) (awarding fee based on lodestar analysis using BLB&G hourly rates); *City of Sunrise General Emps.' Ret. Plan v. Fleetcor Techs. Inc., et al.*, No. 1:17-cv-02207-LMM (N.D. Ga. 2020) (same). BLB&G's rates also compare favorably with the rates charged by Mohawk's Counsel, Alston & Bird, LLP, which, based on a recent court filing, range from \$925 to \$1,290 for partners and from \$570 to \$805 for associates, with a paralegal rate of \$450. *See In re: Space Case, Inc.*, No. 22-10657 (BLS) (Bankr. S.D.N.Y. Dec. 22, 2022), ECF No. 264.

7. My firm's rates, set forth in Exhibit 1, are set based on periodic analysis of rates charged by firms performing comparable work and have been approved by courts. Different timekeepers within the same employment category (e.g., partners, associates, paralegals, etc.) may have different rates based on a variety of factors, including years of practice, years at the firm, year in the current position (e.g., years as a partner), relevant experience, relative expertise, and the rates of similarly experienced peers at our firm or other firms.

8. The total number of hours expended on this Action by my firm from the inception of the case through and including April 21, 2023, is 27,780.00 hours. The total lodestar for my firm for that period is \$14,471,750.00. My firm's lodestar figures are based upon the firm's hourly rates describe above, which do not include charges for expense items. Expense items are recorded separately, and these amounts are not duplicated in my firm's hourly rates.

9. None of the attorneys listed in Exhibit 1 to this declaration and included in my firm's lodestar for the Action are "contract attorneys." All attorneys and employees of the firm listed in the attached schedule worked at BLB&G's offices in New York, New York or Los Angeles, California, or remotely following the COVID-19 pandemic. Except for the partners listed in the attached schedule, all of the other attorneys and professional support staff listed in the schedule were W-2 employees of the firm and were not independent contractors issued Form 1099s.

Thus, the firm pays FICA and Medicare taxes on their behalf, along with state and federal unemployment taxes. These employees were fully supervised by the firm's partners and have access to secretarial, paralegal, and information technology support. BLB&G also assigns a firm email address to each attorney or other employee it employs, including those listed.

10. As detailed in Exhibit 2, my firm is seeking payment for a total of \$689,840.96 in expenses incurred in connection with the prosecution of this Action from its inception through and including April 26, 2023. The following is additional information regarding certain of the expenses stated on Exhibit 2 to this declaration:

a. **Online Legal and Factual Research** (\$73,178.00). The charges reflected are for out-of-pocket payments to vendors such as Westlaw, Lexis/Nexis, and PACER for research done in connection with this litigation. These resources were used to obtain access to court filings, to conduct legal research and cite-checking of briefs, and to obtain factual information regarding the claims asserted through access to various financial databases and other factual databases. These expenses represent the actual expenses incurred by BLB&G for use of these services in connection with this litigation. There are no administrative charges included in these figures. Online research is billed to each case based on actual usage at a charge set by the vendor. When BLB&G utilizes online services provided by a vendor with a flat-rate contract, access to the service is by a billing code entered for the specific

case being litigated. At the end of each billing period, BLB&G's costs for such services are allocated to specific cases based on the percentage of use in connection with that specific case in the billing period.

b. **Experts** (\$393,899.96). Lead Counsel consulted with an expert in the field of loss causation and damages during the preparation of the amended complaint and the motion for class certification, and consulted further with this expert during the settlement negotiations with Defendants and the development of the proposed Plan of Allocation. Lead Counsel also retained and consulted with experts regarding the revenue, inventory, cost accounting, and flooring industry issues that were central to this litigation.

c. **Mediation** (\$80,713.25). This represents Lead Plaintiff's share of fees paid to Phillips ADRs for the services of the mediator, the Hon. Layn R. Phillips (USDJ, Ret.). Judge Phillips conducted an in-person mediation session in New York City on June 8, 2022.

d. **Document Management/Litigation Support** (\$32,906.57). BLB&G seeks reimbursement of \$5,244.47 charged by an outside vendor for data collection services, as well as payment of \$27,662.10 for the costs associated with BLB&G establishing and maintaining the internal document database that was used to process, review, and analyze documents produced by Defendants and third parties. BLB&G requests payment of \$4 per gigabyte of data per month and \$17 per user to

recover the costs associated with maintaining its document database management system, which includes the costs to BLB&G of necessary software licenses and hardware. The amount sought includes the costs of maintaining the database through January 13, 2023, the date on which the parties executed the Stipulation. BLB&G has conducted a review of market rates charged for the similar services performed by third-party document management vendors and found that its rate was approximately 70% below the market rates charged by these vendors, resulting in a savings to the Class.

e. **Out-of-Town Travel** (\$17,450.92). BLB&G has incurred travel expenses for its attorneys to attend depositions conducted in Atlanta, Georgia, to attend the mediation session before Judge Phillips in New York City, and to meet with and gather documents at the offices of the Lead Plaintiff in Jackson, Mississippi. The expenses reflected in Exhibit 2 are the expenses actually incurred by my firm or reflect “caps” on travel costs based on the following criteria: (i) airfare is capped at coach/economy rates; (ii) hotel charges per night are capped at \$350 for “high cost” locations and \$250 for “lower cost” locations, as categorized by IRS guidelines (the relevant cities and how they are categorized are reflected on Exhibit 2); and (iii) meals while traveling are capped at \$20 per person for breakfast, \$25 per person for lunch, and \$50 per person for dinner.

f. **Working Meals** (\$876.42). Out-of-office meals are capped at \$25 per person for lunch and \$50 per person for dinner, and in-office working meals are capped at \$25 per person for lunch and \$40 per person for dinner.

11. The expenses incurred in this Action are reflected in the records of my firm, which are regularly prepared and maintained in the ordinary course of business. These records are prepared from expense vouchers, check records, and other source materials and are an accurate record of the expenses incurred.

12. With respect to the standing of my firm, attached hereto as Exhibit 3 is a brief biography of my firm and the attorneys still employed with the firm and involved in this matter.

I declare, under penalty of perjury, that the foregoing facts are true and correct.

Executed on: April 26, 2023.

/s/ John C. Browne  
John C. Browne

## EXHIBIT 1

*Public Employees' Retirement System of Mississippi v.  
Mohawk Industries, Inc., et al.*, No. 4:20-cv-00005-VMC

### BERNSTEIN LITOWITZ BERGER & GROSSMANN LLP

#### TIME REPORT

Inception through and including April 21, 2023

NAME	HOURS	HOURLY RATE	LODESTAR
<b>Partners</b>			
Michael Blatchley	36.75	\$975	\$35,831.25
John Browne	700.50	\$1,150	\$805,575.00
Scott Foglietta	42.00	\$900	\$37,800.00
Avi Josefson	22.50	\$1,150	\$25,875.00
Gerald Silk	115.50	\$1,250	\$144,375.00
Jonathan Uslaner	1,441.50	\$975	\$1,405,462.50
<b>Senior Counsel</b>			
David Duncan	13.75	\$825	\$11,343.75
Richard Gluck	547.00	\$825	\$451,275.00
Michael Mathai	1,115.50	\$825	\$920,287.50
John Mills	135.00	\$825	\$111,375.00
<b>Trial Counsel</b>			
Robert Kravetz	81.25	\$850	\$69,062.50
<b>Associates</b>			
Girolamo Brunetto	86.00	\$650	\$55,900.00
Lauren Cruz	1,230.75	\$650	\$799,987.50
Alex Payne	1,553.00	\$600	\$931,800.00
Ross Shikowitz	57.00	\$600	\$34,200.00
<b>Senior Staff Attorney</b>			
Ryan McCurdy	1,867.75	\$450	\$840,487.50

<b>Staff Attorneys</b>			
Alexa Butler	1,925.75	\$425	\$818,443.75
Chris Clarkin	2,231.25	\$425	\$948,281.25
George Doumas	1,759.75	\$425	\$747,893.75
Igor Faynshteyn	1,804.00	\$400	\$721,600.00
Joseph Ferrone	2,292.00	\$425	\$974,100.00
Amy Mitura	1,303.75	\$375	\$488,906.25
Jeff Powell	37.75	\$425	\$16,043.75
Susan Rubinstein	168.50	\$425	\$71,612.50
Joanna Tarnawski	568.50	\$425	\$241,612.50
Richard Urisko	2,223.00	\$425	\$944,775.00
Alex Wu	1,418.75	\$425	\$602,968.75
<b>Financial Analysts</b>			
Milana Babic	28.50	\$425	\$12,112.50
Nick DeFilippis	56.00	\$650	\$36,400.00
Tanjila Sultana	55.50	\$475	\$26,362.50
Adam Weinschel	34.75	\$600	\$20,850.00
<b>Investigators</b>			
Robin Barnier	204.25	\$425	\$86,806.25
Amy Bitkower	125.75	\$600	\$75,450.00
Jacob Foster	131.75	\$325	\$42,818.75
Jenna Goldin	258.75	\$425	\$109,968.75
Andrew Thompson	426.00	\$425	\$181,050.00
<b>Litigation Support</b>			
Johanna Pitcairn	41.75	\$400	\$16,700.00
Roberto Santamarina	84.75	\$450	\$38,137.50
Julio Velazquez	49.00	\$400	\$19,600.00
<b>Managing Clerk</b>			
Mahiri Buffong	92.50	\$425	\$39,312.50
<b>Paralegals</b>			
Cindy Bomzer-Stein	341.50	\$325	\$110,987.50
Annemarie Eames	24.25	\$325	\$7,881.25
Janielle Lattimore	44.75	\$400	\$17,900.00
Khristine De Leon	22.75	\$325	\$7,393.75



Matthew Mahady	23.50	\$375	\$8,812.50
Desiree Morris	98.00	\$375	\$36,750.00
Yulia Tsoy	46.75	\$325	\$15,193.75
Gary Weston	18.00	\$400	\$7,200.00
Melody Yaghoubzadeh	792.50	\$375	\$297,187.50
<b>TOTALS:</b>	<b>27,780.00</b>		<b>\$14,471,750.00</b>

## EXHIBIT 2

*Public Employees' Retirement System of Mississippi v. Mohawk Industries, Inc., et al.*, No. 4:20-cv-00005-VMC

### BERNSTEIN LITOWITZ BERGER & GROSSMANN LLP

#### EXPENSE REPORT

Inception through and including April 26, 2023

CATEGORY	AMOUNT
Service of Process	\$2,895.80
PSLRA Notice Costs	\$2,125.00
On-Line Legal and Factual Research	\$73,178.00
Document Management/Litigation Support	\$32,906.57
Telephone	\$1,067.36
Postage & Express Mail	\$1,196.52
Hand Delivery Charges	\$114.00
Local Transportation	\$1,124.30
Outside Copying	\$11,037.68
Out of Town Travel*	\$17,450.92
Working Meals	\$876.42
Court Reporting & Transcripts	\$71,255.18
Experts	\$393,899.96
Mediation Fees	\$80,713.25
<b>TOTAL:</b>	<b>\$689,840.96</b>

\* Hotel charges for stays in “higher-cost” cities, i.e., New York, NY, are capped at \$350 per night and rates for stays in “lower-cost” cities, i.e., Atlanta, GA and Jackson, MS, are capped at \$250 per night.

**EXHIBIT 3**

*Public Employees' Retirement System of Mississippi v.  
Mohawk Industries, Inc., et al.*, No. 4:20-cv-00005-VMC

**BERNSTEIN LITOWITZ BERGER & GROSSMANN LLP**

**FIRM BIOGRAPHY**

**BLB&G** Bernstein Litowitz  
Berger & Grossmann LLP

*Bernstein Litowitz Berger & Grossmann LLP*  
*Attorneys at Law*

# Firm Resume

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*Since our founding in 1983, Bernstein Litowitz Berger & Grossmann LLP has obtained many of the largest monetary recoveries in history—over \$37 billion on behalf of investors. Unique among our peers, the firm has obtained the largest settlements ever agreed to by public companies related to securities fraud, including four of the ten largest in history. Working with our clients, we have also used the litigation process to achieve precedent-setting reforms which have increased market transparency, held wrongdoers accountable and improved corporate business practices in groundbreaking ways.*

## Firm Overview

Bernstein Litowitz Berger & Grossmann LLP (BLB&G), a national law firm with offices located in New York, California, Delaware, Louisiana, and Illinois, prosecutes class and private actions on behalf of individual and institutional clients. The firm's litigation practice areas include securities class and direct actions in federal and state courts; corporate governance and shareholder rights litigation, including claims for breach of fiduciary duty and proxy violations; mergers and acquisitions and transactional litigation; alternative dispute resolution; and distressed debt and bankruptcy. We also handle, on behalf of major institutional clients and lenders, more general complex commercial litigation involving allegations of breach of contract, accountants' liability, breach of fiduciary duty, fraud, and negligence.

We are the nation's leading firm representing institutional investors in securities fraud class action litigation. The firm's institutional client base includes U.S. public pension funds the New York State Common Retirement Fund; the California Public Employees' Retirement System (CalPERS); the Los Angeles County Employees Retirement Association (LACERA); the Chicago Municipal, Police and Labor Retirement Systems; the Teacher Retirement System of Texas; the Arkansas Teacher Retirement System; the Florida State Board of Administration; the Public Employees' Retirement System of Mississippi; the New York State Teachers' Retirement System; the Ohio Public Employees Retirement System; the State Teachers Retirement System of Ohio; the Oregon Public Employees Retirement System; the Virginia Retirement System; the Louisiana School, State, Teachers and Municipal Police Retirement Systems; the Public School Teachers' Pension and Retirement Fund of Chicago; the New Jersey Division of Investment of the Department of the Treasury; TIAA-CREF and other private institutions; as well as numerous other public and Taft-Hartley pension entities. Our European client base includes APG; Aegon AM; ATP; Blue Sky Group; Hermes IM; Robeco; SEB; Handelsbanken; Nykredit; PGB; and PGGM, among others.

## More Top Securities Recoveries

Since its founding in 1983, BLB&G has prosecuted some of the most complex cases in history and has obtained over \$37 billion on behalf of investors. Unique among its peers, the firm has negotiated and obtained many of the largest securities class action recoveries in history, including:

- *In re WorldCom, Inc. Securities Litigation – \$6.19 billion recovery*
- *In re Cendant Corporation Securities Litigation – \$3.3 billion recovery*

- *In re Bank of America Corp. Securities, Derivative, and Employee Retirement Income Security Act (ERISA) Litigation* – \$2.43 billion recovery
- *In re Nortel Networks Corporation Securities Litigation (Nortel II)* – \$1.07 billion recovery
- *In re Merck & Co., Inc. Securities Litigation* – \$1.06 billion recovery
- *In re McKesson HBOC, Inc. Securities Litigation* – \$1.05 billion recovery

Based on our record of success, BLB&G has been at the top of the rankings by ISS Securities Class Action Services (ISS-SCAS), a leading industry research publication that provides independent and objective third-party analysis and statistics on securities-litigation law firms, since its inception. In its most recent report, [\*Top 100 U.S. Class Action Settlements of All-Time\*](#), ISS-SCAS once again ranked BLB&G as the top firm in the field for the eleventh year in a row. BLB&G has served as lead or co-lead counsel in 37 of the ISS-SCAS's top 100 U.S. securities-fraud settlements—more than twice as many as any other firm—and recovered over \$26 billion for investors in those cases, nearly \$10 billion more than any other plaintiffs' securities firm.

## Giving Shareholders a Voice and Changing Business Practices for the Better

BLB&G was among the first law firms ever to obtain meaningful corporate governance reforms through litigation. In courts throughout the country, we prosecute shareholder class and derivative actions, asserting claims for breach of fiduciary duty and proxy violations wherever the conduct of corporate officers and/or directors, or M&A transactions, seek to deprive shareholders of fair value, undermine shareholder voting rights, or allow management to profit at the expense of shareholders.

We have prosecuted seminal cases establishing precedent which has increased market transparency, held wrongdoers accountable, addressed issues in the boardroom and executive suite, challenged unfair deals, and improved corporate business practices in groundbreaking ways.

From setting new standards of director independence, to restructuring board practices in the wake of persistent illegal conduct; from challenging the improper use of defensive measures and deal protections for management's benefit, to confronting stock options backdating abuses and other self-dealing by executives; we have confronted a variety of questionable, unethical and proliferating corporate practices. Seeking to reform faulty management structures and address breaches of fiduciary duty by corporate officers and directors, we have obtained unprecedented victories on behalf of shareholders seeking to improve governance and protect the shareholder franchise.

## Practice Areas

### Securities Fraud Litigation

Securities fraud litigation is the cornerstone of the firm's litigation practice. Since its founding, the firm has had the distinction of having tried and prosecuted many of the most high-profile securities fraud class actions in history, recovering billions of dollars and obtaining unprecedented corporate governance reforms on behalf of our clients. BLB&G continues to play a leading role in major securities litigation pending in federal and state courts, and the firm remains one of the nation's leaders in representing institutional investors in securities fraud class litigation.

The firm also pursues direct actions in securities fraud cases when appropriate. By selectively opting out of certain securities class actions, we seek to resolve our clients' claims efficiently and for substantial multiples of what they might otherwise recover from related class action settlements.

Our attorneys have extensive experience in the laws that regulate the securities markets and in the disclosure requirements of corporations that issue publicly traded securities. Many also have accounting backgrounds. The group has access to state-of-the-art, online financial wire services and databases, which enable it to instantaneously investigate any potential securities fraud action involving a public company's debt and equity securities. Biographies for our attorneys can be accessed on the firm's website by clicking [here](#).

### Corporate Governance and Shareholder Rights

Our Corporate Governance and Shareholder Rights attorneys prosecute derivative actions, claims for breach of fiduciary duty, and proxy violations on behalf of individual and institutional investors in state and federal courts throughout the country. We have prosecuted actions challenging numerous highly publicized corporate transactions which violated fair process, fair price, and the applicability of the business judgment rule, and have also addressed issues of corporate waste, shareholder voting rights claims, and executive compensation.

