

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DISTRICT**

THE DEPARTMENT OF THE TREASURY OF  
THE STATE OF NEW JERSEY AND ITS  
DIVISION OF INVESTMENT, on behalf of itself  
and all others similarly situated,

Plaintiff,

v.

CLIFFS NATURAL RESOURCES INC.,  
JOSEPH CARRABBA, LAURIE BRLAS,  
TERRY PARADIE, and DAVID B. BLAKE,

Defendants.

Case No. 1:14-cv-1031

Judge Dan Aaron Polster

Magistrate Judge Thomas M. Parker

**JOINT DECLARATION OF JAMES A. HARROD AND MICHAEL B. HIMMEL  
IN SUPPORT OF (A) LEAD PLAINTIFF'S MOTION FOR FINAL APPROVAL  
OF CLASS ACTION SETTLEMENT AND PLAN OF ALLOCATION, AND  
(B) LEAD COUNSEL'S MOTION FOR AN AWARD OF ATTORNEYS' FEES  
AND REIMBURSEMENT OF LITIGATION EXPENSES**

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1	Declaration of Brian F. McDonough, Assistant Attorney General, State of New Jersey, Office of the Attorney General, Department of Law and Public Safety, Division of Law, in Support of: (A) Lead Plaintiff's Motion for Final Approval of Class Action Settlement and Plan of Allocation; (B) Lead Counsel's Motion for an Award of Attorneys' Fees and Reimbursement of Litigation Expenses; and (C) Lead Plaintiff's Request for Reimbursement of Costs and Expenses
2	Declaration of Former U.S. District Court Judge Layn R. Phillips in Support of Approval of Class Action Settlement
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4C	Declaration of Scott D. Simpkins in Support of Lead Counsel's Motion for an Award of Attorneys' Fees and Reimbursement of Litigation Expenses Filed on Behalf of Climaco Wilcox Peca Tarantino & Garofoli Co., LPA
5	Breakdown of Plaintiff's Counsel's Litigation Expenses by Category
6	<i>In re Regions Morgan Keegan Sec., Derivative &amp; ERISA Litig.</i> , No. 2:09-2009 SMH, slip op. (W.D. Tenn. Aug. 5, 2013), ECF No. 364
7	<i>Schuh v. HCA Holdings Inc.</i> , No. 3:11-cv-01033, slip op. (M.D. Tenn. Apr. 14, 2016), ECF No. 563
8	<i>Morse v. McWhorter</i> , No. 3:97-0370, slip op. (M.D. Tenn. Mar. 12, 2004), ECF No. 244-18
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10	<i>In re Broadwing Inc. Sec. Litig.</i> , No. 1:02-cv-00795, slip op. (S.D. Ohio Nov. 30, 2006), ECF No. 65



11	<i>In re Dollar General Corp. Sec. Litig.</i> , No. 3:01-0388, slip op. (M.D. Tenn. May 24, 2002), ECF No. 209
12	<i>In re Delphi Corp. Sec., Derivative &amp; ERISA Litig.</i> , No. 05-md-1725, slip op. (E.D. Mich. June 26, 2008), ECF No. 417
13	<i>In re Advanced Lighting Techs., Inc. Sec. Litig.</i> , 99CV836, slip op. (N.D. Ohio Jan. 17, 2003), ECF No. 138
14	<i>In re Direct Gen. Corp. Sec. Litig.</i> , 3:05-0077, slip. op. (M.D. Tenn. July 20, 2007), ECF 290
15	<i>Beach v. Healthways Inc.</i> , No. 3:08-cv-00569, slip op. (M.D. Tenn. Sept. 27, 2010), ECF No. 252
16	<i>In re Am. Express Fin. Advisors Sec. Litig.</i> , No. 04-cv-01773 (DAB), slip op. (S.D.N.Y. July 18, 2007), ECF No. 170
17	<i>Nieman v. Duke Energy Corp.</i> , No. 3:12-cv-00456-MOC-DSC, slip op. (W.D.N.C. Nov. 2, 2015), ECF No. 112
18	<i>In re Satyam Computer Svc. Sec. Litig.</i> , No. 09-MD-2027, slip op. (S.D.N.Y. Sept. 13, 2011), ECF No. 365
19	<i>In re L.G. Philips LCD Co. Sec. Litig.</i> , No. 1:07-cv-00909-RJS, slip op. (S.D.N.Y. Mar. 17, 2011), ECF No. 82
20	<i>Arkansas Teacher Ret. Sys. v. Bankrate, Inc.</i> , No. 13-cv-07183 (JSR), slip op. (S.D.N.Y. Nov. 25, 2014), ECF No. 87
21	<i>In re General Motors Corp. Sec. &amp; Derivative Litig.</i> , No. 06-md-1749, slip op., memo. (E.D. Mich. Jan. 6, 2009), ECF Nos. 139, 102

We, James A. Harrod and Michael B. Himmel, of the law firms Bernstein Litowitz Berger & Grossmann LLP (“Bernstein Litowitz” or “BLB&G”), and Lowenstein Sandler LLP (“Lowenstein Sandler”; collectively with BLB&G, “Lead Counsel”), respectively, submit this joint declaration in support of Lead Plaintiff, The Department of the Treasury of the State of New Jersey and its Division of Investment’s (“New Jersey” or “Lead Plaintiff”) motion for final approval of the proposed Settlement and approval of the Plan of Allocation, as well as Lead Counsel’s motion for approval of attorneys’ fees and reimbursement of litigation expenses, and declare as follows<sup>1</sup>:

## **I. INTRODUCTION**

1. We are, respectively, partners in the law firms of Bernstein Litowitz and Lowenstein Sandler, the Court-appointed Lead Counsel for New Jersey and the Settlement Class in this Action. We have personal knowledge of the matters set forth herein based on our active supervision of and participation in the prosecution and settlement of the claims asserted in the Action.

2. We respectfully submit this Joint Declaration in support of New Jersey’s motion, pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, for final approval of the proposed settlement (the “Settlement”) that the Court preliminarily approved by its March 11, 2016 Order Preliminarily Approving Proposed Settlement with Individual Defendants and Providing for Notice (the “Preliminary Approval Order”) (ECF No. 98). This Joint Declaration sets forth how Lead Counsel and Lead Plaintiff were able to achieve this favorable Settlement on behalf of the Settlement Class. We also respectfully submit this Joint Declaration in support of: (i) Lead

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<sup>1</sup> When not defined herein, capitalized terms are defined in the Stipulation and Agreement of Settlement with Individual Defendants dated March 10, 2016 (the “Stipulation”) (ECF No. 96-1).

Plaintiff's motion for approval of the proposed plan for allocating the proceeds of the Net Settlement Fund to eligible Settlement Class Members (the "Plan of Allocation"); and (ii) Lead Counsel's motion, on behalf of all Plaintiff's Counsel,<sup>2</sup> for an award of attorneys' fees in the amount of 16% of the Settlement Fund, reimbursement of Plaintiff's Counsel's expenses in the amount of \$214,625.15, and an award pursuant to the Private Securities Litigation Reform Act of 1995 ("PSLRA") in the amount of \$50,697.45 for costs and expenses incurred by New Jersey in connection with its representation of the Settlement Class (the "Fee and Expense Application").<sup>3</sup>

3. The proposed Settlement now before the Court provides for the resolution of all claims in the Action in exchange for a cash payment of \$84,000,000. As detailed herein, New Jersey and Lead Counsel respectfully submit that the Settlement represents a very favorable result for the Settlement Class in light of the significant risks in the Action. As explained further below, the Settlement provides a considerable benefit to the Settlement Class by conferring a substantial, certain and immediate recovery while avoiding the significant risks and expense of continued litigation, including the risk that the Settlement Class could recover nothing or substantially less than the Settlement Amount after years of additional litigation and delay.

4. The proposed Settlement is the result of extensive efforts by Lead Counsel, which included, among other things detailed herein: (i) conducting a wide-ranging investigation of Cliffs Natural Resources, Inc. ("Cliffs" or the "Company") and the allegedly fraudulent misrepresentations and omissions made during the period from March 14, 2012 through March 26,

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<sup>2</sup> Plaintiff's Counsel means Bernstein Litowitz, Lowenstein Sandler, and Climaco Wilcox Peca Tarantino & Garofoli Co., LPA ("Climaco Wilcox" or "Local Counsel").

<sup>3</sup> In conjunction with this Declaration, New Jersey and Lead Counsel, respectively, are also submitting the Memorandum of Law in Support of Lead Plaintiff's Motion for Final Approval of Class Action Settlement and Plan of Allocation (the "Settlement Memorandum") and the Memorandum of Law in Support of Lead Counsel's Motion for an Award of Attorneys' Fees and Reimbursement of Litigation Expenses (the "Fee Memorandum").

2013, inclusive (the “Settlement Class Period” or “Class Period”), principally concerning Cliffs’ “stress testing” of its dividend rate and the conditions at the Bloom Lake iron ore mine; (ii) drafting an initial complaint filed on May 12, 2014 (ECF No. 1); (iii) drafting the Amended Class Action Complaint (the “Amended Complaint”), filed on August 22, 2014 (ECF No. 24); (iv) researching, drafting and filing an opposition to Defendants’ motion to dismiss the Amended Complaint, filed with the Court on December 5, 2014 (ECF No. 33); (v) researching, drafting, and filing, on February 6, 2015, submissions opposing Defendants’ Motion to Strike Certain Allegations from the Amended Complaint (ECF No. 47); (vi) in response to the Court’s March 5, 2015 Order (ECF No. 52), drafting the Second Amended Class Action Complaint (the “Second Amended Complaint,” “SAC” or “Complaint”), filed on March 31, 2015 (ECF No. 55); (vii) researching, drafting and filing an opposition to Defendants’ motion to dismiss the SAC, filed with the Court on June 12, 2015 (ECF No. 76); (viii) researching, drafting, and opposing Defendants’ motion to strike certain allegations from the SAC on June 1, 2015 (ECF No. 72); (ix) consulting with various mining, economic and damages experts and consultants; (x) preparing and exchanging detailed damage analyses and reports with Defendants and the Court; (xi) negotiating a proposed discovery schedule and plan submitted to and approved by the Court; (xii) serving discovery requests on Defendants; (xiii) preparing detailed mediation statements; and (xiv) negotiating with Defendants on an arm’s-length basis both directly and through the mediator to resolve the Action.

5. New Jersey and Lead Counsel believe that the Settlement is in the best interests of the Settlement Class. Due to their efforts described in the foregoing paragraph, New Jersey and Lead Counsel are well informed of the strengths and weaknesses of the claims and defenses in the Action, and they believe the Settlement represents a very favorable outcome for the Settlement Class.

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

7. With respect to the Fee and Expense Application, as discussed in the Fee Memorandum, the requested fee of 16% of the Settlement Fund for all Plaintiff's Counsel is requested pursuant to a retainer agreement entered into with New Jersey at the outset of the litigation and is on the low end of the range of percentage awards granted by courts in this Circuit and across the country in securities class actions. Additionally, the requested fee results in a multiplier of 2.24 on Plaintiff's Counsel's lodestar, which is well within the range of multipliers routinely awarded by courts in the Sixth Circuit and across the country.

8. For all of the reasons set forth herein and in the accompanying memoranda, including the quality of the result obtained and the numerous significant litigation risks discussed fully below, New Jersey and Lead Counsel respectfully submit that the Settlement and the Plan of Allocation are fair, reasonable and adequate, and should be approved. In addition, Lead Counsel respectfully submits that its request for attorneys' fees and reimbursement of Litigation Expenses is also fair and reasonable, and should be approved.

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

### **A. Background**

9. This case concerns the impact of Cliffs' acquisition of a controlling interest in Consolidated Thompson Iron Mines Limited, including the Bloom Lake iron ore mine located in Quebec, Canada. New Jersey alleged in the SAC that Defendants fraudulently misled investors into believing that the acquisition and integration of Bloom Lake would sustainably fund the 123%

increase in the Company's dividend (announced on the first day of the Settlement Class Period), while also paying for an expansion that would triple the mine's production volume.

10. Specifically, New Jersey alleges that Defendants made numerous false and misleading statements and omitted material facts during the Settlement Class Period regarding: (i) the "stress testing" that the Individual Defendants claimed Cliffs had conducted before and after increasing the dividend rate for its common stock, and that such testing ensured that the dividend was sustainable; (ii) the conditions at the Bloom Lake iron ore mine and whether the mine would result in a \$60-per-ton production cost and 8 million ton production rate in Phase 1 of Cliff's Three-Phase Plan to increase iron ore production, which would create cash-flow to support the increased dividend; and (iii) the conditions at Bloom Lake and whether the mine would double production in Phase 2 of the plan, which would further create cash-flow to support the increased dividend.

11. The Complaint further alleges that due to these misrepresentations and omissions, the price of Cliffs common stock was artificially inflated, and declined when the truth was revealed through a series of corrective disclosures that removed the inflation in Cliffs shares and caused statistically significant declines on April 26, 2012, July 26, 2012, October 25, 2012, November 19, 2012, November 20, 2012, February 13, 2013, and March 27, 2013, the last day of the Class Period.

#### **B. Preparation And Filing Of The Initial Complaint**

12. This litigation, initially captioned as above, was commenced on May 12, 2014, with the filing of a securities class action complaint in this District. (ECF No. 1.) The filing of that initial complaint was preceded by a substantial analysis of the possible merits of the case, including substantial factual research concerning the underlying issues at Bloom Lake and the Defendants' capacity to test, and actual testing of, the dividend. That investigation involved discussions with certain former employees of Cliffs and other knowledgeable persons.

13. In preparation for filing the Complaint, Lead Counsel conducted an extensive factual and legal investigation that included, among other things, review and analysis of: (i) documents filed publicly by Defendant Cliffs with the U.S. Securities and Exchange Commission (“SEC”); (ii) Cliffs press releases and other public statements; (iii) transcripts of Cliffs investor conference calls; (iv) research reports by financial analysts concerning Cliffs; (v) publicly available materials concerning Bloom Lake and Cliffs’ acquisition of Consolidated Thompson; (vi) information concerning the pricing and movement in Cliffs common stock and other securities; and (vii) interviews and meetings with numerous former employees of Cliffs and other knowledgeable persons. Lead Counsel also conducted an exhaustive analysis of applicable Sixth Circuit case law and consulted with experts in the fields of mining, loss causation and damages.

**C. The Appointment Of New Jersey As Lead Plaintiff**

14. On July 11, 2014, New Jersey filed a motion seeking to be appointed lead plaintiff pursuant to the PSLRA. (ECF No. 21.) No competing motions were filed.

15. On July 22, 2014, the parties to the litigation submitted a Stipulation and [Proposed] Order (I) Appointing Lead Plaintiff and Lead Counsel; and (II) Setting Schedule. (ECF No. 22.) By Order dated July 23, 2014, the Court granted New Jersey’s motion seeking appointment as Lead Plaintiff and appointed New Jersey as Lead Plaintiff and approved New Jersey’s selection of Bernstein Litowitz and Lowenstein Sandler as Lead Counsel, and Climaco Wilcox Peca Tarantino & Garofoli Co., LPA as Local Counsel. (ECF No. 23.) That Order further provided for New Jersey to file an Amended Complaint on or before August 22, 2014.

**D. The Preparation And Filing Of The Amended Complaint**

16. On August 22, 2014, New Jersey filed and served its Amended Complaint for Violations of the Federal Securities Laws (the “Amended Complaint”) (ECF No. 24) asserting

claims against all Defendants under Section 10(b) of the Securities Exchange Act of 1934 (the “Exchange Act”) and Rule 10b-5 promulgated thereunder, and against the Individual Defendants under Section 20(a) of the Exchange Act. The Amended Complaint alleged in great detail, among other things, that Defendants made materially false and misleading statements and omitted material information regarding Cliffs’ acquisition of a controlling interest in Consolidated Thompson Iron Mines Limited, including the Bloom Lake mine. New Jersey alleged in the Amended Complaint that Defendants fraudulently misled investors into believing that the acquisition and integration of Bloom Lake would enable a 123% increase in the Company’s dividend, while also paying for an expansion that would triple production volumes. The Amended Complaint further alleged that the price of Cliffs common stock was artificially inflated as a result of Defendants’ allegedly false and misleading statements and omissions, and declined when the truth was revealed.

17. More specifically, the Amended Complaint alleged that Defendants materially misstated or omitted to disclose: (i) that Defendants had the ability to and had meaningfully tested the increased dividend; (ii) the true operational conditions and production volumes and costs at Bloom Lake; and (iii) the viability and progress of the expansion of Bloom Lake’s production.

18. The allegations in the Amended Complaint were the product of an exhaustive investigation. In preparing the Amended Complaint, New Jersey reviewed a wide range of factual information in the public domain, consulted with experts in the mining and economics fields, and interviewed hundreds of former Cliffs employees and other knowledgeable individuals.

19. In connection with that investigation, Lead Counsel reviewed information concerning Bloom Lake, including engineering reports, feasibility studies, field assessments, reports to Canadian regulators and environmental authorities, photographs, maps and documents related to Cliffs’ acquisition of Consolidated Thompson.



20. Lead Counsel's investigators met with or interviewed by phone numerous witnesses, including the twenty-eight confidential witnesses included in the Amended Complaint. Those witnesses provided allegations concerning Cliffs' alleged inability to adequately test its dividend and inadequate price modeling capabilities; the numerous operational, production and infrastructure problems at Bloom Lake; and problematic budgeting, staffing, engineering and accounting problems associated with the Phase 2 expansion project at Bloom Lake.

21. In conjunction with New Jersey's investigation concerning the underlying fraud, Lead Counsel engaged in an extensive review of the Defendants' public statements and the market reaction to those statements (including hundreds of reports by securities analysts that covered Cliffs), and had discussions with consulting economic experts. Based on Lead Counsel's extensive investigation, New Jersey determined the scope of the Class Period and the appropriate disclosures to allege as false. Relatedly, New Jersey determined the events that revealed the true facts concerning Defendants' fraud to the market and thus dissipated the inflation in Cliffs shares.

22. The Amended Complaint contained 133 pages of detailed allegations reflecting the facts and theory resulting from Lead Counsel's extensive investigation.

**E. Defendants' Motion To Dismiss The Amended Complaint And New Jersey's Opposition**

23. On October 21, 2014, Defendants filed their Motion to Dismiss the Amended Complaint. (ECF Nos. 32-1 to -20.) Defendants argued that the Amended Complaint should be dismissed on numerous grounds, including, among others, the following:

- That New Jersey's allegations relying upon "confidential witnesses" were inconsistent with the standards in *In re Diebold Securities Litigation*, No. 05-cv-2873, 2008 WL 3927467 (N.D. Ohio Aug. 22, 2008), as they were unreliable, lacked detail, and failed to reflect any knowledge or recklessness attributable to the Defendants.
- That the claims in the Amended Complaint were based on an impermissible theory of "fraud by hindsight" and did not create an

inference of fraud.

- Relying upon the Sixth Circuit's decision in *Helwig v. Vencor, Inc.*, 251 F.3d 540 (6th Cir. 2001), Defendants argued that the scienter allegations in the Amended Complaint failed to create an inference of the Individual Defendants' scienter, including under the 9-factor analysis announced in *Helwig*. Specifically, Defendants argued that the scienter allegations were insufficiently detailed, failed to reflect a knowing or reckless disparity between the Defendants' public statements and internal reports concerning either conditions at Bloom Lake or Cliffs' dividend testing. Defendants further argued that New Jersey's allegations concerning the temporal proximity between the alleged false statements and the later disclosure of inconsistent information were not sufficient to create an inference of scienter. Finally, Defendants argued that the Amended Complaint lacked any reasonable or cognizable theory of motive.
- Defendants also attacked the nature and falsity of the alleged false statements and omissions in the Amended Complaint. Defendants argued that the alleged materially false and misleading statements and omissions were forward-looking and protected by the PSLRA's safe-harbor, and that many of them were inactionable statements of corporate optimism or puffery.
- That, because Lead Plaintiff had not sufficiently alleged a primary violation of the securities laws, it had failed to adequately plead Section 20(a) control person liability against the Individual Defendants.

24. On December 5, 2014, New Jersey filed its opposition to Defendants' Motion to Dismiss. (ECF No. 33.) In its opposition, New Jersey argued, among other things, that Defendants' alleged Class Period false statements and omissions concerning (i) Cliffs' ability to test and maintain the increased dividend, (ii) operational conditions at Bloom Lake, and (iii) the expansion project at Bloom Lake, were materially misleading and actionable. As to falsity, New Jersey also argued that the alleged false statements were not puffery and were not protected by the safe-harbor for forward-looking statements.

25. New Jersey argued that the allegations attributed to confidential witnesses met the applicable legal standards, and were sufficiently detailed and reliable based on, *inter alia*, the fact that they corroborated each other and formed a consistent narrative.

26. As to scienter, New Jersey argued that Defendants' scienter could be inferred from the Amended Complaint's detailed allegations, including those: reflecting Defendants' receipt of internal reports that were inconsistent with their public statements; addressing Defendants' detailed statements concerning their monitoring of Bloom Lake; concerning the centrality of Bloom Lake and the dividend to Cliffs' daily operations; reflecting the temporal proximity between Defendants' false statements and subsequent corrective disclosures; and asserting that Defendants were motivated to commit fraud to justify their decision to acquire Bloom Lake.

27. New Jersey also argued with respect to scienter that the so-called *Helwig* factors need not be satisfied or applied as a "checklist," and that such an approach had not been followed in subsequent Sixth Circuit decisions, including *Frank v. Dana Corp.*, 646 F.3d 954 (6th Cir. 2011).

28. Finally, New Jersey argued that since a primary claim under Section 10(b) had been adequately alleged, the Section 20(a) control person claims should also be sustained.

29. On January 7, 2015, Defendants filed their reply in further support of the Motion to Dismiss and argued that the Amended Complaint should be dismissed on numerous grounds, principally re-asserting the arguments made in their opening brief. Significantly, Defendants renewed their arguments focusing on the proposed deficiencies in the confidential witness and scienter allegations. Defendants also argued that Lead Plaintiff had not established the "strong inference" of scienter required to establish liability for securities fraud, because, under the then-recent Sixth Circuit decision in *In re Omnicare Securities Litigation*, 769 F.3d 455 (6th Cir. 2014), the Complaint did not adequately allege facts giving rise to a strong inference of corporate scienter in that it failed to plead that any of the Individual Defendants made materially false and misleading statements or omissions with knowledge.

**F. Defendants' Motion To Strike Allegations From the Amended Complaint And New Jersey's Opposition**

30. While their Motion to Dismiss was pending, on January 23, 2015, Defendants filed a Motion Pursuant to Federal Rule of Civil Procedure 12(f) To Strike Certain Allegations From the Amended Class Action Complaint ("Motion to Strike"). (ECF No. 39.)

31. On January 23, 2015, Defendants also filed a Motion to Stay Consideration of the Motion to Dismiss, pending the outcome of their Motion to Strike. (ECF No. 41). On January 27, 2015, prior to the time that New Jersey had to respond to the Motion to Stay, the Court granted that motion in an Order, directing New Jersey to respond by February 6, 2015 and to address whether the Amended Complaint can withstand the Motion to Dismiss without the challenged allegations. (ECF No. 44.)

32. Defendants' Motion to Strike focused on allegations attributed to three confidential witnesses that were among the sources of allegations in the Amended Complaint. The motion asserted that allegations attributed to those individuals distorted information they had provided to Lead Counsel's investigators and were taken out of context.

33. The Motion to Strike generally asserted that confidential witness information must be steeply discounted at the pleading stage. Defendants also argued that the subject allegations met the Rule 12(f) standard, which provides that a court may strike from a pleading any "redundant, immaterial, impertinent or scandalous matter." The Motion to Strike argued that because the witness allegations lacked "any 'indicia of reliability'" and were "scandalous," they should be stricken.

34. The Motion to Strike was also accompanied by declarations from each of the individuals who were the underlying sources of the confidential witness allegations. Those

declarations, to varying degrees, argued that the allegations were taken out of context or reflected speculation or opinion.

35. New Jersey opposed the Motion to Strike on February 6, 2015, filing a brief and several declarations from counsel and investigators concerning the conduct in connection with the investigation. (ECF No. 47.)

36. New Jersey's Opposition to the Motion to Strike argued that the investigation was reliable, meticulous and followed a process that had multiple methods to ensure the accuracy of any allegations attributed to a confidential witness. The brief and supporting declarations detailed that process and set forth the reliability of the process used in substantiating the challenged allegations.

37. The opposition also focused on the purported impropriety of submitting factual material in response to a pleading, particularly in light of the PSLRA stay of discovery, relying in particular on two cases from districts within the Sixth Circuit: *Halford v. Atricare, Inc.*, No. 08-867, 2010 WL 8973625 (S.D. Ohio Mar. 29, 2010), and *In re Proquest Securities Litigation*, 527 F. Supp. 2d 728 (E.D. Mich. 2007).

38. New Jersey's opposition to the Motion to Strike addressed the allegations attributed to the three confidential witnesses and pointed out how the allegations were not inconsistent with the declarations submitted by Defendants. New Jersey also argued that the factual record did not support the contention that one of the confidential witnesses sought to retract her statements after the filing of the Amended Complaint.

39. Finally, New Jersey argued, as directed by the Court's Order, that even in the absence of the challenged allegations the Amended Complaint asserted actionable claims and should be sustained.

40. Defendants filed a reply in support of their Motion to Strike on February 13, 2015. (ECF No. 50.) Defendants' reply argued that the confidential witness allegations remained unreliable and that the content of those witnesses' statements was largely not based on personal knowledge, or that the witnesses' statements concerned matters outside the scope of their responsibilities. The reply brief was accompanied by a second declaration from the confidential witness who asserted that she had sought to retract the statements in the Amended Complaint attributable to her.

41. Defendants' reply brief also argued that the principle authorities New Jersey relied upon in its opposition were both distinguishable and inapposite and engaged in a detailed discussion of why each of the challenged confidential witness statements was inaccurate.

42. Finally, in their reply in support of the Motion to Strike, Defendants argued that once the challenged confidential witness allegations were stricken, the remaining allegations in the Amended Complaint were insufficient to meet the Federal Rule of Civil Procedure 9(b) pleading standard for fraud, and that the case should be dismissed in its entirety.

**G. The Court's Ruling On The Motions To Dismiss And Strike Allegations From The Amended Complaint**

43. On March 5, 2015, the Court denied as moot Defendants' motion to dismiss the Amended Complaint and Motion to Strike, and instructed New Jersey to file a second amended complaint. (ECF No. 52.)

44. The Court's March 5, 2015 Order discussed the factual allegations in the case, applicable law, and then requested that New Jersey file a new amended complaint by March 31, 2015, of no more than 50 pages, and required New Jersey to specifically set forth for each Defendant: the statements alleged to be false; the reasons why each such statement was false; and the underlying basis for that Defendant's scienter with respect to the statement.

**H. The Second Amended Complaint**

45. Following receipt of the March 5, 2015 Order, Lead Counsel carefully reviewed and analyzed all potential factual allegations and theories, considered applicable case law, and conferred with New Jersey concerning the allegations to be included in the second amended complaint.

46. On March 31, 2015, New Jersey filed a Second Amended Complaint for Violations of the Federal Securities Laws (the “Second Amended Complaint,” “SAC” or “Complaint”) (ECF No. 55), which again alleged, among other things, that Defendants defrauded investors and caused artificial inflation in the price of Cliffs common stock by misrepresenting that the acquisition and integration of Bloom Lake would sustain the significant increase in the Company’s dividend.

**I. Initial Discovery And Proceedings Following  
The Filing Of The Second Amended Complaint**

47. On April 1, 2015, the Court entered an Order scheduling a case management conference for May 7, 2015 (ECF No. 56), prior to which the parties were required to submit a Report of the Parties’ Planning Meeting by May 5, 2015. That Report would address the parties’ positions on scheduling of discovery and other pre-trial matters.

48. On April 7, 2015, Defendants filed a motion seeking extensions of time and pages to respond to the Second Amended Complaint. (ECF No. 57). On April 8, 2015, the parties participated in a telephonic status conference with the Court, during which the Court discouraged Defendants from moving to dismiss again, but granted an extension until May 15, 2015, for them to file such a motion.

49. On April 16, 2015, Lead Counsel and counsel for Defendants met and conferred concerning discovery, scheduling and other pre-trial matters as required by the Court’s April 1, 2015 Order. The parties had substantial disagreements concerning the length of time for discovery,

the subjects and scope of discovery, and whether bifurcation of class and “merits” discovery was appropriate. Significantly, New Jersey asserted that discovery should not be bifurcated and that the case should be trial ready by May 2016.

50. On April 30, 2015, the parties exchanged their initial disclosures.

51. Consistent with the Court’s April 1, 2015 Order, on May 5, 2015, the parties filed their Report of the Parties’ Planning Meeting, reflecting their views on discovery, scheduling and other pre-trial matters.

52. A status conference was held, with both counsel for the parties and the parties or their representatives present, including representatives of certain of Defendants’ insurance carriers, in Cleveland, Ohio on May 7, 2015. During the May 7, 2015 conference, the parties discussed potential discovery issues and schedules, but the Court deferred a decision on whether discovery should proceed while the parties discussed their willingness to engage in an attempt to settle the case. To that end, the Court ordered that New Jersey provide Defendants with its damages calculations by May 14, 2015, and required Defendants to respond by June 4, 2015. The Court then set a subsequent status conference for June 4, 2015, which was later adjourned to June 22, 2015.

**J. The Motion To Dismiss The Second Amended Complaint And New Jersey’s Opposition**

53. On May 15, 2015, Defendants filed a motion to dismiss the Second Amended Complaint (ECF No. 66), as well as a renewed Motion to Strike Certain Allegations from the Second Amended Complaint (ECF No. 69).

54. Defendants’ Motion to Dismiss the Second Amended Complaint asserted several arguments in support of dismissal, including:

- That alleged materially false and misleading statements and omissions



were forward-looking and protected by the PSLRA's safe-harbor.

- That the claims in the Second Amended Complaint were entirely based on an impermissible theory of "fraud by hindsight."
- That the Second Amended Complaint's scienter allegations were inadequate. In particular, Defendants argued that a competing inference of non-fraudulent intent was the only reasonable inference to be drawn from the facts alleged. Defendants also argued that the New Jersey had failed to allege any cognizable motive for the Defendants to commit fraud.
- That New Jersey's allegations relying upon "confidential witnesses" failed to establish the witnesses' personal knowledge of the facts asserted, were vague and conclusory, and did not reflect the Defendants' knowledge.

55. New Jersey filed its Opposition to Defendants' Motion to Dismiss the Second Amended Complaint on June 12, 2015 (ECF No. 76). The Opposition set forth the factual bases for New Jersey's claims and the detailed facts and authorities that supported the conclusions that Defendants made actionable false statements and omitted to disclose material facts during the Class Period concerning Cliffs' dividend, the operation of Bloom Lake and the expansion of Bloom Lake. The Opposition pointed out why the alleged false statements were not forward looking and not protected by the safe-harbor for forward-looking statements.

56. New Jersey argued that the allegations attributed to confidential witnesses, which had been substantially pared down from the 28 Confidential Witnesses included in the Amended Complaint to the 15 in the Second Amended Complaint, were sufficiently detailed and reliable based on, *inter alia*, the fact that they indicated the witnesses' positions, tenures and bases for knowledge.

57. As to scienter, New Jersey argued that the Second Amended Complaint created a compelling inference of scienter and alleged a clear motive for Defendants' fraud. Moreover, the Opposition argued that scienter could be inferred from the Complaint's detailed allegations,

reflecting Defendants' receipt of internal reports that were inconsistent with their public statements, and due to the centrality of Bloom Lake and the dividend to Cliffs' daily operation. New Jersey also argued that two cases Defendants relied on extensively, *In re Gold Resource Corp. Securities Litigation*, 776 F.3d 1103 (10th Cir. 2015) and *In re Molycorp, Inc. Securities Litigation*, No. 13-5697, 2015 WL 1097355 (S.D.N.Y. Mar. 12, 2015), were distinguishable and inapposite.

58. As discussed below, after the initial attempt at resolving the case through mediation was unsuccessful, Defendants filed a reply in further support of their motion to dismiss the Second Amended Complaint on October 6, 2015. (ECF No. 80.) As their prior submissions had, Defendants' reply focused on the arguments that: (i) the alleged false statements were forward-looking; (ii) all of the claims in the Second Amended Complaint were based on an impermissible "fraud by hindsight" theory; (iii) the scienter allegations were insufficient; and (iv) the confidential witness allegations should be "steeply" discounted.

59. On October 7, 2015, the Court entered an Order requiring New Jersey to file a sur-reply in further opposition to Defendants' Motion to Dismiss the Second Amended Complaint.

60. New Jersey filed a sur-reply in further opposition to that motion on October 22, 2015. (ECF No. 83). The sur-reply principally argued that Defendants had made false statements about the "pressure testing" of the increased dividend, and about Bloom Lake's operations, which were co-dependent, as the increased cash-flow from Bloom Lake was expected to fund the dividend. The sur-reply also pointed out that Defendants were motivated to justify the Bloom Lake acquisition to preserve their careers and professional credibility, and that they had decided to increase the dividend to attract and pacify investors. Finally, the sur-reply argued that rather

than being forward-looking, most of the alleged false statements concerned historical or then-present facts.

**K. Defendants' Motion To Strike Allegations From The Second Amended Complaint**

61. Defendants' Renewed Motion to Strike raised substantially similar legal and factual bases as their prior motion. However, the Renewed Motion to Strike addressed allegations attributable to four confidential witnesses, two of whom were the subject of the initial motion, and two additional witnesses.

62. New Jersey opposed Defendants' Renewed Motion to Strike on June 1, 2015. (ECF No. 72.) As it had previously, New Jersey submitted both a brief and several declarations from counsel and investigators concerning the conduct in connection with the investigation. (ECF No. 47.) The opposition also similarly focused on:

- the improper procedural aspects of responding to a pleading with factual evidence;
- the carefulness and reliability of Lead Counsel's investigation; and
- the absence of any real factual dispute between the declarations submitted by Defendants and the allegations in the Second Amended Complaint.

63. Defendants filed a reply in further support of the Renewed Motion to Strike on June 11, 2015 (ECF No. 75), which raised the recent decision in *In re Millennial Media, Inc.*, No. 14-7923, 205 WL 3443918 (S.D.N.Y. May 29, 2015), and argued that the *Millennial Media* decision supported a conclusion that the means of investigation used by Lead Counsel here were improper. Defendants' reply otherwise substantially focused on the arguments they had made in the prior submissions seeking to strike New Jersey's allegations.

64. With leave of court, New Jersey filed a sur-reply in further opposition to the motion to strike on June 22, 2015. (ECF No. 79). The sur-reply focused solely on the implications of *Millennial Media*, arguing that:

- *Millennial Media* was not based on any controlling precedent and represented a substantial departure from accepted law;
- *Millennial Media* was not supported by the decision in *City of Livonia Employees' Retirement System v. Boeing Co.* No. 09-cv-7143, 2014 WL 4199136 (N.D. Ill. Aug. 21, 2014), which it principally relied upon in reaching its conclusions; and
- The practices used in drafting the Second Amended Complaint are consistent with Sixth Circuit law and the actual arguments raised by Defendants here did not show that any of the confidential witness allegations were actually untrue, incorrect or unreliable.

**L. The Court's Decision On The Motion To Dismiss And Motion To Strike**

65. On November 6, 2015, the Court entered an Opinion and Order denying Defendants' Motions to Dismiss the Second Amended Complaint, and the Renewed Motion to Strike. (ECF No. 84.) Importantly, while the Court denied the pending motions and allowed discovery to proceed, the parties were cautioned about the respective strengths of their positions, and in particular, said that:

[T]he Court notes in passing that it does not believe that a jury will find the case as strong as Lead Plaintiff appears to think it is, nor is it as weak as Defendants make it out to be. If, as [Lead Plaintiff] contends, Defendants were motivated by a desire to retain their jobs, why would they announce a dividend increase they knew Cliffs could not sustain, and why would they hide negative information about Bloom Lake which they knew would be coming to light within a short period of time?

November 6, 2015 Opinion and Order, at 6.

**M. Discovery**

66. Following the Opinion and Order, the parties met and conferred and submitted competing discovery schedules to the Court on November 16, 2015. (ECF No. 85.) As had been the case in the spring of 2015, the parties had diverging views as to the order, scope and time needed for discovery. On November 15, 2015, Defendants submitted a Statement reflecting their arguments in support of the schedule. (ECF No. 86). On November 16, 2015, New Jersey

submitted a response in support of its proposed schedule (ECF No. 87), indicating its view that discovery should be completed in ten months.

67. New Jersey and Defendants served both document demands and interrogatories on November 18, 2015.

68. The Court entered an Order governing the discovery schedule on November 19, 2015 (ECF No. 90), which provided for fact discovery to commence “immediately” on an unbifurcated basis and to be concluded by December 9, 2016. The November 19, 2015 Scheduling Order further provided for a period of expert discovery closing on March 17, 2017.

69. On December 22, 2015, the parties served objections and responses to the discovery requests. On January 8, 2016, Defendants produced certain documents responsive to New Jersey’s requests, and New Jersey produced certain documents responsive to Defendants’ discovery requests.

70. During November and December 2015, in accordance with the Court’s Scheduling Order, the parties had multiple conferrals regarding the production of electronically stored information (ESI), including the number, scope and identity of ESI custodians whose materials would be searched, and the search terms and other criteria to be applied in those searches.

71. At the time of the settlement, the parties continued to review and analyze the documents produced and to be produced.

#### **N. The Settlement**

72. Following the May 7, 2015 Status Conference, the parties exchanged damages calculations. New Jersey carefully analyzed Defendants’ response and considered arguments and risks associated with their position and consulted with its consulting economic damages expert concerning Defendants’ positions. The parties’ position represented massively disparate views of the possible damages to the Settlement Class.

73. On June 22, 2015, the Court held a telephonic status conference and inquired whether the parties would be willing to engage in mediation and whether they wanted to use a private mediator or the Court. The parties agreed that mediation would be appropriate. The Court asked them to respond by June 25, 2015, whether they preferred to use a private mediator and stayed Defendants' filing of a reply in support of their motion to dismiss until two weeks after the mediation.

74. On June 22 and thereafter, New Jersey and Lead Counsel discussed and considered the prospect of mediation and of private mediators who would be appropriate. On June 25, 2015, the parties informed the Court that they had agreed to pursue private mediation with retired U.S. District Judge Layn R. Phillips. That same day, the Court entered an Order indicating that:

The parties have scheduled the mediation on 9/21/2015. Counsel shall keep the Court informed if there is any change to this schedule, and to advise the Court of the result forthwith. In the meantime, formal discovery and briefing is stayed and, as previously agreed, [d]efendants' reply brief (re the motion to dismiss) shall be filed no later than two weeks after the mediation, if unsuccessful.

75. Lead Counsel and Defendants' Counsel participated in a full-day mediation session with Judge Phillips on September 21, 2015. In advance of that session, the parties submitted to Judge Phillips detailed confidential mediation statements and exhibits that addressed issues of liability, damages and collectability. Lead Counsel and counsel for Defendants made detailed oral presentations in joint sessions with the mediator, arguing the strengths of their case and responding to the arguments raised by their opponent. The September 21, 2015 session ended without an agreement being reached.

76. Following further arm's-length negotiations, including additional settlement discussions under the supervision of mediator Judge Phillips, on January 12, 2016, the Settling Parties accepted a revised "Mediator's Recommendation" to resolve the Action for \$84 million.

The Settling Parties' agreement in principle to settle the Action was memorialized in a term sheet executed on January 22, 2016. The Settling Parties subsequently negotiated the Stipulation (and the exhibits thereto), which sets forth the final and binding agreement to settle the Action, and executed the Stipulation on March 10, 2016.

### **III. THE RISKS OF CONTINUED LITIGATION**

77. The Settlement provides an immediate and certain benefit to the Settlement Class in the form of an \$84 million cash payment and represents a very significant recovery, particularly after considering arguments that would have been made by Defendants concerning loss causation issues that, if accepted, would have substantially reduced the damages recoverable by the Settlement Class.

78. As explained below, Defendants had substantial defenses with respect to liability, loss causation and damages in this case. These arguments created a significant risk that, after years of protracted litigation, Lead Plaintiff and the Settlement Class could achieve no recovery at all, or a lesser recovery than the Settlement Amount.

79. In addition, since Cliffs' financial condition deteriorated significantly during the pendency of this litigation, the Settlement Class's ability to recover more, or anything at all, was substantially at risk as the litigation progressed and Defendants' available insurance coverage was depleted.

#### **A. Risks of Proving Falsity and Scienter**

80. New Jersey and the Settlement Class faced significant hurdles to establishing liability. In particular, Defendants would have argued forcefully that New Jersey could not establish that their statements were materially false or that they acted with scienter.

81. Defendants vigorously contested that any of their statements were materially false or misleading. As detailed above, the core allegations in this case were that Defendants

misrepresented: (i) that Defendants had the ability to and had meaningfully tested the increased dividend; (ii) the true operational conditions and production volumes and costs at Bloom Lake; and (iii) the viability and progress of the expansion of Bloom Lake's production.

82. Although New Jersey and Lead Counsel strongly believe that the claims asserted against Defendants have merit, they recognize that there would be substantial risks to establishing each of these allegations and prevailing on Lead Plaintiff's claims at summary judgment, trial and on appeal. Indeed, Defendants raised numerous compelling arguments in their motions to dismiss, and which would have formed the basis for similar arguments based on the evidence to be adduced in discovery.

83. As to Defendants' alleged misrepresentations concerning Cliffs' dividend testing and sustainability, Defendants would have argued that New Jersey would not be able to present evidence sufficient to carry its burden to establish that it was clear that Cliffs' dividend testing and price modeling had not been done or was otherwise inadequate. Those allegations principally relied upon the statements of two former Cliffs employees, one of whom argued that her statements were taken out of context and that she had no actual knowledge of the dividend testing process. Defendants would likely have asserted during and after discovery that there were substantial dividend testing efforts actually undertaken and it would have remained up to the jury to decide whether that evidence credibly contradicted Defendants' public statements.

84. As to the dividend testing allegations, Defendants would have also likely argued that, due to the extreme volatility and historically unprecedented changes in iron ore prices, any modeling of those factors would have been unable to predict whether the dividend would be sustainable. Defendants would have likely pointed to other industry peers' price modeling and dividend testing and introduced expert testimony on the subject, leading to a "battle of the experts."



The outcome of such a battle and the credibility of Defendants' competing evidence posed a substantial risk to establishing falsity with respect to the dividend testing allegations.

85. As to Defendants' alleged misrepresentations concerning the operations and expansion at Bloom Lake, Defendants argued in their motions to dismiss that such statements were not untrue because there was adequate, timely disclosure of the problems at Bloom Lake. For example, throughout the Class Period Cliffs disclosed both declining production and a failure to decrease costs as predicted at Bloom Lake. Those disclosures could have been used to undermine a theory that the public was defrauded about the true state of affairs at Bloom Lake.

86. Moreover, it is unclear whether the allegations concerning conditions at Bloom Lake would have been borne out by discovery, and whether the problems alleged to have plagued Bloom Lake were actually the cause of the production shortfalls and inability to reduce costs. As noted, proof of those false statements was further complicated by Defendants' arguments that the true facts concerning problems at Bloom Lake were timely disclosed.

87. Defendants argued, and would continue to argue, that Cliffs' statements concerning the dividend's sustainability and the future operation and expansion at Bloom Lake were forward-looking statements protected by the PSLRA safe-harbor. Since those statements could be construed as either relating to a future event, *e.g.*, the prospects for expanding Bloom Lake from production of 8 million tons of iron ore per year to 24 tons of iron ore per year, or as to whether the dividend would continue at its increased level in the *future*, it was possible that a jury could determine that they were inactionable.

88. With respect to certain of Cliffs' disclosures characterizing Bloom Lake's operations and prospects, Defendants would have also argued, as they did on their motions to dismiss, that those statements were immaterial as a matter of law because they were vague,

aspirational statements of puffery upon which no investor would have reasonably relied. Indeed, Courts in the Sixth Circuit, as well as across the country, have often found such statements to be too vague for a reasonable investor to have relied upon them.

89. Even if Lead Plaintiff were able to establish a material misrepresentation, it faced significant hurdles in adequately proving scienter. Defendants argued that Lead Plaintiff was unable to directly connect any of the Individual Defendants to knowledge of facts that directly contradicted their public statements. Even if discovery bore out some connection beyond what was alleged in the Complaint, given that Defendants were geographically and operationally removed from Bloom Lake it would have been difficult to establish their day-to-day knowledge of operational problems at Bloom Lake.

90. Defendants were particularly focused on the Defendants' lack of clear individual motive. Specifically, Defendants strongly contended that New Jersey could not establish any material insider trading against the Individual Defendants, and that other allegations concerning motive to save their jobs or professional reputations were not sufficient to create an inference of scienter. Given these arguments, there was a risk that a jury would not believe that the Individual Defendants were motivated to commit fraud and could find that scienter did not exist.

91. Defendants also argued that New Jersey's allegations concerning both the dividend and Bloom Lake constituted nothing more than inactionable "fraud by hindsight" based on subsequent business reversals that were timely disclosed to investors. Those allegations risked being accepted by the jury and vitiating any inference of scienter.

92. Defendants would have similarly argued that while the investment in Bloom Lake and the dividend increase were not ultimately successful, executives who make decisions that do

not work out may engage in mismanagement, but they do not commit fraud - poorly managing a business does not constitute a violation of the federal securities laws.

93. With respect to corporate scienter, or scienter on the part of Cliffs, New Jersey also faced serious risks that the facts would not sufficiently infer knowledge on the part of any individuals whose states of mind are relevant under the Sixth Circuit's decision in *Omnicare*, 769 F.3d at 470-71. Defendants would persuasively argue that the Complaint inferred, at most, knowledge on the part of low-level employees and engineers whose state of mind cannot be attributed to the defendant corporation under *Omnicare*.

**B. Risks Of Establishing Loss Causation And Damages**

94. Even assuming that New Jersey overcame each of the above risks and successfully established liability, it faced very serious risks in proving damages and loss causation. Indeed, while the issues of loss causation and damages were not before the Court at the motion to dismiss stage, these issues were a critical driver of the settlement value of this case.

95. As an initial matter, a major consideration driving the calculation of a reasonable settlement amount was that the Defendants had substantial arguments that the declines in Cliffs' stock price were not caused by revelations of the true facts concerning Cliffs' operations at Bloom Lake or the dividend testing.

96. This case involved six alleged corrective partial disclosures events that removed the artificial inflation in Cliffs shares on the following trading dates: (i) April 26, 2012; (ii) July 26, 2012; (iii) October 25, 2012; (iv) November 19 and 20, 2012; (v) February 13, 2013; and (vi) March 27, 2012. As the Court is aware, Lead Plaintiff bears the burden of establishing loss causation. *See Frank v. Dana Corp.*, 646 F.3d 954, 958 (6th Cir. 2011); *Chamberlain v. Reddy Ice Holdings, Inc.*, 757 F. Supp. 2d 683, 714 (E.D. Mich. 2010) ("a plaintiff must show that an

economic loss occurred after the truth behind the misrepresentation or omission became known to the market.”).

97. Defendants would have contested each of the six corrective disclosures by arguing that they either did not correct a prior false statement, did not cause a statistically significant price reaction, or that any decline was primarily or completely caused by “confounding information” that had nothing to do with the alleged fraud.

98. Defendants would have argued that the price declines associated with the disclosures on October 25, 2012, and February 13, 2013, were substantially the result of information totally unrelated to, and which did not reveal any aspect of, the alleged fraud. As such, Defendants would have posited that any or most of the decline in price on those dates was not recoverable. Further complicating this for New Jersey was the fact that numerous courts have held that the plaintiff bears the burden of proof in “disaggregating” any fraudulent loss causation effect from factors unrelated to the fraud. *See, e.g., Williams Sec. Litig.*, 558 F.3d 1110, 1137 (10th Cir. 2009).

99. On October 25, 2012, Cliffs’ share price declined after the Company announced its third quarter earnings on the prior evening. New Jersey posited that the 11.5% “abnormal” decline on October 25, the next trading day, was the result of Cliffs’ inability to reduce production costs at Bloom Lake and its reduction of production volume expectations at Bloom Lake, which corrected Defendants’ prior misstatements and omissions concerning production problems at Bloom Lake. Defendants would argue that Cliffs’ third quarter earnings release disclosed adverse news concerning production in the Company’s businesses unrelated to Bloom Lake, including increased costs at its Australian mines and lowered production expectations in the United States. Defendants would also have pointed to the fact that several securities analysts attributed these

factors to the decline in Cliffs' shares on October 25, 2012. In Defendants' view, these disclosures caused all or most of the decline on October 25, 2012, and would eliminate or severely reduce the damages accrued on that date.

100. Similarly, after the markets closed on February 12, 2013, Cliffs announced its financial results for fiscal year 2012, and disclosed that it would reduce its dividend by 76%. New Jersey posited that the 20% "abnormal" return on the following day, February 13, 2013, was attributable to the dividend cut, which revealed the falsity of Defendants' prior misstatements concerning the testing and sustainability of the increased dividend. This decline is the single biggest source of the Settlement Class's damages. However, the February 12 financial disclosures also revealed disappointing revenue results and guidance for Cliffs' U.S. iron ore business, which was entirely unrelated to either the dividend or Bloom Lake. On February 12, 2013, Cliffs also announced that it was issuing common and preferred convertible shares to increase its financial liquidity. As with the October 25, 2012 decline, Defendants would have relied upon securities analysts' reports indicating that the decline on February 13, 2013 was attributable not to (or not solely to) the dividend cut, but to the poor results and guidance in the U.S. business and the dilution owing to the sale of additional securities. Defendants would have argued that neither of those factors revealed anything concerning Defendants' alleged fraud and would have asserted that any decline on February 13, 2013 was not recoverable as damages to the Settlement Class.

101. Defendants would have also attacked the loss causation allegations that were not connected to any disclosures attributable to the Defendants. New Jersey alleged loss causation events on both November 20, 2012 and March 27, 2013. It is conceded that Cliffs did not publish any news or reveal any materially adverse facts affecting the market on either date. The "corrective disclosures" on both dates were derived from information and ratings in securities analysts' reports

that discussed and analyzed Cliffs' financial conditions and prospects. Defendants would have relied on substantial authority that such analyst reports did not disclose any "new" information to the market and, as such, the declines on those dates could not be as a matter of law "corrective disclosures" for purposes of loss causation. *See, e.g., Bricklayers & Trowel Trades Int'l Pension Fund v. Credit Suisse (USA), LLC*, 752 F.3d 82, 95 (1st Cir. 2014); *In re Omnicom Grp., Inc. Sec. Litig.*, 597 F.3d 501, 512 (2d Cir. 2010).

102. Given these considerations, Defendants had credible arguments concerning the vast majority of New Jersey's asserted loss causation events that could have materially reduced the damages and recovery to the Settlement Class. Indeed, based on Defendants' many credible challenges to New Jersey's damages theories and on discussions with New Jersey's damages expert, it was possible that the damages could be reduced by over 80%.

### **C. Risks Of Obtaining A Greater Recovery**

103. There were also very real risks to recovering a judgment substantially larger than the Settlement Amount in light of Cliffs' financial condition and limited officers' and directors' insurance. New Jersey carefully evaluated and constantly monitored Cliffs' financial condition. In addition, in connection with the settlement process, New Jersey retained an investment banking firm to analyze Cliffs' financial condition and prospects. That consultant analyzed and provided information concerning Cliffs' "ability-to-pay" that was considered in the settlement negotiations.

104. Indeed, if the Defendants' applicable insurance coverage were depleted (as it was being to pay the defense costs associated with this and other litigations) and Cliffs' financial condition further deteriorated, it would have likely reduced or eliminated the possibility of an equivalent recovery, or any substantial recovery, for the Settlement Class regardless of the merits of the claims asserted in the Action. This factor was particularly true as the case proceeded into a

more intensive phase of discovery, where the spend-down on litigation defense costs would have substantially accelerated and depleted the available insurance assets much more quickly.

105. While Cliffs' was a liquid and well-capitalized entity at the outset of the case, over the course of the litigation its stock price and liquidity severely deteriorated. For example, at the outset of the Class Period on March 13, 2012, Cliffs shares closed at a price of \$64.91. On January 11, 2016, when the agreement to settle the case was reached, Cliffs shares closed at \$1.41, reflecting a decline of 98%.

106. Moreover, Cliffs' credit ratings had suffered numerous declines, its solvency was seriously in question, and the Company had engaged in numerous asset sales and refinancing transactions to deleverage its balance sheet and raise cash. At the end of the third quarter of 2015 (ended September 30, 2015 -- the most recent quarterly report that was available when the Parties agreed in principle to the Settlement), Cliffs had cash and cash equivalents of \$270.2 million and long-term debt of more than \$2.72 billion. That condition continued to deteriorate into 2016. As of March 31, 2016, the date of its most recent public financial statements, Cliffs had cash and cash equivalents of only \$59.9 million and long-term debt of almost \$2.5 billion. Furthermore, over the course of 2014 and 2015, Cliffs suffered losses of approximately \$9 billion.

107. Cliffs' deteriorating financial condition was, and remains, a very substantial risk had the litigation continued and progressed. The Company's ability to pay a larger amount, or to indemnify the Individual Defendants for their own liability, was severely constrained and in doubt.

#### **D. Other Risks**

108. In addition to the risks discussed above, New Jersey faced other significant risks including that: (i) the record in discovery might not have supported New Jersey's allegations; (ii) some or all of New Jersey's experts, including experts on accounting, mining, dividend testing and modeling, and damages, would have opinions that were excluded by the Court or not accepted by

the jury; and (iii) the substantial risks of costs and delays if settlement were not achieved now. Finally, even if New Jersey had succeeded in proving all elements of its case at trial and obtained a jury verdict, Defendants would almost certainly have appealed. An appeal would not only have renewed all the risks faced by New Jersey, as Defendants would have re-asserted all of their arguments summarized above, but also would have engendered significant additional delay.

109. For all these reasons, Lead Plaintiff and Lead Counsel respectfully submit that the Settlement is fair, reasonable and adequate, and that it is in the best interests of the Settlement Class to accept the immediate and substantial benefit conferred by the Settlement, instead of incurring the significant risk that the Settlement Class might recover a lesser amount, or nothing at all, after protracted and arduous litigation.

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

110. The Court's Preliminary Approval Order directed that the Notice of (I) Pendency of Class Action and Certification of Settlement Class; (II) Proposed Settlement with Individual Defendants; (III) Settlement Fairness Hearing; and (IV) Motion for an Award of Attorneys' Fees and Reimbursement of Litigation Expenses (the "Notice") and Proof of Claim and Release Form ("Claim Form") be disseminated to the Settlement Class. The Preliminary Approval Order also set a June 9, 2016 deadline for Settlement Class Members to submit objections to the Settlement, the Plan of Allocation, and the Fee and Expense Application, or to request exclusion from the Settlement Class, and set a final approval hearing date of June 30, 2016.

111. In accordance with the Preliminary Approval Order, Lead Counsel instructed A.B. Data, Ltd. ("A.B. Data"), the Court-approved Claims Administrator, to begin disseminating copies of the Notice and the Claim Form by mail and to publish the Summary Notice. The Notice contains, among other things: (i) a description of the Action and the Settlement; (ii) the terms of



the proposed Plan of Allocation; (iii) an explanation of Settlement Class Members' right to participate in the Settlement; and (iv) an explanation of Settlement Class Members' rights to object to the Settlement, the Plan of Allocation, and the Fee and Expense Application, or exclude themselves from the Settlement Class. The Notice also informs Settlement Class Members of Lead Counsel's intent to apply for an award of attorneys' fees in an amount not to exceed 16% of the Settlement Fund, and for reimbursement of Litigation Expenses in an amount not to exceed \$600,000. To disseminate the Notice, A.B. Data obtained information from the Company and from banks, brokers and other nominees regarding the names and addresses of potential Settlement Class Members. (See Declaration of Eric Schachter Regarding (A) Mailing of Notice and Proof of Claim and Release Form; (B) Publication of Summary Notice; and (C) Report on Requests for Exclusion Received to Date (the "Schachter Decl."), attached hereto as Exhibit 3, at ¶¶ 2-8.)

112. On April 1, 2016, A.B. Data disseminated 9,898 copies of the Notice and Claim Form (together, the "Notice Packet") to potential Settlement Class Members and their nominees by First-Class Mail. (See Schachter Decl. ¶ 5.) As of May 24, 2016, A.B. Data has disseminated a total of 256,923 Notice Packets. (*Id.* ¶ 8.)

113. On April 14, 2016, in accordance with the Preliminary Approval Order, A.B. Data caused the Summary Notice to be published in *The Wall Street Journal* and to be transmitted over the *PR Newswire*. (See Schachter Decl. ¶ 9.)

114. Lead Counsel also caused A.B. Data to establish a dedicated Settlement website, [www.CliffsSecuritiesLitigation.com](http://www.CliffsSecuritiesLitigation.com), to provide potential Settlement Class Members with information concerning the Action and the Settlement and access to downloadable copies of the Notice, Claim Form, Stipulation, Preliminary Approval Order and Second Amended Complaint. (See Schachter Decl. ¶ 11.)

115. As noted above, the deadline for Settlement Class Members to file objections to the Settlement, the Plan of Allocation, and the Fee and Expense Application, or to request exclusion from the Settlement Class, is June 9, 2016. To date, no objections to the Settlement or Lead Counsel's application for attorneys' fees and expenses have been received, and only seven requests for exclusion have been received. (*See* Schachter Decl. ¶ 12). Lead Counsel will file reply papers on or before June 23, 2016, after the deadline for submitting requests for exclusion and objections has passed, which will address all requests for exclusion and any objections that may be received.

## **V. ALLOCATION OF THE PROCEEDS OF THE SETTLEMENT**

116. In accordance with the Preliminary Approval Order, and as described in the Notice, all Settlement 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, and (iv) any attorneys' fees awarded by the Court) must submit valid Claim Forms with all required information postmarked no later than August 8, 2016. As described in the Notice, the Net Settlement Fund will be distributed among Settlement Class Members according to the plan of allocation approved by the Court.

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

118. The Plan of Allocation is set forth at ¶¶ 53-69 of the Notice. (*See* Notice (Exhibit A to Schachter Decl.) at ¶¶ 53-69.) As described in the Notice, calculations under the Plan of Allocation are not intended to be estimates of, or indicative of, the amounts that Settlement Class Members might have been able to recover at 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 Settlement Class Members against one another for the purpose of making an equitable allocation of the Net Settlement Fund. (*See id.* ¶ 53.)

119. Lead Plaintiff's damages expert developed the Plan of Allocation based on an event study. In the event study, the damages expert calculated how much artificial inflation was in the price of Cliffs' common stock on each day during the Settlement Class Period as a result of Defendants' alleged materially false and misleading statements and omissions, and how much the stock price declined as a result of the disclosures that corrected the alleged misstatements and omissions. In determining the estimated artificial inflation allegedly caused by Defendants' alleged misrepresentations and omissions, the damages expert considered price changes in Cliffs common stock in reaction to the alleged corrective disclosures, adjusting for price changes attributable to market or industry forces. (*See id.* 53-55.)

120. Under the Plan of Allocation, a "Recognized Loss Amount" will be calculated for each purchase of Cliffs common stock during the Settlement Class Period. (*See id.* at ¶ 56.) In general, the Recognized Loss Amount will be the difference between the estimated artificial inflation on the purchase date and the estimated artificial inflation on the sale date, or the difference between the actual purchase price and the sales price, whichever is less. (*See id.* ¶ 57.) Accordingly, any shares purchased during the Settlement Class Period that were not held over a corrective disclosure will have no Recognized Loss Amount because the level of alleged artificial inflation is the same on the date of purchase and on the date of sale. (*See id.*)

121. Under the Plan of Allocation, the sum of a Claimant's Recognized Loss Amounts is the Claimant's "Recognized Claim." The Net Settlement Fund will be allocated to Authorized

Claimants on a *pro rata* basis based on the relative size of their Recognized Claims. (See Notice ¶¶ 60-61.)

122. In sum, the Plan of Allocation was designed to fairly and rationally allocate the proceeds of the Net Settlement Fund among Settlement Class Members based on the losses they suffered on transactions in Cliffs 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.

123. As noted above, as of May 24, 2016, 256,923 copies of the Notice, which contains the Plan of Allocation and advises Settlement Class Members of their right to object to the proposed Plan of Allocation, have been sent to potential Settlement Class Members and their nominees. (See Schachter Decl. ¶ 8.) To date, no objection to the proposed Plan of Allocation has been received.

## **VI. THE FEE AND LITIGATION EXPENSE APPLICATION**

124. 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 of 16% of the Settlement Fund, or \$13,440,000 plus interest earned at the same rate as the Settlement Fund (the "Fee Application"). Lead Counsel also requests reimbursement of expenses that Plaintiff's Counsel incurred in connection with the prosecution of the Action from the Settlement Fund in the amount of \$214,625.15. Lead Counsel further request reimbursement to Lead Plaintiff New Jersey of \$50,697.45 in costs and expenses that New Jersey incurred directly related to its representation of the Settlement Class, in accordance with the PSLRA, 15 U.S.C. § 78u-4(a)(4). 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**

125. For its efforts on behalf of the Settlement 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 Settlement Class's interest in achieving the maximum recovery in the shortest amount of time required under the circumstances. The percentage method has been recognized as appropriate by the Supreme Court and Sixth Circuit for cases of this nature.

126. 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 16% fee award is fair and reasonable for attorneys' fees in common-fund cases like this and is at the low end of the range of percentages awarded in securities class actions in this Circuit and elsewhere for comparable settlements.

**1. Lead Plaintiff Supports The Fee Application**

127. Lead Plaintiff New Jersey is a sophisticated institutional investor that closely supervised and monitored the prosecution and the settlement of the Action. As discussed in the declaration submitted by New Jersey, New Jersey believes that requested fee is fair and reasonable in light of the work counsel performed on behalf of the Settlement Class. (*See* Declaration of Brian F. McDonough, Assistant Attorney General, State of New Jersey, Office of the Attorney General, Department of Law and Public Safety, Division of Law, in Support of: (A) Lead Plaintiff's Motion for Final Approval of Class Action Settlement and Plan of Allocation; (B) Lead Counsel's Motion for an Award of Attorneys' Fees and Reimbursement of Litigation Expenses; and (C) Lead Plaintiff's Request for Reimbursement of Costs and Expenses (the "New Jersey

Decl.”), attached hereto as Exhibit 1 (the “New Jersey Decl.”), at ¶ 13.) New Jersey negotiated and approved the fee at the outset of the litigation pursuant to a retention agreement providing for different levels of percentage fees based on the size of the recovery and the stage of the litigation at which settlement was reached. (*Id.*) Following the agreement to settle the Action, New Jersey again reviewed the proposed fee and believes it is fair and reasonable in light of the outstanding result obtained for the Settlement Class and the excellent work performed by Plaintiff’s Counsel. (*Id.*) Lead Plaintiff’s endorsement of the requested fee demonstrates its reasonableness and should be given weight in the Court’s consideration of the fee award.

## **2. The Work And Experience Of Counsel**

128. Plaintiff’s Counsel are: (i) the Court-approved Lead Counsel, Bernstein Litowitz and Lowenstein Sandler, and (ii) the Court-approved Local Counsel, Climaco Wilcox.

129. Attached hereto as Exhibit 4 are declarations from Plaintiff’s Counsel in support of an award of attorneys’ fees and reimbursement of Litigation Expenses. The first page of Exhibit 4 contains a summary chart of the hours expended and lodestar amounts for each Plaintiff’s Counsel firm, as well as a summary of each firm’s expenses. Included within each supporting declaration is a schedule summarizing the hours and lodestar of each firm from the inception of this matter through and including May 6, 2016, a summary of Litigation Expenses by category, and a firm resume.

130. The lodestar amounts for each Plaintiff’s Counsel firm were determined by multiplying the number of hours worked by each timekeeper by his or her historical (meaning then-present) hourly rate. Personnel who billed less than ten hours to the Action were excluded, as was time expended in preparing this application for fees and reimbursement of expenses.

131. As set forth in Exhibit 4, Plaintiff’s Counsel collectively expended a total of 11,213.20 hours in the investigation, prosecution and settlement of the Action from its inception

through and including May 6, 2016, for a total lodestar of \$6,006,733.25. The requested fee of 16% of the Settlement Fund represents \$13,440,000 (plus interest), and therefore represents a multiplier of 2.24 of Plaintiff's Counsel's lodestar. As discussed in further detail in the Fee Memorandum, the requested multiplier is well within 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.

