UNITED STATES DISTRICT COURT
DISTRICT OF DELAWARE

IN RE WILMINGTON TRUST SECURITIES LITIGATION	Master File No. 10-cv-00990-ER
	(Securities Class Action)
This document relates to: ALL ACTIONS	Hon. Eduardo Robreno
	ELECTRONICALLY FILED

DECLARATION OF HANNAH ROSS AND JOSEPH E WHITE, III IN SUPPORT OF (I) LEAD PLAINTIFFS' MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENTS AND PLAN OF ALLOCATION AND (II) LEAD COUNSEL'S MOTION FOR AN AWARD OF ATTORNEYS' FEES AND REIMBURSEMENT OF LITIGATION EXPENSES

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I. THE OUTSTANDING RECOVERY RECEIVED

1. After eight years of hard-fought litigation, Lead Plaintiffs and Lead Counsel have secured an outstanding recovery of $210,000,000. The Settlements will resolve all claims in this Action against all Defendants, on behalf of those investors who purchased Wilmington Trust common stock between January 18, 2008 up to November 1, 2010, and who were damaged thereby.

2. If approved, the proposed Settlements will be the second largest securities class action recovery ever obtained in Delaware and will rank among the Third Circuit's top-10 securities fraud class action recoveries. The $210 million accounts for nearly 40% of the Class's maximum likely recoverable damages, which is eight times greater than the 5% median recovery in the Third Circuit.

3. This remarkable recovery is the product of eight years of unrelenting effort and advocacy on behalf of the Class by Lead Plaintiffs and Lead Counsel. After Wilmington Trust announced its acquisition by M&T on November 1, 2010, Lead Counsel began an extensive investigation into the Bank, which further intensified after Lead Plaintiffs were appointed by this Court pursuant to the PSLRA. This investigation involved contacting more than 80 potential witnesses, and uncovered evidence of fraud relating to issues such as the Bank's underwriting and asset review practices, including the 10% Rule and the systemic waiver of past due loans, its materially understated ALLL, and KPMG's knowledge of the Bank's fraudulent practices. The misconduct uncovered in this investigation were instrumental in meeting the PSLRA's exacting pleading standards and, notably, were uncovered independently of the Government's Criminal Action. Indeed, one of the witnesses that Lead Plaintiffs and Lead Counsel identified later turned out to be a key witness for the Government.

4. Once past the Defendants' motion to dismiss briefing (which collectively totaled nearly 700 pages), Lead Plaintiffs and Lead Counsel continued their relentless work on behalf of the Class. During the course of discovery, Lead Counsel reviewed nearly 13 million pages of highly complex and technical documents including loan files, financial statements, audit worksheets, and accounting papers. After nearly two-and-a-half years of motion practice, status conferences, and supplemental submissions, Lead Counsel successfully compelled Defendants to produce 360,822 pages of documents they had withheld on the basis of the Federal Reserve's and other regulators' assertion of the bank examination privilege. These documents included reports of examinations performed by the regulators that were critical evidence in the prosecution of this Action. Indeed, Lead Counsel relied heavily on these (and other) documents over the course of the 39 depositions we took, defended, or participated in. These depositions generated nearly 11,000 pages of testimony and almost 900 exhibits. Notably, as the Court recognized during the July 2, 2018 Hearing on preliminary approval of the Settlements, the vast bulk of this work was done independently of the Government's work in the Criminal Action.

5. These diligent and exhaustive efforts were undertaken against a background of significant risks and vigorous opposition. Indeed, Lead Plaintiffs' First Amended Complaint was dismissed in its entirety for failure to plead falsity. In fact, throughout the entire litigation, Defendants and their counsel asserted numerous credible arguments on liability and damages, including that the allegedly illicit practices at issue were in fact widely known and "blessed" by KPMG, the Federal Reserve, and the Bank's other regulators. Defendants and their counsel—a who's who of the country's largest and most well-respected defense firms—fought Lead Plaintiffs and Lead Counsel every step of the way. At one point, Wilmington Trust alone had 125 attorneys working on the case, to say nothing of the other Defendants. Nevertheless, Lead

Counsel remained steadfast in pursuit of their claims: between October 2014 and December 2016, Lead Counsel continually fought to lift the multiple stays requested by the Government to complete discovery, take depositions, and resolve this Action on terms favorable to the Class.

6. The $210 million recovery achieved here is the result of extensive, arm's-length negotiations. Significantly, Lead Plaintiffs and Lead Counsel rejected an opportunity to settle the Action in June 2012—after the First Amended Complaint was dismissed in its entirety and with no assurances that the Second Amended Complaint would also not be dismissed—and instead pressed on with their litigation efforts. These efforts resulted in the exceptional result here. And while the deadline for objections has not yet passed, no members of the Class (which consists of approximately 80% of seasoned institutional investors) have objected at this juncture.

7. For all of the reasons discussed in this Declaration, its attached exhibits and in the accompanying memoranda, Lead Plaintiffs 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 submit that their request for attorneys' fees and reimbursement of Litigation Expenses is also fair and reasonable and should be approved.

II. LEAD PLAINTIFFS' AND CO-LEAD COUNSEL'S PROSECUTION OF THE ACTION

A. Factual Background of the Action

8. This case asserts securities claims against Wilmington Trust, its top officers and Board of Directors, its auditor KPMG, and the two underwriters of its February 2010 offering, arising from years of fraudulent loan underwriting, risk management and accounting.

9. Throughout the Class Period (January 18, 2008 through November 1, 2010)—while iconic financial institutions collapsed during the "Great Recession"—Wilmington Trust assured investors that it was a conservative regional lender with a "strong capital position," a

track record consisting of "107 years of stability," and traditional business practices that "stood "in stark contrast to the struggles that many other financial institutions" were experiencing during the Great Recession. Consistent with these assurances, the Bank reported comparatively strong financial metrics, including low amounts of past due loans and modest increases to its Allowance for Loan Loss Reserves, the amount of money that Wilmington Trust set aside each quarter to cover probable losses in its loan portfolio (the "ALLL" or "Loan Loss Reserve").

10. In reality, as alleged in the Fourth Amended Consolidated Securities Class Action Complaint ("FAC") (D.I. 149), during that time, Defendants materially misstated the Bank's loan underwriting and asset review practices and fraudulently concealed billions of dollars of past due and maturing loans by waiving their contractual terms and extending their maturities so that the loans were no longer considered past due. The FAC alleges that the Bank was forced to waive these loans because of its deficient loan underwriting and asset review practices, which failed to properly assess and monitor the risk that these loans posed to the Bank. Then, when borrowers fell behind in their payments, the Bank would often improperly extend interest reserves or other forms of supplemental financing—essentially, a loan to cover the loan payments that were not being paid. Also, as a result of these and other alleged practices, the FAC alleges that the Bank materially understated its ALLL. Because the ALLL is inversely related to the Bank's net income on a dollar-for-dollar basis, Lead Plaintiffs alleged that Wilmington's materially understated ALLL also resulted in materially overstated net income.

11. Pursuant to their scheme, the FAC alleges that throughout the Class Period Wilmington Trust and its senior executives consistently made false and misleading statements to investors concerning: (i) the credit quality of the Bank's commercial loan portfolio, including information about past due and nonperforming loans, and the methodology for calculating non-

accruing loans and loans past due 90 days or more; (ii) the Bank's compliance with generally accepted accounting principles ("GAAP") in calculating its ALLL and net income; (iii) the purported "rigor" and "consistency" of the Bank's loan underwriting to reassure investors about the Bank's credit quality; (iv) the quality of the Bank's asset review function and consistency of its loan risk ratings; (v) loan-to-value ("LTV") ratios for commercial real estate loans; and (vi) the effectiveness of the Bank's internal controls over financial reporting.

12. These false and misleading statements concealed from investors the true financial state of the Bank, and in particular, the Bank's commercial real estate portfolio, which by the end of 2008 comprised 70% (or approximately $6.7 billion) of the Bank's total loan portfolio. This information was critical to investors, and Defendants' fraud artificially propped up the Bank's stock price by creating the false impression that the Bank was weathering the largest financial crisis since the Great Depression without any of the crippling credit losses suffered by other banks.

13. In fact, as alleged in the FAC, Defendants' active concealment of the Bank's deficient underwriting, asset review, and risk management practices so severely threatened Wilmington Trust that, in September 2009, the Federal Reserve placed the Bank under a Memorandum of Understanding (the "MOU").

14. By the end of 2009—within months after the MOU had been issued—the amount of past due loans held by Wilmington Trust (but concealed from investors) reached such substantial levels that Defendants executed a massive sham "extension" of over 1,000 delinquent loans worth more than $1.5 billion—***25%*** of the Bank's loan portfolio. With their public financial statements now purged of reporting delinquencies relating to the Bank's most troubled

loans, the Bank raised nearly $274 million from unsuspecting investors pursuant to a public offering of common stock conducted in February 2010.

15. Though changes imposed by the Federal Reserve in connection with the MOU forced the Bank to begin to report increases in its ALLL, Defendants nonetheless reassured investors that these increases related to market-wide problems impacting all financial institutions, rather than any credit problems with the Bank's loan portfolio. Pressure within the Bank continued to mount when, on June 3, 2010, Wilmington Trust suddenly and unexpectedly announced the immediate resignation of Defendant Cecala—the Bank's CEO and Chairman who had been with the Bank for 31 years—and that Donald Foley, a Board member with no banking experience, would take over as CEO.

16. Less than five months later, Wilmington Trust imploded: on November 1, 2010, the Bank shocked the market by revealing the full extent of Defendants' dramatic overstatement of the quality of the Bank's loan portfolio, and that, consequentially, the Bank could no longer survive as an independent entity and was instead being purchased by M&T for half of the preceding day's share price.

III. APPOINTMENT OF LEAD PLAINTIFFS AND LEAD COUNSEL, LEAD COUNSEL'S EXTENSIVE INVESTIGATION, AND DEFEATING DEFENDANTS' MOTION TO DISMISS

17. This Action began on November 18, 2010, with a complaint styled *Pipefitters Local 537 Annuity Fund v. Wilmington Trust Corp., et al.*, No. 10-cv-990. Shortly thereafter, three related complaints against Wilmington Trust and several of its executive officers were also filed. On January 18, 2011, Lead Plaintiffs filed their motion for consolidation of the cases and for the appointment of lead plaintiff and lead counsel pursuant to the Private Securities Litigation Reform Act of 1995 ("PSLRA"). D.I. 12. As part of their motion, Lead Plaintiffs filed a Joint Declaration describing the "important public policy considerations implicated by the alleged

misconduct," and "recognizing the importance of cooperation among sophisticated members of the institutional investor community to promote prompt, truthful, and accurate public disclosures." D.I. 13-5 at 7-9. Lead Plaintiffs further described the steps they had taken and would take to oversee the prosecution of the Action consistent with the mandates of the PSLRA. *Id*. at 37-38.

18. Three other prospective plaintiffs moved for appointment as lead plaintiff.[1] D.I. 3, 5, 8. Following this briefing and pursuant to the PSLRA, on March 7, 2011 the Court granted Lead Plaintiffs' motion, consolidated the various actions under the caption *In re Wilmington Trust Securities Litigation*, and appointed Merced County Employees' Retirement Association, the Coral Springs Police Pension Fund, the St. Petersburg Firefighters' Retirement System, the Pompano Beach General Employees Retirement System, and the Automotive Industries Pension Trust Fund as Lead Plaintiffs and Bernstein Litowitz Berger & Grossmann LLP and Saxena White P.A. as Lead Counsel. D.I. 26.

19. Even before the Court appointed Lead Plaintiffs, Lead Counsel had already begun an investigation into Defendants' misconduct. Following their appointment, Lead Counsel continued and increased its efforts in conducting a thorough investigation for their forthcoming amended complaint that included, among other things, a review and analysis of: (i) Wilmington Trust's public filings with the SEC; (ii) research reports by securities and financial analysts; (iii) transcripts of the Bank's earnings conference calls; and (iii) an economic analysis of the price movement in Wilmington Trust common stock. In addition, Lead Counsel interviewed over 85

[1] These actions were *Pipefitters Local 537 Annuity Fund v. Wilmington Trust Corp., et al.*, No. 10-cv-990 (D. Del.); *Rooney v. Wilmington Trust Corp., et al.*, No. 10-cv-995 (D. Del.); *Elzagha v. Wilmington Trust Corp., et al.*, 10-cv-1020 (D. Del.); and *Lynch v. Wilmington Trust Corp., et al.*, No. 10-cv-1086 (D. Del.).

former Wilmington Trust employees, including in-person interviews and multiple telephonic interviews. In investigating Defendants' misconduct and drafting the consolidated complaint, Lead Counsel also worked with numerous experts, including: (i) accounting experts who helped Lead Plaintiffs assess the impact of the understated ALLL on net income and quantify/analyze M&T's disclosures about the Bank's loan portfolio; (ii) damages and loss causation experts; and (iii) experts on the real estate market and, specifically, the Delaware commercial real estate market during the Class Period.

20. Indeed, before the Government's criminal investigations had even begun (to Lead Counsel's knowledge), Lead Plaintiffs identified rampant misconduct relating to Wilmington Trust's loan-underwriting practices, including misuse of the so-called ten percent rule—a lending policy at the Bank that permitted lenders to extend credit in an amount up to 10% of an underlying loan without further analysis or Loan Committee approval—and manipulation of the Bank's asset review process. Lead Plaintiffs also identified numerous violations of GAAP with respect to the methodology and calculation of the Bank's ALLL. Importantly, Lead Plaintiffs independently discovered that the Federal Reserve (as well as KPMG and Wilmington Trust's internal audit group) had repeatedly criticized the Bank's practices for years, leading to the Federal Reserve's imposition of a Memorandum of Understanding ("MOU") on the Bank in late 2009.

A. The Consolidated Securities Class Action Complaint and Related Motion to Dismiss Briefing.

21. On May 16, 2011, Lead Plaintiffs filed their 179-page Consolidated Securities Class Action Complaint (the "CAC"). D.I. 39. The CAC alleged varying claims under the Securities Act and the Securities Exchange Act against Wilmington Trust, its senior executives, Board of Directors, the Underwriters, and KPMG. Specifically, the CAC alleged a wide-ranging

fraud perpetrated by the Bank and its most senior officers concerning the Bank's deficient underwriting, asset review, and appraisal policies and practices that were in direct conflict with Defendants' repeated assurances that the Bank was a stable, conservative lender that maintained "stable credit quality" and employed "rigorous underwriting." The CAC alleged that, in reality, Defendants' claims were false and the Bank's underwriting, asset review, appraisal, and accounting practices were so egregiously deficient and risky that the Federal Reserve Board placed the Bank under the MOU in late 2009, which forced the Bank to entirely restructure the way it originated, monitored and accounted for its loans.

22. The CAC unveiled entirely new details surrounding the Bank's fraudulent underwriting and asset review. For example, several Bank policies that encouraged high-risk underwriting and credit extension, such as the 10% Rule discussed above all led to millions of dollars of loans that were outside of the Bank's stated guidelines. Moreover, the CAC revealed that officers of Wilmington Trust prevented the Bank's Asset Review Group from scrutinizing the Bank's portfolio and manipulated loan "risk ratings" to conceal the Bank's exposure to high-risk loans.

23. On July 27, 28, and 29, 2011, motions to dismiss were filed by several different sets of Defendants. In 160 pages of briefing and 50 exhibits (totaling 2,448 pages), Defendants sought the dismissal of the complaint in its entirety. Plaintiffs responded in a 96-page omnibus brief on September 12, 2011. D.I. 66. Defendants filed five separate briefs totaling 78 pages in response. D.I. 68, 69, 70, 75, 82.

24. On March 29, 2012, the Court dismissed the complaint without prejudice for failure to plead falsity. D.I. 86. The Court gave Lead Plaintiffs leave to replead. *Id*.

B. The Second Amended Consolidated Securities Class Action Complaint and Related Motion to Dismiss Briefing.

25. Following the Court's order on the CAC, Lead Plaintiffs renewed their investigative efforts, including interviewing additional potential witnesses, and filed their Second Amended Consolidated Securities Class Action Complaint ("SAC") on May 10, 2012. D.I. 88. The SAC added new relevant information, including statements from former employees regarding the Bank's deficient underwriting and documentation practices, inaccurate and outdated appraisals, and manipulation of the Loan Loss Reserves.

26. After the CAC was dismissed and after Lead Plaintiffs filed the SAC in June 2012, the parties attempted to mediate the case before the Honorable Daniel Weinstein (Ret.). Judge Weinstein is a nationally recognized and highly respected mediator who has mediated hundreds of securities fraud and other highly complex cases. The parties exchanged lengthy mediation submissions. This mediation was unsuccessful, however, because there was no proposed resolution of the claims at that time that could compensate the Class and be in the Class's best interests.

27. Soon after the failed mediation, Defendants filed their motions to dismiss the SAC. In five briefs totaling 138 pages and with an additional 35 exhibits totaling 1,753 pages, Defendants moved on July 27, 2012 to dismiss the SAC in its entirety. D.I. 93, 95, 96, 99, 100, 101, 103, 104, 106, 107. Plaintiffs responded in one 85-page omnibus brief on October 1, 2012. D.I. 112.

C. Third Amended Consolidated Securities Class Action Complaint and Related Motion to Dismiss Briefing.

28. Before briefing on the SAC was complete, two affidavits executed by FBI Special Agents in connection with the FBI's investigation into Wilmington Trust and one of its largest customers were unsealed. The facts in these affidavits corroborated and further supported the

allegations detailed in the SAC, which Plaintiffs developed through their own investigation. On this basis, Lead Plaintiffs moved to amend the SAC on December 7, 2012. D.I. 116, 117. The Court granted Lead Plaintiffs' motion, and the Third Amended Consolidated Securities Class Action Complaint ("TAC") was filed on January 9, 2013. D.I. 120.

29. Once again, on February 28, 2013, in a total of 181 pages of briefing and 36 exhibits (totaling 2,056 pages), Defendants moved to dismiss the TAC in full. D.I. 127, 130, 131, 134, 136. Lead Plaintiffs opposed the motions to dismiss in an omnibus brief filed on April 25, 2013. D.I. 139.

30. Before briefing on the motions was complete, a criminal information against a senior Bank employee and his subsequent guilty plea were unsealed in *United States v. Joseph Terranova*, 13-cr-39 (D. Del.). Lead Plaintiffs found that Terranova's guilty plea further corroborated the facts developed by Lead Plaintiffs' investigation, including abuses of the 10% Rule and other systemic loan underwriting deficiencies. The criminal information also described in detail how the Bank concealed and misrepresented the materially impaired state of the Bank's commercial loan portfolio by falsely reporting the amount of the Bank's past due loans. Moreover, the criminal information also included new facts related to KPMG's knowledge of the fraudulent activity. Lead Plaintiffs moved to amend the TAC on June 7, 2013. D.I. 144. The Court granted this motion.

D. The Operative Fourth Amended Complaint and Related Motion to Dismiss Briefing.

31. On June 13, 2013, Lead Plaintiffs filed the FAC. The FAC is the operative complaint. The FAC states claims for violations of Sections 10(b) and 20(a) of the Exchange Act, and Sections 11, 12(a)(2), and 15 of the Securities Act against Wilmington Trust, its senior

officers, Board of Directors, outside auditor KPMG, and the two underwriters of its February 2010 secondary offering, J.P. Morgan Securities and Keefe, Bruyette & Woods.

32. The FAC included the same allegations that Lead Plaintiffs previously alleged concerning the Bank's underwriting and asset review practices and understated ALLL. It also further corroborated those allegations by alleging a scheme whereby the Wilmington Trust Defendants fraudulently concealed billions of dollars of past due and maturing loans by waiving their maturities so that the loans were no longer considered past due (the "Waiver Practice"). The FAC alleges that the Bank was forced to waive these loans because of its deficient loan underwriting and asset review practices, which failed to properly assess and monitor the risk that these loans posed to the Bank. Then, when borrowers fell behind in their payments, the FAC alleges that the Bank would often improperly extend interest reserves or other forms of supplemental financing – essentially, a loan to cover the loan payments that were not being paid. In connection with this allegation, Plaintiffs worked with an expert to quantify the misstatement of the past due loans by reviewing all available information, including the information contained within the criminal information and guilty plea as well as SEC filings and Consolidated Reports of Condition and Income (or "Call Reports") provided by the Bank to the Federal Reserve.

33. As a result of these practices, Wilmington Trust also materially understated its ALLL, which materially overstated its net income. As discussed above, Plaintiffs worked with an expert to quantify the misstatement of the ALLL and its impact on the Bank's net income.

34. The FAC also stated for the first time in the Action a claim for violations of Section 10(b) of the Exchange Act against KPMG. In connection with this claim, Plaintiffs worked with an expert to analyze the relevant GAAP and Generally Accepted Auditing Standards ("GAAS") applicable to KPMG.

35. Defendants filed five separate motions to dismiss the FAC on July 17, 2013. D.I. 158, 160, 162, 164, 166. Defendants' motion to dismiss briefing consisted of 199 total pages and 26 exhibits (totaling 1,967 pages). Plaintiffs responded in one 106-page omnibus brief on August 15, 2013. D.I. 169. On September 12 and 13, 2013, Defendants served separate reply papers which consisted of a combined 114 pages of additional briefing. D.I. 172, 173, 176, 177, 178.

36. On March 20, 2014, the Court largely denied the Defendants' multiple motions to dismiss the FAC. D.I. 184, 185. Following this decision, Plaintiffs promptly proceeded with both class certification and fact and expert discovery, as discussed further below in Sections IV, V and VI, respectively.

* * * *

IV. LEAD PLAINTIFFS SUCCESSFULLY CERTIFY THE CLASS

37. On May 19, 2014, the Court so-ordered a Stipulation and Proposed Scheduling Order (D.I. 197) setting, among other matters, the schedule for class certification briefing.

38. The motion for class certification was vigorously contested and entailed extensive discovery, which was complicated by the intervention of the Federal Reserve and other bank examiners in the Action to assert privilege. On June 24, 2014, Defendants Wilmington Trust, Cecala, Gibson, Harra, and Rakowski served their first set of document requests on Lead Plaintiffs. Numbering 42 separate requests to each of the Lead Plaintiffs, Defendants sought wide-ranging information regarding Lead Plaintiffs' purchases and sales of Wilmington Trust securities (not just the common stock that is the subject of this Action), trading and investment philosophies, prior litigation experience, and communications with a broad swath of individuals and entities.

39. Lead Plaintiffs objected to a number of the document requests on various grounds on July 28, 2014. Following a series of meet-and-confers with Defendants' counsel that took place over the course of more than a month, Lead Counsel successfully limited the scope of the documents that Defendants were requesting. Lead Plaintiffs nevertheless collectively produced over 55,000 pages in response to these requests. Specifically, under the direction and with the assistance of Lead Counsel, each Lead Plaintiff collected, reviewed, and produced:

(a) Coral Springs Police Pension Fund: 4,117 pages

(b) Pompano Beach General Employees Retirement System: 21,161 pages

(c) St. Petersburg Firefighters' Retirement System: 13,001 pages

(d) Merced County Employees' Retirement Association: 3,395 pages

(e) Automotive Industries Pension Trust Fund: 403 pages

(f) Common documents:[2] 13,465 pages

40. The documents that Lead Plaintiffs produced included both hard copy and electronic files. With respect to hard copy files, Lead Plaintiffs and Lead Counsel had to review, page-by-page, dozens of file cabinets and bankers' boxes to locate relevant information. Indeed, to locate potentially responsive documents maintained by one of the Lead Plaintiffs, Lead Counsel assembled a team of six attorneys to search over 60 bankers' boxes in an unairconditioned warehouse in Florida in the middle of the summer over the course of two-and-a-half days.

41. With respect to electronic files, Lead Plaintiffs and Lead Counsel had to search the emails, computers, and network file servers maintained by Lead Plaintiffs. This included, for

[2] This category consists of documents common to all Lead Plaintiffs, for example, news articles and analyst reports that were relied upon and cited in the FAC.

certain Lead Plaintiffs, a forensic imaging of these locations. Following meet-and-confers regarding search parameters and protocols for ESI (which included custodian and search term proposals supplemented by "hit counts"), each of Lead Plaintiffs agreed to run twenty-five Boolean search strings across their electronic files to locate potentially responsive documents.