Our attorneys have prosecuted numerous cases regarding the improper "backdating" of executive stock options which resulted in windfall undisclosed compensation to executives at the direct expense of shareholders—and returned hundreds of millions of dollars to company coffers. We also represent institutional clients in lawsuits seeking to enforce fiduciary obligations in connection with Mergers & Acquisitions and "Going Private" transactions that deprive shareholders of fair value when participants buy companies from their public shareholders "on the cheap." Although enough shareholders accept the consideration offered for the transaction to close, many sophisticated investors correctly recognize and ultimately enjoy the increased returns to be obtained by pursuing appraisal rights and demanding that courts assign a "true value" to the shares taken private in these transactions.

Our attorneys are well versed in changing SEC rules and regulations on corporate governance issues and have a comprehensive understanding of a wide variety of corporate law transactions and both substantive and courtroom expertise in the specific legal areas involved. As a result of the firm's high-profile and widely recognized capabilities, our attorneys are increasingly in demand with institutional investors who are exercising a more assertive voice with corporate boards regarding corporate governance issues and the boards' accountability to shareholders.



## Distressed Debt and Bankruptcy

BLB&G has obtained billions of dollars through litigation on behalf of bondholders and creditors of distressed and bankrupt companies, as well as through third-party litigation brought by bankruptcy trustees and creditors' committees against auditors, appraisers, lawyers, officers and directors, and other defendants who may have contributed to client losses. As counsel, we advise institutions and individuals nationwide in developing strategies and tactics to recover assets presumed lost as a result of bankruptcy. Our record in this practice area is characterized by extensive trial experience in addition to successful settlements.

## Commercial Litigation

BLB&G provides contingency fee representation in complex business litigation and has obtained substantial recoveries on behalf of investors, corporations, bankruptcy trustees, creditor committees, and other business entities. We have faced down the most powerful and well-funded law firms and defendants in the country—and consistently prevailed. For example, on behalf of the bankruptcy trustee, the firm prosecuted *BFA Liquidation Trust v. Arthur Andersen*, arising from the largest nonprofit bankruptcy in U.S. history. After two years of litigation and a week-long trial, the firm obtained a \$217 million recovery from Andersen for the Trust. Combined with other recoveries, the total amounted to more than 70 percent of the Trust's losses.

Having obtained huge recoveries with nominal out-of-pocket expenses and fees of less than 20 percent, we have repeatedly demonstrated that valuable claims are best prosecuted by a first-rate litigation firm on a contingent basis at negotiated percentages. Legal representation need not compound the risk and high cost inherent in today's complex and competitive business environment. We are paid only if we (and our clients) win. The result: the highest quality legal representation at a fair price.

## Alternative Dispute Resolution

BLB&G offers clients an accomplished team and a creative venue in which to resolve conflicts outside of the litigation process. We have experience in U.S. and international disputes and our attorneys have led complex business-to-business arbitrations and mediations domestically and abroad representing clients before all the major arbitration tribunals, including the American Arbitration Association, FINRA, JAMS, International Chamber of Commerce, and the London Court of International Arbitration.

Our lawyers have successfully arbitrated cases that range from complex business-to-business disputes to individuals' grievances with employers. It is our experience that in some cases, a well-executed arbitration process can resolve disputes faster, with limited appeals and with a higher level of confidentiality than public litigation.

In the wake of the credit crisis, for example, we successfully represented numerous former executives of a major financial institution in arbitrations relating to claims for compensation. We have also assisted clients with disputes involving failure to honor compensation commitments, disputes over the purchase of securities, businesses seeking compensation for uncompleted contracts, and unfulfilled financing commitments.

## Feedback from The Courts

Throughout the firm's history, many courts have recognized the professional excellence and diligence of the firm and its members. A few examples are set forth below.

### *In re WorldCom, Inc. Securities Litigation*

- The Honorable Denise Cote of the United States District Court for the Southern District of New York

"I have the utmost confidence in plaintiffs' counsel...they have been doing a superb job...The Class is extraordinarily well represented in this litigation."

"The magnitude of this settlement is attributable in significant part to Lead Counsel's advocacy and energy...The quality of the representation given by Lead Counsel...has been superb...and is unsurpassed in this Court's experience with plaintiffs' counsel in securities litigation."

"Lead Counsel has been energetic and creative...Its negotiations with the Citigroup Defendants have resulted in a settlement of historic proportions."

\* \* \*

### *In re Clarent Corporation Securities Litigation*

- The Honorable Charles R. Breyer of the United States District Court for the Northern District of California

"It was the best tried case I've witnessed in my years on the bench...."

"[A]n extraordinarily civilized way of presenting the issues to you [the jury]...We've all been treated to great civility and the highest professional ethics in the presentation of the case..."

"These trial lawyers are some of the best I've ever seen."

\* \* \*

### *Landry's Restaurants, Inc. Shareholder Litigation*

- Vice Chancellor J. Travis Laster of the Delaware Court of Chancery

"I do want to make a comment again about the excellent efforts...put into this case...This case, I think, shows precisely the type of benefits that you can achieve for stockholders and how representative litigation can be a very important part of our corporate governance system...you hold up this case as an example of what to do."

\* \* \*

### *McCall V. Scott (Columbia/HCA Derivative Litigation)*

- The Honorable Thomas A. Higgins of the United States District Court for the Middle District of Tennessee

"Counsel's excellent qualifications and reputations are well documented in the record, and they have litigated this complex case adeptly and tenaciously throughout the six years it has been pending. They assumed an enormous risk and have shown great patience by taking this case on a contingent basis, and despite an early setback they have persevered and brought about not only a large cash settlement but sweeping corporate reforms that may be invaluable to the beneficiaries."

## Significant Recoveries

BLB&G is counsel in many diverse nationwide class and individual actions and has obtained many of the largest and most significant recoveries in history. The firm has successfully identified, investigated, and prosecuted many of the most significant securities and shareholder actions in history, recovering billions of dollars on behalf of defrauded investors and obtaining groundbreaking corporate-governance reforms. These resolutions include six recoveries of over \$1 billion, more than any other firm in our field. Examples of cases with our most significant recoveries include:

### Securities Class Actions

**Case:** *In re WorldCom, Inc. Securities Litigation*

**Court:** United States District Court for the Southern District of New York

**Highlights:** \$6.19 billion securities fraud class action recovery—the second largest in history; unprecedented recoveries from Director Defendants.

**Case Summary:** Investors suffered massive losses in the wake of the financial fraud and subsequent bankruptcy of former telecom giant WorldCom, Inc. This litigation alleged that WorldCom and others disseminated false and misleading statements to the investing public regarding its earnings and financial condition in violation of the federal securities and other laws. It further alleged a nefarious relationship between Citigroup subsidiary Salomon Smith Barney and WorldCom, carried out primarily by Salomon employees involved in providing investment banking services to WorldCom, and by WorldCom's former CEO and CFO. As Court-appointed Co-Lead Counsel representing Lead Plaintiff the New York State Common Retirement Fund, we obtained unprecedented settlements totaling more than \$6 billion from the Investment Bank Defendants who underwrote WorldCom bonds, including a \$2.575 billion cash settlement to settle all claims against the Citigroup Defendants. On the eve of trial, the 13 remaining "Underwriter Defendants," including J.P. Morgan Chase, Deutsche Bank and Bank of America, agreed to pay settlements totaling nearly \$3.5 billion to resolve all claims against them. Additionally, the day before trial was scheduled to begin, all of the former WorldCom Director Defendants agreed to pay over \$60 million to settle the claims against them. An unprecedented first for outside directors, \$24.75 million of that amount came out of the pockets of the individuals—20% of their collective net worth. *The Wall Street Journal*, in its coverage, profiled the settlement as having "shaken Wall Street, the audit profession and corporate boardrooms." After four weeks of trial, Arthur Andersen, WorldCom's former auditor, settled for \$65 million. Subsequent settlements were reached with the former executives of WorldCom, and then with Andersen, bringing the total obtained for the Class to over \$6.19 billion.

**Case:** *In re Cendant Corporation Securities Litigation*

**Court:** United States District Court for the District of New Jersey

**Highlights:** \$3.3 billion securities fraud class action recovery – the third largest in history; significant corporate governance reforms obtained.

**Summary:** The firm was Co-Lead Counsel in this class action against Cendant Corporation, its officers and directors and Ernst & Young (E&Y), its auditors, for their role in disseminating materially false and misleading financial statements concerning the company's revenues, earnings and expenses for its 1997 fiscal year. As a result of company-wide accounting irregularities, Cendant restated its financial results for its 1995, 1996, and 1997 fiscal years and all fiscal quarters therein. Cendant agreed to settle the action for \$2.8 billion and to adopt some of the most extensive corporate governance changes in history. E&Y settled for \$335 million. These settlements remain the largest sums ever recovered from a public company and a public accounting firm through securities class action litigation. BLB&G represented Lead Plaintiffs CalPERS (the California Public Employees' Retirement System), the New York State Common Retirement Fund and the New York City Pension Funds, the three largest public pension funds in America, in this action.

**Case:** *In re Bank of America Corp. Securities, Derivative, and Employee Retirement Income Security Act (ERISA) Litigation*

**Court:** United States District Court for the Southern District of New York

**Highlights:** \$2.425 billion in cash; significant corporate governance reforms to resolve all claims. This recovery is by far the largest shareholder recovery related to the subprime meltdown and credit crisis; the single largest securities class action settlement ever resolving a Section 14(a) claim—the federal securities provision designed to protect investors against misstatements in connection with a proxy solicitation; the largest ever funded by a single corporate defendant for violations of the federal securities laws; the single largest settlement of a securities class action in which there was neither a financial restatement involved nor a criminal conviction related to the alleged misconduct; and one of the 10 largest securities class action recoveries in history.

**Summary:** The firm represented Co-Lead Plaintiffs the State Teachers Retirement System of Ohio, the Ohio Public Employees Retirement System, and the Teacher Retirement System of Texas in this securities class action filed on behalf of shareholders of Bank of America Corporation (BAC) arising from BAC's 2009 acquisition of Merrill Lynch & Co., Inc. The action alleges that BAC, Merrill Lynch, and certain of the companies' current and former officers and directors violated the federal securities laws by making a series of materially false statements and omissions in connection with the acquisition. These violations included the alleged failure to disclose information regarding billions of dollars of losses which Merrill had suffered before the BAC shareholder vote on the proposed acquisition, as well as an undisclosed agreement allowing Merrill to pay billions in bonuses before the acquisition closed despite these losses. Not privy to these material facts, BAC shareholders voted to approve the acquisition.

**Case:** *In re Nortel Networks Corporation Securities Litigation (Nortel II)*

**Court:** United States District Court for the Southern District of New York

**Highlights:** Over \$1.07 billion in cash and common stock recovered for the class.

**Summary:** This securities fraud class action charged Nortel Networks Corporation and certain of its officers and directors with violations of the Securities Exchange Act of 1934, alleging that the Defendants knowingly or recklessly made false and misleading statements with respect to Nortel's financial results during the relevant period. BLB&G clients the Ontario Teachers' Pension Plan Board and the Treasury of the State of New Jersey and its Division of Investment were appointed as Co-Lead Plaintiffs for the Class in one of two related actions (Nortel II), and BLB&G was appointed Lead Counsel for the Class. In a historic settlement, Nortel agreed to pay \$2.4 billion in cash and Nortel common stock to resolve both matters. Nortel later announced that its insurers had agreed to pay \$228.5 million toward the settlement, bringing the total amount of the global settlement to approximately \$2.7 billion, and the total amount of the Nortel II settlement to over \$1.07 billion.

**Case:** *In re Merck & Co., Inc. Securities Litigation*

**Court:** United States District Court, District of New Jersey

**Highlights:** \$1.06 billion recovery for the class.

**Summary:** This case arises out of misrepresentations and omissions concerning life-threatening risks posed by the "blockbuster" COX-2 painkiller Vioxx, which Merck withdrew from the market in 2004. In January 2016, BLB&G achieved a \$1.062 billion settlement on the eve of trial after more than 12 years of hard-fought litigation that included a successful decision at the United States Supreme Court. This settlement is the second-largest recovery ever obtained in the Third Circuit, one of the top 11 securities recoveries of all time, and the largest securities recovery ever achieved against a pharmaceutical company. BLB&G represented Lead Plaintiff the Public Employees' Retirement System of Mississippi.

**Case:** *In re McKesson HBOC, Inc. Securities Litigation*

**Court:** United States District Court for the Northern District of California

**Highlights:** \$1.05 billion recovery for the class.

**Summary:** This securities fraud litigation was filed on behalf of purchasers of HBOC, McKesson, and McKesson HBOC securities, alleging that Defendants misled the investing public concerning HBOC's and McKesson HBOC's financial results. On behalf of Lead Plaintiff the New York State Common Retirement Fund, BLB&G obtained a \$960 million settlement from the company; \$72.5 million in cash from Arthur Andersen; and, on the eve of trial, a \$10 million settlement from Bear Stearns & Co. Inc., with total recoveries reaching more than \$1 billion.

**Case:** *HealthSouth Corporation Bondholder Litigation*

**Court:** United States District Court for the Northern District of Alabama

**Highlights:** \$804.5 million in total recoveries.

**Summary:** In this litigation, BLB&G was the appointed Co-Lead Counsel for the bond holder class, representing Lead Plaintiff the Retirement Systems of Alabama. This action arose from allegations that Birmingham, Alabama based HealthSouth Corporation overstated its earnings at the direction of its founder and former CEO Richard Scrushy. Subsequent revelations disclosed that the overstatement actually exceeded over \$2.4 billion, virtually wiping out all of HealthSouth's reported profits for the prior five years. A total recovery of \$804.5 million was obtained in this litigation through a series of settlements, including an approximately \$445 million settlement for shareholders and bondholders, a \$100 million in cash settlement from UBS AG, UBS Warburg LLC, and individual UBS Defendants, and \$33.5 million in cash from the company's auditor. The total settlement for injured HealthSouth bond purchasers exceeded \$230 million, recouping over a third of bond purchaser damages.

**Case:** *In re Washington Public Power Supply System Litigation*

**Court:** United States District Court for the District of Arizona

**Highlights:** Over \$750 million—the largest securities fraud settlement ever achieved at the time.

**Summary:** BLB&G was appointed Chair of the Executive Committee responsible for litigating on behalf of the class in this action. The case was litigated for over seven years, and involved an estimated 200 million pages of documents produced in discovery; the depositions of 285 fact witnesses and 34 expert witnesses; more than 25,000 introduced exhibits; six published district court opinions; seven appeals or attempted appeals to the Ninth Circuit; and a three-month jury trial, which resulted in a settlement of over \$750 million—then the largest securities fraud settlement ever achieved.

**Case:** *In re Lehman Brothers Equity/Debt Securities Litigation*

**Court:** United States District Court for the Southern District of New York

**Highlights:** \$735 million in total recoveries.

**Summary:** Representing the Government of Guam Retirement Fund, BLB&G successfully prosecuted this securities class action arising from Lehman Brothers Holdings Inc.'s issuance of billions of dollars in offerings of debt and equity securities that were sold using offering materials that contained untrue statements and missing material information.

After four years of intense litigation, Lead Plaintiffs achieved a total of \$735 million in recoveries consisting of: a \$426 million settlement with underwriters of Lehman securities offerings; a \$90 million settlement with former Lehman directors and officers; a \$99 million settlement that resolves claims against Ernst & Young, Lehman's former auditor (considered one of the top 10 auditor settlements ever achieved); and a \$120 million settlement that resolves claims against UBS Financial

Services, Inc. This recovery is truly remarkable not only because of the difficulty in recovering assets when the issuer defendant is bankrupt, but also because no financial results were restated, and the auditors never disavowed the statements.

**Case:** *In re Citigroup, Inc. Bond Action Litigation*

**Court:** United States District Court for the Southern District of New York

**Highlights:** \$730 million cash recovery; second largest recovery in a litigation arising from the financial crisis.

**Summary:** In the years prior to the collapse of the subprime mortgage market, Citigroup issued 48 offerings of preferred stock and bonds. This securities fraud class action was filed on behalf of purchasers of Citigroup bonds and preferred stock alleging that these offerings contained material misrepresentations and omissions regarding Citigroup's exposure to billions of dollars in mortgage-related assets, the loss reserves for its portfolio of high-risk residential mortgage loans, and the credit quality of the risky assets it held in off-balance sheet entities known as "structured investment vehicles." After protracted litigation lasting four years, we obtained a \$730 million cash recovery—the second largest securities class action recovery in a litigation arising from the financial crisis, and the second largest recovery ever in a securities class action brought on behalf of purchasers of debt securities. As Lead Bond Counsel for the Class, BLB&G represented Lead Bond Plaintiffs Minneapolis Firefighters' Relief Association, Louisiana Municipal Police Employees' Retirement System, and Louisiana Sheriffs' Pension and Relief Fund.

**Case:** *In re Schering-Plough Corporation/Enhance Securities Litigation; In re Merck & Co., Inc. Vytarin/Zetia Securities Litigation*

**Court:** United States District Court for the District of New Jersey

**Highlights:** \$688 million in combined settlements (Schering-Plough settled for \$473 million; Merck settled for \$215 million) in this coordinated securities fraud litigations filed on behalf of investors in Merck and Schering-Plough.