132. As detailed above, throughout this case, Lead Counsel devoted substantial time to the prosecution of the Action. We, along with other partners at our firms, maintained control of and monitored the work performed on this case. Experienced attorneys at our respective firms undertook particular tasks appropriate for their levels of expertise, skill and experience, and more junior attorneys and paralegals worked on matters appropriate for their experience levels. Throughout the prosecution of this Action, work assignments were allocated among the attorneys at our respective firms in a manner that ensured efficiency and avoided unnecessary duplication of effort.

133. As demonstrated by Lead Counsel's respective firm resumes (attached to Exhibits 4A and 4B hereto), Bernstein Litowitz and Lowenstein Sandler are 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. Local Counsel, Climaco Wilcox, is also an experienced complex litigation firm. (*See* Exhibit 4C.) Moreover, the substantial recovery achieved for the Settlement Class here reflects the superior quality of Plaintiff's Counsel's representation.

### **3. Standing And Caliber Of Defendants' Counsel**

134. 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, Defendants were

represented by Jones Day, one of the country's most prestigious and experienced defense firms, which vigorously defended the Action. In the face of this experienced, formidable, and well-financed opposition, Lead Counsel was nonetheless able to defeat Defendants' motions to dismiss and motions to strike, and persuade them to settle the case on terms favorable to the Settlement Class.

**4. The Risks Of Litigation And The Need  
To Ensure The Availability Of Competent  
Counsel In High-Risk Contingent Securities Cases**

135. This prosecution was undertaken by Lead Counsel entirely on a contingent-fee basis. The risks assumed by Lead Counsel in bringing these claims to a successful conclusion are described above. Those risks are also relevant to an award of attorneys' fees.

136. From the outset, Lead Counsel understood that they were 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 were 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, Plaintiff's Counsel received no compensation during the course of the Action and have collectively incurred \$214,625.15 in expenses in prosecuting the Action for the benefit of the Settlement Class.

137. 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 of efforts, success in contingent-fee litigation like this Action is never assured.

138. Lead Counsel knows from experience that the commencement of a class action does not guarantee a settlement. To the contrary, it takes hard work and diligence by skilled counsel to develop the facts and theories that are needed to sustain a complaint or win at trial, or to induce sophisticated defendants to engage in serious settlement negotiations at meaningful levels.

139. Moreover, courts have repeatedly recognized that it is in the 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.

140. 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 Settlement Class. In these circumstances, and in consideration of the hard work and the excellent result achieved, we believe the requested fee is reasonable and should be approved.

## **5. The Reaction Of The Settlement Class To The Fee Application**

141. As noted above, as of May 24, 2016, a total of 256,923 Notice Packets have been mailed to potential Settlement Class Members and their nominees advising them that Lead Counsel would apply for an award of attorneys' fees in an amount not to exceed 16% of the Settlement Fund. (*See* Schachter Decl. ¶ 8.) In addition, the Court-approved Summary Notice has been

published in *The Wall Street Journal* and transmitted over the *PR Newswire*. (*Id.* ¶ 9.) To date, no objection to the attorneys' fees set forth in the Notice has been received. Should any objections be received, they will be addressed in Lead Counsel's reply papers to be filed on or before June 23, 2016, after the deadline for submitting objections has passed.

142. In sum, Lead Counsel accepted this case on a contingency basis, committed significant resources to it, and prosecuted it without any compensation or guarantee of success. Based on the favorable result obtained, the quality of the work performed, the risks of the Action, and the contingent nature of the representation, Lead Counsel respectfully submit that a fee award of 16%, resulting in a multiplier of 2.24, is fair and reasonable, and is supported by the fee awards courts have granted in other comparable cases.

**B. The Litigation Expense Application**

143. Lead Counsel also seeks reimbursement from the Settlement Fund of \$214,625.15 in expenses that were reasonably and necessarily incurred by Plaintiff's Counsel in connection with commencing, litigating, and settling the claims asserted in the Action. All of the expenses incurred by Plaintiff's Counsel have been approved by the Lead Plaintiff. (*See* New Jersey Decl. ¶ 14.)

144. From the beginning of the case, Lead Counsel were aware that they might not recover any of their expenses, and, even in the event of a recovery, would not recover any of their out-of-pocket expenditures until the Action might be successfully resolved. Lead Counsel also understood that, even assuming that the case was ultimately successful, reimbursement for expenses would not compensate them for the lost use of the funds advanced to prosecute the Action. Accordingly, Lead Counsel were motivated to and did take appropriate steps to avoid incurring unnecessary expenses and to minimize costs without compromising the vigorous and efficient prosecution of the case.

145. Lead Counsel maintained strict control over the expenses in this Action. Indeed, many of the expenses incurred were paid out of a litigation fund created by Lead Counsel and maintained by Bernstein Litowitz (the “Litigation Fund”). Bernstein Litowitz and Lowenstein Sandler collectively contributed \$70,000.00 to the Litigation Fund. A description of the payments from the Litigation Fund by category is set forth in the individual firm declaration submitted on behalf of Bernstein Litowitz. (*See* Exhibit 4A, at ¶ 8, Ex. 3.)

146. As set forth in Exhibit 4 hereto, Plaintiff’s Counsel have incurred a total of \$214,625.15 in unreimbursed litigation expenses in connection with the prosecution of the Action. The expenses are summarized in Exhibit 5, which was prepared based on the declarations submitted by each firm and identifies each category of expense, *e.g.*, expert fees, mediation fees, and photocopying expenses, and the amount incurred for each category. These expense items are billed separately by Plaintiff’s Counsel and are not duplicated in Plaintiff’s Counsel’s billing rates.

147. Of the total amount of expenses, \$129,063.50, or approximately 60%, was expended for the retention of experts. As noted above, Lead Counsel consulted with an expert in the fields of loss causation and damages during its investigation and the preparation of the complaints, and consulted further with the damages expert during the settlement negotiations with the Defendants, and in connection with the development of the proposed Plan of Allocation. Lead Plaintiff also consulted with an expert in the iron ore market during the investigation and preparation of the complaints.

148. Another large component of the expenses, \$70,883.32, was for mediation fees charged by Judge Phillips, which is approximately 33% of the total amount of expenses.

149. The other expenses for which Lead Counsel seeks reimbursement are the types of expenses that are necessarily incurred in litigation and routinely charged to clients billed by the hour. These expenses include, among others, court fees, copying costs, and travel costs.

150. Additionally, Lead Plaintiff seeks reimbursement of its reasonable costs and expenses incurred directly in connection with its representation of the Settlement Class, in the amount of \$50,697.45. (*See* New Jersey Decl. ¶¶ 17-19.)

151. The Notice informed potential Settlement Class Members that Lead Counsel would be seeking reimbursement of expenses in an amount not to exceed \$600,000. The total amount requested, \$265,322.60, which includes \$214,625.15 in reimbursement of litigation expenses incurred by Plaintiff's Counsel and \$50,697.45 in reimbursement of costs and expenses incurred by New Jersey, is significantly below the \$600,000 that Settlement Class Members were advised could be sought. To date, no objection has been raised as to the maximum amount of expenses disclosed in the Notice. Lead Counsel will address any objections in its reply papers.

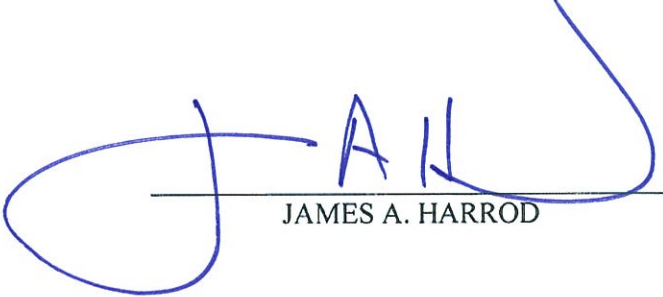
152. The expenses incurred by Plaintiff's Counsel and Lead Plaintiff were reasonable and necessary to represent the Settlement Class and achieve the Settlement. Accordingly, Lead Counsel respectfully submits that the Litigation Expenses should be reimbursed in full from the Settlement Fund.

## **VII. CONCLUSION**

153. For all the reasons set forth above, Lead Plaintiff and Lead Counsel respectfully submit that the Settlement and the Plan of Allocation should be approved as fair, reasonable and adequate. Lead Counsel further submit that the requested fee in the amount of 16% of the Settlement Fund should be approved as fair and reasonable, and the request for reimbursement of total Litigation Expenses in the amount of \$265,322.60, which includes Lead Plaintiff's costs and expenses, should also be approved.

We declare, under penalty of perjury under the laws of the United States, that the foregoing facts are true and correct.

Executed on May 26, 2016



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JAMES A. HARROD

Executed on May 26, 2016



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MICHAEL B. HIMMEL

# **EXHIBIT 1**

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

THE DEPARTMENT OF THE TREASURY OF  
THE STATE OF NEW JERSEY AND ITS  
DIVISION OF INVESTMENT, on behalf of itself  
and all others similarly situated,

Plaintiff,

v.

CLIFFS NATURAL RESOURCES INC.,  
JOSEPH CARRABBA, LAURIE BRLAS,  
TERRY PARADIE, and DAVID B. BLAKE,

Defendants.

Case No. 1:14-cv-1031

Judge Dan Aaron Polster

Magistrate Judge Thomas M. Parker

**DECLARATION OF BRIAN F. McDONOUGH, ASSISTANT ATTORNEY GENERAL,  
STATE OF NEW JERSEY, OFFICE OF THE ATTORNEY GENERAL, DEPARTMENT  
OF LAW AND PUBLIC SAFETY, DIVISION OF LAW, IN SUPPORT OF:**

**(A) LEAD PLAINTIFF'S MOTION FOR FINAL APPROVAL OF CLASS ACTION  
SETTLEMENT AND PLAN OF ALLOCATION; (B) LEAD COUNSEL'S MOTION FOR  
AN AWARD OF ATTORNEYS' FEES AND REIMBURSEMENT OF LITIGATION  
EXPENSES; AND (C) LEAD PLAINTIFF'S REQUEST FOR REIMBURSEMENT OF  
COSTS AND EXPENSES**

I, BRIAN F. McDONOUGH, declare as follows:

1. I am an Assistant Attorney General, Office of the Attorney General (the "OAG"), State of New Jersey, Department of Law and Public Safety, Division of Law, which served as attorneys for Court-appointed Lead Plaintiff The Department of the Treasury of the State of New Jersey and its Division of Investment (the "DOI," and collectively with the OAG, "New Jersey")

in the above-captioned action (the “Action”).<sup>1</sup> I submit this declaration in support of: (a) New Jersey’s motion for final approval of the proposed settlement of the Action for \$84 million (the “Settlement”) and approval of the proposed Plan of Allocation; (b) Lead Counsel’s motion for an award of attorneys’ fees and reimbursement of litigation expenses; and (c) New Jersey’s request to recover reasonable costs and expenses incurred in connection with its representation of the Settlement Class in the prosecution of this litigation. I have personal knowledge of the matters set forth herein and, if called upon, I could and would competently testify thereto.

## **I. BACKGROUND**

### **A. New Jersey**

2. New Jersey manages public pension funds for the benefit of approximately 769,000 current and retired employees of the State of New Jersey. As of May 19, 2016, New Jersey managed approximately \$70.2 billion in pension fund assets.

3. New Jersey closely monitors the activities of the securities class actions in which DOI has been appointed to serve as lead plaintiff. New Jersey had regular communications with Lowenstein Sandler LLP and Bernstein Litowitz Berger & Grossmann LLP, the Court-appointed Lead Counsel for the Settlement Class in the Action. We have communicated with Lead Counsel throughout the litigation and, particularly, at points in time when important decisions needed to be made.

4. New Jersey is familiar with securities class action litigation, and carefully selects the cases in which DOI chooses to move to be appointed as the lead plaintiff. Based on its active

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<sup>1</sup> Unless otherwise noted, capitalized terms have the meanings ascribed to them in the Stipulation and Agreement of Settlement with Individual Defendants dated March 10, 2016 (ECF No. 96-1).



participation in the prosecution of this Action, New Jersey has been able to capably oversee the prosecution of this case as well as the ultimate settlement of the Action.

5. Prior to seeking appointment as Lead Plaintiff in this Action, New Jersey communicated with attorneys from the Lead Counsel firms to evaluate the case. New Jersey reviewed written analyses and evaluations of the case, participated in telephone conversations and meetings, and exchanged correspondence with Lead Counsel in order to evaluate the significant considerations relevant to deciding on an appropriate course of action. In particular, New Jersey considered both internally, and in discussions with Lead Counsel, among other things, (a) the losses it sustained on its Class Period purchases of Cliffs common stock; (b) the alleged securities violations related to Cliffs; and (c) the legal and procedural issues involved in prosecuting the Action. New Jersey also negotiated a fee arrangement with Lead Counsel at the outset of this litigation.

**B. New Jersey's Extensive Participation In The Prosecution And Settlement Of The Action**

7. New Jersey reviewed and approved the filing of the initial complaint in this action as well as all submissions made in connection with DOI's motion for appointment as Lead Plaintiff. By Order entered July 23, 2014, DOI was appointed Lead Plaintiff in this Action.

8. Thereafter, New Jersey closely supervised, carefully monitored, and has been actively involved in all material aspects of the prosecution of the Action. New Jersey received periodic status reports from Lead Counsel on case developments, and participated in regular discussions with attorneys from Lead Counsel concerning the prosecution of the Action. In particular, throughout the course of this Action, New Jersey has:

(a) Regularly communicated with Lead Counsel by email and telephone regarding the posture and progress of the case;

(b) Reviewed and commented on all significant pleadings and briefs filed in the Action, including the amended complaints and briefs filed in opposition to Defendants' motions to dismiss and motions to strike.

(c) Reviewed the Court's orders and discussed them with Lead Counsel;

(d) Traveled to and attended in person the May 7, 2015 Case Management Conference before the Court;

(d) Participated in discovery, including written responses to document requests and the collection of documents for production; and

(e) Consulted with Lead Counsel regarding the retention of experts and other consultants.

9. New Jersey was also actively involved in the settlement negotiations. On September 21, 2015, I and my colleague, Deputy Attorney General Victoria Manning, personally attended a mediation before former United States District Court Judge Layn R. Phillips in New York. During the mediation, we observed presentations from Lead Counsel and Defense Counsel regarding the parties' respective positions, and were present for and participated in settlement discussions involving Judge Phillips. New Jersey also evaluated, and ultimately approved, the mediator's recommendation to settle the Action for \$84 million.

10. Furthermore, New Jersey has reviewed and commented upon the briefs and other documents related to the Settlement, including those that are presently being submitted in support of (a) final approval of the Settlement and approval of the proposed Plan of Allocation; and (b) approval of Lead Counsel's application for an award of attorneys' fees and reimbursement of litigation expenses.

**II. NEW JERSEY STRONGLY ENDORSES THE SETTLEMENT,  
THE PLAN OF ALLOCATION AND LEAD COUNSEL'S  
APPLICATION FOR AN AWARD OF ATTORNEYS' FEES  
AND REIMBURSEMENT OF LITIGATION EXPENSES**

11. Based on New Jersey's oversight of the prosecution and negotiations for the settlement of this action, New Jersey believes that the proposed Settlement is fair, reasonable, and adequate to the Settlement Class. New Jersey believes that the Settlement provides an excellent recovery for the Settlement Class, particularly in light of the risks of continued litigation. Therefore, New Jersey strongly endorses approval of the Settlement by the Court.

12. New Jersey also endorses the proposed Plan of Allocation, and believes that it represents a fair and reasonable method for valuing claims submitted by Settlement Class Members, and for distributing the Net Settlement Fund to Settlement Class Members who submit valid and timely proof of claim forms.

13. New Jersey further believes that Lead Counsel's requested fee of 16% of the Settlement Fund is fair and reasonable in light of the work counsel performed on behalf of New Jersey and the Settlement Class. New Jersey negotiated and approved the fee percentage at the outset of the litigation pursuant to a retention agreement providing for different percentage fees based on the size of the recovery and the stage of the litigation at which settlement was reached. Following the agreement to settle the Action, New Jersey again reviewed the proposed fee and believes it is fair and reasonable in light of the outstanding result obtained for the Settlement Class and the excellent work performed by Plaintiffs' Counsel.

14. New Jersey further believes that the litigation expenses being requested for reimbursement are reasonable, and represent costs and expenses necessary for the prosecution and resolution of this securities class action. As a result, New Jersey has approved the request for reimbursement of expenses submitted by Plaintiffs' Counsel.

### **III. NEW JERSEY REQUESTS REIMBURSEMENT OF ITS LITIGATION COSTS AND EXPENSES**

15. New Jersey understands that reimbursement of a lead plaintiff's reasonable costs and expenses is authorized under the PSLRA, 15 U.S.C. § 78u-4(a)(4). Accordingly, in connection with Lead Counsel's request for reimbursement of litigation expenses, the New Jersey respectfully requests reimbursement for the costs and expenses that it incurred directly relating to New Jersey's representation of the Settlement Class in the Action.

16. One of my responsibilities as an Assistant Attorney General is to provide counsel to New Jersey in certain securities class actions where (as here) New Jersey has been appointed Lead Plaintiff. In working on this Action, I was assisted by other OAG employees, including Deputy Attorney General Victoria Manning and Deputy Attorney General Martin Gandelman.

17. The time that we devoted to the representation of the Settlement Class in this Action was time that we otherwise would have spent on other work for New Jersey and the OAG and, thus, represented a cost to New Jersey. The hourly rates used for purposes of this request are the "weighted average" based on the experience of the respective personnel who worked on this Action at time the hours were spent. New Jersey therefore seeks reimbursement in the amount of \$50,391, for the following OAG employees' time devoted to this Action:

(a) Assistant Attorney General Brian F. McDonough in the amount of \$25,150.00 (113.7 hours at a rate of \$221.1961 per hour);

(b) Deputy Attorney General Victoria Manning in the amount of \$13,732.50 (54.9 hours at a rate of \$250.1366 per hour); and

(c) Deputy Attorney General Martin Gandelman in the amount of \$11,508.50 (72.2 hours at rate of \$159.3975 per hour).

18. New Jersey also incurred \$306.45 in out-of-pocket expenses for travel directly attributable to New Jersey's oversight of this Action, including attendance at the May 7, 2015 Case Management Conference in Cleveland.

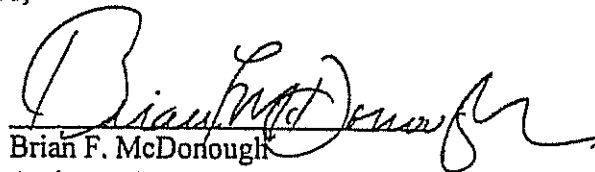
19. Thus, New Jersey hereby requests a total reimbursement of time and expenses of \$50,697.45.

#### IV. CONCLUSION

19. Based on the foregoing, New Jersey respectfully requests that the Court grant: (a) Lead Plaintiff's motion for final approval of the Settlement and the Plan of Allocation; (b) Lead Counsel's motion for an award of attorneys' fees and reimbursement of litigation expenses, and (c) New Jersey's request for reimbursement for its reasonable costs and expenses incurred in prosecuting the Action on behalf of the Settlement Class.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my knowledge, information, and belief.

Executed this 26th day of May, 2016,



Brian F. McDonough  
Assistant Attorney General  
State of New Jersey, Department of Law and Public Safety  
Division of Law

#981908

## **EXHIBIT 2**

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DISTRICT**

THE DEPARTMENT OF THE TREASURY OF  
THE STATE OF NEW JERSEY AND ITS  
DIVISION OF INVESTMENT, on behalf of itself  
and all others similarly situated,

Plaintiff,

v.

CLIFFS NATURAL RESOURCES INC.,  
JOSEPH CARRABBA, LAURIE BRLAS,  
TERRY PARADIE, and DAVID B. BLAKE,

Defendants.

Case No. 1:14-cv-1031

Judge Dan Aaron Polster

**CLASS ACTION**

**DECLARATION OF FORMER U.S. DISTRICT COURT JUDGE LAYN R. PHILLIPS  
IN SUPPORT OF APPROVAL OF CLASS ACTION SETTLEMENT**

I, LAYN R. PHILLIPS, declare under penalty of perjury as follows:

1. I am filing this Declaration in my capacity as the mediator in connection with the proposed settlement of the above-captioned securities class action.

**I. BACKGROUND AND QUALIFICATIONS**

2. I am a former U.S. 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 U.S. Courts of Appeals for the Ninth and Tenth Circuits and the Federal Circuit.

3. 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, and did so for approximately four years.

4. I personally tried many cases and oversaw the trials of numerous other cases as a United States Attorney. While serving as a United States Attorney, I was nominated by President Reagan to serve as a District Judge for the Western District of Oklahoma in Oklahoma City. While on the bench, I presided over a total of 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, where for 23 years I specialized in alternative dispute resolution, complex civil litigation and internal investigations. In 2014, I left Irell & Manella to found my own company, Phillips ADR, which provides mediation and other alternative dispute resolution services.

6. Over the past 24 years, I have devoted a considerable amount of my professional life to serving as a mediator and arbitrator in connection with large, complex cases such as this one. I have successfully mediated numerous complex commercial cases, including dozens of securities class action cases.

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

### **A. The September 21, 2015 Mediation**

7. On September 21, 2015, the parties and their counsel participated in an in-person full-day mediation session before me. The participants included Lead Counsel Bernstein Litowitz Berger & Grossmann LLP and Lowenstein Sandler LLP, Defendants' Counsel Jones Day; representatives of Lead Plaintiffs and Defendants; and representatives of and/or counsel



for certain of Cliffs Natural Resources' insurance carriers. In connection with that session, I requested that the parties submit to me their proposed version of a draft confidential term sheet that would set forth the structure of non-monetary points of any potential settlement. The parties provided their draft confidential term sheets prior to the mediation.

8. The parties also exchanged and submitted to me detailed mediation statements and responses thereto, each with numerous exhibits, addressing both liability and damages. At that time, the parties had previously fully briefed Defendants' first Motions to Dismiss and to Strike certain allegations from the First Amended Complaint, Lead Plaintiff had filed a Second Amended Complaint, and Defendants had filed new Motions to Dismiss and to Strike. Opening and oppositions briefs on the motions had been filed, and the Court stayed further briefing in order to accommodate mediation. In light of the pending motion to dismiss, discovery had been stayed by operation of the PSLRA.

9. I found the discussions in the mediation statements to be extremely valuable in helping me understand the relative merits of each party's positions, and to identify the issues that were likely to serve as the primary drivers and obstacles to achieving a settlement. Counsel for both parties presented significant arguments regarding their clients' positions, and it was apparent to me that both sides possessed strong, non-frivolous arguments, and that neither side was assured of victory.

10. Because the parties submitted their mediation statements and arguments in the context of a confidential mediation process pursuant to Federal Rule of Civil Procedure 408, I cannot reveal their content. I can say, however, that the arguments and positions asserted by all involved were the product of much hard work, and they were complex and highly adversarial. After reviewing all of the written mediation statements and exhibits, I believed that the negotiation would be a difficult and adversarial process through which all involved would hold strong to their convictions that they had the better legal and substantive arguments, and that a resolution without further litigation or trial was by no means certain.

11. With these and many other issues in mind, I held an in-person mediation session on September 21, 2015. Counsel for the parties made presentations both to each other and me in joint sessions, and in sessions with me only. Over the course of the day I engaged in extensive discussions with counsel and the carriers in an effort to find common ground between the parties' respective positions. Lead Plaintiff's representatives took an active part in these discussions. In addition, the parties exchanged several rounds of settlement demands and offers.

12. At the end of the day, it was apparent to me and the parties that a resolution would not be reached at that time. We ended the September 21, 2015 mediation session without a settlement.

**B. Proceedings and Discovery Following The First Mediation**

13. Following the first mediation session, I engaged in additional communications with counsel and the carriers by phone and through e-mail in an ongoing effort to resolve the dispute, while the parties continued the litigation.

14. The parties notified the Court that the mediation was unsuccessful. On a September 25, 2015 conference call with the parties' counsel, the Court explored the possibility of further settlement negotiations. The parties discussed waiving confidentiality for the purpose of allowing me to communicate with the Court regarding the September 21, 2015 mediation session. The Court consented, and directed the parties to send me a joint letter, with a copy to the Court authorizing such communication.

15. On October 7, 2015, after Defendants had filed a reply brief in further support of their Motion to Dismiss, I had a discussion with the Court regarding the prospect of restarting settlement negotiations. As I later advised the parties by email, I stated to the Court that it did not appear that another mediation session would be productive without further guidance from the Court on the Motion to Dismiss.

16. On October 20, 2015, as requested by the Court, Lead Plaintiff filed a sur-reply in further opposition to the Motion to Dismiss.

17. On November 6, 2015, Judge Polster issued an Opinion and Order denying Defendants' Motion to Dismiss and Motion to Strike, and directing the parties to confer regarding a proposed agreed discovery schedule and to continue mediation efforts.

18. On November 19, 2015, the Court entered a Case Management Schedule providing for discovery to commence immediately. It was expected that discovery in this matter would involve millions of documents and dozens of witnesses and numerous experts. It was clear that discovery of this magnitude would impose significant burdens on both the producing and requesting parties, and the costs, risks, and challenges that both sides faced would only increase as litigation continued.

**C. Continued Negotiations and Settlement**

19. With this background, and with discovery imminent, I believed that this juncture created a window for the parties to potentially resolve the matter. Through a series of telephone calls and emails involving me, the parties' and carriers' counsel continued to engage in good faith negotiations toward a settlement.

20. The discussions eventually reached a point where I felt that I could fruitfully make a mediator's recommendation that the parties agree to negotiate in a specific range. On December 8, 2015, both side indicated that they agreed to the settlement range I had proposed, and a second mediation session was scheduled for February 9, 2016.

21. Settlement discussions continued over the next several weeks. On January 12, 2016, after more negotiations, I was able to make a mediator's recommendation that the parties agree to resolve the action for a cash payment by or on behalf of Defendants for \$84 million.

22. The parties ultimately accepted my mediator's recommendation, and negotiated a Settlement Term Sheet that was signed on January 22, 2016, subject to the negotiation and

execution of a customary “long form” stipulation and agreement of settlement and related papers.

23. As discussed above, this was an extremely hard-fought negotiation. I cannot delve into the specifics regarding each party’s and the carriers’ positions and thinking because many discussions occurred during confidential mediation communications. But I can say that there were many complex issues that required significant thought and practical solutions. I can also attest that the negotiations were extremely vigorous, completely at arm’s-length, and fully conducted in good faith.

### **III. CONCLUSION**

24. Based on my experience as a litigator, a former U.S. District Judge, and a mediator, I believe that this 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 all of the parties that they avoid the burdens and risks associated with taking a case of this size and complexity through fact and expert discovery, summary judgment, and to trial, and that they agree on the settlement now before the Court. In sum, I strongly support the approval of the settlement in all respects.

25. Lastly, the advocacy on both sides of the 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 is the

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direct result of all counsel's experience, reputation, and ability in these types of complex class actions.

I declare under penalty of perjury that the foregoing facts are true and correct and that this declaration was executed this 21st day of April, 2016.

A handwritten signature in black ink, appearing to read 'Layn R. Phillips', is positioned above a horizontal line.

LAYN R. PHILLIPS  
Former U.S. District Court Judge

## **EXHIBIT 3**

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

THE DEPARTMENT OF THE TREASURY OF  
THE STATE OF NEW JERSEY AND  
ITS DIVISION OF INVESTMENT, on behalf of  
itself and all others similarly situated,

Plaintiff,

v.

CLIFFS NATURAL RESOURCES INC.,  
JOSEPH CARRABBA, LAURIE BRLAS,  
TERRY PARADIE, and DAVID B. BLAKE,

Defendants.

Case No. 1:14-cv-1031

Judge Dan Aaron Polster

Magistrate Judge Thomas M. Parker

**DECLARATION OF ERIC SCHACHTER REGARDING (A) MAILING OF NOTICE  
AND PROOF OF CLAIM AND RELEASE FORM; (B) PUBLICATION OF SUMMARY  
NOTICE; AND (C) REPORT ON REQUESTS FOR EXCLUSION RECEIVED TO DATE**

I, Eric Schachter, declare as follows:

1. I am a Vice President of A.B. Data, Ltd.'s Class Action Administration Company ("A.B. Data"), whose Corporate Office is located in Milwaukee, Wisconsin. Pursuant to the Court's March 11, 2016 Order Preliminarily Approving Proposed Settlement with Individual Defendants and Providing for Notice (the "Preliminary Approval Order"), A.B. Data was authorized to act as the Claims Administrator in connection with the Settlement of the above-captioned action (the "Action").<sup>1</sup> I am over 21 years of age and am not a party to the Action. I

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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 with Individual Defendants dated March 10, 2016 (the "Settlement Stipulation").

have personal knowledge of the facts set forth herein and, if called as a witness, could and would testify competently thereto.

**MAILING OF THE NOTICE AND PROOF OF CLAIM**

2. Pursuant to the Preliminary Approval Order, A.B. Data mailed the Notice of (I) Pendency of Class Action and Certification of Settlement Class; (II) Proposed Settlement with Individual Defendants; (III) Settlement Hearing; and (IV) Motion for an Award of Attorneys' Fees and Reimbursement of Litigation Expenses (the "Notice") and the Proof of Claim and Release Form (the "Claim Form" and, collectively with the Notice, the "Notice Packet") to potential Settlement Class Members. A copy of the Notice Packet is attached hereto as Exhibit A.

3. On February 26, 2016, A.B. Data received from Defendants' Counsel two data files containing 4,599 unique names and addresses of potential Settlement Class Members. On April 1, 2016, A.B. Data caused Notice Packets to be sent by First-Class Mail to those 4,599 potential Settlement Class Members.

4. As in most class actions of this nature, the large majority of potential Settlement 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, institutions, and other third-party nominees in the name of the respective nominees, on behalf of the beneficial purchasers. A.B. Data maintains a proprietary database with names and addresses of the largest and most common banks, brokers, and other nominees (the "Record Holder Mailing Database"). At the time of the initial mailing, the Record Holder Mailing Database contained 5,299 mailing records. On April 1, 2016, A.B. Data caused Notice Packets to be sent by First-Class Mail to the 5,299 mailing records contained in the Record Holder Mailing Database.



5. In total, 9,898 Notice Packets were mailed to potential Settlement Class Members and their nominees by First-Class Mail on April 1, 2016.

6. The Notice directed those who purchased Cliffs common stock during the Settlement Class Period for the beneficial interest of a person or organization other than themselves to either (a) within seven calendar days of receipt of the Notice, request from A.B. Data sufficient copies of the Notice Packet to forward to all such beneficial owners, or (b) within seven calendar days of receipt of the Notice, provide to A.B. Data the names and addresses of all such beneficial owners. *See* Notice ¶ 84.

7. As of May 24, 2016, A.B. Data had received an additional 207,159 names and addresses of potential Settlement Class Members from individuals or brokerage firms, banks, institutions, and other nominees. A.B. Data has also received requests from brokers and other nominee holders for 39,866 Notice Packets to be forwarded by the nominees to their customers. All such requests have been, and will continue to be, complied with and addressed in a timely manner.

8. As of May 24, 2016, a total of 256,923 Notice Packets have been mailed to potential Settlement Class Members and their nominees. In addition, A.B. Data has remailed 696 Notice Packets to persons whose original mailings were returned by the U.S. Postal Service (“USPS”) and for whom updated addresses were provided to A.B. Data by the USPS.

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

9. In accordance with Paragraph 8(d) of the Preliminary Approval Order, A.B. Data caused the Summary Notice of (I) Pendency of Class Action and Certification of Settlement Class; (II) Proposed Settlement with Individual Defendants; (III) Settlement Hearing; and (IV) Motion for an Award of Attorneys’ Fees and Reimbursement of Litigation Expenses

(the “Summary Notice”) to be published in *The Wall Street Journal* and released via *PR Newswire* on April 14, 2016. Copies of proof of publication of the Summary Notice in *The Wall Street Journal* and over *PR Newswire* are attached hereto as Exhibits B and C, respectively.

#### **TELEPHONE HELP LINE**

10. On or about April 1, 2016, A.B. Data established and continues to maintain a case-specific, toll-free telephone helpline, 1-866-778-1167, with an interactive voice response system and live operators, to accommodate potential Settlement 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 had the option to be transferred to a live operator during business hours.

#### **SETTLEMENT WEBSITE**

11. In accordance with Paragraph 8(c) of the Preliminary Approval Order, A.B. Data established the Settlement website for this Action, [www.CliffsSecuritiesLitigation.com](http://www.CliffsSecuritiesLitigation.com). The Settlement website includes information regarding the Action and the proposed Settlement, including the exclusion, objection, and claim-filing deadlines and the date and time of the Court’s Settlement Hearing. In addition, copies of the Notice, Claim Form, Stipulation, Preliminary Approval Order, and Second Amended Complaint are posted on the website and are available for downloading. The Settlement website was operational beginning on April 1, 2016, and is accessible 24 hours a day, 7 days a week.

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

12. The Notice informed potential Settlement Class Members that requests for exclusion are to be sent to the Claims Administrator, such that they are received no later than June 9, 2016. The Notice also sets forth the information that must be included in each request

for exclusion. As of May 24, 2016, A.B. Data had received seven (7) requests for exclusion. A.B. Data will submit a supplemental affidavit after the June 9, 2016 deadline for requesting exclusion that addresses all requests 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 25th day of May 2016.

A handwritten signature in black ink, appearing to read "Eric Schachter", is written over a light blue rectangular background.

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Eric Schachter

# EXHIBIT A

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

THE DEPARTMENT OF THE TREASURY OF  
THE STATE OF NEW JERSEY AND  
ITS DIVISION OF INVESTMENT, on behalf of itself  
and all others similarly situated,

Plaintiff,

v.

CLIFFS NATURAL RESOURCES INC.,  
JOSEPH CARRABBA, LAURIE BRLAS,  
TERRY PARADIE, and DAVID B. BLAKE,

Defendants.

Case No. 1:14-cv-1031

Judge Dan Aaron Polster

Magistrate Judge Greg White

**NOTICE OF (I) PENDENCY OF CLASS ACTION AND CERTIFICATION OF SETTLEMENT CLASS;  
(II) PROPOSED SETTLEMENT WITH INDIVIDUAL DEFENDANTS; (III) SETTLEMENT HEARING; AND  
(IV) MOTION FOR AN AWARD OF ATTORNEYS' FEES AND REIMBURSEMENT OF LITIGATION EXPENSES**

**TO:** All persons and entities who or which purchased the common stock of Cliffs Natural Resources Inc. ("Cliffs") during the period from March 14, 2012 through March 26, 2013, inclusive (the "Settlement Class Period") and were damaged thereby.<sup>1</sup>

**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 (the "Action") pending in the United States District Court for the Northern District of Ohio (the "Court").

**NOTICE OF SETTLEMENT:** Please also be advised that the Court-appointed Lead Plaintiff, The Department of the Treasury of the State of New Jersey and its Division of Investment ("New Jersey"), on behalf of itself and the other members of the Settlement Class (as defined in ¶ 29 below), has reached a proposed settlement of the Action with defendants Terrance Paradie, Joseph Carrabba, Laurie Brlas, and David Blake (collectively, the "Individual Defendants" or the "Settling Defendants," and together with New Jersey, the "Settling Parties") for \$84,000,000 in cash (the "Settlement").<sup>2</sup> If approved, the Settlement will resolve all claims asserted in the Action.

**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 Settlement Class, your legal rights will be affected whether or not you act.

**If you have any questions about this Notice, the proposed Settlement, or your eligibility to participate in the Settlement, please DO NOT contact the Settling Defendants, Cliffs, their counsel, or New Jersey. All questions should be directed to Lead Counsel or the Claims Administrator (see ¶ 85 below).**

1. **Description of the Action and the Settlement Class:** This Notice relates to a proposed Settlement of claims in a pending securities class action brought by investors alleging, among other things, that defendants Terrance Paradie, Joseph Carrabba, Laurie Brlas, David Blake, and Cliffs (collectively, the "Defendants") violated the federal securities laws by making false and misleading statements regarding Cliffs during the Settlement Class Period. A more detailed description of the Action is set forth in ¶¶ 11-28 below. The proposed Settlement, if approved by the Court, will settle claims of the Settlement Class, as defined in ¶ 29 below.

2. **Statement of the Settlement Class's Recovery:** Subject to Court approval, New Jersey, on behalf of itself and the other members of the Settlement Class, has agreed to settle with the Individual Defendants in exchange for a settlement payment of \$84,000,000 in cash (the "Settlement Amount"), which has been deposited into an escrow account controlled by Lead Counsel.

<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 with Individual Defendants dated March 10, 2016 (the "Stipulation"), which is available at [www.CliffsSecuritiesLitigation.com](http://www.CliffsSecuritiesLitigation.com).

<sup>2</sup> Defendant Cliffs is a signatory to the Stipulation and a participant in the proposed Settlement only for limited purposes, including: (i) exchanging Releases with New Jersey and the Settlement Class, as more fully described in ¶¶ 35-41 below; (ii) making certain representations concerning the events in and conduct of the parties and their counsel in connection with and related to the Action; (iii) providing shareholder records to New Jersey for purposes of providing notice to the Settlement Class; and (iv) providing notice pursuant to the Class Action Fairness Act, 28 U.S.C. § 1715 *et seq.*

The Net Settlement Fund (*i.e.*, the Settlement Amount plus any and all interest earned thereon (the “Settlement Fund”) less (a) any Taxes, (b) any Notice and Administration Costs, (c) any Litigation Expenses awarded by the Court, and (d) any attorneys’ fees awarded by the Court) will be distributed to Settlement Class Members in accordance with a plan of allocation that is approved by the Court. The proposed plan of allocation (the “Plan of Allocation”) is set forth on pages 8-10 below.

3. **Estimate of Average Amount of Recovery Per Share:** Based on New Jersey’s damages expert’s estimate of the number of shares of Cliffs common stock purchased during the Settlement Class Period that may have been affected by the conduct at issue in the Action, and assuming that all Settlement Class Members elect to participate in the Settlement, the estimated average recovery (before the deduction of any Court-approved fees, expenses and costs as described herein) is \$0.42 per affected share of Cliffs common stock. Settlement Class Members should note, however, that the foregoing average recovery per share is only an estimate. Settlement Class Members may recover more or less than this estimated amount depending on, among other factors, when and at what prices they purchased or sold their shares and the total number of shares for which valid Claim Forms are submitted.

4. **Average Amount of Damages Per Share:** The Settling Parties do not agree on the average amount of damages per share that would be recoverable if New Jersey were to prevail in the Action. Among other things, the Settling Defendants do not agree that they violated the federal securities laws or that damages were suffered (at all, or in the amount contended by New Jersey) by any members of the Settlement Class as a result of their conduct.

5. **Attorneys’ Fees and Expenses Sought:** Plaintiff’s Counsel, which have been prosecuting this Action on a wholly contingent basis since its inception in 2014, have not received any payment of attorneys’ fees for their representation of the Settlement Class and have advanced the funds to pay expenses necessarily incurred to prosecute the Action. Court-appointed Lead Counsel, Bernstein Litowitz Berger & Grossmann LLP and Lowenstein Sandler LLP, will apply to the Court for an award of attorneys’ fees for all Plaintiff’s Counsel in an amount not to exceed 16% of the Settlement Fund. In addition, Lead Counsel will apply for reimbursement of Litigation Expenses paid or incurred in connection with the institution, prosecution, and resolution of the Action, in an amount not to exceed \$600,000, which may include an application for reimbursement of the reasonable costs and expenses incurred by New Jersey directly related to its representation of the Settlement Class. Any fees and expenses awarded by the Court will be paid from the Settlement Fund. Settlement Class Members are not personally liable for any such fees or expenses. If the Court approves Lead Counsel’s fee and expense application, the estimated average cost per affected share of Cliffs common stock will be approximately \$0.07.

6. **Identification of Attorneys’ Representatives:** New Jersey and the Settlement Class are represented by James A. Harrod, Esq. of Bernstein Litowitz Berger & Grossmann LLP, 1251 Avenue of the Americas, 44th Floor, New York, NY 10020, (800) 380-8496, and Michael T.G. Long, Esq. of Lowenstein Sandler LLP, 65 Livingston Avenue, Roseland, NJ 07068, (973) 597-2500.

7. **Reasons for the Settlement:** New Jersey’s principal reason for entering into the Settlement is the substantial immediate cash benefit for the Settlement Class without the risk or delays inherent in further litigation. Moreover, the substantial cash benefit provided under the Settlement must be considered against the significant risk that a smaller recovery – or indeed no recovery at all – might be achieved after further contested motions, a trial of the Action and the likely appeals that would follow a trial. This process could be expected to last several years. The Settling Defendants and Cliffs, who deny all allegations of wrongdoing or liability whatsoever, are entering into the Settlement solely to eliminate the uncertainty, burden and expense of further protracted litigation.

<b>YOUR LEGAL RIGHTS AND OPTIONS IN THE SETTLEMENT:</b>	
<b>SUBMIT A CLAIM FORM POSTMARKED NO LATER THAN AUGUST 8, 2016.</b>	This is the only way to be eligible to receive a payment from the Settlement Fund. If you are a Settlement Class Member and you remain in the Settlement 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 ¶ 36 below) that you have against Defendants and the other Defendants’ Releasees (defined in ¶ 37 below), so it is in your interest to submit a Claim Form.
<b>EXCLUDE YOURSELF FROM THE SETTLEMENT CLASS BY SUBMITTING A WRITTEN REQUEST FOR EXCLUSION SO THAT IT IS RECEIVED NO LATER THAN JUNE 9, 2016.</b>	If you exclude yourself from the Settlement Class, you will not be eligible to receive any payment from the Settlement Fund. This is the only option that allows you ever to be part of any other lawsuit against any of the Defendants or the other Defendants’ Releasees concerning the Released Plaintiff’s Claims.

<b>OBJECT TO THE SETTLEMENT BY SUBMITTING A WRITTEN OBJECTION SO THAT IT IS <i>RECEIVED</i> NO LATER THAN JUNE 9, 2016.</b>	If you do not like the proposed Settlement, the proposed Plan of Allocation, or the request for attorneys' fees and reimbursement of Litigation Expenses, you may write to the Court and explain why you do not like them. You cannot object to the Settlement, the Plan of Allocation or the fee and expense request unless you are a Settlement Class Member and do not exclude yourself from the Settlement Class.
<b>GO TO A HEARING ON JUNE 30, 2016 AT 12:00 P.M., AND FILE A NOTICE OF INTENTION TO APPEAR SO THAT IT IS <i>RECEIVED</i> NO LATER THAN JUNE 9, 2016.</b>	Any Settlement Class Member may attend the Settlement Hearing. Filing a written objection and notice of intention to appear by June 9, 2016 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 reimbursement of Litigation Expenses. If you submit a written objection, you may (but you do not have to) attend the hearing and, if you also file a notice of intention to appear, speak to the Court about your objection at the discretion of the Court.
<b>DO NOTHING.</b>	If you are a member of the Settlement 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 Settlement 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.

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#### WHY DID I GET THIS NOTICE?

8. The purpose of this Notice is to inform you of the existence of this case, that it is a class action, how you might be affected, and how to exclude yourself from the Settlement 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 the motion by Lead Counsel for an award of attorneys' fees and

QUESTIONS? CALL 866-778-1167 OR VISIT [WWW.CLIFFSSECURITIESLITIGATION.COM](http://WWW.CLIFFSSECURITIESLITIGATION.COM) PAGE 3 OF 15



reimbursement of Litigation Expenses (the “Settlement Hearing”). See ¶ 75 below for details about the Settlement Hearing, including the date and location of the hearing.

9. The Court directed that this Notice be mailed to you because you or someone in your family or an investment account for which you serve as a custodian may have purchased Cliffs common stock during the Settlement Class Period. The Court has directed us to send you this Notice because, as a potential Settlement Class Member, you have a right to know about your options before the Court rules on the proposed Settlement. Additionally, you have the right to understand how this class action lawsuit may generally affect your legal rights.

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 has not yet decided 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 to complete.

#### WHAT IS THIS CASE ABOUT?

11. This case is a securities class action and is known as *Department of the Treasury of the State of New Jersey and its Division of Investment v. Cliffs Natural Resources Inc., et al.*, Civil Action No. 1:14-cv-1031-DAP. The Court in charge of the case is the United States District Court for the Northern District of Ohio, and the presiding judge is the Honorable Dan Aaron Polster.

12. On May 12, 2014, a putative securities class action complaint was filed with the Court. In accordance with the Private Securities Litigation Reform Act of 1995, 15 U.S.C. §§ 77z-1, 78u-4, notice to the public was issued stating the deadline by which putative class members could move the Court for appointment as lead plaintiff.

13. By Order dated July 23, 2014, the Court appointed New Jersey as Lead Plaintiff for the Action, and approved New Jersey’s selection of Bernstein Litowitz Berger & Grossmann LLP and Lowenstein Sandler LLP as Lead Counsel, and Climaco Wilcox Peca Tarantino & Garofoli Co., LPA as Local Counsel.

14. On August 22, 2014, New Jersey filed and served its Amended Complaint for Violations of the Federal Securities Laws (the “Amended Complaint”) asserting claims against all Defendants under Section 10(b) of the Securities Exchange Act of 1934 (the “Exchange Act”) and Rule 10b-5 promulgated thereunder, and against the Individual Defendants under Section 20(a) of the Exchange Act. The Amended Complaint alleges, among other things, that Defendants made materially false and misleading statements and omitted material information regarding the impact of Cliffs’ acquisition of a controlling interest in Consolidated Thompson Iron Mines Limited, including the Bloom Lake iron ore mine located in Quebec, Canada. New Jersey alleged in the Amended Complaint that Defendants fraudulently misled investors into believing that the acquisition and integration of Bloom Lake would sustainably fund the 123% increase in the Company’s dividend (announced on the first day of the Settlement Class Period), while also paying for an expansion that would triple the mine’s production volume. The Amended Complaint further alleged that the price of Cliffs common stock was artificially inflated as a result of Defendants’ allegedly false and misleading statements and omissions, and declined when the truth was revealed.

15. On October 21, 2014, Defendants moved to dismiss the Amended Complaint for failure to state a claim. New Jersey opposed that motion on December 5, 2014, and Defendants filed a reply in support of their motion on January 7, 2015.

16. On January 23, 2015, Defendants filed a motion to strike certain paragraphs from the Amended Complaint. New Jersey opposed that motion on February 6, 2015, and Defendants filed a reply in support of their motion on February 13, 2015.

17. On March 5, 2015, the Court denied as moot Defendants’ motion to dismiss the Amended Complaint and motion to strike, and instructed New Jersey to file a second amended complaint.

18. On March 31, 2015, New Jersey filed a Second Amended Complaint for Violations of the Federal Securities Laws (the “Second Amended Complaint” or “Complaint”), which again alleged, among other things, that Defendants defrauded investors and caused artificial inflation in the price of Cliffs common stock by misrepresenting that the acquisition and integration of Bloom Lake would sustain the significant increase in the Company’s dividend.

19. On April 1, 2015, the Court entered an Order scheduling a case management conference. That conference was held, with counsel for the parties and the parties or their representatives present, in Cleveland, Ohio on May 7, 2015. During the May 7, 2015 conference, the parties discussed potential discovery issues and schedules. The Court also inquired as to the parties’ interest in settlement of the Action and, to that end, requested that they exchange information concerning the estimated damages to the putative class. Subsequent to the May 7, 2015 conference, New Jersey and Defendants exchanged correspondence reflecting their views regarding the estimated damages to the class.

20. On May 15, 2015, Defendants filed a motion to dismiss the Second Amended Complaint, as well as a motion to strike certain allegations from the Second Amended Complaint. New Jersey opposed Defendants’ motion to strike on June 1, 2015,



Defendants filed a reply in further support of that motion on June 11, 2015, and with leave of court New Jersey filed a sur-reply in further opposition to the motion to strike on June 22, 2015. New Jersey opposed Defendants' motion to dismiss on June 12, 2015.

21. On June 22, 2015, the Court followed up on its May 7 inquiry by asking whether the parties had agreed to use a private mediator in an attempt to settle the Action. On June 25, 2015, the parties notified the Court that they agreed to use former United States District Judge Layn Phillips as a private mediator. After mediation briefing was exchanged by the parties and submissions were made to the mediator, Judge Phillips held a mediation on September 21, 2015, but the parties could not resolve the litigation.

22. Defendants filed a reply in further support of their motion to dismiss the Second Amended Complaint on October 6, 2015, and New Jersey filed a sur-reply in further opposition to that motion on October 22, 2015.

23. On November 6, 2015, the Court issued an Opinion and Order denying Defendants' pending motions to dismiss and to strike, and instructed the parties to meet and confer on a discovery schedule.

24. New Jersey and Defendants served discovery requests on November 18, 2015, and the Court entered an order governing the discovery schedule on November 19, 2015. On December 22, 2015, the parties served objections and responses to the discovery requests. On January 8, 2016, Defendants produced certain documents responsive to New Jersey's requests, and New Jersey produced certain documents responsive to Defendants' discovery requests.

25. On January 12, 2016, following continued arm's-length negotiations and discussions with Judge Phillips, and based on a mediator's recommendation by Judge Phillips, the Settling Parties reached an agreement in principle to settle the Action.

26. On March 10, 2016, the Settling Parties entered into a Stipulation and Agreement of Settlement with Individual Defendants (the "Stipulation"), which sets forth the terms and conditions of the Settlement. The Stipulation can be viewed at [www.CliffsSecuritiesLitigation.com](http://www.CliffsSecuritiesLitigation.com).

27. On March 11, 2016, the Court preliminarily approved the Settlement, authorized this Notice to be disseminated to potential Settlement Class Members, and scheduled the Settlement Hearing to consider whether to grant final approval of the Settlement.

28. Defendants deny that they have violated the federal securities laws or any other laws. Defendants also have denied and continue to deny specifically each and all of the claims and contentions alleged in the Action.

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

29. If you are a member of the Settlement Class, you are subject to the Settlement, unless you timely request to be excluded. The Settlement Class consists of:

all persons and entities who or which purchased Cliffs common stock from March 14, 2012 through March 26, 2013, inclusive (the "Settlement Class Period") and were damaged thereby.

Excluded from the Settlement Class are Defendants; members of the Immediate Family of each of the Individual Defendants; the Officers and/or directors of Cliffs during the Settlement Class Period; and any firm, trust, corporation, or other entity in which any Defendant has or had a controlling interest. Also excluded from the Settlement Class are any persons or entities that exclude themselves by submitting a request for exclusion in accordance with the requirements set forth in this Notice. See "What If I Do Not Want To Be A Member Of The Settlement Class? How Do I Exclude Myself?," on page 11 below.

**PLEASE NOTE: RECEIPT OF THIS NOTICE DOES NOT MEAN THAT YOU ARE A SETTLEMENT CLASS MEMBER OR THAT YOU WILL BE ENTITLED TO RECEIVE MONEY FROM THE SETTLEMENT. IF YOU ARE A SETTLEMENT CLASS MEMBER AND 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 AS SET FORTH THEREIN POSTMARKED NO LATER THAN AUGUST 8, 2016.**

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

30. New Jersey and Lead Counsel believe that the claims asserted in the Action have merit. New Jersey and Lead Counsel recognize, however, the expense and length of continued proceedings necessary to pursue the claims asserted in the Action through trial and appeals, as well as the very substantial risks they would face in establishing liability and damages. In particular, New Jersey recognizes that Defendants have significant arguments that their alleged misstatements were not materially misleading and that, even if they made materially misleading statements, they did not do so intentionally or recklessly. New Jersey also would face challenges with respect to establishing loss causation and class-wide damages. New Jersey recognizes that Defendants have substantial arguments that the decline in Cliffs' stock price during the Settlement Class Period was not caused by revelations

concerning the problems alleged at the Bloom Lake mine or Cliffs' decision to cut its dividend, and that even if some portion of the decline in Cliffs' stock price was caused by these revelations, damages were minimal. Had any of these arguments been accepted in whole or part, they could have eliminated or, at a minimum, dramatically limited any potential recovery. Further, New Jersey would have had to prevail at several stages – class certification, motion for summary judgment and trial – and if it prevailed at those stages, the appeals that were likely to follow. Moreover, there were also very real risks to recovering a judgment substantially larger than the Settlement in light of Cliffs' financial condition and limited officers' and directors' insurance. Thus, there were significant risks attendant to the continued prosecution of the Action.

31. In light of these risks and the immediacy of the \$84,000,000 cash recovery, New Jersey and Lead Counsel believe that the proposed Settlement is an excellent result, and is in the best interests of the Settlement Class.

32. The Settling Defendants have agreed to the Settlement solely to eliminate the burden and expense of continued litigation. The Settling Defendants and Cliffs deny the claims asserted against them in the Action and deny having engaged in any wrongdoing or violation of law of any kind whatsoever.

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

33. If there were no Settlement and New Jersey failed to establish any essential legal or factual element of their claims against Defendants, neither New Jersey nor the other members of the Settlement Class would recover anything from Defendants. Also, if Defendants were successful in proving any of their defenses, either at summary judgment, at trial or on appeal, the Settlement Class could recover substantially less than the amount provided in the Settlement, or nothing at all. Finally, if the Defendants' applicable insurance coverage were depleted and Cliffs' financial condition further deteriorated, it would have likely reduced or eliminated the possibility of an equivalent recovery, or any substantial recovery, for the Settlement Class regardless of the merits of the claims.

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

34. As a Settlement Class Member, you are represented by New Jersey and Lead Counsel, unless you enter an appearance through counsel of your own choice at your own expense. You are not required to retain your own counsel. Class Members may enter an appearance through an attorney if they so desire, but such counsel must file and serve a notice of appearance as provided in ¶ 81 below and will be retained at the individual Class Member's expense.

35. If you are a Settlement Class Member and you do not exclude yourself from the Settlement Class, you will be bound by any orders issued by the Court. If the Settlement is approved, the Court will enter a judgment (the "Judgment"). The Judgment will dismiss with prejudice the Action and will provide that, upon the Effective Date of the Settlement, New Jersey and each of the other Settlement Class Members, on behalf of themselves and their respective heirs, executors, administrators, predecessors, successors, and assigns, in their capacities as such, will have fully, finally and forever compromised, settled, released, resolved, relinquished, waived and discharged each and every Released Plaintiff's Claim (as defined in ¶ 36 below) against the Defendants and the other Defendants' Releasees (as defined in ¶ 37 below), and will forever be barred and enjoined from prosecuting any or all of the Released Plaintiff's Claims against any of the Defendants' Releasees.

36. "Released Plaintiff's Claims" means any and all claims, rights, causes of action and liabilities of every nature and description, whether known claims or Unknown Claims (as defined in ¶ 38 below), whether arising under any federal, state, foreign, statutory or common law, or any other law, rule or regulation, whether fixed or contingent, accrued or unaccrued, matured or unmatured, liquidated or unliquidated, at law or in equity, whether class or individual in nature, that New Jersey or any other member of the Settlement Class: (a) asserted in the Complaint, or (b) could have asserted in the Action or in any other action or in any other forum and that arise out of, are based upon, are related to, or are in consequence of any of the allegations, transactions, facts, matters, occurrences, events, disclosures, statements, representations, or omissions involved, set forth, or referred to in the Complaint and that relate to the purchase of Cliffs common stock during the Settlement Class Period, or that otherwise would have been barred by *res judicata* had the Complaint been litigated to a final judgment. Released Plaintiff's Claims do not include: (i) the claims asserted in *Rosenberg v. Cliffs Natural Resources Inc., et al.*, No. CV-14-828140 (Cuyahoga County Common Pleas, Ohio); (ii) the claims asserted under the Employee Retirement Income Security Act of 1974 in *Saumer et al. v. Cliffs Natural Resources Inc., et al.*, No. 1:15-cv-00954-DAP (N.D. Ohio); (iii) any claims asserted in any pending derivative action; (iv) any claims relating to the enforcement of the Settlement; or (v) any claims of any person or entity who or which submits a request for exclusion that is accepted by the Court as valid.

37. "Defendants' Releasees" means the Defendants and their respective current and former Officers, directors, agents, parents, affiliates, subsidiaries, successors, predecessors, assigns, assignees, employees, Immediate Family members, insurers and reinsurers, and attorneys, in their capacities as such.

38. “Unknown Claims” means any Released Plaintiff’s Claims which New Jersey or any other Settlement 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, her, or its favor at the time of the release of such claims, which, if known by him, her or it, might have affected his, her or its decision(s) with respect to this Settlement. With respect to any and all Released Claims, New Jersey and the Defendants stipulate and agree that, upon the Effective Date of the Settlement, New Jersey and the Defendants shall expressly waive, and each of the other Settlement 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 which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

New Jersey and the Defendants acknowledge, and each of the other Settlement 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.

39. The Judgment will also provide that, 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, will have fully, finally and forever compromised, settled, released, resolved, relinquished, waived and discharged each and every Released Defendants’ Claim (as defined in ¶ 40 below) against New Jersey and the other Plaintiff’s Releasees (as defined in ¶ 41 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.

40. “Released Defendants’ Claims” means any and all claims, rights, causes of action and liabilities of every nature and description, whether known claims or Unknown Claims, whether arising under any federal, state, foreign, statutory or common law, or any other law, rule or regulation, whether fixed or contingent, accrued or unaccrued, matured or unmatured, liquidated or unliquidated, at law or in equity, that arise out of, are based upon, are related to, or are in consequence of the institution, prosecution, or settlement of the claims against the Defendants, except for claims relating to the enforcement of the Settlement or any claims against any person or entity who or which submits a request for exclusion that is accepted by the Court as valid.

41. “Plaintiff’s Releasees” means New Jersey and its attorneys, including Plaintiff’s Counsel, and all other Settlement Class Members, and their respective current and former Officers, directors, agents, parents, affiliates, subsidiaries, successors, predecessors, assigns, assignees, employees, Immediate Family members, insurers and reinsurers, and attorneys, in their capacities as such.

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

42. To be eligible for a payment from the proceeds of the Settlement, you must be a member of the Settlement Class and you must timely complete and return the Claim Form with adequate supporting documentation **postmarked no later than August 8, 2016**. A Claim Form is included with this Notice, or you may obtain one from the website maintained by the Claims Administrator for the Settlement, [www.CliffsSecuritiesLitigation.com](http://www.CliffsSecuritiesLitigation.com), or you may request that a Claim Form be mailed to you by calling the Claims Administrator toll free at (866) 778-1167 or by emailing the Claims Administrator at [info@CliffsSecuritiesLitigation.com](mailto:info@CliffsSecuritiesLitigation.com). Please retain all records of your ownership of and transactions in Cliffs common stock, as they may be needed to document your Claim. If you request exclusion from the Settlement 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?

43. At this time, it is not possible to make any determination as to how much any individual Settlement Class Member may receive from the Settlement. A Claimant’s recovery will depend upon several factors, including when and at what prices he, she, or it purchased or sold the shares, and the total number of shares for which valid Claim Forms are submitted.

44. Pursuant to the Settlement, the Individual Defendants’ insurance carriers have deposited \$84 million into an escrow account controlled by Lead Counsel. 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 will be distributed to Settlement 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.

45. The Net Settlement Fund will not be distributed 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.

46. Neither the Settling Defendants, the Settling Defendants' insurance carriers, nor any other person or entity that paid any portion of the Settlement Amount on behalf of the Settling Defendants is entitled to get back any portion of the Settlement Fund once the Court's order or judgment approving the Settlement becomes Final. Defendants 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.

47. 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.

48. Unless the Court otherwise orders, any Settlement Class Member who fails to submit a Claim Form **postmarked on or before August 8, 2016** shall be fully and forever barred from receiving payments pursuant to the Settlement but will in all other respects remain a Settlement 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 Settlement Class Member releases the Released Plaintiff's Claims (as defined in ¶ 36 above) against the Defendants' Releasees (as defined in ¶ 37 above) and will be enjoined and prohibited from filing, prosecuting, or pursuing any of the Released Plaintiff's Claims against any of the Defendants' Releasees whether or not such Settlement Class Member submits a Claim Form.

49. Participants in and beneficiaries of a plan covered by the Employee Retirement Income Security Act of 1974 ("ERISA Plan") should NOT include any information relating to their transactions in Cliffs common stock held through the ERISA Plan in any Claim Form that they may submit in this Action. They should include ONLY those shares that they purchased outside of the ERISA Plan. Claims based on any ERISA Plan's purchases of Cliffs common stock during the Settlement Class Period may be made by the plan's trustees.

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

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

52. Only Settlement Class Members, *i.e.*, persons and entities who or which purchased Cliffs common stock during the Settlement Class Period and were damaged as a result of such purchases, will be eligible to share in the distribution of the Net Settlement Fund. Persons and entities that are excluded from the Settlement Class by definition or that exclude themselves from the Settlement Class pursuant to 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 Cliffs common stock.

#### **PROPOSED PLAN OF ALLOCATION**

53. The objective of the Plan of Allocation is to distribute the Settlement proceeds equitably among those Settlement Class Members who suffered economic losses as a proximate result of the alleged wrongdoing. The Plan of Allocation is not a formal damage analysis, and the calculations made in accordance with the Plan of Allocation are not intended to be estimates of, or indicative of, the amounts that Settlement Class Members might have been able to recover after a trial. Nor are the calculations in accordance with the Plan of Allocation intended to be estimates of the amounts that will be paid to Authorized Claimants under the Settlement. The computations under the Plan of Allocation are only a method to weigh the claims of Authorized Claimants against one another for the purpose of making *pro rata* allocations of the Net Settlement Fund.

54. In developing the Plan of Allocation, New Jersey's damages expert calculated the estimated amount of artificial inflation in the per share closing prices of Cliffs common stock that was allegedly proximately caused by Defendants' alleged false and misleading statements and material omissions. In calculating the estimated artificial inflation allegedly caused by Defendants' alleged misrepresentations and omissions, New Jersey's damages expert considered price changes in Cliffs common stock in reaction to certain public announcements allegedly revealing the truth concerning Defendants' alleged misrepresentations and material omissions, adjusting for price changes that were attributable to market or industry forces. The estimated artificial inflation in Cliffs common stock is shown in Table A set forth at the end of this Notice.

55. In order to have recoverable damages, disclosure of the alleged misrepresentations or omissions must be the cause of the decline in the price of Cliffs common stock. In this case, New Jersey alleges that Defendants made false statements and omitted material facts during the period from March 14, 2012 through and including March 26, 2013, which had the effect of artificially inflating the prices of Cliffs common stock. New Jersey further alleges that corrective disclosures removed artificial inflation from the price of Cliffs common stock on April 26, 2012, July 26, 2012, October 25, 2012, November 19, 2012, November 20, 2012, February 13, 2013, and March 27, 2013.

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

56. Based on the formula stated below, a "Recognized Loss Amount" will be calculated for each purchase of Cliffs common stock during the Settlement Class Period that is listed on the Proof of 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 Recognized Loss Amount will be zero.



57. For each share of Cliffs common stock purchased during the period from March 14, 2012 through and including the close of trading on March 26, 2013, and:

(a) Sold prior to the close of trading on April 25, 2012, the Recognized Loss Amount will be \$0.00.

(b) Sold during the period from April 26, 2012 through and including the close of trading on March 26, 2013, the Recognized Loss Amount will be *the lesser of*: (i) the amount of artificial inflation per share stated in Table A on the date of purchase minus the amount of artificial inflation per share stated in Table A on the date of sale; or (ii) the purchase price minus the sale price.

(c) Sold during the period from March 27, 2013 through and including the close of trading on June 24, 2013, the Recognized Loss Amount will be *the least of*: (i) the amount of artificial inflation per share stated in Table A on the date of purchase; (ii) the purchase price minus the sale price; or (iii) the purchase price minus the average closing price between March 27, 2013 and the date of sale stated in Table B at the end of this Notice.

(d) Held as of the close of trading on June 24, 2013, the Recognized Loss Amount will be *the lesser of*: (i) the amount of artificial inflation per share stated in Table A on the date of purchase; or (ii) the purchase price minus \$19.34, the average closing price for Cliffs common stock between March 27, 2013 and June 24, 2013 (the last entry on Table B).<sup>3</sup>

#### **ADDITIONAL PROVISIONS**

58. The Net Settlement Fund will be allocated among all Authorized Claimants whose Distribution Amount (defined in ¶ 61 below) is \$10.00 or greater.

59. If a Settlement Class Member has more than one purchase or sale of Cliffs common stock, purchases and sales will be matched on a First In, First Out (“FIFO”) basis. Settlement Class Period sales will be matched first against any holdings at the beginning of the Settlement Class Period, and then against purchases in chronological order, beginning with the earliest purchase made during the Settlement Class Period.

60. A Claimant’s “Recognized Claim” under the Plan of Allocation will be the sum of his, her, or its Recognized Loss Amounts.