42. The Underwriter Defendants also served a subpoena on Buckhead Capital Management, LLC, an outside investment manager for certain Lead Plaintiffs, on November 4, 2014. D.I. 340.

43. On August 25, 2014, all Defendants served a common interrogatory on Lead Plaintiffs. Lead Plaintiffs objected to certain instructions and aspects of the interrogatory, and substantively responded on September 22, 2014.

44. On September 12, 2014, Lead Plaintiffs moved to certify a class of damaged investors, be appointed as Class Representatives, and appoint Lead Counsel as Class Counsel. D.I. 259. Along with the motion, each of Lead Plaintiffs submitted a Declaration setting forth their decision to seek Class Representative status, their acknowledgment of their fiduciary obligations, and reaffirming their commitment to the continued vigorous prosecution of the Action. D.I. 261-1, 261-2. Lead Plaintiffs also submitted the Expert Report of Prof. S.P. Kothari, the Gordon Y Billard Professor of Accounting and Finance at the MIT Sloan School of Business, which concluded that Wilmington Trust's stock traded in an efficient market, thereby allowing Lead Plaintiffs to invoke the fraud on the market presumption under *Basic Inc. v. Levinson*, 485 U.S. 224 (1988). The motion for class certification was vigorously contested and entailed extensive deposition discovery, in addition to the document and written discovery set forth above.

45. On September 23, 2014, Defendants served Rule 30(b)(6) deposition notices on each of Lead Plaintiffs, each setting forth eight deposition topics. *See* D.I. 270, 272, 273, 275, 276. Lead Plaintiffs objected to the listed deposition topics and, after a series of meet-and-confers between Lead Counsel and Defendants' counsel, were deposed on October 16, 2014 (in St. Petersburg, Florida); October 20, 2014 (two depositions in Boca Raton, Florida); October 21, 2014 (in Merced, California); and October 23, 2014 (in San Francisco, California).

46. On September 24, 2014, Defendants served a deposition subpoena on Prof. Kothari. D.I. 274. In advance of his deposition, Plaintiffs produced over 500 documents related to Prof. Kothari's report and engagement. Prof. Kothari was then deposed on November 11, 2014, in New York.

47. On September 24, 2014, the Wilmington Trust Defendants surprised Lead Counsel by serving a Rule 30(b)(6) deposition subpoena on BLB&G, which set forth eight deposition topics. D.I. 271. In Lead Counsel's collective experience, subpoenaing PSLRA-appointed lead counsel is nearly unprecedented. The subpoena sought information concerning Lead Counsel's pre-complaint investigation, information that was clearly protected by the attorney-client privilege and work product doctrine. After meeting and conferring with counsel for Wilmington Trust, BLB&G moved for a protective order quashing the subpoena as improper and harassing on October 2, 2014. D.I. 282. Defendants subsequently withdrew the subpoena on December 9, 2014. D.I. 357.

48. On November 24, 2014, the Wilmington Trust Defendants filed their opposition papers to the class certification motion under seal, which the other Defendants joined. D.I. 347, 349, 350, 352, 353. Their opposition was generally based on two arguments: (i) that Lead Plaintiffs did not carry their burden of establishing that damages were capable of measurement

on a class-wide basis under *Comcast Corp. v. Behrend*, 569 U.S. 27 (2013); and (ii) that Lead Plaintiffs were not adequate because they granted authority to purchase and sell securities to investment managers such as Buckhead, who did not purchase shares on the dates of the allegedly false statements.

49. On January 23, 2015, Lead Plaintiffs filed their reply in further support of their class certification motion under seal. D.I. 360. Along with their reply, Lead Plaintiffs submitted a Supplemental Expert Report by Prof. Kothari. D.I. 362-1. Among other opinions, Dr. Kothari opined that that a common model of damages would apply Class-wide.

50. Just seven days later, on January 30, 2015, Defendants Wilmington Trust, Cecala, Gibson, Harra, and Rakowski moved to strike portions of Lead Plaintiffs' reply and all of Prof. Kothari's supplemental Expert Report. D.I. 366. Lead Plaintiffs opposed this motion on February 13, 2015 (D.I. 368), and the Defendants replied on February 20, 2015 (D.I. 369).

51. On June 29, 2015, the Court heard oral argument on the class certification motion. Following the oral argument, Lead Plaintiffs submitted two separate letters to Judge Robinson with supplemental authority in support of class certification, which helped clarify the impact of *Comcast* on class certification in securities class actions. *See* D.I. 401.

52. On September 3, 2015, the Court issued a Memorandum and Order granting the class certification motion in its entirety, certifying a Class, appointing Lead Plaintiffs as Class Representatives, and appointing Lead Counsel as Class Counsel. D.I. 405, 406.

53. In connection with the Court's certification of the Class, on January 14, 2016, Lead Plaintiffs filed a motion to approve the Notice and Summary Notice of Pendency of Class Action. D.I. 427. The Court approved the form and content of the Notices and granted this motion on January 15, 2016. D.I. 429. The Class Notice was mailed to thousands of potential

Class Members beginning on March 11, 2016. The Class Notice notified potential Class Members of, among other things: (i) the Action pending against the Defendants; (ii) the Court's certification of the Action to proceed as a class action on behalf of the Court-certified Class; and (iii) their right to request to be excluded from the Class, the effect of remaining in the Class or requesting exclusion, and the requirements for requesting exclusion. In response, as set forth on Appendix 1 to the Stipulations, just eight individuals requested exclusion from the Class.

V. DISCOVERY

54. Lead Counsel began pursuing discovery as soon as the Court sustained the Complaint and lifted the PSLRA stay in March 2014. As set forth further below, Lead Counsel's hard-fought discovery efforts included:

(a) drafting and issuing multiple sets of document requests containing hundreds of requests, as well as preparing responses and objections to dozens of requests from Defendants, as well as pursuing discovery from 8 third-parties;

(b) producing and/or reviewing more than 12.7 million pages of documents that included emails, memoranda, spreadsheets, workpapers, and loan review documentation, and that ranged from over a decade-long time period;

(c) exchanging voluminous correspondence and engaging in dozens of meet-and-confers with counsel from twelve leading defense firms,

(d) filing and arguing multiple motions to compel and/or for a protective order, to ensure the completeness and accuracy of Defendants' responses to Plaintiffs' document requests;

(e) successfully pursuing through both administrative means and extensive litigation tens of thousands of pages of materials that were withheld by Defendants on the basis of regulatory privilege at the instruction of several federal and state regulators, including (among others) the Federal Reserve, Office of Thrift Supervision, and Delaware Office of State Bank Commissioner ("OSBC"; all regulators collectively, the "Regulators"), over the course of 3 years, which included multiple regulatory submissions, full briefing, an extensive hearing, and multiple subsequent updates and submissions to the Court; and

(f) taking, defending, or otherwise participating in 39 depositions of witnesses including the Individual Defendants, key Wilmington Trust employees, KPMG auditors, Plaintiffs' class certification expert, and representatives from the Underwriter Defendants.

55. Throughout its discovery efforts, Lead Counsel litigated against aggressive and well-funded adversaries, including many of the best defense firms in the country: Skadden Arps, Williams & Connolly, Venable, Simpson Thatcher, Morgan Lewis, Hogan Lovells, Paul Hastings, McCarter & English, Pepper Hamilton, Dalton & Associates P.A., Krovatin Klingeman LLC, and Wilks Lukoff & Bracegirdle LLC.

56. Notably, when discovery commenced in this Action, the Government had not yet filed or unsealed criminal charges against the Bank or any of its employees. Even after the Government filed charges—over a year after discovery began, and more than three years after Plaintiffs first brought this action—the Criminal Action allegations concerned much narrower conduct, over a far shorter time span and by far fewer defendants, than Lead Plaintiffs' allegations. Accordingly, Lead Plaintiffs and Lead Counsel could not simply rely on the Criminal Action, but instead had to develop the evidence necessary to prove their case from the ground up. Lead Counsel's independent approach to discovery required that Lead Plaintiffs pursue an aggressive schedule that was not dependent on the success of the Criminal Trial. Indeed, when the Government settled with Defendant Wilmington Trust on the eve of the Criminal Trial in October 2017, Lead Counsel was prepared to file expert reports prior to the start of the rescheduled Criminal Trial against the Individual Defendants, and to file summary judgment motions shortly after the close of the Criminal Trial. Lead Plaintiffs could not have successfully prosecuted the Action in this manner without being fully familiar with the documents, evidence, and issues relating to the underlying fraud.

A. Document Discovery

57. Developing the substantial body of evidence needed to prove the alleged violations of the federal securities laws against the Bank and its executives, directors, auditor, and underwriters required Plaintiffs to undertake exhaustive document discovery efforts, which included briefing and arguing numerous discovery motions and reviewing nearly 13 million pages of documents, many of which were highly technical and complex loan origination, accounting, and auditing documents.

58. For example, to prove Plaintiffs' allegations that Defendants had concealed the deterioration in the Bank's loan portfolio through improper ALLL accounting—a claim not at issue the Criminal Action—Plaintiffs needed to obtain and review the Bank's myriad changing policies and procedures with respect to its accounting for ALLL, the accounting work done by the Company in preparing its financial reporting, and further underlying details about the Company's loan portfolio (which typically consisted of hundreds or thousands of pages of documents for each of the Company's hundreds of loans) to determine precisely when the risk profile for the Bank's massive loan portfolio increased and how this should have impacted the Bank's reserve. In addition, Plaintiffs had to review the work done by the Bank's auditor to address Defendants' arguments that the accounting had been blessed by the auditor.

59. As another example, to prove Plaintiffs' allegations that Defendants fraudulently claimed that the Bank's lending and underwriting practices were "rigorous" (another allegation not directly at issue in the Criminal Action), Lead Counsel needed to exhaustively comb through the Bank's production to find evidence of hundreds of millions in dollars in new loans or extensions on existing loans that Defendants wrongly or recklessly granted during the Class Period. This documentary record included thousands of voluminous loan origination and extension files, as well as countless contemporaneous correspondence and emails.

1. Document Requests

60. In April 2014, promptly after the Court denied Defendants' motions to dismiss and lifted the PSLRA stay, Lead Plaintiffs issued their first sets of document requests to Defendants, consisting of a total of over 150 requests concerning all aspects of Plaintiffs' allegations in the Action. One month later, Defendants served their responses and objections to the first set of document requests. Defendants raised numerous objections to Lead Plaintiffs' requests, refused to produce documents on certain subjects, and agreed to produce only limited documents on certain other subjects. Plaintiffs thereafter engaged in numerous meet-and-confers and motion practice (discussed further below) before Defendants gradually began to produce documents in June 2014.

61. Also, as part of their document discovery efforts, Lead Plaintiffs subpoenaed eight third parties that Lead Counsel knew or had reason to believe had critical documents in their possession. These third-parties included Treliant Risk Advisors ("Treliant"), a company retained by the Bank to review its loan portfolio in 2010. Lead Plaintiffs served a subpoena on Treliant on May 13, 2014, seeking documents relating to Treliant's evaluation and review of the Bank's loan portfolio in the second quarter of 2010, which resulted in massive wholesale changes to the Bank's ratings and ALLL that ultimately forced the Bank's fire sale to M&T Bank. D.I. 212. Ultimately, after considerable efforts (discussed further below (¶71)), Treliant produced over 30,000 documents, totaling nearly 115,000 pages. As another example, on June 4, 2014, Lead Plaintiffs served a document subpoena on Ardmore Banking Advisors, Inc. ("Ardmore"), another company retained by the Bank to review its loan portfolio just prior to the start of the Class Period. The Ardmore subpoena requested documents relating to its evaluation and review of the Bank's loan portfolio in 2006 and 2007. D.I. 212. Ardmore ultimately

produced over 1500 pages of documents. In total, third parties produced over 600,000 pages, in over 170,000 documents, in response to Lead Plaintiffs' subpoenas.

62. As discovery progressed and Plaintiffs' understanding of the facts grew, Plaintiffs continuously evaluated the sufficiency of Defendants' document collection, and, on numerous occasions, requested additional documents that appeared relevant but were not included. On August 12, 2014, Plaintiffs issued their second set of document requests on Defendants, containing an additional four, narrowly tailored requests concerning documents related to damages and Defendants' affirmative defenses. In addition, on November 26, 2014, Plaintiffs served an additional document request on KPMG, seeking documents concerning KPMG's relevant policies and procedures.

63. In total, Lead Plaintiffs received over 1.8 million documents, totaling nearly 13 million pages, in response to their requests, produced over the course of several years. Approximately 500,000 documents were produced in 2014; 235,000 in 2015; 69,000 in 2016; and over 1 million in 2017, with the final production in this Action occurring on December 7, 2017.

64. Finally, in addition to issuing its own requests for documents, Lead Plaintiffs responded to several sets of document requests that Defendants served on each Lead Plaintiff beginning in June 2014. *See* ¶¶38-39, above.

2. Discovery Disputes

65. Lead Counsel's work to obtain the necessary documents involved numerous additional discovery disputes that were resolved after considerable time and effort, significant negotiations, and—at times—court intervention. In total, Lead Counsel briefed or otherwise argued ten motions to compel or for protective orders throughout discovery, requiring dozens of

submissions to the Court. This section summarizes some of the major discovery disputes between the Parties.

a. Bank Examination Privilege

66. From the start, Plaintiffs' document discovery efforts were hindered by the assertion of privilege over thousands of documents that described and/or reflected criticisms of the Bank made by the Regulators in connection with their examinations, as well as the Bank's responses thereto.

67. Defendants and certain third parties refused to produce these documents due to the Regulators' assertion of the Bank Examination Privilege, which refers to various privileges created by federal and state statutory and common law that allow the Regulators to severely limit the disclosure of any analysis contained in or ascertained from any examination or investigation made by relevant regulatory agencies. Plaintiffs first learned from Defendants that the Regulators intended to assert this privilege in May 2014. Through subsequent formal administrative submissions, Plaintiffs promptly requested that the Regulators waive the privilege. The Federal Reserve rejected Plaintiffs' requests on June 27, 2014.

68. On August 5, 2014, Plaintiffs moved to compel the production of these documents. D.I. 233. The Regulators moved to intervene in this Action, and then opposed Plaintiffs' motion to compel, leading to multiple submissions to Magistrate Judge Fallon, to whom Judge Robinson had referred the motion. D.I. 246, 293, 310, 318.

69. On November 4, 2014, Magistrate Judge Fallon held oral argument, but deferred ruling from the bench. Plaintiffs' battle to overcome the Bank Examination Privilege continued for nearly the next two years. During that time, Plaintiffs made additional numerous submissions, participated in at least six subsequent conferences with the Court, and engaged in numerous

meet-and-confers and exchanged multiple discovery letters on the issue of the withheld documents.

70. On February 19, 2016, Magistrate Judge Fallon issued an order requesting the production of a sampling of certain categories of documents that Regulators claimed were covered by the Bank Examination Privilege for *in camera* review. D.I 432. After conducting an in camera review of over 150 purportedly privileged documents and reviewing the numerous submissions by Plaintiffs and the intervening Regulators, on August 16, 2016, Magistrate Judge Fallon issued a Report and Recommendation granting virtually all of Plaintiffs' motion to compel (the "Report"). D.I. 459. There were no objections to the Report and, on September 12, 2016, Judge Robinson adopted the Report. D.I. 460. Defendants subsequently produced the nearly 35,000 documents they had been withholding from production, totaling approximately 360,000 pages. In addition, Defendants later produced, largely in 2017, an additional over 800,000 documents that were produced in connection with the Criminal Action, totaling approximately 5.9 million pages.

71. Nonetheless, third party Treliant still refused to produce a significant number of documents in its possession because the Report was filed under seal. After the Regulators refused to consent to unsealing the Report, on November 29, 2016, Plaintiffs moved to unseal the Report, which the Regulators again opposed. D.I. 484. Ultimately, on June 7, 2017, Magistrate Judge Fallon issued a Report and Recommendation unsealing the report, and Treliant finally agreed to produce the over 30,000 responsive documents in its possession. D.I. 670.

72. Even then, the Bank Examination Privilege presented one last hurdle for Plaintiffs. Plaintiffs sought documents produced in connection with a lawsuit between Defendant North and the Bank that had been filed in Delaware State Superior Court, captioned *North v.*

Wilmington Trust Co. et al. (the "North Action"). Though documents in the North Action were responsive to Plaintiffs' document requests, including the court's opinion resolving the parties' cross-motions for summary judgment in the North Action, they had been under seal since December 2015 due to the Regulators' assertion of the Bank Examination Privilege in this Action. After contacting the Regulators, Plaintiffs sent a letter to the Delaware State Superior Court on October 19, 2017 requesting access to the sealed documents, which was granted on November 20, 2017.

b. Plaintiffs' motion to compel agreed-upon search terms.

73. Beginning on May 30, 2014, Lead Counsel and counsel for Defendants engaged in extensive negotiations concerning search terms sufficient to address Plaintiffs' document requests. However, after June 11, 2014, when Plaintiffs sent Defendants additional search terms in an attempt to capture documents both relevant and responsive, Defendants refused to respond for months. During an August 6, 2014, hearing before the Court, Lead Plaintiffs raised their concerns regarding the status of Defendants' document production, at which time the Court ordered Defendants to start rolling productions of documents in this Action and to avoid a "document dump" on or before October 17, 2014. D.I. 237.

74. Thereafter, Defendants finally responded to Plaintiffs' attempt to negotiate search terms, proposing revised sets of terms to reduce the number of documents to be reviewed for production. Lead Plaintiffs agreed to the vast majority of Defendants' revisions in both instances. On September 9, 2014, Defendants confirmed that they would apply the agreed-upon terms, but just ten days later informed Plaintiffs that they had unilaterally and without any discussion eliminated one-third of the agreed-upon search terms. After Defendants refused to discuss this modification further and rejected Plaintiffs' proposal, on October 2, 2014, Plaintiffs filed a letter-motion to compel the use of these search terms. D.I. 280.

75. After Defendants filed a response, the Court heard argument concerning the issue during a hearing on October 7, 2014. At that time, the Court agreed with Plaintiffs, and compelled Defendants to use the search terms submitted by Plaintiffs.

c. Plaintiffs' Pursuit of 500,000 Unreviewed Documents

76. Consistent with the Court's initial Scheduling Order in this Action, Defendants had represented to Plaintiffs that they had substantially completed document production by October 17, 2014. However, in April 2015—nearly six months after Wilmington Trust purportedly completed its document production and after Plaintiffs had pressed Defendants on numerous apparent gaps and missing custodial files in Defendants' production—the Bank notified Plaintiffs that it had somehow failed to review approximately 500,000 documents, all of which were potentially responsive in this Action (the "500,000 Missing Documents").[3]

77. On April 13, 2015, Wilmington Trust proposed to the Court that it have until August 17, 2015, to review and produce the 500,000 Missing Documents. D.I. 381. However, on August 24, 2015—after Defendants' own deadline had passed—Defendants claimed that the Court's July 2, 2015 limited stay of discovery due to the Criminal Action (as discussed further below (¶86)) absolved the Bank of its obligation to produce any remaining responsive documents. After an unsuccessful meet-and-confer, on August 28, 2015, Lead Plaintiffs filed a motion requesting clarification that the Court's July 2, 2015 Order did not impact Defendants' obligations with respect to the 500,000 Missing Documents, which the Court granted on September 3, 2015. D.I. 404.

78. In total, Lead Counsel's diligent pursuit of the 500,000 Unreviewed Documents led to the Bank's production of over 1.3 million additional pages, constituting 202,178

[3] As discussed below, deposition discovery in this Action was stayed beginning in October 2014.

documents. For perspective, these belated productions increased the Bank's document production by over 30% at the time they were produced.

3. Document Review

79. As Lead Counsel received documents in response to Plaintiffs' requests, it needed to review and analyze those documents. The magnitude and complexity of the documents was substantial—totaling nearly 13 million pages from a far-ranging period of time, and including, *e.g.*, emails, loan documentation, accounting memoranda, financial statements, and interview summaries. At all times, Lead Counsel endeavored to conduct the document review (and subsequent deposition preparation) as efficiently as possible. While a large number of attorneys were responsible for this review and preparation, at all times Lead Counsel collectively had less attorneys assigned to this case than Wilmington Trust, whose counsel informed the Court during the September 16, 2014 status conference that it had 125 attorney reviewers assigned to review and analyze documents that the Bank has produced. Significantly, this number does not include attorneys from Williams & Connolly LLP and Venable LLP, two additional firms that Wilmington Trust retained to represent it in this action; the firms retained by the Individual Defendants who were brought on to represent them; or the firms representing KPMG and the Underwriter Defendants.

80. Throughout, Lead Counsel constantly looked for ways to keep costs to a minimum, as well as to streamline their review and analysis. At the very outset, Lead Counsel solicited proposals from discovery vendors to provide cost-effective, but powerful, document-management services. After receiving bids from three firms, Lead Counsel ultimately selected the e-discovery vendor Recommind (later renamed to "Opentext"), a vendor that had worked with the SEC and several other plaintiffs' firms. At a price that matched the lowest bid received, Recommind provided unique document review capabilities, including cutting-edge, algorithm-

based "technology assisted review" ("TAR") (also known as "predictive coding"). The TAR software enabled Lead Counsel to efficiently and cost-effectively streamline their review by 'learning' the coding of documents as they were reviewed, and then using an algorithm to apply that 'learning' and assign a ranking to the other documents in the production. This permitted Lead Counsel to prioritize its review by focusing on those documents identified as the most likely to be relevant by the TAR software.

81. Using the TAR predictive coding to narrow down to those documents most likely to provide meaningful information, attorneys from Lead Counsel reviewed, analyzed, and categorized the documents in Recommind's electronic database. Before beginning, Lead Counsel developed a search protocol, issue "tags," and guidelines for identifying "hot" documents, as well as a manual and guidelines for the review and "coding" of documents. Using these tools, Lead Counsel tasked its attorneys to begin reviewing documents as soon as they were produced, which involved making several substantive analytical determinations as to the importance and relevance of each document—including whether each document was "hot," "highly relevant," "relevant," or "irrelevant." For documents identified as "hot," the attorneys typically documented their substantive analysis of the document's importance by making electronic notations on the document review system, explaining what portions of the documents were hot, how they related to the issues in the case, and why the attorney believed that information to be significant. These attorneys also "tagged" the specific issues that documents related to, such as whether the documents concerned the treatment of past due loans, the calculation of the ALLL, or communications with governmental authorities. In addition, the attorneys "tagged" which deponents the documents related to, enabling the effective and efficient collection of documents in preparation for depositions. Similarly, the attorneys tagged and foldered documents related to

different categories of substantive issues and separately tagged documents that were relevant to expert analyses. Given the dynamic, evolving nature of discovery, Lead Counsel frequently revised and refined its tools, techniques, and "tags" as it developed its understanding of the issues.

82. Throughout their review, the attorneys also analyzed the documents for several other issues related to the adequacy and scope of the document productions. For example, the attorneys reviewed all privilege redactions and Defendants' numerous privilege logs to assess whether Defendants redacted or withheld potentially non-privileged information. The attorneys also reviewed the productions to determine whether they substantively tracked what had been agreed to be produced in response to document requests.

83. In addition to regular communications that occurred throughout the review process, the attorneys focused on the document review participated in weekly meetings with the rest of the litigation team. In advance of these meetings, the most significant, "hot" documents that had recently been discovered and analyzed were compiled and circulated. At the meetings, the attorneys who analyzed the documents explained their importance, and other attorneys asked questions and discussed similar documents that had been discovered. In connection with these meetings, the attorneys would prepare a memorandum summarizing the key documents discussed. These efforts ensured that the entire litigation team learned of and understood the important documentary evidence being developed, provided an opportunity for Lead Counsel to further refine their legal and factual theories, and focused the document review teams on developing other supporting evidence. Lead Counsel also often asked for follow up research into and memoranda concerning topics of interest that arose at these meetings.