**Summary:** After nearly five years of intense litigation, just days before trial, BLB&G resolved the two actions against Merck and Schering-Plough, which stemmed from claims that Merck and Schering artificially inflated their market value by concealing material information and making false and misleading statements regarding their blockbuster anti-cholesterol drugs Zetia and Vytarin. Specifically, we alleged that the companies knew that their "ENHANCE" clinical trial of Vytarin (a combination of Zetia and a generic) demonstrated that Vytarin was no more effective than the cheaper generic at reducing artery thickness. The companies nonetheless championed the "benefits" of their drugs, attracting billions of dollars of capital. When public pressure to release the results of the ENHANCE trial became too great, the companies reluctantly announced these negative results, which we alleged led to sharp declines in the value of the companies' securities, resulting in significant losses to investors. The combined \$688 million in settlements (Schering-Plough settled for \$473 million; Merck settled for \$215 million) is the second largest securities recovery ever in the Third Circuit, among the top 25

settlements of all time, and among the ten largest recoveries ever in a case where there was no financial restatement. BLB&G represented Lead Plaintiffs Arkansas Teacher Retirement System, the Public Employees' Retirement System of Mississippi, and the Louisiana Municipal Police Employees' Retirement System.

**Case:** *In re Lucent Technologies, Inc. Securities Litigation*

**Court:** United States District Court for the District of New Jersey

**Highlights:** \$667 million in total recoveries; the appointment of BLB&G as Co-Lead Counsel is especially noteworthy as it marked the first time since the 1995 passage of the Private Securities Litigation Reform Act that a court reopened the lead plaintiff or lead counsel selection process to account for changed circumstances, new issues, and possible conflicts between new and old allegations.

**Summary:** BLB&G served as Co-Lead Counsel in this securities class action, representing Lead Plaintiffs the Parnassus Fund, Teamsters Locals 175 & 505 D&P Pension Trust, Anchorage Police and Fire Retirement System, and the Louisiana School Employees' Retirement System. The complaint accused Lucent of making false and misleading statements to the investing public concerning its publicly reported financial results and failing to disclose the serious problems in its optical networking business. When the truth was disclosed, Lucent admitted that it had improperly recognized revenue of nearly \$679 million in fiscal 2000. The settlement obtained in this case is valued at approximately \$667 million, and is composed of cash, stock, and warrants.

**Case:** *In re Wachovia Preferred Securities and Bond/Notes Litigation*

**Court:** United States District Court for the Southern District of New York

**Highlights:** \$627 million recovery—among the largest securities class action recoveries in history; third-largest recovery obtained in an action arising from the subprime mortgage crisis.

**Summary:** This securities class action was filed on behalf of investors in certain Wachovia bonds and preferred securities against Wachovia Corp., certain former officers and directors, various underwriters, and its auditor, KPMG LLP. The case alleged that Wachovia provided offering materials that misrepresented and omitted material facts concerning the nature and quality of Wachovia's multibillion-dollar option-ARM (adjustable rate mortgage) "Pick-A-Pay" mortgage loan portfolio, and that Wachovia's loan loss reserves were materially inadequate. According to the Complaint, these undisclosed problems threatened the viability of the financial institution, requiring it to be "bailed out" during the financial crisis before it was acquired by Wells Fargo. The combined \$627 million recovery obtained in the action is among the 20 largest securities class action recoveries in history, the largest settlement ever in a class action case asserting only claims under the Securities Act of 1933, and one of a handful of securities class action recoveries obtained where there were no parallel civil or criminal actions brought by government authorities. The firm represented Co-Lead Plaintiffs Orange County Employees Retirement System and Louisiana Sheriffs' Pension and Relief Fund in this action.



**Case:** *Bear Stearns Mortgage Pass-Through Litigation*

**Court:** United States District Court for the Southern District of New York

**Highlights:** \$500 million recovery—the largest recovery ever on behalf of purchasers of residential mortgage-backed securities.

**Summary:** BLB&G served as Co-Lead Counsel in this securities action, representing Lead Plaintiffs the Public Employees' Retirement System of Mississippi. The case alleged that Bear Stearns & Company, Inc. sold mortgage pass-through certificates using false and misleading offering documents. The offering documents contained false and misleading statements related to, among other things, (1) the underwriting guidelines used to originate the mortgage loans underlying the certificates; and (2) the accuracy of the appraisals for the properties underlying the certificates. After six years of hard-fought litigation and extensive arm's-length negotiations, the \$500 million recovery is the largest settlement in a U.S. class action against a bank that packaged and sold mortgage securities at the center of the 2008 financial crisis.

**Case:** *Gary Hefler et al. v. Wells Fargo & Company et al.*

**Court:** United States District Court for the Northern District of California

**Highlights:** \$480 million recovery—the fourth largest securities settlement ever achieved in the Ninth Circuit and the 32nd largest securities settlement ever in the United States.

**Summary:** BLB&G served as Lead Counsel for the Court-appointed Lead Plaintiff Union Asset Management Holding, AG in this action, which alleged that Wells Fargo and certain current and former officers and directors of Wells Fargo made a series of materially false statements and omissions in connection with Wells Fargo's secret creation of fake or unauthorized client accounts in order to hit performance-based compensation goals. After years of presenting a business driven by legitimate growth prospects, U.S. regulators revealed in September 2016 that Wells Fargo employees were secretly opening millions of potentially unauthorized accounts for existing Wells Fargo customers. The Complaint alleged that these accounts were opened in order to hit performance targets and inflate the "cross-sell" metrics that investors used to measure Wells Fargo's financial health and anticipated growth. When the market learned the truth about Wells Fargo's violation of its customers' trust and failure to disclose reliable information to its investors, the price of Wells Fargo's stock dropped, causing substantial investor losses.

**Case:** *Ohio Public Employees Retirement System v. Freddie Mac*

**Court:** United States District Court for the Southern District of Ohio

**Highlights:** \$410 million settlement.

**Summary:** This securities fraud class action was filed on behalf of the Ohio Public Employees Retirement System and the State Teachers Retirement System of Ohio alleging that Federal Home Loan Mortgage Corporation (Freddie Mac) and certain of its current and former officers issued false and misleading

statements in connection with the company's previously reported financial results. Specifically, the Complaint alleged that the Defendants misrepresented the company's operations and financial results by having engaged in numerous improper transactions and accounting machinations that violated fundamental GAAP precepts in order to artificially smooth the company's earnings and to hide earnings volatility. In connection with these improprieties, Freddie Mac restated more than \$5 billion in earnings. A settlement of \$410 million was reached in the case just as deposition discovery had begun and document review was complete.

**Case:** *In re Refco, Inc. Securities Litigation*

**Court:** United States District Court for the Southern District of New York

**Highlights:** Over \$407 million in total recoveries.

**Summary:** The lawsuit arises from the revelation that Refco, a once prominent brokerage, had for years secreted hundreds of millions of dollars of uncollectible receivables with a related entity controlled by Phillip Bennett, the company's Chairman and Chief Executive Officer. This revelation caused the stunning collapse of the company a mere two months after its initial public offering of common stock. As a result, Refco filed one of the largest bankruptcies in U.S. history. Settlements have been obtained from multiple company and individual defendants, resulting in a total recovery for the class of over \$407 million. BLB&G represented Co-Lead Plaintiff RH Capital Associates LLC.

**Case:** *In re Allergan, Inc. Proxy Violation Securities Litigation*

**Court:** United States District Court for the Central District of California

**Highlights:** Litigation recovered over \$250 million for investors while challenging an unprecedented insider trading scheme by billionaire hedge fund manager Bill Ackman.

**Summary:** As alleged in groundbreaking litigation, billionaire hedge fund manager Bill Ackman and his Pershing Square Capital Management fund secretly acquired a near 10% stake in pharmaceutical concern Allergan, Inc. as part of an unprecedented insider trading scheme by Ackman and Valeant Pharmaceuticals International, Inc. What Ackman knew—but investors did not—was that in the ensuing weeks, Valeant would be launching a hostile bid to acquire Allergan shares at a far higher price. Ackman enjoyed a massive instantaneous profit upon public news of the proposed acquisition, and the scheme worked for both parties as he kicked back hundreds of millions of his insider-trading proceeds to Valeant after Allergan agreed to be bought by a rival bidder. After a ferocious three-year legal battle over this attempt to circumvent the spirit of the U.S. securities laws, BLB&G obtained a \$250 million settlement for Allergan investors, and created precedent to prevent similar such schemes in the future. The Plaintiffs in this action were the State Teachers Retirement System of Ohio, the Iowa Public Employees Retirement System, and Patrick T. Johnson.

## Corporate Governance and Shareholders' Rights

**Case:** *City of Monroe Employees' Retirement System, Derivatively on Behalf of Twenty-First Century Fox, Inc. v. Rupert Murdoch, et al.*

**Court:** Delaware Court of Chancery

**Highlights:** Landmark derivative litigation established unprecedented, independent Board-level council to ensure employees are protected from workplace harassment while recouping \$90 million for the company's coffers.

**Summary:** Before the birth of the #metoo movement, BLB&G led the prosecution of an unprecedented shareholder derivative litigation against Fox News parent 21st Century Fox, Inc. arising from the systemic sexual and workplace harassment at the embattled network. After nearly 18 months of litigation, discovery and negotiation related to the shocking misconduct and the Board's extensive alleged governance failures, the parties unveil a landmark settlement with two key components: 1) the first ever Board-level watchdog of its kind—the "Fox News Workplace Professionalism and Inclusion Council" of experts (WPIC)—majority independent of the Murdochs, the Company and Board; and 2) one of the largest financial recoveries—\$90 million—ever obtained in a pure corporate board oversight dispute. The WPIC serves as a model for public companies in all industries. The firm represented 21st Century Fox shareholder the City of Monroe (Michigan) Employees' Retirement System.

**Case:** *In re McKesson Corporation Derivative Litigation*

**Court:** United States District Court, Northern District of California, Oakland Division and Delaware Chancery Court

**Highlights:** Litigation recovered \$175 million and achieved substantial corporate governance reforms.

**Summary:** BLB&G represented the Police & Fire Retirement System City of Detroit and Amalgamated Bank in this derivative class action arising from the company's role in permitting and exacerbating America's ongoing opioid crisis. The complaint, initially filed in Delaware Chancery Court, alleged that defendants breached their fiduciary duties by failing to adequately oversee McKesson's compliance with provisions of the Controlled Substances Act and a series of settlements with the Drug Enforcement Administration intended to regulate the distribution and misuse of controlled substances such as opioids. Even after paying fines and settlements in the hundreds of millions of dollars, McKesson was sued in the National Opioid Multidistrict Litigation. In May 2018, our clients joined a substantially similar action being litigated in California federal court. Acting as co-lead counsel, BLB&G played a major role in litigating the case, opposing a motion to stay the action by a special litigation committee, and engaging in extensive pretrial discovery. Ultimately, \$175 million was recovered for the benefit of McKesson's shareholders in a settlement that also created substantial corporate-governance reforms to prevent a recurrence of McKesson's inadequate legal compliance efforts.

- Case:** *UnitedHealth Group, Inc. Shareholder Derivative Litigation*
- Court:** United States District Court for the District of Minnesota
- Highlights:** Litigation recovered over \$920 million in ill-gotten compensation directly from former officers for their roles in illegally backdating stock options, while the company agreed to far-reaching reforms aimed at curbing future executive compensation abuses.
- Summary:** This shareholder derivative action filed against certain current and former executive officers and members of the Board of Directors of UnitedHealth Group, Inc. alleged that the Defendants obtained, approved and/or acquiesced in the issuance of stock options to senior executives that were unlawfully backdated to provide the recipients with windfall compensation at the direct expense of UnitedHealth and its shareholders. The firm recovered over \$920 million in ill-gotten compensation directly from the former officer Defendants—the largest derivative recovery in history. As feature coverage in *The New York Times* indicated, “investors everywhere should applaud [the UnitedHealth settlement]...[T]he recovery sets a standard of behavior for other companies and boards when performance pay is later shown to have been based on ephemeral earnings.” The Plaintiffs in this action were the St. Paul Teachers’ Retirement Fund Association, the Public Employees’ Retirement System of Mississippi, the Jacksonville Police & Fire Pension Fund, the Louisiana Sheriffs’ Pension & Relief Fund, the Louisiana Municipal Police Employees’ Retirement System and Fire & Police Pension Association of Colorado.
- Case:** *Caremark Merger Litigation*
- Court:** Delaware Court of Chancery – New Castle County
- Highlights:** Landmark Court ruling ordered Caremark’s board to disclose previously withheld information, enjoined a shareholder vote on the CVS merger offer, and granted statutory appraisal rights to Caremark shareholders. The litigation ultimately forced CVS to raise its offer by \$7.50 per share, equal to more than \$3.3 billion in additional consideration to Caremark shareholders.
- Summary:** Commenced on behalf of the Louisiana Municipal Police Employees’ Retirement System and other shareholders of Caremark RX, Inc., this shareholder class action accused the company’s directors of violating their fiduciary duties by approving and endorsing a proposed merger with CVS Corporation, all the while refusing to fairly consider an alternative transaction proposed by another bidder. In a landmark decision, the Court ordered the Defendants to disclose material information that had previously been withheld, enjoined the shareholder vote on the CVS transaction until the additional disclosures occurred, and granted statutory appraisal rights to Caremark’s shareholders—forcing CVS to increase the consideration offered to shareholders by \$7.50 per share in cash (over \$3 billion in total).

**Case:** *In re Pfizer Inc. Shareholder Derivative Litigation*

**Court:** United States District Court for the Southern District of New York

**Highlights:** Landmark settlement in which Defendants agreed to create a new Regulatory and Compliance Committee of the Pfizer Board to be supported by a dedicated \$75 million fund.

**Summary:** In the wake of Pfizer's agreement to pay \$2.3 billion as part of a settlement with the U.S. Department of Justice to resolve civil and criminal charges relating to the illegal marketing of at least 13 of the company's most important drugs (the largest such fine ever imposed), this shareholder derivative action was filed against Pfizer's senior management and Board alleging they breached their fiduciary duties to Pfizer by, among other things, allowing unlawful promotion of drugs to continue after receiving numerous "red flags" that Pfizer's improper drug marketing was systemic and widespread. The suit was brought by Court-appointed Lead Plaintiffs Louisiana Sheriffs' Pension and Relief Fund and Skandia Life Insurance Company, Ltd. In an unprecedented settlement reached by the parties, the Defendants agreed to create a new Regulatory and Compliance Committee of the Pfizer Board of Directors (the "Regulatory Committee") to oversee and monitor Pfizer's compliance and drug marketing practices and to review the compensation policies for Pfizer's drug sales related employees.

**Case:** *Miller et al. v. IAC/InterActiveCorp et al.*

**Court:** Delaware Court of Chancery

**Highlights:** This litigation shut down efforts by controlling shareholders to obtain "dynastic control" of the company through improper stock class issuances, setting valuable precedent and sending a strong message to boards and management in all sectors that such moves will not go unchallenged.

**Summary:** BLB&G obtained this landmark victory for shareholder rights against IAC/InterActiveCorp and its controlling shareholder and chairman, Barry Diller. For decades, activist corporate founders and controllers sought ways to entrench their position atop the corporate hierarchy by granting themselves and other insiders "supervoting rights." Diller laid out a proposal to introduce a new class of non-voting stock to entrench "dynastic control" of IAC within the Diller family. BLB&G litigation on behalf of IAC shareholders ended in capitulation with the Defendants effectively conceding the case by abandoning the proposal. This became a critical corporate governance precedent, given the trend of public companies to introduce "low" and "no-vote" share classes, which diminish shareholder rights, insulate management from accountability, and can distort managerial incentives by providing controllers voting power out of line with their actual economic interests in public companies.

**Case:** *In re News Corp. Shareholder Derivative Litigation*

**Court:** Delaware Court of Chancery – Kent County

**Highlights:** An unprecedented settlement in which News Corp. recouped \$139 million and enacted significant corporate governance reforms that combat self-dealing in the boardroom.

**Summary:** Following News Corp.'s 2011 acquisition of a company owned by News Corp. Chairman and CEO Rupert Murdoch's daughter, and the phone-hacking scandal within its British newspaper division, we filed a derivative litigation on behalf of the company because of institutional shareholder concern with the conduct of News Corp.'s management. We ultimately obtained an unprecedented settlement in which News Corp. recouped \$139 million for the company coffers, and agreed to enact corporate governance enhancements to strengthen its compliance structure, the independence and functioning of its board, and the compensation and clawback policies for management.

## Clients and Fees

We are firm believers in the contingency fee as a socially useful, productive and satisfying basis of compensation for legal services, particularly in litigation. Wherever appropriate, even with our corporate clients, we encourage retentions in which our fee is contingent on the outcome of the litigation. This way, it is not the number of hours worked that will determine our fee, but rather the result achieved for our client. The firm generally negotiates with our clients a contingent fee schedule specific to each litigation, and all fee proposals are approved by the client prior to commencing litigation, and ultimately by the Court.

Our clients include many large and well-known financial and lending institutions and pension funds, as well as privately held companies that are attracted to our firm because of our reputation, expertise, and fee structure. Most of the firm's clients are referred by other clients, law firms and lawyers, bankers, investors, and accountants. A considerable number of clients have been referred to the firm by former adversaries. We have always maintained a high level of independence and discretion in the cases we decide to prosecute. As a result, the level of personal satisfaction and commitment to our work is high.

## In The Public Interest

Bernstein Litowitz Berger & Grossmann LLP is guided by two principles: excellence in legal work and a belief that the law should serve a socially useful and dynamic purpose. Attorneys at the firm are active in academic, community and pro bono activities, and regularly participate as speakers and contributors to professional organizations. In addition, the firm endows a public interest law fellowship and sponsors an academic scholarship at Columbia Law School. Highlights of our community contributions include the following:

### **Bernstein Litowitz Berger & Grossmann Public Interest Law Fellows**

BLB&G is committed to fighting discrimination and effecting positive social change. In support of this commitment, the firm donates funds to Columbia Law School to create the Bernstein Litowitz Berger & Grossmann Public Interest Law Fellowship. This fund at Columbia Law School provides Fellows with 100% of the funding needed to make payments on their law school tuition loans so long as such graduates remain in the public interest law field. The BLB&G Fellows are able to begin their careers free of any school debt if they make a long-term commitment to public interest law.