61. The Net Settlement Fund will be distributed to Authorized Claimants on a *pro rata* basis based on the relative size of their Recognized Claims. Specifically, a “Distribution Amount” will be calculated for each Authorized Claimant, which will be the Authorized Claimant’s Recognized Claim divided by the total Recognized Claims of all Authorized Claimants, multiplied by the total amount in the Net Settlement Fund. If any Authorized Claimant’s Distribution Amount calculates to less than \$10.00, it will not be included in the calculation and no distribution will be made to that Authorized Claimant.

62. Purchases and sales of Cliffs 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 operation of law of Cliffs common stock during the Settlement Class Period will not be deemed a purchase or sale of Cliffs common stock for the calculation of an Authorized Claimant’s Recognized Loss Amount, nor will the receipt or grant be deemed an assignment of any claim relating to the purchase of Cliffs common stock unless (i) the donor or decedent purchased the shares during the Settlement Class Period; (ii) no Claim Form was submitted by or on behalf of the donor, on behalf of the decedent, or by anyone else with respect to those shares; and (iii) it is specifically so provided in the instrument of gift or assignment.

63. The date of covering a “short sale” is deemed to be the date of purchase of the Cliffs common stock. The date of a “short sale” is deemed to be the date of sale of Cliffs common stock. Under the Plan of Allocation, however, the Recognized Loss Amount on “short sales” is zero. In the event that a Claimant has an opening short position in Cliffs common stock, his, her, or its earliest Settlement Class Period purchases of Cliffs common stock will be matched against the opening short position, and not be entitled to a recovery, until that short position is fully covered.

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<sup>3</sup> Under Section 21(D)(e)(1) of the Exchange Act, “in any private action arising under this Act 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 statute, Recognized Loss Amounts are reduced to an appropriate extent by taking into account the closing prices of Cliffs common stock during the 90-day look-back period. The mean (average) closing price for Cliffs common stock during this 90-day look-back period was \$19.34.

64. Option contracts are not securities eligible to participate in the Settlement. With respect to shares of Cliffs common stock purchased or sold through the exercise of an option, the purchase/sale date of the Cliffs common stock is the exercise date of the option and the purchase/sale price of the Cliffs common stock is the exercise price of the option.

65. If a Claimant had a market gain with respect to his, her, or its overall transactions in Cliffs common stock during the Settlement 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 Cliffs common stock during the Settlement Class Period but that market loss was less than the Claimant's total Recognized Claim calculated above, then the Claimant's Recognized Claim will be limited to the amount of the actual market loss.

66. For purposes of determining whether a Claimant had a market gain with respect to his, her, or its overall transactions in Cliffs common stock during the Settlement Class Period or suffered a market loss, the Claims Administrator will determine the difference between (i) the Total Purchase Amount<sup>4</sup> and (ii) the sum of the Total Sales Proceeds<sup>5</sup> and Holding Value.<sup>6</sup> This difference will be deemed a Claimant's market gain or loss with respect to his, her, or its overall transactions in Cliffs common stock during the Settlement Class Period.

67. 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 fund nine (9) months after the initial distribution, if Lead Counsel, in consultation with the Claims Administrator, determine that it is cost-effective to do so, the Claims Administrator 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 and who would receive at least \$10.00 on such additional re-distributions may occur thereafter if Lead Counsel, in consultation with the Claims Administrator, determine 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 shall be contributed to non-sectarian, not-for-profit organization(s), to be recommended by Lead Counsel and approved by the Court.

68. Payment pursuant to the Plan of Allocation, or such other plan of allocation as may be approved by the Court, shall be conclusive against all Authorized Claimants. No person shall have any claim against New Jersey, Plaintiff's Counsel, New Jersey's damages expert, the Settling Defendants, Cliffs, 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. New Jersey, the Settling 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 Form or nonperformance of the Claims Administrator; the payment or withholding of Taxes; or any losses incurred in connection therewith.

69. The Plan of Allocation set forth herein is the plan that is being proposed to the Court for its approval by New Jersey 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 Settlement Class. Any orders regarding any modification of the Plan of Allocation will be posted on the settlement website, [www.CliffsSecuritiesLitigation.com](http://www.CliffsSecuritiesLitigation.com).

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

70. Plaintiff's Counsel have not received any payment for their services in pursuing claims asserted in the Action on behalf of the Settlement Class, nor have Plaintiff's Counsel been reimbursed for their out-of-pocket expenses. Before final approval of the Settlement, Lead Counsel will apply to the Court for an award of attorneys' fees for all Plaintiff's Counsel in an amount not to

<sup>4</sup> The "Total Purchase Amount" is the total amount the Claimant paid (excluding commissions and other charges) for Cliffs common stock purchased during the Settlement Class Period.

<sup>5</sup> The Claims Administrator will match any sales of Cliffs common stock during the Settlement Class Period first against the Claimant's opening position (the proceeds of those sales will not be considered for purposes of calculating market gains or losses). The total amount received (excluding commissions and other charges) for the remaining sales of Cliffs common stock sold during the Settlement Class Period will be the "Total Sales Proceeds".

<sup>6</sup> The Claims Administrator will ascribe a value of \$18.46 per share for Cliffs common stock purchased during the Settlement Class Period and still held as of the close of trading on March 26, 2013 (the "Holding Value"). The Holding Value is based on the closing price of Cliffs common stock on March 27, 2013, the day after the last day of the Settlement Class Period.

exceed 16% of the Settlement Fund. At the same time, Lead Counsel also intend to apply for reimbursement of Litigation Expenses in an amount not to exceed \$600,000, which may include an application for reimbursement of the reasonable costs and expenses incurred by New Jersey directly related to its representation of the Settlement Class. The Court will determine the amount of any award of attorneys' fees or reimbursement of Litigation Expenses. Such sums as may be approved by the Court will be paid from the Settlement Fund. Settlement Class Members are not personally liable for any such fees or expenses.

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

71. Each Settlement Class Member will be bound by all determinations and judgments in this lawsuit, whether favorable or unfavorable, unless such person or entity mails or delivers a written Request for Exclusion from the Settlement Class, addressed to Cliffs Securities Litigation, EXCLUSIONS, c/o A.B. Data, Ltd., P.O. Box 173003, Milwaukee, WI 53217. The exclusion request must be **received no later than June 9, 2016**. You will not be able to exclude yourself from the Settlement Class after that date. Each Request for Exclusion must: (a) 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; (b) state that such person or entity "requests exclusion from the Settlement Class in *The Department of the Treasury of the State of New Jersey and its Division of Investment v. Cliffs Natural Resources Inc., et al.*, Case No. 1:14-cv-1031"; (c) state the number of shares of Cliffs common stock that the person or entity requesting exclusion (x) owned as of the close of trading on March 13, 2012, and (y) purchased and/or sold during the Settlement Class Period (*i.e.*, from March 14, 2012 through March 26, 2013, inclusive), as well as the number of shares, dates and prices for each such purchase and/or sale; and (d) be signed by the person or entity requesting exclusion or an authorized representative. A Request for Exclusion shall not be valid and effective unless it provides all the information called for in this paragraph and is received within the time stated above, or is otherwise accepted by the Court. Lead Counsel may, at their discretion, request from any person or entity requesting exclusion documentation sufficient to prove his, her or its purchases and/or sales of Cliffs common stock during the Settlement Class Period.

72. If you do not want to be part of the Settlement 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' Releases.

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

74. The Settling Defendants have the right to terminate the Settlement if valid requests for exclusion are received from persons and entities entitled to be members of the Settlement Class in an amount that exceeds an amount agreed to by New Jersey and the Settling Defendants.

**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?**

75. The Settlement Hearing will be held on June 30, 2016 at 12:00 p.m., before the Honorable Dan Aaron Polster at the United States District Court for the Northern District of Ohio, Carl B. Stokes United States Court House, Courtroom 18B, 801 West Superior Avenue, Cleveland, Ohio 44113-1837. The Court reserves the right to approve the Settlement, the Plan of Allocation, Lead Counsel's motion for an award of attorneys' fees and reimbursement of 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 Settlement Class.

**76. Settlement 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 Settlement Class Member does not attend the hearing. Participation in the Settlement is not conditioned on attendance at the Settlement Hearing.**

77. Any Settlement Class Member who or which does not request exclusion may object to the Settlement, the proposed Plan of Allocation, or Lead Counsel's motion for an award of attorneys' fees and reimbursement of 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 Ohio at the address set forth below **on or before June 9, 2016**. You must also serve the papers on Lead Counsel and on Defendants' Counsel at the addresses set forth below so that the papers are **received on or before June 9, 2016**.

**Clerk's Office**

United States District Court  
Northern District of Ohio  
Clerk of the Court  
Carl B. Stokes United States Court House  
801 West Superior Avenue  
Cleveland, OH 44113-1837

**Lead Counsel**

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and

**Lowenstein Sandler LLP**

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Roseland, NJ 07068

**Defendants' Counsel**

**Jones Day**  
John M. Newman, Jr., Esq.  
901 Lakeside Avenue  
Cleveland, OH 44114-1190

78. Any objection: (a) must state the name, address, and telephone number of the person or entity objecting and must be signed by the objector; (b) must contain a statement of the Settlement Class Member's objection or objections, and the specific reasons for each objection, including any legal and evidentiary support the Settlement Class Member wishes to bring to the Court's attention; and (c) must include documents sufficient to prove membership in the Settlement Class, including the number of shares of Cliffs common stock that the objecting Settlement Class Member purchased and/or sold during the Settlement Class Period (*i.e.*, from March 14, 2012 through March 26, 2013, inclusive), as well as the dates and prices of each such purchase and sale. Documents sufficient to prove membership in the Settlement Class include brokerage statements, confirmation slips, or authorized statements from a broker containing the transaction and holding information found in a confirmation slip or account statement. You may not object to the Settlement, the Plan of Allocation, or Lead Counsel's motion for attorneys' fees and reimbursement of Litigation Expenses if you exclude yourself from the Settlement Class or if you are not a member of the Settlement Class.

79. You may file a written objection without appearing at the Settlement Hearing. You may not, however, appear at the Settlement Hearing to present your objection unless you first file and serve a written objection in accordance with the procedures described above, unless the Court orders otherwise.

80. If you wish to be heard orally at the hearing in opposition to the approval of the Settlement, the Plan of Allocation or Lead Counsel's motion for an award of attorneys' fees and reimbursement of Litigation Expenses, and if you timely file and serve 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 Defendants' Counsel at the addresses set forth above so that it is ***received on or before June 9, 2016***. 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.

81. 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 Defendants' Counsel at the addresses set forth in ¶ 77 above so that the notice is ***received on or before June 9, 2016***.

82. The Settlement Hearing may be adjourned by the Court without further written notice to the Settlement Class. If you intend to attend the Settlement Hearing, you should confirm the date and time with Lead Counsel.

**83. Unless the Court orders otherwise, any Settlement 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, or Lead Counsel's motion for an award of attorneys' fees and reimbursement of Litigation Expenses. Settlement 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 ON SOMEONE ELSE'S BEHALF?**

84. If you purchased Cliffs common stock from March 14, 2012 through March 26, 2013, inclusive, for the beneficial interest of persons or organizations other than yourself, you must either: (a) within seven (7) calendar days of receipt of this Notice, request from the Claims Administrator sufficient copies of the Notice and Claim Form (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 (b) within seven (7) calendar days of receipt of this Notice, provide a list of the names and addresses of all such beneficial owners to Cliffs Securities Litigation, c/o A.B. Data, Ltd., P.O. Box 173003, Milwaukee, WI 53217. 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 also be obtained from the website maintained by the Claims Administrator,



[www.CliffsSecuritiesLitigation.com](http://www.CliffsSecuritiesLitigation.com), by calling the Claims Administrator toll-free at (866) 778-1167, or by emailing the Claims Administrator at [info@CliffsSecuritiesLitigation.com](mailto:info@CliffsSecuritiesLitigation.com).

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

85. This Notice contains only a summary of the terms of the proposed Settlement. For more detailed information about the matters involved in this Action, you are referred to the papers on file in the Action, including the Stipulation, which may be inspected during regular office hours at the Office of the Clerk, United States District Court for the Northern District of Ohio, Carl B. Stokes United States Court House, 801 West Superior Avenue, Cleveland, Ohio 44113-1837. Additionally, copies of the Stipulation and any related orders entered by the Court will be posted on the website maintained by the Claims Administrator, [www.CliffsSecuritiesLitigation.com](http://www.CliffsSecuritiesLitigation.com).

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

Cliffs Securities Litigation  
c/o A.B. Data, Ltd.  
P.O. Box 173003  
Milwaukee, WI 53217  
(866) 778-1167  
[info@CliffsSecuritiesLitigation.com](mailto:info@CliffsSecuritiesLitigation.com)  
[www.CliffsSecuritiesLitigation.com](http://www.CliffsSecuritiesLitigation.com)

and/or

James A. Harrod, Esq.  
BERNSTEIN LITOWITZ BERGER  
& GROSSMANN LLP  
1251 Avenue of the Americas, 44th Floor  
New York, NY 10020  
(800) 380-8496  
[blbg@blbglaw.com](mailto:blbg@blbglaw.com)

**DO NOT CALL OR WRITE THE COURT, THE OFFICE OF THE CLERK OF THE COURT, DEFENDANTS OR THEIR COUNSEL REGARDING THIS NOTICE.**

Dated: April 1, 2016

By Order of the Court  
United States District Court  
Northern District of Ohio

**TABLE A****Estimated Artificial Inflation from March 14, 2012  
through and including March 26, 2013**

<b>Transaction Date</b>	<b>Inflation Per Share</b>
March 14, 2012 – April 25, 2012	\$29.33
April 26, 2012 – July 25, 2012	\$25.01
July 26, 2012 – October 24, 2012	\$21.15
October 25, 2012 – November 18, 2012	\$16.25
November 19, 2012	\$14.66
November 20, 2012 – February 12, 2013	\$10.60
February 13, 2013 – March 26, 2013	\$3.33

TABLE B

**Cliffs Closing Price and Average Closing Price  
March 27, 2013 – June 24, 2013**

<b>Date</b>	<b>Closing Price</b>	<b>Average Closing Price Between March 27, 2013 and Date Shown</b>	<b>Date</b>	<b>Closing Price</b>	<b>Average Closing Price Between March 27, 2013 and Date Shown</b>
3/27/2013	\$18.46	\$18.46	5/10/2013	\$23.53	\$19.52
3/28/2013	\$19.01	\$18.74	5/13/2013	\$22.90	\$19.62
4/1/2013	\$18.95	\$18.81	5/14/2013	\$22.29	\$19.70
4/2/2013	\$18.18	\$18.65	5/15/2013	\$21.00	\$19.74
4/3/2013	\$18.73	\$18.67	5/16/2013	\$20.42	\$19.76
4/4/2013	\$18.75	\$18.68	5/17/2013	\$20.69	\$19.78
4/5/2013	\$18.45	\$18.65	5/20/2013	\$21.17	\$19.82
4/8/2013	\$18.79	\$18.67	5/21/2013	\$21.25	\$19.85
4/9/2013	\$20.45	\$18.86	5/22/2013	\$21.40	\$19.89
4/10/2013	\$20.35	\$19.01	5/23/2013	\$20.62	\$19.91
4/11/2013	\$19.92	\$19.09	5/24/2013	\$20.37	\$19.92
4/12/2013	\$19.20	\$19.10	5/28/2013	\$20.08	\$19.93
4/15/2013	\$17.61	\$18.99	5/29/2013	\$18.92	\$19.90
4/16/2013	\$17.50	\$18.88	5/30/2013	\$18.73	\$19.88
4/17/2013	\$17.50	\$18.79	5/31/2013	\$18.04	\$19.84
4/18/2013	\$17.53	\$18.71	6/3/2013	\$18.09	\$19.80
4/19/2013	\$17.63	\$18.65	6/4/2013	\$19.19	\$19.79
4/22/2013	\$17.65	\$18.59	6/5/2013	\$18.23	\$19.76
4/23/2013	\$17.32	\$18.53	6/6/2013	\$18.55	\$19.73
4/24/2013	\$18.22	\$18.51	6/7/2013	\$17.94	\$19.70
4/25/2013	\$20.95	\$18.63	6/10/2013	\$17.83	\$19.66
4/26/2013	\$20.17	\$18.70	6/11/2013	\$17.50	\$19.62
4/29/2013	\$20.87	\$18.79	6/12/2013	\$17.37	\$19.58
4/30/2013	\$21.34	\$18.90	6/13/2013	\$18.70	\$19.56
5/1/2013	\$20.33	\$18.95	6/14/2013	\$17.74	\$19.53
5/2/2013	\$19.17	\$18.96	6/17/2013	\$17.69	\$19.50
5/3/2013	\$19.91	\$19.00	6/18/2013	\$18.59	\$19.48
5/6/2013	\$21.01	\$19.07	6/19/2013	\$18.45	\$19.46
5/7/2013	\$21.33	\$19.15	6/20/2013	\$17.55	\$19.43
5/8/2013	\$23.15	\$19.28	6/21/2013	\$17.19	\$19.40
5/9/2013	\$22.66	\$19.39	6/24/2013	\$15.88	\$19.34

**MUST BE  
POSTMARKED NO  
LATER THAN  
AUGUST 8, 2016**



**FOR INTERNAL USE  
ONLY**

## **PROOF OF CLAIM AND RELEASE FORM**

**Cliffs Securities Litigation  
c/o A.B. Data, Ltd.  
P.O. Box 173003  
Milwaukee, WI 53217**

**Toll-Free Number: (866) 778-1167  
Email: [info@CliffsSecuritiesLitigation.com](mailto:info@CliffsSecuritiesLitigation.com)  
Settlement Website: [www.CliffsSecuritiesLitigation.com](http://www.CliffsSecuritiesLitigation.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 mail it by first-class mail to the above address, **postmarked no later than August 8, 2016**.

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 any money in connection with the Settlement.

**Do not mail or deliver your Claim Form to the Court, the parties to the Action, or their counsel. Submit your Claim Form only to the Claims Administrator at the address set forth above.**

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**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.

Claimant Names(s) (as the name(s) should appear on check, if eligible for payment; if the shares are jointly owned, the names of all beneficial owners must be provided):

Name of Person the Claims Administrator Should Contact Regarding this Claim Form (Must Be Provided):

Mailing Address – Line 1: Street Address/P.O. Box:

Mailing Address – Line 2 (If Applicable): Apartment/Suite/Floor Number:

City:

State/Province:

Zip Code/Postal Code (if outside U.S.):

Country:

Last 4 digits of Claimant Social Security/Taxpayer Identification Number:<sup>1</sup>

Daytime Telephone Number:

Evening Telephone Number:

Email address (E-mail 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.):

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<sup>1</sup> The last four digits of the taxpayer identification number (TIN), consisting of a valid Social Security Number (SSN) for individuals or Employer Identification Number (EIN) for business entities, trusts, estates, etc., and the telephone number of the beneficial owner(s) may be used in verifying this claim.

## **PART II – GENERAL INSTRUCTIONS**

1. It is important that you completely read and understand the Notice of (I) Pendency of Class Action and Certification of Settlement Class; (II) Proposed Settlement with Individual Defendants; (III) Settlement Hearing; and (IV) Motion for an Award of Attorneys' Fees and Reimbursement of 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 Settlement 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 share in the proceeds of the Settlement described in the Notice. IF YOU ARE NOT A SETTLEMENT CLASS MEMBER (see the definition of the Settlement Class on page 5 of the Notice, which sets forth who is included in and who is excluded from the Settlement Class), OR IF YOU, OR SOMEONE ACTING ON YOUR BEHALF, SUBMITTED A REQUEST FOR EXCLUSION FROM THE SETTLEMENT CLASS, DO NOT SUBMIT A CLAIM FORM. **YOU MAY NOT, DIRECTLY OR INDIRECTLY, PARTICIPATE IN THE SETTLEMENT IF YOU ARE NOT A SETTLEMENT CLASS MEMBER.** THUS, IF YOU ARE EXCLUDED FROM THE SETTLEMENT 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 share in the proceeds of 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) (including free transfers and deliveries) in and holdings of Cliffs common stock. On this schedule, please provide all of the requested information with respect to your holdings, purchases, acquisitions, and sales of Cliffs common stock, whether such transactions resulted in a profit or a loss. **Failure to report all transaction and holding information during the requested time period may result in the rejection of your claim.**

5. Please note: Only Cliffs common stock purchased during the Settlement Class Period (*i.e.*, from March 14, 2012 through March 26, 2013, inclusive) is eligible under the Settlement. However, under the "90-day look-back period" (described in the Plan of Allocation set forth in the Notice), your sales of Cliffs common stock during the period from March 27, 2013 through June 24, 2013, inclusive, 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 information during the 90-day look-back period must also be provided.

6. You are required to submit genuine and sufficient documentation for all of your transactions in and holdings of Cliffs common stock 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 Settling Parties, Cliffs, and the Claims Administrator do not independently have information about your investments in Cliffs common stock. IF SUCH DOCUMENTS ARE NOT IN YOUR POSSESSION, PLEASE OBTAIN COPIES 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, please do not highlight any portion of the Claim Form or any supporting documents.**

7. Separate Claim Forms should be submitted for each separate legal entity (*e.g.*, a claim from joint owners should not include separate transactions of just one of the joint owners, and an individual should not combine his or her IRA transactions with transactions made solely in the individual's name). Conversely, a single Claim Form should be submitted on behalf of one legal entity including all transactions made by that entity on one Claim Form, no matter how many separate accounts that entity has (*e.g.*, a corporation with multiple brokerage accounts should include all transactions made in all accounts on one Claim Form).

8. All joint beneficial owners must each sign this Claim Form and their names must appear as "Claimants" in Part I of this Claim Form. If you purchased Cliffs common stock during the Settlement Class Period and held the shares in your name, you are the beneficial owner as well as the record owner and you must sign this Claim Form to participate in the Settlement. If, however, you purchased Cliffs common stock during the relevant time period and the securities were registered in the name of a third party, such as a nominee or brokerage firm, you are the beneficial owner of these shares, but the third party is the record owner. The beneficial owner, not the record owner, must sign this Claim Form to be eligible to participate in the Settlement.

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, 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 Cliffs 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 Cliffs 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, A.B. Data, Ltd., at the above address, by email at [info@CliffsSecuritiesLitigation.com](mailto:info@CliffsSecuritiesLitigation.com), or by toll-free phone at (866) 778-1167, or you can visit the Settlement website, [www.CliffsSecuritiesLitigation.com](http://www.CliffsSecuritiesLitigation.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.CliffsSecuritiesLitigation.com](http://www.CliffsSecuritiesLitigation.com) or you may email the Claims Administrator's electronic filing department at [info@CliffsSecuritiesLitigation.com](mailto:info@CliffsSecuritiesLitigation.com). Any file not in accordance with the required electronic filing format will be subject to rejection. No electronic files will be considered to have been properly submitted unless the Claims Administrator issues an email to that effect after processing your file with your claim numbers and respective account information. **Do not assume that your file has been received or processed 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 [info@CliffsSecuritiesLitigation.com](mailto:info@CliffsSecuritiesLitigation.com) to inquire about your file and confirm it was received and acceptable.**

**IMPORTANT: PLEASE NOTE**

**YOUR CLAIM IS NOT DEEMED FILED UNTIL YOU RECEIVE AN ACKNOWLEDGEMENT POSTCARD. THE CLAIMS ADMINISTRATOR WILL ACKNOWLEDGE RECEIPT OF YOUR CLAIM FORM BY MAIL, WITHIN 60 DAYS. IF YOU DO NOT RECEIVE AN ACKNOWLEDGEMENT POSTCARD WITHIN 60 DAYS, PLEASE CALL THE CLAIMS ADMINISTRATOR TOLL FREE AT (866) 778-1167.**

**PART III – SCHEDULE OF TRANSACTIONS IN CLIFFS COMMON STOCK**

Please be sure to include proper documentation with your Claim Form as described in detail in Part II – General Instructions, Paragraph 6, above. Do not include information regarding securities other than Cliffs common stock.

<b>1. HOLDINGS AS OF MARCH 14, 2012</b> – State the total number of shares of Cliffs common stock held as of the opening of trading on March 14, 2012. (Must be documented.) If none, write “zero” or “0.”				Confirm Proof of Position Enclosed <input style="width: 30px; height: 15px;" type="checkbox"/>
<b>2. PURCHASES/ACQUISITIONS FROM MARCH 14, 2012 THROUGH MARCH 26, 2013</b> – Separately list each and every purchase/acquisition (including free receipts) of Cliffs common stock from after the opening of trading on March 14, 2012 through and including the close of trading on March 26, 2013. (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 taxes, commissions, and fees)	Confirm Proof of Purchase Enclosed <input style="width: 30px; height: 15px;" type="checkbox"/>
/ /		\$	\$	<input style="width: 30px; height: 15px;" type="checkbox"/>
/ /		\$	\$	<input style="width: 30px; height: 15px;" type="checkbox"/>
/ /		\$	\$	<input style="width: 30px; height: 15px;" type="checkbox"/>
/ /		\$	\$	<input style="width: 30px; height: 15px;" type="checkbox"/>
<b>3. PURCHASES/ACQUISITIONS FROM MARCH 27, 2013 THROUGH JUNE 24, 2013</b> – State the total number of shares of Cliffs common stock purchased/acquired (including free receipts) from after the opening of trading on March 27, 2013 through and including the close of trading on June 24, 2013. If none, write “zero” or “0.” <sup>2</sup>				
<input style="width: 150px; height: 20px;" type="text"/>				
<b>4. SALES FROM MARCH 14, 2012 THROUGH JUNE 24, 2013</b> – Separately list each and every sale/disposition (including free deliveries) of Cliffs common stock from after the opening of trading on March 14, 2012 through and including the close of trading on June 24, 2013. (Must be documented.)				<b>IF NONE, CHECK HERE</b> <input style="width: 30px; height: 15px;" type="checkbox"/>
Date of Sale (List Chronologically) (Month/Day/Year)	Number of Shares Sold	Sale Price Per Share	Total Sale Price (excluding taxes, commissions, and fees)	Confirm Proof of Sale Enclosed <input style="width: 30px; height: 15px;" type="checkbox"/>
/ /		\$	\$	<input style="width: 30px; height: 15px;" type="checkbox"/>
/ /		\$	\$	<input style="width: 30px; height: 15px;" type="checkbox"/>
/ /		\$	\$	<input style="width: 30px; height: 15px;" type="checkbox"/>
/ /		\$	\$	<input style="width: 30px; height: 15px;" type="checkbox"/>
<b>5. HOLDINGS AS OF JUNE 24, 2013</b> – State the total number of shares of Cliffs common stock held as of the close of trading on June 24, 2013. (Must be documented.) If none, write “zero” or “0.”				Confirm Proof of Position Enclosed <input style="width: 30px; height: 15px;" type="checkbox"/>
<input style="width: 150px; height: 20px;" type="text"/>				
<b>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</b> <input style="width: 30px; height: 15px;" type="checkbox"/>				

<sup>2</sup> **Please note:** Information requested with respect to your purchases/acquisitions of Cliffs common stock from after the opening of trading on March 27, 2013 through and including the close of trading on June 24, 2013 is needed in order to balance your claim; purchases during this period, however, are not eligible under the Settlement and will not be used for purposes of calculating your Recognized Claim pursuant to the Plan of Allocation.



**PART IV - RELEASE OF CLAIMS AND SIGNATURE**

**YOU MUST ALSO READ THE RELEASE AND CERTIFICATION BELOW AND SIGN ON  
PAGE 7 OF THIS CLAIM FORM.**

I (we) hereby acknowledge that, pursuant to the terms set forth in the Stipulation, without further action by anyone, upon the Effective Date of the Settlement, I (we), on behalf of myself (ourselves) and my (our) 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 each and every Released Plaintiff's Claim (including, without limitation, any Unknown Claims) against the 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) Settlement Class Member(s), as defined in the Notice, and is (are) not excluded by definition from the Settlement Class as set forth in the Notice;
3. that the claimant has **not** submitted a request for exclusion from the Settlement Class;
4. that I (we) own(ed) the Cliffs 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, or that, in signing and submitting this Claim Form, I (we) have the authority to act on behalf of the owner(s) thereof;
5. that the claimant(s) has (have) not submitted any other claim covering the same purchases of Cliffs common stock and knows (know) of no other person having done so on the claimant's (claimants') behalf;
6. 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;
7. 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;
8. that the claimant(s) waive(s) the right to trial by jury, to the extent it exists, and agree(s) to the Court's summary disposition of the determination of the validity or amount of the claim made by this Claim Form;
9. 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
10. 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 (a) the claimant(s) is (are) exempt from backup withholding or (b) the claimant(s) has (have) not been notified by the IRS that he/she/it is subject to backup withholding as a result of a failure to report all interest or dividends or (c) the IRS has notified the claimant(s) that he/she/it is no longer subject to backup withholding. **If the IRS has notified the claimant(s) that he/she/it is 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	Print your name here	Date
-----------------------	----------------------	------

---

Signature of joint claimant, if any	Print your name here	Date
-------------------------------------	----------------------	------

***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	Print your name here	Date
---	----------------------	------

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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 paragraph 9 on page 4 of this Claim Form.)

**REMINDER CHECKLIST:**

1. Please sign the above release and certification. If this Claim Form is being made on behalf of joint claimants, then both must sign.
2. Remember to attach only **copies** of acceptable supporting documentation as these documents will not be returned to you.
3. Please 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. The Claims Administrator will acknowledge receipt of your Claim Form by mail, within 60 days. Your claim is not deemed filed until you receive an acknowledgement postcard. **If you do not receive an acknowledgement postcard within 60 days, please call the Claims Administrator toll free at (866) 778-1167.**
6. If your address changes in the future, or if this Claim Form was sent to an old or incorrect address, please send the Claims Administrator written notification of your new address. If you change your name, please inform the Claims Administrator.
7. If you have any questions or concerns regarding your claim, please contact the Claims Administrator at the address below, by email at [info@CliffsSecuritiesLitigation.com](mailto:info@CliffsSecuritiesLitigation.com), or by toll-free phone at (866) 778-1167, or you may visit [www.CliffsSecuritiesLitigation.com](http://www.CliffsSecuritiesLitigation.com). Please DO NOT call Cliffs or any of the other Defendants or their counsel with questions regarding your claim.

**THIS CLAIM FORM MUST BE MAILED TO THE CLAIMS ADMINISTRATOR BY FIRST-CLASS MAIL, POSTMARKED NO LATER THAN AUGUST 8, 2016, ADDRESSED AS FOLLOWS:**

Cliffs Securities Litigation  
c/o A.B. Data, Ltd.  
P.O. Box 173003  
Milwaukee, WI 53217

A Claim Form received by the Claims Administrator shall be deemed to have been submitted when posted, if a postmark date on or before August 8, 2016 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 of the Claim Forms. Please be patient and notify the Claims Administrator of any change of address.

# EXHIBIT B



ADVERTISEMENT

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CLASS ACTIONS

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

THE DEPARTMENT OF THE TREASURY OF  
THE STATE OF NEW JERSEY AND ITS  
DIVISION OF INVESTMENT, on behalf of itself  
and all others similarly situated,

Plaintiff,

v.

CLIFFS NATURAL RESOURCES INC.,  
JOSEPH CARRABBA, LAURIE BRLAS,  
TERRY PARADIE, and DAVID B. BLAKE,  
Defendants.

Case No. 1:14-cv-1031

Judge Dan Aaron Polster

Magistrate Judge Thomas M. Parker

SUMMARY NOTICE OF (I) PENDENCY OF CLASS ACTION AND CERTIFICATION  
OF SETTLEMENT CLASS; (II) PROPOSED SETTLEMENT WITH INDIVIDUAL  
DEFENDANTS; (III) SETTLEMENT HEARING; AND (IV) MOTION FOR AN AWARD  
OF ATTORNEYS' FEES AND REIMBURSEMENT OF LITIGATION EXPENSES

TO: All persons and entities who or which purchased Cliffs Natural Resources Inc. ("Cliffs") common  
stock from March 14, 2012 through March 26, 2013, inclusive (the "Settlement Class Period") and  
were damaged thereby (the "Settlement Class"):

PLEASE READ THIS NOTICE CAREFULLY. YOUR RIGHTS WILL 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 Ohio, that the above-captioned litigation (the "Action") has  
been certified as a class action on behalf of the Settlement Class, except for certain persons and entities who are  
excluded from the Settlement Class by definition as set forth in the full printed Notice of (I) Pendency of Class Action  
and Certification of Settlement Class; (II) Proposed Settlement with Individual Defendants; (III) Settlement Hearing;  
and (IV) Motion for an Award of Attorneys' Fees and Reimbursement of Litigation Expenses (the "Notice").

YOU ARE ALSO NOTIFIED that the Lead Plaintiff in the Action, The Department of the Treasury of the State  
of New Jersey and its Division of Investment, on behalf of itself and the other members of the Settlement Class, has  
reached a proposed settlement of the Action with defendants Terrance Paradie, Joseph Carrabba, Laurie Brlas, and  
David Blake (the "Settling Defendants") for \$84,000,000 in cash (the "Settlement"). If the Settlement is approved by  
the Court, it will resolve all claims in the Action.

A hearing will be held on June 30, 2016 at 12:00 p.m., before the Honorable Dan Aaron Polster at the United  
States District Court for the Northern District of Ohio, Carl B. Stokes United States Court House, Courtroom 18B,  
801 West Superior Avenue, Cleveland, Ohio 44113-1837, to determine (i) whether the proposed Settlement should  
be approved as fair, reasonable, and adequate; (ii) whether the Action should be dismissed with prejudice against the  
Settling Defendants, and the Releases specified and described in the Stipulation and Agreement of Settlement with  
Individual Defendants dated March 10, 2016 (and in the Notice) should be granted; (iii) whether the proposed Plan  
of Allocation should be approved as fair and reasonable; and (iv) whether Lead Counsel's application for an award  
of attorneys' fees and reimbursement of Litigation Expenses should be approved.

If you are a member of the Settlement 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  
Claim Form, you may obtain copies of these documents by contacting the Claims Administrator at Cliffs Securities  
Litigation, c/o A.B. Data, Ltd., P.O. Box 173003, Milwaukee, WI 53217, by toll-free phone at (866) 778-1167, or by  
email at [info@CliffsSecuritiesLitigation.com](mailto:info@CliffsSecuritiesLitigation.com). Copies of the Notice and Claim Form can also be downloaded from  
the website maintained by the Claims Administrator, [www.CliffsSecuritiesLitigation.com](http://www.CliffsSecuritiesLitigation.com).

If you are a member of the Settlement Class, in order to be eligible to receive a payment under the proposed Settlement,  
you must submit a Claim Form *postmarked* no later than August 8, 2016. If you are a member of the Settlement Class 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 judgments or orders entered by the Court in the Action.

If you are a member of the Settlement Class and wish to exclude yourself from the Settlement Class, you must  
submit a request for exclusion such that it is *received* no later than June 9, 2016, in accordance with the instructions set  
forth in the Notice. If you properly exclude yourself from the Settlement 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  
attorneys' fees and reimbursement of Litigation Expenses, must be filed with the Court and delivered to Lead  
Counsel and counsel for the Settling Defendants such that they are *received* no later than June 9, 2016, in accordance  
with the instructions set forth in the Notice.

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

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

Cliffs Securities Litigation  
c/o A.B. Data, Ltd.  
P.O. Box 173003  
Milwaukee, WI 53217  
(866) 778-1167  
[info@CliffsSecuritiesLitigation.com](mailto:info@CliffsSecuritiesLitigation.com)  
[www.CliffsSecuritiesLitigation.com](http://www.CliffsSecuritiesLitigation.com)

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

BERNSTEIN LITOWITZ BERGER &  
GROSSMANN LLP  
James A. Harrod, Esq.  
1251 Avenue of the Americas, 44th Floor  
New York, NY 10020  
(800) 380-8496

LOWENSTEIN SANDLER LLP  
Michael T.G. Long, Esq.  
65 Livingston Avenue  
Roseland, NJ 07068  
(973) 597-2500

Dated: April 14, 2016

By Order of the Court

BANKRUPTCIES

In re: WINSWAY ENTERPRISES HOLDINGS LIMITED, f/k/a  
WINSWAY COKING COAL HOLDINGS LIMITED, Debtor In a foreign proceeding  
United States Bankruptcy Court for the Southern District of New York,  
Case No. 16-10833-mg

NOTICE OF FILING AND HEARING ON PETITION UNDER CHAPTER 15  
OF THE UNITED STATES BANKRUPTCY CODE AND MOTION FOR RELATED RELIEF

PLEASE TAKE NOTICE that on April 6, 2016, Cao Xinyi (the "Petitioner"), in her capacity as the foreign  
representative in respect of a voluntary restructuring proceeding (the "Hong Kong Proceeding")  
concerning the Debtor currently pending before the High Court of the Hong Kong Special Adminis-  
trative Region, filed the Verified Petition for Recognition of Foreign Nonmain Proceeding Supplementing  
the Vory Petition [ECF No. 1] and Motion for Related Relief (together with the Form of Voluntary  
Petition, the "Petition") pursuant to chapter 15 of title 11 of the United States Code, 11 U.S.C. §§  
1501-1532 (the "Bankruptcy Code"), with the United States Bankruptcy Court for the Southern District  
of New York (the "Bankruptcy Court").

PLEASE TAKE FURTHER NOTICE that, among other things, the Petition seeks the entry of an order  
(i) recognizing the Hong Kong Proceeding as a foreign nonmain proceeding pursuant to sections  
1515 and 1517 of the Bankruptcy Code and (ii) granting related relief pursuant to sections 105(a),  
1507(a), 1509(b)(2)-(3), 1521(a) and 1525(a) of the Bankruptcy Code giving full force and effect to  
a scheme of arrangement and related agreements concerning the Debtor.

PLEASE TAKE FURTHER NOTICE that the Bankruptcy Court has scheduled a hearing (the "Recog-  
nition Hearing") to consider the relief requested in the Petition for 10 a.m. (New York time) on May  
9, 2016 in Room 523 of the United States Bankruptcy Court for the Southern District of New York,  
One Bowling Green, New York, New York 10004.

Copies of the Petition and all accompanying documentation are available to parties in interest on  
the Bankruptcy Court's Electronic Case Filing System, which can be accessed from the Bankruptcy  
Court's website at <http://www.nysb.uscourts.gov> (a PACER login and password are required to retrieve a  
document) or upon written request to the Petitioner's counsel (including by facsimile or e-mail) ad-  
dressed to:

Reed Smith LLP  
Michael J. Venditto or  
Sarah K. Kam  
599 Lexington Avenue  
New York, NY 10022  
Telephone: (212) 521-5400 Facsimile: (212) 521-5450

[mvenditto@reedsmith.com](mailto:mvenditto@reedsmith.com)  
[skam@reedsmith.com](mailto:skam@reedsmith.com)

PLEASE TAKE FURTHER NOTICE that any party in interest wishing to submit a response or objection to  
the Petition or the relief requested therein must do so in writing, setting forth the basis therefor,  
on or before May 2, 2016 at 4:00 p.m., New York time (the "Objection Deadline"). To be timely, prior  
to the Objection Deadline any responses or objections must be: (a) filed electronically with the Court  
on the Court's electronic case filing system, (b) with a copy thereof delivered to the Chambers of the  
Honorable Martin Glenn, United States Bankruptcy Judge, One Bowling Green, New York, NY 10004; and,  
(c) served upon (i) Reed Smith LLP, 599 Lexington Avenue, New York, New York 10022 (Attn:  
Michael J. Venditto, Esq., and Sarah K. Kam, Esq.), counsel to the Petitioner; (ii) Akin Gump Strauss  
Hauer & Feld, Units 1801-08 & 10, 18th floor, Gloucester Tower, The Landmark, 15 Queen's Road  
Central, Hong Kong (Attn: Mark Fucci and Naomi Moore) and One Bryant Park, Bank of Amer-  
ica Tower, New York, NY 10036-6745 (Attn: David Botter), counsel to the Ad Hoc Committee; and (iii)  
the Office of the United States Trustee, 201 Varick Street, Suite 1005, New York, NY 10014.

PLEASE TAKE FURTHER NOTICE that if no response or objection is timely filed and served as pro-  
vided above, the Court may grant the relief requested in the Petition without further notice.

PLEASE TAKE FURTHER NOTICE the Recognition Hearing may be adjourned from time to time without  
further notice other than an announcement in open court, or a notice of adjournment filed  
with the Court, of the adjourned date or dates at the hearing or any other further adjourned hearing.

PLEASE TAKE FURTHER NOTICE that additional information and updates in respect of the Hong  
Kong Proceeding are available to Noteholders at [www.bondcom.com/winswayscheme](http://www.bondcom.com/winswayscheme), which Note-  
holders should regularly monitor for such information, updates and notices of important events.  
Dated: April 14, 2016

REED SMITH LLP  
599 Lexington Avenue  
New York, NY 10022 Telephone: (212) 521-5400

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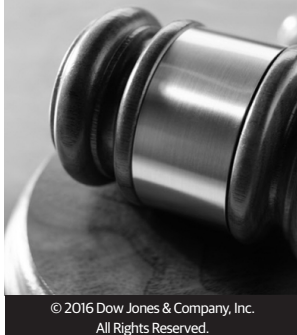
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THE WALL STREET JOURNAL.

BUSINESS NEWS

Air-Travel Survey Reveals  
American Fliers' Habits

Airline trips taken  
for business purposes  
in 2015 accounted  
for 31% of the total

By SUSAN CAREY

More than 80% of the adult  
U.S. population have flown in  
their lifetimes, compared with  
49% in 1971, said a survey  
done for the leading U.S. air-  
line trade group. Last year,  
45% took to the skies, up from  
21% in 1971.

Air travelers last year were  
equally split by gender, nearly  
divided into thirds by age  
groupings and more ethnically  
diverse, according to the sur-  
vey of about 3,000 members  
of the general public 18 and  
older conducted by Ipsos Pub-  
lic Affairs. The average num-  
ber of airline trips taken last  
year was 4.8, with 31% taking  
just one trip and 15% taking  
nine or more, the study said.

Airline trips taken for busi-  
ness purposes last year ac-  
counted for 31% of the total,  
down from 47% in 1997. Lei-  
sure trips accounted for 48%  
and personal trips not for lei-  
sure accounted for 21% of the  
total, according to the data  
prepared for Airlines for  
America.

Of those who flew last year,  
three-quarters said they are  
somewhat or very likely to  
travel by air this year.

Some 63% of 2015 airline  
trips were domestic, followed  
by 19% to Latin America and  
the Caribbean and 8% to Eu-  
rope. Two-thirds of fliers last  
year were members of an air-  
line frequent-flier program but  
most didn't have elite status,  
the study found. The preferred  
check-in method was on a per-  
sonal computer or mobile de-  
vice, with just 11% of travelers  
checking in at airport ticket  
counters.



Last year, 45% of Americans took to the skies, up from 21% in '71.

Of those who flew last year,  
23% chose to purchase a seat  
upgrade using money, points  
or miles, the study said. Those  
traveling for personal reasons  
purchased basic economy tick-  
ets 70% of the time in 2015,  
56% booked their tickets on an  
airline website and they  
checked an average of 1.1  
pieces of luggage, the study  
said. More than half the  
checked items didn't require  
payment. Two thirds of the  
group surveyed prefer the a la  
carte pricing model in which  
they pay only for the airline  
services and amenities they  
need or want.

Younger travelers and peo-  
ple with less than \$50,000 in  
annual household income are  
more likely to fly today than  
in past decades, according to  
Airlines for America. Millen-  
nial travelers between 18 and  
34 on average flew six times  
in 2015 but are value-con-  
scious when spending money  
on travel. Also price-conscious  
are retirees (83%), women  
(85%) and people flying for  
personal reasons (88%).

The study found that travel-  
ers value price and airline  
schedule as most important in

deciding whether to travel by  
air. Time spent in travel,  
safety perceptions, operational  
reliability and convenience of  
the airport also counted  
strongly. But the quality of in-  
flight amenities and amenities  
at the airport rated much  
lower.

Before flight, the most im-  
portant factors for travelers  
were the speed of getting  
through security and the effi-  
ciency of the boarding pro-  
cess. During the flight, leg-  
room and seat comfort  
mattered the most, followed  
by space for carry-on items,  
the study found.

Finally, for an industry de-  
fined by anecdotes and trav-  
eler snark, the study found  
that 80% of 2015 fliers were  
somewhat or very satisfied  
with their overall flying expe-  
riences last year, with even  
higher levels of satisfaction  
reported by those who receive  
expedited security screening  
through PreCheck and Global  
Entry, two programs run by  
the government. About 14%  
of those surveyed were neutral  
about their 2015 travel experi-  
ences and 6% were somewhat  
or very dissatisfied.



Workers examined basil seedlings at FarmedHere's Bedford Park, Ill., facility last November, when the startup was going through a strategic transition. The company has moved away from aquaponics.

FARM

Continued from page B1

ticated mix of crop science,  
fertilizer know-how as well as  
expensive lighting and sensor  
systems to monitor tempera-  
ture, moisture and other con-  
ditions.

"This is very much a tech-  
nology play," said David  
Rosenberg, chief executive of  
Newark, N.J.-based Aero-  
Farms LLC, which currently  
operates one indoor commer-  
cial farm as well as a re-  
search and development farm  
and a farm in a local school.  
AeroFarms said it has  
raised over \$70 million in  
corporate and project financ-  
ing.

The company isn't profit-  
able but says it expects each  
of its farms to become cash-  
flow positive in its first year.

FarmedHere, which re-  
started its business in Febru-  
ary, abandoned an aquaponic  
model that relied on a tilapia  
farm to generate fertilizer to  
grow lettuce, basil and other  
greens. Now the company,  
which has raised about \$13  
million, uses plant-derived  
organic fertilizers.

Aquaponics "sounds pretty  
elegant," said Nate Laurell,  
who recently took over as  
CEO. But "it's a much sim-  
pler process to use organic  
nutrients than to manage a  
school of fish and all that bi-  
ology and chemistry." He  
said the change will also re-  
duce the total cost of raising

crops by 30%.

Most startups grow lettuce  
and herbs that have short  
growing cycles and thrive in  
controlled environments.  
Brooklyn-based Edenworks  
says it can produce many va-  
rieties of baby lettuce in its  
indoor farm in just 18 to 21  
days compared with 28 to 35  
days for field-grown prod-  
ucts.

"We are getting better unit  
economics than a farmer  
farming 1,000 acres in Salin-  
as, Calif.," said Edenworks  
CEO Jason Green, noting that  
a shorter growing cycle and a

High-tech indoor  
farming can involve  
millions of dollars  
in investments.

12-month operation allows  
the startup to turn over its  
crop more often than soil-  
based farms. By locating  
close to purchasers, the com-  
pany cuts transportation and  
warehouse costs, he added.

Still, the economics are  
challenging. In a second fac-  
ility, not yet under construc-  
tion, Edenworks plans to cut  
labor costs by more than 50%  
by automating seeding, har-  
vesting, washing, drying,  
packaging and labeling. "The  
numbers would not work out  
if we didn't do that," Mr.  
Green said.

Flavor is also tricky. Indus-  
try participants disagree  
about what combination of

lighting, fertilizer and grow-  
ing methods produces the  
tastiest greens at the lowest  
cost. Some startups operate  
greenhouses, while others  
stack trays of plants in so-  
called vertical farms that rely  
on lighting systems instead of  
sunlight.

"It is more difficult for hy-  
droponic growers to achieve  
the same taste as soil-grown  
products or herbs," said Elly  
Truesdell, a buyer for Whole  
Foods, which buys produce  
from several high-tech farm-  
ers. In hydroponic farming,  
plants are grown in nutrient-  
rich water.

Ms. Truesdell said custom-  
ers are willing to pay a pre-  
mium for locally grown pro-  
duce.

In New York, Whole Foods  
typically sells a 5-ounce pack-  
age of Gotham Greens lettuce  
for \$3.99, about the same  
price as a slightly larger  
package of store-brand or-  
ganic greens grown in Cali-  
fornia and \$1 more than a  
head of soil-grown organic  
romaine lettuce.

Gotham Greens CEO Viraj  
Puri said the company had to  
experiment with dozens of  
varieties of kale before set-  
tling on one that would thrive  
in its greenhouses without  
turning bitter and struggled  
to find a variety of green leaf  
lettuce that wouldn't "bolt,"  
or shoot up and take on a  
sharp taste, just before har-  
vesting.

"Plants are not widgets,"  
said Mr. Puri. "There are a lot  
of dependent variables."



# EXHIBIT C

**Bernstein Litowitz Berger &  
Grossmann LLP and Lowenstein  
Sandler LLP Announce Proposed  
Settlement of Department of the  
Treasury of the State of New Jersey  
and its Division of Investment v.  
Cliffs Natural Resources Inc., et al.,  
Case No. 1:14-cv-1031 (N.D. Ohio)**

Apr 14, 2016, 09:00 ET from Bernstein Litowitz Berger & Grossmann LLP and Lowenstein  
Sandler LLP ([http://www.prnewswire.com](http://www.prnewswire.com/news/bernstein+litowitz+berger+%27and%27+grossmann+llp+and+lowenstein+sandler+llp)  
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NEW YORK, April 14, 2016 /PRNewswire/ --

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

THE DEPARTMENT OF THE TREASURY OF  
THE STATE OF NEW JERSEY AND ITS  
DIVISION OF INVESTMENT, on behalf of itself  
and all others similarly situated,

Plaintiff,

v

CLIFFS NATURAL RESOURCES INC.,  
JOSEPH CARRABBA, LAURIE BRLAS,  
TERRY PARADIE, and DAVID B. BLAKE,

Defendants.

Case No. 1:14-cv-1031

Judge Dan Aaron Polster

Magistrate Judge Thomas M. Parker

**SUMMARY NOTICE OF (I) PENDENCY OF CLASS ACTION AND  
CERTIFICATION OF SETTLEMENT CLASS; (ii) PROPOSED SETTLEMENT  
with individual defendants; (III) SETTLEMENT HEARING; AND (IV) MOTION  
FOR AN AWARD  
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A hearing will be held on June 30, 2016 at 12:00 p.m., before the Honorable Dan Aaron Polster at the United States District Court for the Northern District of Ohio, Carl B. Stokes United States Court House, Courtroom 18B, 801 West Superior Avenue, Cleveland, Ohio 44113-1837, to determine (i) whether the proposed Settlement should be approved as fair, reasonable, and adequate; (ii) whether the Action should be dismissed with prejudice against the Settling Defendants, and the Releases specified and described in the Stipulation and Agreement of Settlement with Individual Defendants dated March 10, 2016 (and in the Notice) should be granted; (iii) whether the proposed Plan of Allocation should be approved as fair and reasonable; and (iv) whether Lead Counsel's application for an award of attorneys' fees and reimbursement of Litigation Expenses should be approved.

**If you are a member of the Settlement 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 Claim Form, you may obtain copies of these documents by contacting the Claims Administrator at Cliffs Securities Litigation, c/o A.B. Data, Ltd., P.O. Box 173003, Milwaukee, WI 53217, by toll-free phone at (866) 778-1167, or by email at [info@CliffsSecuritiesLitigation.com](mailto:info@CliffsSecuritiesLitigation.com). Copies of the Notice and Claim Form can also be downloaded from the website maintained by the Claims Administrator, [www.CliffsSecuritiesLitigation.com](http://www.CliffsSecuritiesLitigation.com).

If you are a member of the Settlement Class, in order to be eligible to receive a payment under the proposed Settlement, you must submit a Claim Form *postmarked* no later than August 8, 2016. If you are a member of the Settlement Class 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

If you are a member of the Settlement Class and wish to exclude yourself from the Settlement Class, you must submit a request for exclusion such that it is *received* no later than June 9, 2016, in accordance with the instructions set forth in the Notice. If you properly exclude yourself from the Settlement 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 attorneys' fees and reimbursement of Litigation Expenses, must be filed with the Court and delivered to Lead Counsel and counsel for the Settling Defendants such that they are *received* no later than June 9, 2016, in accordance with the instructions set forth in the Notice.

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

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

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c/o A.B. Data, Ltd.  
P.O. Box 173003  
Milwaukee, WI 53217  
(866) 778-1167  
[info@CliffsSecuritiesLitigation.com](mailto:info@CliffsSecuritiesLitigation.com)  
[www.CliffsSecuritiesLitigation.com](http://www.CliffsSecuritiesLitigation.com)

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

BERNSTEIN LITOWITZ BERGER & GROSSMANN LLP	LOWENSTEIN SANDLER LLP
James A. Harrod, Esq.	Michael T.G. Long, Esq.
1251 Avenue of the Americas, 44th Floor	or 65 Livingston Avenue
New York, NY 10020	Roseland, NJ 07068
(800) 380-8496	(973) 597-2500

Dated: April 14, 2016

By Order of the Court

Contact — James A. Harrod, Esq.  
Bernstein Litowitz Berger & Grossmann LLP  
(800) 380-8496

Michael T.G. Long, Esq.



SOURCE Bernstein Litowitz Berger & Grossmann LLP and Lowenstein Sandler LLP

Related Links

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## **EXHIBIT 4**

**EXHIBIT 4**

*Department of the Treasury of the State of New Jersey and  
its Division of Investment v. Cliffs Natural Resources Inc., et al.*  
Civil Action No. 1:14-cv-1031-DAP

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

<b>TAB</b>	<b>FIRM</b>	<b>HOURS</b>	<b>LODESTAR</b>	<b>EXPENSES</b>
A	Bernstein Litowitz Berger & Grossmann LLP	6,445.25	\$3,285,761.25	\$108,645.30
B	Lowenstein Sandler LLP	4,463.70	2,532,709.50	104,583.53
C	Climaco Wilcox Peca Tarantino & Garofoli Co., LPA	304.25	188,262.50	1,396.32
	<b>TOTAL:</b>	<b>11,213.20</b>	<b>\$6,006,733.25</b>	<b>\$214,625.15</b>

## **EXHIBIT 4A**

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

THE DEPARTMENT OF THE TREASURY OF  
THE STATE OF NEW JERSEY AND ITS  
DIVISION OF INVESTMENT, on behalf of itself  
and all others similarly situated,

Plaintiff,

v.

CLIFFS NATURAL RESOURCES INC.,  
JOSEPH CARRABBA, LAURIE BRLAS,  
TERRY PARADIE, and DAVID B. BLAKE,

Defendants.

Case No. 1:14-cv-1031

Judge Dan Aaron Polster

Magistrate Judge Thomas M. Parker

**DECLARATION OF JAMES A. HARROD IN SUPPORT OF  
LEAD COUNSEL'S MOTION FOR AN AWARD OF ATTORNEYS' FEES AND  
REIMBURSEMENT OF LITIGATION EXPENSES FILED ON BEHALF OF  
BERNSTEIN LITOWITZ BERGER & GROSSMANN LLP**

I, JAMES A. HARROD, declare as follows:

1. I am a partner of the law firm of Bernstein Litowitz Berger & Grossmann LLP. My firm, along with Lowenstein Sandler LLP, is the Court-appointed Lead Counsel 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 reimbursement of litigation expenses incurred in connection with the Action. I have personal knowledge of the facts set forth herein and, if called upon, could and would testify thereto.

2. My firm, as Lead Counsel, was involved in all aspects of the litigation and its settlement as set forth in Joint Declaration of James A. Harrod and Michael B. Himmel in Support of: (A) Lead Plaintiff's Motion for Final Approval of Class Action Settlement and Plan

of Allocation, and (B) Lead Counsel's Motion for an Award of Attorneys' Fees and Reimbursement of Litigation Expenses.

3. The schedule attached hereto as Exhibit 1 is a detailed summary indicating the amount of time spent by attorneys, non-attorney professionals and paraprofessionals of my firm who, from inception of this matter through and including May 6, 2016, billed ten or more hours to this Action, and the lodestar calculation for those individuals based on my firm's historic billing rates.<sup>1</sup> For personnel who are no longer employed by my firm, the lodestar calculation is based upon the billing rates for such personnel in his or her final year of employment by my firm. The schedule was prepared from contemporaneous daily time records regularly prepared and maintained by my firm. Time expended on this application for fees and reimbursement of expenses has not been included in this request.

4. The hourly rates for the attorneys, non-attorney professionals and paraprofessionals of my firm included in Exhibit 1 are the same as the regular rates charged for their services in non-contingent matters and/or which have been accepted in other complex matters, including in connection with other class action settlements.

5. The total number of hours reflected in Exhibit 1 from inception of this matter through and including May 6, 2016 is 6,445.25. The total lodestar reflected in Exhibit 1 for that period is \$3,285,761.25, consisting of \$2,439,966.25 for attorneys' time and \$845,795.00 for non-attorney time.

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<sup>1</sup> The hourly rates set forth on Exhibit 1 are the "weighted average" of the standard hourly rates in effect for the timekeeper at time the hours were spent. My firm's rates for all timekeepers were constant from the inception of this matter through December 31, 2015, and were increased for some, but not all, of the timekeepers as of January 1, 2016.



6. My firm's lodestar figures are based upon the firm's billing rates, which rates do not include charges for expense items. Expense items are billed separately and such charges are not duplicated in my firm's billing rates.

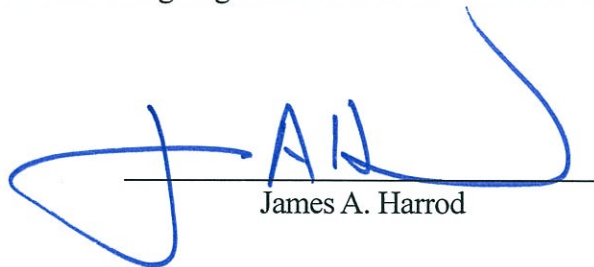
7. As detailed in Exhibit 2, my firm is seeking reimbursement for a total of \$108,645.30 in expenses incurred in connection with the prosecution of this Action.

8. To facilitate the sharing of expenses, Lead Counsel established and jointly contributed to a litigation fund, which my firm managed. As reflected in Exhibit 3, each firm contributed \$35,000.00 to the litigation fund, for a total of \$70,000.00, and the fund has been fully exhausted by payments for mediation fees (\$62,517.51) and expert fees (\$7,482.50).

9. The litigation expenses incurred in this Action are reflected on the books and records of my firm. These books and 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 4 is a brief biography of my firm and attorneys in my firm who were involved in this Action.

I declare, under penalty of perjury, that the foregoing facts are true and correct. Executed on May 26, 2016.



James A. Harrod

**EXHIBIT 1**

*Department of the Treasury of the State of New Jersey and  
its Division of Investment v. Cliffs Natural Resources Inc., et al.*  
Civil Action No. 1:14-cv-1031-DAP

**BERNSTEIN LITOWITZ BERGER & GROSSMANN LLP****TIME REPORT**

Inception through and including May 6, 2016

<b>NAME</b>	<b>HOURS</b>	<b>HOURLY RATE</b>	<b>LODESTAR</b>
<b>Partners</b>			
Max Berger	168.00	978.6310	164,410.00
James A. Harrod	1,270.50	776.7808	986,900.00
Avi Josefson	44.25	700.0000	30,975.00
Gerald Silk	137.50	875.0000	120,312.50
<b>Senior Counsel</b>			
Joseph Cohen	51.00	700.0000	35,700.00
<b>Associates</b>			
Laura Asserfea	167.25	450.0000	75,262.50
Michael Blatchley*	25.00	525.0000	13,125.00
Rebecca Boon	545.50	526.5811	287,250.00
Scott Foglietta	11.50	450.0000	5,175.00
Adam Hollander	182.50	530.2397	96,768.75
Catherine McCaw	310.50	450.0000	139,725.00
John Mills	168.25	600.0000	100,950.00
Jeremy Robinson*	408.50	550.0000	224,675.00
Ross Shikowitz	352.75	450.0000	158,737.50
<b>Non-Attorney Professionals</b>			
Nick DeFilippis (Director of Financial Analysts)	35.00	500.0000	17,500.00
Amy Bitkower (Director of Investigators)	298.25	495.0000	147,633.75
Adam Weinschel (Director of Institutional Investor Services)	68.00	415.0000	28,220.00
Michelle Miklus (Financial Analyst)	36.00	325.0000	11,700.00
Rochelle Moses (Financial Analyst)	57.00	325.0000	18,525.00
Sharon Safran (Financial Analyst)	42.00	325.0000	13,650.00
Tanjila Sultana (Financial Analyst)	11.50	325.0000	3,737.50
Matthew McGlade (Financial Analyst)	19.25	275.0000	5,293.75
Joelle Landino (Investigator)	277.50	290.0000	80,475.00
Lisa Burr (Investigator)	574.75	290.0000	166,677.50
Chris Altiery (Investigator)	61.75	245.0000	15,128.75



<b>Paraprofessionals</b>			
Babatunde Pedro	10.00	275.0000	2,750.00
Ricia Augusty	37.50	310.0000	11,625.00
Virgilio Soler, Jr.	841.00	310.0000	260,710.00
Norbert Sygdziak	31.00	310.0000	9,610.00
Yvette Badillo	53.25	285.0000	15,176.25
Martin Braxton	39.25	245.0000	9,616.25
Matthew Mahady	15.00	285.0000	4,275.00
Ruben Montilla	84.25	245.0000	20,641.25
Nyema Taylor	10.00	285.0000	2,850.00
<b>TOTALS:</b>	<b>6,445.25</b>		<b>\$3,285,761.25</b>

\* Promoted to Partner on January 1, 2016.

**EXHIBIT 2**

*Department of the Treasury of the State of New Jersey and  
its Division of Investment v. Cliffs Natural Resources Inc., et al.*  
Civil Action No. 1:14-cv-1031-DAP

**BERNSTEIN LITOWITZ BERGER & GROSSMANN LLP**

**EXPENSE REPORT**

<b>CATEGORY</b>	<b>AMOUNT</b>
Court Fees	\$ 360.00
Internal Copying	706.08
Outside Copying	2,844.69
Out of Town Travel	3,671.12
Expert Fees	60,921.00
Mediation Fees	4,182.91
Local Counsel Expenses (Court Fees/Service of Process)	959.50
Contributions to Litigation Fund	35,000.00
<b>TOTAL EXPENSES:</b>	<b>\$108,645.30</b>

**EXHIBIT 3**

*Department of the Treasury of the State of New Jersey and  
its Division of Investment v. Cliffs Natural Resources Inc., et al.*  
Civil Action No. 1:14-cv-1031-DAP

**CONTRIBUTIONS TO AND  
EXPENDITURES FROM THE LITIGATION FUND**

**CONTRIBUTIONS:**

<b>FIRM</b>	<b>AMOUNT</b>
Bernstein Litowitz Berger & Grossmann LLP	\$35,000.00
Lowenstein Sandler LLP	35,000.00
<b>TOTAL CONTRIBUTED:</b>	<b>\$70,000.00</b>

**DISBURSEMENTS:**

<b>CATEGORY OF EXPENSE</b>	<b>AMOUNT</b>
Mediation Fees	\$62,517.50
Expert Fees	7,482.50
<b>TOTAL DISBURSED:</b>	<b>\$70,000.00</b>
<b>BALANCE:</b>	<b>\$ 0.00</b>

**EXHIBIT 4**



Trusted  
Advocacy.  
Proven  
Results.

Bernstein Litowitz Berger & Grossmann LLP

Attorneys at Law

# Firm Resume

## **New York**

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Fax: 212-554-1444

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Tel: 858-793-0070  
Fax: 858-793-0323

## **Louisiana**

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Suite 14  
New Orleans, LA 70130  
Tel: 504-899-2339  
Fax: 504-899-2342

## **Illinois**

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Chicago, IL 60611  
Tel: 312-373-3880  
Fax: 312-794-7801

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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 \$27 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, 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; distressed debt and bankruptcy; civil rights and employment discrimination; consumer class actions and antitrust. 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 in representing institutional investors in securities fraud class action litigation. The firm’s institutional client base includes the New York State Common Retirement Fund; the California Public Employees’ Retirement System (CalPERS); the Ontario Teachers’ Pension Plan Board (the largest public pension funds in North America); 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; Forsta AP-fonden (“AP1”); Fjarde AP-fonden (“AP4”); 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.

## MORE TOP SECURITIES RECOVERIES

Since its founding in 1983, Bernstein Litowitz Berger & Grossmann LLP has litigated some of the most complex cases in history and has obtained over \$27 billion on behalf of investors. Unique among its peers, the firm has negotiated the largest settlements ever agreed to by public companies related to securities fraud, and obtained four of the ten largest securities recoveries in history:

- *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

For over a decade, Securities Class Action Services (SCAS – a division of ISS Governance) has compiled and published data on securities litigation recoveries and the law firms prosecuting the cases. BLB&G has been at or near the top of their rankings every year – often with the highest total recoveries, the highest settlement average, or both.