84. In addition, as they conducted their review, Lead Counsel prepared chronologies of events and maintained a central repository of key documents organized by issue, which they continually updated and refined as the team's knowledge of issues expanded. This step enabled attorneys to quickly and efficiently access critical documents necessary for the preparation for depositions and drafting of evidentiary submissions to the Court. In addition, as discussed further below (¶¶112-13), Lead Counsel's thoughtful and planned approach to document discovery proved to be critical in responding to the Wilmington Trust Defendants' far-reaching Second Set of Interrogatories, enabling Plaintiffs to quickly distill down their review of millions of pages of documents by issue and relevance.

B. Discovery Stays And Delays Imposed As A Result Of The Criminal Action

85. Beginning in October 2014, the United States sought to stay deposition discovery in this Action in light of the Criminal Action. D.I. 297. Specifically, after Plaintiffs noticed the depositions of 23 individuals, including several of the Individual Defendants, to take place between October 20, 2014 and December 19, 2014, the Government moved to intervene in this Action and stay all depositions, interrogatories, and requests for admission in this Action until March 2015 to avoid potential prejudice to the Government's investigation. D.I. 298.

86. Although the Court did not rule on the Government's motion for a stay, the case was effectively stayed by operation of Local Rule 30.2. The Government's request for a discovery stay expired on March 1, 2015, whereupon Plaintiffs immediately sought to schedule depositions, and filed a letter request with the Court to set a schedule. Despite Plaintiffs' efforts, on July 2, 2015, the Court issued an Order staying discovery until further Order and requiring that the parties file status reports on or before September 30, 2015. D.I. 397.

87. Pursuant to the Court's July 2, 2015 Order, on September 30, 2015, Plaintiffs submitted a status report, stating Plaintiffs' position that depositions of witnesses other than the

Criminal Defendants should be permitted to move forward. D.I. 408. On October 13, 2015, Judge Robinson issued an Order in effect granting Plaintiffs' request and lifting the limited stay of discovery, except for the depositions of the Criminal Defendants, and ordering that fact deposition discovery re-commence no later than November 1, 2015. D.I. 409.

88. However, two weeks later, on October 27, 2015, the United States again moved for a limited stay. D.I. 415. Within three days, Lead Counsel filed an opposition to the United States' motion. D.I. 422. On November 3, 2015, the Court again issued an Order staying discovery but requiring the Parties to file status reports on March 3, 2016. D.I. 423.

89. In accordance with the Court's November 3, 2015 Order, on March 3, 2016, the Lead Plaintiffs, Defendants, and the Government each filed a status report. D.I. 436-440. While Defendants and the Government asserted that the case should continue to be stayed, Plaintiffs requested that depositions be allowed to proceed. On March 7, 2016, Plaintiffs filed a letter responding to certain of the assertions made in the Government's status report concerning the necessity of a stay in this Action. D.I. 443.

90. On April 13, 2016, the Court ordered that the stay of fact discovery would continue "pending completion of the Criminal Trial." D.I. 454. However, on September 9, 2016, the Criminal Trial was again delayed. This delay marked the second postponement of the Criminal Trial, this time for over a year. In light of this delay, on September 19, 2016, Plaintiffs moved to lift the stay. D.I. 461. Defendants filed briefs in opposition to Plaintiffs' motion. D.I. 463-68. On October 21, 2016, Plaintiffs filed a reply brief addressing their arguments. D.I. 478. Plaintiffs' arguments prevailed, and, on December 19, 2016, the Court lifted the Stay in its entirety, allowing discovery to resume. D.I. 488.

C. Depositions

91. Depositions provided a critical component of Lead Plaintiffs' efforts to develop the evidentiary record, in terms of both fact-gathering and solidifying Plaintiffs' legal arguments. Beginning largely (except for six class certification-related depositions) after the Court lifted the stay of discovery, by the end of fact and class discovery, the Parties had taken 39 depositions at locations across the country, including Delaware, New York, Pennsylvania, New Mexico, and Utah. For Lead Counsel, these depositions required tens of thousands of hours of attorney team across the entire litigation teams of both firms.

92. As it did through discovery generally, Lead Counsel strove for the upmost efficiency and to avoid unnecessary expense. For example, Lead Counsel made every effort to minimize the number of depositions, noticing only those depositions that Lead Counsel believed were critical. Of the 39 depositions, only 28 were noticed by Lead Plaintiffs. In our experience, this number is not unusual in comparably sized cases, particularly given the large number (16) of Defendants here. Further, Lead Counsel staffed each of the 39 depositions as efficiently as possible, with generally no more than two (and in a few cases, three) Lead Counsel attorneys in attendance. In contrast, at least a dozen, and sometimes more than 20, attorneys typically attended for Defendants, with each Defendant having at least 1 or 2 attorneys present.

1. The Development and Evolution of Lead Counsel's Deposition Strategy

93. Lead Counsel's deposition-related work began in 2014, when Lead Plaintiffs began receiving documents produced in response to their requests and in anticipation that depositions would have to conclude before December 2014 pursuant to the then-operative scheduling order. Lead Counsel's team constructed "key players" lists compiled from: (i) their investigation in connection with the complaints; (ii) document searches, including an analysis of

hot documents; and (iii) corporate organization charts produced by Defendants. This process involved considerable effort given the volume of Defendants' productions and the expansive nature of the alleged fraud.

94. During this process, Lead Counsel met multiple times to discuss potential candidates for depositions, reviewing memoranda and samples of relevant documents, and debating the relative merits of each. Through this process, dozens of potential deponents were considered and analyzed. The existence of the Criminal Action meant that this process required more legal research and analysis than typical, as many key witnesses were expected to assert their right under the Fifth Amendment rather than testify.

95. As soon as a meaningful number of documents had been reviewed using these criteria, Lead Counsel analyzed the results of their review of those documents to begin finalizing the identities of key witnesses and other potential deponents. As the list of potential deponents narrowed, Lead Counsel ranked the witnesses by reference to their role in the events at issue and the anticipated value of their testimony.

96. Attorneys also reviewed the documents extensively and drafted numerous memorandum to assist in discovery, including: (i) memorandum in preparation for each deposition; (ii) memorandum concerning numerous subjects, such as appraisal, interest reserves, and risk ratings; (iii) and memorandum discussing certain of Wilmington Trust's largest customer relationships.

97. Lead Plaintiffs served their first Notices of Deposition on October 6, 2014, seeking the deposition of each Individual Defendant as well as several Bank employees whom discovery had confirmed had critical knowledge concerning Plaintiffs' allegations. However, as described further above (¶¶85-90), the Government's seriatim motions to stay discovery

prevented any merits depositions from being taken until 2017. Nevertheless, after each time the stay was lifted or expired, Lead Plaintiffs sought to take depositions, only to be stayed again until 2017.

2. Lead Counsel Fights Defendants' Obstructionism On Depositions

98. Even after Plaintiffs' successful motion to lift the Stay enabled Lead Counsel to begin depositions in 2017, within weeks, the Individual Criminal Defendants sought to prevent their depositions claiming they intended to assert their Fifth Amendment right to avoid self-incrimination during their depositions.

99. Specifically, on January 13, 2017, the parties submitted competing proposals for a discovery schedule and for a protective order. At the heart of the dispute between the two proposed schedules was the timing of the Individual Defendants' depositions: Lead Plaintiffs insisted that the depositions take place by April 21, 2017 (which was prior to the trial in the Criminal Action), in accordance with the December 19 Order, while the Criminal Defendants again sought to delay their depositions until after their criminal trial. D.I. 498. On January 19, 2017, the Court heard over two hours of oral argument on the competing proposals, and, on January 24, 2017, Judge Robinson issued an Order that, among other things, ruled in Plaintiffs' favor in rejecting the attempts to stay the Individual Criminal Defendants' depositions, and ordered that all fact discovery—including that of the Individual Criminal Defendants—must end by June 1, 2017. D.I. 509.

100. The Criminal Defendants thereafter began a multi-pronged attack on the Court's January 24, 2017 Order, simultaneously filing a Notice of Appeal with the Third Circuit and motions for interlocutory appeal and to stay pending appeal in this Court. D.I. 513, 514, 515. Plaintiffs opposed both motions in this Court and moved to dismiss the Notice filed in the Third Circuit for lack of jurisdiction. Lead Counsel's arguments prevailed; on June 14, 2017, the Third

Circuit dismissed the Individual Defendants' appeal, and, on June 26, 2017, this Court denied Defendants' motions for interlocutory appeal and for a stay of their depositions.

101. The Criminal Defendants simultaneously moved the Court for reconsideration of its June 26, 2017 Order, which Lead Plaintiffs opposed on July 7, 2017, and also for *en banc* review of the Third Circuit's June 14 dismissal.

102. Throughout the drawn-out appeals process, Lead Plaintiffs continually sought deposition dates from the Individual Defendants. However, the Individual Defendants refused to schedule their depositions—even after losing twice at the Third Circuit—taking the position that District of Delaware Local Rule 30.2 prevented their depositions even as they mulled a long-shot petition for certiorari to the Supreme Court. In an effort to overcome this pure dilatory practice, on July 27, 2017, Plaintiffs moved this Court for relief from Local Rule 30.2. D.I. 748. Before the Court ruled on Plaintiffs' motion, however, the Court denied Defendants' motion for reconsideration. D.I. 750. This Order finally allowed Lead Plaintiffs to immediately confirm and notice the final remaining fact depositions in this Action. D.I. 754-57.

3. Lead Counsel's Preparation for Depositions

103. Effectively preparing for, conducting, and participating in depositions required that Lead Counsel devote substantial time, effort, and resources. One of Lead Counsel's most significant projects in preparation for the depositions—both in terms of time and effort as well as substantive importance—was the preparation of detailed "deposition kits." These kits typically consisted of approximately 100-200 documents with an index summary, as well as a detailed memorandum analyzing those documents and proposing areas of examination. Lead Counsel needed to prepare these kits not just for witnesses whose depositions Lead Plaintiffs noticed, but also for those witnesses noticed by Defendants, including both nonparties and Plaintiffs themselves. Lead Counsel prepared a deposition kit for each of the 28 witnesses whose

deposition was taken by Lead Counsel, as well as kits for the 5 merits witnesses whose depositions were noticed by Defendants.[4]

104. The preparation of these kits was an iterative process that required the synthesis and analysis of an enormous amount of information. Though Lead Counsel had developed a preliminary sense of the deposition witnesses in preparing the Deposition Plan, the preparation of the deposition kits required a comprehensive, deep dive into the witnesses, including their: (i) custodial documents, *i.e.*, documents the deponent drafted, received, or maintained in their files; (ii) role in the events at issue; (iii) prior relevant testimony or interviews; and (iv) information gleaned from public searches. The preparation of each kit required the analysis of myriad documents in the particular context of each witness, as well as the exercise of professional judgment in narrowing down which documents to present to that deponent. As the kits were prepared and refined, the attorneys taking the deposition worked closely with the reviewing attorneys.

105. Finally, as a result of the pending Criminal Action, at their depositions in this Action numerous witnesses asserted their Fifth Amendment right rather than provide actual testimony. Lead Counsel exhaustively researched the implications of this refusal to testify and any adverse inference that could be drawn from it, and prepared for such depositions accordingly.

106. The affirmative depositions taken during the course of discovery lasted one to two days, and frequently involved dozens of exhibits totaling hundreds of pages per deposition. Even for those depositions noticed by Defendants, Lead Counsel frequently prepared a full deposition

[4] Lead Counsel had prepared full deposition kits in 2014 for the noticed witnesses, but those kits had to be materially updated and re-analyzed in light of the significant additional document discovery and other events that took place over 2015-2016.

kit and examined the witness at length. This was particularly necessary because the depositions noticed by Defendants typically concerned Defendants' primary defense—that auditors or government regulators had known of and condoned the allegedly fraudulent conduct.

D. Interrogatories And Requests For Admission

107. Finally, in addition to the comprehensive document and deposition discovery just described, Lead Counsel sought to develop the evidence required to prove Plaintiffs' allegations through informed and targeted interrogatories and requests for admission. Lead Counsel also spent considerable time and effort responding to far-reaching interrogatories served on Plaintiffs by Defendants.

1. Lead Plaintiffs' Interrogatories and Requests for Admission.

108. Lead Plaintiffs issued a total of 52 interrogatories during the litigation. On March 2, 2017, Lead Plaintiffs issued their first set of interrogatories to the Wilmington Trust Defendants. On June 15, 2017, Lead Plaintiffs issued their first set of interrogatories to the Director Defendants, KPMG, Defendant North, and the Underwriter Defendants, and their second set of interrogatories to the Wilmington Trust Defendants. In each instance, Lead Counsel reviewed and analyzed Defendants' responses to these interrogatories as they came in, and at times had to engage in extensive meet-and-confers with Defendants to satisfactorily obtain the requested information.

109. In addition, on July 14, 2017, Lead Plaintiffs served a total of 148 Requests for Admission on all Defendants. Drafting these Requests required Lead Counsel to distill the entirety of the knowledge that they had gained in discovery into carefully crafted questions, strategically crafted for maximum effect in the remainder of the litigation (including summary judgment, *Daubert* motions, and even submission to a jury).

2. Lead Plaintiffs' Responses to Defendants' Interrogatories

110. Lead Counsel also prepared responses and objections to the three sets of interrogatories (totaling 36 interrogatories) served on Plaintiffs by Defendants. Responding to these far-ranging interrogatories required a significant amount of work by each Lead Plaintiff and by Lead Counsel, including several meet-and-confers and motion practice.

111. On August 25, 2014, Defendants served Plaintiffs with Defendants' First Common Interrogatory Directed to Lead Plaintiffs, seeking information concerning the confidential witnesses cited in the Complaint. On September 25, 2014, Plaintiffs served their Answers and Objections to this Interrogatory.

112. On March 1, 2017, the Wilmington Trust Defendants served their Second Set of Interrogatories to Plaintiffs, which largely consisted of contention interrogatories seeking specific factual responses concerning Plaintiffs' best evidence. On March 31, 2017, after conducting in-depth legal research, Plaintiffs served their responses to the interrogatories, objecting entirely to the interrogatories as untimely, overbroad, and improperly seeking attorney communications. After an unsuccessful meet-and-confer, on April 11, 2017, Defendants moved to compel Plaintiffs to respond to its Second Set of Interrogatories, which Plaintiffs opposed on April 25, 2017. D.I. 613. On May 17, 2017, after oral argument, Magistrate Judge Fallon granted in part and denied in part Defendants' motion to compel, and Plaintiffs thereafter began the considerable work of preparing responses to the Wilmington Trust Defendants' Second Set of Interrogatories.

113. In order to provide adequate responses to Defendants' Second Set of Interrogatories, Lead Counsel had to distill down its review and analysis of tens of thousands of pages of public statements and SEC filings, as well as millions of pages of deposition testimony, deposition exhibits, and Defendants' document productions. On June 19, 2017, Plaintiffs served

their Supplemental Answers and Objections to Defendants' Second Set of Interrogatories, which included hundreds of specific citations exhaustively cataloging the documentary evidence that Plaintiffs had collected to date from Defendants' SEC filings, conference calls and other public statements, document productions in the litigation, and deposition transcripts and exhibits. For example, in response to Defendants' interrogatory number 7, Lead Plaintiffs provided an extensive 50-page appendix setting forth more than 100 alleged false and misleading statements, detailed citations to deposition testimony from Defendants and the Bank's executives, and quotes from a multitude of emails and presentations sent to and by Defendants and Defendants' officials.

114. On July 14, 2017, Defendants Wilmington Trust and Cecala served their Third Set of Interrogatories on Plaintiffs, containing 11 further contention interrogatories seeking the basis of Plaintiffs' claims. The same day, the Underwriter Defendants served their First Set of Interrogatories on Plaintiffs, containing six interrogatories that principally sought information concerning Plaintiffs' reliance on experts and Plaintiffs' contentions concerning "red flags" brought to the attention of the Underwriter Defendants. On August 28, 2017, Lead Plaintiffs responded and objected to both sets of interrogatories. As with Defendants' prior interrogatories, responding to these Interrogatories required considerable work by Lead Plaintiffs and Lead Counsel, including verification by Lead Plaintiffs themselves.

VI. THE COMPLEXITY OF LEAD PLAINTIFFS' CLAIMS NECESSITATED THE EXTENSIVE USE OF EXPERTS AND CONSULTANTS

115. The prosecution of this Action was extremely difficult because of the complexity and highly specialized and technical nature of the subject matter, as well as the number of Defendants involved in the Action. Lead Plaintiffs' allegations challenged Defendants' statements relating to the core of Wilmington Trust's lending operations, one of its primary

segments that included the Bank's loan underwriting, appraisals, asset review, risk management, ALLL, and reported financial statements. Moreover, Plaintiffs' allegations—and Defendants' defenses—involved non-Bank parties, including the Underwriters and KPMG, as well as non-parties such as the regulators and third party lending consultants. The prosecution of this Action against all Defendants on multiple fronts was further complicated because the conduct at issue took place during the Great Recession and its aftermath. This required the retention of several expert witnesses and consultants. Lead Counsel further knew that the army of highly skilled and well-respected defense counsel would hire preeminent experts in their fields, and it was therefore in the Class's best interests to respond in kind. Given these facts, Lead Counsel believe that the experts and consultants Lead Plaintiffs retained were both reasonable and necessary. Unlike defense counsel, however, Lead Counsel undertook this case on a contingency basis, fronted all payments to the experts, and assumed all of the risk that they might not compensated if they did not secure a judgment or reach a settlement.

116. Lead Counsel took several steps to ensure that their experts and consultants were working efficiently and without duplication of efforts. Lead Counsel closely monitored the experts' work progress and regularly reviewed their invoices to ensure that work was being done efficiently and delegated appropriately among the experts' team, much like how legal work is divided between junior attorneys, senior attorneys, and professional support staff.

117. Lead Counsel performed a first pass review and analysis of all categories of documents and documents requested by the experts, to avoid having the expert's staff charge for this work. Relatedly, Lead Counsel were often able to pull publicly available documents that the experts needed (such as regulatory filings or analyst reports) to avoid the time and expense of having the expert's team pull them. Because multiple experts would sometimes need to review

the same documents, this allowed Lead Counsel to leverage the cost-saving efficiencies by searching for or reviewing a document once, rather than having each expert do it separately.

118. Lead Counsel also set up regular, periodic calls with their experts and their teams. These calls would serve to ensure that the experts were on track and focused on deliverables and work product. The calls also served as a centralized way for Lead Counsel and the experts to jointly resolve any questions or outstanding issues as they arose. To further conserve resources, many of the calls dealing with regular, customary matters were handled by the experts' staff (billing at lower hourly rates).

119. Lead Plaintiffs and Lead Counsel worked with the following experts and consultants during the prosecution of this Action:

1. Professor S.P. Kothari

120. Lead Plaintiffs retained Prof. S.P. Kothari as their testifying expert in the fields of market efficiency, causation, and damages. Prof. Kothari is the Gordon Y Billard Professor of Accounting and Finance at the MIT Sloan School of Business, has been an editor of the *Journal of Accounting and Economics* for 17 years, and has published dozens of peer reviewed articles during his career. Both BLB&G and Saxena White have retained Prof. Kothari and his team on several prior and ongoing securities fraud litigations. Knowing that his analysis would involve many complex issues, Lead Plaintiffs retained Prof. Kothari because of their prior experience with him and his sterling reputation and standing within the academic community. Further, Lead Counsel was able to use their strong relationship with Prof. Kothari to maximize efficiencies and avoid any duplication of efforts between Prof. Kothari, other experts, and Lead Counsel.

121. At the time that the Settlements were reached, Prof. Kothari had (i) submitted his initial expert report with Lead Plaintiffs' class certification motion on September 12, 2014 (D.I. 261-3), (ii) been deposed on November 11, 2014, in New York; (iii) submitted a supplemental

expert report in support of Lead Plaintiffs' class certification motion on January 23, 2015 (D.I. 362); (iv) completed a substantial amount of work towards finishing an expert report on damages and causation that Lead Plaintiffs would have submitted had the Settlements not been reached; and (v) consulted with Lead Counsel during the course of deposition discovery.

122. Lead Plaintiffs retained Prof. Kothari in connection with class certification proceedings to establish the existence of an efficient market and thereby invoke the fraud on the market presumption to satisfy the predominance element of Fed. R. Civ. P. 23(b). Professor Kothari's initial report, deposition, and supplemental report concerning market efficiency were integral to Lead Plaintiffs' successful class certification motion.

123. Lead Plaintiffs also retained Prof. Kothari as their damages and causation expert. Establishing damages in a securities fraud class action is always fraught with risk, even if a jury were to accept Professor Kothari's analysis. *In re BankAtlantic Bancorp, Inc.*, 2011 WL 1585605, at *17-19 (S.D. Fla. Apr. 25, 2011) (reversing jury verdict in favor of plaintiff class and granting judgment as a matter of law to defendants on the basis of "incomplete" testimony by plaintiff's expert). In this regard, Prof. Kothari did a significant amount of work and prepared numerous drafts of his anticipated report by the time the Parties agreed to settle, which occurred weeks before expert reports were to be exchanged.

124. As part of his damages and causation analysis, Prof. Kothari analyzed the numerous false statements over the nearly three-year long class period, the corrective disclosures, and ascertained which Class Period events caused inflationary movement in the Bank's share price and the amount of inflation introduced or removed throughout the Class Period. Prof. Kothari also identified and disaggregated movement in the Bank's share price caused by disclosures relating to Lead Plaintiffs' allegations of fraud from share price

movements caused by unrelated company or industry news. Disaggregation was especially important in this action because Defendants were likely to argue that a significant portion of the losses in Wilmington Trust securities was due to the Great Recession rather than Defendants' own fraudulent conduct. A significant challenge addressed by Prof. Kothari was linking Lead Plaintiffs' allegations of underwriting and asset review violations, inadequate ALLL, and grossly understated past due loans to Wilmington Trust's actual announcements made on each of the corrective disclosure dates. For example, the Bank did not ever specifically correct the amount of Wilmington Trust's past due loans or admit that their underwriting and asset review practices were deficient, and instead made more general announcements about increased ALLL and Defendant Cecala's resignation, among other things. Prof. Kothari also needed to demonstrate that the Bank's ALLL was misstated throughout the entire Class Period and that the increases at the end of the Class Period were not timely (a defense raised throughout the litigation), but were belated increases that should have been taken months and years earlier.

125. Also, Defendants made the argument in the Criminal Action—and Lead Counsel expected them to make a similar argument here—that the final November 1, 2010 disclosure did not reveal the falsity of the Bank' statements concerning underwriting, asset review or past due loans. As a result, Prof. Kothari analyzed evidence from documents, deposition testimony, and other expert analysis by the experts retained by Lead Plaintiffs in order to link the misstated past due loans and underwriting and asset review deficiencies to the corrective disclosures in this Action. Prof. Kothari was able to do this by demonstrating that the failure to accurately record loans as past due led to inflated risk ratings that, in turn, resulted in materially understated ALLL.

126. Prof. Kothari worked with Lead Counsel on implementing his event study and the damages per share calculated in connection with his unsubmitted expert report for use in the Plan of Allocation. Prof. Kothari was asked by Lead Counsel to develop an estimate of the per share damages throughout the Class Period. Based on the factual evidence provided to Prof. Kothari by Lead Counsel and his understanding of the legal theories of the alleged securities laws violations, Prof. Kothari conducted an analysis of the economic evidence in this case to measure the aggregate per share damages that security holders suffered due to the alleged material misrepresentations that defendants made throughout the Class Period. *See* Ex. A at ¶¶7-10.

127. Considering these challenges and risks, and taken together with the likely recovery in this case, Lead Counsel determined that Prof. Kothari's $1,100 hourly rate was reasonable, necessary, and in-line with other experts of his caliber and stature.[5] The rates of Prof. Kothari's support team (which includes two MIT Sloan School Professors and ranges from $150 to $900 per hour), were also reasonable and in proportion to their level of expertise. Lead Counsel chose to take on the risk that absent a settlement or judgment, they might not be reimbursed for the significant amount of fees payable to Prof. Kothari and his team.