### **Firm Sponsorship of Her Justice**

BLB&G is a sponsor of Her Justice, a not-for-profit organization in New York City dedicated to providing *pro bono* legal representation to indigent women, principally vulnerable women, in connection with the myriad legal problems they face. The organization trains and supports the efforts of New York lawyers who provide *pro bono* counsel to these women. Several members and associates of the firm volunteer their time to help women who need divorces from abusive spouses, or representation on issues such as child support, custody, and visitation. To read more about Her Justice, visit the organization's website at <http://www.herjustice.org/>.

### **Firm Sponsorship of City Year New York**

BLB&G is also an active supporter of City Year New York, a division of AmeriCorps. The program was founded in 1988 as a means of encouraging young people to devote time to public service and unites a diverse group of volunteers for a demanding year of full-time community service, leadership development and civic engagement. Through their service, corps members experience a rite of passage that can inspire a lifetime of citizenship and build a stronger democracy.

### **Max W. Berger Pre-Law Program**

In order to encourage outstanding minority undergraduates to pursue a meaningful career in the legal profession, the Max W. Berger Pre-Law Program was established at Baruch College. Providing workshops, seminars, counseling and mentoring to Baruch students, the program facilitates and guides them through the law school research and application process, as well as placing them in appropriate internships and other pre-law working environments.



## Our Attorneys

BLB&G employs a dedicated team of attorneys, including partners, counsel, associates, and senior staff attorneys. Biographies for each of our attorneys can be found on our website by clicking [here](#). On a case-by-case basis, we also make use of a pool of staff attorneys to supplement our litigation teams. The BLB&G team also includes investigators, financial analysts, paralegals, electronic-discovery specialists, information-technology professionals, and administrative staff. Biographies for our investigative team are available on our website by clicking [here](#), and biographies for the leaders of our administrative departments are viewable [here](#).

## Partners

**Max Berger**, Founding Partner, has grown BLB&G from a partnership of four lawyers in 1983 into what the *Financial Times* described as "[one of the most powerful securities class action law firms in the United States](#)" by prosecuting seminal cases which have increased market transparency, held wrongdoers accountable, and improved corporate business practices in groundbreaking ways.

Described by sources quoted in leading industry publication *Chambers USA* as "the smartest, most strategic plaintiffs' lawyer [they have] ever encountered," Max has litigated many of the firm's most high-profile and significant cases and secured some of the largest recoveries ever achieved in securities fraud lawsuits, negotiating seven of the largest securities fraud settlements in history, each in excess of a billion dollars: *Cendant* (\$3.3 billion), *Citigroup-WorldCom* (\$2.575 billion), *Bank of America/Merrill Lynch* (\$2.4 billion), *JPMorgan Chase-WorldCom* (\$2 billion), *Nortel* (\$1.07 billion), *Merck* (\$1.06 billion), and *McKesson* (\$1.05 billion). Max's prosecution of the *WorldCom* litigation, which resulted in unprecedented monetary contributions from WorldCom's outside directors (nearly \$25 million out of their own pockets on top of their insurance coverage) "shook Wall Street, the audit profession and corporate boardrooms." (*The Wall Street Journal*)

Max's cases have resulted in sweeping corporate governance overhauls, including the creation of an independent task force to oversee and monitor diversity practices (*Texaco* discrimination litigation), establishing an industry-accepted definition of director independence, increasing a board's power and responsibility to oversee internal controls and financial reporting (*Columbia/HCA*), and creating a Healthcare Law Regulatory Committee with dedicated funding to improve the standard for regulatory compliance oversight by a public company board of directors (*Pfizer*). His cases have yielded results which have served as models for public companies going forward.

Most recently, before the #metoo movement came alive, on behalf of an institutional investor client, Max handled the prosecution of an unprecedented shareholder derivative litigation against Fox News parent 21st Century Fox, Inc. arising from the systemic sexual and workplace harassment at the embattled network. After nearly 18 months of litigation, discovery, and negotiation related to the shocking misconduct and the Board's extensive alleged governance failures, the parties unveiled a landmark settlement with two key components: 1) the first ever Board-level watchdog of its kind—the "Fox News Workplace Professionalism and Inclusion Council" of experts (WPIC)—majority independent of the Murdochs, the Company and Board; and 2) one of the largest financial recoveries—\$90 million—ever obtained in a pure corporate board oversight dispute. The WPIC is expected to serve as a model for public companies in all industries.

Max's work has garnered him extensive media attention, and he has been the subject of feature articles in a variety of major media publications. *The New York Times* highlighted his remarkable track record in an October 2012 profile entitled "[Investors' Billion-Dollar Fraud Fighter](#)," which also discussed his role in the *Bank of America/Merrill Lynch Merger* litigation. In 2011, Max was twice profiled by *The American Lawyer* for his role in negotiating a \$627 million recovery on behalf of investors in the *In re Wachovia Corp. Securities Litigation*, and a \$516 million recovery in *In re Lehman Brothers Equity/Debt Securities Litigation*. For his outstanding efforts on behalf of WorldCom investors, he was featured in articles in *BusinessWeek* and *The American Lawyer*, and *The National Law Journal* profiled Max (one of only eleven attorneys selected nationwide) in its annual 2005 "Winning Attorneys" section. He was subsequently featured in a 2006 *New York Times* article, "A Class-Action Shuffle," which assessed the evolving landscape of the securities litigation arena.

### **One of the "100 Most Influential Lawyers in America"**

Widely recognized as the "Dean" of the U.S. plaintiff securities bar for his remarkable career and his professional excellence, Max has a distinguished and unparalleled list of honors to his name.

- He was selected as one of the "100 Most Influential Lawyers in America" by *The National Law Journal* for being "front and center" in holding Wall Street banks accountable and obtaining over \$5 billion in cases arising from the subprime meltdown, and for his work as a "master negotiator" in obtaining numerous multi-billion dollar recoveries for investors.
- Described as a "standard-bearer" for the profession in a career spanning nearly 50 years, he is the recipient of *Chambers USA's* award for Outstanding Contribution to the Legal Profession. In presenting this prestigious honor, *Chambers* recognized Max's "numerous headline-grabbing successes," as well as his unique stature among colleagues—"warmly lauded by his peers, who are nevertheless loath to find him on the other side of the table." Max has been recognized as a litigation "star" and leading lawyer in his field by *Chambers* since its inception.
- *Benchmark Litigation* recently inducted him into its exclusive "Hall of Fame" and named him a 2021 "Litigation Star" in recognition of his career achievements and impact on the field of securities litigation.
- Upon its tenth anniversary, *Lawdragon* named Max a "Lawdragon Legend" for his accomplishments. He was recently inducted into *Lawdragon's* "Hall of Fame." He is regularly included in the publication's "500 Leading Lawyers in America" and "100 Securities Litigators You Need to Know" lists.
- *Law360* published a special feature discussing his life and career as a "Titan of the Plaintiffs Bar," named him one of only six litigators selected nationally as a "Legal MVP," and selected him as one of "10 Legal Superstars" nationally for his work in securities litigation.
- Max has been regularly named a "leading lawyer" in the *Legal 500 US Guide* where he was also named to their "Hall of Fame" list, as well as *The Best Lawyers in America®* guide.
- Max was honored for his outstanding contribution to the public interest by Trial Lawyers for Public Justice, which named him a "Trial Lawyer of the Year" Finalist in 1997 for his work in *Roberts, et al. v. Texaco*, the celebrated race discrimination case, on behalf of Texaco's African-American employees.

Max has lectured extensively for many professional organizations, and is the author and co-author of numerous articles on developments in the securities laws and their implications for public policy. He was chosen, along with

several of his BLB&G partners, to author the first chapter—"Plaintiffs' Perspective"—of Lexis/Nexis's seminal industry guide *Litigating Securities Class Actions*. An esteemed voice on all sides of the legal and financial markets, in 2008 the SEC and Treasury called on Max to provide guidance on regulatory changes being considered as the accounting profession was experiencing tectonic shifts shortly before the financial crisis.

Max also serves the academic community in numerous capacities. A long-time member of the Board of Trustees of Baruch College, he served as the President of the Baruch College Fund from 2015-2019 and now serves as its Chairman. In May 2006, he was presented with the Distinguished Alumnus Award for his contributions to Baruch College, and in 2019, was awarded an honorary Doctor of Laws degree at Baruch's commencement, the highest honor Baruch College confers upon an individual for non-academic achievement. The award recognized his decades-long dedication to the mission and vision of the College, and in bestowing it, Baruch's President described Max as "[one of the most influential individuals in the history of Baruch College](#)." Max established the [Max Berger Pre-Law Program at Baruch College](#) in 2007.

A member of the Dean's Council to Columbia Law School as well as the Columbia Law School Public Interest/Public Service Council, Max has taught Profession of Law, an ethics course at Columbia Law School, and serves on the Advisory Board of Columbia Law School's Center on Corporate Governance. In February 2011, Max received Columbia Law School's most prestigious and highest honor, "The Medal for Excellence." This award is presented annually to Columbia Law School alumni who exemplify the qualities of character, intellect, and social and professional responsibility that the Law School seeks to instill in its students. As a recipient of this award, Max was [profiled](#) in the Fall 2011 issue of *Columbia Law School Magazine*. Max is a member of the American Law Institute and an Advisor to its Restatement Third: Economic Torts project. Max [recently endowed the Max Berger '71 Public Interest/Public Service Fellows Program at Columbia Law School](#). The program provides support for law students interested in pursuing careers in public service. Max and his wife, Dale, previously endowed the [Dale and Max Berger Public Interest Law Fellowship at Columbia Law School](#) and, under Max's leadership, BLB&G also created the Bernstein Litowitz Berger & Grossmann Public Interest Law Fellowship at Columbia.

Among numerous charitable and volunteer works, Max is a significant and long-time contributor to Her Justice, a non-profit organization in New York City dedicated to providing *pro bono* legal representation to indigent women, principally survivors of intimate partner violence, in connection with the many legal problems they face. In recognition of their personal support of the organization, Max and his wife, Dale Berger, were awarded the "Above and Beyond Commitment to Justice Award" by Her Justice in 2021 for being steadfast advocates for women living in poverty in New York City. In addition to his personal support of Her Justice, Max has ensured BLB&G's long-time involvement with the organization. Max is also an active supporter of City Year New York, a division of AmeriCorps, dedicated to encouraging young people to devote time to public service. In July 2005, he was named City Year New York's "Idealist of the Year," for his commitment to, service for, and work in the community. A celebrated photographer, Max has held two successful photography shows that raised hundreds of thousands of dollars for City Year and Her Justice.

\* *Not admitted to practice in California.*

**Education:** Columbia Law School, 1971, J.D., Editor of the *Columbia Survey of Human Rights Law*

**Bar Admissions:** Baruch College-City University of New York, 1968, B.B.A., Accounting

**Michael Blatchley's** practice focuses on securities fraud litigation. He is currently a member of the firm's case development and client advisory group, in which he, along with a team of attorneys, financial analysts, forensic accountants, and investigators, counsels the firm's clients on their legal claims.

Michael has also served as a member of the litigation teams responsible for prosecuting a number of the firm's cases. For example, Michael was a key member of the team that recovered \$150 million for investors in *In re JPMorgan Chase & Co. Securities Litigation*, a securities fraud class action arising out of misrepresentations and omissions concerning JPMorgan's Chief Investment Office, the company's risk management systems, and the trading activities of the so-called "London Whale." He was also a member of the litigation team in *In re Medtronic, Inc. Securities Litigation*, an action arising out of allegations that Medtronic promoted the Infuse bone graft for dangerous "off-label" uses, which resulted in an \$85 million recovery for investors. In addition, Michael prosecuted a number of cases related to the financial crisis, including several actions arising out of wrongdoing related to the issuance of residential mortgage-backed securities and other complex financial products.

Michael was a member of the team that achieved a \$250 million recovery for investors in *In re Allergan, Inc. Proxy Violation Securities Litigation*, a precedent-setting case alleging unlawful insider trading by hedge fund billionaire Bill Ackman. Most recently, he played a key role on the BLB&G team that recovered nearly \$2 billion for 35 institutions that invested in the Allianz Structured Alpha Funds.

Among other accolades, Michael has been repeatedly named to *Benchmark Litigation's* "Under 40 Hot List," selected as a leading plaintiff financial lawyer by *Lawdragon*, and recognized as a "Super Lawyer" by Thomson Reuters. He frequently presents to public pension fund professionals and trustees concerning legal issues impacting their funds, has authored numerous articles addressing investor rights, including, for example, a chapter in the Practising Law Institute's *2017 Financial Services Mediation Answer Book*, and is a regular speaker at institutional investor conferences. While attending Brooklyn Law School, Michael held a judicial internship position for the Honorable David G. Trager, United States District Judge for the Eastern District of New York. In addition, he worked as an intern at The Legal Aid Society's Harlem Community Law Office, as well as at Brooklyn Law School's Second Look and Workers' Rights Clinics, and provided legal assistance to victims of Hurricane Katrina in New Orleans, Louisiana.

**Education:** Brooklyn Law School, J.D., *cum laude*, Edward V. Sparer Public Interest Law Fellowship; William Payson Richardson Memorial Prize; Richard Elliott Blyn Memorial Prize; Editor for the *Brooklyn Law Review*; Moot Court Honor Society; University of Wisconsin, B.A.

**Bar Admissions:** New York; New Jersey; United States District Court for the Southern District of New York; United States District Court for the District of New Jersey; United States District Court for the Western District of Wisconsin; United States Court of Appeals for the Ninth Circuit.

**John C. Browne's** practice focuses on the prosecution of securities fraud class actions. He represents the firm's institutional investor clients in jurisdictions throughout the country and has been a member of the trial teams of some of the most high-profile securities fraud class actions in history.

John was Lead Counsel in the *In re Citigroup, Inc. Bond Action Litigation*, which resulted in a \$730 million cash recovery – the second largest recovery ever achieved for a class of purchasers of debt securities. It is also the second largest civil settlement arising out of the subprime meltdown and financial crisis. John was also a member of the team representing the New York State Common Retirement Fund in *In re WorldCom, Inc. Securities Litigation*, which

culminated in a five-week trial against Arthur Andersen LLP and a recovery for investors of over \$6.19 billion – one of the largest securities fraud recoveries in history.

Other notable litigations in which John served as Lead Counsel on behalf of shareholders include *In re Refco Securities Litigation*, which resulted in a \$407 million settlement; *In re SCANA Corp. Securities Litigation*, which settled for \$192.5 million, the largest securities class action settlement in the District of South Carolina history; *In re BNY Mellon Foreign Exchange Securities Litigation*, which settled for \$180 million; *Medina v. Clovis Oncology*, where John represented an Israeli institutional investor and recovered \$142 million in cash and stock on behalf of the class; *In re Allergan Securities Litigation*, which settled for \$130 million in cash; *In re ComScore, Inc. Securities Litigation*, which settled for \$110 million in cash and stock; *In re State Street Corporation Securities Litigation*, which settled for \$60 million; and *In re the Reserve Fund Securities and Derivative Litigation*, which settled for more than \$54 million.

John also represents the firm's institutional investor clients in the appellate courts across the country, arguing appeals in the First Circuit, Second Circuit, Third Circuit and the Fifth Circuit, and obtaining appellate reversals in *In re Ariad Securities Litigation* (First Circuit), *In re Green Mountain Coffee Roasters* (Second Circuit), and *In re Amedisys Securities Litigation* (Fifth Circuit).

In recognition of his achievements and legal excellence, *Chambers USA* has ranked John as one of the top practitioners in the field for the New York Securities Litigation Plaintiff category, describing him as "a go-to litigator" and quoting market sources who describe him as "professional and courteous, while still being a fierce advocate for his clients." *Law360* has twice named John a "Class Action MVP" (one of only four litigators selected nationally), *Benchmark Litigation* has recognized him as a "Litigation Star," and he was named a "Litigation Trailblazer" by *The National Law Journal*. He is regularly named to lists of leading plaintiff lawyers by *Lawdragon*, *Legal 500*, and Thomson Reuters' *Super Lawyers*.

Prior to joining BLB&G, John was an attorney at Latham & Watkins, where he had a wide range of experience in commercial litigation, including defending securities class actions, and representing major corporate clients in state and federal court litigations and arbitrations.

John has been a panelist at various continuing legal education programs offered by the American Law Institute ("ALI") and has authored and co-authored numerous articles relating to securities litigation.

**Education:** Cornell Law School, 1998, J.D., *magna cum laude*, Editor, *Cornell Law Review*; James Madison University, 1994, B.A., *magna cum laude*, Economics

**Bar Admissions:** New York; United States District Court for the Southern District of New York; United States District Court for the District of Colorado; United States Court of Appeals for the First Circuit; United States Court of Appeals for the Second Circuit; United States Court of Appeals for the Third Circuit; United States Court of Appeals for the Fourth Circuit; United States Court of Appeals for the Fifth Circuit; United States Court of Appeals for the Seventh Circuit

**Scott Foglietta** prosecutes securities fraud, corporate governance, and shareholder rights litigation on behalf of the firm's institutional investor clients. As a member of the case development and client advisory group—the firm's case development and client advisory group—Scott advises Taft-Hartley pension funds, public pension funds, and other institutional investors on potential legal claims.

Scott was an integral member of the team that advised the firm's clients in numerous matters including in securities class actions against Wells Fargo, which resulted in a \$480 million recovery; against Salix, which resulted in a \$210 million recovery; and against Equifax, which resulted in a \$149 million recovery. Scott was also key part of the teams that evaluated and developed novel case theories or claims in numerous cases, such as Willis Towers Watson, which arose from misrepresentations made in a proxy statement in connection with the merger between Willis Group and Towers Watson and was recently resolved for \$75 million (pending court approval), and the ongoing securities class action against Perrigo arising from misrepresentations made in connection with a tender offer for shares trading in both the United States and Israel. Scott was also a member of the team that secured our clients' appointments as lead plaintiffs in the ongoing securities class actions against Boeing, Kraft Heinz, and Luckin Coffee, among others.