BLB&G also eclipses all competitors on SCAS’s “Top 100 Settlements” report, having recovered 39% of all the settlement dollars represented in the report (over \$23 billion); and having prosecuted more than a third of all the cases on the list (34 of 100).

## 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, as well as 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 precedents which have 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.

## ADVOCACY FOR VICTIMS OF CORPORATE WRONGDOING

While BLB&G is widely recognized as one of the leading law firms worldwide advising institutional investors on issues related to corporate governance, shareholder rights, and securities litigation, we have also prosecuted some of the most significant employment discrimination, civil rights and consumer protection cases on record. Equally important, the firm has advanced novel and socially beneficial principles by developing important new law in the areas in which we litigate.

The firm served as co-lead counsel on behalf of Texaco’s African-American employees in *Roberts v. Texaco Inc.*, which resulted in a recovery of \$176 million, the largest settlement ever in a race discrimination case. The creation of a Task Force to oversee Texaco’s human resources activities for five years was unprecedented and served as a model for public companies going forward.

In the consumer field, the firm has gained a nationwide reputation for vigorously protecting the rights of individuals and for achieving exceptional settlements. In several instances, the firm has obtained recoveries for consumer classes that represented the entirety of the class’s losses – an extraordinary result in consumer class cases.



## 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 and derivative 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.

The attorneys in the securities fraud litigation practice group have extensive experience in the laws that regulate the securities markets and in the disclosure requirements of corporations that issue publicly traded securities. Many of the attorneys in this practice group 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.

### CORPORATE GOVERNANCE AND SHAREHOLDERS' RIGHTS

The Corporate Governance and Shareholders' Rights Practice Group prosecutes 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. The group has obtained unprecedented victories on behalf of shareholders seeking to improve corporate governance and protect the shareholder franchise, prosecuting actions challenging numerous highly publicized corporate transactions which violated fair process and fair price, and the applicability of the business judgment rule. We have also addressed issues of corporate waste, shareholder voting rights claims, and executive compensation. As a result of the firm's high-profile and widely recognized capabilities, the corporate governance practice group is increasingly in demand by institutional investors who are exercising a more assertive voice with corporate boards regarding corporate governance issues and the board's accountability to shareholders.

The firm is actively involved in litigating numerous cases in this area of law, an area that has become increasingly important in light of efforts by various market participants to buy companies from their public shareholders "on the cheap."

### EMPLOYMENT DISCRIMINATION AND CIVIL RIGHTS

The Employment Discrimination and Civil Rights Practice Group prosecutes class and multi-plaintiff actions, and other high-impact litigation against employers and other societal institutions that violate federal or state employment, anti-discrimination, and civil rights laws. The practice group represents diverse clients on a wide range of issues including Title VII actions: race, gender, sexual orientation and age discrimination suits; sexual harassment, and "glass ceiling" cases in which otherwise qualified employees are passed over for promotions to managerial or executive positions.

Bernstein Litowitz Berger & Grossmann LLP is committed to effecting positive social change in the workplace and in society. The practice group has the necessary financial and human resources to ensure that the class action approach to discrimination and civil rights issues is successful. This litigation method serves to empower employees and other civil rights victims, who are usually discouraged from pursuing litigation because of personal financial limitations, and offers the potential for effecting the greatest positive change for the greatest number of people affected by discriminatory practice in the workplace.

## GENERAL COMMERCIAL LITIGATION AND ALTERNATIVE DISPUTE RESOLUTION

The General Commercial Litigation practice group 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 powerful and well-funded law firms and defendants – and consistently prevailed. However, not every dispute is best resolved through the courts. In such cases, BLB&G Alternative Dispute practitioners offer clients an accomplished team and a creative venue in which to resolve conflicts outside of the litigation process. BLB&G has extensive experience – and a marked record of successes – in ADR practice. For example, in the wake of the credit crisis, we successfully represented numerous former executives of a major financial institution in arbitrations relating to claims for compensation. 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 (AAA), FINRA, JAMS, International Chamber of Commerce (ICC) and the London Court of International Arbitration.

## DISTRESSED DEBT AND BANKRUPTCY CREDITOR NEGOTIATION

The BLB&G Distressed Debt and Bankruptcy Creditor Negotiation Group 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 completion of successful settlements.

## CONSUMER ADVOCACY

The Consumer Advocacy Practice Group at Bernstein Litowitz Berger & Grossmann LLP prosecutes cases across the entire spectrum of consumer rights, consumer fraud, and consumer protection issues. The firm represents victimized consumers in state and federal courts nationwide in individual and class action lawsuits that seek to provide consumers and purchasers of defective products with a means to recover their damages. The attorneys in this group are well versed in the vast array of laws and regulations that govern consumer interests and are aggressive, effective, court-tested litigators. The Consumer Practice Advocacy Group has recovered hundreds of millions of dollars for millions of consumers throughout the country. Most notably, in a number of cases, the firm has obtained recoveries for the class that were the entirety of the potential damages suffered by the consumer. For example, in actions against MCI and Empire Blue Cross, the firm recovered all of the damages suffered by the class. The group achieved its successes by advancing innovative claims and theories of liabilities, such as obtaining decisions in Pennsylvania and Illinois appellate courts that adopted a new theory of consumer damages in mass marketing cases. Bernstein Litowitz Berger & Grossmann LLP is, thus, able to lead the way in protecting the rights of consumers.

## THE COURTS SPEAK

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."*

## RECENT ACTIONS & SIGNIFICANT RECOVERIES

Bernstein Litowitz Berger & Grossmann LLP is counsel in many diverse nationwide class and individual actions and has obtained many of the largest and most significant recoveries in history. Some examples from our practice groups 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 had 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 literally 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.

**CASE 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 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.

**DESCRIPTION:** 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.

**DESCRIPTION:** 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 (all figures in US dollars) 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 MCKESSON HBOC, INC. SECURITIES LITIGATION*

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

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

**DESCRIPTION:** 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:** *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.

**DESCRIPTION:** 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 that the auditors never disavowed the statements.

**CASE:** *HEALTHSOUTH CORPORATION BONDHOLDER LITIGATION*

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

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

**DESCRIPTION:** 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 (collectively, "UBS"), 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 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.

**DESCRIPTION:** 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 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.

**DESCRIPTION:** BLB&G was appointed Chair of the Executive Committee responsible for litigating the action 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 SCHERING-PLOUGH CORPORATION/ENHANCE SECURITIES LITIGATION; IN RE MERCK & CO., INC. VYTORIN/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.

**DESCRIPTION:** 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 Vytorin. Specifically, we alleged that the companies knew that their “ENHANCE” clinical trial of Vytorin (a combination of Zetia and a generic) demonstrated that Vytorin 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.

**DESCRIPTION:** 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 20 largest securities class action recoveries in history; third largest recovery obtained in an action arising from the subprime mortgage crisis.

**DESCRIPTION:** 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 alleges that Wachovia provided offering materials that misrepresented and omitted material facts concerning the nature and quality of Wachovia’s multi-billion 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:** *OHIO PUBLIC EMPLOYEES RETIREMENT SYSTEM V. FREDDIE MAC*

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

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

**DESCRIPTION:** 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.

**DESCRIPTION:** 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**.



## CORPORATE GOVERNANCE AND SHAREHOLDERS' RIGHTS

**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.

**DESCRIPTION:** 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 orders Caremark’s board to disclose previously withheld information, enjoins shareholder vote on CVS merger offer, and grants statutory appraisal rights to Caremark shareholders. The litigation ultimately forced CVS to raise offer by \$7.50 per share, equal to more than \$3.3 billion in additional consideration to Caremark shareholders.

**DESCRIPTION:** Commenced on behalf of the **Louisiana Municipal Police Employees’ Retirement System** and other shareholders of Caremark RX, Inc. (“Caremark”), this shareholder class action accused the company’s directors of violating their fiduciary duties by approving and endorsing a proposed merger with CVS Corporation (“CVS”), 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 that will be supported by a dedicated \$75 million fund.

**DESCRIPTION:** 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:** *IN RE EL PASO CORP. SHAREHOLDER LITIGATION*

**COURT:** Delaware Court of Chancery – New Castle County

**HIGHLIGHTS:** Landmark Delaware ruling chastises Goldman Sachs for M&A conflicts of interest.

**DESCRIPTION:** This case aimed a spotlight on ways that financial insiders – in this instance, Wall Street titan Goldman Sachs – game the system. The Delaware Chancery Court harshly rebuked Goldman for ignoring blatant conflicts of interest while advising their corporate clients on Kinder Morgan's high-profile acquisition of El Paso Corporation. As a result of the lawsuit, Goldman was forced to relinquish a \$20 million advisory fee, and BLB&G obtained a \$110 million cash settlement for El Paso shareholders – one of the highest merger litigation damage recoveries in Delaware history.

**CASE:** *IN RE DELPHI FINANCIAL GROUP SHAREHOLDER LITIGATION*

**COURT:** Delaware Court of Chancery – New Castle County

**HIGHLIGHTS:** Dominant shareholder is blocked from collecting a payoff at the expense of minority investors.

**DESCRIPTION:** As the Delphi Financial Group prepared to be acquired by Tokio Marine Holdings Inc., the conduct of Delphi's founder and controlling shareholder drew the scrutiny of BLB&G and its institutional investor clients for improperly using the transaction to expropriate at least \$55 million at the expense of the public shareholders. BLB&G aggressively litigated this action and obtained a settlement of \$49 million for Delphi's public shareholders. The settlement fund is equal to about 90% of recoverable Class damages – a virtually unprecedented recovery.

**CASE:** *QUALCOMM BOOKS & RECORDS LITIGATION*

**COURT:** Delaware Court of Chancery – New Castle County

**HIGHLIGHTS:** Novel use of "books and records" litigation enhances disclosure of political spending and transparency.

**DESCRIPTION:** The U.S. Supreme Court's controversial 2010 opinion in *Citizens United v. FEC* made it easier for corporate directors and executives to secretly use company funds – shareholder assets – to support personally favored political candidates or causes. BLB&G prosecuted the first-ever "books and records" litigation to obtain disclosure of corporate political spending at our client's portfolio company – technology giant Qualcomm Inc. – in response to Qualcomm's refusal to share the information. As a result of the lawsuit, Qualcomm adopted a policy that provides its shareholders with comprehensive disclosures regarding the company's political activities and places Qualcomm as a standard-bearer for other companies.

**CASE:** *IN RE NEWS CORP. SHAREHOLDER DERIVATIVE LITIGATION*

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

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

**DESCRIPTION:** 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.

**CASE:** *IN RE ACS SHAREHOLDER LITIGATION (XEROX)*

**COURT:** Delaware Court of Chancery – New Castle County

**HIGHLIGHTS:** BLB&G challenged an attempt by ACS CEO to extract a premium on his stock not shared with the company's public shareholders in a sale of ACS to Xerox. On the eve of trial, BLB&G obtained a \$69 million recovery, with a substantial portion of the settlement personally funded by the CEO.

**DESCRIPTION:** Filed on behalf of the **New Orleans Employees' Retirement System** and similarly situated shareholders of Affiliated Computer Service, Inc., this action alleged that members of the Board of Directors of ACS breached their fiduciary duties by approving a merger with Xerox Corporation which would allow Darwin Deason, ACS's founder and Chairman and largest stockholder, to extract hundreds of millions of dollars of value that rightfully belongs to ACS's public shareholders for himself. Per the agreement, Deason's consideration amounted to over a 50% premium when compared to the consideration paid to ACS's public stockholders. The ACS Board further breached its fiduciary duties by agreeing to certain deal protections in the merger agreement that essentially locked up the transaction between ACS and Xerox. After seeking a preliminary injunction to enjoin the deal and engaging in intense discovery and litigation in preparation for a looming trial date, Plaintiffs reached a global settlement with Defendants for \$69 million. In the settlement, Deason agreed to pay \$12.8 million, while ACS agreed to pay the remaining \$56.1 million.

**CASE:** *IN RE DOLLAR GENERAL CORPORATION SHAREHOLDER LITIGATION*

**COURT:** Sixth Circuit Court for Davidson County, Tennessee; Twentieth Judicial District, Nashville

**HIGHLIGHTS:** Holding Board accountable for accepting below-value "going private" offer.

**DESCRIPTION:** A Nashville, Tennessee corporation that operates retail stores selling discounted household goods, in early March 2007, Dollar General announced that its Board of Directors had approved the acquisition of the company by the private equity firm Kohlberg Kravis Roberts & Co. ("KKR"). BLB&G, as Co-Lead Counsel for the **City of Miami General Employees' & Sanitation Employees' Retirement Trust**, filed a class action complaint alleging that the "going private" offer was approved as a result of breaches of fiduciary duty by the board and that the price offered by KKR did not reflect the fair value of Dollar General's publicly-held shares. On the eve of the summary judgment hearing, KKR agreed to pay a \$40 million settlement in favor of the shareholders, with a potential for \$17 million more for the Class.

**CASE:** *LANDRY'S RESTAURANTS, INC. SHAREHOLDER LITIGATION*

**COURT:** Delaware Court of Chancery – New Castle County

**HIGHLIGHTS:** Protecting shareholders from predatory CEO's multiple attempts to take control of Landry's Restaurants through improper means. Our litigation forced the CEO to increase his buyout offer by four times the price offered and obtained an additional \$14.5 million cash payment for the class.

**DESCRIPTION:** In this derivative and shareholder class action, shareholders alleged that Tilman J. Fertitta – chairman, CEO and largest shareholder of Landry's Restaurants, Inc. – and its Board of Directors stripped public shareholders of their controlling interest in the company for no premium and severely devalued remaining public shares in breach of their fiduciary duties. BLB&G's prosecution of the action on behalf of Plaintiff **Louisiana Municipal Police Employees' Retirement System** resulted in recoveries that included the creation of a settlement fund composed of \$14.5 million in cash, as well as significant corporate governance reforms and an increase in consideration to shareholders of the purchase price valued at \$65 million.

## EMPLOYMENT DISCRIMINATION AND CIVIL RIGHTS

**CASE:** *ROBERTS V. TEXACO, INC.*

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

**HIGHLIGHTS:** BLB&G recovered \$170 million on behalf of Texaco's African-American employees and engineered the creation of an independent "Equality and Tolerance Task Force" at the company.

**DESCRIPTION:** Six highly qualified African-American employees filed a class action complaint against Texaco Inc. alleging that the company failed to promote African-American employees to upper level jobs and failed to compensate them fairly in relation to Caucasian employees in similar positions. BLB&G's prosecution of the action revealed that African-Americans were significantly under-represented in high level management jobs and that Caucasian employees were promoted more frequently and at far higher rates for comparable positions within the company. The case settled for over \$170 million, and Texaco agreed to a Task Force to monitor its diversity programs for five years – a settlement described as the most significant race discrimination settlement in history.

**CASE:** *ECO A - GMAC/NMAC/FORD/TOYOTA/CHRYSLER - CONSUMER FINANCE DISCRIMINATION LITIGATION*

**COURT:** Multiple jurisdictions

**HIGHLIGHTS:** Landmark litigation in which financing arms of major auto manufacturers are compelled to cease discriminatory "kick-back" arrangements with dealers, leading to historic changes to auto financing practices nationwide.

**DESCRIPTION:** The cases involve allegations that the lending practices of General Motors Acceptance Corporation, Nissan Motor Acceptance Corporation, Ford Motor Credit, Toyota Motor Credit and DaimlerChrysler Financial cause African-American and Hispanic car buyers to pay millions of dollars more for car loans than similarly situated white buyers. At issue is a discriminatory kickback system under which minorities typically pay about 50% more in dealer mark-up which is shared by auto dealers with the Defendants.

**NMAC:** The United States District Court for the Middle District of Tennessee granted final approval of the settlement of the class action against Nissan Motor Acceptance Corporation ("NMAC") in which NMAC agreed to offer pre-approved loans to hundreds of thousands of current and potential African-American and Hispanic NMAC customers, and limit how much it raises the interest charged to car buyers above the company's minimum acceptable rate.

**GMAC:** The United States District Court for the Middle District of Tennessee granted final approval of a settlement of the litigation against General Motors Acceptance Corporation ("GMAC") in which GMAC agreed to take the historic step of imposing a 2.5% markup cap on loans with terms up to 60 months, and a cap of 2% on extended term loans. GMAC also agreed to institute a substantial credit pre-approval program designed to provide special financing rates to minority car buyers with special rate financing.

**DAIMLERCHRYSLER:** The United States District Court for the District of New Jersey granted final approval of the settlement in which DaimlerChrysler agreed to implement substantial changes to the company's practices, including limiting the maximum amount of mark-up dealers may charge customers to between 1.25% and 2.5% depending upon the length of the customer's loan. In addition, the company agreed to send out pre-approved credit offers of no-markup loans to African-American and Hispanic consumers, and contribute \$1.8 million to provide consumer education and assistance programs on credit financing.

**FORD MOTOR CREDIT:** The United States District Court for the Southern District of New York granted final approval of a settlement in which Ford Credit agreed to make contract disclosures informing consumers that the customer's Annual Percentage Rate ("APR") may be negotiated and that sellers may assign their contracts and retain rights to receive a portion of the finance charge.

## 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 will encourage retention where 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.

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, as well as participating 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.

### BERNSTEIN LITOWITZ BERGER & GROSSMANN PUBLIC INTEREST LAW FELLOWS

**COLUMBIA LAW SCHOOL** – BLB&G is committed to fighting discrimination and effecting positive social change. In support of this commitment, the firm donated funds to Columbia Law School to create the Bernstein Litowitz Berger & Grossmann Public Interest Law Fellowship. This newly endowed fund at Columbia Law School will provide 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

**NEW YORK, NY** – BLB&G is a sponsor of Her Justice, a non-profit organization in New York City dedicated to providing *pro bono* legal representation to indigent women, principally battered 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 [www.herjustice.org](http://www.herjustice.org).

### THE PAUL M. BERNSTEIN MEMORIAL SCHOLARSHIP

**COLUMBIA LAW SCHOOL** – Paul M. Bernstein was the founding senior partner of the firm. Mr. Bernstein led a distinguished career as a lawyer and teacher and was deeply committed to the professional and personal development of young lawyers. The Paul M. Bernstein Memorial Scholarship Fund is a gift of the firm and the family and friends of Paul M. Bernstein, and is awarded annually to one or more second-year students selected for their academic excellence in their first year, professional responsibility, financial need and contributions to the community.

### FIRM SPONSORSHIP OF CITY YEAR NEW YORK

**NEW YORK, NY** – 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

**BARUCH COLLEGE** – 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.

### NEW YORK SAYS THANK YOU FOUNDATION

**NEW YORK, NY** – Founded in response to the outpouring of love shown to New York City by volunteers from all over the country in the wake of the 9/11 attacks, The New York Says Thank You Foundation sends volunteers from New York City to help rebuild communities around the country affected by disasters. BLB&G is a corporate sponsor of NYSTY and its goals are a heartfelt reflection of the firm's focus on community and activism.



## OUR ATTORNEYS

### MEMBERS

**MAX W. BERGER**, the firm's senior founding partner, supervises BLB&G's litigation practice and prosecutes class and individual actions on behalf of the firm's clients.

He has litigated many of the firm's most high-profile and significant cases, and has negotiated six 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); and *McKesson* (\$1.04 billion).

Mr. Berger's work has garnered him extensive media attention, and he has been the subject of feature articles in a variety of major media publications. Unique among his peers, *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, Mr. Berger 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*. Previously, Mr. Berger's role in the *WorldCom* case generated extensive media coverage including feature articles in *BusinessWeek* and *The American Lawyer*. For his outstanding efforts on behalf of *WorldCom* investors, *The National Law Journal* profiled Mr. Berger (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 for his professional excellence and achievements, Mr. Berger was named 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 over 40 years, he is the 2014 recipient of *Chambers USA*'s award for Outstanding Contribution to the Legal Profession. In presenting this prestigious honor, *Chambers* recognized Mr. Berger'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."

*Law360* published a special feature discussing his life and career as a "Titan of the Plaintiffs Bar," and also named him one of only six litigators selected nationally as a "Legal MVP" for his work in securities litigation.

For the past ten years in a row, Mr. Berger has received the top attorney ranking in plaintiff securities litigation by *Chambers* and is consistently recognized as one of New York's "local litigation stars" by *Benchmark Litigation* (published by *Institutional Investor* and *Euromoney*). *Law360* also named him one of only six litigators selected nationally as a "Legal MVP" for his work in securities litigation.

Since their various inception, he has also been named a "leading lawyer" by the *Legal 500 US* guide, one of "10 Legal Superstars" by *Securities Law360*, and one of the "500 Leading Lawyers in America" and "100 Securities Litigators You Need to Know" by *Lawdragon* magazine. Further, *The Best Lawyers in America* guide has named Mr. Berger a leading lawyer in his field.

Mr. Berger also serves the academic community in numerous capacities as a member of the Dean's Council to Columbia Law School, and as a member of the Board of Trustees of Baruch College. He has taught Profession of Law, an ethics course at Columbia Law School, and currently serves on the Advisory Board of Columbia Law School's Center on Corporate Governance. In May 2006, he was presented with the Distinguished Alumnus Award for his contributions to Baruch College, and in February 2011, Mr. Berger 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, Mr. Berger was profiled in the Fall 2011 issue of *Columbia Law School Magazine*.

Mr. Berger is currently a member of the New York State, New York City and American Bar Associations, and is a member of the Federal Bar Council. He is also a member of the American Law Institute and an Advisor to its Restatement Third: Economic Torts project. In addition, Mr. Berger is a member of the Board of Trustees of The Supreme Court Historical Society.

Mr. Berger lectures extensively for many professional organizations. In 1997, Mr. Berger was honored for his outstanding contribution to the public interest by Trial Lawyers for Public Justice, where he was a "Trial Lawyer of the Year" Finalist for his work in *Roberts, et al. v. Texaco*, the celebrated race discrimination case, on behalf of Texaco's African-American employees.

Among numerous charitable and volunteer works, Mr. Berger is 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 long-time service and work in the community. He and his wife, Dale, have also established the Dale and Max Berger Public Interest Law Fellowship at Columbia Law School and the Max Berger Pre-Law Program at Baruch College.

EDUCATION: Baruch College-City University of New York, B.B.A., Accounting, 1968; President of the student body and recipient of numerous awards. Columbia Law School, J.D., 1971, Editor of the *Columbia Survey of Human Rights Law*.

BAR ADMISSIONS: New York; U.S. District Courts for the Eastern and Southern Districts of New York; U.S. Court of Appeals for the Second Circuit; U.S. Supreme Court.

**GERALD H. 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.

Mr. Silk is a managing partner of the firm and oversees its New Matter department in which he, along with a group of attorneys, financial analysts and investigators, counsels institutional clients on potential legal claims. He was the subject of "Picking Winning Securities Cases," a feature article in the June 2005 issue of *Bloomberg Markets* magazine, which detailed his work for the firm in this capacity. A decade later, in December 2014, Mr. Silk was recognized by *The National Law Journal* in its inaugural list of "Litigation Trailblazers & Pioneers" – one of 50 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 Mr. Silk 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 recently 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 by *Chambers USA*, Mr. Silk 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 *New York Super Lawyers* every year since 2006.

Mr. Silk is currently advising institutional investors worldwide 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.”

Mr. Silk is also representing 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. 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.

Mr. Silk was one of the principal attorneys responsible for prosecuting the *In re Independent Energy Holdings Securities Litigation*. A case against the officers and directors of Independent Energy as well as several investment banking firms which underwrote a \$200 million secondary offering of ADRs by the U.K.-based Independent Energy, the litigation was resolved for \$48 million. Mr. Silk has also prosecuted and successfully resolved several other securities class actions, which resulted in substantial cash recoveries for investors, including *In re Sykes Enterprises, Inc. Securities Litigation* in the Middle District of Florida, and *In re OM Group, Inc. Securities Litigation* in the Northern District of Ohio. 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.

A graduate of the Wharton School of Business, University of Pennsylvania and Brooklyn Law School, in 1995-96, Mr. Silk 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.

Mr. Silk 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 “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,” 3<sup>rd</sup> 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 is a frequent 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: Wharton School of the University of Pennsylvania, B.S., Economics, 1991. Brooklyn Law School, J.D., *cum laude*, 1995.

BAR ADMISSIONS: New York; U.S. District Courts for the Southern and Eastern Districts of New York.

**AVI JOSEFSON** prosecutes securities fraud litigation for the firm's institutional investor clients, and has participated in many of the firm's significant representations, including *In re SCOR Holding (Switzerland) AG Securities Litigation*, which resulted in a recovery worth in excess of \$143 million for investors. 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.

As a member of the firm's New Matter department, Mr. Josefson counsels institutional clients on potential legal claims. He has presented argument in several federal and state courts, including an appeal he argued before the Delaware Supreme Court.

Mr. Josefson is also actively involved in the M&A litigation practice, and represented shareholders in the litigation arising from the proposed acquisitions of Ceridian Corporation and Anheuser-Busch. A member of the firm's subprime litigation team, he has participated in 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. Mr. Josefson has prosecuted actions against Deutsche Bank and Morgan Stanley arising from their sale of mortgage-backed securities, and is advising U.S. and foreign institutions concerning similar claims arising from investments in mortgage-backed securities.

Mr. Josefson practices in the firm's Chicago and New York Offices.

EDUCATION: Brandeis University, B.A., *cum laude*, 1997. Northwestern University, J.D., 2000; *Dean's List*; Justice Stevens Public Interest Fellowship (1999); Public Interest Law Initiative Fellowship (2000).

BAR ADMISSIONS: Illinois, New York; U.S. District Courts for the Southern District of New York and the Northern District of Illinois.

**JAMES A. HARROD**'s practice focuses on representing the firm's institutional investor clients in securities litigation. He has over fifteen years' experience prosecuting complex litigation in federal courts.

Over the course of his career, Mr. Harrod has obtained hundreds of millions of dollars on behalf of investor classes. His high-profile cases include *In re Motorola Securities Litigation*, in which he was a key member of the team that represented the State of New Jersey's Division of Investment and obtained a \$190 million recovery three days before trial. In 2014, Mr. Harrod recovered \$280 million on behalf of a class of investors in *Plumbers' & Pipefitters' Local #562 Supplemental Plan & Trust v. J.P. Morgan Acceptance Corp. I*, which brought claims related to the issuance of mortgage pass-through certificates during 2006 and 2007. Among his other notable recoveries are *Anwar, et al., v. Fairfield Greenwich Limited* (total settlement valued at \$80 million), *In re Service Corporation International* (recovery of \$65 million), *Danis v. USN Communications, Inc.* (recovery of \$44.6 million), *In re Navistar International Securities Litigation* (\$13 million), and *In re Sonus Networks, Inc. Securities Litigation-II* (\$9.5 million).

Most recently, Mr. Harrod has represented institutional investors in several cases concerning the issuance of residential mortgage-backed securities prior to the financial crisis, including: *In re Bear Stearns Mortgage Pass-Through Certificates Litigation*; *Tsereteli v. Residential Asset Securitization Trust 2006-A8*; and *In re Lehman Bros. Mortgage-Backed Securities Litigation*. In connection with his representation of institutional investors, Mr. Harrod is a frequent speaker to public pension fund organizations and trustees concerning fiduciary duties, emerging issues in securities litigation and the financial markets.

Mr. Harrod has been named a *New York Super Lawyer* for his skill in securities litigation every year since 2013. Prior to that, he was recognized as a *Super Lawyer* "Rising Star" in 2011 and 2012.

Mr. Harrod was recognized for his skill in securities litigation as a *Super Lawyer* in 2013 and 2014, and a *Super Lawyer* “Rising Star” in 2011 and 2012.

EDUCATION: Skidmore College, B.A.; George Washington University Law School, J.D.

BAR ADMISSIONS: New York; U.S. Courts of Appeals for the Second and Seventh Circuits; U.S. District Courts for the Eastern and Southern Districts of New York.

**JEREMY P. ROBINSON** has extensive experience in securities and civil litigation. Since joining BLB&G, Mr. Robinson has been involved in prosecuting many high-profile securities cases. He was an integral member of the teams that prosecuted significant securities cases such as *In re Refco Securities Litigation* (total recoveries in excess of \$425 million) and *In re WellCare Health Plans, Inc. Securities Litigation* (\$200 million settlement, representing the second largest settlement of a securities case in Eleventh Circuit history). He served as counsel on behalf of the institutional investor plaintiffs in *In re Citigroup, Inc. Bond Action Litigation*, which settled for \$730 million, representing the second largest recovery ever in a securities class action brought on behalf of purchasers of debt securities and ranking among the fifteen largest recoveries in the history of securities class actions. He also recently represented investors in *In re Bank of New York Mellon Corp. Forex Transactions Litigation*, which settled for \$180 million, and in *In re Freeport-McMoRan Derivative Litigation*, which settled for a cash recovery of nearly \$154 million plus corporate governance reforms. He is presently a member of the teams prosecuting *In re Allergan, Inc. Proxy Violation Securities Litigation*; *Fernandez et al. v. UBS AG et al.*; and *The Department of the Treasury of the State of New Jersey and its Division of Investment v. Cliffs Natural Resources Inc.*

In 2000-01, Mr. Robinson spent a year working with barristers and judges in London, England as a recipient of the Harold G. Fox Education Fund Scholarship. In 2005, Mr. Robinson completed his Master of Laws degree at Columbia Law School where he was honored as a Harlan Fiske Stone Scholar.

EDUCATION: Queen’s University, Faculty of Law in Kingston, Ontario, Canada, LL.B., 1998; Best Brief in the Niagara International Moot Court Competition; David Sabbath Prizes in Contract Law and in Wills & Trusts Law. Columbia Law School, LL.M., 2005; Harlan Fiske Stone Scholar.

BAR ADMISSIONS: Ontario, Canada; New York; U.S. District Court for the Eastern District of Michigan; U.S. District Court for the Southern District of New York.

**MICHAEL D. BLATCHLEY**’s practice focuses on securities fraud litigation. He is currently a member of the firm’s New Matter department in which he, along with a team of attorneys, financial analysts, forensic accountants, and investigators, counsels the firm’s clients on their legal claims.

Mr. Blatchley has also served as a member of the litigation teams responsible for prosecuting a number of the firm’s significant cases. For example, he was 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. Mr. Blatchley has also served on the litigation teams in 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. Currently, he serves as a member of the team prosecuting *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.”

While attending Brooklyn Law School, Mr. Blatchley 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: University of Wisconsin, B.A., 2000. Brooklyn Law School, J.D., *cum laude*, 2007; 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.

BAR ADMISSIONS: New York, New Jersey; U.S. District Courts for the Southern District of New York and the District of New Jersey.

## SENIOR COUNSEL

**JOSEPH COHEN** has extensive complex civil litigation experience and currently practices in the firm's settlement department where he has primary responsibility for negotiating, documenting and obtaining court approval of the firm's securities, merger and derivative settlements.

Prior to joining the firm, Mr. Cohen successfully prosecuted numerous securities fraud, consumer fraud, antitrust and constitutional law cases in federal and state courts throughout the country. Cases in which Mr. Cohen took a lead role include: *Jordan v. California Department of Motor Vehicles*, 100 Cal. App. 4<sup>th</sup> 431 (2002) (complex action in which the California Court of Appeal held that California's Non-Resident Vehicle \$300 Smog Impact Fee violated the Commerce Clause of the United States Constitution, paving the way for the creation of a \$665 million fund and full refunds, with interest, to 1.7 million motorists); *In re Geodyne Resources, Inc. Sec. Litig.* (Harris Cty. Tex.) (settlement of securities fraud class action, including related litigation, totaling over \$200 million); *In re Community Psychiatric Centers Sec. Litig.* (C.D. Cal.) (settlement of \$55.5 million was obtained from the company and its auditors, Ernst & Young, LLP); *In re McLeodUSA Inc., Sec. Litig.* (N.D. Iowa) (\$30 million settlement); *In re Arakis Energy Corp. Sec. Litig.* (E.D.N.Y.) (\$24 million settlement); *In re Metris Companies, Inc., Sec. Litig.* (D. Minn.) (\$7.5 million settlement); *In re Landry's Seafood Restaurants, Inc. Sec. Litig.* (S.D. Tex.) (\$6 million settlement); and *Freedman v. Maspeth Federal Loan and Savings Association*, (E.D.N.Y) (favorable resolution of issue of first impression under RESPA and full recovery of improperly assessed late fees).

Mr. Cohen was also a member of the teams that obtained substantial recoveries in the following cases: *In re: Foreign Exchange Benchmark Rates Antitrust Litig.* (S.D.N.Y.) (partial settlements of approximately \$2 billion); *In re Washington Mutual Mortgage-Backed Securities Litigation* (W.D. Wash.) (settlement of \$26 million); *Mylan Pharmaceuticals, Inc. v. Warner Chilcott Public Limited Company* (E.D. Pa.) (\$8 million recovery on behalf of class of indirect purchasers of the prescription drug Doryx); *City of Omaha Police and Fire Retirement Sys. v. LHC Group, Inc.* (W.D. La.) (securities class action settlement of \$7.85 million); and *In re Pacific Biosciences of Cal., Inc. Sec. Litig.* (Cal. Super. Ct.) (\$7.6 million recovery).

EDUCATION: University of Rhode Island, B.S., Marketing, *cum laude*, 1986; Case Western Reserve University School of Law, J.D., 1989; New York University School of Law, LL.M., 1990.

BAR ADMISSIONS: California; District of Columbia; U.S. Court of Appeals for the Ninth Circuit; U.S. District Courts for the Central, Northern and Southern Districts of California.

## ASSOCIATES

**REBECCA BOON** practices out of the New York office, where she prosecutes securities fraud, corporate governance and shareholder rights litigation for the firm's institutional investor clients.

Prior to joining the firm, Ms. Boon was an associate at a major international law firm, where she represented clients in securities litigation, ERISA litigation, contract disputes, international arbitration, white collar crime and criminal appeals.

Ms. Boon is currently a senior member of the teams prosecuting *New York State Teachers' Retirement System v. General Motors Company, et al.*; *The Department of The Treasury of the State of New Jersey and Its Division of Investment v. Cliffs Natural Resources Inc., et al.*; and *Public School Teachers' Pension and Retirement Fund of Chicago v. Northern Trust Investments N.A., et al.* In addition, over the past few years, Ms. Boon has been a senior member of the teams prosecuting numerous actions against Morgan Stanley and Deutsche Bank arising out of their allegedly fraudulent sales of residential mortgage-backed securities, which have resulted in millions of dollars in recovery for investors, including *Metropolitan Life Insurance Company v. Morgan Stanley, et al.*, among others.

While in law school, Ms. Boon served as the research assistant to Dean Nora Demleitner. Ms. Boon also worked as an intern at Her Justice (formerly known as inMotion, Inc.), as well as Hofstra Law School's Political Asylum Clinic.

EDUCATION: Vassar College, B.A., 2004 (History, Correlate in Women's Studies); Social Justice Community Fellow. Hofstra University School of Law, 2007, J.D., *cum laude*; Charles H. Revson Foundation Law Students Public Interest Fellow; *Hofstra Law Review*; Distinguished Contribution to the School and Excellence in International Law Awards; Merit Scholarship.

BAR ADMISSIONS: New York; U.S. District Court for the Southern District of New York.

**SCOTT R. FOGLIETTA** focuses his practice on securities litigation and is a member of the firm's New Matter group, in which he, as part of a team of attorneys, financial analysts, and investigators, counsels institutional investors on potential legal claims.

Mr. Foglietta also serves as a member of the litigation team responsible for prosecuting *In re Lumber Liquidators Holdings, Inc. Securities Litigation*. For his accomplishments, Mr. Foglietta was recently named a New York "Rising Star" in the area of securities litigation.

Before joining the firm, Mr. Foglietta represented institutional and individual clients in a wide variety of complex litigation matters, including securities class actions, commercial litigation, and ERISA litigation. While in law school, Mr. Foglietta served as a legal intern in the Financial Industry Regulatory Authority's (FINRA) Enforcement Division, and in the general counsel's office of NYSE Euronext. Prior to law school, Mr. Foglietta earned his M.B.A. in finance from Clark University and worked as a capital markets analyst for a boutique investment banking firm.

EDUCATION: Clark University, B.A., Management, *cum laude*, 2006. Clark University, Graduate School of Management, M.B.A., Finance, 2007. Brooklyn Law School, J.D., 2010.

BAR ADMISSIONS: New York; New Jersey.





**ADAM HOLLANDER** prosecutes securities fraud, corporate governance, and shareholder rights litigation on behalf of the firm's institutional investor clients.

Mr. Hollander has represented institutional investors and corporations in state and federal trial and appellate courts throughout the country. Currently, he represents clients in a number of disputes relating to corporate governance and transactions, including a derivative action on behalf of Dish Network Corporation in the Nevada Business Court, a class and derivative action on behalf of Kinder Morgan Energy Partners, L.P. and its limited partners, and a class action on behalf of the public shareholders of KKR Financial Holdings LLC. In addition, Mr. Hollander has drafted numerous briefs in matters before the federal courts of appeals.

Prior to joining BLB&G, Mr. Hollander clerked for the Honorable Barrington D. Parker, Jr. of the United States Court of Appeals for the Second Circuit, and for the Honorable Stefan R. Underhill of the United States District Court for the District of Connecticut. He has also been associated with two New York defense firms, where he gained significant experience representing clients in various civil, criminal, and regulatory matters, including white collar and complex commercial litigation.

Mr. Hollander is currently a member of the teams prosecuting *Bach v. Amedisys, Inc.*, *The Department of the Treasury of the State of New Jersey and its Division of Investment v. Cliffs Natural Resources Inc.*, *In re Fairway Group Holdings Corp. Securities Litigation*, *In re Dish Network Corp. Shareholder Litigation*, *In re Kinder Morgan Energy Partnership, L.P. Derivative Litigation*, *In re Nu Skin Enterprises, Inc. Derivative Litigation*, *In re KKR Financial Holdings LLC Shareholder Litigation*, *Central Laborers' Pension Fund v. Portnoy*, *Slotoroff v. Kinder Morgan, Inc.*, *City of Cambridge Retirement System v. Devitre*, *International Union of Operating Engineers Local 478 v. Hsu*, *Teamsters Local 443 Health Services & Insurance Plan v. Otis*, and *In re Sanchez Energy Derivative Litigation*.

EDUCATION: Brown University, A.B., *magna cum laude*, 2001, Urban Studies. Yale Law School, J.D., 2006; Editor, *Yale Law and Policy Review*.

BAR ADMISSIONS: New York; Connecticut; U.S. District Courts for the Southern District of New York and the District of Connecticut; U.S. Court of Appeals for the Second Circuit.

**JOHN J. MILLS'** practice concentrates on Class Action Settlements and Settlement Administration. Mr. Mills also has experience representing large financial institutions in corporate finance transactions.

EDUCATION: Duke University, B.A., 1997. Brooklyn Law School, J.D., *cum laude*, 2000; Member of *The Brooklyn Journal of International Law*; Carswell Merit Scholar recipient.

BAR ADMISSIONS: New York; U.S. District Courts for the Eastern and Southern Districts of New York.

**ROSS SHIKOWITZ** focuses his practice on securities litigation and is a member of the firm's New Matter group, in which he, as part of a team attorneys, financial analysts, and investigators, counsels institutional clients on potential legal claims.

Mr. Shikowitz has also served as a member of the litigation teams responsible for successfully prosecuting a number of the firm's cases involving wrongdoing related to the securitization and sale of residential mortgage-backed securities ("RMBS"), including *Allstate Insurance Co. v. Morgan Stanley*, *Bayerische Landesbank, New York Branch v. Morgan Stanley*; and *Metropolitan Life Insurance Company v. Morgan Stanley*. Currently, he serves as a member of the litigation teams prosecuting *Dexia SA/NV v. Morgan Stanley*; and *Sealink Funding Limited v. Morgan Stanley*, which also involve the fraudulent issuance of RMBS.

While in law school, Mr. Shikowitz 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, *cum laude*, 2003. Indiana University-Bloomington, M.M., Music, 2005. Brooklyn Law School, J.D., *magna cum laude*, 2010; 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.

**LAURA K. ASSERFEA** (former associate) practiced out of the New York office, where she prosecuted securities fraud, corporate governance and shareholder rights litigation on behalf of the firm's institutional investor clients.

Prior to joining the firm, Ms. Asserfea was an associate at a prominent securities law practice, where she handled complex insider trading, accounting and investor fraud litigation and cross-border investigations. While in law school, she served as an extern for the United States Attorney's Office for the Eastern District of New York. In addition, Ms. Asserfea also worked as a judicial extern to the Honorable Chester J. Straub of the U.S. Court of Appeals for the Second Circuit, and as a judicial intern for the Honorable Harold Baer, Jr. of the U.S. District Court for the Southern District of New York.

EDUCATION: New York University, B.A., French Language and Literature; 2006; Presidential Honors Scholar. Columbia Law School, J.D., 2010; Founding Member and Articles Editor for the *Columbia Journal of Tax Law*.

BAR ADMISSION: New York.

**CATHERINE MCCAW** (former associate) practiced out of the New York office, where she focused on securities fraud and corporate governance and shareholder rights litigation.

Prior to joining the firm, Ms. McCaw clerked for the Honorable Chester J. Straub of the United States Court of Appeals for the Second Circuit and the Honorable Richard J. Holwell of the United States District Court for the Southern District of New York. She also served as a Presidential Management Fellow at the General Counsel's Office for the Federal Bureau of Investigation (FBI).

EDUCATION: Harvard College, A.B., *magna cum laude*, History, 2003. Harvard Law School, J.D., 2009; Articles Editor, *Harvard Civil Rights-Civil Liberties Law Review*.

BAR ADMISSION: Massachusetts.



## **EXHIBIT 4B**

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

THE DEPARTMENT OF THE TREASURY OF  
THE STATE OF NEW JERSEY AND ITS  
DIVISION OF INVESTMENT, on behalf of itself  
and all others similarly situated,

Plaintiff,

v.

CLIFFS NATURAL RESOURCES INC.,  
JOSEPH CARRABBA, LAURIE BRLAS,  
TERRY PARADIE, and DAVID B. BLAKE,

Defendants.

Case No. 1:14-cv-1031

Judge Dan Aaron Polster

Magistrate Judge Thomas M. Parker

**DECLARATION OF MICHAEL B. HIMMEL IN SUPPORT OF  
LEAD COUNSEL'S MOTION FOR AN AWARD OF ATTORNEYS' FEES AND  
REIMBURSEMENT OF LITIGATION EXPENSES FILED ON BEHALF OF  
LOWENSTEIN SANDLER LLP**

I, MICHAEL B. HIMMEL, declare as follows:

1. I am a partner of the law firm of Lowenstein Sandler LLP. My firm, along with Bernstein Litowitz Berger & Grossmann LLP ("Bernstein"), is the Court-appointed Lead Counsel 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 reimbursement of litigation expenses incurred in connection with the Action. I have personal knowledge of the facts set forth herein and, if called upon, could and would testify thereto.

2. Along with Bernstein, this firm as Lead Counsel was involved in all aspects of the litigation and its settlement as set forth in Joint Declaration of James A. Harrod and Michael B.

Himmel in Support of: (A) Lead Plaintiff's Motion for Final Approval of Class Action Settlement and Plan of Allocation, and (B) Lead Counsel's Motion for an Award of Attorneys' Fees and Reimbursement of Litigation Expenses.

3. The schedule attached hereto as Exhibit 1 is a detailed summary indicating the amount of time spent by attorneys and paraprofessionals of my firm who, from inception of this matter through and including May 6, 2016, billed ten or more hours to this Action, and the lodestar calculation for those individuals based on my firm's historic billing rates.<sup>1</sup> For personnel who are no longer employed by my firm, the lodestar calculation is based upon the billing rates for such personnel in his or her final year of employment by my firm. The schedule was prepared from contemporaneous daily time records regularly prepared and maintained by my firm. Time expended on this application for fees and reimbursement of expenses has not been included in this request.

4. The hourly rates for the attorneys and paraprofessionals of my firm included in Exhibit 1 are the same as the regular rates charged for their services in non-contingent matters and/or which have been accepted in other complex matters, including in connection with other class action settlements.

5. The total number of hours reflected in Exhibit 1 from inception through and including May 6, 2016 is 4,463.70. The total lodestar reflected in Exhibit 1 for that period is \$2,532,709.50, consisting of \$2,346,928.50 for attorneys' time and \$185,781.00 for paraprofessional staff.

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<sup>1</sup> The hourly rates set forth on Exhibit 1 are the "weighted average" of the standard hourly rates in effect for the timekeeper at time the hours were spent.

6. My firm's lodestar figures are based upon the firm's billing rates, which rates do not include charges for expense items. Expense items are billed separately and such charges are not duplicated in my firm's billing rates.

7. As detailed in Exhibit 2, my firm is seeking reimbursement for a total of \$104,583.53 in expenses incurred in connection with the prosecution of this Action.

8. The litigation expenses incurred in this Action are reflected on the books and records of my firm. These books and records are prepared from expense vouchers, check records and other source materials and are an accurate record of the expenses incurred.

9. With respect to the standing of my firm, attached hereto as Exhibit 3 is a brief biography of my firm and attorneys in my firm who were involved in this Action.

I declare, under penalty of perjury, that the foregoing facts are true and correct. Executed on May 25, 2016



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Michael B. Himmel

**EXHIBIT 1**

*Department of the Treasury of the State of New Jersey and  
its Division of Investment v. Cliffs Natural Resources Inc., et al.*  
Civil Action No. 1:14-cv-1031-DAP

LOWENSTEIN SANDLER LLP

**TIME REPORT**

Inception through and including May 6, 2016

<b>NAME</b>	<b>HOURS</b>	<b>HOURLY RATE</b>	<b>LODESTAR</b>
<b>Partners</b>			
Etkin, Michael S.	17.40	\$ 895.0000	\$ 15,573.00
Himmel, Michael B.	746.20	\$ 1,007.7272	\$ 751,966.00
Lichtenstein, Michael D.	12.90	\$ 733.9535	\$ 9,468.00
Long, Michael T.G.	1,558.00	\$ 608.5623	\$ 948,140.00
<b>Of Counsel</b>			
Furia, Jamie Gottlieb	604.60	\$ 494.9826	\$ 299,266.50
<b>Associates</b>			
Bluestone, Lawrence	44.70	\$ 500.0000	\$ 22,350.00
Fierro, Brandon M.	404.80	\$ 385.2470	\$ 155,948.00
Fischetti, Joseph A.	346.00	\$ 416.8121	\$ 144,217.00
<b>Paraprofessionals</b>			
Duff, Christy	24.10	\$ 224.7095	\$ 5,415.50
Esposito, Elizabeth	689.90	\$ 257.0945	\$ 177,369.50
Jara, Gabriel	15.10	\$ 198.4106	\$ 2,996.00
<b>TOTALS</b>	<b>4,463.70</b>		<b>\$ 2,532,709.50</b>

**EXHIBIT 2**

*Department of the Treasury of the State of New Jersey and  
its Division of Investment v. Cliffs Natural Resources Inc., et al.*  
Civil Action No. 1:14-cv-1031-DAP

LOWENSTEIN SANDLER LLP

**EXPENSE REPORT**

<b>CATEGORY</b>	<b>AMOUNT</b>
Internal Copying	\$ 374.72
Out of Town Travel	\$ 3,406.40
Expert Fees	\$ 60,660.00
Mediation Fees	\$ 4,182.91
Local Counsel Expenses (Court Fees/Service of Process)	\$ 959.50
Contributions to Litigation Fund	\$ 35,000.00
<b>TOTAL EXPENSES:</b>	<b>\$ 104,583.53</b>

## **EXHIBIT 3**

### **FIRM RESUME AND BIOGRAPHIES**



# Lowenstein Sandler

## LOWENSTEIN SANDLER OVERVIEW

Lowenstein Sandler is a leading national law firm, committed to helping our clients succeed. Our industry knowledge, entrepreneurial drive, and proven commitment to our communities delivers a different and better law firm experience to our clients.

Our **Corporate Department** comprises approximately 140 attorneys. In 2014, *Chambers USA: America's Leading Lawyers for Business* praised the corporate practice as a "corporate powerhouse with great depth of practice" and quoted commentators who laud the group for being "first rate: a top firm." The size of the department and our lawyers' broad-based talent and experience enable us to offer our clients innovative, practical solutions to their matters.

We handle complex corporate transactions nationwide, in many different practice areas:

- Corporate Finance & Securities
- Derivatives
- Employee Benefits & Executive Compensation
- Intellectual Property & Patents
- Investment Management
- Lending & Financial Services
- Mergers & Acquisitions
- Mezzanine Financing
- Mortgage Banking & Structured Finance
- Private Equity
- Public and Private Offerings of Securities
- Real Estate and Real Estate Finance
- Tax
- Tech Transfer
- Trusts & Estates
- Venture Capital and Angel Investing

Our **Litigation Department** also continues to receive top rankings from the *Chambers USA* guide. The department, which comprises nearly 100 attorneys, includes former federal prosecutors, a former Attorney General, a former First Assistant Attorney General, and the former Comptroller of New Jersey. Among the firm's litigation practices recognized by the 2014 *Chambers USA* guide are general commercial litigation, insurance litigation, environmental litigation and white collar criminal defense. The publication notes that the litigation department "has always delivered high-quality advice and given strong guidance in complex and difficult situations."

Our litigation services encompass:

- Antitrust and Trade Regulation
- Appellate
- Capital Markets Litigation
- Class Action & Derivative Litigation
- Commercial & Business Litigation
- Construction Law & Litigation
- Consumer Fraud Litigation
- Corporate Investigations & Integrity
- Employment Law & Litigation
- Environmental Law & Litigation
- Health Care Litigation, Investigations & Compliance
- Fiduciary Counseling & Litigation
- Insurance Coverage
- Intellectual Property Litigation
- Media & Entertainment Litigation
- Products & Specialty Torts
- Securities Litigation
- White Collar Criminal Defense

Our **Bankruptcy, Financial Reorganization, and Creditors' Rights Department** comprises several of this country's top reorganization attorneys who advise clients in many of the nation's largest Chapter 11 cases, out-of-court workouts and financial restructurings. We have developed a national profile through our representation of unsecured creditors' committees as well as individual secured and unsecured creditors in Chapter 11 cases filed throughout the country. The practice is top-ranked in the 2014 edition of the *Chambers USA* guide and is consistently ranked among the most active bankruptcy departments in the nation by *The Deal*.

# Lowenstein Sandler

## LOWENSTEIN SANDLER HONORS & AWARDS

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### ***Chambers USA: America's Leading Lawyers for Business (2014)***

- #1 ranking (tie) for Corporate, Bankruptcy/Restructuring practices
- #1 ranking (tie) General Commercial Litigation, Environmental, Insurance and White Collar Crime & Government Investigations
- Additional practices cited for excellence: Employee Benefits & Executive Compensation; Employment & Labor; Intellectual Property; Real Estate, Investment Funds: Venture Capital

### ***The Legal 500 (2013)***

- "Recommended" for Investment Fund Formation and Management: Alternative/Hedge Funds (National) (for seventh consecutive year); Mergers, Acquisitions and Buyouts: Venture Capital and Emerging Companies and Mergers, Acquisitions and Buyouts: M&A Middle Market

### ***U.S. News & World Report Best Law Firms (2013)***

- Recognized in the following practice areas: Bankruptcy and Creditor Debtor Rights/Insolvency and Reorganization Law; Commercial Litigation; Corporate Law; Criminal Defense: White Collar – Governmental Investigations & Litigation; Employee Benefits (ERISA) Law; Environmental Law; Insurance Law; Litigation – Bankruptcy; Litigation – Construction; Litigation – Eminent Domain & Condemnation; Litigation – Environmental; Litigation – First Amendment; Litigation – Intellectual Property; Litigation – Securities; Litigation – Trusts & Estates; Media & First Amendment Law; Mergers & Acquisitions Law; Personal Injury Litigation – Defendants; Private Equity Law; Private Funds/Hedge Funds Law; Real Estate Law; Securities/Capital Markets Law; Securitization and Structured Finance Law; Tax Law; Trusts & Estates Law and Venture Capital Law

### ***Best Lawyers In America (2008-2014)***

- Two of our litigation partners were named among the country's top "bet-the-company litigators"

### ***The Deal (2007-2013)***

- Consistently ranked among the most active bankruptcy departments in the nation

### ***Dow Jones Private Equity Analyst (2010-2013)***

- Ranked among the most active law firms in the nation for the number of private equity and venture capital deals negotiated and closed in 2009-2012

### ***World Trademark Review (2012-2013)***

- Listed among the preeminent trademark practices in *World Trademark Review 1000 - The World's Leading Trademark Professionals*. The chair of our Trademark Enforcement & Prosecution group was also individually recognized among leading global trademark practitioners

### ***Intellectual Asset Management (IAM) (2013)***

- Listed among the preeminent patent practices in *IAM's Patent 1000 - The World's Leading Patent Practitioners 2013*
- The chair of our Intellectual Property practice, Mark P. Kessler, and Stephen R. Buckingham were individually recognized among leading global patent practitioners

### ***Intellectual Property Today (2013)***

- Ranked among top patent firms based on number of patents issued in 2012

### ***Private Asset Management (PAM) Magazine (2013)***

- Received "Best Law Firm – Client Service" award for two consecutive years

### ***BTI Client Service A-Team (2013)***

- Recognized for outstanding client service to Fortune 1000 companies

### ***PrivateRaise.com and Placement Tracker (2008-2012)***

- Consistently ranked among the nation's leading firms for representing placement agents and investors in Private Investments in Public Equity (PIPE) transactions

### ***The AmLaw Daily (2012)***

- Ranked 33<sup>rd</sup> among AmLaw 200 firms for *pro bono* work

### ***New Jersey Law Journal Pro Bono Ranking (2006-2012)***

- Ranked first in the state for *pro bono* work for seven consecutive years

# Lowenstein Sandler

## Litigation Department Overview

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Lowenstein's Litigation Department is comprised of seasoned trial lawyers with extensive experience across multiple practices and industries. The department, which includes over 100 attorneys, works together seamlessly in bet the company litigation across jurisdictions both nationally and internationally. Our clients range from emerging to Fortune 100, public and private companies in industries that include, life sciences, financial services, technology, energy, retail, real estate and health care. Our goal is always to protect our clients' businesses – whether that means going to trial, appealing a decision, or working zealously to resolve matters outside of the courtroom. While our lawyers have the skill and experience to try cases in any jurisdiction in the country, we understand that protecting our clients often requires avoiding the business interruption and unwanted public exposure caused by extensive litigation.

### Our litigation services include:

- Antitrust and Trade Regulation
- Appellate
- Capital Markets Litigation
- Class Action & Derivative Litigation
- Commercial & Business Litigation
- Construction Law & Litigation
- Consumer Fraud Litigation
- Corporate Investigations & Integrity
- Employment Law & Litigation
- Environmental Law & Litigation
- Health Care Litigation, Investigations & Compliance
- Fiduciary Counseling & Litigation
- Insurance Coverage
- Intellectual Property Litigation
- Media & Entertainment Litigation
- Products & Specialty Torts
- Securities Litigation
- White Collar Criminal Defense

## Representative Matters

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- Representing **Bristol-Myers Squibb Company** in approximately 500 cases claiming personal injury, property damage, and medical monitoring, brought by present and former neighbors of a pharmaceutical manufacturing facility. The cases are split between state and federal court, and the state cases have been designated as a "mass tort" by the Supreme Court of New Jersey. We recently won a decision from the federal court dismissing many of the wrongful death claims because they were time-barred.
- Representing an **international engineering firm** under investigation for alleged FCPA violations. Our representation included a preliminary investigation on behalf of the company. Our client was also the subject of a DOJ investigation into alleged fraudulent practices and a parallel qui tam case. The DOJ and qui tam matters were recently resolved through a deferred prosecution agreement, a civil settlement agreement and an administrative agreement. Importantly, the agreements allowed the company to maintain its most significant customers and avoid debarment or suspension (which could have devastated the company's business). We are continuing to defend the firm and assist it in satisfying its obligations in the ongoing FCPA investigation.
- Representing **Tesla Motors, Inc.** (Tesla) in an appeal challenging the New Jersey Motor Vehicle Commission's (MVC) adoption of amendments to the regulations governing the issuance of new car dealer licenses. The appeal asserts that the amendments are ultra vires because they exceed the scope of the MVC's statutory authority and violate the New Jersey Constitution. We also represent Tesla in an Open Public Records Act (OPRA) suit challenging the MVC's refusal to provide Tesla with

## Lowenstein Sandler

access to public government records related to the MVC's proposal and adoption of the regulatory amendments being challenged in the appeal.

- Representing **The Prudential Insurance Company of America** against Morgan Stanley in a matter alleging fraudulent misrepresentation and civil Racketeer Influenced and Corrupt Organizations Act (RICO) involving the creation and sale of over \$1 billion of residential mortgage-backed securities (RMBS).
- Representing **Chinese Insurer** in international arbitration venued in Hong Kong with approximately \$500 million at stake.
- Representing **Jarwick Developments, Inc.**, in a high profile matter involving the owner of the Minnesota Vikings, a professional team in the National Football League ("NFL"). In this matter, our client and another plaintiff each owned 25% of a partnership that developed and operated a large apartment complex located in Montville, New Jersey. After a two-year bench trial involving highly sophisticated legal claims, the judge found defendants liable on all claims and ordered them to pay our client \$51 million in total damages. The defendants have also been ordered to pay the firm's legal fees and litigation expenses, and a dissolution sale of the apartment complex has been ordered, with our client to receive 25% of the net proceeds.
- Representing **Lennar Corporation** and its subsidiary, **U.S. Home Corporation** in a trial in March 2014 involving U.S. Home's proposed purchase of approximately 1250 acres of undeveloped land in Prince George's County, Maryland.
- Represented **IKB Deutsche Industriebank** and won a dismissal of a \$1.875 billion claim brought in New York by financial guarantor FGIC. FGIC was attempting to rescind a financial commitment issued in the United Kingdom as loss protection to a structured vehicle; the matter involved a complex array of credit default swaps and underlying collateralized debt obligation (CDO) assets.
- Represented **Merck & Co., Inc.**, in the dismissal of civil Racketeer Influenced and Corrupt Organizations Act (RICO), Consumer Fraud Act and other claims brought by a putative class of third-party payors in which the plaintiffs alleged injury from our client's supposed marketing of oncology drugs for "off-label" indications. The dismissal was later upheld by the Third Circuit.
- Represented a special committee of the board of directors of **Johnson & Johnson** in an investigation into a shareholder demand related to the company's compliance with FDA current Good Manufacturing Practice ("cGMP") regulations and alleged off-label promotional practices involving Risperdal, among other pharmaceuticals. After conducting a thorough investigation, we issued a report to the special committee recommending that the shareholder demand should be rejected.

# Lowenstein Sandler

## Securities Litigation

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Navigating financial markets has always been precarious, but for those with a good command of those markets, the rewards can be great. This is especially true in our current economic climate, when the financial industry faces a maze of new regulations and an unstable economy. While the regulatory framework may aim to protect financial markets' integrity, no clear policy objective exists in the legal world. Judges are left to try to strike the right balance between expanding the liability of financial institutions and maintaining a high bar for investor lawsuits.

The murky legal landscape for securities matters adds new challenges for institutional and individual investors: at what point does risk or creativity lead to legal liability? When the risk transitions from economic to legal, individuals and companies can benefit immensely from the fast and deliberate action of experienced lawyers who have a sound knowledge of historic and current legal developments.

At Lowenstein, we have a diverse team of seasoned lawyers who successfully handle securities litigation across the country on behalf of defendants and plaintiffs. Our experience is so in-depth and long-standing that the firm founded the New Jersey State Bar Association's Committee on Securities Litigation and Regulatory Enforcement. Our diverse team regularly handles claims asserted under Sections 10(b), 14(a) and 18 of the Securities Exchange Act of 1934 (the "'34 Act") and Sections 11 and 12 of the Securities Act of 1933 (the "'33 Act").

We also handle shareholder class actions, derivative actions, claims by shareholders who opt out of a class, litigation arising from proxy contests, mergers and acquisitions, Section 16(b) disgorgement, and appraisal rights. In addition, our attorneys have acted as arbitrators for the Financial Industry Regulatory Authority (FINRA).

### Types of Clients

- Institutional and private investment funds
- Hedge funds
- Officers, directors and employees
- Public Companies
- Broker-dealers
- Mortgage bankers/lenders

## Representative Matters

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### Opt-out Litigation

- Represented a large, international fund in claims related to Section 10(b) of the '34 Act and Sections 25400 and 25500 of the California Corporations Code.
- Represented 23 funds by global asset manager in claims related to Sections 10(b) and 20(a) of the '34 Act and Sections 25400 and 25500 of the California Corporations Code. We achieved a confidential settlement in full and final resolution of the claims.
- Served as co-lead counsel in a securities fraud class action filed in the Eastern District of Texas (In re Electronic Data Systems Corporation Securities Litigation). The matter settled for \$137.5 million, one of the largest settlements ever against a corporation that had not issued a restatement for the relevant class period. We represented the plaintiffs.

### Claimant Representation

- Represented W.R. Huff Asset Management Co., L.L.C., in a federal securities fraud action to recover hundreds of millions of dollars in losses arising out of the purchase of debt securities of Adelphia Communications Corporation. The action asserted claims against Adelphia's founders and former directors and officers, former auditors, certain underwriters, and other professionals involved in the issuance of Adelphia's debt securities, under Sections 11, 12 and 15 of the '33 Act and Sections 10(b), 18 and 20 of the '34 Act. The claims against Adelphia's outside directors, its auditor and its



## Lowenstein Sandler

underwriters were successfully settled on confidential terms. "Recommended" for Investment Fund Formation and Management: Alternative/Hedge Funds (National) (for seventh consecutive year); Mergers, Acquisitions and Buyouts: Venture Capital and Emerging Companies and Mergers, Acquisitions and Buyouts: M&A Middle Market.

- Represented Special Situations Fund III, L.P., in a securities class action against Quovadx, Inc. Plaintiffs sought relief under Sections 11 and 15 of the '33 Act against Quovadx and its officers and directors. Plaintiffs asserted claims for false statements and omissions made by Quovadx in a Form S-4 Registration Statement filed with the SEC for the issuance of securities in connection with the exchange of shares with Rogue Wave Software, Inc. We were able to broker a successful settlement for the client.
- Represented a group of senior lenders under a credit agreement in an action against Freescale Semiconductor, Inc. The breach of contract and declaratory judgment action was brought by several funds affiliated with institutional investors which lent approximately \$400 million to Freescale. Plaintiffs alleged that Freescale breached the credit agreement when it issued approximately \$924 million in incremental term loans. The case was successfully settled on confidential terms.

### ***Derivative Litigation and Shareholder Rights***

- Successfully defended Rule 10b-5 claims in *In re Emerson Radio Corp. Securities Litigation*. Our client's arguments against the sufficiency of the complaint, including against plaintiff's loss causation allegations, were accepted by the court, which dismissed the action.
- Represented a media company in a stock option backdating case in which the court dismissed the plaintiff's complaint and also denied plaintiff's request for leave to replead and file a further amended complaint.

### **Rankings**

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Our practice group has received top honors from Chambers USA, which ranked us as Band 1 in New Jersey.

# Lowenstein Sandler

## Class Action & Derivative Litigation

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Class actions, multicounty litigation and other multiparty complex litigations present legal and economic risks to all companies. Similarly, derivative suits against corporations' officers and directors can challenge corporate governance and expose executives to personal liability. As the number of class actions and derivative suits have soared in recent years – spurred by a struggling economy, enhanced regulations, and aggressive plaintiffs' lawyers – it has become more important than ever to have an experienced legal team on your side that can handle these matters judiciously and protect against suits that can cripple a company or weigh heavily on employees' productivity.

At Lowenstein, our nationally recognized Class Action & Derivative Litigation Group uses a hands-on interdisciplinary approach for each client and each matter to provide a pragmatic and effective strategy that minimizes interruption to each client's business. We can when needed, consult with our internal experts in antitrust, business divorce, fiduciary issues, life sciences and other practices to look at all sides of a matter.

We take into account our clients' specific industry and regulatory environments, as well as substantive and procedural legal issues that impact a particular case. We are known for our ability to synthesize massive claims and to address head-on complex "bet-the company" cases.

Lowenstein lawyers have extensive experience defending against class action and derivative suits alleging consumer fraud, securities fraud, ERISA, antitrust, products liability and mass tort claims. We have successfully prevented certification or secured orders decertifying classes in the early stages of litigation. In instances where a class is certified, our team has an extensive track record of successfully resolving cases in both federal and state court. We have numerous successes defending derivative litigations brought against directors and officers of public and private companies. Whatever legal challenge our clients present us with, our team can effectively respond, resolving disputes while meeting clients' legal and business objectives.