2. Chad W. Coffman

128. Lead Plaintiffs retained Chad W. Coffman ("Coffman"), the founder and President of Global Economics Group, as a consulting expert in the fields of damages, causation, and market efficiency. Coffman has testified as an expert in these areas in several high-profile securities fraud cases, including *In re Bank of Am. Corp. Sec., Deriv. & ERISA Litig.*, No. 08-

[5] For example, Saxena White previously retained Prof. Kothari as an expert in *City Pension Fund for Firefighters and Police Officers in the City of Miami Beach v. Aracruz Celulose S.A.*, No. 08-cv-23317 (S.D. Fla.) At that time (in 2012), Defendants' opposing expert, Prof. Robert Glenn Hubbard of the Graduate School of Business at Columbia University charged $1,200 per hour—above Prof. Kothari's hourly rate here. Ex. H at p. 5.

md-2058 (S.D.N.Y.) ($2.4 billion settlement) and *In re Schering-Plough Corp./Enhance Sec. Litig.*, No. 08-cv-397 (D.N.J.) ($473 million settlement). Both BLB&G and Saxena White have retained Coffman and Global Economics on several prior and ongoing securities fraud litigations. As such, Lead Counsel were highly familiar with Coffman's work and used their relationship to maximize efficiencies and avoid any duplication of efforts between Coffman, other experts, and Lead Counsel.

129. Lead Plaintiffs retained Coffman in the early stages of this Action, during Lead Counsel's investigation into the CAC, and subsequent amended complaints, including the FAC. At that time, Coffman analyzed the Bank's share price movement to identify inflationary events and corrective disclosure dates. Based on Coffman's analysis, Lead Plaintiffs were able to confirm the proper start date for the Class Period, and the appropriate corrective disclosure dates to plead in the complaint.[6]

130. Coffman also prepared a detailed damages analysis in advance of June 2012 mediation.

131. While Plaintiffs retained Prof. Kothari as the testifying expert in this Action, Lead Counsel determined that Coffman's valuable years of knowledge of the case allowed him and his team at Global Economics to provide valuable feedback concerning the highly complex issues relating to market efficiency, damages, and causation arising in this case. For example, Lead Counsel utilized Coffman as a mock defense expert to anticipate challenges that Defendants would likely make to Prof. Kothari's analyses, methodologies, and conclusions, and to ensure that Prof. Kothari's testimony would be admissible under *Daubert*. Coffman was also able to

[6] The initial complaints identified in ¶¶17-18, *supra*, alleged class periods with beginning dates ranging from April 18, 2008 to October 23, 2009. *See* D.I. 14 at 1.

translate Prof. Kothari's estimated damages per share into a classwide damages number to be used during the course of settlement negotiations in late 2017 and early 2018.

132. Finally, Lead Counsel worked with Coffman to devise the Plan of Allocation. As Lead Counsel have previously worked with Coffman on several plans of allocation that have been accepted by courts, Lead Counsel had confidence that Coffman would be efficient and effective. Here, Coffman devised the Plan of Allocation using the estimates calculated by Prof. Kothari of the artificial inflation present in each share of Wilmington Trust throughout the Class Period. With these estimates, Coffman formulated the Plan of Allocation to treat Class Members who purchased and sold Wilmington Trust common stock at different times within the Class Period in an equitable manner consistent with recoverable losses under the federal securities laws, by capturing the artificial inflation in the purchase price minus the artificial inflation present in the sale price. Based on his work on this case and his prior experience, Coffman opined that the Plan of Allocation is fair and reasonable in his accompanying declaration. *See* Ex. B at ¶18.

133. Based on their prior experience with Coffman, along with the challenges, risks, and likely recovery in this Action, Lead Counsel determined that Coffman's $575 hourly rate was reasonable, necessary, and less than other experts of his caliber and stature.[7] The rates of Coffman's support team at Global Economics – ranging from $175 to $450 per hour were also reasonable and in proportion to their level of expertise. Lead Counsel chose to take on the risk

[7] For example, in 2011 in the *Bank of Am.* litigation, (*see* ¶128, *supra*), in opposition to a report submitted by Coffman, the defendants submitted an expert report by Prof. Allen Ferrell, the Greenfield Professor of Securities Law at Harvard Law School. Prof. Ferrell's hourly rate at that time was $850. Ex. H at 57.

that absent a settlement or judgment, they might not be reimbursed for what they paid to Coffman.

3. Harris L. Devor, CPA

134. Lead Plaintiffs retained Harris L. Devor ("Devor") as their consulting and testifying expert in the areas of accounting, GAAP, and Generally Accepted Auditing Standards ("GAAS"). Devor is a Certified Public Accountant with nearly 40 years of experience, and is the Philadelphia Partner in charge of Forensic Accounting, Litigation, Support and Valuation Service at Friedman LLP. Devor has testified in several high-profile cases, including *Bank of America, In re Petrobras Sec. Litig.*, No. 14-cv-9662 (S.D.N.Y.), and *In re WorldCom Sec. Litig.*, No. 02-cv-3288 (S.D.N.Y.). Lead Counsel have retained Devor on several prior and ongoing securities fraud litigations. As such, Lead Counsel was highly familiar with Devor's work and used their relationship with Devor to maximize efficiencies and avoid any duplication of efforts between Devor, other experts, and Lead Counsel.

135. A significant portion of this Action centers on Defendants' improper accounting for Wilmington Trust's ALLL and KPMG's audit work thereon. Lead Counsel retained Devor during the course of their investigation leading up to the first amended complaint filed by Lead Plaintiffs in this Action. In particular, Lead Counsel worked with Devor on developing GAAP allegations concerning Wilmington Trust's ALLL, as well as Wilmington Trust's deferred tax asset and fair value disclosures concerning its loan portfolio.

136. Lead Counsel once again worked with Devor after the FAC was sustained, closely consulting with Devor and his team throughout document and deposition discovery. Devor provided crucial insight into GAAP to determine whether the Wilmington Trust's financial statements were properly prepared. This insight included an analysis of (i) the impact of improperly rated loans on the Bank's financial statements and ALLL calculations (which

involved working closely with Lead Plaintiffs' expert Michael Clabby), ¶¶140-43, infra); (ii) accounting issues implicated by the alleged Waiver Practice and Mass Extension, including the impact of the unreported past due loans on the ALLL; (iii) the impact of Wilmington Trust's underwriting violations, included the alleged misuse of the 10% Rule, interest reserves, and other forms of supplemental financing on the Bank's financial results; and (iv) whether the above and other violations led to a material understatement of the Bank's ALLL.

137. Devor and his team also provided Lead Counsel with crucial insight into whether KPMG's audits and audit methodology were consistent with GAAS and other applicable standards. This included an analysis of (i) KPMG's audit planning, staffing, and budgeting; (ii) KPMG's testing procedures (including loan sampling and identified deficiencies, significant deficiencies, and material weaknesses); and (iii) regulatory guidance and findings—including the MOU and the Federal Reserve's 2009 Examination Report.

138. At the time the Settlements were reached, Devor and his team had closely and extensively consulted with Lead Counsel on the topics listed above (and others)—including during numerous conference calls between various members of the Lead Counsel team and members of Devor's team, including an in-person, day-long meeting in New York between Lead Counsel, Devor, and his team. Throughout discovery, Devor and his team provided valuable assistance to Lead Counsel. For example, Devor and his team assisted Lead Counsel in preparing for depositions, both in 2014 prior to the first stay on discovery imposed in this case, and again in 2017, after the stay was lifted. Devor and his team worked closely with Lead Counsel in preparation for the highly complex and technical depositions of KPMG witnesses and Wilmington Trust witnesses who were involved in accounting for the Bank's ALLL. At Lead Counsel's request, members of Devor's team (who billed at substantially lower rates than Devor)

attended several depositions that particularly related to auditing issues, including the depositions of certain KPMG audit personnel. In addition, Devor and his team had completed a substantial amount of work towards finishing a lengthy and detailed expert report concerning the Bank's and KPMG's violations of the securities laws that Lead Plaintiffs would have submitted had the Settlements not been reached.

139. Based on their prior experience with Devor, along with the challenges, risks, and likely recovery in this Action, Lead Counsel determined that Devor's hourly rate of $650 was reasonable, necessary, and in line with other experts of his caliber and stature.[8] The rates of Devor's support team—ranging from $195 to $415 per hour were also reasonable and in proportion to their level of expertise. Lead Counsel chose to take on the risk that absent a settlement or judgment, they might not be reimbursed for what they paid to Devor.

4. Michael J. Clabby

140. Lead Plaintiffs retained Michael J. Clabby ("Clabby") as their testifying expert in the areas of loan underwriting, asset review, and risk ratings. Clabby is a commercial banker with over 35 years of active lending experience that includes active commercial and commercial real estate lending, extensive portfolio management, credit and problem loan work-out, and corporate governance and compliance, in all areas of lending. Clabby's lending background encompasses the credit administration of large commercial and industrial, commercial real estate, asset-backed and personal/private banking loan portfolios, including large scale land acquisition/development loans, development/construction projects, and master-planned communities. Clabby also has extensive experience in both large and small banks in commercial

[8] For example, the hourly rate defendants' accounting experts in the *Petrobras* litigation (in which Devor testified on behalf of the plaintiffs) was $655 in 2013. Ex. H at 127, 131.

real estate loan underwriting standards and approvals, the creation of and implementation of credit policy, regulatory compliance as well as a broad understanding of banking industry lending standards and practices. In his role as an expert witness, Clabby has testified in high-profile cases, including for the Government in *FDIC v. Van Dellen*, No. 10-cv-4915 (C.D. Cal.), arising from the IndyMac bank collapse.

141. Lead Counsel retained Clabby to provide crucial insight into the Bank's commercial real estate loan underwriting and asset review practices that form a core portion of Lead Plaintiffs' claims and relate directly to the understated ALLL. If his report had been submitted, Clabby would have demonstrated how the Bank's fraudulent underwriting and asset review practices were part of the alleged widespread pattern of fraudulent conduct and how Defendants misrepresented the nature of those practices to investors. As part of this process, Clabby analyzed: (i) the Bank's written underwriting and asset review practices; (ii) conflicts of interest between lenders and customers within the Bank's loan underwriting department; (iii) the existence of Wilmington Trust's waiver practice and Mass Extension and its impact on the Bank's asset review and risk rating practices; (iv) systematic deficiencies in the Bank's loan files that prevented the Bank from properly underwriting and reviewing commercial real estate loans; (v) abuses of non-standard practices such as the 10% Rule, which resulted in incorrect LTV ratios; (vi) illicit uses of interest reserves and other forms of supplemental financing extended to struggling borrowers in order to keep loans current for interest; and (vii) improperly risk rated loans and the improper delay in risk rating downgrades.

142. In addition to his analysis and expert opinions on the above topics, which were all part of a draft report prepared by Clabby, Lead Counsel requested that Clabby review and re-rate, if necessary, the Bank's loan risk ratings for selected loans as of year-end 2007, 2008 and

2009. The loans assigned for review related to five major Wilmington Trust borrower relationships (a "relationship" being a group of loans related to certain common principals, makers, co-makers and/or guarantors or as that term is used in commercial banking). As part of the process to re-risk rate the loans, Clabby and Lead Counsel worked together to rebuild certain significant borrower loan files for the entire life of loan relationship, including origination and tax returns. In total, Clabby and his team (comprised in large part of former regulators with extensive experience in assigning risk ratings to loans) reviewed over 300 loans and re-rated each of those loans up to three times as of year-end 2007, 2008 and 2009. The results of Clabby's risk ratings analysis were a crucial component not only of Clabby's assessment of Wilmington Trust's asset review practices and procedures, but were used by accounting expert Devor in assessing whether the Bank's inflated risk ratings led to a material and fraudulent understatement of the ALLL, and by damages and loss causation expert Prof. Kothari in assessing whether the decline in share prices was due to revelations concerning Defendants' fraudulent misrepresentations.

143. Based on their review of Clabby's prior expert engagements, credentials, and several interviews conducted by Lead Counsel, Lead Counsel determined that Clabby's hourly rate of $600 was reasonable and necessary.[9] The rates of Clabby's support team—ranging from $385 to $500 per hour were also reasonable and in proportion to their level of expertise. After he

[9] Clabby's hourly rate is in line with that of Devor's (whose analysis built on Clabby's work), and lower than several other of Lead Plaintiffs' experts. Of note, Lead Counsel identified several other potential experts before retaining Clabby. Additionally, Lead Counsel determined that Clabby's hourly rate of $600 was reasonable, necessary, and in line with other experts of his caliber and stature. For example, the hourly rate of plaintiffs' mortgage loan underwriting expert in the *IndyMac* litigation was $825 for its principals in 2013. Ex. H at 339-340.

was retained, Lead Counsel worked with Clabby and his team to ensure that all work was performed efficiently and without duplication.

5. James Miller

144. Lead Plaintiffs retained James Miller as their testifying rebuttal expert on the topic of investment banking and due diligence in connection with the February 2010 Offering. Miller is a seasoned Wall Street investment banker with considerable experience in equity offerings. He has worked as a senior equity capital markets investment banker at Merrill Lynch, the head of U.S. Equity Capital Markets at Deutsche Bank Securities, Co-Head of U.S. Equity Capital Markets at Lehman Brothers, and Global Co-Head of Equity Capital Markets at Dresdner Kleinwort Wasserstein. Miller has previously testified in high-profile cases such as *In re MF Global Holdings Ltd. Sec. Litig.*, No. 11-cv-7866 (S.D.N.Y.), *In re Lehman Bros. Equity/Debt Sec. Litig.*, No. 08-cv-5523 (S.D.N.Y.), and *WorldCom.*

145. At the time the Settlements were reached, Miller had closely consulted with Lead Counsel regarding events surrounding the Offering. Miller performed a thorough analysis of targeted documentary and testimonial evidence related to the Offering to form his opinion, and based on his extensive experience, laid out anticipated areas and topics that the Underwriter Defendants' expert would likely have addressed. Lead Counsel would have submitted an expert report authored by Miller to rebut the Underwriter Defendants' affirmative due diligence defense.

146. Lead Counsel has worked with Miller on prior securities fraud cases and enjoy an excellent working relationship with him. Based on their prior experience with Miller, along with the challenges, risks, and likely recovery in this Action, Lead Counsel determined that Miller's

hourly rate of $975 hourly rate was reasonable, necessary, and in line with other experts of his caliber and stature.[10]

6. Dr. Charles D. Cowan, Ph.D

147. Lead Plaintiffs retained Dr. Charles D. Cowan to perform a statistical analysis on Wilmington Trust's commercial loan portfolio in order to assist Plaintiffs in determining a statistically relevant sample of loans to review for the purposes of this litigation. Dr. Cowan is the Chief Executive Officer and Co-Managing Member of Analytic Focus, LLC, a firm that specializes in financial, economic, demographic, and statistical research. Dr. Cowan, a nationally recognized expert in statistical applications and economic investigations, has over 40 years of experience in statistical research and design applied to issues in finance and economics. Dr. Cowan has been retained as an expert witness and consultant in connection with litigation involving statistical sampling. For example, he was retained as a sampling expert in *MBIA v. Countrywide,* No. 602825/08 (Sup. Ct. N.Y. Cty.). a case that involved allegations of material misrepresentations and omissions regarding loan characteristics similar to the allegations in this Action.

148. In order to quantify the amount by which the ALLL was understated, Lead Plaintiffs needed to re-rate a subset of commercial real estate loans originated before and during the Class Period. Cowan would have reviewed the new risk ratings determined by Clabby for the selected loans in question, and then applied a statistical analysis to determine the number of other loans that should have been re-rated based on similar criteria. Lead Plaintiffs engaged Cowan to increase cost savings and efficiency in the expert discovery process; his statistical

[10] Of note, Miller's hourly rate is lower than that of that of Kothari's, another financial expert, and his rates were approved in *MF Global*, *Lehman*, and *WorldCom* discussed above.

analysis would have supplanted hundreds or thousands of additional hours of time for Clabby and his team reviewing and re-rating additional loans in Wilmington Trust's portfolio.

149. Lead Counsel retained Cowan based on Lead Counsel's extensive interviews with him and other potential experts. Based on these own interviews, along with the challenges, risks, and likely recovery in this Action, Lead Counsel determined that Cowan's hourly rate of $695 was reasonable, necessary, and in line with other experts of his caliber and stature.[11] The rates of Dr. Cowan's support team – ranging from $150 to $550 per hour were also reasonable and in proportion to their level of expertise.

7. Patrick Rohan

150. Lead Plaintiffs consulted with Patrick Rohan, who would have been their testifying expert in the areas of banking rules, regulations, and standards, and issues related to regulatory examinations, findings, and enforcement. Rohan is a respected expert with significant experience in bank examination and supervision. He worked at the FDIC for 32 years, during which time he was promoted to Regional Director for a six-state region in the Northeast. In that capacity, Rohan was responsible for all aspects of financial examination activities and supervised a staff of over 300 people. He has testified as an expert in several significant cases, including *VIP Mortg. Corp. v. TD Bank N.A.*, No. 08-cv-10562 (D. Mass.) and *Everbank v. Lefta Enterprises LLC*, No. CACE-09-050156 (Fla. Cir.). Lead Counsel consulted with Rohan to provide crucial insight into issues related to the regulators' examinations of Wilmington Trust and the Federal Reserve's 2009 imposition of the MOU. While the Settlements were achieved

[11] Cowan's hourly rate is in line with Clabby's (upon whose work he would have based his analysis), and less than other of Lead Plaintiffs' experts. Lead Counsel were also able to negotiate terms to Cowan's retainer that were advantageous to the Class.

before Lead Plaintiffs formally retained Rohan, Lead Counsel would have submitted his expert report had litigation continued.

8. Colliers/Kidder Matthews

151. Lead Plaintiffs consulted with experts from Kidder Matthews (and formerly with Colliers International) on issues relating to historical real estate appraisals. The Kidder Matthews team are respected experts with significant experience in commercial real estate valuation and advisory services. For example, Robert Dietrich and Derrick Sinclair, currently vice presidents at Kidder Matthews, have a collective 70 years of expertise in the appraisal industry, and have been designated as experts in real estate valuation issues in court, testifying in that capacity on more than 70 occasions. Lead Counsel retained the Kidder Matthews team based on Lead Counsel's extensive interviews with them and other potential experts. Based on these interviews, along with the challenges, risks, and likely recovery in this Action, Lead Counsel determined that their hourly rate of $400-$500 was reasonable, necessary, and in line with other experts of their caliber and stature.[12]

152. The Kidder Matthews team provided information relating to Wilmington Trust's appraisal practices, and how those practices compared to industry standard practices. In addition, Lead Counsel consulted with the Kidder Matthews team during the discovery phase of the Action in order to understand Wilmington Trust's appraisal policies and to craft questions to be used in depositions that addressed the Bank's grossly deficient appraisal practices and policies.

[12] Their hourly rates are lower than other of Lead Plaintiffs' experts. Lead Counsel were also able to negotiate terms to the Kidder Matthews retainer that were advantageous to the Class.

9. Other Consulting Experts

153. Lead Plaintiffs retained additional consulting experts during the early stages of the litigation to assist with drafting the complaints and opposing the multiple motions to dismiss. These consulting experts include:

(a) Sharon Fierstein. Lead Counsel consulted with Fierstein on certain discrete accounting issues with respect to the earlier complaints and the FAC related to the calculation of Wilmington Trust's allegedly misstated ALLL. Fierstein is a CPA who has testified as an expert witness in securities fraud cases against Fannie Mae and Washington Mutual. Lead Counsel has worked with Fierstein in previous securities fraud class actions. Based on their prior experience with Fierstein, along with the challenges, risks, and likely recovery in this Action, Lead Counsel determined that her hourly rate of $400 was reasonable, necessary, and in line with other experts of her caliber and stature.

(b) John Finnerty, Ph.D. Lead Counsel consulted with Dr. Finnerty on certain limited causation and damages issues with respect to the Amended Complaint. Finnerty is the founder of Finnerty Economic Consulting, a Professor of Finance and Fordham University's Gabelli School of Business, and has published 15 books and over 100 articles and peer-reviewed papers. Dr. Finnerty has testified on behalf of both plaintiffs and defendants, and Lead Counsel has worked with him in previous securities fraud class actions. Based on their prior experience with Finnerty, along with the challenges, risks, and likely recovery in this Action, Lead Counsel determined that his hourly rate of $695 was reasonable, necessary, and in line with other experts of his caliber and stature.

(c) Peter Nigro and Carey Collins. Lead Counsel consulted with Profs. Nigro and Collins on issues relating to trends and developments in the commercial real estate industry and, in particular, the Delaware commercial real estate industry, in connection

with their investigation into the allegations in the FAC and earlier complaints. Prof. Nigro is the Sarkisian Chair in Financial Services at Bryant University and Prof. Collins is an Associate Professor of Finance and Bryant University; they have worked as expert witnesses in securities fraud cases against major banks such as Washington Mutual. Lead Counsel has worked with Profs. Nigro and Collins in previous securities fraud class actions, and based on their prior experience, along with the challenges, risks, and likely recovery in this Action, Lead Counsel determined that the Professors' hourly rates of $450 per hour reasonable, necessary, and in line with other experts of their caliber and stature.

VII. SUMMARY JUDGMENT

154. Under the April 27, 2017 Joint Stipulation to Extend Discovery Dates (D.I. 645), the deadline for parties to file summary judgment motions was to be January 31, 2018. Accordingly, Lead Plaintiffs ended fact discovery in August 2017 and soon began preparing for the summary judgment stage of the litigation. Lead Plaintiffs and Lead Counsel would have been prepared to file a summary judgment motion based on, at the very least, the waiver practice and past due loan fraud on that date. Lead Plaintiffs and Lead Counsel believed that a partial summary judgment verdict in advance of trial would strengthen their position and move the Class forward expeditiously to their day in court. Indeed, Lead Counsel had prepared a draft of a motion for summary judgment and an extensive draft statement of undisputed facts to be used in connection with this motion. Given the significant amount of work completed by the end of 2017, Lead Plaintiffs proposed to Defendants that the deadline for summary judgment motions should be moved up to December 15, 2017. Defendants opposed this schedule.

155. Lead Plaintiffs and Lead Counsel were also prepared to respond to the intensive summary judgment motions that they expected Defendants to file. Email exchanges with

Defendants' counsel in late November and early December 2017 indicated that, at that time, Defendants intended to collectively file 450 pages of opening summary judgment briefs ***and*** 450 pages in opposition to Lead Plaintiffs' summary judgment briefing.

156. On December 18, 2017, the Court entered an Order extending the deadline to file summary judgment motions to August 31, 2018. D.I. 805. Lead Counsel continued to prepare for summary judgment until the Parties agreed to settle the Action.

VIII. THE CRIMINAL TRIAL AGAINST WILMINGTON TRUST AND CERTAIN INDIVIDUAL DEFENDANTS

157. On May 6, 2015, while discovery in this Action was stayed, the United States Attorney's Office for the District of Delaware ("USAO") unsealed an Indictment, styled *United States v. North, et al.*, No. 15-cr-23 (D. Del.) (the "Criminal Action") asserting four counts of criminal conduct against North and Rakowski arising from their actions at the Bank. Three months later, on August 5, 2015, the U.S. Attorney unsealed a Superseding Indictment, restyled *United States v. Gibson, et al.*, which added allegations of criminal conduct against Gibson and Harra, and which also expanded the scope of the charged conduct to 19 counts. On January 6, 2016, a Second Superseding Indictment was unsealed, again restyled *United States v. Wilmington Trust, et al*. This indictment named Wilmington Trust itself as a criminal defendant. Finally, on August 2, 2016, a federal grand jury returned a 19-count Third Superseding Indictment charging Wilmington Trust, Gibson, Harra, North, and Rakowski with an overarching conspiracy offense, as well as additional fraud, false statements, and false entries offenses.

158. Jury selection for the Criminal Trial began in early October 2017. The trial was set to begin on October 10, 2017. However, on the morning that opening statements were scheduled to begin, the USAO announced that it had reached a resolution with Wilmington Trust. Through that resolution, criminal charges against Wilmington Trust were dropped and the

USAO filed a Civil Forfeiture Complaint through which Wilmington Trust and the USAO agreed to a total settlement amount of $60,000,000, which credited Wilmington with its prior payment to the SEC in the amount of $16,000,000 and requires an additional forfeiture payment of $44,000,000. After the Wilmington Trust settlement was announced, the Criminal Trial for remaining defendants Gibson, Harra, North, and Rakowski was rescheduled to begin on March 12, 2018. Following 31 trial days, on May 3, 2018, a jury unanimously convicted Gibson, Harra, North, and Rakowski on all counts.