Scott was a member of the litigation teams representing investors in securities class actions against FleetCor Technologies, which resulted in a \$50 million recovery, and Lumber Liquidators, which achieved a recovery of \$45 million. He is currently part of the team advising one of the firm's institutional investor clients in a shareholder derivative action against the board of directors of FirstEnergy Corp. arising from the company's role in an egregious public corruption scandal. For his accomplishments, Scott was recently named a 2022 "Rising Star" by *Law360*, has been regularly named a New York "Rising Star" in the area of securities litigation by Thomson Reuters *Super Lawyers* and in 2021 was chosen as a "Rising Star of the Plaintiffs Bar" by *The National Law Journal* and chosen by *Benchmark Litigation* for its "40 & Under Hot List."

Before joining the firm, Scott represented institutional and individual clients in a wide variety of complex litigation matters, including securities class actions, commercial litigation, and ERISA litigation. Prior to law school, Scott earned his M.B.A. in finance from Clark University and worked as a capital markets analyst for a boutique investment banking firm.

**Education:** Brooklyn Law School, 2010, J.D.; Clark University, Graduate School of Management, 2007, M.B.A., Finance; Clark University, 2006, B.A., *cum laude*, Management

**Bar Admissions:** New York; New Jersey; United States District Court for the Southern District of New York; United States District Court for the Eastern District of New York; United States District Court for the District of New Jersey

**Avi Josefson** is one of the senior partners managing the firm's case development and client advisory group, and leads a team of attorneys, financial analysts and investigators that analyze potential securities claims. Avi counsels institutional clients in the U.S., Europe, and Israel.

With more than 20 years of experience in securities litigation, Avi participated in many of the firm's significant representations. Avi led the BLB&G team that recovered nearly \$2 billion for 35 institutions that invested in the Allianz Structured Alpha Funds. He previously prosecuted *In re SCOR Holding (Switzerland) AG Securities Litigation*, which recovered more than \$143 million for investors and utilized a novel settlement process in both New York and Amsterdam. He was also a member of the team that litigated the *In re OM Group, Inc. Securities Litigation*, which resulted in a settlement of \$92.4 million. Avi has presented argument in several federal and state courts, including the Delaware Supreme Court.

Recognized as both a "Leading Plaintiff Financial Lawyer" and as one of "500 Leading Lawyers in America" by *Lawdragon* and by *The National Law Journal* as a "Plaintiffs' Lawyers Trailblazer," Avi is experienced in all aspects of the firm's representation of institutional investors. He represented shareholders in the litigation arising from the

proposed acquisitions of Ceridian Corporation and Anheuser-Busch and, as leader of the firm's subprime litigation team, he prosecuted securities fraud actions arising from the collapse of subprime mortgage lender American Home Mortgage and the actions against Lehman Brothers, Citigroup and Merrill Lynch, arising from those banks' multi-billion dollar loss from mortgage-backed investments. Avi has also represented U.S. and European institutions in actions against Deutsche Bank and Morgan Stanley arising from their sale of mortgage-backed securities.

Avi practices in the firm's Chicago and New York offices.

**Education:** Northwestern University School of Law, 2000, J.D., Dean's List, Awarded the Justice Stevens Public Interest Fellowship (1999); Public Interest Law Initiative Fellowship (2000); Brandeis University, 1997, B.A., cum laude

**Bar Admissions:** Illinois; New York; United States District Court for the Southern District of New York; United States District Court for the Northern District of Illinois

**Jerry Silk's** practice focuses on representing institutional investors on matters involving federal and state securities laws, accountants' liability, and the fiduciary duties of corporate officials, as well as general commercial and corporate litigation. He also advises creditors on their rights with respect to pursuing affirmative claims against officers and directors, as well as professionals both inside and outside the bankruptcy context.

Jerry is a member of the firm's Executive Committee. He also oversees the firm's New Matter department in which he, along with a group of attorneys, financial analysts and investigators, counsels institutional clients on potential legal claims. In December 2014, Jerry was recognized by *The National Law Journal* in its inaugural list of "Litigation Trailblazers & Pioneers" — one of several lawyers in the country who have changed the practice of litigation through the use of innovative legal strategies — in no small part for the critical role he has played in helping the firm's investor clients recover billions of dollars in litigation arising from the financial crisis, among other matters.

In addition, *Lawdragon* magazine, which has named Jerry one of the "100 Securities Litigators You Need to Know," one of the "500 Leading Lawyers in America," and one of America's top 500 "Rising Stars" in the legal profession, also profiled him as part of its "Lawyer Limelight" special series, discussing subprime litigation, his passion for plaintiffs' work and the trends he expects to see in the market. Recognized as one of an elite group of notable practitioners, *Chambers USA's* ranked Jerry nationally "for his expertise in a range of cases on the plaintiff side." He is also named as a "Litigation Star" by *Benchmark*, is recommended by the *Legal 500 USA* guide in the field of plaintiffs' securities litigation, and has been selected by Thomson Reuters as a *Super Lawyer* every year since 2006.

In the wake of the financial crisis, he advised the firm's institutional investor clients on their rights with respect to claims involving transactions in residential mortgage-backed securities (RMBS) and collateralized debt obligations (CDOs). His work representing Cambridge Place Investment Management Inc. on claims under Massachusetts state law against numerous investment banks arising from the purchase of billions of dollars of RMBS was featured in a 2010 *New York Times* article by Gretchen Morgenson titled, "[Mortgage Investors Turn to State Courts for Relief.](#)"

Jerry also represented the New York State Teachers' Retirement System in a securities litigation against the General Motors Company arising from a series of misrepresentations concerning the quality, safety, and reliability of the Company's cars, which resulted in a \$300 million settlement. He was also a member of the litigation team responsible for the successful prosecution of *In re Cendant Corporation Securities Litigation* in the District of New Jersey, which was resolved for \$3.2 billion. In addition, he is actively involved in the firm's prosecution of highly successful M&A

litigation, representing shareholders in widely publicized lawsuits, including the litigation arising from the proposed acquisition of Caremark Rx, Inc. by CVS Corporation — which led to an increase of approximately \$3.5 billion in the consideration offered to shareholders.

A graduate of the Wharton School of Business, University of Pennsylvania and Brooklyn Law School, in 1995-96, Jerry served as a law clerk to the Hon. Steven M. Gold, U.S.M.J., in the United States District Court for the Eastern District of New York.

Jerry lectures to institutional investors at conferences throughout the country, and has written or substantially contributed to several articles on developments in securities and corporate law, including his most recent article, "[SEC Statement On Emerging Markets Is A Stunning Failure](#)," which was published by *Law360* on April 27, 2020. He has authored numerous additional articles, including: "Improving Multi-Jurisdictional, Merger-Related Litigation," American Bar Association (February 2011); "The Compensation Game," *Lawdragon*, (Fall 2006); "Institutional Investors as Lead Plaintiffs: Is There A New And Changing Landscape?," 75 *St. John's Law Review* 31 (Winter 2001); "The Duty To Supervise, Poser, Broker-Dealer Law and Regulation," 3rd Ed. 2000, Chapter 15; "Derivative Litigation In New York after Marx v. Akers," *New York Business Law Journal*, Vol. 1, No. 1 (Fall 1997).

He has also been a commentator for the business media on television and in print. Among other outlets, he has appeared on NBC's *Today*, and CNBC's *Power Lunch*, *Morning Call*, and *Squawkbox* programs, as well as being featured in *The New York Times*, *Financial Times*, *Bloomberg*, *The National Law Journal*, and the *New York Law Journal*.

**Education:** Brooklyn Law School, 1995, J.D., *cum laude*; Wharton School of the University of Pennsylvania, 1991, B.S., Economics

**Bar Admissions:** New York; United States District Court for the Southern District of New York; United States District Court for the Eastern District of New York; United States Court of Appeals for the Second Circuit

**Jonathan Uslaner** prosecutes class and direct actions on behalf of the firm's institutional investor clients and has litigated many of the firm's most high-profile litigations, including *In re Bank of America Securities Litigation*, which resulted in a historic settlement shortly before trial of \$2.43 billion, one of the largest shareholder recoveries ever obtained; *In re Cobalt International Energy, Inc. Securities Litigation*, which resulted in settlements totaling up to \$335.3 million after years of hard-fought litigation; *In re Genworth Financial, Inc. Securities Litigation*, which settled for \$219 million, the largest recovery ever obtained in a securities class action in Virginia; *In re JPMorgan Chase & Co. Securities Litigation*, which settled for \$150 million; *In re Wells Fargo Mortgage-Backed Certificates Litigation*, which settled for \$125 million; *In re Rayonier Securities Litigation*, which settled for \$73 million; and *In re RH, Inc. Securities Litigation*, which settled for \$50 million.

Jonathan is also actively involved in the firm's direct action opt-out practice. He represented numerous clients in opt-out actions brought against American Realty Capital Properties, which resulted in settlements totaling \$85 million, and more recently represented 18 institutional clients in opt-out actions brought against Valeant Pharmaceuticals, Inc., which resulted in confidential settlements.

Jonathan is an editor of the American Bar Association's *Class Actions and Derivative Suits Committee's Newsletter*. He has authored numerous articles relating to class actions and the federal securities laws, which have appeared in *Pensions & Investments*, and *SACRS Magazine*, and has a [recurring column with Reuters](#). Jonathan has also been a member of the Board of Governors of the Association of Business Trial Lawyers (ABTL).



For his achievements, Jonathan has been recognized by noted legal industry ranking guide *Chambers USA*, with the guide describing him as an “expert plaintiff securities litigator,” and quoting market sources who describe Jonathan as “an excellent lawyer and a strong advocate for his clients” and “a fierce advocate for his clients and tough opponent.” Jonathan has also been recognized by *Benchmark Litigation* as a “Litigation Star” and as a member of the “500 Leading Plaintiff Financial Lawyers” list by *Lawdragon*.

Jonathan is a board member of UCPLA, a non-profit organization dedicated to advancing the independence, productivity and full citizenship of individuals with developmental and intellectual disabilities. He serves on UCPLA’s Nominating and Governance Committee and its Merger Committee. He has also been a board member of Home of Guiding Hands, a non-profit organization that serves individuals with developmental disabilities and their families. For his work and contributions to the organization, he was named “Volunteer of the Year.”

Prior to joining BLB&G, Jonathan was a senior litigation associate at the law firm of Skadden, Arps, Slate, Meagher & Flom LLP, where he successfully prosecuted and defended claims from the discovery stage through trial. He also gained significant trial experience as a volunteer prosecutor for the City of Inglewood, California, as well as a judicial extern for Justice Steven Wayne Smith of the Supreme Court of Texas.

**Education:** The University of Texas School of Law, 2005, J.D., University of Texas Presidential Academic Merit Fellowship; Articles Editor, *Texas Journal of Business Law*; Duke University, 2001, B.A., *magna cum laude*, William J. Griffith Award for Leadership; Chairperson, Duke University Undergraduate Publications Board

**Bar Admissions:** California; United States District Court for the Central District of California; United States District Court for the Northern District of California; New York; United States District Court for the Southern District of New York

## Senior Counsel

**David Duncan's** practice concentrates on the settlement of class actions and other complex litigation and the administration of class action settlements.

Prior to joining BLB&G, David worked as a litigation associate at Debevoise & Plimpton, where he represented clients in a wide variety of commercial litigation, including contract disputes, antitrust and products liability litigation, and in international arbitration. In addition, he has represented criminal defendants on appeal in New York State courts and has successfully litigated on behalf of victims of torture and political persecution from Sudan, Côte d'Ivoire and Serbia in seeking asylum in the United States.

While in law school, David served as an editor of the *Harvard Law Review*. After law school, he clerked for Judge Amalya L. Kearse of the U.S. Court of Appeals for the Second Circuit.

**Education:** Harvard Law School, 1997, J.D., *magna cum laude*; Harvard College, 1993, A.B., *magna cum laude*, Social Studies

**Bar Admissions:** New York; Connecticut; United States District Court for the Southern District of New York

**Richard D. Gluck** [Former Senior Counsel] practiced out of the firm's Los Angeles office. Rich has more than 30 years of litigation and trial experience in bet-the-company cases. His practice focuses on securities fraud, corporate governance, and shareholder rights litigation. He has been named a *Super Lawyer* in securities litigation, named one of San Diego's "Top Lawyers" practicing complex business litigation, and recognized for achieving "the highest levels of ethical standards and professional excellence" by Martindale Hubbell®.

Rich was a key member of the teams prosecuting a number of high-profile cases, including several RMBS class and direct actions against a number of large Wall Street Banks. He was a senior attorney on the team prosecuting the *In re Lehman Brothers Equity/Debt Securities Litigation*, which resulted in over \$615 million for investors and is considered one of the largest total recoveries for shareholders in any case arising from the financial crisis. Specifically, he was instrumental in developing important evidence that led to the \$99 million settlement with Lehman's former auditor, Ernst & Young – one of the top 10 auditor settlements ever achieved. He also was a senior member of the teams that prosecuted the RMBS class actions against Bear Stearns, which settled for \$500 million; JPMorgan, which settled for \$280 million; and Morgan Stanley, which settled for \$95 million. He was also a key member of the trial teams that prosecuted the litigations against MF Global, which recovered \$234.3 million on behalf of investors; Wilmington Trust, which settled for \$210 million; and Genworth, which settled for \$219 million.

Before joining BLB&G, Rich represented corporate and individual clients in securities fraud and consumer class actions, SEC investigations and enforcement actions, and in actions involving claims of fraud, breach of contract and misappropriation of trade secrets in state and federal courts and in arbitration. He has substantial trial experience, having obtained verdicts or awards for his clients in multi-million dollar lawsuits and arbitrations. Prior to entering private practice, Rich clerked for Judge William H. Orrick of the United States District Court for the Northern District of California.

Rich was a senior member of the teams prosecuting *In re Qualcomm, Inc. Securities Litigation*, *Felix v. Symantec Corp.*, and *Public Employees' Retirement System of Mississippi v. Mohawk Industries, Inc.*

Rich is a former President of the San Diego Chapter of the Association of Business Trial Lawyers and currently is a member of its Board of Governors.

**Education:** Santa Clara University, 1990, J.D., *summa cum laude*, Articles Editor of the Santa Clara Computer and High Technology Law Journal; California State University Sacramento, 1987, B.S., with honors, Business Administration

**Bar Admissions:** California; United States District Court for the Southern District of California; United States District Court for the Central District of California; United States District Court for the Northern District of California

**Michael Mathai's** practice focuses on securities fraud, corporate governance, and shareholder rights litigation.

Since joining the firm, Michael has helped investors achieve over \$1 billion in recoveries, including in securities class actions against Wells Fargo (\$480 million), Signet Jewelers (\$240 million), SCANA (\$192.5 million), Allergan (\$130 million), CenturyLink (\$55 million), and Henry Schein (\$35 million), and derivative litigation against McKesson (\$175 million). He is currently a senior member of the teams prosecuting securities class actions against NVIDIA, Farfetch, Grand Canyon Education, and Energy Transfer, as well as the team prosecuting claims on behalf of institutional investors that have suffered losses in connection with investments in the Allianz Structured Alpha Funds.

Prior to joining the firm, Michael was a litigation associate at O'Melveny & Myers LLP, where he represented financial services and other companies in securities class action, shareholder rights, antitrust, and commercial litigation matters in state and federal court. He also gained considerable experience representing companies and individuals in investigations and inquiries by regulatory bodies, including the SEC, DOJ, FTC, and FINRA.

**Education:** Columbia Law School, 2012, J.D., Harlan Fiske Stone Scholar; London School of Economics and Political Science, 2008, M.Sc., Economics; Harvard University, 2006, B.A., *cum laude*, Economics, with High Honors in Field

**Bar Admissions:** New York; United States District Court for the Southern District of New York; United States District Court for the Eastern District of New York; United States Court of Appeals for the Second Circuit

**John Mills'** practice focuses on negotiating, documenting, and obtaining court approval of the firm's securities, merger, and derivative settlements.

Over the past decade, John was actively involved in finalizing the following settlements, among others: *In re Wachovia Preferred Sec. and Bond/Notes Litig.* (S.D.N.Y.) (\$627 million settlement); *In re Wilmington Trust Sec. Litig.* (D. Del.) (\$210 million settlement); *In re Freeport-McMoRan Copper & Gold Inc. Derivative Litig.* (Del. Ch.) (\$153.75 million settlement); *Medina, et al. v. Clovis Oncology, Inc., et al.* (D. Colo.) (\$142 million settlement); *In re News Corp. S'holder Litig.* (Del. Ch.) (\$139 million recovery and corporate governance enhancements); *In re Mut. Funds Invest. Litig. (MFS, Invesco, and Pilgrim Baxter Sub-Tracks)* (D. Md.) (\$127.036 million total recovery); *Fresno County Employees' Ret. Ass'n, et al. v. comScore, Inc., et al.* (S.D.N.Y.) (\$110 million settlement); *In re El Paso Corp. S'holder Litig.* (Del. Ch.) (\$110 million settlement); *In re Starz Stockholder Litig.* (Del. Ch.) (\$92.5 million settlement); *The Dep't of the Treasury of the State of New Jersey and its Div. of Invest. v. Cliffs Natural Res. Inc., et al.* (N.D. Ohio) (\$85 million settlement).

John received his J.D. from Brooklyn Law School, *cum laude*, where he was a Carswell Merit Scholar recipient and a member of *The Brooklyn Journal of International Law*. He received his B.A. from Duke University.

**Education:** Brooklyn Law School, 2000, J.D., *cum laude*, Member of The Brooklyn Journal of International Law; Carswell Merit Scholar recipient; Duke University, 1997, B.A.