### Types of Clients

- Pharmaceutical companies
- Telecommunications companies
- Financial services firms
- Food, beverage and consumer products
- Universities and academic institutions
- Hospitality companies
- Investor owned utilities
- Privately held corporations
- Fortune 500 companies
- Global corporations
- Emerging companies & start-ups

## Representative Matters

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### Securities

- Defended Schering-Plough Corporation and certain individual defendants in a Rule 10b5 securities class action arising out of a market capitalization loss of approximately \$10 billion following the issuer's announcement of manufacturing problems cited by the Food and Drug Administration and a delay in the approval of a new pharmaceutical product. The case resolved on favorable terms.
- Served as co-counsel to Merck, Inc. in the defense of parallel securities fraud and shareholder derivative claims arising out of the ENHANCE clinical trial. The case resolved on favorable terms.
- Successfully represented defendant J.B. Hanauer & Co. in a putative class action that alleged claims under Sections 12 and 15 of the '33 Act and Sections 10(b) and 20(a) of the '34 Act in connection with a bond offering by the Allegheny County Industrial Development Authority.



## **Lowenstein Sandler**

- Represented Emerson Radio Corp. and certain of its officers and directors in a putative class action alleging violations of Sections 10(b) and 20 of the Exchange Act. The District Court granted our motion to dismiss the plaintiffs' complaint.
- Won a landmark appeal on behalf of defendants a securities fraud class action against i-STAT and several of its officers and directors concerning alleged fraudulent statements by i-STAT regarding its sales of hand-held medical diagnostic products for blood analysis.
- Served as co-counsel to Ernst & Young LLP in a matter involving federal securities and common law claims arising from Ernst & Young's alleged failure to discover alleged fraudulent practices while serving as the independent auditor of one of two companies which merged to form Cendant Corporation. The case resolved on favorable terms.

### **Consumer and Commercial Fraud**

- Won a decision from the Third Circuit affirming dismissal of civil RICO, Consumer Fraud Act and other claims brought by a putative class of third-party payors against Merck, Inc., in which the plaintiffs alleged injury from the defendant's supposed marketing of oncology drugs for "off-label" indications. This victory was profiled in Law360, "How They Won It," on July 10, 2012.
- Defeated a motion to certify a class of real estate developers suing Verizon, claiming that it had improperly charged them for expenses involved in relocating the utilities' infrastructure in order to accommodate their developments.
- Won summary judgment on behalf of Dun & Bradstreet in a putative nationwide class action, in which the plaintiffs alleged that they purchased supposedly unnecessary products to avoid having their credit scores lowered. The plaintiffs had asserted claims for deceptive business practices, breach of contract, unjust enrichment, and libel. The court entered judgment in favor of Dun & Bradstreet on all claims.
- Successfully opposed a motion for class certification on behalf of a real estate investment and management firm, in an action brought by a former residential tenant who sought class certification on behalf of all tenants who paid a "lease break fee."
- Currently defending a restaurant franchisor in a putative nationwide class action, in which the plaintiff has asserted claims for breach of contract and unjust enrichment due to the restaurant's alleged failure to charge the plaintiff a "reasonable price" for several beers and mixed alcoholic drinks that the plaintiff ordered and consumed.
- Won the first-ever decertification of a class action pending in New Jersey state court on behalf of Jersey Central Power & Light Company, as well as a decision dismissing a class-wide damages model that established New Jersey law on the admissibility of such models.
- Represented a timeshare exchange company in a matter in which a nationwide putative class of approximately 1.7 million members asserted claims for violation of consumer protection laws and breach of the implied covenant of good faith and fair dealing.
- Defeated certification of the consumer fraud claims in a class action against a telecommunications carrier alleging consumer fraud and antitrust claims. We then resolved the remaining antitrust claims by providing a corrective disclosure to the class.
- Defeated a motion for class certification filed against a Massachusetts investor-owned electric utility against claims of gross negligence and violation of the consumer fraud statute arising from widespread power outages caused by a severe ice storm.
- Won an appeal overturning an order certifying a class against an art auction house on claims that it violated the New Jersey Consumer Fraud Act through allegedly deceptive auctioneering practices.

## **Lowenstein Sandler**

- Represented a timeshare exchange company in a matter in which a putative class of approximately 4,000 members alleged the company violated the New Jersey Consumer Fraud Act and breach of the plaintiffs' membership agreements.
- Successfully defended numerous product manufacturers against putative class action claims under the New Jersey Consumer Fraud Act, including the manufacturers/sellers of the allergy drug Claritin, Coppertone sunscreen, Spot-on flea and tick remedies and Little League baseball bats.

### ***Multicounty Litigation***

- Currently defending Bristol-Myers Squibb Company in over 400 environmental tort suits, consolidated in the state and federal courts of New Jersey, alleging personal injury, wrongful death, property damage and medical monitoring arising from claims that a historic manufacturing plant released toxic substances into the surrounding community. The state cases have been designated as a "mass tort" by the Supreme Court of New Jersey.
- Represent a client in a putative class action filed on behalf of more than 1,000 individuals in which the plaintiffs allege that they contracted cancer and other illnesses, and incurred property damage, as a result of releases of chemical contaminants from two manufacturing plants.
- Represent a client in a putative state class action involving property damage allegedly suffered by area homeowners as a result of environmental discharges from the company's facility.

### ***Derivative & Corporate Governance***

- Represented the Special Committee of the Johnson & Johnson Board of Directors in connection with claims asserted in various shareholder demand letters and derivative complaints in *In re Johnson & Johnson Derivative Litigation*.
- Represented Princeton University in a nationally prominent derivative litigation that raised a number of issues of first impression involving donor intent, academic freedom, and the fiduciary duties of directors of a supporting charitable corporation. The case resolved on favorable terms.
- Served as co-counsel to Schering-Plough, Inc. in a shareholder derivative action relating to alleged breaches of fiduciary duty by certain senior officers and directors in connection with alleged failures to disclose how certain manufacturing difficulties might affect Food and Drug Administration approval of a new pharmaceutical product. The case resolved on favorable terms.
- Represented Vulcan Materials Company in a multi-forum and multi-faceted litigation arising out of a hostile take-over attempt by Martin Marietta Materials, Inc. In related actions, three separate groups of shareholders sued Vulcan's Board in federal court, alleging that the directors breached their fiduciary duties by opposing the merger. The case resolved on favorable terms.
- Represented a special litigation committee of the MBIA board of directors in connection with shareholder derivative litigation in federal and state courts that alleged wrongdoing regarding MBIA's issuance of financial guarantees on structured products.
- Defeated a derivative claim brought by a minority shareholder against Tourneau, Inc. as the controlling shareholder of Tourneau Express. The firm prevailed in AAA arbitration, and successfully argued for dismissal of a suit filed in New York Supreme Court on grounds of collateral-estoppel after certification of the arbitration award in our client's favor.
- Successfully opposed a derivative action brought in federal and state courts in New York against the officers and directors of a NYSE-traded company in connection with alleged accounting irregularities. After filing motions to terminate both actions on behalf of the special litigation committee, the federal and state plaintiffs withdrew their complaints.
- Served as counsel to a special committee of Converse Technology Inc. in connection with shareholder derivative actions and related litigation in federal and state courts alleging wrongdoing regarding stock option backdating.

# Lowenstein Sandler

## ***Merger Related Litigation***

- Represented numerous clients in cases involving attempts to enjoin mergers and acquisitions, including Bristol-Myers Squibb Company in its merger with Medarex, Inc.
- Represented NextWave Wireless, Inc. and its directors and officers in connection with class action brought in Delaware Chancery Court to challenge NextWave's cash out merger with AT&T.
- Represent special committee of the board of directors of Cybex, Inc. in connection with a class action brought in New York State Supreme Court to challenge the company's going private transaction.

## ***Antitrust***

- Represented Kids Line, LLC in an antitrust class action lawsuit where plaintiffs alleged that a national retailer of baby products induced 6 of its suppliers to implement resale price policies prohibiting the retailer's competitors from offering lower prices. The firm vigorously defended Kids Line in this action and obtained dismissal without prejudice during the class certification proceedings. Additionally, the firm successfully opposed class plaintiffs' subsequent effort to amend the complaint to add Kids Line as a defendant to the action for a second time. Kids Line ultimately entered into a settlement with all parties to the action, but did so on highly beneficial terms that reflected its status as the only dismissed party.
- Represented an automobile dealership in an antitrust class action lawsuit where plaintiffs alleged that Mercedes-Benz, U.S.A. and several of its dealers in the New York area participated in a conspiracy to fix the price of new automobiles through the exchange of competitively sensitive business information. The class settlement was approved by the court.
- Represented Prudential Financial, Inc. and Prudential Life Insurance Company of America as defendants in as federal multidistrict civil RICO and antitrust class action involving claims of bid-rigging, market allocation, and ERISA violations. The trial court's dismissal with prejudice of the second amended complaint for failure to state a claim was affirmed by the Third Circuit. We also successfully represented the officers and directors of Prudential in two derivative litigations arising out of the same subject matter.

## **Rankings**

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Our practice group has received top honors from Chambers USA, which ranked us as Band 1 in New Jersey.

# Lowenstein Sandler

## White Collar Criminal Defense

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White collar criminal defense is high stakes and requires both smart and fast action. In recent years, state and federal prosecutions have become more complicated and multifaceted, often involving parallel criminal, civil and regulatory issues. The increasingly complex world of corporate compliance may mean that even the most scrupulous corporation or executive may become the target of an investigation.

As soon as you know that you or your company is being investigated, a strategic response is needed. Missteps could result in protracted or expanded investigations and, eventually, prosecutions. Experienced lawyers with the strategic and tactical know-how are critical to developing your response.

At Lowenstein, we have a team of seasoned lawyers – including four former federal prosecutors – who have successfully represented clients to avoid criminal prosecutions, reduce devastating publicity, minimize follow-on negative consequences and, when necessary, defend clients in criminal proceedings. Our team includes experienced trial lawyers who can defend clients in state and federal courts across the country. It also includes lawyers well-versed in the ins and outs of internal investigations and board matters, conducting such reviews with minimal corporate disturbance.

Lowenstein's white collar defense lawyers have a proven track record of obtaining highly favorable outcomes in prosecutions. But some of our greatest successes are the nonpublic resolutions we achieve in extremely sensitive matters. We have defended clients before the Department of Justice, SEC, United States Attorneys Offices, State Attorney Generals' Offices, IRS, Federal Reserve Bank and FINRA, among others.

### Types of Clients

- Individuals
- Corporations
- Boards of Directors
- Audit Committees

## Representative Matters

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- Represent an international engineering firm under investigation for alleged FCPA violations. Our representation included a preliminary investigation on behalf of the company. The government contractor was also the subject of a DOJ investigation into alleged fraudulent practices and a parallel Qui Tam case. These matters were recently resolved through a deferred prosecution agreement, a civil settlement agreement and an administrative agreement. Importantly, the agreements allowed the company to maintain its most significant customers and avoid debarment or suspension (which could have devastated the company's business). The matter also involved U.S. Attorney's Offices in New Jersey and Maryland.
- Represent an individual in connection with involvement in alleged mismarking of a mortgage bond portfolio while employed at a large investment bank. The matter involves the U.S. Attorney's Office for the Southern District of New York and the SEC.
- Represent an individual who operates a chemical business. Both he and his company are being investigated for alleged dumping practices related to chemical imports from China and Vietnam. The U.S. Attorney's Office of the Southern District of Ohio is heading the investigation.
- Represent a physician under investigation by the U.S. Attorney's Office for the Southern District of New York in connection with alleged fraudulent medical billing practices.
- Represent an individual under investigation for alleged collusion in the bidding on and purchasing of tax liens from New Jersey municipalities. The individual is being investigated by federal grand jury run by the New York field office of the DOJ's Antitrust Division.

## Lowenstein Sandler

- Represent an individual in connection with a DOJ inquiry into foreign banks' facilitation of offshore tax evasion.
- Represent an agency of the government of the Republic of China in its defense against a bankruptcy adversary proceeding arising from the Bernie L. Madoff Investment Securities recovery.
- Represent an individual in connection with an SEC investigation concerning the potential mismanagement and/or misappropriation of funds of a multibillion dollar international hedge fund.
- Represented an individual in connection with a criminal investigation into the embezzlement of over \$10 million from a New Jersey-based hedge fund with \$2 billion under management. The investigation was carried out by the U.S. Attorney's Office, District of New Jersey, and the IRS Criminal Division.
- Represented two Swiss hedge funds in connection with an insider trading case brought by the SEC in the Southern District of New York. After over six months of fact and expert discovery, the SEC moved to dismiss the case without prejudice, and the funds posted in escrow were returned to our clients.

### Rankings

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Our practice group has received top honors from Chambers USA and Best Law Firms in both New York and New Jersey for several years running. In the most recent edition of the Chambers USA New Jersey ranking, a client commented that, "[T]his firm is top-notch: they are the best in the state and the team is very strong."





**Michael B. Himmel**

Partner

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## Co-Chair, Litigation Department

## Chair, White Collar Criminal Defense Practice

Few choices are more important to a company or individual than the counsel they select when faced with a government investigation, potential indictment or trial. Michael Himmel's significant experience defending entities and individuals in high-profile, bet-the-company matters makes him a clear choice when so much is at stake. Michael's clients benefit from his years of experience on both sides of the courtroom, as well as his deep-rooted commitment to the successful outcome of each matter he handles.

Michael's national white collar practice includes matters involving tax fraud, securities fraud, the Foreign Corrupt Practices Act, political corruption, antitrust, bank fraud and environmental matters, as well as internal investigations. His clients have included private and public corporations in various industries, including life sciences and the financial sector, officers and directors of private and public corporations, professionals, and state and federal officials. Michael has also won multibillion-dollar securities fraud cases.

Michael served as an Assistant District Attorney in Bronx County, New York, and an Assistant U.S. Attorney for the District of New Jersey, where he was involved in the prosecution and conviction of a New Jersey state senator, a former speaker of the state legislature and a number of union officials. He currently serves on the Advisory Board for the Association of the Federal Bar of New Jersey, serves on the Lawyers Advisory Committee for the U.S. District Court of New Jersey and is a member of the Federal Bar Council, 2nd Circuit.

## REPRESENTATIVE ENGAGEMENTS

- **White Collar & Government Investigations**
  - Successfully represented numerous entities accused of FCA and FCPA violations. For example, recently secured a deferred prosecution agreement for a global company that provides engineering and environmental consulting services to various federal, state, regional and local governmental and quasi-governmental agencies. The case was initially brought as an FCA Qui Tam matter, which led to an investigation of alleged FCPA violations. The lead enforcement agencies were the U.S. Department of Justice and the U.S. Attorney's office for the District of New Jersey.
  - Successfully represented numerous individuals in the banking and securities industries who were the targets of investigations conducted by the U.S. Department of Justice and the SEC. Michael is currently representing a client in connection with an SEC investigation concerning the potential mismanagement and/or misappropriation of funds of a multibillion-dollar international hedge fund.
  - Successfully represented numerous individuals investigated for alleged insider trading violations.
  - Successfully represented numerous clients in federal antitrust investigations.

## RELATED AREAS

Antitrust & Trade  
Regulation  
Commercial & Business  
Litigation  
Corporate Investigations &  
Integrity  
Health Care Litigation,  
Investigations &  
Compliance  
Life Sciences  
Litigation  
Securities Litigation  
Trial and Arbitration  
White Collar Criminal  
Defense

## EDUCATION

St. Louis University School  
of Law ( J.D. , 1974 ) ,  
Member, St. Louis  
University Law Review

New York University ( B.S.  
, 1971 )

## BAR ADMISSIONS

New York

New Jersey

## COURT ADMISSIONS

1975 , U.S. District Court,  
Southern District of New  
York

1975 , U.S. District Court,  
Eastern District of New  
York

1975 , U.S. Court of  
Appeals, Second Circuit

1980 , U.S. Supreme Court

## MICHAEL B. HIMMEL

Partner

- Successfully represented individuals who were the subjects of alleged tax-fraud violations.
- Successfully represented individuals in political corruption investigations and prosecutions.
- Successfully represented many individuals and entities in connection with Bernard L. Madoff-related investigations. For example, Michael is currently representing an agency of a foreign state in defending against a bankruptcy adversary proceeding arising from the Madoff Investment Securities recovery.

1981 , U.S. District Court,  
District of New Jersey

1983 , U.S. Court of  
Appeals, Third Circuit

2005 , U.S. Court of  
Appeals, Fifth Circuit

### AFFILIATIONS

- American Bar Association
- New Jersey State Bar Association
- New York State Bar Association
- Association of the Federal Bar of the State of New Jersey
- Federal Bar Council
- National Association of Criminal Defense Lawyers
- New Jersey Association of Criminal Defense Lawyers

### ▪ *Business Litigation*

- Successfully represented partner in business dispute concerning large apartment complex, successfully obtaining judgment in excess of \$50 million against defendant managing partner for civil racketeering offenses, fraud, breach of fiduciary duty, and breaches of the partnership agreement and partnership law.
- Successfully represented several Fortune 100 companies in Qui Tam cases.
- Successfully represented institutional investors as plaintiffs in the civil prosecution of securities fraud cases.
- Successfully represented national and regional law firms as defendants in legal malpractice cases.

### OTHER DISTINCTIONS

- **Chambers USA: America's Leading Lawyers for Business (2004–2015)** – Ranked in Band 1 as a leading individual in the white collar crime & government investigations practice area, noting that he is "very experienced and highly competent," "a seasoned white-collar crime practitioner with a national reputation for representing individuals and companies involved in high-profile investigations and criminal proceedings," "a fantastic guy," and "very pragmatic." The firm has ranked consistently in Band 1 for white collar and general commercial litigation.
- **The Best Lawyers in America (2001–2016)** – Consistently ranked in criminal defense and business litigation, and in the 2008-2012 editions, he was selected as a "bet-the-company litigator" for his work in "make-or-break litigation," an honor shared by a small, elite segment of litigators nationwide.
- **Super Lawyers (2005–2016)** – Acknowledged for white collar criminal defense and business litigation.
- **National Judge Learned Hand Award (2015)** – Michael was the recipient of the Metro New Jersey Region of the American Jewish Committee's National Judge Learned Hand Award in recognition of his significant contributions to the legal community.
- **Merit Selection Committee** – Michael served on the United States Magistrate Judges Judicial Selection Committee for the United States District Court for 2014.
- **Trial Bar Award of the Trial Attorneys of New Jersey** – Michael was the recipient of the 2003 award for outstanding trial advocacy.



## MICHAEL B. HIMMEL

Partner

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### PUBLICATIONS

- DOJ Announces FCPA Pilot Program  
*White Collar Criminal Defense Client Alert*, May 4, 2016  
Michael Himmel, Steven Llanes
- Should An Individual Defendant Go To Trial On FCPA Charges? Five Important Considerations  
*The FCPA Report*, May 28, 2014  
Michael Himmel, Steven Llanes
- FCPA Regulators Set Sights On Private Equity  
*VC Experts*, May 3, 2012  
Michael Himmel
- Anti-Money Laundering  
*The Hedge Fund Law Report*, February 16, 2012  
Michael Himmel, Matthew Oliver
- The Third Time's The Charm – IRS Announces Third Opportunity For Voluntary Disclosure Of Offshore Accounts  
*Client Alert*, January 10, 2012  
Robert Kipnees, Michael Himmel, Michael Gooen, Brian Silikovitz, Matthew Oliver
- FCPA Regulators Set Sights On Private Equity  
*Metropolitan Corporate Counsel*, December 2011  
Michael Himmel
- FCPA Regulators Set Sights on Private Equity  
*SEC Enforcement/White Collar Criminal Defense Client Alert*, November 2011  
Michael Himmel
- Getting Out from Under Antitrust Litigation: How it just got harder for foreign entities to stay out of the U.S. antitrust labyrinth  
*Bloomberg Antitrust & Trade Law Report*, October 12, 2011  
Michael Himmel, Jamie Gottlieb Furia
- New Jersey Retroactively Levies Rebate Payment Obligations on Non-Participating Pharmaceutical Manufacturers Under the WorkFirst New Jersey General Public Assistance Act  
*Business Litigation Client Alert*, April 2011  
Michael Himmel
- Client Alert: New Opportunity for Disclosure of Offshore Accounts  
*Client Alert*, February 11, 2011  
Robert Kipnees, Michael Himmel, Matthew Oliver, Michael Gooen
- Foreign Corrupt Practices Act Enforcement Blitz Snares Health Care Companies  
*Bloomberg Health Law Reports*, July 2009

## MICHAEL B. HIMMEL

Partner

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Michael Himmel

- Foreign Corrupt Practices Act 2.0: Its Role In The 2009 Global Economy  
*Metropolitan Corporate Counsel*, May 2009  
Michael Himmel
- Fall-Out from the Financial Crisis: Criminal Enforcement  
*White Collar Criminal Defense Client Alert*, October 2008  
Michael Himmel, Robert Kipnees
- Think Your Tax Secrets Are Safe In Foreign Bank Accounts? Think Again  
*White Collar Criminal Defense Alert*, July 2008  
Michael Himmel, Robert Kipnees
- Feds' Power To Renege on Immunity May Be Tested in U.S. Supreme Court  
*New Jersey Law Journal*, October 16, 2006  
Michael Himmel
- Lessons From the Anderson Debacle  
*The Middlesex Advocate*, Volume 17, Number 2, October 2002  
Michael Himmel, Chris Porrino
- Employer suffers when worker invokes Fifth  
*New Jersey Lawyer*, July 19, 1999  
Michael Himmel, Chris Porrino
- When An Employee Invokes The Fifth Amendment, The Corporate Employer May Suffer The Consequences  
*The Metropolitan Corporate Counsel*, June 1999  
Michael Himmel, Chris Porrino
- Document Destruction May Constitute Pre-Subpoena Obstruction of Justice  
*New Jersey Law Journal*, February 1, 1999  
Michael Himmel, Chris Porrino
- Fair Trade Or Foul Play? The Antagonism Between The Antidumping And Antitrust Laws  
*The Metropolitan Corporate Counsel*, May 1997  
Michael Himmel, Robert Kipnees, Chris Porrino
- Victims May Collude to Contest Dumping  
*The National Law Journal*, March 31, 1997  
Michael Himmel, Robert Kipnees, Chris Porrino
- Knowing When To Fight  
*New Jersey Law Journal*, November 4, 1996  
Michael Himmel, Chris Porrino

## MICHAEL B. HIMMEL

Partner

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### PRESS MENTIONS

- Michael Himmel, Michael T.G. Long, Jamie Gottlieb Furia and Joseph Fischetti are mentioned in *Law360* regarding their successful representation of NJ's Division of Investments on behalf of shareholders of Cliffs Natural Resources against Cliffs and certain of its officers. An \$84 million settlement was recently announced. , *Law360* , February 8, 2016
- Michael Himmel comments in *The Wall Street Journal* about whether HSBC Holdings should be ordered to publicly disclose their compliance monitor's report in the wake of their 2012 money laundering settlement. , *The Wall Street Journal* , January 25, 2016
- Michael Himmel is mentioned in *Law360* in connection with his representation of Heidi Piao in the recent UN bribery case. , *Law360* , January 14, 2016
- In *Compliance Week*, Michael Himmel comments on the rise of derivative and shareholder class action lawsuits brought against companies that have faced FCPA investigations. , *Compliance Week* , May 2014
- In *Compliance Week*, Michael Himmel comments on the increasing number of FCPA investigations in industries that have not traditionally been subject to FCPA enforcement actions. , April 15, 2014
- In the *Wall Street Journal* and on UPI.com, Michael Himmel is highlighted for representing a former executive of the Port Authority of New York and New Jersey in an investigation into lane closures at the George Washington Bridge. , *Wall Street Journal*; *UPI.com* , December 18, 2013
- In *Risk & Insurance*, Michael Himmel comments on the recent increase in anti-corruption investigations and enforcement actions. , *Risk & Insurance* , October 15, 2013
- In a *Corporate Secretary* article, Michael Himmel discusses trends in FCPA investigations including an increasing number of enforcement actions against individuals and federal authorities calling on US Attorneys Offices for assistance. Himmel also comments on the need to train compliance officials doing business in third world countries considered 'hotbed' areas of FCPA corruption. , *Corporate Secretary* , July 23, 2013
- Michael Himmel comments on the SEC's and DOJ's Foreign Corrupt Practices Act enforcement in America and abroad, and on the SEC's whistleblower bounty program. , *BNA Securities Regulation & Law Report* , January 23, 2012
- In a *Law360* article, Michael Himmel comments on how regulators have stepped up their enforcement of the Foreign Corrupt Practices Act, particularly for private equity firms that are increasingly investing in emerging markets and other areas where bribery and corruption may be common. , *Law360* , October 26, 2011
- Michael Himmel comments on the increase in global anti-corruption enforcement in light of Russian investigators cooperating with German investigators in the Hewlett-Packard bribery probe. , *Main Justice* , August 13, 2010
- Michael B. Himmel comments on a federal appeals court decision affirming the dismissal of a qui tam

## MICHAEL B. HIMMEL

Partner

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False Claims Act lawsuit brought against clients Schering-Plough Corporation (now known as Merck & Co., Inc.) and Organon USA Inc. by a former Organon employee. In the lawsuit, the former employee alleged that Organon wrongfully obtained FDA approval for the anesthetic drug Raplon and thereby caused false claims for the use of Raplon to be submitted to Medicare and Medicaid. The U.S. Court of Appeals for the Third Circuit held that the case was properly dismissed for lack of jurisdiction because the plaintiff's allegations were based upon prior public disclosures and he did not qualify as an "original source" within the meaning of the False Claims Act's public disclosure bar. , *Law360* , February 3, 2010

- Michael B. Himmel, Lawrence A. Spector, and Alice B. Stock are recognized for being named to the 2009 edition of New York Super Lawyers. , *Metropolitan Corporate Counsel* , November 2, 2009
- Michael Himmel comments on the IRS' increased scrutiny of individuals who have offshore bank accounts. , *NJBiz* , February 16, 2009
- In an article about accounting fraud during recessionary times, Michael Himmel discusses the correlation between the increase in white-collar crime and financial instability, noting "White-collar crime clearly upticks when there's a downturn in the economy." , *BusinessWeek* , January 9, 2009
- Michael Himmel comments on trial lawyers' use of graphics and visuals as part of a winning strategy to refine and simplify arguments and present them in a visual context. , *The Recorder* , December 8, 2008
- Michael Himmel's appointment to the position of Chair of the firm's Litigation Department is highlighted in Executives Moves. , *The Star Ledger* , April 6, 2008
- Michael J. Himmel discusses the SEC's reasoning for targeting secondary participants in federal securities violations, including those related to the recent case of videogame maker Take Two Interactive Software and its distributor, Capitol Distributing. , *Compliance Week* , May 22, 2007
- Michael B. Himmel discusses far reaching implications of the Supreme Court's imminent decision on federal government power to revoke immunity promised to antitrust violators under the Justice Department's Corporate Leniency Program. , *The New Jersey Law Journal* , October 16, 2006
- Michael B. Himmel comments on Hewlett-Packard's Congressional hearings surrounding allegations of intrusion into its directors' private phone records. , *Washingtonpost.com*, *BusinessWeek online* , September 19, 2006
- Michael B. Himmel comments on the criminal indictments of former General Re Corp. executives and the attempts to reach other executives in an alleged fraud between the reinsurer and AIG , *Business Insurance* , June 13, 2005
- Michael B. Himmel discusses former Berkshire Hathaway executive Richard Napier's guilty plea to aiding AIG in its distortion of finances , *Bloomberg.com* , June 10, 2005
- Michael B. Himmel examines the fairness defense strategy in the late-trading case against former Bank of America securities broker Theodore Sihpol III , *New York Law Journal* , May 5, 2005
- Michael B. Himmel is quoted in an article about the benefits and risks associated with former WorldCom

# Lowenstein Sandler

**MICHAEL B. HIMMEL**

Partner

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CEO Bernard J. Ebbers taking the stand at his trial. , *The New York Times* , February 27, 2005

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Attorney Advertising

# Lowenstein Sandler



**Michael S. Etkin**

Partner

New Jersey

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Michael ("Mickey") S. Etkin is a senior bankruptcy practitioner and commercial litigator with significant experience in complex business reorganizations and litigation as well as securities and ERISA class action litigation. Mickey graduated from Boston University, *cum laude*, in 1975, and received his law degree, *with honors*, from St. John's University in 1978. He is admitted to practice in the state and federal courts of New York and New Jersey. Mickey is listed in the 2011-2015 editions of *Chambers USA: America's Leading Lawyers for Business*, which has described him as "fantastic", "very plugged-in" and "instrumental in providing tactical advice" and noted his skill in "anticipating all the key issues that are likely to arise." In addition, he is also featured in the 2007-2016 editions of *The Best Lawyers in America* in the Bankruptcy and Creditors' Rights section of the publication.

Mickey practices in Lowenstein Sandler's Bankruptcy, Financial Reorganization & Creditors' Rights and its Complex Business Litigation groups. Mickey's bankruptcy practice includes the representation of debtors, trustees, creditors and investors in a variety of complex bankruptcies and bankruptcy related litigation. On the creditor/investor side, Mickey has had significant involvement in many of the largest and most complex Chapter 11 proceedings where he represented the interests of major creditors, bondholders and/or shareholders. Mickey is currently representing shareholder and investor interests in the Residential Capital, Lehman Brothers, Washington Mutual, Overseas Shipholding Group, Nortel, Tribune, Lyondell, Sino Forest, ATP Oil and Point Blank Solutions Chapter 11 or Chapter 15 proceedings. He is a recognized national expert in the representation of defrauded investors and class action claimants in bankruptcy proceedings and has lectured on the rights of securities fraud claimants and class action plaintiffs in a Chapter 11 context. Mickey has also lectured on the interplay between bankruptcy law and product liability litigation.

Mickey also represents major energy companies in connection with bankruptcy proceedings involving their customers and counterparties. He has been invited to speak before financial institutions, bar association groups and credit associations regarding the rights of counterparties to derivatives in a bankruptcy context, including cutting edge issues emerging from the Lehman Brothers Chapter 11 and SIPC proceedings.

Mickey has represented both debtors and purchasers in acquisitions of assets of Chapter 11 and Chapter 7 bankruptcy estates. He has been retained as creditors' committee counsel in the Chapter 11 proceedings of retailers, telecommunications companies, and manufacturers and as special counsel on behalf of Chapter 7 and Chapter 11 trustees to prosecute fraud and similar claims. He has also been retained as debtors' counsel in the Chapter 11 proceedings of several industrial manufacturers and contractors, a major book publisher, a California shopping center, a software manufacturer, a converter, marketer and distributor of paper products and a discount retail store chain and has represented plan proponents in pre-packaged Chapter 11 proceedings.

## PUBLICATIONS

- Third-Party Releases? – Not So Fast! Changing Trends and Heightened Scrutiny

## RELATED AREAS

Bankruptcy, Financial Reorganization & Creditors' Rights  
Commercial & Business Litigation

## EDUCATION

St. John's University  
School of Law ( J.D. ,  
1978 ) , *with honors*

Boston University ( B.S. ,  
1975 ) , *cum laude*

## BAR ADMISSIONS

New York

New Jersey

## COURT ADMISSIONS

1979 , U.S. District Court,  
Southern District of New  
York

1979 , U.S. District Court,  
Eastern District of New  
York

1980 , U.S. Court of  
International Trade

1981 , U.S. District Court,  
District of New Jersey

1997 , U.S. Court of  
Appeals, Second Circuit

2008 , U.S. Court of  
Appeals, Sixth Circuit

2010 , U.S. Court of  
Appeals, Seventh Circuit

## AFFILIATIONS

## MICHAEL S. ETKIN

Partner

- 
- *AIRA Journal*, Volume 29 No. 3, 2015  
Michael Etkin, Nicole Brown
  - Sparks Continue to Fly – Electricity is not Eligible for Section 503(b)(9) Status and Other Shocking Developments  
*Business Credit*, January 2014  
Bruce Nathan, Michael Etkin, David Banker
  - Where to Litigate: Litigation Forum Choices in a Bankruptcy Proceeding  
*New Jersey State Bar Association Seventh Annual Bankruptcy Bench-Bar Conference*, April 1, 2005  
Michael Etkin
  - Automatic Stay Doctrine Applies to Certain Related Nondebtors  
*New Jersey Law Journal*, February 5, 2001  
Michael Etkin
  - American Bar Association
  - New Jersey State Bar Association
  - New York State Bar Association
  - American Bankruptcy Institute
  - International Energy Credit Association

## PRESS MENTIONS

- Michael S. Etkin is quoted in *Law360* from oral argument during the Chapter 11 bankruptcy proceedings of Molycorp. On behalf of defrauded shareholders, Etkin expressed concern that certain notice provisions in connection with the plan of reorganization failed to make purchasers of Molycorp stock aware of the Debtor's attempt to release their claims against non-debtor defendants in pending securities litigation. , *Law360* , March 16, 2016
- Michael S. Etkin is quoted in *Law360* regarding certain disclosure issues and the Chapter 11 plan in rare earth miner Molycorp Inc.'s bankruptcy proceedings. Etkin is bankruptcy counsel to the court-appointed lead plaintiffs in the case. , *Law360* , March 8, 2016
- Michael S. Etkin comments on the bankruptcy court's recent decision regarding the enforceability of the GM Chapter 11 sale order to enjoin certain claims associated with the well-publicized ignition switch defect in General Motors products. In the June issue of the *Turnarounds & Workouts* newsletter, Etkin doubts that the decision will have a broad effect on Chapter 11 cases in general given the uniqueness of the GM case. , *Turnarounds & Workouts* , June 2015
- Michael S. Etkin discusses the status of the restructuring landscape and factors affecting change in the year ahead in the March issue of the *Turnarounds & Workouts* newsletter. , *Turnarounds & Workouts* , March 2015
- Michael S. Etkin comments in *Debtwire* regarding a recap of restructuring in 2014, and anticipated trends and issues to look for in 2015 , *Debtwire* , January 2, 2015
- Michael S. Etkin is featured and recognized in *IECA Insights*, the newsletter of the International Energy Credit Association. Etkin's longtime involvement to the IECA spans over eight years, as, among other contributions, a speaker and a member of the Contracts and Legal Education Group Committee. , *IECA Insights* , November 2014
- Michael S. Etkin was quoted in *Law360* from his oral argument before the Delaware Bankruptcy Court in



## MICHAEL S. ETKIN

Partner

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connection with the objection of defrauded purchasers, who are plaintiffs in a federal securities class action suit, to the scope of the injunction sought by Furniture Brands International Inc. in its Chapter 11 liquidating plan. The Bankruptcy Court sustained that part of the objection. Etkin represents the lead plaintiff. , *Law360* , July 14, 2014

- Michael S. Etkin is quoted in *The National Law Journal* as objecting to the proposed scheduling order in the General Motors Bankruptcy case relating to the ignition switch litigation and claims. Etkin, co-counsel of plaintiffs, requested more information about a proposal to stay the litigation, as well as adequate communication amongst attorneys with cases against GM. , *The National Law Journal* , May 15, 2014
- In *Law360*, Michael S. Etkin and Michael Savetsky are highlighted for representing Kenneth Freeling, a former partner at the law firm Dewey & LeBoeuf LLP, in connection with that firm's Chapter 11 liquidation proceeding. , *Law360* , February 13, 2013
- Michael S. Etkin comments on non-debtor third-party releases in Dynegy Inc.'s bankruptcy plan. , *SNL Financial* , August 27, 2012
- In *Law 360*, Michael S. Etkin is highlighted for representing the proposed lead plaintiff in a securities fraud class action against three executives of the bankrupt oil and gas company Delta Petroleum. On May 8, 2012, Mr. Etkin convinced the bankruptcy court after oral argument to deny Delta's motion to extend the bankruptcy automatic stay to shield the executives from the litigation. , *Law 360* , May 8, 2012
- Michael S. Etkin comments on the \$208.5 million settlement of the consolidated shareholder class-action lawsuit against former officers, directors, underwriters and auditors of Washington Mutual, Inc. alleging misrepresentations and failures to disclose relating to Washington Mutual's financial condition. Lowenstein Sandler is bankruptcy counsel to the lead institutional plaintiff and the class. , *Dow Jones Newswire and The Wall Street Journal* , July 1, 2011
- Michael S. Etkin and Ira M. Levee are highlighted for representing the securities plaintiffs in Colonial BancGroup Inc.'s Chapter 11 proceedings. , *Law360* , June 3, 2011
- Michael S. Etkin comments on Judge Mary Walrath's decision to reject confirmation of Washington Mutual Inc.'s Chapter 11 plan. , *Dow Jones Daily Bankruptcy Review* , January 19, 2011
- Michael S. Etkin featured in an article describing his success in striking a deal for securities claimants in the WorldCom Chapter 11 litigation. , *New Jersey Law Journal* , August 15, 2005
- Michael S. Etkin discusses the decrease of bankruptcy filings in 2005 , *Philadelphia Inquirer* , June 2005



**Michael D. Lichtenstein**  
Partner

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mlichtenstein@lowenstein.com

Michael David Lichtenstein is universally known, by both clients and adversaries, as a practical lawyer who achieves results without the rancor often associated with "big case" litigation. For the past 20 years, he has focused his practice exclusively on insurance and environmental issues.

In the environmental arena, Michael focuses on the defense of cost recovery and toxic tort claims. His approach is to work closely with his clients to thoroughly understand the issues and create a customized approach to the defense of the case, balancing the need for a vigorous defense with the practical considerations of cost and the impact the case will have on his client's business. In insurance matters, Michael prides himself on balancing aggressive representation with an ability to maximize insurance recoveries without engaging in expensive and time-consuming litigation.

Giving back to the community is a major priority for Michael. For nearly a decade, he has worked closely with advocacy groups that provide pro bono legal services to victims of domestic violence in Essex County, New Jersey.

## REPRESENTATIVE ENGAGEMENTS

- Currently representing a company in defense of a CERCLA cost recovery claim in excess of \$100 million. A decision post-trial is pending.
- Currently representing a company in an insurance recovery litigation related to an airplane crash in Oregon.
- Currently representing a company in defense of a class action toxic tort litigation in Dayton, Ohio. A class action determination is pending.
- Successfully represented an individual client in defense of a cost recovery action associated with a condemnation matter as part of a large public redevelopment project in Harrison, New Jersey.
- Successfully represented a company in a toxic tort lawsuit on Long Island and obtained a no cause verdict for the client.
- Recovered for a corporate policyholder millions of dollars in defense costs incurred in defense of multiple class action product liability litigations.
- Successfully tried an insurance coverage case to a policyholder jury verdict in Somerville, New Jersey, and recovered significant unpaid defense costs incurred in defending multiple class action securities lawsuits.

## RELATED AREAS

Commercial & Business  
Litigation  
Environmental Law &  
Litigation  
Insurance Recovery  
Group  
Litigation  
Products & Specialty Torts

## EDUCATION

University of Pennsylvania  
Law School ( J.D. ,  
1991 ) , *cum laude*

Brandeis University ( B.A.  
, 1988 ) , *magna cum  
laude*

## CLERKSHIPS

U.S. District Court, Eastern  
District of Pennsylvania ,  
Honorable Donald W.  
VanArtsdalen (retired)

## BAR ADMISSIONS

New York

New Jersey

Connecticut

## AFFILIATIONS

- American Bar Association
- New Jersey State Bar Association
- New York State Bar Association
- Connecticut State Bar Association

## MICHAEL D. LICHTENSTEIN

Partner

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### OTHER DISTINCTIONS

- Immediate past Co-chair, Insurance Coverage Practice (2008–2011)
- Chair, New Jersey Institute for Continuing Legal Education “Corporate Counsel” (2008–2013)
- Visiting Lecturer, Rutgers University School of Law

### PUBLICATIONS

- Watch What You Say To Your Insurance Broker  
*Law360*, July 24, 2015  
Michael Lichtenstein, Catherine Aiello
- Killing A Mocking Burd And Other NJ Duty To Defend Issues  
*Law360*, May 15, 2015  
Michael Lichtenstein, Craig Dashiell
- Policyholder Beware: Communications With Insurance Brokers May Waive Privilege  
*Insurance Coverage Alert*, April 6, 2015  
Michael Lichtenstein, Catherine Aiello
- Roundtable: Risks Facing Directors and Officers  
*Financier Worldwide Magazine*, August 2013  
Michael Lichtenstein
- A Viable Bad Faith Argument Comes to NJ  
*Law 360*, August 7, 2012  
Michael Lichtenstein
- Lumbermens Mutual Casualty Company Placed into Rehabilitation: What you should be doing to protect and prepare to assert your claims  
*Insurance Law Client Alert*, July 2012  
Michael Lichtenstein
- Second Circuit: D&O Insurance Covers Subpoenas, Special Litigation Committees and Independent Consultants  
*Metropolitan Corporate Counsel*, September 2011  
Michael Lichtenstein
- Notable Case Developments In Food Insurance Law  
*Law360*, August 29, 2011  
Michael Lichtenstein
- Food Insurance Law: Notable Case Developments  
*Insurance Law Client Alert*, August 2011  
Michael Lichtenstein

## MICHAEL D. LICHTENSTEIN

Partner

---

- Second Circuit: D&O Insurance Covers Subpoenas, Special Litigation Committees, and Independent Consultants  
*Insurance Law Client Alert*, July 2011  
Michael Lichtenstein
- New Jersey Federal Court Denies Coverage Under Cost Cap and Pollution Legal Liability Policies  
*Insurance Law Client Alert*, April 2011  
Michael Lichtenstein
- Hedge, PE and VC Funds, Be Warned: Insurance Companies Disclaim Coverage  
*Insurance Law and Investment Management Client Alert*, March 2011  
Michael Lichtenstein, Peter Greene
- Review of 2010 Case Law on D&O Insurance Coverage  
*Insurance Law Client Alert*, February 2011  
Michael Lichtenstein
- Running For Cover, Not For Coverage  
*Law360*, October 18, 2010  
Michael Lichtenstein
- Wheel In The Sky Keeps On Turning  
*Mealey's Litigation Report: Construction Defects Insurance*, August 2010  
Michael Lichtenstein
- Key Recent Insurance Coverage Decisions  
*New Jersey Law Journal*, June 7, 2010  
Michael Lichtenstein
- Survey of Recent D&O Insurance Case Law  
*Insurance Law Client Alert*, January 2010  
Michael Lichtenstein
- The Intersection of Data Breach and D&O Exposure  
*Insurance Law Client Alert*, December 29, 2009  
Michael Lichtenstein
- New Jersey Appellate Division Estops Insurers From Denying Coverage Based on Faulty Reservations of Rights  
*Insurance Law Client Alert*, May 8, 2009  
Michael Lichtenstein
- New Jersey Court Expansively Interprets Term "Physical Damage" in Property Policy  
*Insurance Law Client Alert*, May 2009  
Michael Lichtenstein
- States Continue to Lead in the Absence of Federal Action to Address Climate Change

## MICHAEL D. LICHTENSTEIN

Partner

---

*EnergyLaw 360*, February 2009

Michael Lichtenstein, James Stewart

- AIG: Time to Evaluate, Not Panic

*Insurance Law Client Alert*, September 19, 2008

Michael Lichtenstein

- Environmental Financial Disclosures: Public Disclosure of Environmental Liabilities and the Potential Impact of Global Warming

*Bloomberg Law Reports*, September 2008

Michael Lichtenstein

- Claim Denied Newsletter

*Claim Denied Alert*, July 2008

Michael Lichtenstein

- Regulating Climate Change: A Summary of Federal and State Action

*The Metropolitan Corporate Counsel*, April 2008

Michael Lichtenstein

- Insurance Coverage for In-house Counsel

*Focus, a newsletter of the Association of Corporate Counsel New Jersey Chapter*, February 11, 2008

Michael Lichtenstein

- Insurance Coverage for In-House Counsel

*Insurance Law Client Alert*, January 2008

Michael Lichtenstein

- New Jersey Adopts Global Warming Response Act What It Means to You

*Environmental Law & Litigation Group Alert*, July 2007

James Stewart, Michael Lichtenstein, Norman Spindel

- Does Your Hospital Have Environmental Compliance Issues?

*of Healthcare Risk Management of New Jersey News*, Summer 2005

James Stewart, Michael Lichtenstein

- Contribution Confusion Redux

*Environmental Alert*, January 2005

Michael Lichtenstein

- GAO Reviews SEC Environmental Disclosures

*Environmental Law Alert*, August 2004

Michael Lichtenstein

- Contribution Confusion: The Supreme Court Is Set To Decide When A CERCLA Contribution Claim Can Be Made

*The Metropolitan Corporate Counsel*, April 1, 2004

## MICHAEL D. LICHTENSTEIN

Partner

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Michael Lichtenstein

- Getting a Handle on the Unmanageable  
*New Jersey Law Journal*, April 29, 2002  
Michael Lichtenstein, Gavin Rooney
- The New Jersey Department of Environmental Protection Pulls Environmental Justice Regulations  
*Environmental Law Alert*, April 2002  
Michael Lichtenstein
- Mold Contamination of Mortgaged Property a New and Significant Legal Issue for Lenders  
*Mortgage Lending Alert*, March 2002  
Michael Lichtenstein, James Stewart
- The Emerging Tort of Insurer Bad Faith  
*Claim Denied Insurance Coverage Newsletter*, November 1998  
Michael Lichtenstein

## E-SOURCES

- The Lowenstein Sandler Insurance Claims Handling Guide  
*Insurance Coverage Group*, 2011  
Michael Lichtenstein

## PRESS MENTIONS

- Michael Lichtenstein discusses the resources available, including pro bono legal services, to women who are victims of domestic violence. , *The Star Ledger* , December 23, 2007



**Michael T. G. Long**

Partner

New York, New Jersey  
T 973.422.6726 | F 973.422.6727  
mlong@lowenstein.com

Too often, litigators put all their energy into “the fight” and lose sight of how to solve the underlying problem. Specializing in white collar criminal defense, Mike Long does not simply ask “How do we win this lawsuit?” but rather, “How do we advance your short- and long-term strategic goals, not only in this matter but in the big picture?” Recognized for his tenacity, creativity and sound judgment in the courtroom, Mike is a trusted advisor who knows when to fight and when to keep his clients out of court.

In his white collar practice, Mike conducts internal investigations and handles matters involving allegations of bribery and public corruption, criminal antitrust and international cartel violations, criminal tax evasion, mail and wire fraud, and health care fraud. His complex commercial litigation practice includes civil RICO claims, business divorce matters, and state and federal appeals. Mike also has extensive experience advising clients on “pay to play” political contribution restrictions and other aspects of campaign finance law.

Mike is deeply committed to giving back to the community, including providing pro bono legal services to victims of domestic violence and advocating for the reform of the prison, parole and juvenile justice systems. He is also an avid sports fan, cigar enthusiast and proud father of three children. Prior to joining the firm, Mike served as a judicial law clerk to the Honorable James R. Zazzali of the New Jersey Supreme Court.

## REPRESENTATIVE ENGAGEMENTS

- Successfully defended a telecommunications company in a bench trial involving breach of contract and *quantum meruit* claims.
- Represented partner in business dispute concerning large apartment complex, successfully obtaining judgment in excess of \$50 million against defendant managing partner for civil racketeering offenses, fraud, breach of fiduciary duty, and breaches of the partnership agreement and partnership law.
- Represented an executive of a multinational company accused of participating in an international price-fixing conspiracy.
- Represented a pharmaceutical scientist charged with misbranding pharmaceutical products, including parallel licensing and FDA regulatory matters.
- Represented a union official accused of engaging in a kickback scheme, laundering money and other criminal misconduct.
- Represented a heavy-road contractor in the first challenge to the “pay to play” law to reach the New Jersey Supreme Court.
- Represented a physician accused of participating in a conspiracy to improperly bill Medicare and

## RELATED AREAS

Antitrust & Trade  
Regulation  
Appellate  
Business Divorce  
Corporate Investigations &  
Integrity  
Health Care Litigation,  
Investigations &  
Compliance  
Investment Management  
Life Sciences  
Litigation  
White Collar Criminal  
Defense

## EDUCATION

Seton Hall University  
School of Law ( J.D. ,  
2004 ) , *summa cum  
laude*, *Order of the Coif*,  
*Senior Articles Editor*,  
*Seton Hall Law Review*

Boston College ( B.A. ,  
2000 )

## BAR ADMISSIONS

New York

New Jersey

## AFFILIATIONS

- American Bar Association
- New Jersey State Bar  
Association
- New York State Bar  
Association



## MICHAEL T. G. LONG

Partner

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Medicaid.

- Represented numerous clients in a variety of business divorce matters involving closely held corporations, partnerships and LLCs as well as professional firms.

## OTHER DISTINCTIONS

- **Super Lawyers (2010–2016)** – Recognized as a “Rising Star” for white collar criminal defense.
- **Partners for Women and Justice** – 2014 Partners in Justice Award Recipient.
- **Senior Editor**, DiversityIsNatural.com.

## SPEAKING ENGAGEMENTS

- “Pay-to-Play: Impact on Public Purchasing,” Rutgers Public Purchase Education Forum, Atlantic City, New Jersey, April 30, 2014 (Speaker)
- “Sunshine Act Transparency May Be Costly: Understanding Key Provisions and Enforcement Implications of the Physician Payments Sunshine Act,” West LegalEdcenter Webinar, November 5, 2013 (Speaker)
- “Public Contracts and Procurement Regulations,” Lorman Education Services Seminars, Mt. Laurel, New Jersey, September 10, 2013 (Speaker)
- “Public Contracts and Procurement Regulations,” Lorman Education Services Seminars, East Hanover, New Jersey, February 20, 2013 (Speaker)
- “Pay to Play 101,” New Jersey Legislators and State House Staff Presentation, Trenton, New Jersey, September 21, 2012 (Speaker)

## PUBLICATIONS

- Physician Sunshine Act: Transparency Could be Costly  
*White Collar Criminal Defense Client Alert*, September 2013  
Robert Kipnees, Maureen Ruane, Michael Long, Michael Kaplan
- New California Law Requires Placement Agents and Some Investment Advisers to Register as Lobbyists  
*Investment Management Client Alert*, December 16, 2010  
Michael Long, David Goret, Scott Moss
- SEC “Pay to Play” Rules Restrict Political Contributions by Investment Advisers  
*Investment Management Client Alert*, July 22, 2010  
Scott Moss, David Goret, Michael Long
- Effective November 7, 2009: New York Investment Advisers Subject to New “Pay-to-Play” Rules  
*Lowenstein Sandler PC Client Alert*, November 2009  
Michael Long

## MICHAEL T. G. LONG

Partner

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- An Ounce of Prevention: Lessons Learned from Recent Enforcement Actions in the Pharmaceutical and Medical Device Industry  
*Mealey's Emerging Drugs and Devices*, April 2, 2009  
Maureen Ruane, Michael Long
- Read This Before Making Your Next Political Contribution: Pay-to-Play Legislation Expanded  
*New Jersey Law Journal*, November 17, 2008  
Michael Long, Chris Porrino
- Read This Before Making Your Next Political Contribution: Pay to Play Legislation Expanded  
*Lowenstein Sandler PC Client Alert*, October 2008  
Michael Long, Chris Porrino
- Pay-to-Play Deadline Nears  
*New Jersey Law Journal*, September 24, 2007  
Michael Long, Chris Porrino
- Pay to Play Deadline: Many Businesses With New Jersey Government Contracts Must File Disclosure Statements By September 28, 2007  
*Lowenstein Sandler PC Client Alert*, September 2007  
Michael Long, Chris Porrino
- The Replying Game: Making the Case for Adopting the Fifth Circuit's Use of Particularized Replies in Section 1983 Actions  
*Seton Hall Law Review*, Volume 37, Issue 1, Fall 2003  
Michael Long

## PRESS MENTIONS

- Michael Himmel, Michael T.G. Long, Jamie Gottlieb Furia and Joseph Fischetti are mentioned in *Law360* regarding their successful representation of NJ's Division of Investments on behalf of shareholders of Cliffs Natural Resources against Cliffs and certain of its officers. An \$84 million settlement was recently announced. , *Law360* , February 8, 2016
- Michael Long comments on how differences in pay to play and lobbyist registration laws from state to state make it difficult for investment management chief compliance officers to develop consistent national policies and procedures at their firms. , *Compliance Intelligence* , October 3, 2013
- In *New Jersey Law Journal*, *Millburn-Short Hills Patch* and *Citybizlist.com* articles, Lowenstein Sandler's election of Richard Bernstein, Richard J. Horne, Michael T.G. Long and Matthew A. Magidson to Members of the Firm is highlighted. , *New Jersey Law Journal*, *Millburn-Short Hills Patch*, *Citybizlist.com* , January 2012
- James Stewart comments on how, in Lowenstein's friend-of-the-court brief in *Brown v. Plata*, including a photo of a phone-booth-sized cage used to hold mentally ill inmates influenced the U.S. Supreme Court to order California to reduce critical and dangerous prison overcrowding. , *New Jersey Law Journal* , May

# Lowenstein Sandler

**MICHAEL T. G. LONG**

Partner

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27, 2011

- Scott Moss and Michael Long discuss new regulations barring contingent compensation arrangements for placement agents who seek investments by certain public pension funds. , *The Hedge Fund Law Report* , April 21, 2011

# Lowenstein Sandler



**Jamie Gottlieb Furia**  
Counsel

New York, New Jersey  
T 646.414.6887 (NY), 973.422.6494 (NJ) | F 973.422.6495  
jfuria@lowenstein.com

Jamie Gottlieb Furia focuses her practice on white collar criminal defense, representing individual and corporate clients in matters involving allegations of antitrust violations, political corruption, securities fraud, healthcare fraud, smuggling, environmental violations, wire fraud and tax fraud. Her practice also includes complex civil litigation in both state and federal courts, including consumer fraud class actions and copyright infringement matters.

In addition to her litigation practice, Jamie is committed to representing indigent individuals on a pro bono basis. Most recently, she was a member of a team that secured asylum for refugee children from Central America.

Jamie has a strong dedication to the public interest and to urban education reform in particular. She is a member of the Young Professionals Board of the New Jersey Law & Education Empowerment Project (NJ LEEP), a community-based organization committed to creating a college-bound path for urban youth. While attending Seton Hall Law, Jamie co-founded the Urban Education Law & Policy Initiative, which seeks to facilitate critical dialogue and to develop pragmatic solutions to systemic legal and policy issues affecting urban education.

Jamie joined the firm after serving as a judicial law clerk for the Honorable Katharine S. Hayden of the U.S. District Court of New Jersey (2009–2010). Her experience also includes a position as a clinic student in the Impact Litigation Clinic of Seton Hall Law's Center for Social Justice (2008–2009), where her team briefed and successfully argued a case before the Second Circuit Court of Appeals on behalf of a prisoner at a federal correctional institution, obtaining reversal of the district court's summary judgment order dismissing the client's Eighth Amendment claim.

## REPRESENTATIVE ENGAGEMENTS

- Represented partner in business dispute concerning large apartment complex, successfully obtaining judgment in excess of \$50 million against defendant managing partner for civil racketeering offenses, fraud, breach of fiduciary duty, and breaches of the partnership agreement and partnership law.
- Successfully represented an international company in an antitrust investigation by the United States Department of Justice.
- Successfully represented an entity under investigation by the New Jersey Bureau of Securities for alleged violations of the New Jersey Uniform Securities Act.
- Represents individuals under investigation for alleged tax-fraud violations by the United States Attorney's Offices in the Southern District of New York and the District of New Jersey.

## RELATED AREAS

Appellate  
Class Action Litigation  
Corporate Investigations & Integrity  
Litigation  
White Collar Criminal Defense

## EDUCATION

Seton Hall University  
School of Law ( J.D. ,  
2009 ) , *magna cum laude*,  
*Order of the Coif*,  
*Distinguished Public  
Interest Scholar*,  
*Comments Editor*, *Seton  
Hall Law Review*

New York University  
( B.A. , 2006 ) ,  
(*Psychology*) *magna cum  
laude*, *Phi Beta Kappa*

## BAR ADMISSIONS

New York

New Jersey

## COURT ADMISSIONS

U.S. District Court, District  
of New Jersey

U.S. District Court,  
Southern District of New  
York

## AFFILIATIONS

- New Jersey Law and Education Empowerment Project (NJ LEEP, Inc.), Young Professionals Board
- American Bar Association

## JAMIE GOTTLIEB FURIA

Counsel

- Represents an agency of a foreign state in defending against a bankruptcy adversary proceeding arising from the Bernie L. Madoff Investment Securities Ponzi scheme recovery.
- Association of the Federal Bar of New Jersey
- Represents an international corporation in a high-stakes federal litigation relating to copyright infringement and unfair competition allegations.
- Successfully represented a pharmaceutical corporation defending against RICO and Consumer Fraud Act claims in a class action lawsuit.

## OTHER DISTINCTIONS

- ***Super Lawyers* (2013–2016)** – Recognized as a "Rising Star."

## SPEAKING ENGAGEMENTS

- Presentation, "NJ Criminal Trial Practice", New York City Bar Association's 16 Hour New Jersey Bridge-the-Gap, December 11, 2015
- Key-note Speaker, "The Moral Commitment of a Major Law Firm: Defending Asylum Seekers, and Other Causes," Bergen County Sanctuary Committee, March 8, 2014
- Presentation, "NJ Criminal Trial Practice", New York City Bar Association's 16 Hour New Jersey Bridge-the-Gap, January 31, 2014
- Presentation, "NJ Criminal Trial Practice", New York City Bar Association's 16 Hour New Jersey Bridge-the-Gap, February 1, 2013

## PUBLICATIONS

- Getting Out from Under Antitrust Litigation: How it just got harder for foreign entities to stay out of the U.S. antitrust labyrinth  
*Bloomberg Antitrust & Trade Law Report*, October 12, 2011  
Michael Himmel, Jamie Gottlieb Furia
- Harmonizing No Child Left Behind's Restructuring Provision and State Charter School Laws: The Need for Autonomy, Flexibility, and Adequate Resources  
*Seton Hall Law Review*, January 2009  
Jamie Gottlieb Furia
- Predictors of Homelessness Among Older Adults in New York City: Disability, Economic, Human, and Social Capital, and Stressful Events  
*Journal of Health Psychology*, December 2007  
Jamie Gottlieb Furia

## PRESS MENTIONS

- Michael Himmel, Michael T.G. Long, Jamie Gottlieb Furia and Joseph Fischetti are mentioned in *Law360* regarding their successful representation of NJ's Division of Investments on behalf of shareholders of

# Lowenstein Sandler

**JAMIE GOTTLIEB FURIA**

Counsel

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Cliffs Natural Resources against Cliffs and certain of its officers. An \$84 million settlement was recently announced. , *Law360* , February 8, 2016

## FORMER EMPLOYEE



**Lawrence Bluestone**

Counsel

Tel 973.597.2354 Fax 973.597.2355

E-mail: lbluestone@lowenstein.com

### Practice

Lawrence Bluestone focuses his practice on multimillion-dollar commercial and business disputes, ranging from matters involving breach of contract claims, fraud, and intentional misrepresentation claims seeking contract rescission to constitutional challenges under the Commerce Clause, the Contracts Clause and the Fourteenth Amendment.

Lawrence joined the firm after clerking for the Honorable George W. Miller, U.S. Court of Federal Claims (2009-2010) and working as a litigation associate at Genova Burns Giantomasi & Webster, where he served as part of a trial team on behalf of a professional sports franchise. Lawrence was also an intern in the chambers of the Honorable William H. Walls, U.S. District Court for the District of New Jersey (2006).

Outside the office, Lawrence is an avid tennis enthusiast and has traveled to three of the four Grand Slam tournaments. He hopes to make it to Melbourne, Australia, sometime in the near future to complete his grand slam.

### Representative Experience

- Currently represents the second-largest homebuilder in the U.S. in a multimillion-dollar dispute involving purchase and development of land in Prince George's County, Maryland.
- Represented a retail federation in a successful constitutional challenge to a New Jersey statute under the Contracts Clause.
- Represented large multinational corporations in commercial disputes in federal and state courts, including commercial distribution and franchise matters, consumer fraud matters and real estate disputes.
- Represented a public agency in appellate challenges regarding freedom of information requests.
- Represented a pro bono client in a federal habeas proceeding challenging a state court conviction for armed robbery after an aborted plea attempt.

### Education

- **Benjamin N. Cardozo School of Law** (J.D., 2008), *summa cum laude*; *Order of the Coif*; *Senior Articles Editor*, *Cardozo Law Review*; *Kathryn O. Greenberg Scholarship*; *Dean's Distinguished Scholar*
- **Tufts University** (B.A., 2005), *summa cum laude*, *Political Science and Philosophy*, *Phi Beta Kappa*



## FORMER EMPLOYEE

### Articles/Interviews Featuring Lawrence Bluestone

- **N.J. Supreme Court Recognizes Right to Self-Representation for Individuals Facing Civil Commitment** July 24, 2014

### Publications

- **"So You Want to Pay a Former Employee for His Time Spent Assisting Your Company in Litigation? - In New Jersey, Not So Fast.,"** Gavin J. Rooney, Nicole Denise Bearce, Lawrence Bluestone, *NJCCA Newsletter*, June 2013
- **"Unjust Imprisonment Claims Before the Court of Federal Claims: The Presentation of a Certificate of Innocence Should Not Be Considered "Jurisdictional","** Lawrence Bluestone, *Federal Circuit Bar Journal*, December 2011
- **"Straddling the Line of Medical Malpractice: Why There Should be a Private Cause of Action Against Physicians via EMTALA,"** Lawrence Bluestone, *Cardozo Law Review*, May 2007

### Bar Admissions

- 2009, New York
- 2008, New Jersey



**Joseph A. Fischetti**

Associate

New Jersey

T 973.422.6506 | F 973.422.6507

jfischetti@lowenstein.com

Joseph Fischetti is an associate in the firm's litigation department. Joseph focuses his practice on representing large corporate clients in complex litigation in state and federal courts, with an emphasis on class action defense and consumer fraud litigation. Joseph has represented clients in cases in numerous jurisdictions, including New Jersey, New York, Delaware, Maryland and Massachusetts. Joseph excels at breaking intricate legal and factual issues into their core components, providing simplicity and clarity for courts and clients alike.

Joseph is also active in the firm's pro bono program, where he is currently representing a Colombian refugee seeking asylum due to political persecution. Joseph's other pro bono cases have included sophisticated procedural and constitutional matters before the United States Supreme Court and the New Jersey Supreme Court.

Joseph joined the firm after serving as a law clerk to the Honorable Katharine S. Hayden of the U.S. District Court for the District of New Jersey (2011–2012) and Chief Justice Stuart J. Rabner of the New Jersey Supreme Court (2010–2011). Joseph frequently leans on his clerkship experiences to assist clients with insights on esoteric procedural and technical issues that arise in their cases.

During law school, Joseph served as Executive Editor of the Seton Hall Law Review, as an intern to the Honorable Faith S. Hochberg of the U.S. District Court for the District of New Jersey, and as an intern at Catholic Charities of the Archdiocese of Newark's Immigration Services program. Prior to law school, Joseph worked as a legislative assistant at a law firm in Washington, D.C., specializing in governmental affairs issues in the financial services industry. In that capacity, he was responsible for tracking pending legislation in Congress and updating clients with regard to developments of interest.

## REPRESENTATIVE ENGAGEMENTS

- Defends electric utilities in putative class actions brought by customers due to power outages following major weather events such as hurricanes and winter storms. Successfully defended appeal of a trial court's denial of class certification of a class of ratepayers suing a Massachusetts electric utility for damages caused by widespread and lengthy blackouts following a major winter storm. The appeal resulted in one of the key Supreme Judicial Court opinions addressing the standards for class certification in Massachusetts.
- Currently representing a major biotechnology company in New Jersey state court in a 350-plaintiff case involving claims related to the use of human acellular dermal matrices in ventral hernia surgery and abdominal wall reconstruction.
- Currently providing pro bono representation to a Colombian refugee seeking asylum as a result of political persecution.