159. Notably, as the Court observed (and as Wilmington Trust's counsel conceded) at the July 2, 2018 Preliminary Approval Hearing, Lead Plaintiffs and Lead Counsel prosecuted this Action such that it "was pretty well underway" where "virtually all of the document discovery had been completed" by the time the Criminal Action was filed. Hr'g. Tr. 30:6-16.

160. Indeed, while this Action and the Criminal Action overlapped to a limited degree, this Action covers a far longer time span, names a larger number of defendants, and encompasses a significantly larger number of issues than the Government's case. For example, the Class Period in this Action begins in January 2008 and covers fraudulent conduct that occurred throughout 2007—nearly two years prior to the conduct charged in the Criminal Action. Moreover, throughout this significantly longer period, Lead Plaintiffs alleged a course of fraudulent conduct based not just on the Bank's practice of waiving past due loans that was the focus of the Government's case, but also principally on the Bank's materially understated ALLL, outdated appraisals, and illicit use of the 10% Rule and other forms of supplemental financing to inflate loan risk ratings and disguise the true health of the Bank's commercial loan portfolio. Much of the Criminal Trial was not relevant to these issues.

IX. SETTLEMENT DISCUSSIONS AND AGREEMENT

161. As mentioned above, the parties engaged in an unsuccessful formal mediation in June 2012. During active discovery in 2014 through 2016, the parties would occasionally and informally discuss resolution of the Class's claims, but the conversations were never substantive or fruitful. In late 2017, following Wilmington Trust's exit through civil settlement from the Criminal Action, the Plaintiffs and the Wilmington Trust Defendants began to engage in serious settlement discussions.

162. Over the course of several months, Plaintiffs and the Wilmington Trust Defendants participated in several meetings during which they engaged in substantive discussions of the merits of the case, the risks of litigation, and the amount of recoverable damages, in an effort to reach a resolution of the Class's claims. Following these extensive arm's-length negotiations over the course of several months, Lead Plaintiffs, the Wilmington Trust Defendants, M&T Bank, and the Underwriter Defendants reached an agreement in principle to settle the Class's claims for $200,000,000 in cash (the "Wilmington Trust Settlement"). This agreement was memorialized in a settlement Term Sheet executed on April 9, 2018. On May 15, 2018, the Wilmington Trust settling parties executed the Wilmington Trust Stipulation, which set forth the final terms and conditions of the Wilmington Trust Settlement.

163. Lead Plaintiffs and KPMG commenced settlement negotiations in April 2018. Lead Plaintiffs and KPMG participated in several meetings during which they engaged in substantive discussions of the merits of the case, the risks of litigation, and the amount of recoverable damages, in an effort to reach a resolution of the Class's claims. Following these extensive arm's-length negotiations, on May 21, 2018, Lead Plaintiffs and KPMG reached an agreement in principle to settle for $10,000,000 in cash. Lead Plaintiffs and KPMG executed the KPMG Stipulation on May 25, 2018.

X. PRELIMINARY APPROVAL

164. On May 25, 2018, Lead Plaintiffs filed their Unopposed Motion for (I) Preliminary Approval of Settlements and (II) Approval of Notice to the Class. D.I. 821.

165. The Parties appeared before the Court on July 2, 2018 for oral argument on Lead Plaintiffs' motion. Following oral argument, on July 10, 2018, the Court issued its Preliminary Approval Order, granting Lead Plaintiffs' motion and finding the settlements to be "fair, reasonable, and adequate to the Class subject to further consideration at the Settlement Fairness Hearing[.]" D.I. 825. The Court set the Settlement Fairness Hearing for Monday, November 5, 2018.

A. The Court's Request Concerning the Calculation of Maximum Damages

166. In its July 10, 2018 memorandum concerning Lead Plaintiffs' motion for Preliminary Approval, the Court requested that, "[a]s part of the preparation for the final fairness hearing, Counsel will submit an expert report regarding, inter alia, how they calculated the maximum damages that could have been recovered." D.I. 824 at 8 n. 7.

167. In response to the Court's request, Lead Plaintiffs attach hereto two declarations. The first declaration is from Professor S.P. Kothari, whom (as discussed further below) Lead Counsel retained as Lead Plaintiffs' testifying expert in the fields of market efficiency, causation, and damages. (¶¶120-27) Prof. Kothari's declaration explains how he applied an accepted technique known as an "event study" to calculate the amount of artificial inflation present in each share of Wilmington Trust stock throughout the Class Period based on an analysis of disclosures corrective of Defendants' alleged misrepresentations. Ex. A at ¶¶12-20.

168. The second declaration is from Chad Coffman, whom (as discussed further below) Lead Counsel retained as a consulting expert in the fields of damages, causation, and market efficiency, and to prepare the Plan of Allocation. (¶¶128-133) Mr. Coffman's declaration

explains that he applied the estimate of artificial inflation prepared by Mr. Kothari to trading models Mr. Coffman constructed to estimate the number of damaged shares during the Class Period. By doing so, Mr. Coffman found that there were aggregate damages of $590 million. Ex. B at ¶16. After reducing this amount by the $44 million forfeited by Wilmington Trust in connection with its settlement of the criminal charges against it, the maximum recoverable damages becomes $546 million. *Id.*

XI. THE SIGNIFICANT RISKS FACED BY LEAD PLAINTIFFS AND LEAD COUNSEL

169. As a result of the substantial discovery, legal research, and analysis conducted by Lead Counsel, Lead Plaintiffs and Lead Counsel had a thorough understanding of the strengths and weaknesses of the claims against the Defendants at the time the Settlements were reached. As summarized below, Lead Counsel assumed significant risk in prosecuting the Action on an entirely contingent basis. Indeed, the fact that the Court dismissed Plaintiffs' CAC in its entirety demonstrates the reality of the risk faced by Lead Counsel in prosecuting this Action. Even after Plaintiffs' subsequent Complaint survived Defendants' motions to dismiss, settlement was by no means inevitable, and certainly not at the high dollar amount—representing approximately one-third of recoverable damages—Lead Counsel ultimately achieved.

1. General Risks In Contingency Securities Class Actions

170. Data indicates that securities class actions as a group have become riskier in recent years, even just in the years since this Action was first initiated. For example, data from Cornerstone Research shows that, in each year between 2008 and 2017, a majority of the securities class actions filed were dismissed—and the percentage of dismissals was as high as

58% in 2013 and 54% in 2015.[13] Well-known economic consulting firm NERA found that, out of securities class actions in which a motion to dismiss was decided from January 2000 through December 2017, 45% were dismissed.[14]

171. Even when they have survived motions to dismiss, securities class actions are increasingly dismissed in connection with Daubert motions, or at summary judgement. Multiple securities class actions also recently have been dismissed at the summary judgment stage. *See, e.g.*, *In re Barclays Bank PLC Sec. Litig.*, No. 09-01989, (S.D.N.Y.) (summary judgment granted on September 13, 2017 after eight years of litigation); *Omnicom Grp., Inc. Sec. Litig.*, 541 F. Supp. 2d 546, 554-55 (S.D.N.Y. 2008), *aff'd* 597 F.3d 501 (2d Cir. 2010) (summary judgment granted after six years of litigation and millions of dollars spent by plaintiffs' counsel); *see also In re Xerox Corp. Sec. Litig.*, 935 F. Supp. 2d 448, 496 (D. Conn. 2013), *aff'd* 766 F.3d 172 (2d Cir. 2014). Further, cases are frequently dismissed prior to trial in connection with *Daubert* motions. *See, e.g., Bricklayers and Trowel Trades Int'l Pension Fund v. Credit Suisse First Boston*, 853 F. Supp. 2d 181 (D. Mass. 2012), *aff'd* 752 F.752 F2d 82 (1st Cir. 2014) (granting summary judgment *sua sponte* in favor of defendants after finding that plaintiffs' expert was unreliable).

172. Even when securities class action plaintiffs are successful in getting a class certified, have prevailed at summary judgment, overcome *Daubert* motions, and have gone to trial, there are still very real risks that there will be no recovery or substantially less recovery for class members. For example, in *In re BankAtlantic Bancorp, Inc.* (S.D. Fla. 2010), a jury rendered a verdict in plaintiffs' favor on liability in 2010. In 2011, the district court granted

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[13] *See* Cornerstone Research, *Securities Class Action Filings, 2017 Year In Review* (2018) at 15.

[14] *See* Stefan Boettrich and Svetlana Starykh, "Recent Trends in Securities Class Action Litigation: 2017 Full-Year Review" (NERA 2018 at p. 19, Figure 14).

defendants' motion for judgment as a matter of law and entered judgment in favor of the defendants on all claims. 2011 WL 1585605 (S.D. Fla. Apr. 25, 2011). In 2012, the Eleventh Circuit affirmed the district court's ruling, finding that there was insufficient evidence to support a finding of loss causation. *In re BankAtlantic Bancorp, Inc.*, 688 F.3d 713 (11th Cir. 2012).

173. In sum, Lead Counsel respectfully submit that securities class actions face serious risks of dismissal and non-recovery at all stages of litigation, and this Action is no different.

2. Specific Risks In Prosecuting The Action

174. Facts specific to this Action created particularly significant risks that created the very real possibility that, even after nearly a decade protracted litigation, Lead Plaintiff and the Settlement Class could achieve no recovery at all, or a significantly lesser recovery than the Settlement Amount. Some of the most meaningful of these risks are discussed below.

a. The Difficulty Of Proving Defendants' Liability.

175. While Plaintiffs and Lead Counsel believe that they advanced strong claims on the merits, Defendants vigorously contested their liability throughout the litigation, and there was a substantial risk that the Court or a jury would find that Plaintiffs failed to establish liability.

176. For example, Plaintiffs' core allegations relating to Wilmington Trust's understated ALLL were, and would continue to be, the subject of strong challenges by Defendants. Indeed, as Defendants repeatedly argued, there was no restatement of Wilmington Trust's financial statements—including its reserve—and its auditor signed off on the Bank's ALLL throughout the Class Period. As such, the complicated, technical, and judgment-driven nature of the accounting standards at issue governing the setting of the Bank's ALLL could prevent a finding of objective falsity. Thus, the Parties' respective positions are based on fundamental disagreements about highly technical and judgment-driven accounting standards, and the resolution would turn on dueling testimony offered by experts—issues which courts

observe are particularly difficult for plaintiffs to litigate. *See, e.g.*, *Harris v. AmTrust Fin. Servs., Inc.*, 135 F. Supp. 3d 155, 162 n.9 (S.D.N.Y. 2015), *aff'd*, 649 F. App'x 7 (2d Cir. 2016) ("Financial accounting is not a science. It addresses many questions as to which the answers are uncertain and is a 'process [that] involves continuous judgments and estimates.'"); *In re Telik, Inc. Sec. Litig.*, 576 F. Supp. 2d 570, 579-80 (S.D.N.Y. 2008) (in a "battle of experts, it is virtually impossible to predict with any certainty which testimony would be credited").

177. As another example, Plaintiffs would have to establish the element of scienter—*i.e.*, that Defendants acted intentionally or recklessly misled Wilmington Trust investors. Even a jury finding of gross negligence by Defendants would be insufficient to support Plaintiffs' fraud-based claims under the Exchange Act. Here, Defendants had made compelling arguments that they had no intent to mislead investors because Defendants believed the practices at issue were known of (and implicitly condoned by) the Bank's regulators and auditors.

178. The eventual (and at the time of Settlement, uncertain) guilty verdict in the Criminal Action did not substantially eliminate any of the above risks relating to Defendants' liability. Lead Plaintiffs still needed to prove the elements of falsity, materiality, scienter and, as discussed below, damages, for each category of false statements for a Class Period that exceeded the time period covered by the Criminal Action by two years and for Defendants that included not only the Criminal Defendants, but the Bank, other individuals, and KPMG.

b. Risks In Proving And Collecting Damages

179. Even assuming that Plaintiffs would successfully overcome the above risks and established liability, Plaintiffs faced serious risks in proving and collecting damages.

180. First, while Plaintiffs' damages expert estimated that the Settlement Class suffered approximately $590 million in recoverable damages, that amount would be offset by the money recovered by the Government on behalf of investors. In order to prove damages,

Plaintiffs bear the burden of establishing "loss causation," *i.e.*, that Defendants' false and misleading statements caused their alleged loss. To establish loss causation, plaintiffs must demonstrate a sufficient connection between the alleged fraudulent conduct and the losses suffered. Plaintiffs attempted to meet this burden through their allegations that Defendants' fraud was gradually revealed to the investing public through a series of partial corrective disclosures principally occurring during 2010.

181. In response, however, Defendants would have made credible arguments that Plaintiffs could not establish (either in whole or in part) that their losses were attributable to the revelation of the Bank's fraud. Instead, Defendants would have argued that much if not all of the decline in Wilmington Trust's stock price were collateral consequences of the ongoing global financial crisis, a broad macroeconomic event that wreaked particular havoc on the real estate lending industry—precisely the subject of many of Plaintiffs' allegations here. Indeed, Defendants would undoubtedly argue that many of the corrective disclosures alleged in the FAC—increases to the reserve—were timely, prudent, and necessary in light of economic circumstances at the time.

182. Moreover, Defendants would argue—as they had in the context of the Criminal Action—that the massive decline in the price of Wilmington Trust securities at the end of the Class Period related solely to the fire sale purchase of Wilmington Trust by M&T Bank at half the Bank's trading price, not any disclosure of alleged fraud.

183. These arguments posed a significant risk, because if Defendants had succeeded Plaintiffs could have established liability but nevertheless have been unable to establish that the Class was entitled to the full amount (or any) of its damages. Accordingly, to meet their burden on loss causation and overcome this argument, Plaintiffs had to engage multiple experts in a

variety of fields making clear the direct connection between the alleged corrective disclosures and disaggregating any confounding effects from the deteriorating economic conditions from the global financial crisis and other events. Further, because several of the alleged corrective disclosures related to the Bank's announcement of significant increases to its ALLL, Plaintiffs worked with sophisticated experts in different fields – including underwriting, accounting, and damages – to analyze Wilmington Trust's actual loan portfolio to establish that the Bank should have increased its ALLL months or years earlier than Defendants actually did. Only by doing so could Plaintiffs meet their burden of showing that the stock declines accompanying Wilmington Trust's announcements of those increases to its ALLL were in fact caused by Defendants' fraudulent understatement of their ALLL during the Class Period.

c. The Risk And Uncertainty Created By The Criminal Action

184. Even though the Government did not file the Criminal Action until years after Plaintiffs initiated this Action—and in fact did not even did not indict the Criminal Defendants until discovery had begun—the Criminal Action created considerable risk and uncertainty in prosecuting this Action.

185. The Wilmington Trust Settlement was agreed to shortly after the Criminal Trial commenced, and weeks prior to the delivery of the jury verdict against the Criminal Action Individual Defendants. Wilmington Trust and the Criminal Defendants had spent years and considerable resources building a credible defense that the Bank's past due practices were longstanding and known to its regulators and auditors, and therefore the Criminal Defendants had no intent to commit fraud. While a not-guilty jury verdict in the Criminal Action would not have been fatal to Plaintiffs' claims in this Action—due to, among other things, the higher standard of proof required in the Criminal Action, as well as the far broader conduct at issue in

this Action—the Defendants would have looked to gain every strategic advantage possible from such a verdict.

186. In addition, the prospect that the Defendants would pay a settlement or monetary judgment in connection with the Criminal Action – which eventually occurred in October 2017 when the Government settled with Wilmington Trust – created additional risk in prosecuting this Action, because that recovery in the Criminal Action would be offset against the Class's possible recovery here. This is because the applicable securities law precludes any recovery in excess of actual damages.

187. Finally, the guilty verdicts created risks with respect to recoverability from certain Defendants. The PSLRA requires a finder of fact to assign proportionate liability, and contains provisions for judgment reduction based on that proportionate liability. Even if Lead Plaintiffs and Lead Counsel were able to secure a verdict against the non-Wilmington Trust Defendants (such as KPMG), they faced a very real risk that a jury would significantly reduce the convicted defendants' liability in light of the criminal convictions.

3. Given The Risks Facing Lead Plaintiff And Lead Counsel, Settlement Was The Best Result For The Class

188. This Action, while highly meritorious, presented the real possibility that the class would be unable to obtain a meaningful recovery against Defendants. Moreover, the Class has already waited eight years for a recovery here. Even if Lead Plaintiffs had completely prevailed at trial on both liability and damages, post-verdict motions and appeals would have been almost inevitable, raising the risk of additional months (and likely years) of delay in finally resolving the class's claims. Settlement at this time, and for such a substantial percentage of the Class's recoverable damages, presented the best result for the Class. The Settlements provide a

substantial cash recovery for the benefit of the Settlement Class and eliminate the risks attendant to continued litigation against the Defendants.

XII. FEE AND EXPENSE APPLICATION

189. In addition to seeking final approval of the Settlement and Plan of Allocation, Lead Counsel are applying to the Court for an award of attorneys' fees of 28% of the combined Settlement Funds, or $58.8 million, plus interest earned at the same rate as the Settlement Fund (the "Fee Application"). As discussed below, the requested fee represents a multiplier of 0.74 on Lead Counsel's lodestar. Lead Counsel also request reimbursement of litigation expenses that they incurred in connection with the prosecution of this Action in the amount of $6,790,044.82. Lead Counsel further request reimbursement to Lead Plaintiffs of a total of $55,456.06 in costs and reimbursement of time that Lead Plaintiffs incurred directly related to their representation of the Class, in accordance with the PSLRA, 15 U.S.C. § 78u-4(a)(4). The legal authorities supporting the requested fees and expenses are discussed in Lead Counsel's Fee memorandum. The primary factual bases for the requested fee and expenses are set forth below.

A. The Requested Fee is Fair and Reasonable

1. Lead Plaintiffs Have Authorized and Support the Fee Application

190. Each of the five Lead Plaintiffs – sophisticated institutional investors of the type favored by Congress in passing the PSLRA – have evaluated Lead Counsel's Fee Application, as well as the Expense Application discussed in Section XII below, fully support it, believe it to be fair and reasonable, and warranting consideration and approval by the Court.[15] *See* Declaration

[15] In addition to their responsibilities as Lead Plaintiffs and certified Class Representatives under the PSLRA and Rule 23, as public pension funds, each of the Lead Plaintiffs has a duty and obligation to their respective constituents to ensure that they are acting in their best interests and that they are appropriately reviewing Co-Lead Counsel's Fee and Expense Application.

of Scott Myers on behalf of the Coral Springs Police Pension Fund (the "Myers Decl.") (attached as Ex. C-1), at ¶¶7-8; Declaration of George Mitchell on behalf of the Pompano Beach General Employees Retirement System (the "Mitchell Decl.") (attached as Ex. C-2), at ¶¶10-11; Declaration of Brett Ciskoski on behalf of the St. Petersburg Firefighters' Retirement System (the "Ciskoski Decl.") (attached as Ex. C-3), at ¶¶7-8; Declaration of Kristen Santos on behalf of the Merced County Employees' Retirement Association (the "Santos Decl.") (attached as Ex. C-4), at ¶¶7-8; Declaration of James Beno on behalf of the Automotive Industries Pension Trust Fund (the "Beno Decl.) (attached as Ex. C-5), at ¶¶7-8.

191. As a result, Lead Plaintiffs collectively endorse Lead Counsel's application for an award of attorneys' fees constituting 28% of the Settlement Fund net of Plaintiffs' Counsel's expenses, an amount in accordance with or below the amount set forth in each of Lead Plaintiffs' respective retainer agreements entered into by the Lead Plaintiffs and our respective firms at the outset of this Action. Under the retainer agreements, Lead Counsel agreed to undertake the litigation on an entirely contingent basis. Each of the retainer agreements sets forth a cap on the fee percentage that each Lead Plaintiff has authorized our respective firms to make, and each retainer agreement discloses that any fee award is subject to the Court's approval.

192. For purposes of determining an appropriate fee request, the lowest fee percentage among the retainer agreements that each of Lead Plaintiffs had negotiated with our respective firms would be utilized to calculate the percentage of attorneys' fees that Lead Counsel would be permitted to apply for. Based on these provisions, Lead Counsel are applying for a fee award of 28% of the Settlement Amounts.

2. The Significant Time and Labor Devoted to this Action by Lead Counsel

193. As detailed in Sections III-VI, *supra*, the work undertaken by Lead Counsel in investigating and prosecuting this Action to arrive at the present Settlements in the face of substantial risks has been time-consuming and challenging. At all times throughout the pendency of this Action, Lead Counsel's efforts were driven and focused on advancing the litigation to bring about the most successful outcome for the Class, whether through settlement or trial.

194. Attached as Exhibits D-1, D-2, and D-3, respectively, are the Declarations of Hannah Ross, on behalf of BLB&G; Joseph E. White, III on behalf of Saxena White; and Robert J. Kriner, Jr., on behalf of Chimicles, in support of Counsel's motion for an award of attorneys' fees and reimbursement of litigation expenses (the "Fee and Expense Declarations"). The Fee and Expense Declarations include schedules summarizing the lodestar of each firm and the expenses incurred by each firm, broken out by category.

195. Plaintiffs' Counsel have expended a total of 195,075.13 hours in the investigation, prosecution, and resolution of this Action.[16] The resulting lodestar is $79,976,223.50, resulting in a blended hourly rate for Plaintiffs' Counsel of $409.97. Under the lodestar approach, the requested fee yields a substantial negative multiplier of 0.74. Moreover, this multiplier is far below the range of multipliers awarded in actions where similar settlements have been achieved.

[16] No time spent in preparing the application for the Fee Application is included. Lead Counsel will continue to perform legal work on behalf of the Class should the Court approve the proposed Settlement. Additional resources will be expended assisting Class Members with their Proof of Claim Forms and related inquiries and working with the Claims Administrator to ensure the smooth progression of claims processing.

See Fee Brief at 15. Appendix A to this declaration sets forth a breakdown and description of the work performed by Plaintiffs' Counsel.

196. As demonstrated by the Firm Resumes of Saxena White and BLB&G (attached to their respective Fee and Expense Declarations), Lead Counsel are experienced and skilled practitioners in the area of securities fraud class actions, and each firm has a long and distinguished track record of success. Lead Counsel worked diligently and efficiently while prosecuting this Action together, avoiding duplication of effort throughout the course of the litigation. At the outset of the Action, Saxena White and BLB&G entered into a Joint Prosecution Agreement to ensure that the Class's claims would be vigorously and efficiently prosecuted without unnecessary delay or duplication of work.

3. The Preeminent Standing and Caliber of Defense Counsel

197. The quality of work performed by Lead Counsel in attaining the Settlements should also be evaluated in light of the quality of the opposition. Here, Defendants were represented by no less than 15 law firms, which included many of the nation's most elite firms and litigators. Defendants' counsel included: Skadden, Arps, Slate, Meagher & Flom LLP, Venable LLP, and Williams & Connolly LLP (who represented Wilmington Trust); Hogan Lovells US LLP (who represented KPMG); Pepper Hamilton LLP (who represented the Independent Director Defendants); Simpson Thacher & Bartlett LLP and Potter Anderson & Corroon LLP (who represented the Underwriter Defendants); Morgan, Lewis & Bockius LLP (who represented Cecala); Paul Hastings LLP and the Law Office of John S. Malik (who represented Gibson); McCarter & English, LLP and Andrew M Lawler, P.C. (who represented Harra); Wilks Lukoff & Bracegirdle, LLC (who represented North); and Krovatin Klingeman LLC and Dalton & Associates, P.A. (who represented Rakowski).

198. In addition to Defendants' counsel, Lead Counsel also faced off against the intervenor U.S. Attorney's Office when opposing the Government's multiple efforts to stay discovery and the significant advancement of this Action between 2014 and 2016. *See, supra*, ¶¶85-90. Moreover, Lead Counsel was in an adversarial position against the intervenor Federal Reserve, the Office of the Comptroller of the Currency, the Office of Thrift Supervision, the Delaware Office of the State Bank Commissioner, and the Pennsylvania Department of Banking and Securities, who lodged an ultimately unsuccessful two-year campaign against Lead Plaintiffs' efforts compel the production of documents purportedly subject to the bank examination privilege. *See, supra*, ¶¶66-72.