**Bar Admissions:** New York; United States District Court for the Southern District of New York; United States District Court for the Eastern District of New York

## Trial Counsel

**Robert "Rocky" Kravetz** is Trial Counsel for the firm. Having served as an Assistant United States Attorney and Chief of Appeals for the United States Attorney's Office for the District of Delaware for over thirteen years, Robert has substantial investigative, litigation, trial, and appellate experience involving a wide array of federal criminal offenses, including financial institution, securities, and health care fraud.

His extensive experience includes leading large-scale investigations of financial institutions and auditing firms, in concert with securities and banking regulators. He has tried multiple cases to verdict as lead counsel, including a recent securities fraud case involving a bank and its senior executives that yielded multiple guilty pleas and resulted in a trial verdict against the remaining defendants. As Chief of Appeals, Robert supervised the Office's written

advocacy and conducted oral arguments before the United States Court of Appeals. He has received the Executive Office of United States Attorneys Director's Award, one of the Department of Justice's highest honors, and he was previously named the Federal Bar Association's Younger Attorney of the Year.

Before becoming an Assistant United States Attorney, Robert served as a law clerk to the Honorable D. Michael Fisher on the United States Court of Appeals for the Third Circuit, and to the Honorable Joy Flowers Conti on the United States District Court for the Western District of Pennsylvania. Prior to joining BLB&G, Robert served as an Assistant Professor of Law at Duquesne University School of Law for two years, teaching courses in advanced criminal law and investigations and torts. He continues to serve as an Adjunct Professor at Duquesne.

Robert is the past president of the Delaware Chapter of the Federal Bar Association and a recipient of the Caleb R. Layton III Service Award, chosen by the Judges of the United States District Court for the District of Delaware.

**Education:** Duquesne University, 2003, J.D., Editor-in-Chief, *Duquesne Law Review*; Duquesne University, 2000, B.A., *summa cum laude*

**Bar Admissions:** Pennsylvania; United States District Court for the Western District of Pennsylvania; United States Court of Appeals for the Third Circuit

## Associates

**Girolamo Brunetto** practices out of the firm's New York office, prosecuting securities fraud, corporate governance, and shareholder rights litigation on behalf of the firm's institutional investor clients. He is a member of the firm's case development and client advisory group, in which he, as part of a team of attorneys, financial analysts, and investigators, counsels public pension funds and other institutional investors on potential legal claims.

Prior to joining the firm, Jimmy investigated and prosecuted securities fraud with the New York State Office of the Attorney General's Investor Protection Bureau, where he worked on a number of high-profile matters. While in law school, Jimmy was honored as a John Marshall Harlan Scholar and served as a Staff Editor for the *New York Law School Law Review*.

**Education:** New York Law School, 2011, J.D., *cum laude*, John Marshall Harlan Scholar; Staff Editor, *New York Law School Law Review*; University of Florida, 2007, B.A., *cum laude*, Political Science; University of Florida, 2007, B.S.B.A., Finance

**Bar Admission:** New York

**Lauren Cruz** practices out of the firm's Los Angeles office, where she prosecutes class actions on behalf of the firm's institutional investor clients. She is currently a member of the teams prosecuting securities class actions against Wells Fargo & Company, CVS Health Corporation, NVIDIA Corporation, Intel Corporation, and Qualcomm, Inc., among others.

Since joining the firm in 2019, Lauren has been a key member of the teams that prosecuted and secured hundreds-of-millions of dollars in recoveries for investors, including among other matters:

- *In re Mattel, Inc. Securities Litigation* (\$98 million settlement);

- *Public Employees' Retirement System of Mississippi v. Mohawk Industries, Inc.* (pending \$60 million settlement);
- *In re Splunk Inc. Securities Litigation* (pending \$30 million settlement);
- *In re Impinj, Inc. Securities Litigation* (\$20 million settlement);
- *In re Merit Medical Systems, Inc. Securities Litigation* (\$18.25 million settlement); and
- *Israel Sanchez v. Centene Corp.* (\$7.5 million settlement).

Lauren is also a board member and board secretary of Mental Health Advocacy Services, a non-profit organization that provides free legal services to people with mental health disabilities in Los Angeles. She is also a member of Women Lawyers Association of Los Angeles.

Prior to joining BLB&G, Lauren was a litigation associate at Sullivan & Cromwell LLP, where she represented domestic and international clients in complex civil litigation and alternative dispute resolution. She also gained considerable experience advising company boards following internal investigations of shareholder demands. In addition, Lauren's practice included substantial pro bono civil rights class action litigation on behalf of immigration detainees with indicia of mental health disabilities.

**Education:** New York University School of Law, 2014, J.D., Senior Articles Editor, *Journal of Law and Liberty*; Staff Editor, *Environmental Law Journal*; California State University Channel Islands, 2008, B.S., *summa cum laude*, Business

**Bar Admissions:** California; United States District Court for the Central District of California; United States District Court for the Eastern District of California; United States District Court for the Northern District of California; United States District Court for the Southern District of California; United States Court of Appeals for the Ninth Circuit

**Alex Payne** practices out of the firm's New York Office in the securities litigation group.

Previously, he was a Litigation & Dispute Resolution associate at Mayer Brown's New York office where he represented financial institutions and corporations in complex commercial and securities litigations, shareholder derivative and fiduciary duty litigations, and governmental investigations.

Alex graduated from the Fordham University School of Law in 2015. While in law school, Alex was a member of the *Fordham Law Review* and served as a Judicial Intern for the Honorable Loretta A. Preska, while she was Chief Judge of the United States District Court for the Southern District of New York (S.D.N.Y.). He also interned for the Investor Protection Bureau of the New York State Office of the Attorney General where he gained experience investigating and prosecuting securities fraud.

In recognition of his academic excellence, he was a recipient of the Henrietta Metcalf Contract Prize for excellence in the study of Contracts and the Fordham University School of Law Legal Writing Award.

Prior to entering the legal profession, Alex worked in the field of education policy analysis for the Graduate School of Education and Human Development at The George Washington University in Washington, D.C.

**Education:** Fordham University School of Law, 2015, J.D., *cum laude*, *Fordham Law Review*; Henrietta Metcalf Contract Prize for Excellence in the Study of Contracts; Fordham University School of Law Legal Writing Award; The George Washington University, 2006, B.A., *magna cum laude*

**Bar Admissions:** New York; United States District Court for the Southern District of New York; United States District Court for the Eastern District of New York; United States Court of Appeals for the Ninth Circuit

**Ross Shikowitz** [Former Associate] focused his practice on securities litigation. He was a member of the firm's new matter department, in which he, as part of a team of attorneys, financial analysts, and investigators, counseled institutional clients on potential legal claims.

Ross also served as a member of the litigation teams responsible for successfully prosecuting a number of the firm's significant cases involving wrongdoing related to the securitization and sale of residential mortgage-backed securities ("RMBS"), and recovered hundreds of millions of dollars on behalf of injured investors. He successfully represented Allstate Insurance Co., Metropolitan Life Insurance Company, Teachers Insurance and Annuity Association of America, Bayerische Landesbank, Dexia SA/NV, Sealink Funding Limited, and Landesbank Baden-Württemberg against various issuers of RMBS in both state and federal courts.

Ross served as a member of the litigation team prosecuting the securities fraud class action against Volkswagen AG, which resulted in a recovery of \$48 million for Volkswagen investors and arose out of Volkswagen's illegal use of defeat devices in millions of purportedly clean diesel cars to cheat emissions standards worldwide. He also served as a member of the team litigating the securities class action concerning GT Advanced Technologies Inc., which alleged that defendants knew that the company's \$578 million deal to supply Apple, Inc. with product was an onerous and massively one-sided agreement that allowed GT executives to sell millions worth of stock. The case concerning GT has resulted in \$36.7 million in recoveries to date.

For his accomplishments, Ross was consistently named by *Super Lawyers* as a New York "Rising Star" in the area of securities litigation.

While in law school, Ross was a research assistant to Brooklyn Law School Professor of Law Emeritus Norman Poser, a widely respected expert in international and domestic securities regulation. He also served as a judicial intern to the Honorable Brian M. Cogan of the Eastern District of New York, and as a legal intern for the Major Narcotics Investigations Bureau of the Kings County District Attorney's Office.

**Education:** Skidmore College, B.A., Music, 2003, *cum laude*; Indiana University-Bloomington, M.M, Music, 2005. Brooklyn Law School, J.D., 2010, *magna cum laude*; Notes/Comments Editor, *Brooklyn Law Review*; Moot Court Honor Society; Order of Barristers Certificate; CALI Excellence for the Future Award in Products Liability, Professional Responsibility.

**Bar Admissions:** New York; U.S. District Courts for the Eastern and Southern Districts of New York.

## Senior Staff Attorney

**Ryan McCurdy** is a senior staff attorney in the Los Angeles office, where he assists with securities fraud class actions. Since joining the firm, Ryan has worked on several matters, including *Impinj*, *Merit Medical Systems*, *Allianz*, *Symantec*, *Valeant Pharmaceuticals*, and *EQT*.

Prior to joining the firm, Ryan worked with a small aircraft products liability boutique, a large firm in mortgage-backed securities, and with a major eDiscovery vendor.

Ryan received his J.D. from UCLA, School of Law and he received his B.A. in political science from Emory University.

**Education:** University of California, Los Angeles, 2003, J.D.; Emory University, 1999, B.A., Political Science

**Bar Admission:** California

## Staff Attorneys

**Alexa Butler** has worked on numerous matters at BLB&G, including *In re Bank of New York Mellon Corp. Forex Transactions Litigation*; *In re JPMorgan Chase & Co. Securities Litigation*; *In re Merck & Co., Inc. Securities Litigation (VIOXX-related)*; *In re MBIA Inc. Securities Litigation*; *In re Washington Mutual, Inc. Securities Litigation*; *In re Merrill Lynch & Co., Inc. Securities, Derivative and ERISA Litigation (Bond Action)*; *In re Refco, Inc. Securities Litigation*; and *Affiliated Computer Services, Inc. Shareholder Derivative Litigation*.

Prior to joining the firm in 2007, Alexa was a contract attorney at Whatley Drake & Kallas, LLC.

**Education:** St. John's University School of Law, J.D., 1997; Georgia Institute of Technology, B.S., 1993

**Bar Admission:** New York

**Christopher Clarkin** has worked on numerous matters at BLB&G, including *In re Signet Jewelers Limited Securities Litigation*; *In re SunEdison, Inc. Securities Litigation*; *Hefler et al. v. Wells Fargo & Company et al.*; *Fresno County Employees' Retirement Association v. comScore, Inc.*; *In re Wilmington Trust Securities Litigation*; *In re Salix Pharmaceuticals, Ltd. Securities Litigation*; *West Palm Beach Police Pension Fund v. DFC Global Corp.*; *In re NII Holdings, Inc. Securities Litigation*; *In re Facebook, Inc. IPO Securities and Derivative Litigation*; *In re Bank of New York Mellon Corp. Forex Transactions Litigation*; *SMART Technologies, Inc. Shareholder Litigation*; *In re Citigroup Inc. Bond Litigation*; and *In re Pfizer Inc. Shareholder Derivative Litigation*.

Prior to joining the firm in 2010, Chris worked as a contract attorney on several large-scale litigations.

**Education:** New York Law School, J.D., 2006; Trinity College, B.A., 2000

**Bar Admissions:** New York; Connecticut

**George Doumas** has worked on numerous matters at BLB&G, including *City of Sunrise General Employees' Retirement Plan v. FleetCor Technologies, Inc., et al.*; *In re SCANA Corporation Securities Litigation*; *St. Paul Teachers' Retirement Fund Association v. HeartWare International, Inc.*; *Hefler et al. v. Wells Fargo & Company et al.*; *In re NII Holdings, Inc. Securities Litigation*; *General Motors Securities Litigation*; *In re Bank of New York Mellon Corp. Forex Transactions Litigation*; *JPMorgan Mortgage Pass-Through Litigation*; *In re Citigroup Inc. Bond Litigation*; *In re Huron Consulting Group, Inc. Securities Litigation*; and *In re Bristol-Myers Squibb Co. Securities Litigation*.

Prior to joining the firm in 2008, George was a contract attorney for several law firms, where he worked on investigations relating to subprime mortgages and collateralized debt obligations, and other complex litigation. George began his career representing clients in civil and bankruptcy matters.

**Education:** Southern New England School of Law, J.D., 1997; St. John's University, B.S., Accounting, 1994

**Bar Admissions:** Maryland; Massachusetts

**Igor Faynshteyn** has worked on several matters at BLB&G, including *Medina et al v. Clovis Oncology, Inc., et al.*; and *Fresno County Employees' Retirement Association v. comScore, Inc.* Igor also worked with BLB&G on behalf of co-counsel on *In re Merck & Co., Inc., Securities Litigation (VIOXX-related)*.

Prior to joining the firm, Igor was a contract attorney at several New York law firms.

**Education:** Brooklyn Law School, J.D., 2011; City University of New York, Hunter College, B.A., 2005, M.A., 2006

**Bar Admission:** New York

**Joseph Ferrone** has worked on several matters at BLB&G, including *In re Fannie Mae/Freddie Mac Senior Preferred Stock Purchase Agreement Class Action Litigations*; *In re Signet Jewelers Limited Securities Litigation*; and *In re Equifax Inc. Securities Litigation*.

Prior to joining the firm, Joseph was a contract attorney at Selendy & Gay PLLC. Previously, Joseph was a project manager and team leader on several complex litigations.

**Education:** Benjamin N. Cardozo School of Law, J.D., 2000; Binghamton University, B.S., 1995

**Bar Admission:** New York

**Amy Mitura** joined the BLB&G Staff Attorney team in May 2022.

Prior to joining the firm, Amy was a staff attorney with Selendy & Gay focused on e-discovery workflows. Previously, Amy was a contract attorney in the e-discovery field working across multiple industries.

**Education:** Creighton University School of Law, NE, J.D., 2011; University of Connecticut, NE, B.A, 2007

**Bar Admission:** New York

**Robert Jeffrey Powell** has worked on numerous matters at BLB&G, including *Hefler et al. v. Wells Fargo & Company et al.*; *Bach v. Amedisys, Inc.*, *Fernandez, et al. v. UBS AG, et al. ("UBS Puerto Rico Bonds")*; *In re Salix Pharmaceuticals, Ltd. Securities Litigation*; *In re Green Mountain Coffee Roasters, Inc. Securities Litigation*; *In re Genworth Financial Inc. Securities Litigation*; *In re Bank of New York Mellon Corp. Forex Transactions Litigation*; *Bear Stearns Mortgage Pass-Through Litigation*; *Cambridge Place Investment Management Inc. v. Morgan Stanley & Co., Inc., et al.*; *SMART Technologies, Inc. Shareholder Litigation*; and *In re Citigroup Inc. Bond Litigation*.

Prior to joining the firm in 2011, Jeff was a litigation associate at Pillsbury Winthrop LLP and Constantine Cannon LLP.

**Education:** Harvard Law School, J.D., 2001; University of the South, B.A., *magna cum laude*, 1992; Phi Beta Kappa

**Bar Admission:** New York



**Susan Rubinstein** has worked on several matters at BLB&G, including *In re Celgene Corporation Securities Litigation*; and *In re Henry Schein, Inc. Securities Litigation*.

Prior to joining the firm, Susan worked as Special Counsel for the Special Federal Litigation Division, Office of Corporation Counsel, New York City Law Department.

**Education:** Dickinson School of Law, J.D., 1994; LaSalle University, B.A., 1986

**Bar Admissions:** New York; Pennsylvania

**Joanna Tarnawski** has worked on numerous matters at BLB&G, including *In re Celgene Corporation Securities Litigation*; *In re Henry Schein, Inc. Securities Litigation*; *Hefler et al. v. Wells Fargo & Company et al.*; *Fresno County Employees' Retirement Association v. comScore, Inc.*; *Medina et al v. Clovis Oncology, Inc., et al.*; and *San Antonio Fire and Police Pension Fund et al. v. Dole Food Company, Inc., et al.*

Prior to joining the firm in 2016, Joanna worked as a contract attorney on complex litigations. Prior to attending law school, she was a Research Scientist at the Institute for Basic Research in Developmental Disabilities.

**Education:** Seton Hall University School of Law, J.D., 2008; University of Gdansk, M.S. Polish Academy of Sciences, Ph.D., 2003

**Bar Admissions:** New York; New Jersey

**Richard Urisko** joined the BLB&G Staff Attorney team in December 2021.

Prior to joining the firm Richard worked as a contract attorney in various industries and departments including securities litigation, patent infringement & antitrust matters. Previously, Richard practiced as a trial attorney with various corporations, including Kmart and Michelin North America.

**Education:** University of Detroit, MI, J.D., 1983; Ramapo College, Mahwah, NJ, B.A., 1980

**Bar Admission:** Michigan

**Alex P. Wu** has worked on several matters at BLB&G, including *New Orleans Employees' Retirement System v. Mattel, Inc.*; and *In re Impinj, Inc. Securities Litigation*. Prior to joining the firm, Alex was a contract attorney on multiple complex litigations. Previously, Alex worked as a Senior Staff Attorney at O'Melveny & Myers.

**Education:** UCLA School of Law, J.D., 1997; UCLA, B.A., *magna cum laude*, 1994

**Bar Admission:** California

# **Exhibit 4B**

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF GEORGIA  
ROME DIVISION**

PUBLIC EMPLOYEES'  
RETIREMENT SYSTEM OF  
MISSISSIPPI, individually and on  
behalf of all others similarly situated,

Plaintiff,

v.

MOHAWK INDUSTRIES, INC. and  
JEFFREY S. LORBERBAUM,

Defendants.