## RELATED AREAS

Appellate  
Class Action Litigation  
Commercial & Business  
Litigation  
Litigation

## EDUCATION

Seton Hall University  
School of Law ( J.D. ,  
2010 ) , *magna cum laude*;  
*Seton Hall Law Review*,  
Executive Editor; Vice  
President, Peter W.  
Rodino, Jr., Law Society

George Washington  
University ( B.A. , 2005 ) ,  
*cum laude*, History and  
Political Science

## BAR ADMISSIONS

New York

New Jersey

## COURT ADMISSIONS

U.S. District Court, District  
of New Jersey

U.S. Court of Appeals,  
Third Circuit

## AFFILIATIONS

- New Jersey Bar  
Association
  - Young Lawyers Division
- Association of the Federal  
Bar of New Jersey
- Historical Society of the  
United States District Court  
for the District of New  
Jersey

## JOSEPH A. FISCHETTI

Associate

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- Represented a leading residential real estate developer in a \$200 million dispute in the District of Maryland involving the proposed purchase of 1,250 acres of land in Prince George's County.
- Represented a partner in a business dispute concerning a large apartment complex, successfully obtaining judgment in excess of \$50 million against defendant managing partner for civil racketeering offenses, fraud, breach of fiduciary duty, and breaches of the partnership agreement and partnership law.
- Represented Volunteer Lawyers for Justice (VLJ) in an appeal to the New Jersey Supreme Court arising from ethics issues related to VLJ's pro bono bankruptcy clinic for low-income, no-asset Chapter 7 bankruptcy debtors. Reversing a decision of the Advisory Committee on Professional Ethics, the Court held that volunteer lawyers staffing the clinic do not face a conflict of interest under the Rules of Professional Conduct pertaining to conflicts of interest: with appropriate safeguards, a volunteer attorney can represent a low-income debtor in a no-asset Chapter 7 bankruptcy matter even if the attorney's firm represents one or more of the debtor's creditors in unrelated matters.

## OTHER DISTINCTIONS

- ABA/BNA (2010) – Recipient of Award for Excellence in labor and employment law.

## SPEAKING ENGAGEMENTS

- Speaker, "In Privy or Not? Strategies to Mitigate Class Action Exposure," Lowenstein Sandler's Fall Alumni CLE Day, November 18, 2015
- Panelist, "Latest Developments in Class Action Litigation," New Jersey State Bar Association Annual Meeting and Convention, May 14, 2015
- Speaker, "Consumer Protection Law and Life Sciences: Preventive Strategies to Mitigate Potential Liability," ACC NJ and Lowenstein Sandler Life Sciences Breakfast Series, January 22, 2015

## PUBLICATIONS

- State Courts May Become Sole No-Injury Class Action Forum  
*Law 360*, January 8, 2016  
Gavin Rooney, Joseph Fischetti, Amy Schwind
- The Third Circuit's Ascertainable Scrutiny of Cy Pres Awards in Class Action Settlements  
*New Jersey Lawyer Magazine*, April 2015  
Joseph Fischetti
- NJ Pushes Back Against Pro-Arbitration Federal Policy  
*Law 360*, March 10, 2015  
Gavin Rooney, Joseph Fischetti
- New Jersey Pushes Back Against Class Action Waivers and Arbitration Clauses  
*Class Action Client Alert*, February 23, 2015  
Gavin Rooney, Joseph Fischetti

## JOSEPH A. FISCHETTI

Associate

---

- **Employers Must Use Revised FCRA Notices**  
*Employment Law Client Alert*, January 9, 2013  
Joseph Fischetti
- **Ratliff v. Astrue: The Collision of the Equal Access to Justice Act and the Debt Collection Improvement Act**  
*Seton Hall Law Review*, 2010  
Joseph Fischetti

## PRESS MENTIONS

- Michael Himmel, Michael T.G. Long, Jamie Gottlieb Furia and Joseph Fischetti are mentioned in *Law360* regarding their successful representation of NJ's Division of Investments on behalf of shareholders of Cliffs Natural Resources against Cliffs and certain of its officers. An \$84 million settlement was recently announced. , *Law360* , February 8, 2016
- Lowenstein Sandler co-represented Pacira Pharmaceuticals, Inc. (Nasdaq: PCRX) in its lawsuit against the U.S. Food and Drug Administration (FDA). Pacira Pharmaceuticals filed a lawsuit against the agency earlier this year to address an FDA warning letter regarding the anesthetic non-opioid drug Exparel. Although the label authorized specific doses for certain operations, the FDA had approved Exparel with a broad indication, and Pacira promoted the drug accordingly. We successfully argued in the lawsuit that Pacira has a First Amendment right to promote Exparel in accordance with the FDA-approved broad indication. Pacira and the FDA came to an amicable resolution agreement on the marketing of Exparel, and the FDA withdrew its warning letter. Pacira was also represented by Ropes & Gray LLP and Latham & Watkins LLP. The Lowenstein deal team was led by Michael Lerner, Maureen Ruane, and Joseph Fischetti. , December 15, 2015
- Lowenstein Sandler's Class Action and Derivative Litigation Group won a decision from the Massachusetts Supreme Judicial court denying certification of a class seeking to sue Fitchburg Gas and Electric Light Company, a subsidiary of Unitil Corporation (NYSE: UTL), for injuries following power outages triggered by a severe ice storm. This decision marks the first time the highest court of any state has ruled on whether a utility can be sued in a class action arising from widespread power outages. The Lowenstein team included Gavin Rooney, Natalie Kraner, and Joseph Fischetti. , November 4, 2014
- *The New York Times* wrote an editorial endorsing the arguments made in an amicus brief filed in the U.S. S. Ct. in *Hobby Lobby Stores, Inc. v. Sebelius* on behalf of Professor Frederick Mark Gedicks and 20 other law professors. (Catherine Weiss, Natalie Kraner, Michael Hampson, Joe Fischetti, and Meg Slachetka). , February 5, 2014

# Lowenstein Sandler



## **Brandon M. Fierro**

Associate

New Jersey

T 973-422-6530 | F 973-422-6531

[bfierro@lowenstein.com](mailto:bfierro@lowenstein.com)

Brandon M. Fierro is an associate in Lowenstein Sandler's Litigation Department. Brandon returns to the firm after serving as a law clerk to The Honorable Stanley R. Chesler, United States District Judge.

In law school, Brandon served as a Comments Editor on the *Seton Hall Law Review* and won numerous brief and oralist awards as a member of Seton Hall's Interscholastic Moot Court team. Prior to his career in law, Brandon worked as a stage manager and assistant director on live broadcasts of World Wrestling Entertainment programming.

## **RELATED AREAS**

Litigation  
Securities Litigation  
White Collar Criminal  
Defense

## **EDUCATION**

Seton Hall University  
School of Law ( J.D. ,  
2012 ) , *magna cum laude*,  
*Seton Hall Law Review*,  
*Comments Editor*

Syracuse University ( B.A.  
, 2006 ) , *Economics and  
Broadcast Journalism*

## **BAR ADMISSIONS**

New York

New Jersey

## **COURT ADMISSIONS**

U.S. District Court, District  
of New Jersey

## **AFFILIATIONS**

- American Bar Association
- Association of the Federal  
Bar of the State of New  
Jersey
- The John C. Liffand  
American Inn of Court

## **EXHIBIT 4C**

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

THE DEPARTMENT OF THE TREASURY OF  
THE STATE OF NEW JERSEY AND ITS  
DIVISION OF INVESTMENT, on behalf of itself  
and all others similarly situated,

Plaintiff,

v.

CLIFFS NATURAL RESOURCES INC.,  
JOSEPH CARRABBA, LAURIE BRLAS,  
TERRY PARADIE, and DAVID B. BLAKE,

Defendants.

Case No. 1:14-cv-1031

Judge Dan Aaron Polster

Magistrate Judge Thomas M. Parker

**DECLARATION OF SCOTT D. SIMPKINS IN SUPPORT OF  
LEAD COUNSEL'S MOTION FOR AN AWARD OF ATTORNEYS' FEES AND  
REIMBURSEMENT OF LITIGATION EXPENSES FILED ON BEHALF OF  
CLIMACO WILCOX PECA TARANTINO & GAROFOLI CO., LPA**

I, SCOTT D. SIMPKINS, declare as follows:

1. I am a partner/principal of the law firm of Climaco Wilcox Peca Tarantino & Garofoli Co., LPA. My firm serves as Local Counsel for Lead Plaintiff and the Settlement 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 reimbursement of litigation expenses incurred in connection with the Action. I have personal knowledge of the facts set forth herein and, if called upon, could and would testify thereto.

2. My firm, as Local Counsel, actively participated in the prosecution of the claims on behalf of New Jersey and the Settlement Class. In particular, my firm performed work on behalf of New Jersey and the Settlement Class at the direction and under the supervision of the



Court-appointed Lead Counsel, Bernstein Litowitz Berger & Grossman LLP and Lowenstein Sandler LLP. My firm participated in, among other tasks, reviewing and commenting upon draft complaints, including ensuring compliance with the N.D. Ohio local rules; preparing and filing various *pro hac vice* motions; assisting with briefing on the motion for appointment of lead plaintiff; reviewing and commenting on drafts of the oppositions to Defendants' motions to dismiss and motions to strike confidential witnesses; reviewing and commenting on the draft protective orders, initial disclosures, and discovery requests; performing various discrete legal research; attending all in-person and telephonic court hearings including the initial case management conference; reviewing and commenting upon the various mediation materials; and reviewing the scope and terms of the proposed settlement and commenting on the motion for preliminary approval. We also shared with Lead Counsel our knowledge of, and experience in, the local federal court and local Bar.

3. The schedule attached hereto as Exhibit 1 is a detailed summary indicating the amount of time spent by the attorneys of my firm who, from inception of this matter through and including May 6, 2016, billed ten or more hours to this Action, and the lodestar calculation for those individuals based on my firm's historic billing rates.<sup>1</sup> The schedule was prepared from contemporaneous daily time records regularly prepared and maintained by my firm. Time expended on this application for fees and reimbursement of expenses has not been included in this request.

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<sup>1</sup> The hourly rates set forth on Exhibit 1 are the "weighted average" of the standard hourly rates in effect for the timekeeper at time the hours were spent. The rates for the timekeepers listed on Exhibit 1 were increased as of January 1, 2015 and remained constant through May 6, 2016.

4. The hourly rates for the attorneys of my firm included in Exhibit 1 are the same as the regular rates charged for their services in non-contingent matters and/or which have been accepted in other complex matters, including in connection with other class action settlements.

5. The total number of hours reflected in Exhibit 1 from inception of this matter through and including May 6, 2016 is 304.25. The total lodestar reflected in Exhibit 1 for that period is \$188,262.50, all of which is attorneys' time.

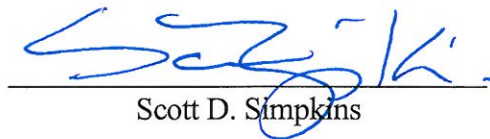
6. My firm's lodestar figures are based upon the firm's billing rates, which rates do not include charges for expense items. Expense items are billed separately and such charges are not duplicated in my firm's billing rates.

7. As detailed in Exhibit 2, my firm is seeking reimbursement for a total of \$1,396.32 in expenses incurred in connection with the prosecution of this Action.

8. The litigation expenses incurred in this Action are reflected on the books and records of my firm. These books and records are prepared from expense vouchers, check records and other source materials and are an accurate record of the expenses incurred.

9. With respect to the standing of my firm, attached hereto as Exhibit 3 is a brief biography of my firm and attorneys in my firm who were involved in this Action.

I declare, under penalty of perjury, that the foregoing facts are true and correct. Executed on May 26, 2016.

  
Scott D. Simpkins

**EXHIBIT 1**

*Department of the Treasury of the State of New Jersey and  
its Division of Investment v. Cliffs Natural Resources Inc., et al.*  
Civil Action No. 1:14-cv-1031-DAP

CLIMACO WILCOX PECA TARANTINO & GAROFOLI CO., LPA

**TIME REPORT**

Inception through and including May 6, 2016

<b>NAME</b>	<b>HOURS</b>	<b>HOURLY RATE</b>	<b>LODESTAR</b>
<b>Partners</b>			
John R. Climaco	60.00	\$730.4167	\$ 48,825.00
Scott D. Simpkins	244.25	591.3511	144,437.50
<b>TOTALS</b>	304.25		\$188,262.50

**EXHIBIT 2**

*Department of the Treasury of the State of New Jersey and  
its Division of Investment v. Cliffs Natural Resources Inc., et al.*  
Civil Action No. 1:14-cv-1031-DAP

CLIMACO WILCOX PECA TARANTINO & GAROFOLI CO., LPA

**EXPENSE REPORT**

<b>CATEGORY</b>	<b>AMOUNT</b>
Court Fees	\$802.50
Internal Copying	299.12
Outside Copying	294.70
<b>TOTAL EXPENSES:</b>	<b>\$1,396.32</b>

**EXHIBIT 3**

[FIRM RESUME AND BIOGRAPHIES]

**Climaco, Wilcox, Peca, Tarantino & Garofoli Co., L.P.A.  
Attorney Professional Biographies**

Climaco, Wilcox, Peca, Tarantino & Garofoli Co., L.P.A. is a nationally recognized law firm founded by John R. Climaco in 1969 with extensive experience in handling all forms of civil and white collar criminal litigation. The Firm's litigation experience encompasses complex commercial and business litigation including securities fraud; ERISA actions; consumer fraud; pharmaceutical and medical device class actions. The Firm also has extensive experience in the areas of municipal law, eminent domain, real estate, environmental, land use litigation and construction litigation, white collar criminal defense, and personal injury litigation. Moreover, the Firm's litigation attorneys routinely utilize the Firm's business and transactional attorneys for expertise in the areas of ERISA contracts, employment law, executive compensation, corporate transactions, financial institutions and municipal bond, insurance coverage, mergers and acquisitions, professional malpractice, and securities transactions.

**Principals:**

**JOHN R. CLIMACO**

John R. Climaco, a 1967 graduate of Case Western Reserve University Law School, began his career as a sole practitioner which eventually evolved into Climaco, Wilcox, Peca, Tarantino & Garofoli Co., L.P.A.

John is licensed to practice in the State of Ohio, as well as United States District Courts for the Northern and Southern Districts of Ohio; Central and Southern Districts of California; Eastern District of New York; Eastern and Western District of Louisiana; Eastern District of Michigan; District of Minneapolis; Eastern District of Texas; Southern District of Illinois; U.S. Courts of Appeals, Second, Fifth, Sixth, Seventh and Ninth Circuits; U.S. Tax Court; U.S. Supreme Court.

Martindale Hubbell's highest rating, AV-pre-eminent, for legal ability and ethical standards.

National Law Journal named John one of the 100 most powerful lawyers in the United States.

Ohio Super Lawyer 2000 to present.

2013-2014 Executive Committee: The National Trial Lawyers Top 100 Trial Lawyers.

John devotes his comprehensive practice to General and Complex Litigation, including Class Actions, Securities ERISA, Mass Torts, Toxic Tort, Environmental, White Collar, Criminal Civil RICO, and Public Law matters.

Throughout his career, John has provided individuals, labor unions, private corporations

and government excellent, diligent, efficient counsel including:

- The State of Ohio; City of Cleveland; Cleveland Board of Education
- Special Counsel, Ohio Attorney General's Office
- Special Counsel, Kent State University
- Special Counsel, Cuyahoga County, Ohio Prosecutor's Office

\* \* \*

- General Counsel, International Brotherhood of Teamsters, 1984 to July 1988
- Sammy Davis, Jr., 1974 until his untimely death in May, 1990.
- Police Officers. Assisted in organizing, drafted the Constitution and By-Laws and served as Counsel to the Cleveland Police Patrolmen's Association (CPPA) and the Ohio Patrolmen's Benevolent Association (OPBA) comprised of 6000 police officers throughout the State of Ohio for over forty (40) years. Currently serves as Civil Counsel to the Cleveland Fraternal Order of Police, Lodge No. 8.

In 1976, Congress revised the U. S. Bankruptcy Code and created the position of Bankruptcy Examiner. In September 1980, Federal Bankruptcy Judge, Mark Schlachet, appointed John the Examiner in the White Motors Chapter 11 Bankruptcy proceedings, which at that time was the largest industrial Chapter 11 Bankruptcy case ever filed under the recently enacted Bankruptcy Code. John's appointment as Examiner was the first appointment of an Examiner following creation of the position.

**U.S. Bankruptcy Judge O'Neil complimented John's role as Examiner:**

"The Examiner's performance was broad in scope, highly productive and most beneficial to results achieved. The Examiner brought to the case a representation of those interests that, in my judgment, would not have existed without that role and a representation that was critical to maintain that balance. Obviously, I believe that the Examiner made significant and substantial contributions to the White Motor reorganization." [*Testimony of Wallace B. Askins, Chairman of White Motors*] The Court concurs and lauds the Examiner's effort which conferred considerable benefit to the estates. He provided an independent, investigative role at the Court's request. Duties commendably performed included valued analyses and decisions on vital issues which proved significantly beneficial."

Beginning in the mid-1970's, John represented Teamster Union official, Jackie Presser, in union-related as well as personal white collar criminal matters. He served as General Counsel of the International Brotherhood of Teamsters ("IBT") from 1984 until 1988 while still developing his Cleveland, Columbus and Washington, D.C. private practice.

**As General Counsel to the IBT, among other significant matters, John:**



- Negotiated the re-affiliation of the IBT with the AFL-CIO.
- Developed a truce with Cesar Chavez, co-founder of the United Farm Workers, and the IBT over migrant farm workers in California.
- Represented the IBT and its elected officials before Congressional Committees, in particular the U.S. Senate's Labor, Judiciary and Permanent Subcommittee on Investigations.
- Represented the IBT and its elected officials before the President's Commission on Organized Crime.
- Represented the IBT in the early stages of the Civil Rico government takeover action and was counsel in the IBT's only victory.
- Developed and successfully litigated the first Civil Rico case filed by a Labor Union against an employer -- Central Transport.

John served as General Counsel to a newly chartered statewide Ohio Teamster Public Employee Union. As a result, at the personal request of then Ohio Governor John G. Gilligan, he quelled a statewide "wildcat strike" by an Ohio Prison Guards' Union, which led to the enactment of Ohio's Public Employment Collective Bargaining Laws.

### **SIGNIFICANT PRECEDENT DECISIONS**

***Herm, et al. v. Stafford, et al.***, 461 F. Supp. 515 (1978), 601 F.2d 588 (6<sup>th</sup> Cir. 1979) established two year statute of limitations in S.E.C. Rule 10b-5 security fraud litigation.

***Dennis J. Kucinich, et al. v. Mercedes Cotner, et al.***, 1978 WL219367 (Ohio App. 8<sup>th</sup> Dist.) Cleveland City Charter reserves to the electors of the City the power to remove from office the Mayor and Members of Council.

***Inland Refuse Transfer Co., et al. v. Browning-Ferris Industries of Ohio, Inc., et al.***, 15 Ohio St.3d 321 (1984) parole evidence is admissible in a contract dispute where the contract is not clear and unambiguous.

***William E. Brock, Secretary of Labor v. Loran W. Robbins, et al.***, 830 F.2d 640 (7<sup>th</sup> Cir. 1987).

***Albrecht v. Treon***, 118 Ohio St. 3d 348 (2008). Recently, John served as Special Counsel to the Cuyahoga County, Ohio Prosecutor's Office in a putative plaintiff and defendant class action suit filed in the United States District Court for the Southern District of Ohio against 87 Ohio county coroners and/or medical examiners in the state

of Ohio who had removed, retained and disposed of body parts (brain) without prior notice to the next of kin. This was a long-standing practice involving thousands of potential claims and \$100 Million dollars in damages. During meetings with attorney representatives of Ohio's 87 counties, John advocated an aggressive litigation strategy including seeking certification of a question of state law to the Ohio Supreme Court. While other attorneys objected, John's certified question of state law strategy was pursued. John's strategy prevailed and the Ohio Supreme Court established the precedent that the next of kin of a decedent upon whom an autopsy had been performed do not have a protected right under Ohio law to the decedent's tissues, organs, blood, or other body parts that have been removed and retained for forensic examination and testing. Based on the Ohio Supreme Court's answer to the certified question of state law John proposed; the United States District Court for the Southern District of Ohio dismissed Plaintiffs' putative class action lawsuit saving eighty-seven Ohio counties hundreds of millions of dollars in potential damages. *Albrecht v. Treon, et al.*, 889 N.E. 2d 120.

### **BILLION/MILLION DOLLAR SETTLEMENTS AND JURY VERDICTS**

#### **\$246 Billion Dollar Class Action Settlement Against the Tobacco Industry**

From 1994, John has been a member of the Castano Plaintiff's Legal Committee serving as acting Chairman of the PLC and Co-Chairman of various committees, including the Discovery, Trial and Fee Committees. In 1994, the Castano class action was the first class action filed against the tobacco industry alleging the nicotine addiction theory.

Castano, along with Mississippi, Texas and Florida are recognized as Tobacco Pioneers. The Pioneers' efforts resulted in the historic \$246 Billion settlement with the tobacco industry.

In 2000, CWPT&G and the other 50 Castano law firms received the "Breath of Life Award" from the American Lung Association for their work.

**John was a member of the Castano Discovery Team in *Scott, et al. vs. The American Tobacco Company, Inc., et al.*, Class Action Claim No. 96-8461 in the Civil District Court of Louisiana, Parish of Orleans where a jury awarded and the Supreme Court of Louisiana affirmed all Louisiana smokers right to participate in a Tobacco Industry paid \$278,720,790.55 Smoking Cessation Programs.**

**John is co-counsel in the Coordination Proceeding Special Title (Rule 1550(b)) *In Re: Tobacco Cases II* in the Superior Court of the State of California for the County of San Diego, Case No. 711400. This matter alleges that the cigarette manufacturers violated section 17200 of California's Unfair Competition Laws ("UCL"). On May 18, 2009, the California Supreme Court reversed the court of appeals**

decertification of a class of California residents who smoked one or more cigarettes and were exposed to the cigarette manufacturers' fraudulent marketing and advertising activities. On March 11, 2010, Judge Prager reinstated claims involving light cigarettes. These recent precedent setting decisions have been widely reported as preserving the California UCL.

**March 22, 1992, John was appointed by Thomas J. Lambros, former Chief Judge of the United States District Court, Northern District of Ohio as a member of the Plaintiffs' Steering Committee and Lead Trial Counsel in a case against USAir arising out of the crash of Flight 405 at LaGuardia Airport in March, 1992, *In Re: Air Disaster at New York LaGuardia Airport on March 22, 1992*, MDL Docket No. 936 (Multi-Million Dollar Individual Plaintiff verdicts).**

**1999 Class Counsel in *Brack, et al. vs. General Motors Corporation*, Case No. CV 98 04046, Superior Court of New Mexico, County of Bernalillo (National Product Liability Multi-Million Dollar Settlement).**

**February 1, 2001, Member of the Plaintiffs' Steering Committee and Co-Chairman of the Discovery and Trial Committees *In Re: Baycol Litigation Products*, MDL 1431, U.S. District Court of Minnesota. (\$1.3 Billion in Settlements).**

**July 6, 2001, The Honorable Judge Kathleen O'Malley appointed John as Co-Lead and Class Counsel in *In Re: Inter-Op Hip Prosthesis Liability Litigation*, MDL No. 1401, U.S. District Court, Northern District of Ohio, Eastern Division (\$3.2 Billion Settlement).**

**March 28, 2003, The Honorable Judge Donald C. Nugent appointed John as Co-Lead Counsel *In re: OM Group Securities Litigation*, Case No. 02CV-2163, U.S. District Court, Northern District of Ohio, Eastern Division (\$92.4 Million Settlement)**

**September 16, 2003 – The Honorable Kathleen M. O'Malley appointed John nationwide Liaison Counsel in *In Re: Welding Rod Products Liability Litigation*, MDL No. 1535, U.S. District Court, Northern District of Ohio, Eastern Division. John also serves on the Class Action Certification, Discovery & Trial Committees. (June 1, 2012 – Confidential Settlement).**

**2006, appointed Co-Lead Counsel in the matter *Opperman, et al. v. Cellco Partnership d/b/a Verizon Wireless*, Case No. BC 326764, Superior Court of the State of California for the County of Los Angeles which was a matter alleging consumer fraud claims on behalf of a national class. The Court approved a national class action settlement on behalf of consumers who activated Verizon wireless cellular service for a Motorola V710 telephone on or before January 31, 2005.**

**December 5, 2007 - \$20.5 Million Dollar Jury Verdict, John was Lead Trial Counsel in *Tamraz v. Lincoln Elec. Co.*, United States District Court, Northern District of Ohio, Eastern Division Case No. 1:04-CV-18948, *In re: Welding Fume Products Liability***

*Litigation*, Case No. 1:03-CV-17000 (MDL Docket No. 1535). The largest of only five Welding Fume Plaintiff verdicts to date. Reversed on Appeal. (**June 1, 2012 Confidential Global Settlement**).

**September 3, 2008 (\$37.5 Million global settlement)** Ohio Attorney General Marc Dann appointed John **Co-counsel** with Bernstein Litowitz Berger & Grossmann LLP for the **Lead Plaintiff the State Teachers Retirement System of Ohio** in the matter ***In re Scottish Re Group Securities Litigation***, U.S.D.C. S.D. NY, Case No. 06-cv-5853 SAS. (**\$37.5 Million Settlement**)

**January 27, 2010 Dannon Activia - \$45 Million national class settlement** including injunctive relief removing “scientifically proven” “clinically proven” and “immunity” language from all packaging, labeling and advertising. John was **Co-Lead Counsel and one of five Class Counsel**. ***Gemelas v. The Dannon Co., Inc., et al.***, U.S.D.C. N.D. Ohio, Case No. 1:08-cv-236 alleging violations of the consumer protection laws on behalf of a national class of consumers arising from Dannon’s contention that its DanActive yogurt is “scientifically and clinically proven” to aid digestion.

**July, 2010 Fleet Oral Sodium Phosphate \$100+ Million Dollar Mass Tort (443 cases) Confidential Settlement**, John was appointed **National Liaison Counsel** by The Honorable Ann Aldrich and subsequently by the Honorable Dan Aaron Polster, ***In re: Oral Sodium Phosphate Solution-Based Products Liability Action***, Case No. 1:09-sp-80000, (MDL Docket No. 2066), United States District Court, Northern District Of Ohio, Eastern Division.

**August 3, 2011 - *Cathy Pfaff, et al. v. Whole Foods Market Group, Inc., et al.***, United States District Court for the Northern District of Ohio, Eastern Division, Case No. 1:10CV02954. **Lead Class Counsel**. Settlement included monetary, equitable relief and *cy pres*.

**December 28, 2011 - *Robert Schmidt, et al. v. AT&T***, Cuyahoga County Court of Common Pleas, Case No. CV-09-688788, \$258,477,200.00 Claims Made Settlement including *cy pres* relating to AT&T’s DSL speed.

**March, 2013 - *In Re: Imprelis Herbicide Marketing, Sales Practices And Products Liability Litigation***, MDL No. 2284 before the Honorable Judge Gene E.K. Pratter, United States District Court Eastern District of Pennsylvania. This class action settlement provided money and other compensation for damage to trees and other vegetation that was caused by an herbicide (weed-killer) called Imprelis®.

***In Re: Navistar Diesel Engine Products Liability Litigation***, MDL 2223, United States District Court for the Northern District of Illinois, Eastern Division. Member - Plaintiffs’ Steering Committee. Settlement covered those who purchased or leased a model year 2003-2007 Ford vehicle(s) equipped with a 6.0-liter PowerStroke diesel engine, who may be a member of a Settlement Class and entitled to reimbursement of certain engine-related repair expenses.

**March, 2013 - *Donald Eliason, et al. v. Gentek Building Products, Inc., Associated Materials, LLC, et al.***, Case No.: 1:10CV2093 PAG, before the Honorable Judge Benita Y. Pearson, United States District Court for the Northern District of Ohio. \$3 Million Settlement and warranty enhancement.

**March, 2013 – *School Employees Retirement System of Ohio v. Wachovia Bank, N.A., et al.***, Case No. 2:10-cv-1160 before the Honorable Algenon L. Marbley, United States District Court for the Southern District of Ohio. \$6 Million Settlement.

**John was Co-Lead and Liaison Counsel** in the matter ***In Re: Inphonic, Inc. Wireless Phone Rebate Litigation***, MDL Docket No. 1792 (D.D.C.), District of Columbia, Case No. 06-528. Following Inphonic filing for bankruptcy, a settlement was negotiated.

***Melissa Brock, et al. v. General Mills, Inc., et al.***, United States District Court Northern District of Ohio, Case No. 1:10-cv-00060, consumer fraud involving false advertising for Yoplait Yogurt. The plaintiffs alleged that Yoplait Yo-Plus made false claims about its yogurt having digestive health benefits. Yoplait and its corporate owner (General Mills) deny the claims, but the case was settled before any findings were made by the court. \$8,500,000. Member – Plaintiffs' Steering Committee.

***Jemeliah Sade Smith, et al. v. Volkswagen Group of America, Inc.***, United States District Court Southern District of Illinois, Case No. 3:13-cv-00370. Settled Final Approval Order dated December 23, 2014. Member- Class Counsel.

#### **PENDING CLASS ACTIONS AND MASS TORTS**

**The Honorable Donald C. Nugent appointed John Co-Lead and Liaison Counsel *In Re: Kaba Simplex Locks Marketing and Sales Practices Litigation***, MDL No. 2220, United States District Court, Northern District of Ohio, Eastern Division. Liaison and Co-Lead Counsel. Settlement in progress.

**January 9, 2012 – The Honorable Ed Kinkeade, USDC for the Northern District of Texas appointed John one of the members of Plaintiff's Steering Committee. *In Re: DePuy Orthopaedics, Inc., Pinnacle Hip Implant Liability Litigation***, MDL No. 2244.

***In Re: POM Wonderful LLC Marketing and Sales Practices Litigation***, MDL 2199 in the United States District Court for the Central District of California. Member - Plaintiffs' Steering Committee.

***In Re: Dial Complete Marketing and Sales Practices Litigation***, USDC for the District of New Hampshire, MDL 2263 before the Honorable Judge Steven J. McAuliffe, Member - Executive Subcommittee.

***In Re: ACTOS (Pioglitazone) Products Liability Litigation***, MDL No. 2299; Judge

Rebecca Doherty, United States District Court, Western District of Louisiana.

***In Re: Colgate-Palmolive Softsoap Antibacterial Hand Soap Marketing and Sales Practices Litigation, MDL No. 2320***, Before the Honorable Judge Paul J. Barbadoro, United States District Court, District of New Hampshire. Member – Plaintiffs’ Executive Committee.

***In re: MI Windows and Doors, Inc. Products Liability Litigation, MDL No. 2333***, before the Honorable Judge David C. Norton, United States District Court for the District of South Carolina.

***In Re: Emerson Electric Co. Wet/Dry Vac Marketing and Sales Practices Litigation, MDL No. 2382***, before the Honorable Judge Henry E. Autrey in the United States District Court Eastern District Of Missouri. Member – Plaintiffs’ Executive Committee.

***In Re: Shop-Vac Marketing and Sales Practices Litigation, MDL 2380***, before the Honorable Chief Judge Yvette Kane in the United States District Court Middle District of Pennsylvania.

***In re: Mirena IUD Products Liability Litigation, MDL 2434***, before the Honorable Judge Cathy Seibel, in the United States District Court Southern District of Illinois.

#### **CONTINUING LEGAL EDUCATION**

John has lectured extensively on trial preparation and practice, RICO, ERISA, Mass Torts, Class Actions, MDL Proceedings, white collar criminal defense, labor and employment law throughout the country including the Stetson University College of Law's Annual Conference; New York City Bar Association; Aspen, Colorado Advanced Criminal Law Institute; Case Western Reserve College of Law-CLE Program; Health Care Section Conference of the Cleveland Bar Association; the Columbus Bar Association's Annual Litigation Institute; Institute of Business Law of California State University, Los Angeles and the Ohio CLE Institute. In January and May 2001, he was a panel member at the Mealey's Baycol Seminar in San Diego, California. On October 24, 2003 John was a Keynote Speaker at the Fourth Annual Class Action/Mass Tort Symposium in New Orleans sponsored by the Louisiana State Bar Association. On November 16, 2004, he was a panel member at the American Conference Institute's Welding Rod Litigation Conference in New Orleans. On March 24, 2010 and May 12, 2010, John was a Keynote Speaker at the HarrisMartin Toyota Recall Litigation Conferences on The Tread Act: Criminal Liability for "Lying" to NHTSA About Safety-Related Defects. On December 10, 2010 John spoke on Civil RICO at the 10<sup>th</sup> Annual Louisiana Mass Torts Symposium. On January 14, 2011 John spoke on Manufacturers Civil RICO Liability at the HarrisMartin Darvon and Darvocet Recall Litigation Conference. In January 2012 and 2013, John spoke on Civil RICO Liability at the Harris Martin Transvaginal Mesh and ACTOS Litigation Conference.

John has appeared numerous times on local and national radio and television, including



*Good Morning America, The Today Show, Larry King Live, Night Line, The Greta Van Susteren Show, The Phil Donahue Show, CNN – Anderson Cooper and is regularly quoted in local and national newspapers discussing various legal issues.*

### **MEMBERSHIPS AND HONORARIUMS**

Life Member - Judicial Conference of the United States Court of Appeals for the Sixth Circuit. Charter and Life Member - Judicial Conference of the Eighth Judicial District of Ohio. United States District Court Judge Donald C. Nugent appointed John as a Member of the Advisory Group to the United States District Court for the Northern District of Ohio. In 2009, Steven Dettlebach, United States Attorney for the Northern District of Ohio, appointed John to the U. S. Attorney Advisory Committee.

On May 6, 2000 John received the **Ellis Island Medal of Honor**.

Life Member - Justinian Forum, a professional organization for attorneys and judges of Italian heritage in Northern Ohio and also the Northern Ohio Italian-American Association ("NOIA").

In 1992 and 1997, the Center for Mental Retardation selected John to receive the Service to the Center Award. In 2003 he received an award for outstanding commitment to individuals with MR/DD. In 2006 he received the Above and Beyond Award from North Coast Community Homes. He currently serves as a member of the Board of Directors of Our Lady of the Wayside.

In 2008, Our Lady of the Wayside honored John with the Starlight Guardian Humanitarian Award – celebrating those who embrace the spirit of giving.

In 2012, The Association for Retarded Citizens presented John the Lifetime Achievement Award.

January 2015, featured article- Ohio Super Lawyer.

### **PERSONAL**

John is married to Carolyn. John and Carolyn have two children, John M. and Nicole and two grandchildren, ten year old John Nicholas and five year old Athena Conlyn. John M. is an attorney. He was one of the founders, President and CEO of Axial Biotech, a genetic research company in Salt Lake City, Utah. Axial Biotech discovered the gene which causes scoliosis and developed a DNA test to diagnose it. John's daughter, Nicole, is 39. Nicole is intellectually challenged, lives independently in a home John and Carolyn built for her and three other challenged adults and works four (4) days per week in John's office.



**DENNIS R. WILCOX**  
**Managing Principal**

With his clients, Principal Dennis R. Wilcox speaks many languages; governmental, finance, real estate, securities. But there is one language he rarely speaks in their presence: *legalese*.

Wilcox currently serves as general counsel to such clients as Gateway Economic Development Corporation and the Cleveland-Cuyahoga County Port Authority. In that capacity he has significant experience in a wide range of business transactions and real estate activities.

As chair of the corporate and business law section, he supervises transactional, commercial litigation and general business matters. He offers the firm extensive experience in transactional work in areas of finance, real estate, securities and bankruptcy. He is equally skilled in areas of commercial litigation, education and employment law. Wilcox also heads the firm's public finance and municipal bond practice.

With his vast pool of knowledge on business law and public financing, Wilcox has been instrumental in a myriad of complex transactions including the Rock and Roll Hall of Fame and Museum, Applied Industrial Technologies and MTD headquarters projects, the acquisition of C&P Ore Docks and Old River Properties on Cleveland's waterfront, financings for Jacobs Field, Quickens Loans Arena, the new Cleveland Browns Football Stadium, the City of Parma Justice Center and the new Kaufmann's (now Macy's) on the Heights project, known as University Square. He has served in numerous roles in these transactions: issuer's counsel, bond counsel, underwriters' counsel and developers' counsel. In these roles he has been involved in over \$4 billion dollars of bond financings. He previously served as special counsel to the Ohio Attorney General for Kent State University and acted as chief outside special counsel for litigation matters for the University.

A graduate of Case Western Reserve's Franklin Thomas Backus School of Law, Order of the Coif, Wilcox is admitted to practice in the State of Ohio and the District of Columbia, as well as the U.S. District Court for the Northern District of Ohio, U.S. District Court for the Eastern District of Michigan, U.S. District Court for the District of Columbia, U.S. Tax Court and U.S. Courts of Appeal for the Third and Sixth Circuits.

Wilcox remains active in the professional development arena through his participation in numerous legal organizations. He is a member of the American, Ohio and Cleveland Bar Associations and the Nationals Association of Bond Lawyers.

He takes an active role in his community where he currently serves on the City Council for the City of Cleveland Heights and as Mayor.

**JOHN A. PECA**  
**President**

In many senses, litigation in the courtroom and negotiation in the boardroom are two very different animals. While adept in both arenas, John A. Peca, President of the Firm, knows that legal proceedings outside of court require a different sort of legal sophistication, may not be suited for unpredictable, unrestrained battle in the boardroom.”

As a principal member of the Climaco firm since 1980, Peca has managed negotiations of business transactions and litigation for international corporations, and local and regional enterprises and organizations. Prior to becoming President he was Managing Principal and also co-chaired the Firm’s Corporate and Business Law department. Currently he manages the Firm’s Class Action and Mass Tort practice.

Mr. Peca, who began his career as a certified public accountant, offers the Firm substantial experience in business, strategic, and financial issues.

A native of Cleveland, Mr. Peca received a Bachelor of Science degree in business administration, major in accounting from John Carroll University where he graduated number two in his class of accounting majors and his law degree from Case Western Reserve University’s Franklin Thomas Backus School of Law.

In addition to membership in the Cleveland, Ohio State and American Bar Associations and the American Institute of Certified Public Accountants, Peca is admitted to practice before: the Supreme Court of the State of Ohio; United States Tax Court; United States District Court, Northern District of Ohio; District of Columbia Court of Appeals; United States District Court for the District of Columbia; United States District Court for Southern Texas; United States Court of Appeals for the District of Columbia, Second District and Sixth District and United States Supreme Court.

Mr. Peca is a member of the American, Ohio and Cleveland Bar Associations, Ohio Society of Certified Public Accountants and the American Association of Attorney-Certified Public Accountants. He has lectured and written extensively on ERISA, bankruptcy proceedings and small business organizations.

In addition to serving on several private company boards, he is secretary/treasurer of NOIA Foundation and a member of the Board of the Cleveland Clinic Children’s Hospital, the Diocese of Cleveland Catholic Education Endowment Trust and Cleveland Central Catholic High School. He has served on the Boards of Gilmour Academy, Alta Social Settlement House, where he is a recent past president, Lyric Opera Cleveland, Neighborhood Centers Association and University Circle Incorporated.

On May 12, 2012, Mr. Peca received the Ellis Island Medal of Honor.

Mr. Peca was recognized in the 2012 Edition as one of Cleveland’s Top Rated

Lawyers® for Commercial & Business Law and Litigation

Mr. Peca has been active in the following Class Action, Mass Tort and Security Litigation matters:

In 2004, Mr. Peca assumed management of the Firm's Asbestos Practice which consisted of in excess of 3,000 clients.

*In re Welding Fumes Products Liability Litigation*, MDL No. 1535, Case No. 1:03-CV-17000, United States District Court for the Northern District of Ohio: He served as assistant to John R. Climaco in his capacity as Local Liaison Counsel. In this position in addition to managing the Firm's Welding Fume individual case docket of several hundred clients he assisted in pleading preparation, discovery and trial preparation. He also served as second chair in the bell weather welding fume trial of *Tamraz v. Lincoln Electric, et al.*, Civil Action No. 1:04-CV-18948, United States District Court of the Northern District of Ohio, Eastern Division, which resulted in a \$20.5 million plaintiff's verdict, the largest of any welding fume trial verdict. In the course of welding fume litigation Mr. Peca deposed over 50 witnesses ranging from employers to co-workers and manufacturer witness, both fact and expert witnesses.

*In re: Baycol Litigation Products Liability Litigation*, MDL 1431, United States District Court, District of Minnesota, Mr. Peca supervised the administration of the Firm's multi-hundred individual cases from initial client intake and claim review and evaluation through litigation and settlement.

*Gemelas v. The Dannon Company, Inc.*, Civil Action No. 1:08-CV-236, United States District Court, Northern District of Ohio, Eastern Division: Mr. Peca participated as a member of the Discovery Committee in this Class Action which resulted in a \$45 million recovery and is reportedly the largest false advertising settlement based on unsubstantiated health claims. In the course of the litigation he reviewed analyzed and coding hundreds of documents and participated in the depositions of several key witnesses.

*In Re: Scottish Re Group Securities Litigation*, Master File No. 06 CV05853 (USDC S.D. New York): Peca served as a member of the discovery team. This matter settled for \$37.5 million

*In re Oral Sodium Phosphate Solution-Based ("OSPS") Products Liability Action*, MDL 2066 (N.D. Ohio Nov. 25, 2009): Mr. Peca assisted John R. Climaco in his role as liaison counsel in this major defective drug case that resulted in settlement payments to individuals in excess of \$100 Million Dollars. Mr. Peca was charged with the responsibility to conduct confirmatory discovery on the adequacy of the settlement in relation to the Defendant's ability to pay. Mr. Peca's responsibility included depositions of the key financial officers of the company and the Defendant's independent auditors.

*Pfaff v. Whole Foods Inc.*, Civil Action No. 1:09-cv-02954-JG: Mr. Peca served as co-lead counsel in this class action alleging false and misleading advertising by Whole Foods Markets at their Ohio stores. Mr. Peca directed the discovery efforts relating to Defendant's sales records and information systems. The litigation was settled for monetary consideration equal to approximately four times the estimated class damages and additional equitable relief including advanced cashier training and revamped signage.

*McKinney v. Bayer Corporation, et al.*, U.S. District Court, Northern District of Ohio, Eastern Division: Mr. Peca serves as Co-Lead Counsel.

*Johns v. Bayer Corporation, et al.*, Case No.: 09-cv-1935, U.S. District Court, Southern District of California: Mr. Peca serves as Co-Lead Counsel.

*In re: Navistar 6.0 L Diesel Engine Products Liability Litigation*, MDL No. 2223, Case No. 1:11-CV-2496, United States District Court for the Northern District of Illinois (*Morris v. Navistar, Inc. et al*, Civil Action No. 1:11-cv-02837).

*Pogrebinsky v. POM Wonderful, et al.*, MDL 2199 United States District Court for the Northern District of Ohio, Eastern Division; *In re: POM Wonderful LLC*: Mr. Peca serves on the Science Committee which has the responsibility to examine the scientific and medical support for health claims made by the manufacturer of POM Wonderful products.

*In re: KABA Simplex Locks Marketing and Sales Litigation*, MDL No. 2220, Mr. Peca is serving as first assistant attorney to co-lead counsel John R. Climaco in the national class action. He has participated on the pleading committee and participation in discussions concerning a potential resolution of the case.

*In re: Bayer Healthcare LLC and Merial Limited Flea Control Products Liability Litigation*, United States District Court, Northern District of Ohio, MDL No. 2319. Mr. Peca serves on the Research Committee.

*In re: Colgate-Palmolive Softsoap Antibacterial Hand Soap Marketing and Sales Practices Litigation*, United States District Court, District of New Hampshire, MDL No. 2320, Mr. Peca serves on the Plaintiffs' Executive Committee.

*In re: Dial Complete Marketing and Sales Practices Litigation*, United States District Court, District of New Hampshire, MDL 2263: Mr. Peca serves on the Discovery and Pleading Committees.

*In re: MI Windows and Doors, Inc. Products Liability Litigation*, United States District Court, District of South Carolina, MDL No. 2333: Mr. Peca serves on the Plaintiffs' Executive Committee.

*Eliason, et al. v. Gentek Building Products, Inc., et al.*, United States District Court, Northern District of Ohio, Eastern Division, MDL 2093. Mr. Peca was appointed as Plaintiffs' Liaison Counsel in the national class action seeking recovery of damages resulting from the sale of faulty siding. Preliminary approval has been granted and unopposed final approval is scheduled for hearing August 1, 2013.

*Raimondo v. Sprint Communications Co., et al.*, Case No.: 1:12-cv-1984, United States District Court, Northern District of Ohio, Eastern Division, Mr. Peca was appointed local counsel in this class seeking recovery for easement violations. Final approval was granted June, 2013.

### **THOMAS J. TARANTINO**

Thomas J. Tarantino is a principal attorney in the law firm of Climaco, Wilcox, Peca, Tarantino & Garofoli Co., L.P.A., where lends his expertise to the Firm in the areas of corporate and business law, investment adviser regulation, real estate, government law, and public finance. Mr. Tarantino has represented both private businesses and non-profit organizations in a wide range of complex transactions including asset acquisitions, stock transactions, mergers, commercial financing, franchise development and real estate acquisition and development. In addition, Mr. Tarantino regularly assists entrepreneurs and civic leaders in organizing new companies and non-profit organizations and providing continual advice and support on corporate governance matters.

As part of his public finance practice, Mr. Tarantino has participated as bond counsel in note and bond issuances of several state, local and quasi-governmental agencies. He has also acted as special counsel in the creation of enterprise zones, commercial reinvestment areas, and in special assessment proceedings. He participated in the Firm's representation as underwriters' counsel and issuers' counsel in numerous other transactions, including the Gateway Economic Development Corporation and Rock and Roll Hall of Fame and Museum projects.

Mr. Tarantino is admitted to the Supreme Court of Ohio, the United States District Court, Northern District of Ohio and the United States Court of Appeals for the Sixth Circuit. Mr. Tarantino is a member of the National Association of Bond Lawyers, the Ohio and Cleveland Bar Association. A Lake County resident, Mr. Tarantino is also a member of the Lake County Bar Association, where he serves on the Real Estate Committee.

Consistent with the Firm's commitment to community service and charitable support, Mr. Tarantino serves various area charitable and community organizations. In addition to his service as a board member and pro bono general counsel to several charities, Mr. Tarantino serves the citizens of Lake County as an appointed board member of the Lake County Board of Developmental Disabilities. Mr. Tarantino is also active in supporting charities devoted to addressing autism and other developmental disabilities.

## DAVID M. CUPPAGE

Attorney David M. Cuppage adds a distinct blend of experience and talent to the Climaco firm in a number of legal areas. Skilled in commercial, class action, real estate and environmental litigation as well as general corporate law, David's range of abilities makes him a valuable member of the firm's seasoned team.

A 1990 graduate of Cleveland-Marshall College of Law and former Judicial Clerk to Judge Francis E. Sweeney and Judge Donald C. Nugent at the Eighth District Court of Appeals, Ohio, Cuppage began his career with the Climaco firm in 1995. In that time, Cuppage has become involved in all aspects of the Firm's Litigation Department and the Commercial\Corporate Department. Cuppage has been involved in all aspects of commercial, intellectual property (trademark, copyright, and trade secret), municipal, business, securities, mass tort and consumer class actions, real estate, construction, land use, appropriations, and employment litigation as well as providing advice, counseling and due diligence in general business, corporate, e-commerce and internet matters. Cuppage's practice in the area of environmental law includes advocacy, negotiation, counseling and litigation of CERCLA, RCRA, EPCRA, Clean Water Act, National Historic Preservation Act and other state and local environmental statutes.

Cuppage has participated in the litigation of many complex civil cases including the following representational and/or reported cases: *In re: Ford Motor Company Crown Victoria Police Interceptor Products Liability Litigation*, U.S. District Court, N.D. Ohio, Case No. 02-CV-1500; *In re OM Group, Inc. Securities. Litigation*, Master File No. 02 CV 2163; *Ferro Corp. v. Blaw-Knox Food & Chem. Equip. Co.*, 2002 WL 31260495 (2002); *Millstein v. Millstein*, 2002 WL 31031676 (2002); *State ex rel. White v. Koch* (2002), 96 Ohio St. 3d 395; *Cleveland ex rel. O'Malley v. White* (2002), 148 Ohio App. 3d 564; *Olmsted Twp. Bd. of Trustees v. City of Berea* 2001 WL 1353668 (2001); *Mick Van Hoose, et al. v. City of Cleveland*, U.S. District Court, N. D. Ohio, Case No. 1:00 CV 0434; *Berea ex. rel. Ward v. Trupo* (2001), 141 Ohio App.3d 772; *United Church of Christ v. Gateway Economic Development Corp. of Greater Cleveland*, U.S. District Court, N.D. Ohio, Case No. 1:00 CV 0661 (2001); *Hauser v. Cleveland-Cuyahoga County Port Authority*, 2000 WL 709017; *Committee to Save the Hueletts v. USACE*, U.S. District Court, N.D. Ohio, Case No. 1:99 CV 3046 (2000); *Olmsted Twp. Bd. of Trustees v. City of Berea*, (1999) 134 Ohio App. 3d 688; *Liberty Steel Products, Inc. v. Francosteel Corp.*, 57 F. Supp. 2d 459 (1999); *Olmsted Twp. Bd. of Trustees v. City of Berea*, 1999 WL 528511 (1999); *Durocher Dock & Dredge, Inc. v. Cleveland-Cuyahoga County Port Authority*, Case No. 382262 (1999); *Automated Tracking Systems, Inc. v. Great American Ins. Co.* (1998), 130 Ohio App.3d 238.

Cuppage has lectured on various legal topics including year 2000 issues, intellectual property and environmental law for the Ohio CLE Institute, the Cleveland Bar Association, and the Business Law Series. He is also published on the year 2000 subject as well as internet related matters.



Cuppage is admitted to practice in Ohio; the U.S. District Court, Northern District of Ohio; and the U.S. Sixth Circuit Court of Appeals.

Active in the legal field, he is a member of the Cleveland Bar Association's Intellectual Property Law Committee, the Environmental Law Section and the Business and Banking Law Section, and the Ohio State Bar Association's Intellectual Property Law Section.

### **SCOTT D. SIMPKINS**

Scott Simpkins joined the Climaco firm in 1999 as an associate in the firm's Litigation Group. He received his Bachelor of Arts degree in economics and political science from Ohio Wesleyan University in 1992 and his law degree from Capital University where he was a member of the Order of the Curia, Associate Editor of the Law Review and graduated *cum laude* in 1996.

Simpkins has been involved in myriad litigation matters including contract dispute, labor and employment, sales taxation, municipal law, legal malpractice, zoning and land use, ERISA and creditor claims in bankruptcy. His practice in these areas have ranged from client consultation, initial intake and evaluation of claims and defenses to prosecuting the claims and defenses at trial to appellate practice including representation before the Ohio Supreme Court. Simpkins has also represented numerous clients before various federal, state and municipal administrative agencies and legislative bodies including without limitation, the National Association of Securities Dealers and the State of Ohio Department of Taxation.

Both prior to his employment at the Climaco firm and during his tenure at Climaco, Simpkins has also been involved in prosecuting and defending various class action and multi-district litigation matters. These matters have included unpaid overtime compensation litigation, tobacco litigation, consumer fraud class actions securities litigation and anti-trust litigation.

Simpkins is currently a member of the American and Ohio Bar Associations, and serves as an Assistant Arbitrator for the Cuyahoga County Court of Common Pleas. He is admitted to practice in the State of Ohio and before the United States District Courts for the Northern District of Ohio, the Southern District of Ohio, and the Eastern District of Michigan.

### **Relevant Securities Matters**

*Government of Guam Retirement Fund v. Invacare Corporation, et al.*, Case No. 1:13-cv-1165 (N.D. Ohio); *In re: OM Group Securities Litigation*, Case No. 02 CV-2163 (N.D. Ohio); *In re: Goodyear Tire & Rubber Company Securities Litigation*, Case No. 03 CV-2166 (N.D. Ohio); *Garlich v. Bowman, et al.*, Hamilton County Court of Common Pleas, Ohio, Case No. A 0302720; *In re Cooper Companies, Inc. Derivative Litigation*, Case No. 06-300 (CJC) (C.D. California); *In re Diebold ERISA Litigation*, Case No. 06 CV 170



(N.D. Ohio); *In re Keithley Instruments, Inc. Derivative Litigation*, Case No. 06 CV 2171 (N.D. Ohio); *In re Scottish Re Litigation*, U.S.D.C. S.D. NY, Case No. 06-cv-5853 SAS.

### **Reported Decisions**

*Cooperrider v. Parker*, 2003 WL 22015397 (Ohio App. 9 Dist. 2003); *Teagardin v. Metal Foils, LLC*, 2003 WL 1904042 (Ohio App. 11 Dist); *State ex rel. White v. Kilbane Koch*, 96 Ohio St. 3d 395 (2002); *City of Cleveland v. North Pacific Group, Inc.*, 2002 WL 1349205 (Ohio App. 8 Dist); *Payphone Ass'n of Ohio v. Cleveland*, 146 Ohio App. 3d 319 (2002); *In re OM Group Sec. Litigation*, 226 F.R.D. 579 (N.D. Ohio 2005); *U.S. S.E.C. v. Wilson*, 2005 WL 563173 (N.D. Ohio 2005).

### **STEWART D. ROLL**

Dan Roll became a firm principal during 2007, after serving in that capacity for 16 years at his prior firm as chair of its litigation department. Mr. Roll obtained his BGS degree from Ohio University, and is a cum laude graduate of the Gonzaga University School of Law. His efforts recently resulted in a multi-million dollar award for one of his clients in the Ohio Supreme Court.

During the first 10-years of his practice, Mr. Roll served as assistant general counsel for a Fortune 500 corporation, supervising litigation and providing counsel in the purchase and sale of companies and license of technology, while traveling throughout North and South America, Europe, Asia, and India.

Mr. Roll also serves as an arbitrator resolving commercial disputes for the American Arbitration Association and National Arbitration Forum. He is admitted to practice before the United States Supreme Court, the U.S. 3rd and 6th Circuit Courts of Appeal, the U.S. District Courts for Connecticut, Eastern and Southern Districts of New York, Western District of Pennsylvania and Northern District of Ohio, and is licensed to practice law in Connecticut, Ohio and Pennsylvania. He is also a member of the American Bar Association and Ohio Bar Association, serving on several committees.

Mr. Roll was recognized in the 2012 Edition as one of Cleveland's Top Rated Lawyers® for General Practice Law.

Mr. Roll has served as a member of the Board of Directors of the Hudson, Ohio Chamber of Commerce, has served on the Hudson planning and zoning commission, and has been active in Rotary and Kiwanis. Mr. Roll is a FAA licensed instrument-rated pilot, and enjoys flying his own airplane. He also served our country in the U.S. Air Force.

## **MARGARET M. METZINGER**

Maggie has been a trial attorney for more than 15 years. She is a member of the Litigation Section and she successfully represents clients, both individuals and businesses, in a wide variety of complex civil cases, including class actions, mass torts, defective medication and medical devices, divorce, and custody disputes. Maggie also has significant experience in probate and estate planning.

### **REPRESENTATIVE EXPERIENCE:**

*In re: Bayer Healthcare LLC and Merial Limited Flea Control Products Liability Litigation*, United States District Court, Northern District of Ohio, MDL No. 2319: Liaison Counsel. *In re: Actos (Pioglitazone) Products Liability Litigation*, United States District Court, Western District of Louisiana, MDL No. 2299. *In re: Colgate-Palmolive Softsoap Antibacterial Hand Soap Marketing and Sales Practices Litigation*, United States District Court, District of New Hampshire, MDL No. 2320, Discovery Committee. *In re: Dial Complete Marketing and Sales Practices Litigation*, United States District Court, District of New Hampshire, MDL 2263: Discovery Committee. *In re: Imprelis Herbicide Marketing, Sales Practices and Products Liability Litigation*, United States District Court, Eastern District of Pennsylvania, MDL No. 2284. *In re: POM Wonderful LLC Marketing and Sales Practice Litigation*, United States District Court, Central District of California, MDL No. 2199. *In re: MI Windows and Doors, Inc. Products Liability Litigation*, United States District Court, District of South Carolina, MDL No. 2333: Briefing Committee. *In re: Vioxx® Products Liability Litigation*, United States District Court, Eastern District of Louisiana, MDL No. 1657: General Litigation. *In re: Baycol Litigation Products Liability Litigation*, United States District Court, District of Minnesota, MDL 1431. *In re: Rezulin Products Liability Litigation*, United States District Court, Southern District of New York, MDL No. 1348: Research Committee. *KeyBank, N.A. v. MRN Ltd. Partnership*, 193 Ohio App.3d 424: Second Chair Trial Counsel. *In re: Scottish Re Group Securities Litigation*, 524 F. Supp.2d 370 (S.D.N.Y. 2007): Discovery Committee. *James W. McHale v. Weston, Inc.*, Cuyahoga County Common Pleas Court (2004): Second Chair Trial Counsel. *Millstein v. Millstein*, 2002 WL 31031676 (2002): Second Chair Trial Counsel. *O'Malley v. O'Malley*, Cuyahoga County Common Pleas Court (2008-2012): Lead Trial Counsel.

### **EDUCATION AND BAR ADMISSIONS:**

Maggie received her Bachelor of Arts degree from Hiram College in 1987, and her Juris Doctor from Cleveland-Marshall College of Law in 1995. She is an active member of the Ohio State Bar Association and the Cleveland Metropolitan Bar Association. Maggie is admitted to practice in the State of Ohio; the U.S. District Court, Northern District of Ohio; U.S. District Court, Southern District of Ohio; the U.S. Sixth Circuit Court of Appeals; the U.S. District Court, Western District of Pennsylvania and the U.S. Third Circuit Court of Appeals.

### **PROFESSIONAL ACTIVITIES AND COMMUNITY SERVICE:**

In 2012, Maggie was instrumental in bringing the Judicial Panel on Multi-District Litigation ("JPML") to Cleveland where the JPML conducted its bi-monthly hearing for the first time. She planned and organized the three-day event along with judges from the Northern District of Ohio, members of the Federal Bar Association and the Cleveland-Metropolitan Bar Association.

Also in 2012, Maggie was appointed as a Planning Committee Member for The Arc, Greater Cleveland's Fiftieth Anniversary Gala. The Arc of Greater Cleveland is the local chapter of The Arc, the world's largest grassroots organization of and for people with intellectual and developmental disabilities.

Maggie was recently approved by the Supreme Court of Ohio as a Mentor for its Lawyer to Lawyer Mentoring Program, a program designed to elevate the competence, professionalism and success of new Ohio lawyers by improving lawyering skills including listening and communication skills, ethical considerations and emphasizing the importance of community involvement.

Since 2006, Maggie has served on the Board of Directors of Hattie Larlham Community Living, ("HLCL"), a non-profit agency committed to enhancing the quality of life for people with severe and profound disabilities through its commitment to education, comfort, joy and achievement. HLCL provides services for the families of people with severe and profound disabilities and it also serves people with Autism, providing job training and skills for independent living. Maggie is also an active fundraiser and participant in various events for the Juvenile Diabetes Research Foundation and Susan G. Komen for the Cure. Maggie has also volunteered her legal services for various community organizations such as The Arc, Greater Cleveland; the Youth of Coventry, Inc.; Renaissance Cleveland Volleyball Club, Inc. and Hattie Larlham Foundation.

### **PATRICIA M. RITZERT**

Patricia Ritzert has over 30 years of legal experience. She is extensively involved in the Governmental Law and Public Finance and Business Law areas.

Her experience includes local government issues comprising employment, land use, taxation and finance, claims for and against townships and municipalities, and matters pertaining to non-profit organizations. Another area of concentration for Ms. Ritzert has been property rights and real estate development. On several occasions she has served as independent outside counsel in the investigation or prosecution of alleged misconduct by municipal employees.

Admitted to practice in the United States Supreme Court, the United States Tax Court, the U.S. Court of Federal Claims, the Ohio Supreme court, the U.S. District court for the North District of Ohio and the U.S. Sixth Circuit Court of Appeals, she has carried

business, financial, tax, property and employment issues through litigation in a wide variety of situations. She also practices before the Internal Revenue Service and the Ohio Board of Tax Appeals, Ohio State Employment Relations Board and other administrative agencies.

In addition to a bachelor of arts in economics (magna cum laude), Ms. Ritzert has obtained two post-juris doctor degrees: a master of tax accounting from the University of Akron and an LL.M. in Taxation from Case Western Reserve University School of Law (magna cum laude). Ms. Ritzert has been a presenter at the Cleveland Tax Institute, and is currently an adjunct professor teaching partnership and corporate taxation in Cleveland-Marshall School of Law at Cleveland State University.

## **EXHIBIT 5**

**EXHIBIT 5**

*Department of the Treasury of the State of New Jersey and  
its Division of Investment v. Cliffs Natural Resources Inc., et al.*  
Civil Action No. 1:14-cv-1031-DAP

**BREAKDOWN OF PLAINTIFF'S COUNSEL'S  
LITIGATION EXPENSES BY CATEGORY**

<b>CATEGORY</b>	<b>AMOUNT</b>
Court Fees/Service of Process	\$ 3,081.50
Internal Copying	1,379.92
Outside Copying	3,139.39
Out of Town Travel	7,077.52
Expert Fees	129,063.50
Mediation Fees	70,883.32
<b>TOTAL EXPENSES:</b>	<b>\$214,625.15</b>

## **EXHIBIT 6**



IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TENNESSEE  
WESTERN DIVISION

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In re REGIONS MORGAN KEEGAN )	
SECURITIES, DERIVATIVE and )	
ERISA LITIGATION )	
)	
This Document Relates to: )	
)	
In re Regions Morgan Keegan )	No. 2:09-2009 SMH V
Closed-End Fund Litigation, )	
)	
No. 2:07-cv-02830-SHM-dkv )	

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**ORDER APPROVING PROPOSED SETTLEMENT AND AWARD OF ATTORNEY'S FEES  
AND EXPENSES**

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On behalf of the Class and the Subclass, Plaintiffs the Lion Fund L.P., Dr. Samir J. Sulieman, and Larry Lattimore (collectively, "Lead Plaintiffs"), and C. Fred Daniels in his capacity as Trustee Ad Litem for the Leroy S. McAbee, Sr. Family Foundation Trust (the "TAL") (collectively with the Lead Plaintiffs, "Plaintiffs"), filed a Motion on March 8, 2013, for Final Approval of the Proposed Settlement and Plan of Allocation entered into with Defendants Morgan Keegan & Co., Inc. ("Morgan Keegan"), MK Holding, Inc., Morgan Asset Management, Inc., Regions Financial Corporation ("RFC"), the Closed-End Funds, Allen B. Morgan, Jr., J. Kenneth Alderman, Brian B. Sullivan, Joseph Thompson Weller, James C. Kelsoe, Jr., and Carter Anthony (collectively, "Defendants"). (Mot. for Final App., ECF No.

283.) Also before the Court is Plaintiffs' Motion for Award of Attorney's Fees and Expenses. (Mot. for Atty. Fees, ECF No. 285.)

For the following reasons, Plaintiffs' proposed Class is CERTIFIED. Plaintiffs' Motion for Final Approval is GRANTED. Plaintiffs' Motion for Attorney's Fees and Expenses is GRANTED. The parties' joint Stipulation and Agreement of Settlement and their Plan of Allocation are APPROVED.

## **I. Standard of Review**

### **A. Approval of Settlement and Certification of Class**

Under Federal Rule of Civil Procedure 23, a member of a class may bring suit on behalf of all other members if:

- (1) the class is so numerous that joinder of all members is impracticable;
- (2) there are questions of law or fact common to the class;
- (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and
- (4) the representative parties will fairly and adequately protect the interests of the class.

Fed. R. Civ. P. 23(a).

If these conditions are met a class action may be maintained if:

- (3) the court finds that the questions of law or fact common to class members predominate over any questions affecting only individual members, and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy. The matters pertinent to these findings include:
  - (A) the class members' interests in individually controlling the prosecution or defense of separate actions;
  - (B) the extent and nature of any litigation concerning the

controversy already begun by or against class members;  
(C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; and  
(D) the likely difficulties in managing a class action.

Fed. R. Civ. P. 23(b)(3).

The "claims, issues, or defenses of a certified class may be settled, voluntarily dismissed, or compromised only with the court's approval." Fed. R. Civ. P. 23(e). When parties to a class action seek to settle, the Court must comply with the following procedures:

- (1) The court must direct notice in a reasonable manner to all class members who would be bound by the proposal.
- (2) If the proposal would bind class members, the court may approve it only after a hearing and on finding that it is fair, reasonable, and adequate.
- (3) The parties seeking approval must file a statement identifying any agreement made in connection with the proposal.
- (4) If the class action was previously certified under Rule 23(b)(3), the court may refuse to approve a settlement unless it affords a new opportunity to request exclusion to individual class members who had an earlier opportunity to request exclusion but did not do so.
- (5) Any class member may object to the proposal if it requires court approval under this subdivision (e); the objection may be withdrawn only with the court's approval.

Id.