199. These firms and Government attorneys vigorously and aggressively litigated the action and spared no effort in the defense of their clients. In the fact of this experienced, formidable, and well-financed opposition, Lead Counsel was nonetheless able to efficiently develop a case that was sufficiently strong to persuade Defendants to settle on terms that are highly favorable to the Class.

4. The Unique Risks and Complexities of Litigating this Action

200. This Action presented novel procedural and substantive legal challenges from the outset. In particular, as described above, there were substantial risks to establishing liability and damages that were unique to this Action. ¶¶174-87, *supra*. For example, Lead Counsel had to continually contend with the Government's attempts to stay this Action, which impacted our ability to push the litigation forward. As discussed earlier, in and around October 2014, the Government intervened in this Action and moved for a stay of discovery, arguing that discovery in this Action might impact its ongoing criminal investigation. Consequentially, discovery in this Action was effectively stayed from October 2014 until December 2016, a delay of over two years that threatened Plaintiffs' ability to secure the evidence necessary to prove their

allegations. Even after the stay was lifted, prosecution of the Action was postponed once again after Wilmington Trust unexpectedly settled with the Government on the eve of the scheduled October 2017 Criminal Trial. Indeed, by the time the Parties agreed to settle this Action, nearly a decade had passed since much of the underlying conduct had occurred.

201. Not being able to prosecute our case for periods of time, Lead Counsel also thus ran the risk that issues would be decided in the Criminal Action that would adversely impact this Action. And while convictions in the Criminal Action would have been helpful, they would not have been dispositive because this Action is far broader in scope than the Criminal Action and covers a much larger time period. Moreover, the majority of damages allegedly suffered by the Class are attributable to the conduct that occurred before the time period encompassed by the Criminal Action.

202. These novel risks are in addition to the more typical risks accompanying litigation, such as the fact that the prosecution of this Action was undertaken by Lead Counsel entirely on a contingent basis. As a general matter, it should be observed that there are numerous cases in which plaintiffs' counsel in contingent fee cases such as this have expended thousands of hours – indeed, litigating to a favorable jury verdict – only to receive no compensation whatsoever. *See, e.g., In re BankAtlantic Bancorp, Inc. Sec. Litig.*, 2011 WL 1585605 (S.D. Fla. Apr. 25, 2011) (reversing jury verdict and granting judgment to defendants on all remaining counts as a matter of law).

203. 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 the outlay of significant expenses that the vigorous prosecution of this Action would require. In undertaking that responsibility, Lead Counsel were

obligated to ensure that sufficient resources were dedicated to the litigation, and that Lead Counsel would further advance all of the costs necessary to pursue the case vigorously, including funds to compensate vendors, experts, and consultants, and to cover the other considerable out-of-pocket costs that a case such as this typically demands. Because complex shareholder litigation generally proceeds for several years before reaching a conclusion – and this case, in particular, lasted eight – the financial burden on contingent-fee counsel is far greater than on a firm (such as those representing Defendants) that is being paid on an ongoing basis. Indeed, Lead Counsel have received no compensation during the course of this Action and no reimbursement of out-of-pocket expenses, yet they have incurred more than $6,790,044.82 in expenses in prosecuting this Action for the benefit of Wilmington Trust investors.

204. Lead Counsel also bore the risk that no recovery would be achieved. As described herein, from the outset, this case presented multiple risks and uncertainties that could have prevented any recovery whatsoever.

205. Moreover, for decades the United States Supreme Court (and countless lower courts) have repeatedly and consistently 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. Indeed, 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, courts should award fees that adequately compensate plaintiffs' counsel, taking into account the risks undertaken in prosecuting a securities class action.

206. These risks assumed by Lead Counsel in connection with this Action, and the time and expenses incurred without any payment, were extensive and are relevant to an award of attorneys' fees. Lead Counsel's persistent efforts in the face of these substantial risks and uncertainties have resulted in a significant and immediate recovery for the benefit of the Class. In circumstances such as these, and in consideration of Lead Counsel's hard work and the extraordinary result achieved, the requested fee of 28% of the Settlement Funds net of Plaintiffs' Counsel's expenses and reimbursement of $6,790,044.82 in expenses (as detailed below), is reasonable and should be approved.

5. Fee Awards in Similar Cases

207. Awards of attorneys' fees that have been approved in other large securities class actions have been compiled and are discussed in the accompanying Fee Brief. *See* Fee Brief at 13-14. For the reasons set forth therein, Lead Counsel's 28% fee request is well within the range of fee awards that have been approved in other large actions.

6. Reaction of the Class

208. In accordance with the Preliminary Approval Order, more than 92,330 Notice Packets have been mailed to potential Class Members and nominees advising them that Lead Counsel would seek an award of attorneys' fees in the amount of 28% of the Settlement Fund and reimbursement of expenses in an amount not to exceed $7.5 million. *See* Ex. G, ¶7. Additionally, on August 6, 2018, the Court-approved Summary Notice was published in Investors' Business Daily and transmitted over the internet via PR Newswire. *Id*. at 11. All important documents related to this Action and the Settlement, including the Stipulation, have also been posted to the website for this Action, www.wilmingtontrustsecuritieslitigation.com. *Id*. at 16. As noted above, the deadline set by the Court for Class Members to object to the amount of attorneys' fees and expenses set forth in the Notice has not yet passed. To date, however,

Lead Counsel are aware of no objections. Lead Counsel will address all objections received in their reply papers to be filed with the Court on October 31, 2018.

B. Referral Fees

209. As stated during the Preliminary Hearing, Lead Counsel Saxena White entered into agreements to pay referral fees with Ronald J. Cohen, Esq., Board Counsel to Pompano Beach General Employees Retirement System, and Stephen H. Cypen, Esq., General Counsel to Coral Springs Police Pension Fund. These referral fees were entered into pursuant to Rule 4-1.5(g)(2) of the Rules Regulating the Florida Bar. *See* Exhibits 4 and 5 to the White Declaration.

210. Subsequent to the Preliminary Approval hearing, Cohen and Cypen each agreed to reduce the amount of the referral fee they are seeking to 4.5% each. Each of these referral fees, if approved by the Court, will be wholly paid out of Saxena White's share of attorneys' fees; they are not in addition to any fee award made to Plaintiffs' Counsel. The efforts expended by counsel to Pompano Beach General Employees Retirement System and Coral Springs Police Pension Fund during the course of this Action are detailed in the Declaration of Ronald J. Cohen (White Decl. Ex. 4) and Stephen H. Cypen (White Decl. Ex. 5), respectively.

C. Reimbursement of the Requested Expenses is Fair and Reasonable

211. Lead Counsel also seek reimbursement from the Settlement Funds for $6,790,044.82 for expenses that were reasonably incurred by Plaintiffs' Counsel in connection with the prosecution of this Action, as well as $55,456.06 for the costs and expenses incurred by Lead Plaintiffs directly related to their representation of the Class (the "Expense Application").

212. From the outset of the Action, Lead Counsel have been cognizant of the fact that they might not recover any of their expenses, and, if there were to be reimbursement of expenses, it would not occur until the Action was successfully resolved, often a period lasting several years. Lead Counsel also understood that, even if the case were ultimately successful,

reimbursement of expenses would not necessarily compensate them for the lost use of funds advanced by them to prosecute the Action. Consequently, Lead Counsel were motivated to, and did, take significant steps to minimize expenses whenever practicable without jeopardizing the vigorous and efficient prosecution of the case.

213. As set forth in the Breakdown of Plaintiffs' Counsel's Litigation Expenses by Category (provided in Exhibit E), Plaintiffs' Counsel have incurred a total of $6,790,044.82 in unreimbursed litigation expenses in connection with the prosecution of this Action for which they are seeking reimbursement. As attested to, these expenses are reflected on the books and records maintained by respective Plaintiffs' Counsel. These books and records are prepared from expense vouchers, check records and other source materials, and are an accurate record of the expenses incurred. Plaintiffs' Counsel's expenses are set forth in detail in their firm's respective declaration, each of which identifies the specific category of expense, e.g., online legal and factual research, experts' fees, out-of-town travel costs, the costs of document management and litigation support, photocopying, telephone, fax and postage expenses, and other costs actually incurred for which Lead Counsel seek reimbursement. These expense items are billed separately, and such charges are not duplicated in the respective firms' billing rates; thus, no amount for general overhead is included in the expense amounts. Additionally, with respect to reimbursement for expenses incurred to outside vendors, the amounts requested reflect the actual amounts billed by the providers. A summary chart of Plaintiffs' Counsel's expenses is attached hereto as Exhibit E.

214. Lead Counsel maintained strict control over the litigation expenses. Indeed, many of the litigation expenses were paid out of a litigation fund created by Lead Counsel and maintained by BLB&G (the "Litigation Fund"). In accordance with the Joint Prosecution

Agreement entered into between Saxena White and BLB&G at the outset of the Action, Lead Counsel collectively contributed $4,440,000.00 to the Litigation Fund. A description of payments from the Litigation Fund by category is set forth in the Ross Declaration. Ex. D-1. Currently, a balance of $36,345.62 remains in the Litigation Fund.

215. Of the total amount of expenses, $4,673,493.31, or approximately 68.8%, was expended on experts and consultants, broken down as follows:

(a) Prof. S.P. Kothari: $1,008,330.00

(b) Chad Coffman: $267,138.43

(c) Harris Devor: $1,685,316.80

(d) Michael Clabby: $1,462,491.35

(e) James Miller: $87,750.00

(f) Charles Cowan: $40,707.50

(g) Kidder Matthews: $38,022.50

(h) Other consulting experts: $83,736.73

216. As detailed more fully in Section VI *supra*, the expertise and assistance provided by these experts was critical to the prosecution and successful resolution of this highly technical and complex Action. Lead Counsel's use of these experts and consults was therefore both essential, and reasonable under the circumstances.

217. Another large component of the expenses for which reimbursement is sought relates to document management costs, which amounts to $1,148,997.99, or approximately 16.9% of the total expenses. As detailed more fully in ¶¶80-81, *supra*, Lead Counsel had to retain the services of vendors to, among other things (i) maintain the electronic database through which the millions of pages of documents produced by Defendants were reviewed and analyzed;

(ii) have documents processed so that they would be in a searchable format; and (iii) convert and upload hard copy documents so that they would be electronically searchable. Notably, Lead Counsel minimized the document management costs during some periods that the Action was stayed by hibernating the database, thereby avoiding paying active management fees.

218. Finally, another large component of the litigation expenses was for deposition transcription and discovery and out of town travel, which amounts to $348,173.37, or approximately 5.1% of the total expenses. As detailed more fully in ¶¶45, 91, *supra*, discovery in this case was a nationwide process, requiring Lead Counsel to frequently travel to take or defend depositions across the country and to attend Court hearings. For example, Lead Counsel traveled to, among other places, San Francisco, California; Santa Fe, New Mexico; Park City, Utah; Atlanta, Georgia; Sarasota and Buffalo, New York; and Orlando, Florida for depositions; Monterey and St. Petersburg, Florida for client meetings; and to Wilmington and Philadelphia for depositions and court appearances.

219. The other expenses for which Plaintiffs' Counsel seek 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, costs of out-of-town travel, copying costs, long distance telephone and facsimile charges and postage and delivery expenses, and court reporters for depositions.

220. All of the litigation expenses incurred by Plaintiffs' Counsel were reasonable and necessary to the successful investigation, prosecution, and resolution of this Action.

D. Lead Plaintiff Reimbursement

221. Additionally, pursuant to 15 U.S.C. § 78u-4(a)(4), Lead Plaintiffs seek reimbursement of their reasonable costs and expenses incurred directly in connection with their representation of the Class in the following amounts:

(a) Coral Springs Police Pension Fund: $7,556.00

(b) Pompano Beach General Employees Retirement System: $11,538.24

(c) St. Petersburg Firefighters' Retirement System: $22,109.00

(d) Merced County Employees' Retirement Association: $14,252.82.

222. The amount of time and effort devoted to this Action by the Lead Plaintiffs is detailed in the accompanying declarations of their respective representatives, attached as Exhibits C-1 through C-5. *See* Ex. C-1, Myers Decl. ¶¶11-12; Ex. C-2, Mitchell Decl. ¶¶14-15; Ex. C-3, Ciskoski Decl. ¶¶11-12; Ex. C-4, Santos Decl. ¶¶11-13; Ex. C-5, Beno Decl. ¶4. Lead Counsel respectfully submit that these requested amounts are fully consistent with Congress' intent, as expressed in the PSLRA, of encouraging institutional investors to take an active role in bringing and supervising actions of this type.[17]

223. As set forth in the Fee Brief and in the supporting declarations submitted on behalf of Lead Plaintiffs, Lead Plaintiffs have been fully committed to pursuing the Class's claims for eight years. These institutions have actively and effectively fulfilled their obligations as representatives of the Class, complying with all of the many demands placed upon them during the litigation and settlement of this Action, and providing valuable assistance to Co-Lead Counsel. The efforts expended by the representatives for the Lead Plaintiffs during the course of this Action are precisely the types of activities Courts have found to support reimbursement to

[17] Lead Plaintiff Automotive is not seeking reimbursement under the PSLRA for the time it expended in representing the Class in this Action. However, Automotive's fund counsel, the law firm of Saltzman & Johnson, devoted 100.6 hours to the prosecution of this Action on behalf of Automotive and the Class. Specifically, Saltzman & Johnson oversaw Automotive's production of documents, assisted Automotive's Chairman in preparation for his deposition, and reviewed case updates and discovery responses with Lead Counsel, among other things. *See* Declaration of Anne Bevington Decl. ¶¶3-5 (attached as Exhibit F). Lead Counsel BLB&G will reimburse Saltzman & Johnson for its time and expenses as set forth in the Bevington Declaration directly from the attorneys' fees awarded in this Action.

class representatives under the PSLRA, and fully support Lead Plaintiffs' requests for reimbursement of costs and expenses. *See* Fee Brief at 18-19. The reimbursement sought is for actual time and expenses spent to represent the Class. This is not an incentive fee.

224. The Notice informed potential Class Members that Lead Counsel would be seeking reimbursement of expenses in an amount not to exceed $7,500,000.00 and that the costs and expenses of the Class Representatives could be sought as part of the request for reimbursement of Litigation Expenses. The total amount sought by the Lead Plaintiffs (*i.e.*, $55,456.06), when added to the request of Plaintiffs' Counsel (*i.e.*, $6,790,044.82), is still significantly below the $7,500,000.00 million that Class Members were advised could be sought. To date, no objection has been raised as to the maximum amount of Litigation Expenses set forth in the Notice, including the amount sought to be reimbursed to the Lead Plaintiffs.

225. In view of the complex nature of the Action, as well as the fact that this Action was vigorously prosecuted, the expenses incurred by Plaintiffs' Counsel were reasonable and necessary to pursue the interests of the Class and achieve the present Settlement. Accordingly, Lead Counsel respectfully submit that the expenses incurred by Plaintiffs' Counsel and Lead Plaintiffs are fair and reasonable and should be reimbursed in full.

XIII. CONCLUSION

226. In view of the significant recovery to the Class and the very substantial risks of this litigation, as described above and in the accompanying Settlement Memorandum, Lead Counsel respectfully submit that the Settlements should be approved as fair, reasonable and adequate, and that the proposed Plan of Allocation should be approved as fair and reasonable. In addition, based on the significant recovery in the face of substantial risks, the efforts of Lead Counsel, the quality of the work performed, the contingent nature of the fee, the complexity of the case, and the standing and experience of Lead Counsel as described above and in the

accompanying Fee Memorandum, Lead Counsel respectfully submit that a fee in the amount of 28% of the Settlements be awarded, that their expenses of $6,790,044.82 be reimbursed in full, and the Lead Plaintiffs' costs and expenses in the amount of $55,456.06 be reimbursed in full.

227. We each declare, under penalty of perjury, that the foregoing facts are true and correct.

Executed on September 17, 2018

/s/ *Joseph E. White, III*
Joseph E. White, III

/s/ *Hannah Ross*
Hannah Ross

Appendix A

Approximate[18] Breakdown of Lead Counsel BLB&G & Saxena White's Time Worked and Lodestar throughout the Action

Time	Phase	Description	Hours Worked / Lodestar (% of total)
Early 2011 – March 20, 2014	Pleadings	During this time, Plaintiffs moved for appointment as Lead Plaintiffs. We also conducted a comprehensive investigation into our claims, including speaking with former employees and consulting with experts; filed four amended complaints and opposed multiple rounds of motions to dismiss, totaling nearly 700 pages (collectively).	Hours Worked: 15,126.25 (7.86%) Lodestar: $8,407,628.69 (10.67%)

[18] Counsel prepared this table based on the time worked during each period.

Time	**Phase**	**Description**	**Hours Worked / Lodestar (% of total)**
March 21, 2014 – July 2, 2015	Document Discovery	After the Court sustained the Fourth Amended Complaint, Plaintiffs immediately engaged in extensive document discovery, including producing and reviewing over 13 million pages of documents. As part of these document discovery efforts, Plaintiffs engaged in active motion practice, including an intense fight to obtain key materials related to the regulatory examinations of Wilmington Trust. *See* Section V *supra*. Additionally, during this time, Plaintiffs prepared for deposition discovery. As depositions were about to begin, the United States Attorney's Office for the District of Delaware intervened in and moved to stay in the action, which we opposed.	Hours Worked: 112,586.00 (58.47%) Lodestar: $44,059,782.21 (55.92%)

Time	**Phase**	**Description**	**Hours Worked / Lodestar (% of total)**
July 3, 2015 – December 19, 2016	Class Certification; Ongoing Document Discovery; and Opposing the Government's Stay	On July 2, 2015, the Court granted the United States Attorney's request for a stay of discovery. Though Plaintiffs could not pursue deposition discovery, Counsel continued to pursue document discovery, both reviewing the millions of pages that had already been produced as well as conferring with Defendants and moving to compel withheld documents so Plaintiffs would be ready to swiftly proceed once the stay was lifted. Also during this time, Plaintiffs successfully moved to certify the Class, which included the production of Plaintiffs' documents and the depositions of all the Plaintiffs, their investment advisors, and Plaintiffs' market efficiency expert. Plaintiffs also requested that the Court lift the discovery stay several times during this eighteenth month period as appropriate based on case developments.	Hours Worked: 21,729.00 (11.28%) Lodestar: $8,486,690.63 (10.77%)

Time	**Phase**	**Description**	**Hours Worked / Lodestar (% of total)**
December 20, 2016 – August 31, 2017	Deposition Discovery	On December 20, 2016, the Court granted Plaintiffs' request and lifted the discovery stay, and Plaintiffs promptly began working to complete discovery. All told, Plaintiffs took, defended, and/or otherwise participated in 39 depositions in numerous locations throughout the country, including Delaware, New York, Pennsylvania, Florida, and Utah. Depositions ultimately concluded in August 2017, after Plaintiffs fought and defeated the Criminal Defendants' tenacious efforts to avoid their depositions, including with an appeal to the Third Circuit. Also during this time, Plaintiffs finished their review of nearly 13 million pages of documents, prepared and/or responded to hundreds of pages of written discovery, and litigated several discovery motions.	Hours Worked: 36,646.25 (19.03%) Lodestar: $14,868,714.80 (18.87%)
September 1, 2017 – May 25, 2018	Expert Reports; Pretrial Work; and Negotiating the Settlements	After depositions concluded, Plaintiffs worked around the clock to complete expert reports on an aggressive timeline. The scale of Plaintiffs' case required that they work with several experts, and Plaintiffs had substantially prepared their reports by the time the parties settled. During this time, Plaintiffs had also made great strides in preparing a partial summary judgment motion to be filed following the criminal trial.	Hours Worked: 6,466.50 (3.36%) Lodestar: $2,974,459.92 (3.77%)

Time	**Phase**	**Description**	**Hours Worked / Lodestar (% of total)**
TOTAL			Hours Worked: 192,554.00 (100%) Lodestar: $78,797,276.25 (100%)

EXHIBIT A

UNITED STATES DISTRICT COURT
DISTRICT OF DELAWARE

IN RE WILMINGTON TRUST SECURITIES LITIGATION	Master File No. 10-cv-00990-ECR (Securities Class Action) Hon. Eduardo C. Robreno
This document relates to: ALL ACTIONS	

I, S.P. Kothari, declare as follows:

INTRODUCTION

1. I was retained on behalf of Lead Plaintiffs as a testifying expert on damages, loss causation and market efficiency.

2. Accordingly, as part of my assignments during the course of this litigation, I was asked by Lead Counsel to develop an estimate of the per-share damages throughout the period January 18, 2008 to November 1, 2010, inclusive (the "Class Period").

3. The details of my analysis, methodology, and estimate of the per-share damages are set forth in the declaration.

QUALIFICATIONS

4. I am the Gordon Y Billard Professor of Accounting and Finance at the Sloan School of Management, Massachusetts Institute of Technology ("MIT"). I have been at MIT since 1999. During this period, I served as the Deputy Dean of the Sloan School of Management from 2007-2008 and 2010-2015. In 2008-2009, I was with Barclays Global Investors ("BGI"), a unit of Barclays Bank, for one-and-a-half years as Global Head of Equity Research. From 1986 to 1999, I served on the faculty of the University of Rochester, first as an Assistant Professor, then as an Associate Professor, and finally as Professor and Accounting Area Coordinator. During my academic career, I have also held visiting positions at Harvard Business School, MIT, the University of Technology in Sydney, Australia, Baruch College of the City University of New York, and the City University Business School in London.

5. I have published numerous academic articles in the areas of accounting, finance, and economics and co-edited two books titled *Financial Statement Analysis*, published by

McGraw-Hill, and *Contemporary Accounting Research*, published by North-Holland Publishing. My research has primarily focused on the informational efficiency of stock prices, valuation of equities and bonds, the relation between accounting accruals and cash flows, the effect of institutions on the properties of accounting numbers internationally, and corporate uses of financial derivatives, among other topics. I am currently an Editor of the *Journal of Accounting & Economics*, a leading academic journal in the field of accounting, and have been an editor of this journal since 1997. I have also served as an associate editor for other professional journals, including the *Journal of Accounting & Economics* and *The Accounting Review*, and as a referee for professional journals such as the *Journal of Finance*, the *Journal of Financial Economics*, the *Journal of Accounting Research*, *Contemporary Accounting Research*, and the *British Accounting Review*.

6. Through my extensive, rigorous research, my practical experience as the Global Head of Equity Research at BGI, and through my teaching financial analysis for more than two decades to graduate students, I have developed deep expertise in assessing the impact of financial information and financial disclosures on investors' assessment of the value of shares and on their trading decisions, which, in turn, manifest in the impact on share prices. This expertise in financial analysis and valuation is directly relevant to rendering my opinions in this matter.

METHODOLOGY AND ANALYSIS

7. Based on my understanding of the factual evidence provided to me by Lead Counsel and my understanding of the legal theories of the alleged securities laws violations, I conducted an analysis of the economic evidence in this case to measure the aggregate per share damages that security holders suffered due to the alleged material misrepresentations that defendants made throughout the Class Period.

8. In brief, I understand that Plaintiffs allege that, during the Class Period, Defendants made materially false and misleading statements regarding its (i) underwriting practices, (ii) asset review procedures, (iii) internal controls and (iv) lending and risk management practices. Plaintiffs also allege that Wilmington's financial reports contained misrepresentations regarding: (i) past due and nonperforming loans, (ii) loan loss reserve, (iii) LTV ratios, and (iv) the allowance for loan losses. These misrepresentations "created the false impression that the Bank was weathering the financial crisis without any of the crippling credit losses suffered by other banks."[1] Plaintiffs also allege that these losses were revealed to market participants in a series of disclosures made throughout the Class Period, which I will refer to as the "Corrective Disclosures" as described in Exhibit 1.

9. For purchasers of Wilmington common stock with §10(b) claims, the relevant loss occurred when the alleged truth concealed by the misrepresentations and/or omissions was disclosed and as a result the stock price declined. Thus, my ultimate goal is to establish a price per share for Wilmington stock for each day of the Class Period had all misrepresentations

[1] Complaint at ¶¶52, 217, 334.

been properly and timely revealed to the market. The difference between this 'but for' price and the traded price is referred to as the artificial inflation in the stock price.