Civ. A. No. 4:20-cv-00005-VMC

**DECLARATION OF H. LAMAR MIXSON  
IN SUPPORT OF LEAD COUNSEL'S MOTION FOR  
ATTORNEYS' FEES AND LITIGATION EXPENSES, FILED ON  
BEHALF OF BONDURANT MIXSON & ELMORE LLP**

I, H. Lamar Mixson, declare pursuant to 28 U.S.C. § 1746 as follows:

1. I am of counsel at the law firm of Bondurant Mixson & Elmore LLP ("BME"). I submit this declaration in support of Lead Counsel's application for an award of attorneys' fees in connection with services rendered in the above-captioned class action (the "Action"), as well as for payment of expenses incurred by my firm

in connection with the Action.<sup>1</sup> I have personal knowledge of the facts stated in this declaration and, if called upon, could and would testify to these facts.

2. BME served as Liaison Counsel for Lead Plaintiff Public Employees' Retirement System of Mississippi and the Class. In that capacity, my firm advised Lead Counsel regarding local practice and procedure and served as the principal contact between Lead Plaintiff and the Court. Among other tasks, we reviewed draft pleadings and briefs, participated in depositions, and were available for court conferences in our capacity as Liaison Counsel.

3. The schedule attached hereto as Exhibit 1 is a summary indicating the amount of time spent by each BME attorney involved in this Action from its inception through and including April 21, 2023 and the lodestar calculation for those individuals based on their current hourly rates. The schedule was prepared based on a review of attorney time records.

4. As the attorney responsible for supervising my firm's work on this case, I reviewed these time and expense records to prepare this declaration. The purpose of this review was to confirm both the accuracy of the time entries and expenses and the necessity for, and reasonableness of, the time and expenses committed to the

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<sup>1</sup> Unless otherwise defined herein, all capitalized terms have the meanings set forth in the Stipulation and Agreement of Settlement dated January 20, 2023 previously filed with the Court. *See* ECF No. 119-1.

litigation. All time expended in preparing this application for fees and expenses has been excluded.

5. Following this review, I believe that the time reflected in the firm's lodestar calculation and the expenses for which payment is sought as stated in this declaration are reasonable in amount and were necessary for the effective and efficient prosecution and resolution of the litigation. The expenses are all of a type that courts have routinely approved in similar class action cases.

6. The hourly rates for the BME attorneys included in Exhibit 1 are consistent with the hourly rates we charge for similar services in non-contingent matters. My firm's rates are set based on periodic analysis of rates charged by firms performing comparable work and have been approved by courts. Different timekeepers within the same employment category (e.g., partners, associates, paralegals, etc.) may have different rates based on a variety of factors, including years of practice, years at the firm, year in the current position (e.g., years as a partner), relevant experience, relative expertise, and the rates of similarly experienced peers at our firm or other firms.

7. The total number of hours expended on this Action by my firm from the inception of the case through and including April 21, 2023, is 105.00 hours. The total lodestar for my firm for that period is \$97,236.00. My firm's lodestar figures are based upon the firm's hourly rates describe above, which do not include charges

for expense items. Expense items are recorded separately, and these amounts are not duplicated in my firm's hourly rates.

8. As detailed in Exhibit 2, my firm is seeking payment for a total of \$1,710.70 in expenses incurred in connection with the prosecution of this Action from its inception through and including April 21, 2023.

9. The expenses incurred in this Action are reflected in the records of my firm, which are regularly prepared and maintained in the ordinary course of business. These records are prepared from expense vouchers, check records, and other source materials and are an accurate record of the expenses incurred.

10. With respect to the standing of my firm, attached hereto as Exhibit 3 is a brief biography of my firm and the attorneys employed with the firm and involved in this matter.

I declare, under penalty of perjury, that the foregoing facts are true and correct.

Executed on: April 26, 2023.

/s/ H. Lamar Mixson  
H. Lamar Mixson  
Georgia Bar No. 514012

**EXHIBIT 1**

*Public Employees' Retirement System of Mississippi v.  
Mohawk Industries, Inc., et al.*, No. 4:20-cv-00005-VMC

**BONDURANT MIXSON & ELMORE LLP**

**TIME REPORT**

Inception through and including April 21, 2023

<b>NAME</b>	<b>HOURS</b>	<b>HOURLY RATE</b>	<b>LODESTAR</b>
<b>Of Counsel</b>			
H. Lamar Mixson	9.20	\$1,500	\$13,800.00
<b>Partner</b>			
Amanda Kay Seals	72.60	\$900	\$65,340.00
<b>Associate</b>			
Jennifer L. Peterson	23.20	\$780	\$18,096.00
<b>TOTALS:</b>	<b>105.00</b>		<b>\$97,236.00</b>

**EXHIBIT 2**

*Public Employees' Retirement System of Mississippi v.  
Mohawk Industries, Inc., et al.*, No. 4:20-cv-00005-VMC

**BONDURANT MIXSON & ELMORE LLP**

**EXPENSE REPORT**

Inception through and including April 21, 2023

<b>CATEGORY</b>	<b>AMOUNT</b>
Court Fees	\$1,600.00
On-Line Factual Research	\$110.70
<b>TOTAL:</b>	<b>\$1,710.70</b>



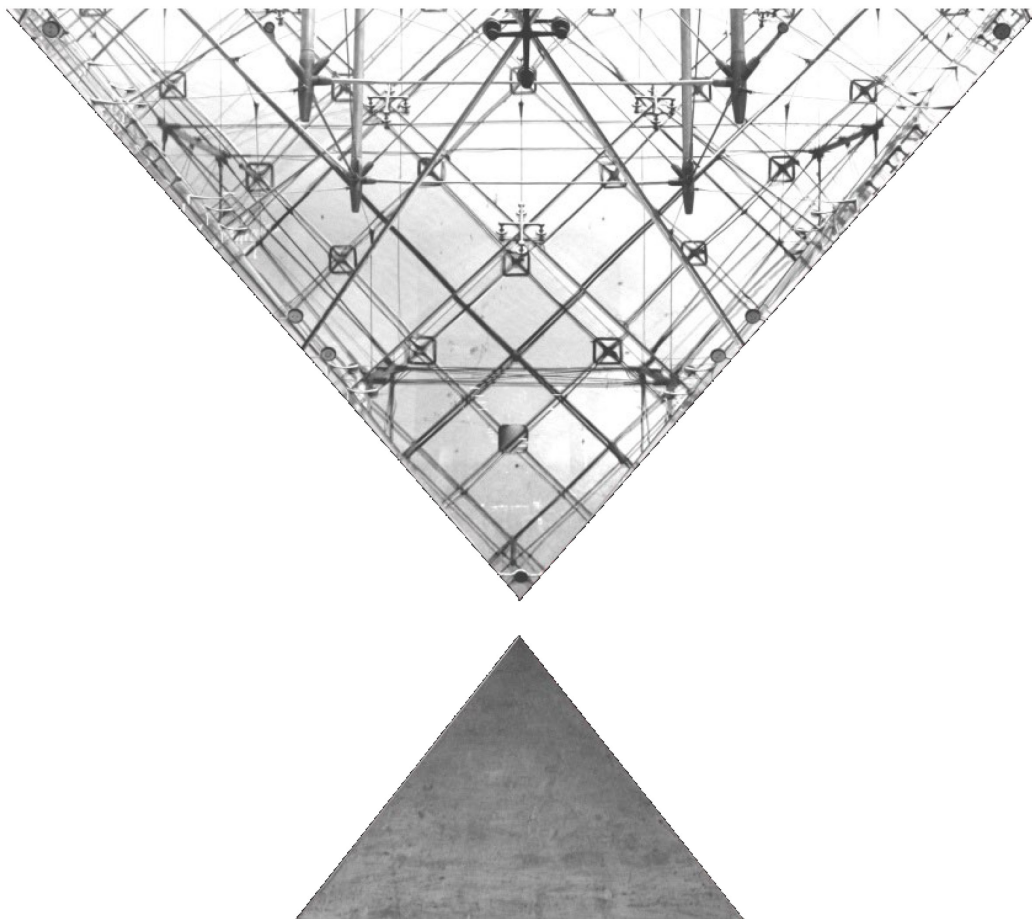
**EXHIBIT 3**

*Public Employees' Retirement System of Mississippi v.  
Mohawk Industries, Inc., et al.*, No. 4:20-cv-00005-VMC

**BONDURANT MIXSON & ELMORE LLP**

**FIRM BIOGRAPHY**

# BONDURANT MIXSON & ELMORE <sup>LLP</sup>



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# BONDURANT MIXSON & ELMORE <sup>LLP</sup>

“One of the **best choices** for complex litigation, wherever the case is based.” - Chambers

## Strategic Advantage

Some firms are structured to bill lots of hours. Ours is built to win high-stakes litigation. And we do.

At Bondurant Mixson & Elmore, our goal is to achieve client objectives. To that end, we have structured the firm to give our clients the greatest potential for achieving a successful outcome. Specifically:

**We recruit, train and retain top talent.** Our lawyers graduated at the top of their classes from the nation’s finest law schools. Virtually all have served as judicial law clerks, giving them an insider’s look at what it takes to win. We hire lawyers intending that they will become partners in the firm. We intensively train our lawyers and invest in their professional development. Our policy of not hiring laterally combined with exceptionally low lawyer turnover means that our cases are staffed with knowledgeable, experienced lawyers who will see your case to its conclusion.

**We staff cases to win.** Most of our cases are staffed by a small number of lawyers who perform all the work on the case. The benefit of this model is that the lawyers who will be drafting briefs, taking depositions, arguing motions, or conducting trials are thoroughly familiar with the clients, facts, legal research, documents, deposition testimony, and case strategy. This staffing model means our lawyers are prepared to perform any task, such as drafting winning briefs and making winning arguments.

**We use technology intelligently.** Because our cases often involve millions of documents, numerous witnesses, and multiple parties, we use case and document management software where appropriate to leverage our lawyers and our talented litigation support professionals to efficiently and effectively organize and manage each case. Additionally, our lawyers are experienced in courtroom presentation tools and know how to use them to present complex subject matters to judges and juries.

# Our Record

BME has extensive experience litigating consumer class actions in venues throughout the country. Examples of that experience include:

- *Elaine Ann Gold et al. vs. DeKalb County School District et al.*, No. 11-CV-3657-5 (Superior Court of DeKalb County) BME represented a class of teachers and other school employees who alleged the DeKalb County Board of Education illegally ended contributions to their retirement funds. The case resulted in a \$117.5 million recovery.
- *Owens v. Metropolitan Life Insurance Co*, No. 2:14-CV-00074-RWS (N.D. Ga. 2019). BME represented two classes of life insurance policy beneficiaries whose benefits were retained by MetLife in retained asset accounts, in violation of ERISA's fiduciary standards and prohibited transaction rules. The case resulted in a combined settlement of \$80 million.
- *Whelan v. Wesley Apartment Homes, LLC*, Civil Action File No. 18-A-70827-4, (DeKalb State Court) BME is currently representing a class of Georgia consumers against a corporate apartment company for security-deposit statute violations. If final approval is granted, the class will have \$1 million in relief available.
- *T.H. et al v. DeKalb County School District*, 1:19-cv-03268-TWT (N.D. Ga. 2021). BME currently represents a class of incarcerated youth aged 17 through 21 with a qualifying disability who have a right to special education services and accommodations under the IDEA and the Americans with Disabilities Act (ADA)/Section 504. The Northern District of Georgia has certified the class and granted summary judgment in its favor.
- *Bickerstaff v. SunTrust Bank*, 299 Ga. 459 (2016), U.S. Supreme Court certiorari denied, 2016 U.S. LEXIS 7351 (U.S. 2016). BME continues to represent a class of SunTrust checking account customers in an action to recover damages incurred as a result of unlawful conduct in collecting customers' interest fact in excess of the limits permitted for such transactions by Georgia law.
- *Synovus Bank v. Griner*, No. 10-C-11235-3 (State Court of Gwinnett County) (Class Counsel). BME represented a class of Synovus bank checking account customers and secured a \$34 million recovery in an action to recover damages incurred as a result of unlawful conduct in collecting customers' interest far in excess of the limits permitted for such transactions by Georgia law.
- *Dorado v. Bank of America*, No. 1:16-cv-21147-UU (S.D. Fla.). BME represented a class of mortgage customers overcharged interest for their last month's payment. The case resulted in a \$29 million recovery.
- *Manjunath A. Gokare, P.C., et al. v. Federal Express Corp., et al.*, No. 2:11-cv-02131 (W.D. Tenn.) (Class Counsel). BME represented a nationwide class of FedEx customers on breach of contract and RICO claims against FedEx for its assessment of unwarranted delivery surcharges. BME recovered \$19 million for the class.
- *Columbus Drywall & Insulation, Inc. v. Masco Corp.*, No. 1:04-cv-3066-JEC (N.D. Ga.) (Class Counsel), BME represented a class of purchasers in a class action antitrust case filed against Masco Corporation and the four largest manufacturers of insulation. The case settled on the eve of trial for \$112.25 million, one of the highest antitrust settlements to date in Georgia.

- *Schorr v. Countrywide Home Loans, Inc.*, 287 Ga. 570 (2010) (Class Counsel). BME represented a class of Georgia consumers whose security deeds were not timely canceled after they paid off their mortgages. BME recovered \$8.5 million for the class to cover the full statutory damages to wronged consumers.
- *Resource Life Ins. Co. v. Buckner*, 304 Ga. App. 719 (2010) (Class Counsel). BME represented consumers owed refunds on premiums paid for credit insurance. The case resulted in a \$47.75 million recovery.
- *Kenny A. v. Perdue*, No. 1:02-CV-1686-MHS (N.D. Ga.) (Class Counsel). BME represented a class of foster children in the custody of the Georgia Department of Human Resources. The litigation established numerous major deficiencies in the foster care system and in emergency shelters in Fulton and DeKalb Counties in particular and resulted in a consent decree with ongoing monitoring.
- *Ingram v. The Coca-Cola Company*, No. 1:98-CV-3679-RWS (N.D. Ga.) (Class Counsel). BME represented class of African American employees alleging racial discrimination in violation of Title VII and 42 U.S.C. § 1981. BME secured a \$192.5 million settlement, the then-largest settlement of a private race discrimination lawsuit in the United States.



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## Education

Harvard Law School, J.D.,  
1974, *cum laude*

- Editor, Harvard Law Review

Washington & Lee  
University, B.A., 1970,  
*magna cum laude*; Honors  
with exceptional distinction  
in English

- Phi Beta Kappa
- Phi Eta Sigma

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## Admissions

State Bar of Georgia  
U.S. Supreme Court  
U.S. Court of Appeals for  
the Third Circuit  
U.S. Court of Appeals for  
the Fourth Circuit  
U.S. Court of Appeals for  
the Fifth Circuit  
U.S. Court of Appeals for  
the Eleventh Circuit  
U.S. District Court for the  
Middle District of Georgia  
U.S. District Court for  
the Northern District of  
Georgia

## H. Lamar "Mickey" Mixson, Partner

 404.881.4171  404.881.4111  [mixson@bmelaw.com](mailto:mixson@bmelaw.com)

Mickey Mixson represents individuals and corporations in a wide variety of business disputes. He has successfully presented hundreds of complex commercial disputes to juries, arbitration panels and judges, gaining a reputation for success with cases considered "unwinnable" by others.

Mickey's areas of focus include business torts, corporate governance, partnership and fiduciary disputes, insurance coverage and bad faith litigation, attorney and accountant liability, RICO, tender offers, and proxy and securities litigation. In recent years, he has recovered awards and settlements for clients totaling well over \$2 billion. He has an equally successful record on the defense side, having obtained summary judgments, dismissals and defense verdicts for numerous major claims.

Mickey is a member of the American College of Trial Lawyers and is recognized by *Chambers USA* and *Chambers Global* as one of the highest-ranking trial lawyers in the United States, and among the top commercial litigators in Georgia. According to *Chambers*, he is a "creative and diligent trial lawyer" with "a superb touch with juries" and "has a fantastic record of success in complex commercial disputes and comes highly regarded for his work in business torts, corporate governance and fiduciary disputes." The most recent version of *Chambers USA* described him as "one hell of a lawyer."

Mickey is a frequent lecturer, and has published numerous articles on trial practice and business litigation issues such as the effective use of experts, presenting persuasive opening and closing arguments and the ACC Value Challenge. He is currently president of the Atlanta chapter of the International Network of Boutique Law Firms.

## Representative Work

- Co-counsel for the plaintiffs, Six Flags Over Georgia, in a breach of fiduciary duty case against Time Warner Entertainment which resulted in a \$454 million jury verdict, the largest verdict ever awarded in Georgia (a verdict which was affirmed on appeal and paid in full).
- Lead counsel representing David McDavid in obtaining a \$281 million jury verdict against Turner Broadcasting System (TBS) for breaching an agreement to sell McDavid the Atlanta Hawks, the Atlanta Thrashers and the operating rights to Philips Arena. Affirmed in full on appeal, this jury verdict is the largest compensatory damage award in Georgia history.
- Lead counsel for the plaintiff class in *Abdallah v. Coca-Cola Co.*, the largest private class action racial discrimination settlement in history, which settled for \$192.5 million.
- Achieved a settlement in a contract dispute case between a leading transportation company and a major supplier, resulting in \$200+ million recovery for our client.
- Represented several groups of individuals asserting related professional liability claims involving tax shelters, recovering more than \$350 million through a combination of settlements and awards.
- Successfully defended a major regional accounting firm from professional malpractice, fraud and RICO claims, winning summary judgment on all counts.

- Successfully defended Farley Industries in a dissenters' rights case before the Georgia Supreme Court, a decision of first impression which has become the seminal case on dissenters' rights in Georgia.
- Represented one of the largest real estate developers in the United States in the withdrawal of a major regional partner from hundreds of partnerships, including coordinating and successfully concluding simultaneous litigation in multiple forums.
- Represented Novelis Corporation in a contract dispute with the consortium representing Coca Cola bottlers. Novelis, the world's leading producer of aluminum rolled products, supplies aluminum can sheet to Coke, which alleged that Novelis had violated the terms of their supply agreement's most favored nation provision. After three years of discovery and proceedings, the Superior Court in Fulton County, Georgia, granted summary judgment in favor of Novelis.
- Successfully defended a major airline client in an international arbitration proceeding, recovering more than \$40 million on its counterclaims.