#### **B. Attorney's Fees and Expenses**

Under Rule 23(h), in a "certified class action, the court may award reasonable attorney's fees and nontaxable costs that are authorized by law or by the parties' agreement." When parties to a class action seek attorney's fees and costs, the Court must comply with the following procedures:

(1) A claim for an award must be made by motion under Rule 54(d)(2), subject to the provisions of this subdivision (h), at a time the court sets. Notice of the motion must be served on all parties and, for motions by class counsel, directed to class members in a reasonable manner.

(2) A class member, or a party from whom payment is sought, may object to the motion.

(3) The court may hold a hearing and must find facts and state its legal conclusions under Rule 52(a).

(4) The court may refer issues related to the amount of the award to a special master or a magistrate judge, as provided in Rule 54(d)(2)(D).

Fed. R. Civ. P. 23(h).

## **II. Analysis**

The Court has reviewed the record in this case, the joint Stipulation and Agreement of Settlement, the Plan of Allocation, all attached exhibits, the Plaintiffs' Motions for preliminary and final approval of the Settlement, the supporting memoranda, and the written objections of Class Members. The Court has held a Preliminary Fairness Hearing and a Final Approval Hearing.

(Prelim. Hearing, ECF No. 275; Final Hearing, ECF No. 312.) At the Final Approval Hearing, the Court heard presentations from the Lead Plaintiffs, TAL counsel, the Defendants, and objecting Class Members as well as testimony from the Plaintiffs' expert. (Final Hearing.)

Based on its independent assessment of the record and the information presented by the parties, the Court makes the following findings and reaches the following conclusions.

### **A. Class Certification**

The conditions of Rule 23(a) have been satisfied. There is no dispute that the Class satisfies the numerosity, commonality, and typicality requirements. At the time of the Final Approval Hearing, the claims administrator had distributed nearly 100,000 class action notices to potential Class Members and more than 7,000 proofs of claim had been filed. All potential Class Members had purchased or acquired shares of the Closed-End Funds between 2003 and 2009.

After considering numerous motions for appointment, the Court decided that the Lead Plaintiffs were best qualified to represent the Class. (Order Appt. Counsel, ECF No. 179.) There is no dispute about the adequacy of the Class representatives. No party or Class Member has given the Court good cause to believe that the Lead Plaintiffs have not fairly and adequately protected the interests of the Class.

The conditions of Rule 23(b)(3) have been satisfied. The injuries of the Class Members are the same in kind if not in degree. The questions of law and fact common to the Class predominate over any questions affecting only individual members. Because there are so many potential Class Members, a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

The Class is CERTIFIED as described in the Preliminary Approval Order:

All Persons who purchased or otherwise acquired the publicly traded shares of (i) RMH between June 24, 2003 and July 14, 2009, inclusive, and were damaged thereby; (ii) RSF between March 18, 2004 and July 14, 2009, inclusive, and were damaged thereby; (iii) RMA between November 8, 2004 and July 14, 2009, inclusive, and were damaged thereby; (iv) RHY between January 19, 2006 and July 14, 2009, inclusive, or pursuant or traceable to the Registration Statement, Prospectus, and Statement of Additional Information (the "RHY Offering Materials") filed by RHY on or about January 19, 2006 with the SEC, and were damaged thereby; and (v) all members of the TAL Subclass.

Excluded from the Class and as Class Members are the Defendants; the members of the immediate families of the Defendants; the subsidiaries and affiliates of Defendants; any person who is an executive officer, director, partner or controlling person of the Closed-End Funds or any other Defendant (including any of its subsidiaries or affiliates, which include but are not limited to Morgan Asset Management, Inc., Regions Bank, Morgan Keegan, RFC, and MK Holding, Inc.); any entity in which any Defendant has a controlling interest; any Person who has filed a proceeding with FINRA against one or more Released Defendant Parties concerning the purchase of shares in one or more of the Closed-End Funds during the Class Period and such proceeding was not subsequently dismissed to allow the Person to specifically participate as a Class Member; any Person who has filed a state court action that has not been removed to federal court, against one or more of the Defendants concerning the purchase of shares in one or more of the Closed-End Funds during the Class Period and whose claims in that action have been dismissed with prejudice, released, or fully adjudicated absent a specific agreement with such Defendant(s) to allow the person to participate as a Class Member; and the legal representatives, heirs, successors and assigns of any such excluded person or entity. These exclusions do not extend to trusts or accounts as to which the control or legal ownership by any Defendant (or by any subsidiary or affiliate of any Defendant) is derived or arises from an appointment as trustee, custodian, agent, or other fiduciary ("Fiduciary Accounts") unless with respect to any such Fiduciary Account any Person has filed a proceeding with FINRA against one or more Released Defendant Parties concerning the purchase of shares in one or more of the Closed-End Funds during the Class Period and such proceeding was not

subsequently dismissed to allow the Person to specifically participate as a Class Member; any Person who has filed a state court action that has not been removed to federal court, against one or more of the Defendants concerning the purchase of shares in one or more of the Closed-End Funds during the Class Period and whose claims in that action have been dismissed with prejudice, released, or fully adjudicated absent a specific agreement with such Defendant(s) to allow the Person to participate as a Class Member (and such exclusion shall apply to the legal representatives, heirs, successors and assigns of any such excluded Person, entity or Fiduciary Account). With respect to Closed-End Fund shares for which the TAL Orders authorize the Trustee Ad Litem to prosecute the claims or causes of action pleaded in the Complaint in the Action ("TAL Represented Closed-End Fund Shares"), "Class" and "Class Member" also excludes Persons who are, or were during the Class Period, trust and custodial account beneficiaries, principals, settlors, co-trustees, and others owning beneficial or other interests in the TAL Represented Closed-End Fund Shares ("Such Persons"), but this exclusion applies only to any claims or causes of action of Such Persons that the Trustee Ad Litem is not authorized by the TAL Orders to prosecute. With respect to Closed-End Fund Shares that are not TAL Represented Closed-End Fund Shares and in which Such Persons have a beneficial or other interest, the foregoing partial exclusion of Such Persons does not apply. Also excluded from the Class and as Class Members are those Persons who submit valid and timely requests for exclusion from the Class in accordance with the requirements set forth in the Notice.

(Prelim. Order, ECF No. 276.)

Persons and entities who have been deemed excluded from Class Membership are identified in the Court's May 17, 2013 and July 26, 2013 Orders, (ECF No. 330; ECF No. 344), and in the Plaintiffs' May 24, 2013 exhibit, (ECF No. 331-2).

#### **B. Sufficiency of Notice**

Due process requires that notice to a class be "reasonably calculated, under all the circumstances, to apprise interested



parties of the pendency of the action and afford them an opportunity to present their objections." Vassalle v. Midland Funding LLC, 708 F.3d 747, 759 (6th Cir. 2013) (internal quotation marks and citations omitted)). "[A]ll that the notice must do is fairly apprise the prospective members of the class of the terms of the proposed settlement so that class members may come to their own conclusions about whether the settlement serves their interests." Id. (internal quotation marks and citations omitted).

The Court approved the Notice submitted by Plaintiffs at the Preliminary Approval Hearing. (Prelim. Order.) The Notice describes the nature of the class action, the proposed settlement terms, the proposed Plan of Allocation, and the requested attorney's fees and expenses in detail. (Notice, ECF No. 260-2.) The Notice is written to be understood by non-attorneys. (Id.) The Court approved the proposed methods of disseminating the Notice. At the time of the Final Approval Hearing, the claims administrator had sent nearly 100,000 Notices by mail and had received more than 7,000 proofs of claim in response. The Defendants had received more than 10,000 requests for share purchase and sale information in response to the Notice. The Court received four timely and valid objections, one untimely objection, and one invalid objection from a non-class member.

The Notice was sufficient. The due process requirements have been met.

### **C. Settlement Approval**

In compliance with Rule 23(e), the Court required the Plaintiffs to send Notices of Class Action, Proofs of Claim, and information about Requests for Exclusion to all Class Members by means reasonably calculated to give them actual notice of the pendency of the class action and the terms of the proposed Settlement. (Prelim. Order); Fed. R. Civ. P. 23(e)(1). The parties filed a Stipulation and Agreement of Settlement identifying all agreements made in connection with the proposed Settlement. (ECF No. 260); Fed. R. Civ. P. 23(e)(3). The Court allowed all Class Members to file written objections to the proposed Settlement and held a Final Approval Hearing at which proper objectors were entitled to appear. (Prelim. Order; Final Hearing); Fed. R. Civ. P. 23(e)(2), 23(e)(5).

The procedural requirements of Rule 23(a), (b), and (e) have been satisfied. Final approval of the proposed Settlement is warranted if the Court finds that the terms of the Settlement are fair, reasonable, and adequate.

"A district court looks to seven factors in determining whether a class action settlement is fair, reasonable, and adequate: '(1) the risk of fraud or collusion; (2) the complexity, expense and likely duration of the litigation; (3)

the amount of discovery engaged in by the parties; (4) the likelihood of success on the merits; (5) the opinions of class counsel and class representatives; (6) the reaction of absent class members; and (7) the public interest.'" Vassalle, 708 F.3d at 754-755 (quoting UAW v. GMC, 497 F.3d 615, 631 (6th Cir. 2007)). The Court has "'wide discretion in assessing the weight and applicability' of the relevant factors." Id. (quoting Granada Invest., Inc. v. DWG Corp., 962 F.2d 1203, 1205-06 (6th Cir. 1992)). Although the Court need not decide the merits of the case or resolve unsettled legal questions, the Court cannot "'judge the fairness of a proposed compromise' without 'weighing the plaintiff's likelihood of success on the merits against the amount and form of the relief offered in the settlement.'" Id. (quoting UAW, 497 F.3d at 631) (internal citations omitted).

The parties seek approval of a monetary Settlement in the amount of \$62,000,000.00. All of the UAW factors support the fairness, reasonableness, and adequacy of the proposed Settlement. The parties protected against the risk of fraud or collusion by using a highly qualified and experienced independent mediator during settlement negotiations. The parties engaged in arms-length negotiations. The complexity and expense of the litigation are evident. The litigation has been pending for more than five-and-a-half years. The matter before the Court represents a consolidation of seven cases; tens of

thousands of claims could be made on the settlement fund.

If the case were to proceed to trial, the Plaintiffs would face a daunting task in establishing loss causation and liability because there is evidence of both management failures and market decline. The parties have stated that they will proceed to trial if the proposed Settlement is rejected. Although the case has not reached the summary judgment stage, the Plaintiffs have completed a substantial amount of discovery to support their loss valuation theory and their mediation position. Because of the complexity of the case, discovery costs would be much higher before the case could proceed to trial.

The opinions of Class counsel and the reactions of Class Members also support approval of the Settlement. Class counsel have represented to the Court that, given the circumstances of the case and the anticipated litigation risk, they believe they have achieved the best possible result. From the tens of thousands of potential Class Members, the Court has received four valid and timely objections, one untimely objection, and one invalid objection raised by a non-class member. (ECF No. 309.) The Court has considered all of the objections and heard from two of the objectors at the Final Approval Hearing. None of the objections has caused the Court to conclude that the proposed Settlement is unfair, unreasonable, or inadequate.

Settlement is also in the public interest. It will conserve judicial resources and permit monetary recovery for potentially tens of thousands of individuals and entities. The Release is narrow and does not implicate individuals or entities with claims outside the Class.

"The most important of the factors to be considered in reviewing a settlement is the probability of success on the merits. The likelihood of success, in turn, provides a gauge from which the benefits of settlement must be measured."

Poplar Creek Dev. Co. v. Chesapeake Appalachia, L.L.C., 636 F.3d 235, 245 (6th Cir. 2011) (quoting In re Gen. Tire & Rubber Co. Sec. Litig., 726 F.2d 1075, 1086 (6th Cir. 1984)). The Plaintiffs' likelihood of success on the merits is questionable for several reasons. First, the Defendants argue that they have strong defenses but have chosen to settle because of the projected costs of discovery, the uncertainty and disruption to the Defendants' ongoing businesses, and the risk of higher damages. Second, the Defendants argue, and the Plaintiffs admit, that the Plaintiffs did not have to show loss causation to obtain the proposed Settlement. The Defendants contend that loss causation would be difficult to prove under the circumstances of this case. They argue that, if the Plaintiffs were required to prove the portion of the loss attributable to the Defendants, recovery would be significantly reduced. The

Defendants also argue that it would be difficult at trial for the Plaintiffs to prove material fraudulent misrepresentations and to establish that Morgan Keegan and RFC were controlling persons of the Funds.

Finally, the Plaintiffs' novel damages valuation methodology could be excluded at trial for failure to satisfy the expert testimony standard in Daubert v. Merrell Dow Pharms., Inc., 509 U.S. 579 (1993). "Before an expert may testify at trial, the district 'court must make a preliminary assessment of whether the reasoning or methodology underlying the testimony is scientifically valid and of whether that reasoning or methodology properly can be applied to the facts in issue.'" United States v. Watkins, 450 F. App'x 511, 515 (6th Cir. 2011) (quoting United States v. Smithers, 212 F.3d 306, 313 (6th Cir. 2000) (internal quotations and citations omitted)). At the Final Approval Hearing, the Plaintiffs' expert described substantial differences between the methodology he employed and generally accepted methodologies. Plaintiffs' expert admitted that his method was otherwise untested and that it used daily net asset values as a novel proxy for the potentially fraudulent or misleading statements of Fund managers. It is possible that the expert's method would be found invalid. If the Plaintiffs' damages valuations were excluded at trial, their likelihood of success on the merits and the amount of any recovery would be

greatly reduced.

The proposed Settlement offers the Class Members a monetary recovery for their monetary loss. Based on the information presented by the parties and the objectors, counsel for the Plaintiffs were able to negotiate a multi-million dollar recovery for the Class based on a novel theory. The Plaintiffs' expert testified that, under generally accepted damages valuation models, the total loss to the Class attributable to the Defendants would have been between one sixth and one third of the proposed Settlement amount.

Although the proposed Settlement allows the Class Members to recover, at best, 18% of their losses as alleged by the Plaintiffs, monetary relief is guaranteed. The Plaintiffs could succeed on the merits, but the likelihood is problematic and their theory of recovery introduces unusual litigation risks. Based on these considerations, the proposed Settlement confers a substantial benefit on the Class Members.

The Sixth Circuit looks beyond the UAW factors when evaluating the fairness of a settlement to determine whether the proposed settlement "'gives preferential treatment to the named plaintiffs while only perfunctory relief to unnamed class members.'" Vassalle, 708 F.3d at 755 (quoting Williams v. Vukovich, 720 F.2d 909, 925 n.11 (6th Cir. 1983)). Under the proposed Settlement, each Class Member receives a pro rata share



of the settlement fund based on the number of shares the Class Member purchased. The parties have represented to the Court that there is no side agreement promising a bonus or a different type of relief to the named Plaintiffs.

The form and amount of recovery in the proposed Settlement appropriately balance the risks of litigation. All of the UAW factors weigh in favor of concluding that the proposed Settlement is fair, reasonable, and adequate. Plaintiffs' Motion for Final Approval is GRANTED. The Stipulation and Agreement of Settlement and the Plan of Allocation are ADOPTED and APPROVED.

#### **E. Attorney's Fees and Expenses**

In compliance with Rule 23(h), the Plaintiffs have filed a Motion for Award of Attorney's Fees and Expenses that conforms to the requirements of Rule 54(d)(2). (Mot. for Atty. Fees.) Notice of the Motion was served on all parties through the Court's Electronic Filing Docket and on Class Members by mail. (See ECF No. 301.) The Class Members and the Defendants were given an opportunity to object to the Motion. (Prelim. Order.) The Court heard argument from the Lead Plaintiffs, TAL Counsel, Defendants, and several objectors at the Final Approval Hearing.

All of the procedural prerequisites to an award of attorney's fees and expenses have been satisfied. The question is whether the attorney's fees and expenses requested are

reasonable. In general, "there are two methods for calculating attorney's fees: the lodestar and the percentage-of-the-fund." Van Horn v. Nationwide Prop. & Cas. Ins. Co., 436 F. App'x 496, 498 (6th Cir 2011). "District courts have discretion 'to select the more appropriate method for calculating attorney's fees in light of the unique characteristics of class actions in general, and of the unique circumstances of the actual cases before them.'" Id. (quoting Rawlings v. Prudential-Bache Props., Inc., 9 F.3d 513, 516 (6th Cir. 1993)). "The lodestar method better accounts for the amount of work done, while the percentage of the fund method more accurately reflects the results achieved." Rawlings, 9 F.3d at 516. A district court "generally must explain its 'reasons for adopting a particular methodology and the factors considered in arriving at the fee.'" Id. (quoting Moulton v. U.S. Steel Corp., 581 F.3d 344, 352 (6th Cir. 2009)).

Plaintiffs move the Court to approve a percentage-of-the-fund, or common fund, award of attorney's fees in the amount of \$18,600,000.00, or 30% of the total common fund. (Mem. in Supp. of Mot. for Atty. Fees, ECF No. 86.) The Plaintiffs contend that the reasonableness of their request is supported by a "lodestar cross-check," a method by which the party requesting an award works backward from the requested amount to determine the multiplier that would be necessary to reach that amount if the party had instead used the lodestar method to determine the

requested fee. (Id.) If the resulting multiplier is within the accepted range, it supports the party's contention that its fee request is reasonable. (Id.)

To recover attorney's fees under the common fund doctrine, "(1) the class of people benefitted by the lawsuit must be small in number and easily identifiable; (2) the benefits must be traceable with some accuracy; and (3) there must be reason for confidence that the costs can in fact be shifted with some exactitude to those benefitting." Geier v. Sundquist, 372 F.3d 784, 790 (6th Cir. 2004). These factors are not satisfied "'where litigants simply vindicate a general social grievance,'" but are satisfied "'when each member of a certified class has an undisputed and mathematically ascertainable claim to part of a lump-sum judgment recovered on his behalf.'" Id. (quoting Boeing Co. v. Van Gemert, 444 U.S. 472, 478 (1980)). For that reason, "the common fund method is often used to determine attorney's fees in class action securities cases." Id.

The instant class action is a securities case. Each Class Member who submits a proper proof of claim will receive a pro rata share of the settlement fund based on the number of shares the Member purchased during the Class Period. Although the Class is large, each Class Member is easily identifiable and the benefit to each Member is easily traceable to the work of Plaintiffs' counsel. Because recovery is pro rata, if the

common fund method is applied, each Class Member will in effect pay a portion of the attorney's fees and expenses based on the size of the Class Member's recovery.

The common fund method is the more appropriate method for calculating attorney's fees in this case. "In common fund cases, the award of attorney's fees need only 'be reasonable under the circumstances.'" Id. (quoting Rawlings, 9 F.3d at 516). "The 'majority of common fund fee awards fall between 20% and 30% of the fund.'" Gooch v. Life Investors Ins. Co. of Am., 672 F.3d 402, 426 (quoting Waters v. Int'l Precious Metals Corp., 190 F.3d 1291, 1294 (11th Cir. 1999)). Although the Court may award fees in its discretion, it should consider:

(1) the value of the benefit rendered to the plaintiff class; (2) the value of the services on an hourly basis; (3) whether the services were undertaken on a contingent fee basis; (4) society's stake in rewarding attorneys who produce such benefits in order to maintain an incentive to others; (5) the complexity of the litigation; and (6) the professional skill and standing of counsel involved on both sides.

Moulton, 581 F.3d at 352 (quoting Bowling v. Pfizer, Inc., 102 F.3d 777, 780 (6th Cir. 1996)).

In this case, there is no dispute that the litigation is complex, that counsel for all parties are highly skilled and nationally well-regarded, and that counsel for the Plaintiffs undertook a substantial risk and bore considerable costs by accepting this case on a contingent fee basis. The requested

fee is within the typical range for awards in common fund cases, and society has a clear stake in rewarding attorneys as an incentive to take on complicated, risky, contingent fee cases.

The value of Plaintiffs' legal services on an hourly basis is established by their lodestar cross-check. See Johnson v. Midwest Log. Sys., No. 2:11-CV-1061, 2013 U.S. Dist. LEXIS 74201, at \*16 (S.D. Ohio May 25, 2013). "In contrast to employing the lodestar method in full, when using a lodestar cross-check, the hours documented by counsel need not be exhaustively scrutinized by the district court." Id. at \*17 (internal quotations and citations omitted). Plaintiffs spent approximately 13,000 hours in preparation for this case, producing a cumulative lodestar value of \$5,980,680.50. (ECF No. 287-1.) Each firm comprising Plaintiffs' counsel submitted an accounting of the hourly rate and hours spent for each attorney who worked on the case. (ECF No. 287-6; ECF No. 287-7; ECF No. 287-8.) The hours spent and the rates applied are reasonable. The resulting lodestar multiplier is approximately 3.1. "Most courts agree that the typical lodestar multiplier in a large post-PSLRA securities class action[] ranges from 1.3 to 4.5." In re Cardinal Health Inc. Sec. Litigs., 528 F. Supp. 2d 752, 767 (S.D. Ohio 2007) (collecting cases). The lodestar cross-check multiplier is within the reasonable range.

The most important factor in determining the reasonableness

of the requested attorney's fees in this case is the value of the benefit conferred on the Class. This is a complex case, and the Plaintiffs' likelihood of success on the merits is in question. Nevertheless, Plaintiffs' counsel was able to negotiate a multimillion-dollar settlement on a novel theory of recovery to be distributed pro rata to all Class Members. Plaintiffs' counsel created substantial value for the Class Members. Had the litigation proceeded on an accepted damages valuation theory, the total recovery was projected to be from one third to as little as one sixth of the proposed settlement fund. If the case had proceeded to trial, the Class Members faced a substantial risk of no recovery at all.

The Plaintiffs also seek payment of expenses from the common fund totaling \$380,744.14. (ECF No. 287.) The Plaintiffs state that approximately \$277,000.00 represents payments to experts, approximately \$17,000.00 represents the costs of mediation, and the remainder includes photocopying, travel, and lodging. (Id.) The Plaintiffs have submitted itemized lists of all expenses. (ECF No. 287-6; ECF No. 287-7; ECF No. 287-8.) No objections have been raised to the Plaintiffs' expenses. After review of the Plaintiffs' submissions, the Court finds that the requested expenses are reasonable and should be paid from the common fund.

The Plaintiffs' requested attorney's fees and expenses are

reasonable under the unique circumstances of this case. The common fund method is the more appropriate method of addressing attorney's fees. All of the Bowling factors weigh in favor of the requested fee of 30% of the fund, \$18,600,000.00.

Plaintiffs' Motion for Attorney's Fees and Expenses is GRANTED.

### **III. Dismissal of Claims and Release**

Except as to any individual claim of those persons who have been excluded from the Class, this action, together with all claims asserted in it, is dismissed with prejudice by the Plaintiffs and the other members of the Class against each and all of the Defendants. The Parties shall bear their own costs, except as otherwise provided above or in the joint Stipulation and Agreement of Settlement and the Plan of Allocation.

After review of the record, including the Complaint and the dispositive motions, the Court concludes that, during the course of this action, the parties and their respective counsel have complied at all times with the requirements of Rule 11.

The Release submitted by the parties as part of Exhibit B to the joint Stipulation and Agreement of Settlement, (ECF No. 260-5), is APPROVED and ADOPTED by the Court.

### **IV. Continuing Jurisdiction**

The Court retains jurisdiction for purposes of effecting the Settlement, including all matters relating to the administration, consummation, enforcement, and interpretation of



the joint Stipulation and Agreement of Settlement and the Plan of Allocation.

#### **V. Conclusion**

For the foregoing reasons, Plaintiffs' proposed Class is CERTIFIED. Plaintiffs' Motion for Final Approval is GRANTED. Plaintiffs' Motion for Attorney's Fees and Expenses is GRANTED. The parties' Stipulation and Agreement of Settlement and their Plan of Allocation are APPROVED. The Class settlement fund is approved in the amount of \$62,000,000.00. Attorney's fees are approved in the amount of \$18,600,000.00. Expenses are approved in the amount of \$380,744.14. All claims in this matter are DISMISSED except as provided above.

So ordered this 5th day of August, 2013.

s/ Samuel H. Mays, Jr.\_\_\_\_\_  
SAMUEL H. MAYS, JR.  
UNITED STATES DISTRICT JUDGE

# **EXHIBIT 7**

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF TENNESSEE  
NASHVILLE DIVISION

KARSTEN SCHUH, Individually and on	)	Civil Action No. 3:11-cv-01033
Behalf of All Others Similarly Situated,	)	<b>(Consolidated)</b>
	)	
Plaintiff,	)	Chief Judge Kevin H. Sharp
	)	
vs.	)	Magistrate Judge Barbara D. Holmes
	)	
HCA HOLDINGS, INC., et al.,	)	<u>CLASS ACTION</u>
	)	
Defendants.	)	ORDER AWARDING ATTORNEYS' FEES
	)	AND EXPENSES
_____	)	

This matter having come before the Court on April 11, 2016, on the motion of counsel for the Lead Plaintiff for an award of attorneys' fees and expenses incurred in this action, the Court, having considered all papers filed and proceedings conducted herein, having found the settlement of this action to be fair, reasonable and adequate, and otherwise being fully informed in the premises and good cause appearing therefore;

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that:

1. All of the capitalized terms used herein shall have the same meanings as set forth in the Stipulation of Settlement dated December 18, 2015 (the "Stipulation"). Dkt. No. 534.

2. This Court has jurisdiction over the subject matter of this application and all matters relating thereto, including all members of the Class who have not timely and validly requested exclusion.

3. The Court hereby awards Lead Plaintiff's counsel attorneys' fees of 30% of the Settlement Amount, and litigation expenses in the amount of \$2,016,508.52, together with the interest earned thereon for the same time period and at the same rate as that earned on the Settlement Fund until paid. Said fees and expenses shall be allocated amongst counsel in a manner which, in Lead Counsel's good faith judgment, reflects each such counsel's contribution to the institution, prosecution and resolution of the Litigation. The Court finds that the amount of fees awarded is fair and reasonable under the "percentage-of-recovery" method considering, among other things, the following: the highly favorable result achieved for the Class; the contingent nature of Lead Plaintiff's counsel's representation; Lead Plaintiff's counsel's diligent prosecution of the Litigation; the quality of legal services provided by Lead Plaintiff's counsel that produced the Settlement; that the Lead Plaintiff appointed by the Court to represent the Class approved the requested fee; the reaction of the Class to the fee request; and that the awarded fee is in accord with Sixth Circuit authority and consistent with other fee awards in cases of this size.

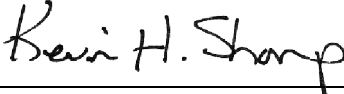
4. The awarded attorneys' fees and expenses shall be paid to Lead Counsel immediately after the date this Order is executed subject to the terms, conditions and obligations of the Stipulation and in particular ¶6.2 thereof, which terms, conditions and obligations are incorporated herein.

5. Pursuant to 15 U.S.C. §77z-1(a)(4), Lead Plaintiff New England Teamsters & Trucking Industry Pension Fund is awarded \$6,081.25 as payment for its time spent in representing the Class.

6. The Court has considered the objection to the fee award filed by Class Members Mathis and Catherine Bishop, and finds it to be without merit. The objection is therefore overruled in its entirety.

IT IS SO ORDERED.

DATED: April 14, 2016

  
\_\_\_\_\_  
THE HONORABLE KEVIN H. SHARP  
CHIEF UNITED STATES DISTRICT JUDGE

## **EXHIBIT 8**

UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF TENNESSEE  
NASHVILLE DIVISION

SIDNEY MORSE, et al.	]	
	]	
v.	]	NO. 3:97-0370
	]	Judge Higgins
R. CLAYTON MCWHORTER, et al.	]	


O R D E R

In accordance with the memorandum contemporaneously entered, the plaintiffs' petition for an award of attorney fees and expenses is granted.

Accordingly, the plaintiffs are awarded attorney fees in the amount of \$16,500,000, and other expenses in the amount of \$849,147.03, for a total award of \$17,349,147.03, plus interest at the same rate as that earned by the Settlement Fund until paid.

The court shall retain jurisdiction over this matter with respect to any dispute about the distribution of such fees.

It is so ORDERED.

  
\_\_\_\_\_  
THOMAS A. HIGGINS  
United States District Judge  
3-12-04



## **EXHIBIT 9**

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF TENNESSEE  
NASHVILLE DIVISION

EDWARD B. WINSLOW, Individually and on )	Civil Action No. 3:10-cv-00463
Behalf of All Others Similarly Situated, )	
Plaintiff, )	<u>CLASS ACTION</u>
vs. )	Judge Kevin H. Sharp
)	Magistrate Judge John S. Bryant
BANCORPSOUTH, INC., et al., )	REVISED ORDER
Defendants. )	AWARDING ATTORNEYS' FEES AND
)	EXPENSES
_____ )	

THIS MATTER having come before the Court on October 31, 2012, on the motion of counsel for the Lead Plaintiff for an award of attorneys' fees and expenses incurred in this action, the Court, having considered all papers filed and proceedings conducted herein, having found the settlement of this action to be fair, reasonable and adequate, and otherwise being fully informed in the premises and good cause appearing therefore;

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

1. All of the capitalized terms used herein shall have the same meanings as set forth in the Stipulation of Settlement dated as of May 24, 2012 (the "Stipulation").

2. This Court has jurisdiction over the subject matter of this application and all matters relating thereto, including all Members of the Settlement Class who have not timely and validly requested exclusion.

3. The Court hereby awards Lead Plaintiff's counsel attorneys' fees of 30% of the Settlement Fund, and litigation expenses in the amount of \$198,397.36, together with the interest earned thereon for the same time period and at the same rate as that earned on the Settlement Fund until paid. Said fees and expenses shall be allocated among Lead Plaintiff's counsel in a manner which, in Co-Lead Counsel's good faith judgment, reflects each such plaintiffs' counsel's contribution to the institution, prosecution and resolution of the litigation. The Court finds that the amount of fees awarded is fair and reasonable under the "percentage-of-recovery" method considering, among other things the highly favorable result achieved for the Settlement Class; the contingent nature of Lead Plaintiff's counsel's representation; Lead Plaintiff's counsel's diligent prosecution of the litigation; the quality of legal services provided by Lead Plaintiff's counsel that produced the settlement; that the Lead Plaintiff appointed by the Court to represent the Settlement Class reviewed and approved the requested fee; the reaction of the Settlement Class to the fee

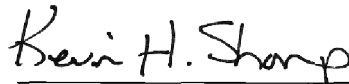
request; and the awarded fee is in accord with Sixth Circuit authority and consistent with empirical data regarding fee awards in cases of this size.

4. The awarded attorneys' fees and expenses shall be paid to Co-Lead Counsel immediately after the date this Order is executed subject to the terms, conditions and obligations of the Stipulation and in particular ¶6.2 thereof, which terms, conditions and obligations are incorporated herein.

5. Pursuant to 15 U.S.C. §78u-4(a)(4), Lead Plaintiff Edward B. Winslow is awarded \$5,000.00 for his time and expenses (plus interest) in serving on behalf of the Settlement Class.

IT IS SO ORDERED.

DATED: U&à^!ÁFÉCFG



\_\_\_\_\_  
THE HONORABLE KEVIN H. SHARP  
UNITED STATES DISTRICT JUDGE

## **EXHIBIT 10**

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION

\_\_\_\_\_  
IN RE BROADWING INC.  
SECURITIES LITIGATION  
\_\_\_\_\_

) Civil Action No. C-1-02-795  
)  
) JUDGE WALTER H. RICE  
)

**ORDER AND FINAL JUDGMENT**

On the 6<sup>th</sup> day of September, 2006, a hearing having been held before this Court to determine: (1) whether the terms and conditions of the Stipulation and Agreement of Settlement dated July 12, 2006 (the "Stipulation") are fair, reasonable, and adequate for the settlement of all claims asserted by the Class against the Defendants in the Complaint now pending in this Court under the above caption, including the release of the Defendants and the Released Parties, and should be approved; (2) whether judgment should be entered dismissing the Complaint on the merits and with prejudice in favor of the Defendants and as against all persons or entities who are members of the Class herein who have not requested exclusion therefrom; (3) whether to approve the Plan of Allocation as a fair and reasonable method to allocate the settlement proceeds among the members of the Class; and (4) whether and in what amount to award Plaintiffs' Co-Lead Counsel fees and reimbursement of expenses. The Court having considered all matters submitted to it at the hearing and otherwise; and it appearing that a notice of the hearing substantially in the form approved by the Court was mailed to all persons or entities reasonably identifiable, who purchased or otherwise acquired for consideration publicly-traded securities of Broadwing Inc. ("Broadwing") during the period between January 17, 2001 and May 21, 2002, inclusive (the "Class Period"), except those persons or entities excluded from the definition of the Class, as shown by the records of Broadwing's transfer agent, at the respective addresses set forth in such records, and that a summary notice of the hearing substantially in the

form approved by the Court was published in the national edition of The Wall Street Journal pursuant to the specifications of the Court; and the Court having considered and determined the fairness and reasonableness of the award of attorneys' fees and expenses requested; and all capitalized terms used herein having the meanings as set forth and defined in the Stipulation.

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

1. The Court has jurisdiction over the subject matter of the Action, the Lead Plaintiffs, all Class Members, and the Defendants.
2. The Court finds that, solely for the purposes of settlement, the prerequisites for a class action under Federal Rules of Civil Procedure 23 (a) and (b)(3) have been satisfied in that: (a) the number of Class Members is so numerous that joinder of all members thereof is impracticable; (b) there are questions of law and fact common to the Class; (c) the claims of the Class Representatives are typical of the claims of the Class they seek to represent; (d) the Class Representatives and Plaintiffs' Co-Lead Counsel have and will fairly and adequately represent the interests of the Class; (e) the questions of law and fact common to the members of the Class predominate over any questions affecting only individual members of the Class; and (f) a class action is superior to other available methods for the fair and efficient adjudication of the controversy.
3. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, and solely for the purposes of the Settlement, this Court hereby finally certifies this Action as a class action on behalf of all persons who purchased or otherwise acquired for consideration publicly-traded securities of Broadwing Inc. ("Broadwing") during the period between January 17, 2001 and May 21, 2002, inclusive, and who were damaged thereby. Excluded from the Class are the Defendants, other directors and officers of Broadwing, members of their immediate families and

their legal representatives, heirs, successors or assigns and any entity in which Defendants have or had a controlling interest. No member of the Class requested exclusion from the Class.

4. Notice of the pendency of this Action as a class action and of the proposed Settlement was given to all Class Members who could be identified with reasonable effort. The form and method of notifying the Class of the pendency of the action as a class action and of the terms and conditions of the proposed Settlement met the requirements of Rule 23 of the Federal Rules of Civil Procedure, Section 21D(a)(7) of the Securities Exchange Act of 1934, 15 U.S.C. 78u-4(a)(7) as amended by the Private Securities Litigation Reform Act of 1995, due process, and any other applicable law, constituted the best notice practicable under the circumstances, and constituted due and sufficient notice to all persons and entities entitled thereto.

5. The Settlement is approved as fair, reasonable, and adequate, and the Class Members and the parties are directed to consummate the Settlement in accordance with the terms and provisions of the Stipulation.

6. The Complaint, which the Court finds was filed on a good faith basis in accordance with the Private Securities Litigation Reform Act and Rule 11 of the Federal Rules of Civil Procedure based upon all publicly available information, is hereby dismissed with prejudice and without costs, except as provided in the Stipulation, as against the Defendants.

7. Lead Plaintiffs and members of the Class, on behalf of themselves, their heirs, executors, administrators, successors and assigns, are hereby permanently barred and enjoined from instituting, commencing or prosecuting the Settled Claims against the Released Parties. "Settled Claims" means any and all claims, debts, demands, rights or causes of action or liabilities whatsoever (including, but not limited to, any claims for damages, interest, attorneys' fees, expert or consulting fees, and any other costs, expenses or liability whatsoever, or



injunctive, equitable or other relief), whether based on federal, state, local, statutory or common law or any other law, rule or regulation, whether fixed or contingent, accrued or un-accrued, liquidated or un-liquidated, at law or in equity, matured or un-matured, whether class or individual in nature, including both known claims and Unknown Claims (as defined below), (i) that have been asserted in this Action by the Class Members or any of them against any of the Released Parties, (ii) that have been or could have been asserted in any forum by the Class Members or any of them against any of the Released Parties which arise out of, relate in any way to or are based upon the allegations, transactions, facts, matters or occurrences, representations or omissions involved, set forth, or referred to in the Complaint and which relate to the purchase, acquisition, holding or sale of Broadwing publicly-traded securities during the Class Period, or (iii) that have been or could have been asserted in this Action or any forum by the Class Members or any of them against any of the Released Parties, which arise out of or relate in any way to the defense or settlement of this Action. "Settled Claims" does not mean or include claims, if any, against the Released Parties arising under the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1001, *et seq.* ("ERISA") that are not common to all Class Members. "Settled Claims" does not mean or include the claims brought in the stockholder derivative action captioned *Jack Garlich v. Lawrence J. Bouman, et al.*, Case No. A03027290 (Court of Common Pleas, Hamilton County, Ohio), which are to be released in that action. "Unknown Claims" means any and all Settled Claims which any Lead Plaintiff or Class Member does not know or suspect to exist in his, her or its favor at the time of the release of the Released Parties, which if known by him, her or it might have affected his, her or its decision(s) with respect to the Settlement. Upon entry of this Order and Final Judgment, each Class Member shall be deemed to 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, which is similar, comparable, or equivalent to Cal. Civ. Code § 1542, which provides: "A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor." "Released Parties" means the Defendants, their present or former heirs, assigns, affiliates, trustees, administrators, executors, successors, subsidiaries, general and limited partners, corporate parents, related companies, and their present and/or former officers, directors, shareholders, employees, agents, representatives, attorneys, accountants, auditors, experts, consultants, advisors, investment bankers, commercial bankers, and/or insurers. The Settled Claims are hereby compromised, settled, released, discharged and dismissed as against the Released Parties on the merits and with prejudice by virtue of the proceedings herein and this Order and Final Judgment.

8. The Defendants and the successors and assigns of any of them, are hereby permanently barred and enjoined from instituting, commencing or prosecuting the Settled Defendants' Claims. "Settled Defendants' Claims" means any and all claims, rights or causes of action or liabilities whatsoever, whether based on federal, state, local, statutory or common law or any other law, rule or regulation, including both known claims and Unknown Claims, that have been or could have been asserted in the Action or any forum by the Defendants or any of them or the successors and assigns of any of them against any of the Lead Plaintiffs, Class Members or their attorneys, which arise out of or relate in any way to the institution, prosecution, or settlement of the Action (except for claims to enforce the Settlement). The Settled Defendants' Claims of all the Released Parties are hereby compromised, settled, released,

discharged and dismissed on the merits and with prejudice by virtue of the proceedings herein and this Order and Final Judgment.

9. Pursuant to 15 U.S.C. § 78u-4(f)(7)(A) of the Private Securities Litigation Reform Act ("PSLRA"), all claims for contribution and/or indemnity by any person or entity, whether arising under state, federal or common law, based upon, arising out of, relating to, or in connection with the Settled Claims of the Class or any Class Member are barred to the fullest extent provided by the PSLRA (a) against the Released Parties; and (b) by the Released Parties against any person or entity other than any person or entity whose liability to the Class has been extinguished pursuant to the Stipulation and this Order and Final Judgment.

10. Neither this Order and Final Judgment, the Stipulation, nor any of its terms and provisions, nor any of the negotiations or proceedings connected with it, nor any of the documents or statements referred to therein shall be:

(a) described as, construed as, offered or received against the Defendants as evidence of and/or deemed to be evidence of any presumption, concession, or admission by any of the Defendants with respect to the truth of any fact alleged by any of the plaintiffs or the validity of any claim that has been or could have been asserted in the Action or in any litigation, or the deficiency of any defense that has been or could have been asserted in the Action or in any litigation, or of any liability, negligence, fault, or wrongdoing of the Defendants;

(b) described as, construed as, offered or received against the Defendants as evidence of and/or deemed to be evidence of a presumption, concession or admission of any fault, breach of duty, wrongful act, misrepresentation or omission with respect to any statement or written document approved or made by any Defendant;

(c) described as, construed as, offered or received against the Defendants as evidence of a presumption, concession or admission with respect to any liability, negligence, fault or wrongdoing, or in any way referred to for any other reason as against any of the Defendants, in any other civil, criminal or administrative action or proceeding; provided, however, that Defendants may refer to it to effectuate the provisions of the Settlement or to effectuate the liability protection granted them hereunder;

(d) described as or construed against the Defendants as an admission or concession that the consideration to be given hereunder represents the amount which could be or would have been recovered after trial; or

(e) construed as or received in evidence as an admission, concession or presumption against Lead Plaintiffs or any of the Class Members that any of their claims are without merit, or that any defenses asserted by the Defendants have any merit, or that damages recoverable under the Complaint would not have exceeded the Gross Settlement Fund.

11. The Plan of Allocation is approved as fair and reasonable, and Plaintiffs' Counsel and the Claims Administrator are directed to administer the Stipulation in accordance with its terms and provisions.

12. The Court finds that all parties and their counsel have complied with each requirement of Rule 11 of the Federal Rules of Civil Procedure as to all proceedings herein.

13. Plaintiffs' Co-Lead Counsel are hereby awarded 23 % of the Gross Settlement Fund in fees, which sum the Court finds to be fair and reasonable, and \$ 214,609.<sup>25</sup> in reimbursement of expenses, which amounts shall be paid, upon the Effective Date of the Settlement, to Plaintiffs' Co-Lead Counsel from the Gross Settlement Fund with interest from the date such Settlement Fund was funded to the date of payment at the same net

rate that the Settlement Fund earns. The award of attorneys' fees shall be allocated among Plaintiffs' Counsel in a fashion which, in the opinion of Plaintiffs' Co-Lead Counsel, fairly compensates Plaintiffs' Co-Lead Counsel for their respective contributions in the prosecution of the Action.

14. In making this award of attorneys' fees and reimbursement of expenses to be paid from the Gross Settlement Fund, the Court has considered and found that:

(a) the settlement has created a fund of \$36 million in cash that is already on deposit, plus interest thereon, and that Class Members who submit acceptable Proofs of Claim will benefit from the Settlement created by Plaintiffs' Co-Lead Counsel;

(b) Over 31,267 copies of the Notice were disseminated to putative Class Members indicating that Plaintiffs' Co-Lead Counsel were moving for attorneys' fees in the amount of up to 30% of the Gross Settlement Fund and for reimbursement of expenses in the approximate amount of \$300,000 and no objections remain to the terms of the proposed Settlement or the request for an award of 23% of the gross Settlement Fund for attorneys' fees and \$214,609.25 in expenses;

(c) Plaintiffs' Co-Lead Counsel have conducted the litigation and achieved the Settlement with skill, perseverance and diligent advocacy;

(d) The action involves complex factual and legal issues and was actively prosecuted for almost four years and, in the absence of a settlement, would involve further lengthy proceedings with uncertain resolution of the complex factual and legal issues;

(e) Had Plaintiffs' Co-Lead Counsel not achieved the Settlement there would remain a significant risk that Lead Plaintiffs and the Class may have recovered less or nothing from the Defendants;

(f) Plaintiffs' Co-Lead Counsel have devoted over 5,511 hours, with a lodestar value of \$2,325,988 to achieve the Settlement; and

(g) The amount of attorneys' fees awarded and expenses reimbursed from the Settlement Fund are fair and reasonable and consistent with awards in similar cases.

15. Exclusive jurisdiction is hereby retained over the parties and the Class Members for all matters relating to this Action, including the administration, interpretation, effectuation or enforcement of the Stipulation and this Order and Final Judgment, and including any application for fees and expenses incurred in connection with administering and distributing the settlement proceeds to the members of the Class.

16. Without further order of the Court, the parties may agree to reasonable extensions of time to carry out any of the provisions of the Stipulation.

17. There is no just reason for delay in the entry of this Order and Final Judgment and immediate entry by the Clerk of the Court is expressly directed pursuant to Rule 54 (b) of the Federal Rules of Civil Procedure.

Dated: Dayton, Ohio  
November 30, 2006

  
\_\_\_\_\_  
Walter Herbert Rice  
UNITED STATES DISTRICT JUDGE

# **EXHIBIT 11**

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF TENNESSEE  
NASHVILLE DIVISION

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)  
IN RE DOLLAR GENERAL ) Civil Action No. 3:01-0388  
CORPORATION SECURITIES LITIGATION )  
)  
)  
----- X

ORDER APPROVING CLASS ACTION SETTLEMENT

WHEREAS Lead Plaintiffs and Settling Defendants entered into an April 1, 2002 First Amended Stipulation of Settlement to settle this class action; and

WHEREAS the Court entered an Order dated April 3, 2002 (the "Preliminary Approval Order"), preliminarily certifying the putative class in this action for settlement purposes under Fed. R. Civ. P. 23(b)(3), ordering individual and publication notice to potential class members, scheduling a Fairness Hearing for May 24, 2002, and providing those persons and entities identified as members of the putative class with an opportunity either to exclude themselves from the settlement class or to object to the proposed settlement; and

WHEREAS the Court held a Fairness Hearing on May 24, 2002 to determine whether to give final approval to the proposed settlement; and

WHEREAS the Court is contemporaneously issuing a Final Judgment that, among other things, grants final certification of the settlement class, approves the

This document was entered on  
the docket in compliance with  
Rule 58 and / or Rule 79 (a).

FRGP on 5-24-02 By ni

(209)



proposed settlement and dismisses the settlement class members' claims with prejudice;  
now, therefore,

Based on the submissions of the Settling Parties and Class Members, on the argument of counsel at the Fairness Hearing and on this Court's Findings of Fact and Conclusions of Law, it is hereby **ORDERED, ADJUDGED AND DECREED** as follows:

1. **Incorporation of Other Documents.** This Order Approving Class Action Settlement incorporates and makes a part hereof:

(a) the First Amended Stipulation of Settlement filed with this Court on April 1, 2002; and

(b) Exhibits A through I to the First Amended Stipulation of Settlement.

The First Amended Stipulation of Settlement and all exhibits thereto shall be referred to collectively as the "Settlement Agreement."<sup>1</sup>

2. **Jurisdiction.** The Court has personal jurisdiction over all Class Members (as defined below) and has subject matter jurisdiction over this Action, including, without limitation, jurisdiction to approve the proposed settlement, grant final certification of the Class and dismiss this Action on the merits and with prejudice.

3. **Final Class Certification.** The Class this Court previously certified preliminarily is hereby finally certified for settlement purposes under Fed. R.

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<sup>1</sup> Unless otherwise defined in this Order Approving Class Action Settlement, the capitalized terms in this Order have the same meaning as they have in the Settlement Agreement.

Civ. P. 23(b)(3). The Class consists of all persons or entities (“Class Members”) who, during the period from March 5, 1997 through January 14, 2002, inclusive (the “Class Period”), (i) purchased, exchanged, otherwise acquired or made an investment decision (*i.e.*, a decision by a Class Member not to sell Dollar General Securities held by the Class Member or a decision to allow options or other rights with respect to Dollar General Securities to expire) involving Dollar General Securities, or (ii) sold put options on Dollar General Securities.

The Class finally certified by this Court for settlement purposes does *not* include:

- (a) such persons or entities who submit valid and timely requests for exclusion from the Class in accordance with the procedures set out in Section VIII of the Settlement Agreement and described in the Notice;
- (b) such persons or entities who settled an actual or threatened lawsuit or other proceeding with the Company and released the Company from any further claims concerning their purchase, exchange, acquisition of or investment decision involving Dollar General securities, or their sale of put options or other derivative instruments on Dollar General Securities;
- (c) such persons or entities who are Defendants, members of the immediate family of the Individual Defendants, any entity in which Dollar General has or had a controlling interest during the Class Period or the legal representatives, heirs, executors, successors or assigns of any such excluded person or entity, or any directors or officers of Dollar General during the Class Period; or

(d) any Non-Settling Defendant.

A list of the persons or entities who requested exclusion from the Class is on file with the Court as an Exhibit to the Declaration of Brian Burke and is incorporated herein and made a part hereof. The persons and entities set out on this list shall be deemed to be excluded from the Class.

4. **Adequacy of Representation.** The Florida State Board of Administration and the Teachers' Retirement System of Louisiana, and the law firms of Grant & Eisenhofer, P.A., Entwistle & Cappucci LLP and Milberg Weiss Bershad Hynes & Lerach LLP, which were appointed Lead Plaintiffs and Lead Counsel, respectively, by the Court in a July 20, 2001 order pursuant to the provisions of the Private Securities Litigation Reform Act of 1995 ("PSLRA"), 15 U.S.C. § 77z-1(a)(3)(B)(ii), have fully and adequately represented the Class for purposes of entering into and implementing the settlement and have satisfied the requirements of Fed. R. Civ. P. 23(a)(4) and the PSLRA.

5. **Class Notice.** The Court finds that the distribution of the Notice, the publication of the Summary Notice and the notice methodology, all implemented in accordance with the terms of the Settlement Agreement and this Court's Preliminary Approval Order:

- (a) constituted the best practicable notice to Class Members under the circumstances of this action;
- (b) were reasonably calculated, under the circumstances, to apprise Class Members of (i) the pendency of this class action, (ii) their right to exclude

themselves from the Class or the proposed settlement, (iii) their right to review discovery produced to Lead Plaintiffs by Settling Defendants, (iv) their right to object to any aspect of the proposed settlement, (v) their right to appear at the Fairness Hearing – either on their own or through counsel hired at their own expense – if they did not exclude themselves from the Class, and (vi) the binding effect of the Orders and Judgment in this action, whether favorable or unfavorable, on all persons who do not request exclusion from the Class;

- (c) were reasonable and constituted due, adequate and sufficient notice to all persons entitled to be provided with notice; and
- (d) fully satisfied all applicable requirements of the Federal Rules of Civil Procedure (including Fed. R. Civ. P. 23(c)(2) and (e)), the United States Constitution (including the Due Process Clause), the PSLRA, the Rules of the Court and any other applicable law.

6. **Final Settlement Approval.** The terms and provisions of the Settlement Agreement have been entered into in good faith and are hereby fully and finally approved as fair, reasonable and adequate as to, and in the best interests of, each of the Settling Parties and the Class Members, and in full compliance with all applicable requirements of the Federal Rules of Civil Procedure, the United States Constitution (including the Due Process Clause), the Rules of the Court and any other applicable law. The Settling Parties and their counsel are hereby directed to implement and consummate the Settlement Agreement according to its terms and provisions.

7. **Binding Effect.** The terms of the Settlement Agreement and of this Order and the accompanying Final Judgment shall be forever binding on, and, as to all Released Claims, to have *res judicata* and other preclusive effect in all pending and future lawsuits or other proceedings encompassed by the Release maintained by or on behalf of Lead Plaintiffs and all other Class Members, as well as their heirs, executors and administrators, successors and assigns.

8. **Release.** The following Release and relevant definitions, which are also set forth in Sections X.A and I.D.1., respectively, of the Settlement Agreement, are expressly incorporated herein in all respects. The Release is effective as of the Final Settlement Date and forever discharges the Releasees from any claims or liabilities arising from or related to the Released Claims.

A. Definitions Relevant to Release and Waiver.

1. “Claim” means (i) a demand (whether written or oral) or cause of action for monetary or non-monetary relief or (ii) a demand, cause of action or allegation in a civil, criminal or administrative proceeding in any judicial, arbitral, regulatory or other forum for monetary or non-monetary relief.

2. “Released Claims” means each and every Claim or Unknown Claim, whether arising under any federal, state or foreign statutory or common law or rule, including, without limitation, each and every Claim for negligence, gross negligence, indemnification, breach of duty of care and/or breach of duty of loyalty, fraud, breach of fiduciary duty, or violations of state or federal statutes, rules or regulations, that has been, or might have been, or could be asserted against any of the

Releasees at any time by or on behalf of any Class Member, in any capacity, in the Action or in any court, tribunal or other forum of competent jurisdiction, arising out of or related, directly or indirectly, to the purchase, acquisition, exchange, retention, transfer or sale of or investment decision involving any Dollar General Securities during the Class Period (*i.e.*, a decision by a Class Member not to sell Dollar General Securities held by the Class Member or a decision to allow options or other rights with respect to Dollar General Securities to expire), including any Claims or Unknown Claims arising out of or relating to:

- (a) any or all of the acts, omissions, matters, transactions, occurrences or oral or written statements or representations that have been, may be or could be directly or indirectly alleged, asserted, described, set forth or referred to in this Action;
- (b) any SEC filing by any of the Releasees relating to Dollar General Securities or Dollar General during the Class Period;
- (c) any forward-looking statement made by any of the Releasees during the Class Period;
- (d) any adjustments, revisions or restatements of financial information of Dollar General during the Class Period;
- (e) any disclosures of any sort made by any of the Releasees during the Class Period to any third party regarding, without limitation, Dollar General's financial condition, its operational results and/or its operational prospects, including, without limitation, press releases and/or press reports and presentations to analysts, rating agencies, banks, Company employees, potential investors and/or shareholders;

(f) any internal and/or external accounting reports or opinions prepared during or relating in any way to the Class Period, or on which any Class Member allegedly relied during the Class Period in purchasing, acquiring, exchanging, retaining, transferring, selling or making an investment decision with respect to Dollar General securities;

(g) the Company's recordkeeping during or relating in any way to the Class Period;

(h) any financial statement, audited or unaudited, and any report or opinion on any financial statement relating to Dollar General that was prepared or issued during or that relates in any way to the Class Period, or on which any Class Member allegedly relied during the Class Period in purchasing, acquiring, exchanging, retaining, transferring, selling or making an investment decision with respect to Dollar General Securities;

(i) any statements or omissions by any of the Releasees as to quarterly or annual results of Dollar General during the Class Period;

(j) any internal accounting controls or internal audits of Dollar General during or relating in any way to the Class Period;

(k) any purchases, acquisitions, exchanges, sales, transfers or other trading of Dollar General Securities during the Class Period by any of the Releasees, or any acts taken by Releasees to finance or pay for such trades; and

(l) any issues relating to the Company's accounting for its operations, including but not limited to, inventory valuation and obsolescence, expense accruals, reserves, general ledger balance reconciliations and synthetic leases.

3. "Releasees" means each and every one of the following: Dollar General and all of its predecessors and present and former parents, subsidiaries and affiliates, and each of their respective past and present directors, officers, employees, partners, principals, agents, attorneys, advisors, consultants, representatives, directors and officers liability insurers, accountants and auditors, and the Individual Defendants and each of their heirs, executors, trusts, trustees, administrators and assigns and the Dollar General STRYPES Trust; *provided however*, that the term Releasees shall not include Deloitte & Touche LLP or PricewaterhouseCoopers LLP.

4. "Unknown Claim" means any Released Claim that any Class Member does not know or suspect to exist in his, her or its favor at any time on or before the date that Class Member's release becomes effective, and that, if known by him, her or it, might have affected his, her or its settlement with the Releasees or might have affected his, her or its decision not to request exclusion from the Class or not to object to the Settlement Agreement.

B. Release and Waiver.

1. Without further action by anyone, on and after the Final Settlement Date, each Class Member, including Class Members who are parties to any other actions, arbitrations or other proceedings against any of the Settling Defendants or Releasees that are pending on the Final Settlement Date, on behalf of themselves, their heirs, executors,



administrators, predecessors, successors, assigns, any person claiming by or through Class Members and any person they represent, for good and sufficient consideration, the receipt and adequacy of which are hereby acknowledged, shall be deemed to have, and by operation of law and of the Final Judgment shall have, fully, finally and forever released, relinquished, settled and discharged all Released Claims against each and every one of the Releasees, including such Released Claims as already may have been asserted in any pending actions, arbitrations or other proceedings, and whether or not a Proof of Claim is executed and delivered by, or on behalf of, such Class Member; *provided however*, that nothing in the judgment shall bar any action or claim by the Settling Parties to enforce the terms of the Settlement Agreement or the Final Judgment; *provided further* that each Class Member, including Class Members who are parties to any other actions, arbitrations or other proceedings against any of the Settling Defendants or Releasees that are pending on the Final Settlement Date, on behalf of themselves, their heirs, executors, administrators, predecessors, successors, assigns, any person or entity claiming by or through Class Members and any person they represent, for good and sufficient consideration, the receipt and adequacy of which are hereby acknowledged, shall be deemed to have, and by operation of law and of the Final Judgment shall have, fully, finally and forever released, relinquished, settled and discharged all claims as to any or all Settling Parties or Releasees that relate in any way to any or all acts, omissions, nondisclosures, facts, matters, transactions, occurrences or oral or written statements or representations in connection with or directly or indirectly relating to the Settlement Agreement or the settlement of the Action.

2. With respect to any and all Released Claims, the Settling Parties stipulate and agree that, by the terms of the Final Judgment, each Class Member shall have, and shall be deemed to have, waived and relinquished, to the fullest extent permitted by law, any and all provisions, rights and benefits conferred by any federal, state or foreign law, rule, regulation or common-law doctrine that is similar, comparable, equivalent or identical to, or which has the effect of, Section 1542 of the California Civil Code, which provides:

A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.

Notwithstanding the provisions of Section 1542 and all similar provisions in California or in any other state of the United States or the District of Columbia or in any foreign jurisdiction, Class Members understand and agree that this Release is intended to include all Released Claims Class Members may have, including those which Class Members do not now know or suspect to exist in their favor against the Releasees, and that this Release extinguishes those Released Claims. Class Members may hereafter discover facts in addition to or different from those that they know or believe to be true with respect to the subject matter of the Released Claims, but Class Members hereby stipulate and agree that they have, and shall be deemed to have, on or after the Final Settlement Date, fully, finally and forever settled and released any and all Released Claims and without regard to subsequent discovery or existence of such different or additional facts.

The foregoing waiver was separately bargained for and is a key element of the Settlement Agreement.

9. **Permanent Injunction.** All Class Members who have not been timely excluded from the Class are permanently barred and enjoined from (i) filing, commencing, prosecuting, intervening in, participating in (as class members or otherwise), or receiving any benefits or other relief from, any other lawsuit, arbitration or administrative, regulatory or other proceeding or order in any jurisdiction based on or relating in any way to the claims and causes of action, or the facts and circumstances relating thereto, in this Action and/or the Released Claims and (ii) organizing such nonexcluded Class Members into a separate class for purposes of pursuing as a purported class action (including by seeking to amend a pending complaint to include class allegations, or by seeking class certification in a pending action) any lawsuit based on or relating to the claims and causes of action, and/or the facts and circumstances relating thereto, in this Action and/or the Released Claims.

10. **Contribution Bar.** In accordance with 15 U.S.C. § 78u-4(f)(7)(A), any and all claims for contribution arising out of this Action (a) by any person against the Releasees and (b) by the Releasees against any person (other than other of the Releasees) are hereby permanently barred, extinguished, discharged, satisfied and unenforceable. Accordingly, (a) any Non-Settling Defendant is hereby permanently enjoined from commencing, prosecuting or asserting any such claim for contribution arising out of this Action against the Releasees and (b) the Releasees are hereby permanently enjoined from commencing, prosecuting or asserting any such claim for

contribution arising out of this Action against any Non-Settling Defendant. In accordance with 15 U.S.C. § 78u-4(f)(7)(B), any final verdict or judgment that may be obtained by or on behalf of the Class against a Non-Settling Defendant shall be reduced by the greater of (i) an amount that corresponds to the percentage of responsibility of the Releasees for the claims asserted by or on behalf of the Class or (ii) the value of the consideration paid by or on behalf of the Releasees to the Class in connection with the Settlement.

**11. Complete Bar.**

(a) Any and all claims by a Non-Settling Defendant against the Releasees arising under state, federal or common law, however styled, whether for indemnification or contribution, or otherwise denominated (including, without limitation, claims for breach of contract and for misrepresentation) that are based upon, arise out of or relate to this Action, the Released Claims or the transactions and occurrences referred to in the Complaint (including, without limitation, any claim in which a Non-Settling Defendant seeks to recover from the Releasees (i) any amounts it may become liable to pay to any of the Class Members and (ii) any costs, expenses or attorneys' fees from defending any claim by any of the Class Members), whether such claims are legal or equitable, known or unknown, foreseen or unforeseen, matured or unmatured, accrued or unaccrued, are hereby permanently barred. Any Non-Settling Defendant is enjoined and restrained from commencing, prosecuting or asserting any such claim. All such claims are hereby extinguished, discharged, satisfied and unenforceable.

(b) The provisions of Section (a) above are intended to preclude any liability of the Releasees to any Non-Settling Defendant for indemnification, contribution or otherwise on any claim based upon, arising out of or related to this Action, the Released Claims or the transactions and occurrences referred to in the Complaint, and any provision hereof that is not subsequently enforced shall be substituted with such other provision as may be necessary to afford the Releasees the fullest protection from such claims permitted by law.

(c) Any and all claims by the Releasees against a Non-Settling Defendant arising under state, federal or common law, however styled, whether for indemnification or contribution, or otherwise denominated (including, without limitation, claims for breach of contract and for misrepresentation) that are based upon, arise out of or relate to this Action, the Released Claims or the transactions and occurrences referred to in the Complaint (including, without limitation, any claim in which any of the Releasees seek to recover from a Non-Settling Defendant (i) any amounts the Releasee has or may become liable to pay to any of the Class Members and (ii) any costs, expenses or attorneys' fees from defending any claim by any of the Class Members), whether such claims are legal or equitable, known or unknown, foreseen or unforeseen, matured or unmatured, accrued or unaccrued, are hereby permanently barred. The Releasees are enjoined and restrained from commencing, prosecuting or asserting any such claim. All such claims are hereby extinguished, discharged, satisfied and unenforceable. However, in the event that a Non-Settling Defendant commences any action against any of the

Releasees that is not barred by a court pursuant to Sections (a) and (b) above, this Section (c) shall be null and void as to such Non-Settling Defendant.

(d) If, notwithstanding the above Bar Orders, a Non-Settling Defendant obtains a judgment against any of the Releasees on any claim that is based upon, arises out of or relates to this Action or the Released Claims, or on any other claim, however denominated, to recover, directly or indirectly, (i) any amounts the Non-Settling Defendant may become liable to pay to any of the Class Members and (ii) any costs, expenses or attorneys' fees from defending any claim by any of the Class Members, the Class and the Class Members agree that they will reduce or credit any judgment or settlement (up to the amount of such judgment or settlement) that they may obtain against the Non-Settling Defendant by an amount equal to the amount of the Non-Settling Defendant's judgment against the Releasees.

(e) Dollar General agrees that it will pay the costs of defending any such claim that may be asserted against a Releasee by a Non-Settling Defendant and will not settle any such claim without the prior written consent of Lead Counsel, which consent shall not be unreasonably withheld. In the event that a final judgment is entered in favor of the Class against a Non-Settling Defendant before the adjudication of the Non-Settling Defendant's claims against any Releasee, any funds collected on account of such judgment shall not be distributed to the Class, but shall be held in trust pending final adjudication of such claim.

(f) The Class will not settle any claim with a Non-Settling Defendant without obtaining from the Non-Settling Defendant a release of any claims that the Non-Settling Defendant has against the Releasees.

12. **Enforcement of Settlement.** Nothing in this Order or the accompanying Final Judgment shall preclude any action by the Settling Parties to enforce the terms of the Settlement Agreement.

13. **Attorneys' Fees and Expenses.** Lead Counsel are hereby awarded attorneys' fees of 20.879% of the Cash Settlement Fund and reimbursement of expenses in the amount of \$1,010,380.29, together with the interest earned thereon, if any, to be paid from the Cash Settlement Fund, consistent with the terms of the Settlement Agreement.

14. **No Other Payments.** The preceding paragraph 13 of this Order covers, without limitation, any and all claims for attorneys' fees and expenses, costs or disbursements incurred by Lead Counsel or any other counsel of record representing plaintiffs or Class Members in this Action, or incurred by Lead Plaintiffs or the Class Members, or any of them, in connection with or related in any manner to this Action, the settlement of this Action, the administration of such settlement and/or the Released Claims except to the extent otherwise specified in this Order and the Settlement Agreement.

15. **Modification of Settlement Agreement.** The Settling Parties are hereby authorized, without further approval from the Court, to agree to and adopt such amendments, modifications and expansions of the Settlement Agreement and all exhibits

attached to the Settlement Agreement, provided that such amendments, modifications and expansions of the Settlement Agreement are not materially inconsistent with this Order and the Final Judgment and do not materially limit the rights of Class Members under the Settlement Agreement.

16. **Findings of Fact and Conclusions of Law.** The Settling Parties are directed to prepare findings of fact and conclusions of law in support of the Court's Final Judgment and this Order.