10. This price inflation is ultimately corrected by the Corrective Disclosures, which reveal the truth previously concealed by the alleged fraud. Class members' losses associated with this fraud-related price inflation can be calculated as the portion of Wilmington's stock price decline which is attributable to the disclosure of the alleged truth.

11. I identify seven events in which information about Wilmington's misrepresentations was revealed to the market, which are set forth in greater detail in Exhibit 1. In brief:

Date	**Corrective Disclosure**
January 29, 2010	Wilmington Trust's 2009 Q4 earnings disclosed unexpected loan losses.
April 23, 2010	Wilmington Trust's 2010 Q1 earnings disclosed unexpected loan losses.
June 3, 2010	Wilmington Trust disclosed Defendant Cecala's surprise resignation, which the market suspected was due to a deteriorating loan portfolio.
June 23, 2010	Wilmington Trust's management indicated that there were more loan losses coming and that the Bank had hired an independent appraiser to review its loan portfolio.
June 24, 2010	Wilmington Trust's management indicated that they were expecting additional loan losses on the loan portfolio.
July 23, 2010	Wilmington Trust's 2010 Q2 earnings disclosed unexpected loan losses.
November 1, 2010	Wilmington Trust's 2010 Q3 earnings disclosed unexpected loan losses, and the market learned that the Bank's loan loss reserve was short more than $500 million.

12. Based on the above, I conducted an event study to measure the effect of each Corrective Disclosure on Wilmington's stock price. I described event studies, including the event study I conducted here, in greater detail in my September 12, 2014 report submitted in support of Lead Plaintiffs' motion for class certification. *See* D.E. 261-3.

13. Generally speaking, event studies are a commonly used scientific methodology for examining the impact of firm-specific events on the stock price. Academic studies have used the event study methodology to assess the impact of a variety of firm-specific disclosures, including earnings announcements, press releases, and SEC filings, as well as to assess the impact of corporate decisions, such as dividend payments, stock splits, mergers, etc.[2] As discussed in the classic study by Brown and Warner (1980):

[2] For a review of this literature, see SP Kothari, 2001, "Capital markets research in accounting," *Journal of Accounting and Economics* 31, 105–231 and Chapter 1 titled "Econometrics of Event Studies" by SP Kothari and Jerold Warner in Handbook of Empirical Corporate Finance by Espen Eckbo, Elsevier/North-Holland, 2007.

> "To the extent that the event is unanticipated, the magnitude of abnormal performance at the time the event actually occurs is a measure of the impact of that type of event on the wealth of the firms' claimholders… such abnormal performance is consistent with market efficiency."[3]

In other words, event studies allow one to measure the impact of unanticipated corporate events on the stock.

14. To conduct my event study, I first determine the date(s) and time of each Corrective Disclosure event. The date and timestamp of each Corrective Disclosure event is included in Exhibit 1. For one corrective disclosure (June 3, 2010), the time stamp indicates that the disclosure occurred after the market close, so I use the following day (June 4, 2010) as the event date, as that is when the price would begin to reflect the market's reaction to the news. Otherwise, all of the remaining corrective disclosures were made either before the market opened or during the day while there was active trading.

15. A central issue in an event study is to assess the extent to which security price performance around the time of the event is abnormal. I estimate a regression model that uses the daily stock returns, obtained from the CRSP database, for Wilmington Trust as the dependent variable. I include the returns of the S&P 500 Index as an independent variable to control for the market return associated with large publicly traded corporations, and the returns of the KBW 50 Regional Banking Index (with Wilmington being removed from the index) as another independent variable to control for the industry return associated with the financial sector.[4] I also control for any earnings announcement and/or corrective disclosure that occurred during the estimation window because they are also likely to affect Wilmington's stock price. For each corrective disclosure, I estimate this model over a 120-trading-day window ending one day prior to the corrective disclosure date. I refer to this process as estimating "120-day rolling regressions." One benefit of rolling regressions is that the parameters of the model used to estimate expected returns are allowed to vary for each corrective disclosure.

16. I obtain the intercept and slope coefficient parameters from this regression model, and calculate the expected return on each corrective disclosure date k as $\hat{\alpha} + \hat{\beta}_k \times RET_{SP500_k} + \hat{\gamma}_K \times RET_{KBW_k}$, where $\hat{\alpha}$ is the estimated intercept, $\hat{\beta}$ and $\hat{\gamma}$ are the estimated slope coefficients for the return on the S&P 500 Index and the KBW 50 Regional Banking Index, respectively. The expected return measures what the stock price would have been if there were no corrective disclosure or any firm specific news released on that day. I then deduct the expected return from Wilmington's realized return to obtain a measure of the abnormal return, that is, $ABRET_k = RET_{WT_k} - (\hat{\alpha} + \hat{\beta}_k \times RET_{SP500_k} + \hat{\gamma}_K \times RET_{KBW_k})$.

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[3] Stephen Brown and Jerold Warner, 1980, "Measuring Security Price Performance," *Journal of Financial Economics* 8, p. 205.

[4] This regression model is slightly different from the one I used in the market efficiency report. In the market efficiency report I include only the KBW 50 Regional Banking Index in the event study because the objective was to test market efficiency. Because the objective of this report is to estimate damages, I take a more conservative approach and include both the S&P 500 Index and the KBW 50 Regional Banking Index.

The abnormal return measures the effect of firm-specific news on Wilmington's stock price on the corrective disclosure date k.

17. Abnormal returns on the seven corrective disclosure events are reported in Exhibit 2. The abnormal returns range from a -3.33% on the day of CEO Cecala'a resignation on June 4, 2010 to -37.5% on the date of the announcement of the merger with M&T on November 1, 2010. The abnormal returns on the other five corrective disclosure events ranged between -9% and -12%.

18. I conduct a statistical test to assess whether the abnormal returns are statistically significant. The p-values associated with these tests are disclosed in Exhibit 2. A p-value measures the probability that an abnormal return of a given magnitude would be observed on a day randomly chosen from the 120-day estimation window. The results tabulated in Exhibit 2 indicate that the abnormal returns are negative and statistically significant, at the 5% level, for all seven corrective disclosure events. In economic terms, the abnormal returns sum up to an accumulated decline in the stock price of $9.71 per share.

19. Finally, I examined the news disclosed on each corrective disclosure date to parse out and measure any firm-specific information unrelated to the misrepresentations ("confounding" information). I then removed the amount attributable to confounding information. The outcome of this analysis is a measure of the impact that each corrective disclosure had on Wilmington's stock price. In other words, it captures the amount of artificial inflation in Wilmington's stock price that is attributable to each misrepresentation.

20. For each of the seven corrective disclosure events, I first read through the Motion Record to identify the alleged news articles that form the basis for the alleged corrective disclosures. I then supplemented these articles with a search of the Factiva database to identify all of the news articles on Wilmington that were disclosed over a two-day window beginning on the date before the corrective disclosure date and ending on the corrective disclosure date.[5] I also reviewed all of the analyst reports, press releases, and SEC filings that were disclosed during the two-week period after the corrective disclosure to determine if analysts commented on any additional news disclosed on the corrective disclosure date.

MY OPINION

21. In my opinion, the corrective disclosures released on January 29, 2010, July 23, 2010, and November 1, 2010 did not have significant confounding news, and the entire market reaction on these dates can be attributed to the corrective disclosure.

22. In my opinion, the April 23, 2010, June 3, 2010, and June 23 and 24, 2010 corrective disclosures contained some confounding news that the market reacted to. I disaggregated the extent of the impact of the confounding news on Wilmington's share price on each of these dates.

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[5] When searching Factiva, I limited my search to firms with the company identifier "Wilmington Trust Corporation." I searched all sources, all authors, all industries, and all regions.

23. On April 23, 2010 the defendants issued a press release announcing first quarter earnings and I find a negative abnormal return of 9.26%. Based on my reading of the news articles and analyst reports, I determined that part of the market's reaction was related to the disclosures of losses on the loan portfolio, and thus the revelation of misrepresentations, and part of the market's reaction was related to other poor earnings news. I use the analyst reports to measure the analyst expectations of losses on the loan portfolio to estimate the extent to which the market's reaction is related to unexpected losses on the loan portfolio. The mean of expectations of loan losses was $54.2 million, which relative to the actual loan loss of $77.4 million implies an unexpected loan loss provision was $23.23 million. Compared to the unexpected earnings of $35.33 million, the unexpected loan loss accounts for 65.8% of the earnings surprise. In my analysis of the market's reaction to the alleged corrective disclosures, I find an abnormal price movement of $1.87 on April 23, 2010. Based on my analysis above, I determine that a price decline of $1.23 (65.8% of the total decline) was attributable to the misrepresentations.

24. On the evening of June 3, 2010 (after the stock market closed), Wilmington announced the resignation of their CEO, and I find a negative market reaction of 3.33%. As academic literature indicates that CEO turnover generally prompts a positive market reaction, I determined based on my analysis of news articles and analyst reports, among other things, that this negative market reaction related to the market's interpretation that the resignation signaled additional impending losses on the Bank's the loan portfolio (and thus the revelation of misrepresentations) and losses on pooled trust-preferred securities investment portfolio (unrelated to the misrepresentations). As analysts did not explicitly update their models for either asset, I allocate the negative market reaction using an analysis of the relative proportion of the size of these two assets, and consequentially allocate 90.8% to the loan portfolio.[6] In my analysis of the market's reaction to the alleged corrective disclosures, I find an abnormal price movement of $0.50 on June 4, 2010. Based on my analysis above, I determine that a price decline of $0.45 (90.8% of the total decline) was attributable to the misrepresentations.

25. On June 23-24, 2010, the market learned that Wilmington had disclosed to analysts that, among other things, there would be additional loan losses and that it had hired a third party to appraise its loan portfolio, and I find a negative market reaction of 12.29%. The market first learned this information through Suntrust's analyst report issued June 23, 2010, in which Suntrust reduced its 2010 earnings forecast by $15.5 million and revised its loan loss provision by $4.1 million. The corrective disclosure continued through RBC's analyst report issued the following day, in which RBC reduced its 2010 earnings forecast by $182.4 million and revised its loan loss provision by $240.3 million. Considered together, this implies a mean forecast revision of $99 million and a mean loan loss provision revision of $122.2 million. Since the loan loss provision revision is larger, the earnings revisions seem to be driven by analysts' expectations of future loan portfolio losses. Because the analysts highlight that their revisions relate to both the Bank's loan portfolio, its investment portfolio, and a slight adjustment for personnel costs, I use a rationale similar to the one I

[6] See Wilmington SEC Form 10-Q for 2010Q1, p. 6.

used for the June 4, 2010 decline, and attribute 88% of the decline in the stock price to losses on the loan portfolio.[7] (¶24) Specifically, in my analysis of the market's reaction to the alleged corrective disclosures, I find an abnormal price movement of $1.60 on June 23-24, 2010. Based on my analysis above, I determine that a price decline of $1.41 (91% of the total decline) was attributable to the misrepresentations.

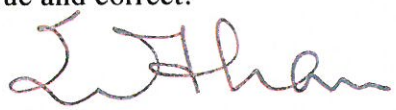
26. In conclusion, the results tabulated in Exhibit 3 provide the artificial inflation present per share after taking into account confounding events.

27. In brief, I found that a total of $8.83 of artificial inflation dissipated from each share of Wilmington Trust as follows:

- January 29, 2010: $1.86
- April 23, 2010: $1.23
- June 4, 2010: $0.45
- June 23 & 24, 2010: $1.41
- July 23, 2010: $1.21
- November 1, 2010: $2.67

28. As detailed herein, my expert opinion addressed per-share damages estimates. This is based on my understanding that, with respect to damages, the jury in this matter would only receive per-share damages estimates, rather than a Class-wide aggregate damages estimate. Accordingly, I did not develop a full Class-wide trading model necessary to calculate aggregate damages. I understand that Lead Counsel provided the per-share damages estimates that I prepared to another consultant, Mr. Chad Coffman, who created a trading model necessary to calculate aggregate damages for use during settlement discussions and for the plan of allocation.

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



Executed on: September 14, 2018 in Cambridge Massachusetts

[7] I note that compared to the June 4 analysis, I slightly decreased the amount of the stock price decline attributed to the misrepresentations. This adjustment is due to one analysts indicating that they "slightly" adjusted their forecast to reflect increases in personnel costs but did not disclose the magnitude of the adjustment. I noted that their estimate of forecasted non-interest expense increased by $2 million, which is approximately 2.8% of their expected losses and 2% of their expected losses on their loan portfolio. To be conservative, I attribute 2.8% of the market's reaction to unexpected personnel costs.

Exhibit 1
Summary of Wilmington's Corrective Disclosures

Date	Time (EST)	Corrective Disclosures	Source of News
January 29, 2010	8:00 am	Earnings announcement of 2009 Q4 – Wilmington Trust reported a quarterly loan loss provision of 82.8 million, a 114% increase from the prior quarter.	"Wilmington Trust Announces 2009 Fourth Quarter Results." Business Wire.
April 23, 2010	8:00 am	Earnings announcement of 2010 Q1 – Wilmington Trust reported a bigger-than-expected quarterly loan loss provision of 77.4 million.	"Wilmington Trust Announces 2010 First Quarter Results." Business Wire.
June 3, 2010	5:44 pm	CEO resignation – Market suspected that the resignation was due to deteriorating loan portfolio and more loss to come.	"Wilmington Trust Chairman and CEO Ted T. Cecala Retires After 31 Years of Service; Board Elects Donald E. Foley as CEO." Business Wire.
June 23, 2010	10:16 am	Analyst downgrade – In an analyst meeting, Wilmington Trust's management indicated more loan losses coming in Q2 and Wilmington hired an independent appraiser to review its loan portfolio.	"Wilmington Trust Cut to Neutral from Buy by SunTrust." Dow Jones Newswires.
June 24, 2010		Analyst - In an analyst meeting, Wilmington Trust's management indicated that they were expecting additional loan losses on the loan portfolio.	"Expect Significantly Higher Credit Costs - Lowering EPS Estimates." RBC Capital Markets.
July 23, 2010	6:00 am	Earnings announcement of 2010 Q2 – Wilmington Trust's quarterly loan loss provision increased by 165% to $205.2 million and Loan Loss Reserve increased by 25% to $373.8 million relative to Q1.	"Wilmington Trust Announces 2010 Second Quarter Results." Business Wire.
November 1, 2010	8:00 am	Earnings announcement of 2010 Q3 – Wilmington Trust reported a quarterly loan loss provision of 281.5 million. Joint conference call with M&T – M&T revealed that Wilmington Trust's Loan Loss Reserve was still underfunded by more than $500 million.	"Wilmington Trust Announces 2010 Third Quarter Results." Business Wire. "UPDATE 6-M&T Bank snapping up bargain-priced Wilmington." Reuters News.

Exhibit 2
Rolling Regression Results of the Market Reaction to Wilmington Trust's Seven Corrective Disclosure Events

I perform an event study using rolling regressions. Specifically, for each of the seven corrective disclosure dates, I estimate the following regression model using a 120-trading-day window prior to the corrective disclosures:

$$RET_{k,t} = \alpha_k + \beta_k \times RET_{SP500_{k,t}} + \gamma_k \times RET_{KBW_{k,t}} + \sum(\delta_k \times Corporate\ Event_{k\text{-}1to5}) + \varepsilon_{k,t},$$
$$t = -120, -119\ldots, -1, k = 1, 2,\ldots, 7$$

$RET_{k,t}$ is Wilmington's stock return on day t. $RETSP500_{k,t}$ is the return of the market portfolio on day t, as proxied by the S&P 500 Index, while $RETKBW_{k,t}$ is the return of the industry portfolio on day t, as proxied by the KBW 50 Reginal Banking Index (with Wilmington being removed from the index). In addition, I control for any prior corporate events that occur during the estimation window. Specifically, I define the indicator variable *Corporate Event*$_{k,1to5}$ to be one if an earnings announcements or corrective disclosure occurs during the estimation window. I then compute abnormal return (*ABRET*) on each earnings announcement date as:

$$ABRET_k = RET_k - (\hat{\alpha} + \hat{\beta}_k \times RET_{SP500_k} + \hat{\gamma} \times RET_{KBW_k}),\ k=1, 2, \ldots, 7$$

where $\hat{\alpha}$, $\hat{\beta}$ and $\hat{\gamma}$ are estimated parameters obtained from the 120-trading-day rolling regression. For one-day corrective disclosures, this exhibit presents *ABRET* for each of the corrective disclosure dates and the t-statistic computed as *ABRET* divided by the root mean squared error of the 120-trading-day estimation window. I use the appropriate degrees of freedom from the 120-day rolling regression to derive the p-value and consider two-tailed p-value of less than or equal to 5% to be statistically significant. For the two-day corrective disclosure (i.e., June 23-24, 2010), this exhibit presents the sum of *ABRET* over two days and t-statistic and p-value from a bootstrap analysis. To implement the bootstrap approach, I randomly select two days, one from each of the 120-day window used to estimate the market model for each given event date. I then sum up the abnormal returns for these two observations. I repeat this process 1,000 times to derive an empirical distribution of summed returns. I then assess the statistical significance of the two-day cumulative abnormal return by comparing it to the distribution of the 1,000 summed returns.

Date	*Abnormal Return*	*Abnormal Return T-statistic*	*Abnormal Return p-value*	*Significant at 95% Confidence Level*	*Abnormal Dollar Movement in Price*
January 29, 2010	-12.18%	-5.13	0.0000	✓	-$1.86
April 23, 2010	-9.26%	-5.04	0.0000	✓	-$1.87
June 4, 2010	-3.33%	-2.03	0.0447	✓	-$0.50
June 23 & 24, 2010	-12.29%	-5.69	0.0000	✓	-$1.60
July 23, 2010	-11.13%	-7.17	0.0000	✓	-$1.21
November 1, 2010	-37.50%	-16.59	0.0000	✓	-$2.67
Total					**-$9.71**

Exhibit 3
Artificial Loss Estimate Attributable to Corrective Disclosures

This exhibit reports the abnormal price change attributable to the seven corrective disclosure events. Abnormal price change is calculated as *ABRET* multiplied with the closing stock price on the prior trading day. Adjusted loss estimate is abnormal price change multiplied with the adjustment ratio for confounding news based on the analysis of Section VIII.

Date	***Abnormal Dollar Movement in Price (1)***	***Adjustment Ratio for Confounding News [2]***	***Adjusted Loss Estimate [3]=[1]x[2]***
January 29, 2010	-$1.86	100%	-$1.86
April 23, 2010	-$1.87	66%	-$1.23
June 4, 2010	-$0.50	90.8%	-$0.45
June 23 & 24, 2010	-$1.60	88%	-$1.41
July 23, 2010	-$1.21	100%	-$1.21
November 1, 2010	-$2.67	100%	-$2.67
Total	**-$9.71**		**-$8.83**

EXHIBIT B

UNITED STATES DISTRICT COURT
DISTRICT OF DELAWARE

IN RE WILMINGTON TRUST SECURITIES LITIGATION	Mater File No. 10-cv-00990-ER (Securities Class Action) Hon. Eduardo C. Robreno

DECLARATION OF CHAD COFFMAN REGARDING LEAD PLAINTIFFS' CALCULATION OF DAMAGES

I, Chad Coffman, submit this declaration pursuant to 28 U.S.C §1746 and declare as follows:

I. INTRODUCTION

1. I have been retained as a consulting expert on behalf of Lead Plaintiffs in this action. I submit this Declaration regarding Lead Plaintiffs' motion for final approval.

2. The details of my analysis are provided in the section of this declaration immediately following my qualifications.

II. QUALIFICATIONS

3. I am the President of Global Economics Group, a Chicago-based firm that specializes in the application of economics, finance, statistics, and valuation principles to questions that arise in a variety of contexts, including, as here, in the context of litigation.

4. I hold a Bachelor's Degree in Economics with Honors from Knox College and a Master's of Public Policy from the University of Chicago. I am also a CFA charter-holder. The CFA, or Chartered Financial Analyst designation, is awarded to those who have sufficient practical

experience and complete a rigorous series of three examinations over three years that cover a wide variety of financial topics including financial statement analysis and valuation.

5. I, along with several others, founded Global Economics Group in March 2008. (Prior to March 16, 2011, Global Economics Group was known as Winnemac Consulting, LLC.) Prior to starting Global Economics Group, I was employed by Chicago Partners, LLC for over twelve years where I was responsible for conducting and managing analysis in a wide variety of areas including securities valuation and damages, labor discrimination, and antitrust. I have been engaged numerous times as a valuation expert both within and outside the litigation context. My experience in class action securities cases includes work for plaintiffs, defendants, D&O insurers, and a prominent mediator (Retired Judge Daniel Weinstein) to provide economic analysis and opinions in dozens of securities class actions as well as other matters.

III. OPINIONS

6. Among other assignments, my work for Lead Plaintiffs in this Action included the calculation of maximum recoverable damages, as well as assistance in the design of the plan to allocate the settlement proceeds (the "Plan of Allocation" or "Plan") among Class Members who submit valid Proof of Claim forms that are approved for payment by the Court ("Authorized Claimants"). To complete both of these assignments, I implemented a methodology commonly used by experts in this context after being provided with estimates of artificial inflation prepared by Lead Plaintiffs' testifying expert in this matter, S.P. Kothari, and asked to assume that those estimates were fair and reasonable.

7. For losses to be compensable damages under the federal securities laws, the disclosure of the allegedly misrepresented information must be the cause of the decline in the price of the relevant security. Thus, to suffer damages or share in the distribution of the Net Settlement

Funds, an Authorized Claimant must have purchased or otherwise acquired Wilmington Trust Common Stock during the Class Period and must have suffered a loss resulting from the alleged fraud on his/her/its investments in Wilmington Trust Common Stock. In other words, a Wilmington Trust investor must have purchased or otherwise acquired the stock during the Class Period and then held the stock until after a corrective disclosure occurred and some measure of artificial inflation has been removed. For example, every Class Period purchase was made with some artificial inflation in the stock. For shares sold with the same amount of artificial inflation as existed at purchase, the investor cannot claim harm from the alleged fraud. However, after a corrective disclosure, some of the artificial inflation has been removed, and therefore the shares have lost value and the investor has been harmed due to the fraud rather than market or industry factors.

8. The first step in the calculation of maximum recoverable damages is to prepare a model to estimate the trading behavior of investors during the Class Period, through which I can track shares traded over the Class Period. Ideally, if I had access to the actual trading records of all Wilmington Trust investors, I could calculate damages and damaged shares precisely. However, typically, as in this case, experts calculating aggregate damages do not have access to the detailed trading records of Class Members.

9. As a result, experts estimate trading activity based on publicly available information. Each calendar quarter, institutional investment managers that exercise discretion over $100 million or more in publicly traded equity securities are required to report their holdings to the U.S. Securities and Exchange Commission on Schedule 13-F. I have obtained a summary of this holdings data for Wilmington Trust from S&P CapitalIQ. During the Class Period, reporting institutions held at least 50% of the public float of Wilmington Trust.

10. From this data, I constructed a trading model for institutions ("institutional model"). Using this quarterly data to pro-rate each institution's holdings between quarter ends (weighted by total trading volume of the stock on each day), and using a first-in, first-out ("FIFO") inventory assumption, I model the timing of each Class Period purchase and its corresponding sale (if the purchased shares were sold during the relevant time period). In my experience, this is the most widely utilized method for modeling institutional trading and has often been used by experts retained by defendants in other securities class actions.[1] Based on the implied daily trading activity, I can calculate damages for each institution applying the methodology described above.

11. I also estimated damages for the remaining shares that are not reflected in the quarterly holdings discussed above (the "non-institutional model"). This group is made up of non-reporting institutions and individual investors. To estimate damages for this group of Class Period purchasers, experts in cases such as this often apply a standard methodology commonly referred to as the 80/20 Proportional Two-Trader Model.[2] Because no investor-specific holdings information is available for non-institutions, the only observable trading input for non-institutional holders is the total trading volume. For the volume of shares available to trade not held by reporting institutions, this non-institutional model assumes that 80% of the volume is accounted for by "fast" traders that hold 20% of the non-institutional shares. The remaining 20% of volume is accounted for by "slow" traders that hold 80% of the non-institutional shares. Within each group of "fast"

[1] For example, this model is outlined in Mayer, Marcia Kramer, "Best-Fit Estimation of Damaged Volume in Shareholder Class Actions: The Multi-Sector, Multi-Trader Model of Investor Behavior," *National Economic Research Associates (NERA),* Third Edition, October 2000. NERA is a firm that often represents Defendants in class action securities matters.