### Professional Activities

Past President and Member, Board of Directors, Georgia Lawyers for the Arts

Fellow, American College of Trial Lawyers

Fellow, International Academy of Trial Lawyers

Member, American Bar Foundation

Member, Litigation section, Atlanta Bar Association

Member, Antitrust; Corporate and Banking; General Practice and Trial Law Sections, State Bar of Georgia

Member, Business and Litigation sections; Commercial and Banking Litigation and Business Tort Litigation committees;

American Bar Association

President, Atlanta Chapter, International Network of Boutique Law Firms (INBLF)

Director and Member of the Executive Committee, International Network of Boutique Law Firms

Member, Lawyers Club of Atlanta

### Honors & Awards

Finalist, Trial Lawyer of the Year Award, Trial Lawyers for Public Justice (*Abdallah v. Coca-Cola Co.* case)

Profiled by *National Law Journal* in a report recognizing 12 U.S. lawyers who recently won difficult cases and have a history of success

Member of Georgia's "Legal Elite," each year since the award's inception

Named in *Top 100 Georgia Super Lawyers*, each year since the award's inception

Named in *500 Leading Litigators in America*, each year since the award's inception

Named in *Best Lawyers in America*, each year since the award's inception

Named as 2012 Atlanta Litigation - Securities Lawyer of the Year, *Best Lawyers in America*

Georgia Local Litigation Star, Benchmark Plaintiff

Who's Who Legal: Litigation

Benchmark 2017 National Star List of Top 100 Trial Lawyers



## One Atlantic Center

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Atlanta, GA 30309

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University of Georgia  
School of Law, J.D., 2012,  
*magna cum laude*

- Order of the Coif
- Executive Articles Editor, *Georgia Law Review*
- Winner, Best Note Competition
- Outstanding Moot Court Advocate

South Carolina Honors  
College, University of South  
Carolina, BARSC, 2008,  
*summa cum laude*

- Phi Beta Kappa
- McNair Scholar

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## Previous Experience

Law Clerk, Chief Judge W.  
Keith Watkins, U.S. District  
Court for the Middle District  
of Alabama, 2012-2013

Law Clerk, Senior Judge  
Joel F. Dubina, U.S. Court  
of Appeals for the Eleventh  
Circuit, 2013-2014

## Amanda Kay Seals, Associate

 404.881.4174  404.881.4111  seals@bmelaw.com

Amanda Kay Seals is a lawyer who represents plaintiffs and defendants in complex trial and appellate litigation. Though Amanda Kay has substantial business litigation experience, she devotes much of her practice to consumer and business tort cases at both the trial and appellate level, including fraud, breach of fiduciary duty, and business and personal injury.

Outside the office, Amanda Kay serves as adjunct faculty at the University of Georgia School of Law, where she teaches a course on sexual orientation and gender identity law.

Prior to joining the firm, Amanda Kay served as a law clerk to the Honorable Joel F. Dubina, U.S. Court of Appeals for the Eleventh Circuit, and Chief Judge W. Keith Watkins, U.S. District Court for the Middle District of Alabama.

Amanda Kay received her law degree from the University of Georgia School of Law, from which she received the school's inaugural Young Alumni of Excellence Award in 2017. Amanda Kay also holds a Bachelor of Arts and Sciences degree from South Carolina Honors College at the University of South Carolina.

## Representative Work

- Currently representing sex trafficking victims against hotels that facilitated and participated in their trafficking.
- Currently representing liquidators of entities looted by a years-long, multi-jurisdiction Ponzi scheme in claims against an international bank the liquidators allege substantially assisted in the scheme.
- Part of a team who guided Equifax investors to a \$149 million cash settlement related to the 2017 data breach.
- Part of a team who guided investors to a \$50 million cash settlement of allegations that the investors purchased stock at prices artificially inflated by defendant's misrepresentations about the source of its revenue.
- Part of trial team that won \$54 million verdicts over two related trials. Amanda Kay argued nearly every evidentiary objection in both trials and handled arguments regarding jury strikes, jury charges, and a mistrial motion.
- Part of appellate team whose Georgia Supreme Court argument preserved \$40 million verdict in products liability case.
- Successfully defended a \$500 million RICO case filed against twenty corporate defendants, alleging conspiracy spanning four continents and four decades. Not only did Amanda Kay and a team of Bondurant lawyers persuade the trial court to dismiss the case, they also successfully defended that dismissal on appeal in the U.S. Court of Appeals for the Eleventh Circuit.
- Successfully defended a private corporation and its outside counsel in a series of related malicious prosecution suits filed in both state and federal court alleging RICO claims, conspiracy, and violations of plaintiffs' constitutional rights. Amanda Kay assumed responsibility for arguments regarding the retroactive application of amendments to Georgia's RICO statute. Ultimately, the Georgia Court of Appeals adopted the Bondurant team's reasoning, and all cases were resolved at the motion to dismiss stage without any discovery having been taken.



## Admissions

State Bar of Georgia  
Supreme Court of Georgia  
Georgia Court of Appeals  
U.S. Court of Appeals for  
the Eleventh Circuit  
U.S. District Court for the  
Northern District of Georgia  
U.S. District Court for the  
Middle District of Georgia  
U.S. District Court for the  
Southern District of Georgia

- Regularly represents a Fortune 50 retailer in business tort, breach of contract, and intellectual property disputes involving the company's relationships with vendors and suppliers.
- Successfully argued on behalf of the former North American General Manager of a leading European medical products distributor to send employment-related dispute to arbitration. The Company brought suit against Amanda Kay's client and opposed efforts to arbitrate the Company's claims and Manager's counterclaims, but Amanda Kay persuaded the court that arbitration clause in employment agreement covered these disputes. Amanda Kay then handled settlement negotiations from start to finish, reaching a favorable resolution for her client.
- Represented fourteen county governments in multimillion-dollar RICO claim against data company that harvested images of county land records without paying per-page fee. Amanda Kay managed electronic discovery process on behalf of the counties, drafted an ultimately successful brief opposing severance of the counties' claims, and authored the mediation strategy that led to the suit's favorable resolution.

## REPRESENTATIVE PRO BONO WORK

- Represents a certified class of juvenile pretrial detainees entitled to special education services who have been denied those services during detention. In addition to certifying the class, the U.S. District Court for the Northern District of Georgia granted summary judgment in favor of the class.
- Represented Georgia Equality as amicus curiae before the United States Supreme Court in *Bostock* and the related landmark Title VII sexual orientation and gender discrimination cases.
- Won reversal of motion to dismiss in Eleventh Circuit Court of Appeals on behalf of Georgia inmate in an Eighth Amendment failure to protect claim after the inmate was beaten and stabbed by fellow prisoners following repeated threats and prison's refusal to transfer the attacked inmate to different dormitory.
- Negotiated favorable settlement for a Fulton County Jail detainee in an excessive force suit against jailers.
- Regularly represents transgender Georgians in efforts to secure conforming identity documents and connects dozens of others with volunteer lawyers to do the same.

## PROFESSIONAL ACTIVITIES

Barrister, Bleckley Inn of Court, 2019–  
Georgia High School Mock Trial Competition Chair, 2018–19  
Eleventh Circuit Judicial Conference Planning Committee, 2018  
Barrister, Lumpkin Inn of Court, 2017–19  
Leadership Academy, State Bar of Georgia, 2018  
LEAD Atlanta Class of 2017

## PUBLICATIONS

"Posthumous Organ Donation as Prisoner Agency and Rehabilitation," *DePaul Law Review*, Volume 65, Spring 2016, co-authored with Prof. Lisa Milot, University of Georgia School of Law



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## Education

Harvard Law School, J.D.

- Editor-in-Chief, *Harvard Journal of Law & Public Policy*
- Vice President, Federalist Society

Princeton University, B.A., *magna cum laude*

## Previous Experience

Law Clerk, Honorable Elizabeth L. Branch, U.S. Court of Appeals for the Eleventh Circuit

Law Clerk, Honorable William H. Pryor Jr., U.S. Court of Appeals for the Eleventh Circuit

## Admissions

State Bar of Georgia

U.S. Court of Appeals for the Eleventh Circuit

U.S. District Court for the Northern District of Georgia

U.S. District Court for the Southern District of Georgia

## Jennifer L. Peterson, Associate

404.881.4168 404.881.4111 [peterson@bmelaw.com](mailto:peterson@bmelaw.com)

Jennifer Peterson represents plaintiffs and defendants in complex trial and appellate litigation.

Before joining the firm, Jennifer served as a law clerk to the Honorable Elizabeth L. Branch and the Honorable William H. Pryor Jr. of the U.S. Court of Appeals for the Eleventh Circuit.

Jennifer received her law degree from Harvard Law School and received her Bachelor of Arts degree, *magna cum laude*, from Princeton University.

## Representative Work

### For plaintiffs:

- Successfully orally argued question of first impression confirming two-party consent requirement in Georgia State-wide Business Court
- Successfully upheld a \$45 million jury verdict on appeal to the Supreme Court of Georgia
- Successfully defeated motion to compel arbitration in the Georgia Court of Appeals
- Successfully obtained remand from federal court in class action to recover unpaid franchise fees
- Successfully briefed securities class action issue in the U.S. Court of Appeals for the Eleventh Circuit, leading to favorable settlement
- Successfully brought trade secrets suit and obtained preliminary injunction and defended counterclaims, leading to favorable settlement
- Successfully sued to enforce LLC member's right to distributions, leading to favorable settlement
- Successfully tried complex claims for breach of fiduciary duty, leading to favorable settlement

### For defendants:

- Successfully orally argued on behalf of major corporation in the U.S. Court of Appeals for the Eleventh Circuit, leading to favorable settlement of claims and attorneys' fees
- Successfully obtained partial dismissal of claims in class action involving conservation easement tax deductions
- Successfully obtained Georgia Court of Appeals' reversal of appointment of special master
- Successfully conducted multi-day arbitration of a municipal annexation dispute, prevailing on all issues
- Successfully opposed preliminary injunction sought against a Georgia hospital authority
- Successfully obtained dismissal of insurance suit wrongfully filed in Georgia against out-of-state policyholders

Supreme Court of Georgia  
Georgia Court of Appeals

- Successfully obtained reconsideration of summary judgment against insurer in federal court
- Successfully defended breach of contract suit in federal court, leading to favorable settlement and restoration of business relationship

# **Exhibit 4C**

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF GEORGIA  
ROME DIVISION**

PUBLIC EMPLOYEES’  
RETIREMENT SYSTEM OF  
MISSISSIPPI, individually and on  
behalf of all others similarly situated,

Plaintiff,

v.

MOHAWK INDUSTRIES, INC. and  
JEFFREY S. LORBERBAUM,

Defendants.

Civ. A. No. 4:20-cv-00005-VMC

**DECLARATION OF JOHN L. DAVIDSON  
IN SUPPORT OF LEAD COUNSEL’S MOTION FOR  
ATTORNEYS’ FEES AND LITIGATION EXPENSES, FILED ON  
BEHALF OF DAVIDSON BOWIE, PLLC**

I, John L. Davidson, declare pursuant to 28 U.S.C. § 1746 as follows:

1. I am a partner at the law firm of Davidson Bowie, PLLC (“Davidson Bowie”). I submit this declaration in support of Lead Counsel’s application for an award of attorneys’ fees in connection with services rendered in the above-captioned class action (the “Action”).<sup>1</sup> I have personal knowledge of the facts stated in this declaration and, if called upon, could and would testify to these facts.

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<sup>1</sup> Unless otherwise defined herein, all capitalized terms have the meanings set forth in the Stipulation and Agreement of Settlement dated January 20, 2023 previously filed with the Court. *See* ECF No. 119-1.

2. Davidson Bowie served as additional counsel for Lead Plaintiff Public Employees' Retirement System of Mississippi in the Action. In that capacity, I, on behalf of my firm, assisted Lead Counsel by, among other tasks, reviewing draft pleadings and briefs, advising on the collection of documents and discovery from Lead Plaintiff, advising on issues particular to Mississippi law, assisting in the mediation and settlement process and strategic decision making, and assisting in the preparation of Lead Plaintiff's Rule 30(b)(6) witnesses for their depositions.

3. The schedule attached hereto as Exhibit 1 is a summary indicating the amount of time I spent on this Action from its inception through and including April 21, 2023 and the lodestar calculation for my time based on my current hourly rate. The schedule was prepared based on a review of attorney time records.

4. As the partner responsible for supervising my firm's work on this case, I reviewed these time records to prepare this declaration. The purpose of this review was to confirm both the accuracy of the time entries and the necessity for, and reasonableness of, the time committed to the litigation. All time expended in preparing this application for fees has been excluded.

5. Following this review, I believe that the time reflected in the firm's lodestar calculation is reasonable in amount and was necessary for the effective and efficient prosecution and resolution of the litigation.

6. My hourly rate included in Exhibit 1 is consistent with the hourly rate my firm has charged Lead Plaintiff for similar services in a non-contingent matter.

7. The total number of hours expended on this Action by my firm from the inception of the case through and including April 25, 2023 is 105.50 hours. The total lodestar for my firm for that period is \$36,925.00. My firm's lodestar is based upon the firm's hourly rates describe above.

8. With respect to the standing of my firm, attached hereto as Exhibit 2 is a brief biography of my firm.

I declare, under penalty of perjury, that the foregoing facts are true and correct.

Executed on: April 25, 2023.

/s/ John L. Davidson  
John L. Davidson

**EXHIBIT 1**

*Public Employees' Retirement System of Mississippi v.  
Mohawk Industries, Inc., et al.*, No. 4:20-cv-00005-VMC

**DAVIDSON BOWIE, PLLC**

**TIME REPORT**

Inception through and including April 21, 2023

<b>NAME</b>	<b>HOURS</b>	<b>HOURLY RATE</b>	<b>LODESTAR</b>
<b>Partner</b>			
John L. Davidson	105.50	\$350	\$36,925.00



**EXHIBIT 2**

*Public Employees' Retirement System of Mississippi v.  
Mohawk Industries, Inc., et al.*, No. 4:20-cv-00005-VMC

**DAVIDSON BOWIE, PLLC**

**FIRM BIOGRAPHY**

# DAVIDSON | BOWIE

Davidson Bowie, PLLC was established in 2004 by partners John L. Davidson and F. Lee Bowie. Mr. Davidson and Mr. Bowie have been practicing law since 1990 and collectively, have decades of litigation experience. Davidson Bowie, PLLC has represented hundreds of individuals involving complex matters, including securities cases. The firm has obtained recovery on behalf of investors for claims of fraud, breach of fiduciary duty, unsuitable investments, churning and failure to supervise against numerous financial advisors, broker dealers, variable annuity companies and mutual fund companies. Most notable are the multi-million dollar arbitration awards for retired Kansas City Southern investors and retired American Airlines pilots against InterSecurities, Inc. and Securities America, Inc. for fraud and breach of fiduciary duty.

Some of the firm's most notable awards regarding securities litigation include:

- Awarded \$9.3 million for claims filed by three retired American Airlines pilots against Securities America and their financial advisor in Texas for, among other things, excessive trading in leveraged Rydex mutual funds. The firm also represented dozens of retired American Airlines pilots in a multi-million dollar settlement stemming from this trial.
- Awarded \$2.2 million for claims against a St. Petersburg, FL broker-dealer to four retired Kansas City Southern railroad workers. The award, which included punitive damages, was directed against InterSecurities Inc., a broker-dealer and registered investment advisor, and two of its representatives in New Orleans, LA. The four claimants, who had opened IRA rollover accounts at the firm, alleged InterSecurities placed excessive amounts of their retirement assets in high-cost, high-fee variable annuities from an affiliate, Western Reserve Life Insurance Co.

Davidson Bowie, PLLC has also represented clients in a variety of other complex cases ranging from class actions to claims on behalf of States for consumer protection and "*parens patriae*" claims. The firm currently serves as outside counsel for several states' attorney general representing Mississippi, Arkansas, Louisiana and Ohio. Below are some of the accomplishments of which the firm is most proud:

- The firm filed the first opioid case in the country on behalf of a State, seeking to hold drug makers like Johnson & Johnson, Purdue Pharma, and Teva Pharmaceuticals responsible for the opioid epidemic.
- The firm filed class actions in South Carolina and Florida against StarCraft for their manufacture of thousands of defective church buses that a multi-year investigation revealed failed to meet Federal Motor Vehicle Safety Standards. The result was a multi-million dollar confidential settlement and a NHTSA recall of thousands of vehicles.
- The firm filed a class action against the largest limousine manufacturer in the nation for manufacturing defective limousines that violate the Federal Motor Vehicle Safety Standards.
- The firm filed and settled a national class action against Hibbetts Sporting Goods for violations of the Fair Labor Standards Act.



John L. Davidson is the managing partner of Davidson Bowie, PLLC. His firm represents clients throughout the country in matters ranging from complex securities cases to catastrophic injury cases.

Mr. Davidson, J.D. began his legal career in 1990 after graduating from the University of Mississippi Law School. He worked as a felony prosecutor in both Dallas, Texas and Jackson, Mississippi until 1998. Mr. Davidson has personally tried dozens of cases, including assisting in the successful re-prosecution of the murder of slain civil rights worker Medgar Evers. During the last four years of his prosecutorial career he ran the Grand Juries and homicide prosecutions division for the Jackson, Mississippi Circuit Court.

In 1998, Mr. Davidson went into private practice. That firm eventually became the largest plaintiffs practice in Mississippi, handling pharmaceutical cases, crashworthy litigation, and securities fraud claim.

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