17. **Retention of Jurisdiction.** The Court has jurisdiction to enter this Order and the accompanying Final Judgment. Without in any way affecting the finality of this Order and the accompanying Final Judgment, this Court expressly retains jurisdiction as to all matters relating to the administration, consummation, enforcement and interpretation of the Settlement Agreement, and of this Order and the accompanying Final Judgment, and for any other necessary purpose, including, without limitation:

- (a) enforcing the terms and conditions of the Settlement Agreement and resolving any disputes, claims or causes of action that, in whole or in part, are related to or arise out of the Settlement Agreement, this Order or the Final Judgment (including, without limitation, whether a person or entity is or is not a Class Member, and whether claims or causes of action allegedly related to this Action are or are not barred by the Final Judgment or Release);
- (b) entering such additional Orders as may be necessary or appropriate to protect or effectuate the Court's Order and the Final Judgment approving



the Settlement Agreement, dismissing all claims on the merits and with prejudice, and permanently enjoining Class Members from initiating or pursuing related proceedings, or to ensure the fair and orderly administration of this settlement; and

- (c) entering any other necessary or appropriate Orders to protect and effectuate this Court's retention of continuing jurisdiction; *provided, however,* that nothing in this paragraph is intended to restrict the ability of the parties to exercise their rights under paragraph 15 of this Order.

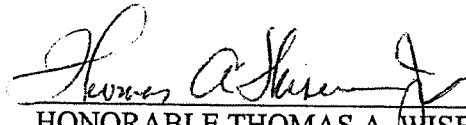
18. **No Admissions.** Neither this Order and the accompanying Final Judgment nor the Settlement Agreement, nor any of the provisions of the Settlement Agreement or any negotiations leading to its execution, nor any other document referred to in this Order or the accompanying Final Judgment, nor any action taken to carry out this Order and the Final Judgment is, may be construed as, offered as, received as, used as or deemed to be evidence of any kind in this Action, any other action, or any judicial, administrative, regulatory or other proceeding, or may be construed as, offered as, received as, used as or deemed to be evidence or an admission or concession of any liability or wrongdoing whatsoever on the part of any person or entity, including but not limited to Settling Defendants, or as a waiver by the Settling Defendants of any applicable defense. Entering into or carrying out the Settlement Agreement, and any negotiations or proceedings related to it, shall not in any event be construed as, offered as, received as, used as or deemed evidence of, an admission or concession as to the Settling Defendants' denials or defenses and shall not be offered or received in evidence

in this Action or any other action or any judicial, administrative, regulatory or other proceeding against any party hereto for any purpose whatsoever, except as evidence of the settlement or to enforce the provisions of this Order, the accompanying Final Judgment and the Settlement Agreement; *provided, however*, that this Order, the accompanying Final Judgment and the Settlement Agreement may be filed in any action against or by the Settling Defendants or Releasees to support a defense of *res judicata*, collateral estoppel, release, waiver, good-faith settlement, judgment bar or reduction, full faith and credit, or any other theory of claim preclusion, issue preclusion or similar defense or counterclaim.

19. **Dismissal of Action.** This Action, including all individual claims and Class claims resolved by it, is hereby dismissed on the merits and with prejudice as to the Settling Defendants, without fees or costs to any party except as otherwise provided in this Order and the Final Judgment.

20. **Rule 58 Separate Judgment.** The Court will separately enter the accompanying Final Judgment in accordance with Fed. R. Civ. P. 58.

SO ORDERED this 24 day of May, 2002.

  
HONORABLE THOMAS A. WISEMAN, JR.  
UNITED STATES DISTRICT JUDGE

## **EXHIBIT 12**

This matter came for hearing on April 29, 2008 (the “Final Approval Hearing”), upon the application of the parties for approval, pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, of the Settlement set forth in the Stipulation and Agreement of Settlement dated and filed with the Court on January 22, 2008 (the “Deloitte Stipulation”) resolving the above-captioned action (the “Delphi Securities Action”), which Deloitte Stipulation was joined and consented to by Teachers’ Retirement System of Oklahoma, Public Employees’ Retirement System of Mississippi, Raiffeisen Kapitalanlage-Gesellschaft m.b.H. and Stichting Pensioenfonds ABP (“Lead Plaintiffs”), on behalf of themselves and the Class, on the one hand, and Defendant Deloitte & Touche, LLP (“Deloitte”) on the other hand (together with Lead Plaintiffs, the “Settling Parties”), and which, along with the defined terms therein, is incorporated herein by reference; and for approval of Co-Lead Counsel’s Motion for Award of Attorneys’ Fees and Reimbursement of Expenses (the “Fee Request”), and the Court having

considered all papers filed and proceedings had herein and otherwise being fully informed in the premises and good cause appearing therefore,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

1. The Court, for purposes of this Order, adopts all defined terms as set forth in the Deloitte Stipulation.

2. Pursuant to and in compliance with Rule 23 of the Federal Rules of Civil Procedure, the Court hereby finds that notice of the Final Approval Hearing was given in accordance with the Court's Order of Preliminary Approval and for Notice and Hearing dated February 6, 2008 (the "Preliminary Approval Order") to members of the Class as certified by the Court in the Preliminary Approval Order, advising them of Co-Lead Counsel's intention to seek the Fee Request and of their right to object thereto, and a full and fair opportunity was accorded to all Class Members to be heard with respect to the Fee Request, and that said notice was the best notice practicable and was adequate and sufficient.

3. No objections to the Fee Request were filed by any Class Member or any other person, agency, or authority.

4. The Final Approval Hearing was held on April 29, 2008. No objector, class member, other person, agency, or authority objected at the hearing.

5. Co-Lead Counsel are hereby awarded: (i) attorneys' fees of 18% of the Gross Deloitte & Touche Settlement Fund (which by definition, includes interest earned thereon); and (ii) reimbursement of litigation costs and expenses in the amount of \$482,565.14, which are in addition to the \$1,300,000.00 awarded pursuant to the Court's Order of January 10, 2008, and may take reimbursement of all such expenses, plus interest on all such amounts calculated at the same rate as interest has accrued from the date of deposit. Further, Co-lead Counsel may remit

payment of \$45,000.00 to pay the invoiced, but unpaid, bills of Special Master Phillips submitted after the Fee Request was filed.

6. Based upon the evidence and pleadings submitted to the Court, the record at the Final Fairness Hearing, and all papers on file in this matter, the Court believes, and hereby finds, that the attorneys' fees and reimbursement of expenses awarded herein are fair and reasonable under the circumstances of the Delphi Securities Action. In making this award, the Court has considered the factors considered by courts in the Sixth Circuit to be relevant to the determination of an appropriate fee in common fund cases and finds that:

a. the Settlement provides for a recovery with a cash value of \$38,250,000, plus interest and that numerous Class Members who have already submitted acceptable Proofs of Claim in connection with the previously approved Delphi Settlement, or who submit acceptable Proofs of Claim in connection with this Settlement will benefit from the Gross Deloitte & Touche Settlement Fund created through the efforts of Co-Lead Counsel;

b. Over 490,000 copies of the Notice were disseminated to putative Class Members stating that Co-Lead Counsel were moving for an award of attorneys' fees of up to 18% of the Gross Deloitte & Touche Settlement Fund (which by definition, includes interest earned thereon), and for reimbursement of additional costs and expenses in an amount not to exceed \$585,000, plus interest, which are in addition to the fees and expenses previously awarded by the Court, and not a single objection was filed or made regarding the fees or expense reimbursements requested by Co-Lead Counsel as set forth in the Notice;

c. The Court has found the Settlement to be fair, reasonable and adequate;

d. Co-Lead Counsel's Fee Request as a percentage of the Gross Deloitte & Touche Settlement Fund is consistent with the prevailing law of the Sixth Circuit;

e. The Delphi Securities Action involved numerous difficult issues related to liability and damages;

f. Co-Lead Counsel achieved this Settlement with skill, perseverance, and diligent advocacy for the Class;

g. Had Co-Lead Counsel not achieved the Settlement, there would remain a significant risk that Lead Plaintiffs and the Class may have recovered less or nothing from Deloitte;

h. Co-Lead Counsel pursued this Action on a contingent basis;

i. A fee award under the percentage of the fund method is appropriate and an award of 18% of the common fund recovered for the Class in attorneys' fees is reasonable and, in fact, less than awards in similarly complex cases in this jurisdiction; and

j. This Settlement was negotiated at arm's-length, and no evidence of fraud or collusion has been presented.

7. There is no just reason for delay in the entry of this Order, and immediate entry of this Order by the Clerk of the Court is expressly directed pursuant to Rule 54(b) of the Federal Rules of Civil Procedure.

SIGNED THIS 26th DAY OF June, 2008.

s/Gerald E. Rosen  
Gerald E. Rosen  
United States District Judge

Dated: June 26, 2008

I hereby certify that a copy of the foregoing document was served upon counsel of record on June 26, 2008, by electronic and/or ordinary mail.

s/LaShawn R. Saulsberry

Case Manager



## **EXHIBIT 13**

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

FILED  
JAN 17 AM 10:39

In re ADVANCED LIGHTING  
TECHNOLOGIES, INC. SECURITIES  
LITIGATION

This Document Relates To:

1:99CV1264  
1:99CV1282

Master File No. 1:99CV836 ✓

CLASS ACTION

JUDGE NUGENT  
MAG. JUDGE STREEPY

~~PROPOSED~~ ORDER AWARDING  
PLAINTIFFS' COUNSEL'S  
ATTORNEYS' FEES AND  
REIMBURSEMENT OF EXPENSES  
AND AMOUNTS FOR CERTAIN  
PLAINTIFFS

THIS MATTER having come before the Court on January 17, 2003, on the application of counsel for the Lead Plaintiffs for an award of attorneys' fees and reimbursement of expenses incurred in this litigation, the Court, having considered all papers filed and proceedings conducted herein, having found the settlement of this action to be fair, reasonable and adequate and otherwise being fully informed in the premises and good cause appearing therefor;

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

1. All of the capitalized terms used herein shall have the same meanings as set forth in the Stipulation and Agreement of Settlement dated as of November 8, 2002 (the "Stipulation").

2. This Court has jurisdiction over the subject matter of this Application and all matters relating thereto, including all Members of the Class who have not timely and validly requested exclusion.

3. The Court hereby awards plaintiffs' counsel in the Litigation attorneys' fees of 30% of the Settlement Fund and reimbursement of litigation expenses in the amount of \$769,509.51 together with the interest earned thereon for the same time period and at the same rate as that earned on the Settlement Fund until paid. Said fees and expenses shall be allocated among plaintiffs' counsel in the Litigation in a manner which, in Plaintiffs' Settlement Counsel's good faith judgment, reflects each such counsel's contribution to the institution, prosecution and resolution of the litigation. The Court finds that the amount of fees awarded is fair and reasonable under the "percentage-of-recovery" method.

4. Pursuant to 15 U.S.C. §78u-4(a)(4), the Court awards \$5,000 each to Frank Donio, George Peterson, and Bill Lowery and \$7,500 to David Kuykendall, as requested.

5. The awarded attorneys' fees and expenses and reimbursement shall be paid to Plaintiffs' Settlement Counsel subject to the terms, conditions and obligations of the Stipulation and in particular ¶6.2 thereof, which terms, conditions and obligations are incorporated herein.

IT IS SO ORDERED.

DATED:

January 17, 2003

Donald C. Nugent  
THE HONORABLE DONALD C. NUGENT  
UNITED STATES DISTRICT JUDGE

Submitted by:

THE LANDSKRONER LAW FIRM, LTD.  
JACK LANDSKRONER (0059227)

Jack Landskroner  
JACK LANDSKRONER

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Case No. 99CV836

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Lead Counsel for Plaintiffs,  
as an Escrow Agent, Case No. 99CV836

## **EXHIBIT 14**

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF TENNESSEE  
NASHVILLE DIVISION

In re DIRECT GENERAL CORPORATION	)	Civil Action No. 3:05-0077
SECURITIES LITIGATION	)	
	)	Judge Todd J. Campbell
	)	Magistrate Judge Juliet E. Griffin
This Document Relates To:	)	
	)	<u>CLASS ACTION</u>
ALL ACTIONS.	)	
	)	

~~PROPOSED~~ ORDER AWARDING ATTORNEYS' FEES AND EXPENSES  
TSC

THIS MATTER having come before the Court on July 20, 2007, on the application of Lead Counsel for an award of attorneys' fees and expenses incurred in the Litigation; the Court, having considered all papers filed and proceedings conducted herein, having found the settlement of this Litigation to be fair, reasonable and adequate and otherwise being fully informed in the premises and good cause appearing therefor;

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

1. All of the capitalized terms used herein shall have the same meanings as set forth in the Stipulation of Settlement dated as of March 30, 2007 (the "Stipulation").
2. This Court has jurisdiction over the subject matter of this application and all matters relating thereto, including all Members of the Class who have not timely and validly requested exclusion.
3. The Court hereby awards Lead Counsel attorneys' fees of 30% of the Settlement Fund and reimbursement of expenses in an aggregate amount of \$531,085.07 together with the interest earned thereon for the same time period and at the same rate as that earned on the Settlement Fund until paid. Said fees shall be allocated by Lead Counsel in a manner which, in their good-faith judgment, reflects each counsel's contribution to the institution, prosecution and resolution of the Litigation. The Court finds that the amount of fees awarded is fair and reasonable under the "percentage-of-recovery" method.
4. The awarded attorneys' fees and expenses, and interest earned thereon, shall be paid to Lead Counsel from the Settlement Fund immediately after the date this Order is executed subject to the terms, conditions, and obligations of the Stipulation and in particular ¶¶6.2-6.3 thereof, which terms, conditions, and obligations are incorporated herein.
5. Lead Plaintiff John Dzaugis is hereby awarded \$7,300.00.



IT IS SO ORDERED.

DATED: 7-26-07

  
THE HONORABLE TODD J. CAMPBELL  
UNITED STATES DISTRICT JUDGE

Submitted by,

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DOUGLAS S. JOHNSTON, JR. #5782  
TIMOTHY L. MILES, #21605  
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Nashville, TN 37201-1601  
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Liaison Counsel

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RUDMAN & ROBBINS LLP  
DARREN J. ROBBINS  
TOR GRONBORG  
JEFFREY D. LIGHT  
X. JAY ALVAREZ  
RAMZI ABADOU

s/ Jeffrey D. Light  
JEFFREY D. LIGHT

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Lead Counsel for Plaintiffs

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Telephone: 217/544-1771  
217/544-9894 (fax)

Additional Counsel for Plaintiffs

S:\Settlement\Direct General.set\ORD FEE 00043474.doc

**CERTIFICATE OF SERVICE**

I hereby certify that on July 13, 2007, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the e-mail addresses denoted on the attached Electronic Mail Notice List, and I hereby certify that I have mailed the foregoing document or paper via the United States Postal Service to the non-CM/ECF participants indicated on the attached Manual Notice List.

I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on July 13, 2007.

s/ Jeffrey D. Light  
JEFFREY D. LIGHT

LERACH COUGHLIN STOIA GELLER  
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619/231-7423 (fax)  
E-mail: [JeffL@lerachlaw.com](mailto:JeffL@lerachlaw.com)

## **Mailing Information for a Case 3:05-cv-00077**

### **Electronic Mail Notice List**

The following are those who are currently on the list to receive e-mail notices for this case.

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general\_efile@lerachlaw.com
- **X. Jay Alvarez**  
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- **Antonio Yanez, Jr**  
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### Manual Notice List

The following is the list of attorneys who are **not** on the list to receive e-mail notices for this case (who therefore require manual noticing). You may wish to use your mouse to select and copy this list into your word processing program in order to create notices or labels for these recipients.

**Gordon Ball**  
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**Karen Hanson Riebel**  
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**Manual Notice List**

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## **EXHIBIT 15**

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF TENNESSEE  
NASHVILLE DIVISION

JOHN RICHARD BEACH, Individually and	)	Civil Action No. 3:08-cv-00569
on Behalf of All Others Similarly Situated,	)	<b>(Consolidated)</b>
	)	
Plaintiff,	)	<u>CLASS ACTION</u>
	)	
vs.	)	Judge Todd J. Campbell
	)	Magistrate Judge Juliet Griffin
HEALTHWAYS INC., et al.,	)	
	)	[PROPOSED] ORDER AWARDING
Defendants.	)	PLAINTIFFS' COUNSEL ATTORNEYS'
	)	FEES AND EXPENSES
	)	

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The matter having come before the Court on September 24, 2010, on Plaintiffs' Counsel's motion for an award of attorneys' fees and expenses incurred in this action, the Court, having considered all papers filed and proceedings conducted herein, having found the settlement of this action to be fair, reasonable, and adequate and otherwise being fully informed in the premises and good cause appearing therefore;

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

1. All of the capitalized terms used herein shall have the same meanings as set forth in the Stipulation of Settlement dated May 21, 2010 (the "Stipulation");

2. This Court has jurisdiction over the subject matter of this application and all matters relating thereto, including all members of the Class who have not timely and validly requested exclusion.

3. The Court hereby awards Plaintiffs' Counsel attorneys' fees of 30% of the Settlement Fund, and litigation expense in the amount of \$763,372.03, together with the interest earned thereon for the same time period and at the same rate as that earned on the Settlement Fund until paid. Said fees and expenses shall be allocated among Plaintiffs' Counsel in a manner which, in Lead Counsel's good faith judgment, reflects each such Plaintiffs' Counsel's contribution to the institution, prosecution and resolution of the litigation.

4. The awarded attorneys' fees and expenses shall be paid to Lead Counsel immediately after the date this Order is executed subject to the terms, conditions, and obligations of the Stipulation and in particular ¶6.2 thereof, which terms, conditions and obligations are incorporated herein.

5. Pursuant to 15 U.S.C. §78u-4(a)(4), Lead Plaintiff West Palm Beach Firefighters' Pension Fund is awarded \$3,781.00 in reimbursement of its time and expenses in serving on behalf of the Class.

IT IS SO ORDERED.

DATED: \_\_\_\_\_

  
THE HONORABLE TODD J. CAMPBELL  
CHIEF UNITED STATES DISTRICT JUDGE

## **EXHIBIT 16**

ORIGINAL

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

USDC SDNY  
DOCUMENT  
ELECTRONICALLY FILED  
DOC #:  
DATE FILED: July 18, 2007

In re AMERICAN EXPRESS FINANCIAL  
ADVISORS SECURITIES LITIGATION

Master File No. 04 Civ. 1773 (DAB)

**ORDER AND FINAL JUDGMENT**

On July 13, 2007, the Court held a hearing to determine (1) whether the terms and conditions of the Stipulation of Settlement dated January 18, 2007 ("Stipulation")<sup>1</sup> are fair, reasonable, and adequate for the settlement of all claims asserted on behalf of the Class in the above-captioned Action, including the release of Defendants, Nominal Defendants, and the other Released Persons, and should be approved; (2) whether judgment should be entered dismissing the Action on the merits and with prejudice in favor of Defendants and Nominal Defendants and as against all Class Members who are not Opt-Outs; (3) whether the Plan of Allocation proposed by Plaintiffs' Co-Lead Counsel is a fair, reasonable, and adequate method of allocating the settlement proceeds among the Class Members; (4) whether and in what amount Plaintiffs' Co-Lead Counsel should be awarded attorneys' fees and reimbursement of expenses; and (5) whether and in what amount incentive awards should be given to the lead plaintiffs in the instant action and in a related action, known as *Haritos v. American Express Financial Advisors, Inc.*, Case No. 02-2255 PHX-PGR, pending in the United States District Court for the District of Arizona ("Haritos").

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1. All defined terms have the same meaning as defined in the Stipulation of Settlement dated January 18, 2007.

The Court, having considered all matters submitted to it at the hearing and otherwise; and it appearing from the submissions of the parties that, in accordance with the Court's Order Provisionally Certifying Class, Directing Dissemination of Notice, and Setting Settlement Fairness Hearing, dated February 14, 2007 ("Notice Order"), a notice of the Settlement and Final Fairness Hearing, substantially in the form approved by the Court, was mailed to all Class Members who could be identified with reasonable effort, using the information provided by Defendant American Express Financial Advisors, Inc. or its successor, Ameriprise Financial Services, Inc. (collectively, "AEFA"), pursuant to the Notice Order; and it appearing that a summary notice of the Settlement and Final Fairness Hearing, substantially in the form approved by the Court, was published once in the national edition of The Wall Street Journal and Parade Magazine in accordance with the Notice Order; and the Court having considered and determined the fairness and reasonableness of the award of attorneys' fees and expenses requested by Plaintiffs' Co-Lead Counsel; and all defined terms used herein having the meanings as set forth and defined in the Stipulation,

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

1. The Court has jurisdiction over the subject matter of the Action, Plaintiffs, all Class Members, and Defendants.
2. The Court makes a final determination that, for the purposes of the Settlement, the prerequisites for a class action under Rules 23(a) and (b)(3) of the Federal Rules of Civil Procedure have been satisfied in that (a) the Class is so numerous that joinder of all members thereof is impracticable; (b) there are questions of law and fact common to the Class; (c) Plaintiffs' claims are typical of the claims of the Class they seek to represent; (d) Plaintiffs and their counsel will fairly and adequately represent the interests of the Class; (e) questions of

law and fact common to the Class Members predominate over questions affecting only individual members of the Class; and (f) a class action settlement is superior to other available methods for the fair and efficient adjudication of the controversy.

3. Pursuant to Rules 23(a) and (b)(3) of the Federal Rules of Civil Procedure, and, for the purposes of the Settlement, this Court hereby makes final its certification of the Action as a class action on behalf of the following Class:

All Persons who, at any time during the Class Period:

- (i) Paid a fee for financial advice, financial planning, or Financial Advisory Services;
- (ii) Purchased any of the Non-Proprietary Funds through AEFA or for which AEFA was listed as the broker;
- (iii) Purchased any of the AXP Funds through AEFA or for which AEFA was listed as the broker; and/or;
- (iv) Paid a fee for financial advice, financial planning, or other financial advisory services rendered in connection with an SPS, WMS and/or SMA account.

Excluded from the Class are Defendants, Nominal Defendants, members of Defendant James M. Cracchiolo's immediate family, any entity in which any Defendant or Nominal Defendant has or had a controlling interest, and the employees, agents, legal affiliates, or representatives who had been employees, agents, legal affiliates or representatives during the Class Period, heirs, controlling persons, successors, and predecessors in interest or assigns of any such excluded party, and all persons and entities who timely and properly requested exclusion from the Class pursuant to the Mailed Notice or Publication Notice disseminated in accordance with the Notice

Order, and six persons whose tardy exclusions are excused due to extenuating circumstances.

Those six persons are: Carroll Neinhaus, James King, Dorothy King, Muriel Wester, Joseph Centineo and Ester Saabye.

4. Plaintiffs assert claims against Defendants under Sections 12(a)(2) and 15 of the Securities Act of 1933; Section 10(b) of the Securities Exchange Act of 1934 and Securities and Exchange Commission Rules 10b-5(a)-(c) and 10b-10 promulgated thereunder; Section 20(a) of the Securities Exchange Act of 1934; the Investment Advisers Act of 1940, 15 U.S.C. §§ 80b-5, 80b-6; the Minnesota Uniform Deceptive Trade Practices Act, Minnesota Consumer Fraud Act, Minnesota False Advertisement Act, and Minnesota Unlawful Trade Practices Act; and for breach of fiduciary duty and unjust enrichment. The Complaint alleges that Defendants engaged in a common course of conduct that included, among other things, misrepresentations and omissions in connection with the (a) marketing and sale of financial plans and advice to Defendants' clients; (b) the marketing, recommending, and sale of certain non-proprietary mutual funds that paid inadequately disclosed compensation to Defendants for such promotion; and (c) the marketing, recommending, and sale of Defendants' proprietary mutual funds and other proprietary products. For purposes of the Settlement only, the Court makes final its certification of these claims for class treatment.

5. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, the Court hereby makes final its appointment of Plaintiffs (Leonard D. Caldwell, Carol M. Anderson, Donald G. Dobbs, Kathie Kerr, Susan M. Rangeley, and Patrick J. Wollmering) as representatives of the Class for purposes of the Settlement.

6. Having considered the factors described in Rule 23(g)(1) of the Federal Rules of Civil Procedure, the Court hereby makes final its appointment of Plaintiffs' counsel, the law



firms of Girard Gibbs LLP, Milberg Weiss LLP, and Stull Stull & Brody, as counsel for the Class for purposes of the Settlement.

7. In accordance with the Notice Order, individual notice of the pendency of this Action as a class action and of the proposed Settlement was given to all Class Members who could be identified with reasonable effort, using the information provided by Defendant AEFA, supplemented by published notice. The form and method of notifying the Class of the pendency of the Action as a class action, the terms and conditions of the Settlement, and the Final Fairness Hearing met the requirements of Rule 23 of the Federal Rules of Civil Procedure; Section 21D(a)(7) of the Securities Exchange Act of 1934 (as amended by the Private Securities Litigation Reform Act of 1995), 15 U.S.C. § 78u-4(a)(7); and due process, constituted the best notice practicable under the circumstances, and constituted due and sufficient notice to all persons and entities entitled thereto.

8. The Settlement is approved as fair, reasonable, and adequate, and the Parties are directed to consummate the Settlement in accordance with the terms and provisions of the Stipulation.

9. The Complaint, which the Court finds was filed on a good-faith basis in accordance with the Private Securities Litigation Reform Act of 1995, based upon publicly available information, is hereby dismissed with prejudice and without costs, except as provided in the Stipulation, as against Defendants.

10. Class Members, and the successors and assigns of any of them, are hereby permanently barred and enjoined from instituting, commencing, or prosecuting, either directly or in any other capacity, any and all Released Claims against any and all Released Persons. The Released Claims are hereby compromised, settled, released, discharged, and dismissed as to all



Class Members and their successors and assigns and as against the Released Persons on the merits and with prejudice by virtue of the proceedings herein and this Order and Final Judgment.

11. Defendants and Nominal Defendants and their successors and assigns are hereby permanently barred and enjoined from instituting, commencing, or prosecuting, either directly or in any other capacity, any and all Settled Defendants' Claims against any Plaintiffs, Class Members, or their attorneys. The Settled Defendants' Claims of all Defendants and Nominal Defendants are hereby compromised, settled, released, discharged, and dismissed on the merits and with prejudice by virtue of the proceedings herein and this Order and Final Judgment.

12. The Released Persons are hereby discharged from all claims for indemnity and contribution by any person or entity, whether arising under state, federal or common law, based upon, arising out of, relating to or in connection with the Released Claims of the Class or any Class Member, other than claims for indemnity or contribution asserted by a Released Person against another Released Person. Accordingly, the Court hereby bars all claims for indemnity and/or contribution by or against the Released Persons based upon, arising out of, relating to, or in connection with the Released Claims of the Class or any Class Member; provided, however, that this bar order does not prevent any Released Person from asserting a claim for indemnity or contribution against another Released Person.

13. Neither this Order and Final Judgment, nor the Stipulation, nor any of its terms and provisions, nor any of the negotiations or proceedings connected with it, nor any of the documents or statements referred to therein shall be:

(a) offered or received against Defendants or Nominal Defendants as evidence of or construed as or deemed to be evidence of any presumption, concession, or admission by any Defendant with respect to the truth of any fact alleged by Plaintiffs, the

certification of the class, or the validity of any claim that has been or could have been asserted in the Action or in any litigation, or the deficiency of any defense that has been or could have been asserted in the Action or in any litigation, or of any liability, negligence, fault, or wrongdoing of Defendants or Nominal Defendants;

(b) offered or received against Defendants or Nominal Defendants as evidence of a presumption, concession or admission of any fault, misrepresentation, or omission with respect to any statement or written document approved or made by any Defendant or Nominal Defendant;

(c) offered or received against Defendants or Nominal Defendants as evidence of a presumption, concession or admission with respect to any liability, negligence, fault or wrongdoing, or in any way referred to for any other reason as against any Defendant or Nominal Defendant, in any other civil, criminal or administrative action or proceeding, other than such proceedings as may be necessary to effectuate the provisions of the Stipulation; provided, however, that Defendants and/or Nominal Defendants may refer to this Order and Final Judgment and/or the Stipulation to effectuate the liability protection granted them thereunder;

(d) construed as an admission or concession that the consideration given under the Stipulation represents the amount which could be or would have been recovered after dispositive motions or trial; or

(e) construed as or received in evidence as an admission, concession, or presumption against Plaintiffs or any Class Members that any of their claims are without merit, or that any defenses asserted by Defendants or Nominal Defendants have any merit, or that damages recoverable under the Complaint would not have exceeded the Settlement Payment.

14. The Plan of Allocation proposed by Plaintiffs' Co-Lead Counsel for allocating the proceeds of the Settlement is approved as fair, reasonable, and adequate, and the Claims Administrator is directed to administer the Settlement and allocate the Settlement Fund in accordance with its terms and provisions.

15. The Court finds that all Parties and their counsel have complied with each requirement of Rule 11 of the Federal Rules of Civil Procedure as to all proceedings herein.

16. Plaintiffs' Co-Lead Counsel are hereby awarded 27 percent of the Settlement Fund in attorneys' fees, which sum the Court finds to be fair and reasonable, and \$597,204 in reimbursement of expenses, which fees and expenses shall be paid to Plaintiffs' Co-Lead Counsel from the Settlement Fund with interest at the same net rate that the Settlement Fund earns, from the date the Court approves the Fee and Expense Award. Plaintiffs' Co-Lead Counsel shall allocate the award of attorneys' fees among themselves according to their own agreement, and among any other counsel in a fashion that, in the opinion of Plaintiffs' Co-Lead Counsel, fairly compensates such counsel for their contribution to the prosecution of the Action.

17. In making this award of attorneys' fees and reimbursement of expenses to be paid from the Settlement Fund, the Court has considered and found that:

(a) The Settlement has created a fund of \$100,000,000 in cash that is already on deposit, plus interest thereon, and that numerous Class Members who file acceptable Proof of Claim forms will benefit from the Settlement created by Plaintiffs' Co-Lead Counsel;

(b) The Settlement obligates Defendants to pay all reasonable expenses of notice and settlement administration and to adopt remedial measures negotiated with Plaintiffs' Co-Lead Counsel and designed to address the issues giving rise to the Action;

(c) Over 3,012,814 copies of the Settlement Notice were disseminated to putative Class Members indicating that Plaintiffs' Co-Lead Counsel were moving for attorneys' fees and reimbursement of expenses in the requested amounts, and there were approximately 80 written comments and objections in opposition to the proposed Settlement and/or the fees and expenses requested by Plaintiffs' Co-Lead Counsel which have been considered by the Court and the Court overrules;

(d) Plaintiffs' Co-Lead Counsel have conducted the litigation and achieved the Settlement with skill, perseverance, and diligent advocacy;

(e) The Action involves complex factual and legal issues and, in the absence of a settlement, would involve further lengthy proceedings with uncertain resolution of such issues;

(f) Had Plaintiffs' Co-Lead Counsel not achieved the Settlement, there would remain a significant risk that the Class would recover significantly less or nothing from Defendants and/or Nominal Defendants;

(g) Plaintiffs' Co-Lead Counsel have submitted affidavits showing that they expended over 24,000 hours, with a lodestar value of \$9,572,865, in prosecuting the Action and achieving the Settlement; and

(h) The amounts of attorneys' fees awarded and expenses reimbursed from the Settlement Fund are consistent with awards in similar cases.

18. Plaintiffs' Co-Lead Counsel are authorized to pay, from the amount awarded by the Court for attorneys' fees, incentive awards of \$5,000 each to each of the six class representatives in this action and each of the five plaintiffs in the related Haritos case.

19. Exclusive jurisdiction is hereby retained over the Parties and the Class Members for all matters relating to this Action and the Settlement, including (a) the administration, interpretation, effectuation, or enforcement of the Stipulation and this Order and Final Judgment; (b) any application for fees and expenses incurred in connection with administering and distributing the Settlement proceeds to the Class Members; (c) any dispute over attorneys' fees or expenses sought in connection with the Action or the Settlement; and (d) determination whether, in the event an appeal is taken from any aspect of the Judgment approving the Settlement or any award of attorneys' fees, notice should be given under Federal Rule of Civil Procedure 23(d), at the appellant's expense, to some or all members of the Class apprising them of the pendency of the appeal and such other matters as the Court may order.

20. Without further order of the Court, the Parties may agree to reasonable extensions of time to carry out any of the provisions of the Stipulation.

DATED: July 18, 2007

Deborah A. Batts  
THE HONORABLE DEBORAH A. BATTS  
UNITED STATES DISTRICT JUDGE

## **EXHIBIT 17**

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NORTH CAROLINA  
CHARLOTTE DIVISION  
DOCKET NO. 3:12-cv-00456-MOC-DSC

<b>MAURINE NIEMAN, ET AL.,</b>	)	
	)	
Plaintiffs,	)	
	)	
Vs.	)	<u>CLASS ACTION</u>
	)	ATTORNEYS' FEES ORDER
	)	
<b>DUKE ENERGY CORPORATION, ET AL.,</b>	)	
	)	
Defendants.	)	

**THIS MATTER** having come before the Court on August 12, 2015, on the motion of Lead Counsel for an award of attorneys' fees and expenses and Lead Plaintiff's expenses in the litigation, and the Court, having considered all papers filed and proceedings conducted herein, having found the settlement of this litigation to be fair, reasonable and adequate, and otherwise being fully informed in the premises and good cause appearing therefore;

**IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that:**

1. This Order incorporates by reference the definitions in the Stipulation of Settlement dated March 5, 2015 (the "Stipulation") and all capitalized terms used, but not defined herein, shall have the same meanings as set forth in the Stipulation.
2. This Court has jurisdiction over the subject matter of this application and all matters relating thereto, including all members of the Settlement Class who have not timely and validly requested exclusion.
3. The Court hereby awards Lead Counsel attorneys' fees of **18%** of the Settlement Fund, plus expenses in the amount of \$191,738.27, together with the interest earned on both amounts for the same time period and at the same rate as that earned on the Settlement Fund until paid. The Court finds that the amount of fees awarded is appropriate and that the amount



of fees awarded is fair and reasonable under the “percentage-of-recovery” method after an analysis of relevant factors outlined by the Fifth Circuit in *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714-717-19 (5th Cir. 1974), which were adopted by the Fourth Circuit in *Barber v. Kimbrell’s*, 577 F.2d 216, 226 (4th Cir. 1978). In so doing, the court has considered the objections to the fee award filed by Donald Robert Pierson II and Fiduciary Counselors, Inc. While plaintiffs’ counsel requested **24.5%**, the requested lodestar multiplier of 8.75 (which is merely a crosscheck) is far beyond the range courts have found acceptable in other large securities actions. Most courts agree that the typical lodestar multiplier in a large post-PSLRA securities class actions ranges from 1.3 to 4.5. In re Cendant Corp. PRIDES Litigation, 243 F.3d 722 (3rd Cir. 2001). A multiplier of 4.5 would, in the circumstances of this case, be inappropriately too low. Where courts do approve a particularly high multiplier, they have held, as follows:

the Court is not uncomfortable with deviating from the normal range of lodestar multipliers, at least to some extent. Given the outstanding settlement in this case and the noticeable skill of counsel, a lodestar multiplier greater than the average would not be unwarranted or unprecedented. Indeed, the Court has adopted the percentage approach, and the lodestar cross check is but one of several factors it must consider; it should not unilaterally control the Court's analysis. From the Court's analysis of the previous factors, the Court has found that approximately 18% is a reasonable award, which would yield a lodestar multiplier of six. Though significantly above average, the Court finds this award reasonable under the circumstances.

In re Cardinal Health Inc. Securities Litigations, 528 F.Supp.2d 752, 768 (S.D.Ohio 2007). Even at 18%, the multiplier remains high, but is facially reasonable under the circumstances of this action wherein counsel took substantial risk, results were not assured, the legal issues were difficult, and the class was broad. The amount of the settlement and the efficiency of counsel in reaching such a resolution reinforce an upward variance from a 4.5 multiplier, but not an 8.0 multiplier. Considering all of the arguments presented, the court finds that the work



accomplished in this case -- which was substantial -- is reasonably compensated by an 18% fee when the *Johnson* factors are considered and then crosschecked.

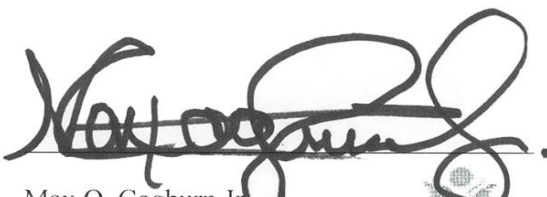
4. The fees and expenses shall be allocated among plaintiffs' Counsel in a manner which, in Lead Counsel's good-faith judgment, reflects each such counsel's contribution to the institution, prosecution, and resolution of the litigation. Pursuant to 15 U.S.C. §77z-1(a)(4) and 15 U.S.C. §78u-4(a)(4), Lead Plaintiff Amalgamated Bank is awarded \$20,612.50 for its representation of the Settlement Class during the litigation.

5. The awarded attorneys' fees and expenses and interest earned thereon, shall immediately be paid to Lead Counsel subject to the terms, conditions, and obligations of the Stipulation, and in particular ¶¶8.1-8.2 thereof, which terms, conditions, and obligations are incorporated herein.

### ORDER

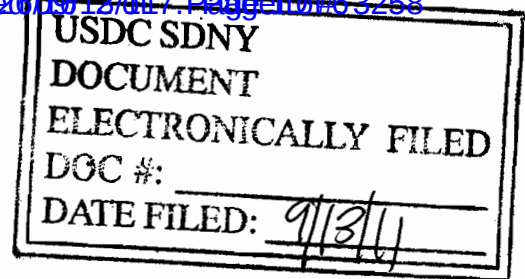
**IT IS, THEREFORE, ORDERED** that Lead Counsel's Motion for an Award of Attorneys' Fees and Expenses (ECF No. 96) is **GRANTED** attorneys' fees of 18% of the Settlement Fund are **ALLOWED**, plus expenses in the amount of \$191,738.27, together with the interest earned on both amounts for the same time period and at the same rate as that earned on the Settlement Fund until paid. Lead Plaintiff Amalgamated Bank is awarded \$20,612.50 for its representation of the Settlement Class during the litigation.

Signed: November 2, 2015



Max O. Cogburn Jr.  
United States District Judge

## **EXHIBIT 18**



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

IN RE: SATYAM COMPUTER SERVICES LTD.  
SECURITIES LITIGATION

No.: 09-MD-2027-BSJ

**ORDER AWARDING ATTORNEYS' FEES AND EXPENSES**

This matter came on for hearing on September 8, 2011 (the "Settlement Hearing") on the motion of Lead Counsel to determine, among other things, whether and in what amount to award Lead Counsel in the above-captioned consolidated securities class action (the "Action") fees and reimbursement of expenses.

The Court having considered all matters submitted to it at the Settlement Hearing and otherwise; and it appearing that notices of the Settlement Hearing substantially in the form approved by the Court were mailed to all Class Members who or which could be identified with reasonable effort, except those persons or entities excluded from the definition of the Class, and that summary notices of the hearing substantially in the form approved by the Court were published in *The Wall Street Journal*, *Investor's Business Daily* and *The Financial Times* and transmitted over *Business Wire* pursuant to the specifications of the Court; and the Court having considered and determined the fairness and reasonableness of the award of attorneys' fees and expenses requested.

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

1. This Order Awarding Attorneys' Fees and Expenses incorporates by reference the definitions in the Stipulations and Agreements of Settlement (the "Settlement Stipulations") and all

terms used herein shall, with respect to the respective Settlement Stipulations, have the same meanings as set forth in the applicable Settlement Stipulations.<sup>1</sup>

2. The Court has jurisdiction to enter this Order Awarding Attorneys' Fees and Expenses, and over the subject matter of the Action and all parties to the Action, including all Class Members.

3. Notice of Lead Counsel's application for attorneys' fees and reimbursement of expenses was given to all Class Members who could be identified with reasonable effort. The form and method of notifying the Class of the motion for attorneys' fees and expenses constituted due, adequate, and sufficient notice to all persons or entities entitled to receive notice of the motion and satisfied the requirements of Rule 23 of the Federal Rules of Civil Procedure, the United States Constitution (including the Due Process Clause), the Private Securities Litigation Reform Act of 1995 (15 U.S.C. § 78u-4, et seq.) (the "PSLRA"), and all other applicable law and rules.

4. Lead Counsel are hereby awarded attorneys' fees in the amount of 17% of the total Settlement Funds, as well as 17% of any additional Settlement Funds recovered by Satyam from the PwC Entities, net of any taxes withheld from the Initial Escrow Accounts and ultimately paid pursuant to Indian tax law, and \$1,027,076.94 in reimbursement of litigation expenses advanced or incurred by Lead Counsel collectively while prosecuting this Action (which expenses shall be paid from the Settlement Funds) with interest on such fees and expenses at the same rate as earned by the Settlement Funds from the dates the Settlement Funds were funded to the date of payment, which sums the Court finds to be fair and reasonable. The foregoing award of Attorneys' Fees and

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<sup>1</sup> The Settlement Stipulations are: the Stipulation and Agreement of Settlement with Defendant Satyam Computer Services Ltd., dated February 16, 2011 (the "Satyam Stipulation") and the Stipulation and Agreement of Settlement between Lead Plaintiffs and the PwC Entities, dated April 27, 2011 (the "PwC Entities Stipulation") entered into by and among Lead Plaintiffs and the Settling Defendants (together, the "Settlement Stipulations").

Expenses shall be payable immediately in accordance with the terms set forth in ¶¶ 19 and 16, respectively of the Satyam Stipulation and the PwC Entities Stipulation. The award of attorneys' fees shall be allocated among Plaintiffs' Counsel in a manner which, in the opinion of Lead Counsel, fairly compensates Plaintiffs' Counsel for their respective contributions in the prosecution and settlement of the Action.

5. Also in accordance with the terms set forth in ¶¶ 20 and 17, respectively of the Satyam Stipulation and the PwC Entities Stipulation, Lead Counsel who seek to be paid their share of the attorney fee and expense award prior to the Effective Date shall be jointly and severally obligated to make appropriate refunds or repayments of attorneys' fees and expenses and any interest thereon paid to Lead Counsel to the Settlement Funds or to the Settling Defendants who contributed the Settlement Funds in direct proportion to their contributions to the Settlement Funds, as applicable, plus accrued interest at the same net rate as is earned by the Settlement Funds, if the Settlements are terminated pursuant to the terms of the Stipulations or if, as a result of any appeal or further proceedings on remand, or successful collateral attack, the award of attorneys' fees and/or litigation expenses is reduced or reversed by final non-appealable court order.

6. Class Representative the Public Employees' Retirement System of Mississippi is awarded \$14,400 as reimbursement for its costs and expenses directly relating to its services in representing the Class.

7. Class Representative Mineworkers' Pension Scheme is awarded \$98,711 as reimbursement for its costs and expenses directly relating to its services in representing the Class.

8. Class Representative SKAGEN AS is awarded \$59,000 as reimbursement for its costs and expenses directly relating to its services in representing the Class.

9. Class Representative Sampension KP Livsforsikring A/S is awarded \$21,000 as reimbursement for its costs and expenses directly relating to its services in representing the Class.

10. Subclass Representative Brian F. Adams is awarded \$2,000 as reimbursement for his costs and expenses directly relating to his services in representing the Class and Subclass.

11. A litigation fund in the amount of \$1,000,000 from the Satyam Settlement Fund shall be established to fund the continued prosecution of the Action against the Non-Settling Defendants.

12. In making this award of attorneys' fees, and reimbursement of expenses to be paid from the Settlement Funds, the Court has considered and found that:

(a) The Settlements have created a total settlement amount of \$150.5 million in cash that is already on deposit and has been earning interest, and that numerous Class Members who submit acceptable Proofs of Claim will benefit from the Settlements created by the efforts of Lead Counsel;

(b) The fee sought by Lead Counsel has been reviewed and approved as fair and reasonable by the Court-appointed Lead Plaintiffs, sophisticated institutional investors that were substantially involved in all aspects of the prosecution and resolution of the Action;

(c) To date, over 208,000 copies of the Notices were disseminated to putative Class Members stating that Lead Counsel were moving for attorneys' fees not to exceed 17% of proposed Settlements and reimbursement of expenses incurred in connection with the prosecution of this Action. Only one objection to the terms of the Settlement and the fees and expenses requested by Lead Counsel contained in the Notice was received, although it was untimely and not filed with the Court as required by the Preliminary Approval Orders. The objector has not proven that he is a member of the Class, nor does he have standing; even if he did, his objection has been considered and overruled;



(d) Lead Counsel have conducted the litigation and achieved the Settlements with skill, perseverance and diligent advocacy;

(e) The Action involves complex factual and legal issues and, in the absence of settlement, would involve lengthy proceedings with uncertain resolution of the complex factual and legal issues;

(f) Had the Settlements not been achieved, there would remain a significant risk that Lead Plaintiffs and the other members of the Class may have recovered less or nothing from the Settling Defendants; and

(g) The amount of attorneys' fees awarded and expenses reimbursed from the Settlement Funds are fair and reasonable and consistent with awards in similar cases.


13. Any appeal or any challenge affecting this Court's approval regarding any attorneys' fees and expense application shall in no way disturb or affect the finality of the Judgments entered with respect to the Settlements.

14. Continuing jurisdiction is hereby retained over the parties and the Class Members for all matters relating to this Action, including the administration, interpretation, effectuation or enforcement of the Settlement Stipulations and this Order, including any further application for fees and expenses incurred in connection with administering and distributing the settlement proceeds to the members of the Class.

15. In the event that any of the Settlements are terminated or do not become Final or the Effective Date does not occur in accordance with the terms of the applicable Settlement Stipulation(s), this Order, except for ¶ 5 above, shall be rendered null and void to the extent provided by the applicable Settlement Stipulation(s) and shall be vacated in accordance with the terms of the applicable Settlement Stipulation(s).

16. There is no just reason for delay in the entry of this Order, and immediate entry by the Clerk of the Court is expressly directed.

Dated: New York, New York  
September 13, 2011

  
Honorable Barbara S. Jones  
UNITED STATES DISTRICT JUDGE



## **EXHIBIT 19**

USDS SDNY  
DOCUMENT  
ELECTRONICALLY FILED  
DOC #:  
DATE FILED: 3/17/11

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

_____	X	
In re L.G. PHILIPS LCD CO., LTD.	:	Civil Action No. 1:07-cv-00909-RJS
SECURITIES LITIGATION	:	
_____	:	<u>CLASS ACTION</u>
	:	
This Document Relates To:	:	
	:	
ALL ACTIONS.	:	
_____	X	

[REDACTED] ORDER AWARDING CO-LEAD COUNSEL ATTORNEYS' FEES AND  
EXPENSES

This matter having come before the Court on March 17, 2011, on the motion of Co-Lead Counsel for an award of attorneys' fees and expenses incurred in the action, the Court, having considered all papers filed and proceedings conducted herein, having found the settlement of this action to be fair, reasonable, and adequate and otherwise being fully informed in the premises and good cause appearing therefore;

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that:

1. All of the capitalized terms used herein shall have the same meanings as set forth in the Stipulation and Agreement of Settlement dated October 15, 2010 (the "Stipulation"), and filed with the Court.

2. This Court has jurisdiction over the subject matter of this application and all matters relating thereto, including all members of the Class who have not timely and validly requested exclusion.

3. The Court hereby awards Co-Lead Counsel attorneys' fees of 30% of the Settlement Amount, plus litigation expenses in the amount of \$81,993.45, together with the interest earned on both amounts for the same time period and at the same rate as that earned on the Settlement Fund until paid, pursuant to 15 U.S.C. §78u-4(a)(6). The Court finds that the amount of fees awarded is fair and reasonable under the "percentage-of-recovery" method.

4. The fees and expenses shall be allocated among Lead Plaintiffs' counsel in a manner which, in Co-Lead Counsel's good-faith judgment, reflects each such counsel's contribution to the institution, prosecution, and resolution of the action.

5. Justin M. Coren is awarded \$1,500.00 pursuant to 15 U.S.C. §78u-4(a)(4) for his efforts and service to the Class during the action.

6. The awarded attorneys' fees and expenses and interest earned thereon shall immediately be paid to Co-Lead Counsel subject to the terms, conditions, and obligations of the Stipulation, and in particular ¶8 thereof which terms, conditions, and obligations are incorporated herein.

IT IS SO ORDERED.

DATED:

March 17, 2011

  
\_\_\_\_\_  
THE HONORABLE RICHARD J. SULLIVAN  
UNITED STATES DISTRICT JUDGE



## **EXHIBIT 20**

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

ARKANSAS TEACHER RETIREMENT SYSTEM  
and FRESNO COUNTY EMPLOYEES'  
RETIREMENT ASSOCIATION, Individually and on  
Behalf of All Others Similarly Situated,

Plaintiffs,

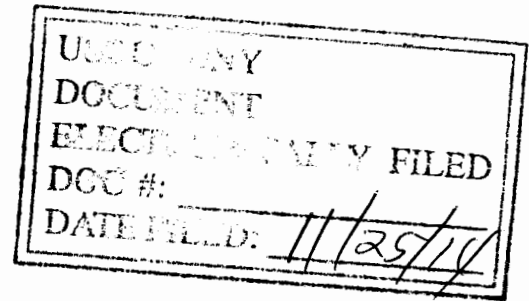
v.

BANKRATE, INC. et al.,

Defendants.

Case No. 13-cv-7183 (JSR)

ECF CASE



**ORDER AWARDING ATTORNEYS' FEES AND EXPENSES**

This matter came on for hearing on November 21, 2014 (the "Settlement Hearing") on Lead Counsel's motion for an award of attorneys' fees and reimbursement of Litigation Expenses. The Court having considered all matters submitted to it at the Settlement Hearing and otherwise; and it appearing that notice of the Settlement Hearing substantially in the form approved by the Court was mailed to all Settlement Class Members who or which could be identified with reasonable effort, except those persons or entities excluded from the definition of the Settlement Class, and that a summary notice of the hearing substantially in the form approved by the Court was published in *Investor's Business Daily* and was transmitted over the *PR Newswire* pursuant to the specifications of the Court; and the Court having considered and determined the fairness and reasonableness of the award of attorneys' fees and Litigation Expenses requested,

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

1. This Order incorporates by reference the definitions in the Amended Stipulation and Agreement of Settlement dated September 17, 2014 (ECF No. 73-1) (the "Amended

Stipulation”) and all terms not otherwise defined herein shall have the same meanings as set forth in the Amended Stipulation.

2. The Court has jurisdiction to enter this Order and over the subject matter of the Action and all parties to the Action, including all Settlement Class Members.

3. Notice of Lead Counsel’s motion for attorneys’ fees and reimbursement of Litigation Expenses was given to all Settlement Class Members who could be identified with reasonable effort. The form and method of notifying the Settlement Class of the motion for attorneys’ fees and expenses satisfied the requirements of Rule 23 of the Federal Rules of Civil Procedure, the Private Securities Litigation Reform Act of 1995 (15 U.S.C. § 78u-4(a)(7)), due process, and all other applicable law and rules, constituted the best notice practicable under the circumstances, and constituted due and sufficient notice to all persons and entities entitled thereto.

4. Lead Counsel is hereby awarded attorneys’ fees in the amount of 25 % of the Settlement Fund, net of Court-awarded expenses, and \$ 194,426.83 in reimbursement of litigation expenses (which fees and expenses shall be paid from the Settlement Fund), which sums the Court finds to be fair and reasonable.

5. Lead Counsel shall be paid 50% of the attorneys’ fees awarded and 100% of the approved expenses immediately upon entry of this Order. Payment of the balance of the attorneys’ fees awarded shall be made to Lead Counsel when distribution of the Net Settlement Fund to claimants has been very substantially completed.

6. In making this award of attorneys’ fees and reimbursement of expenses to be paid from the Settlement Fund, the Court has considered and found that:

(a) The Settlement has created a fund of \$18,000,000 in cash that has been funded into escrow pursuant to the terms of the Amended Stipulation, and that numerous

Settlement Class Members who submit acceptable Claim Forms will benefit from the Settlement that occurred because of the efforts of Lead Counsel;

(b) The fee sought by Lead Counsel has been reviewed and approved as fair and reasonable by Lead Plaintiffs, who are institutional investors that oversaw the prosecution and resolution of the Action;

(c) Copies of the Notice were mailed to over 35,000 potential Settlement Class Members and nominees stating that Lead Counsel would apply for attorneys' fees in an amount not to exceed 25% of the Settlement Fund and reimbursement of Litigation Expenses in an amount not to exceed \$300,000, and there were no objections to the requested attorneys' fees and expenses;

(d) Lead Counsel has conducted the litigation and achieved the Settlement with skill, perseverance and diligent advocacy;

(e) The Action raised a number of complex issues;

(f) Had Lead Counsel not achieved the Settlement there would remain a significant risk that Lead Plaintiffs and the other members of the Settlement Class may have recovered less or nothing from Defendants;

(g) Lead Counsel devoted over 5,100 hours, with a lodestar value of approximately \$2,485,000, to achieve the Settlement; and

(h) The amount of attorneys' fees awarded and expenses to be reimbursed from the Settlement Fund are fair and reasonable and consistent with awards in similar cases.

7. Lead Plaintiff Arkansas Teacher Retirement System is hereby awarded \$ 4,270.22 from the Settlement Fund as reimbursement for its reasonable costs and expenses directly related to its representation of the Settlement Class.



8. Lead Plaintiff Fresno County Employees' Retirement Association is hereby awarded \$ 850.67 from the Settlement Fund as reimbursement for its reasonable costs and expenses directly related to its representation of the Settlement Class.

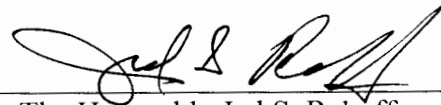
9. Any appeal or any challenge affecting this Court's approval regarding any attorneys' fees and expense application shall in no way disturb or affect the finality of the Judgment.

10. Exclusive jurisdiction is hereby retained over the parties and the Settlement Class Members for all matters relating to this Action, including the administration, interpretation, effectuation or enforcement of the Amended Stipulation and this Order.

11. In the event that the Settlement is terminated or the Effective Date of the Settlement otherwise fails to occur, this Order shall be rendered null and void to the extent provided by the Amended Stipulation.

12. There is no just reason for delay in the entry of this Order, and immediate entry by the Clerk of the Court is expressly directed.

SO ORDERED this 21<sup>st</sup> day of November, 2014.



The Honorable Jed S. Rakoff  
United States District Judge

## **EXHIBIT 21**

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

IN RE GENERAL MOTORS CORP.  
SECURITIES AND DERIVATIVE  
LITIGATION

MDL No. 1749  
Master Case No. 06-md-1749  
Hon. Gerald E. Rosen  
This Document Relates to:  
2:06-cv-12258-GER  
2:06-cv-12259-GER

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**ORDER APPROVING ATTORNEYS' FEES AND EXPENSES  
AND AWARDING COSTS AND EXPENSES TO NAMED AND LEAD PLAINTIFFS**

This matter came on for hearing on December 22, 2008 (the "Final Approval Hearing"), and for a supplemental hearing on January 6, 2009 (the "Supplemental Fairness Hearing") to consider any objections received as a result of the Supplemental Notice to the Class ordered by this Court on December 15, 2008, upon the application of the parties for approval, pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, of the Settlement set forth in the Stipulation and Agreement of Settlement dated September 16, 2008 (the "Stipulation") resolving the above-captioned action (the "GM Securities Action"), and which, along with the defined terms therein, is incorporated herein by reference; and for approval of Co-Lead Counsels' Motion for (I) Award of Attorneys' Fees and Reimbursement of Expenses (the "Fee Request") and for (II) Awards to Lead and Named Plaintiffs (the "Costs Awards"), and the Court having considered all papers and arguments submitted in favor of and in opposition to the Fee Request and Costs Awards, and otherwise being fully informed in the premises and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

1. The Court, for purposes of this Order, adopts all defined terms as set forth in the Stipulation.

2. Pursuant to and in compliance with Rule 23 of the Federal Rules of Civil Procedure, the Court hereby finds that notice of the Final Approval Hearing (the “Notice”) was given in accordance with the Court’s Order of Preliminary Approval and for Notice and Hearing dated September 23, 2008 (the “Preliminary Approval Order”) and its Order dated December 16, 2008 regarding the Supplemental Notice to members of the Class as certified by the Court in the Preliminary Approval Order, advising them of Co-Lead Counsels’ intention to seek (1) the Fee Request and (2) the Costs Awards, and of their right to object thereto, and a full and fair opportunity was accorded to all Class Members to be heard with respect to the Fee Request and the Costs Awards, and that said notice was the best notice practicable and was adequate and sufficient.

3. In response to the Notice, there were the following objections to the Fee Request filed or asserted by apparent class members, as follows: (1) the Pennsylvania State Employees’ Retirement System (“SERS”); (2) Independent Fiduciary Services (“IFS”), which is the fiduciary for several trusts through which GM employee benefit plans are funded; (3) Mildred Terry Warren; (4) Gregg Geanuracos; (5) Larry Banks; (6) Hans Klar; (7) Merle and Martha Likins; (8) Rick Jasinski; (9) Glenn Brewer and Elise Fitzgerald; (10) Masako Nakata; (11) Michael and Babette Rinis; (12) Paul Garrett; (13) Peter Spitalieri; and (14) Norman Mintz (collectively, the “Fee Objectors”), and of these, IFS was the only objector to complain about the Costs Awards.

4. The Court has fully considered the submissions and arguments made in favor of and opposition to the Fee Request and the Costs Awards.

5. Co-Lead Counsel are hereby awarded: (i) attorneys’ fees of 15% of the Gross Settlement Fund, plus interest earned thereon at the same rate as the Class; and (ii) reimbursement of litigation costs and expenses in the amount of \$1,524,929.02, plus interest

earned thereon at the same rate as the Class. Immediately after the date this Order is entered, the awarded attorneys' fees and expenses shall be paid from the Gross Settlement Fund to Co-Lead Counsel in accordance with the terms, conditions, and obligations set forth in the Stipulation. The awarded attorneys' fees shall be allocated to the various other plaintiffs' counsel by Co-Lead Counsel in amounts that in Co-Lead Counsels' sole discretion reflect the work performed by each non-lead counsel, as well as each non-lead counsel's contribution to the institution, prosecution and resolution of this case.

6. Lead Plaintiffs Deka Investment GmbH and Deka International S.A. Luxembourg are collectively awarded \$184,205, a fair and reasonable amount under the circumstances, as reimbursement for their active assistance in prosecuting this matter and for their costs incurred in representing the Class. The Court directs that such award be paid from the Gross Settlement Fund.

7. The seven Additional Named Plaintiffs, Claudia Polvani, Costantino Forlano, J. Bryan Dewell, Dan Cleveland, Mark and Ruth Koppelman, Max Marcus Katz on behalf of the Max Marcus Katz Pension & Profit Sharing Plan dated 12/31/78, and Frankfurt -Trust Investment GmbH are awarded \$1,000 each as reimbursement for his, her, or its costs incurred in connection with acting as a plaintiff and Class Representative in this case, which amounts the Court finds to be fair and reasonable.

8. Based upon the evidence and pleadings submitted to the Court, the records at the Final Fairness Hearing and the Supplemental Fairness Hearing and all papers on file in this matter, the Court believes, and hereby finds, that the attorneys' fees and reimbursement of expenses awarded herein are fair and reasonable under the circumstances of the GM Securities Action. In making this award, the Court has considered the factors considered by courts in the

Sixth Circuit to be relevant to the determination of an appropriate fee in common fund cases and finds that:

(a) the Settlement provides for an excellent recovery, one of the largest securities class action settlements ever obtained within this Circuit, with a cash value of \$303,000,000, plus interest, and that numerous Class Members will benefit from the Gross Settlement Fund created through the efforts of Co-Lead Counsel;

(b) Over 829,000 copies of the Notice were disseminated to putative Class Members stating that Co-Lead Counsel were moving for an award of attorneys' fees of up to 19% of the Gross Settlement Fund, plus interest earned at the same rate as the Class, and for reimbursement of additional costs and expenses in an amount not to exceed \$1.75 million, plus interest earned at the same rate as the Class, with the attorneys' fees and expenses awarded herein being less than the maximum fees or expense reimbursements requested by Co-Lead Counsel as set forth in the Notice;

(c) The Court has found the Settlement to be fair, reasonable and adequate;

(d) Co-Lead Counsels' Fee Request as a percentage of the Gross Settlement Fund is consistent with the prevailing law of the Sixth Circuit;

(e) The GM Securities Action involved numerous difficult issues related to liability and damages, and there was a substantial risk of a lesser recovery or no recovery for the Class;

(f) Co-Lead Counsel achieved this Settlement with skill, perseverance, and diligent advocacy for the Class;

(g) Had Co-Lead Counsel not achieved the Settlement, there would remain a significant risk that Lead Plaintiffs and the Class may have recovered less or nothing from

Defendants, particularly from GM, which has needed a massive multi-billion dollar federal bailout;

(h) Co-Lead Counsel pursued this Action on a contingent basis, having received no compensation during the litigation in which they and other plaintiffs' counsel invested almost 25,000 hours of time, and any fee award has always been at risk and completely contingent on the result achieved;

(i) The time spent working on this case was at the expense of time that could have been spent on other cases;

(j) The Fee Request is supported by the Court-appointed institutional Lead Plaintiffs;

(k) A fee award under the percentage of the fund method is appropriate, and an award of 15% of the common fund recovered for the Class in attorneys' fees is reasonable and, in fact, less than awards in similarly complex cases in this jurisdiction;

(l) Lead Counsels' request for reimbursement of expenses is reasonable in light of Lead Counsels' duties to ensure full prosecution of the claims alleged in the Complaint; and

(m) This Settlement was negotiated at arm's-length, and no evidence of fraud or collusion has been presented.

9. There is no just reason for delay in the entry of this Order, and immediate entry of this Order by the Clerk of the Court is expressly directed.

s/Gerald E. Rosen  
Gerald E. Rosen  
Chief United States District Judge

Dated: January 6, 2009

I hereby certify that a copy of the foregoing document was served upon counsel of record on January 6, 2009, by electronic and/or ordinary mail.

s/LaShawn R. Saulsberry  
Case Manager



UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

IN RE GENERAL MOTORS CORP.  
SECURITIES AND DERIVATIVE  
LITIGATION

MDL No. 1749  
Master Case No. 06-md-1749  
Hon. Gerald E. Rosen  
This Document Relates to:  
2:06-cv-12258-GER  
2:06-cv-12259-GER

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**MOTION FOR (I) AWARD OF ATTORNEYS' FEES  
AND REIMBURSEMENT OF EXPENSES, AND  
(II) AWARDS TO LEAD AND NAMED PLAINTIFFS**

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LEXIS 17464, at \*9-10 (noting that the litigation at issue was not the type that would be litigated under an hourly fee contract and awarding percentage fee without performing a lodestar calculation); *DPL*, 307 F. Supp. 2d at 949 (overruling objection that court should have calculated a lodestar).

In *DPL*, for example, the court overruled an objection that it should have used the lodestar method to calculate fees, 307 F. Supp. 2d at 949, and in declining to perform a lodestar calculation, opted instead to use the percentage method, awarding 20% of the common fund - \$22 million. *Id.* at 954. In doing so, the court had enough information to determine a lodestar calculation: (i) it estimated that counsel expended no more than 1,100 to 2,200 hours on the litigation; and (ii) it assumed an hourly rate of \$350. *Id.* at 953-54. Had the court calculated a lodestar with this information, it would have found that a multiplier of 28.57 to 57.14 was required to yield the \$22 million fee award. *Id.* Yet, the court still used the percentage of recovery method and awarded the 20% fee. The *DPL* court is not alone in ruling that a lodestar need not be calculated in all cases. *See also Clevenger*, 2007 U.S. Dist. LEXIS 17464, at \*9-10 (declining, as unnecessary, to perform a lodestar calculation).

In this action, Co-Lead Counsels' total lodestar is \$8,334,694.50.<sup>9</sup> The lodestars of the Murray, Frank & Sailer firm, the Diaz Reus & Targ firm, Elwood Simon & Associates, Goldman Scarlato & Karon P.C., and Harold B. Obstfeld P.C. add \$3,897,112.00 more to the total, or an aggregate lodestar of \$12,231,806.25. Joint Decl. ¶ 68. In computing this overall lodestar calculation, Co-Lead Counsel, as well as the other five law firms, charged for their services at the same rates charged to their clients for non-contingent cases or otherwise charged in similar

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<sup>9</sup> The lodestar information for five different law firms that allows us to make a total lodestar calculation is contained in individual declarations made by partners or directors of each of these firms. *See* the Declarations of Jonathan M. (Cont'd)

**CERTIFICATE OF SERVICE**

A copy of the foregoing was filed electronically this 26<sup>th</sup> day of May 2016. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

Dated: May 26, 2016

*/s/ Scott D. Simpkins*

John R. Climaco (0011456)

Scott D. Simpkins (0066775)

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