[2] *See,* Fischel, Daniel R., Keable, Michael A., and Ross, David J., "The Use of Trading Models to Estimate Aggregate Damages in Securities Fraud Litigation: An Update," *The National Legal Center for Public Interest,* Vol. 10, Number 3, March 2006. Mayer, Marcia Kramer, "Best-Fit Estimation of Damaged Volume in Shareholder Class Actions: The Multi-Sector, Multi-Trader Model of Investor Behavior," *National Economic Research Associates (NERA),* Third Edition, October 2000.

and "slow" traders, each share is equally likely to trade on any given day, regardless of how long it was held. Based on these assumptions, the algorithm identifies the number of shares purchased on each day and when those shares were ultimately sold (if at all).

12. Using these trading models, I determined that approximately 130 million shares were traded and damaged during the Class Period, including approximately 80 million shares specifically connected to and following Wilmington Trust's secondary common stock offering that occurred on or about February 23, 2010 (the "Offering").[3] I then calculated the economic loss, or damages, for any given share purchased during the Class Period. This amount is the artificial inflation in the market price of the security at the time of purchase less the artificial inflation in the market price of the security at time of sale. The formulas in the Plan of Allocation are designed so that the Recognized Loss Amounts are determined based upon this well-settled damages formula, and limit recovery to the nominal loss suffered (*i.e.*, the purchase price minus the sale price).

13. For example, with regard to the Wilmington Trust/Underwriter Settlement and in accordance with the inflation tables A-1 and A-2 in the Plan of Allocation, shares purchased during the period January 18, 2008 to January 28, 2010 and sold prior to the first corrective disclosure would not have a Recognized Loss Amount because artificial inflation at time of purchase was $8.83 and artificial inflation at time of sale was also $8.83, as no corrective information had been released prior to the sale. By contrast, shares purchased when the artificial inflation embedded in the stock was $8.83 and sold on February 1, 2010, soon after the January 29, 2010 disclosure, would have a Recognized Loss Amount of $1.86 per share ($8.83 artificial inflation at purchase - $6.97 artificial inflation at sale). I understand that the $1.86 per share of artificial

[3] Of those 80 million shares, approximately 21.7 million shares were specifically connected to the Offering itself.

inflation was determined from a detailed analysis of how the stock price reacted upon the release of information that partially corrected the alleged fraud.

14. Further, for a share purchased during the Class Period and simply held through all of the alleged corrective disclosures, the recoverable damages are equal to the artificial inflation at time of purchase. For instance, a share purchased at the start of the Class Period with artificial inflation of $8.83 and still held past October 31, 2010, the final alleged corrective disclosure date, would have a Recognized Loss Amount equal to the full artificial inflation of $8.83 per share ($8.83 of artificial inflation at purchase – $0.00 of artificial inflation at sale). I understand this $8.83 per share was determined by aggregating the changes in the market price of Wilmington Trust Common Stock on each of the alleged partial corrective disclosures. Similarly, shares purchased on June 4, 2010, when artificial inflation was $5.29 per share (as some of the corrective information had already been disclosed and the related artificial inflation removed from the stock) and held past the end of the Class Period would have a Recognized Loss Amount of $5.29 per share ($5.29 of artificial inflation at purchase – $0.00 of artificial inflation at sale).

15. The calculation of recoverable damages must also incorporate a statutory limitation on recovery. In particular, the Private Securities Litigation Reform Act specifies that recoverable damages cannot exceed the purchase price less the average closing price over the 90 days following the corrective disclosure.[4] I have incorporated this limitation in my calculation of damages and it is also reflected in the formulas for determining the Recognized Loss Amounts in the Plan of Allocation.

[4] As required by the statute, if the share is sold within the 90-day "lookback" period, then the average closing price up to that day is used.

16. Under these assumptions, I find aggregate damages over the 130 million shares damaged during the Class Period (¶12) equal to $590 million.[5] Note that under the trading models, the same physical "share" can be damaged more than once. For example, if Trader 1 purchases a share, holds it over the first corrective disclosure, sells the share and suffers a loss, the share is counted as damaged. If the same share later suffers damages as well, it is counted as a damaged share again. In addition, I understand that these aggregate damages must be reduced by the amount that the Government has already recovered on behalf of Wilmington Trust investors, which would at a minimum include the $44 million forfeited by Wilmington Trust in connection with its settlement of the criminal charges against it. This offset reduces the total aggregate uncompensated damages to $546 million. This total may be even further reduced if some or all of the additional $16 million paid by Wilmington Trust to settle the SEC's action is distributed to shareholders.

17. The KPMG Settlement is simply a subset of the Wilmington Trust/Underwriter Settlement, and damages are calculated the same way applying the same inflation tables, but only for purchases made on February 22, 2010 or later. Following the same methodology and assumptions described above, I find aggregate damages of $285 million from February 22, 2010, on which the 2009 Form 10-K was filed (in which I understand KPMG is alleged to have made false and materially misleading statements) to the end of the Class Period. Again, the damages on these shares are a subset of the larger aggregate damages of $590 million applicable to the other Defendants. As with the larger aggregate damages, this damages amount must also be offset by the amount recovered by the Government.[6] It is important to note that this figure does not apportion

[5] Damages related to shares purchased in the Offering pursuant to the statutory framework set forth in the Securities Act are approximately $80 million and overlap entirely with the overall maximum damages of $590 million relating to secondary market purchases.

[6] My damages estimates do not attempt to apportion KPMG's liability relative to that of the other Defendants, which I understand that Lead Plaintiffs would be required to do under the PSLRA's judgment reduction provisions had KPMG not settled.

the amount of damages for which KPMG, Wilmington Trust, or any other Defendant is liable, which I understand Plaintiffs would be required to do at trial.

18. In my opinion, the Plan of Allocation treats Class Members who purchased Wilmington Trust common stock at different times within the Class Period in an equitable manner, and the Plan of Allocation will appropriately distribute the settlements in proportion to each Claimant's Recognized Claims. The artificial inflation and calculations specified in the Plan of Allocation are based upon methodologies and formulas that reasonably reflect the economic harm caused by the alleged fraud. Therefore, in my opinion, the Plan of Allocation is fair and reasonable to Class Members and is consistent with my understanding of recoverable losses under Section 10(b) of the Exchange Act as a result of the alleged misrepresentations.

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

Executed on: September 17, 2018
Chicago, Illinois



Chad Coffman

EXHIBIT C-1

UNITED STATES DISTRICT COURT
DISTRICT OF DELAWARE

IN RE WILMINGTON TRUST SECURITIES LITIGATION	Master File No. 10-cv-00990-ER
	(Securities Class Action)
This document relates to: ALL ACTIONS	Hon. Eduardo Robreno
	ELECTRONICALLY FILED

DECLARATION OF SCOTT MYERS, CHAIRMAN OF CORAL SPRINGS POLICE PENSION FUND IN SUPPORT OF: (A) LEAD PLAINTIFFS' MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENTS AND PLAN OF ALLOCATION; AND (B) LEAD COUNSEL'S MOTION FOR AN AWARD OF ATTORNEYS' FEES AND REIMBURSEMENT OF LITIGATION EXPENSES

I, Scott Myers, hereby declare under penalty of perjury as follows:

1. I am the Chairman of the Coral Springs Police Pension Fund ("Coral Springs Police"), a Court-appointed Lead Plaintiff and Class Representative in the above-captioned securities class action (the "Action").[1] I submit this declaration in support of: (a) Lead Plaintiffs' motion for final approval of the proposed Settlements and approval of the proposed Plan of Allocation; and (b) Lead Counsel's motion for an award of attorneys' fees and reimbursement of Litigation Expenses, which includes Coral Springs Police's request to recover the reasonable costs and expenses it incurred in connection with its representation of the Class in the Action.

[1] All capitalized terms that are not otherwise defined herein shall have the meanings ascribed to them in the Stipulation and Agreement of Settlement with Wilmington Trust Defendants and Underwriter Defendants dated May 15, 2018 (D.I. 821-1) or the Stipulation and Agreement of Settlement with KPMG dated May 25, 2018 (D.I. 821-2).

2. I am aware of and understand the requirements and responsibilities of a lead plaintiff in a securities class action, including those set forth in the Private Securities Litigation Reform Act of 1995 ("PSLRA"). I have personal knowledge of the matters set forth in this Declaration, as I have been directly involved in monitoring and overseeing the prosecution of the Action, as well as the negotiations leading to the Settlements, and I could and would testify competently to these matters.

I. Oversight of the Litigation

3. Coral Springs Police is a public pension fund which provides retirement benefits to full-time law enforcement officers in the City of Coral Springs, Florida. Coral Springs Police is responsible for the retirement income of these employees and their beneficiaries. As of September 30, 2017, Coral Springs Police's defined benefit plans served more than 350 active and retired members and their beneficiaries, and Coral Springs Police had over $215 million in assets under management.

4. On March 7, 2011, Coral Springs Police was appointed by the Court as one of the Lead Plaintiffs in this Action, and on September 3, 2015, Coral Springs Police was appointed by the Court as a Class Representative for the certified Class. On behalf of Coral Springs Police, I communicated with Saxena White P.A. ("Saxena White"), one of the Court-appointed Class Counsel for the Class, throughout the litigation. Coral Springs Police, through my active and continuous involvement, as well as the involvement of others as detailed below, closely supervised, carefully monitored, and was actively involved in all material aspects of the prosecution and resolution of the Action. Coral Springs Police received periodic status reports from Saxena White on case developments, and participated in discussions with attorneys from Saxena White concerning the prosecution of the Action, the strengths of and risks to the claims,

and potential settlement. In particular, throughout the course of this Action, I or others on behalf of Coral Springs Police:

(a) communicated with Saxena White by email and telephone regarding the posture and progress of the case;

(b) reviewed all significant pleadings and briefs filed in the Action;

(c) reviewed the Court's orders and discussed them with Saxena White;

(d) consulted with Saxena White regarding the settlement negotiations; and

(e) evaluated and approved the proposed Settlements.

II. Coral Springs Police Strongly Endorses Approval of the Settlements

5. Coral Springs Police was kept informed of the settlement negotiations as they progressed. Prior to and during the settlement negotiations, I conferred with Saxena White regarding the parties' respective positions.

6. Based on its involvement in this Action, Coral Springs Police believes that the proposed Settlements are fair, reasonable, and adequate, and represent an excellent recovery for the Class, particularly in light of the substantial risks of continued litigation. Therefore, Coral Springs Police strongly endorses approval of the Settlements by the Court.

III. Coral Springs Police Fully Supports Lead Counsel's Motion for an Award of Attorneys' Fees and Reimbursement of Litigation Expenses

7. Coral Springs Police believes that the request for an award of attorneys' fees in the amount of 28% of the Settlement Funds is fair and reasonable in light of the work that Plaintiffs' Counsel performed on behalf of the Class. Coral Springs Police takes seriously its role as a lead plaintiff to ensure that attorneys' fees are fair in light of the result achieved for the class and reasonably compensate plaintiffs' counsel for the work involved and the substantial risks counsel undertake in litigating an action.

8. Coral Springs Police further believes that the Litigation Expenses being requested for reimbursement to Plaintiffs' Counsel are reasonable, and represent costs and expenses necessary for the institution, prosecution, and resolution of the claims in the Action. Based on the foregoing, Coral Springs Police fully supports Lead Counsel's motion for an award of attorneys' fees and reimbursement of Litigation Expenses.

9. Coral Springs Police understands that reimbursement of a lead plaintiff's reasonable costs and expenses is authorized under the PSLRA. For this reason, in connection with Lead Counsel's request for reimbursement of Litigation Expenses, Coral Springs Police seeks reimbursement for the costs and expenses that it incurred directly relating to its representation of the Class in the Action.

10. My primary responsibility at Coral Springs Police involves overseeing all aspects of Coral Springs Police's operations, including monitoring litigation matters involving the fund, such as Coral Springs Police's activities in the securities class actions where (as here) it has been appointed lead plaintiff. The following employee of Coral Springs Police also participated in the prosecution of this Action: Gina Orlando, Pension Administrator.

11. The time that we devoted to the representation of the Class in this Action was time that we otherwise would have expected to spend on other work for Coral Springs Police and, thus, represented a cost to Coral Springs Police. Coral Springs Police seeks reimbursement in the amount of $7,566 for the time of the following Coral Springs Police personnel:

Personnel	Hours[2]	Rate[3]	Total
Scott Myers	80.5	$60	$4,830
Gina Orlando	58	$47	$2,726
TOTAL	**138.5**		**$7,556**

12. A categorial breakdown of the time spent by each of these individuals is as follows:

a. Case strategizing: 71.75 hours. This category includes time spent on consideration of and coordinating involvement in the litigation, calls or meetings with counsel, reading updates, and reviewing documents prior to filing.

b. Discovery consultation: 36.75 hours. This category includes time spent searching for documents in response to discovery, reviewing document requests, and reviewing and signing interrogatories.

c. Depositions and deposition preparation: 15.5 hours. This category includes time spent preparing for depositions and being deposed.

d. Attendance at hearings: 14.5 hours. This category includes time spent traveling and preparing for attendance at court hearings.

[2] While Coral Springs Police devoted a significant amount of time to this Action, our request for reimbursement of costs is based on a very conservative estimate of the amount of time we spent on this litigation as documented by our records.

[3] The hourly rates used for purposes of this request are based on the annual salaries and benefits of the respective personnel who worked on this Action.

IV. Conclusion

13. Coral Springs Police respectfully requests that the Court approve (a) Lead Plaintiffs' motion for final approval of the proposed Settlements and Plan of Allocation; and (b) Lead Counsel's motion for an award of attorneys' fees and reimbursement of Litigation Expenses, which includes Coral Springs Police's request for reimbursement for its reasonable costs and expenses incurred in prosecuting the Action on behalf of the Class, as set forth above.

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

Executed this 14 day of September 2018.

Scott Myers
Chairman
Coral Springs Police Pension Fund

EXHIBIT C-2

UNITED STATES DISTRICT COURT
DISTRICT OF DELAWARE

IN RE WILMINGTON TRUST SECURITIES LITIGATION	Master File No. 10-cv-00990-ER
	(Securities Class Action)
This document relates to: ALL ACTIONS	Hon. Eduardo Robreno
	ELECTRONICALLY FILED

DECLARATION OF GEORGE MITCHELL, CHAIRMAN OF POMPANO BEACHGENERAL EMPLOYEES RETIREMENT SYSTEM IN SUPPORT OF: (A) LEAD PLAINTIFFS' MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENTS AND PLAN OF ALLOCATION; AND (B) LEAD COUNSEL'S MOTION FOR AN AWARD OF ATTORNEYS' FEES AND REIMBURSEMENT OF LITIGATION EXPENSES

I, George Mitchell, hereby declare under penalty of perjury as follows:

1. I am the Chairman of the Pompano Beach General Employees Retirement System ("Pompano Beach GERS"), a Court-appointed Lead Plaintiff and Class Representative in the above-captioned securities class action (the "Action").[1] I have been Chairman since 2013, and I have been a member of the Board at all relevant times. I submit this declaration in support of: (a) Lead Plaintiffs' motion for final approval of the proposed Settlements and approval of the proposed Plan of Allocation; and (b) Lead Counsel's motion for an award of attorneys' fees and reimbursement of Litigation Expenses, which includes Pompano Beach GERS's request to recover

[1] All capitalized terms that are not otherwise defined herein shall have the meanings ascribed to them in the Stipulation and Agreement of Settlement with Wilmington Trust Defendants and Underwriter Defendants dated May 15, 2018 (D.I. 821-1) or the Stipulation and Agreement of Settlement with KPMG dated May 25, 2018 (D.I. 821-2).

the reasonable costs and expenses it incurred in connection with its representation of the Class in the Action.

2. I am aware of and understand the requirements and responsibilities of a lead plaintiff in a securities class action, including those set forth in the Private Securities Litigation Reform Act of 1995 ("PSLRA"). I have personal knowledge of the matters set forth in this Declaration, as I have been directly involved in monitoring and overseeing the prosecution of the Action, as well as the negotiations leading to the Settlements, and I could and would testify competently to these matters.

I. Oversight of the Litigation

3. Pompano Beach GERS is a public pension fund that provides retirement and related benefits to employees of the City of Pompano Beach, Florida. Pompano Beach GERS is responsible for the retirement income of these employees and their beneficiaries. As of September 30, 2017, Pompano Beach GERS's defined benefit plans served more than 933 active and retired members and their beneficiaries, and Pompano Beach GERS had over $177 million in assets under management.

4. On March 7, 2011, Pompano Beach GERS was appointed by the Court as one of the Lead Plaintiffs in this Action, and on September 3, 2015, Pompano Beach GERS was appointed by the Court as a Class Representative for the certified Class. On behalf of Pompano Beach GERS, I or others communicated with Saxena White P.A. ("Saxena White"), one of the Court-appointed Class Counsel for the Class, throughout the litigation. Pompano Beach GERS, through my active and continuous involvement, as well as the involvement of others as detailed below, closely supervised, carefully monitored, and was actively involved in all material aspects of the prosecution and resolution of the Action. Pompano Beach GERS received periodic status reports

from Saxena White on case developments, and participated in discussions with attorneys from Saxena White concerning the prosecution of the Action, the strengths of and risks to the claims, and potential settlement. In particular, throughout the course of this Action, I or others on behalf of Pompano Beach GERS:

(a) communicated with Saxena White by email and telephone regarding the posture and progress of the case;

(b) reviewed all significant pleadings and briefs filed in the Action;

(c) reviewed the Court's orders and discussed them with Saxena White;

(d) consulted with Saxena White regarding the settlement negotiations; and

(e) evaluated and approved the proposed Settlements.

5. Pompano Beach GERS is governed by a Board of Trustees. In addition to Saxena White, the Board also relied on legal counsel and advice from its Board Counsel, Ronald J. Cohen, and Brent J. Chudachek of the law firm of Rice Pugatch Robinson Storfer & Cohen, PLLC, in connection with the Action. Mr. Cohen has been the Board's general counsel since 2004 and both he and his firm are a trusted legal advisor to Pompano Beach GERS.

6. The Board regularly sought legal advice from Mr. Cohen relating to the Action, This counsel and advice allowed Pompano Beach GERS to successfully act as Lead Plaintiff while ensuring that it complied with its duties as a governmental retirement fund. Mr. Cohen provided the following legal services to the Board throughout the course of the Action:

(a) Regularly updated the Board of developments in the Action, including presenting updates at publicly-noticed meetings pursuant to Florida's "Government in the Sunshine" law;

(b) Provided counsel and input on significant pleadings and briefs filed in the Action to the Board;

(c) Approved the signing of Certifications;

(d) Reviewed Court orders and provided counsel and advice;

(e) Assisted with discovery matters including reviewing, and counselling on written discovery responses, preparation for my deposition and attendance at my deposition.

(f) Remained available for independent consultation

7. The litigation was discussed at regular meetings, and Cohen billed us for his attendance. I understand that Mr. Cohen's time records being submitted to the Court does not include any of that time. Pompano Beach GERS did not otherwise compensate Rice Pugatch Robinson Storfer & Cohen, PLLC or Ronald Cohen, P.A. during the relevant period for legal counsel associated with this matter.

II. Pompano Beach GERS Strongly Endorses Approval of the Settlements

8. Pompano Beach GERS was kept informed of the settlement negotiations as they progressed. Prior to and during the settlement negotiations, I or others on behalf of Pompano Beach GERS conferred with Saxena White regarding the parties' respective positions.

9. Based on its involvement in this Action, Pompano Beach GERS believes that the proposed Settlements are fair, reasonable, and adequate, and represent an excellent recovery for the Class. particularly in light of the substantial risks of continued litigation. Therefore, Pompano Beach GERS strongly endorses approval of the Settlements by the Court.

III. Pompano Beach GERS Fully Supports Lead Counsel's Motion for an Award of Attorneys' Fees and Reimbursement of Litigation Expenses

10. Pompano Beach GERS believes that the request for an award of attorneys' fees in the amount of 28% of the Settlement Funds is fair and reasonable in light of the work that Plaintiffs' Counsel performed on behalf of the Class. Pompano Beach GERS takes seriously its role as a lead plaintiff to ensure that attorneys' fees are fair in light of the result achieved for the class and reasonably compensate plaintiffs' counsel for the work involved and the substantial risks counsel undertake in litigating an action. Pompano Beach GERS is also aware of all retainer agreements

in this case, including the Agreement between its General Counsel and Saxena White, which it joined in, and fully supports that agreement and the obligations therein.

11. Pompano Beach GERS further believes that the Litigation Expenses being requested for reimbursement to Plaintiffs' Counsel are reasonable, and represent costs and expenses necessary for the institution, prosecution, and resolution of the claims in the Action. Based on the foregoing, Pompano Beach GERS fully supports Lead Counsel's motion for an award of attorneys' fees and reimbursement of Litigation Expenses.

12. Pompano Beach GERS understands that reimbursement of a lead plaintiff's reasonable costs and expenses is authorized under the PSLRA. For this reason, in connection with Lead Counsel's request for reimbursement of Litigation Expenses, Pompano Beach GERS seeks reimbursement for the costs and expenses that it incurred directly relating to its representation of the Class in the Action.

13. My primary responsibility at Pompano Beach GERS involves overseeing all aspects of Pompano Beach GERS's operations, including monitoring litigation matters involving the fund, such as Pompano Beach GERS's activities in the securities class actions where (as here) it has been appointed lead plaintiff. The following employee of Pompano Beach GERS also participated in the prosecution of this Action: Madelene Klein, Executive Director.

14. The time that we devoted to the representation of the Class in this Action was time that we otherwise would have expected to spend on other work for Pompano Beach GERS and, thus, represented a cost to Pompano Beach GERS. Pompano Beach GERS seeks reimbursement in the amount of $11,538.24 for the time of the following Pompano Beach GERS personnel:

Personnel	Hours[2]	Rate[3]	Total
George Mitchell	55.75	$58.82	$3,279.21
Madelene Klein	84.5	$97.74	$8,259.03
TOTAL	**140.25**		**$11,538.24**

15. A categorial breakdown of the time spent by each of these individuals is as follows:

a. Case strategizing: 96 hours. This category includes time spent on consideration of and coordinating involvement in the litigation, calls or meetings with counsel, reading updates, and reviewing documents prior to filing.

b. Discovery consultation: 30.75 hours. This category includes time spent searching for documents in response to discovery, reviewing document requests, and reviewing and signing interrogatories.

c. Depositions and deposition preparation: 13.5 hours. This category includes time spent preparing for depositions and being deposed.

IV. Conclusion

16. Pompano Beach GERS respectfully requests that the Court approve (a) Lead Plaintiffs' motion for final approval of the proposed Settlements; and Plan of Allocation; and (b) Lead Counsel's motion for an award of attorneys' fees and reimbursement of Litigation Expenses, which includes Pompano Beach GERS's request for reimbursement for its reasonable costs and expenses incurred in prosecuting the Action on behalf of the Class, as set forth above.

[2] While Pompano Beach GERS devoted a significant amount of time to this Action, our request for reimbursement of costs is based on a very conservative estimate of the amount of time we spent on this litigation as documented by our records.

[3] The hourly rates used for purposes of this request are based on the annual salaries and benefits of the respective personnel who worked on this Action.

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

Executed this 15th day of September 2018.

George Mitchell
Chairman
Pompano Beach General Employees
Retirement System

EXHIBIT C-3

UNITED STATES DISTRICT COURT
DISTRICT OF DELAWARE

IN RE WILMINGTON TRUST SECURITIES LITIGATION	Master File No. 10-cv-00990-ER
	(Securities Class Action)
This document relates to: ALL ACTIONS	Hon. Eduardo Robreno
	ELECTRONICALLY FILED

DECLARATION OF BRETT CISKOSKI, CHAIRMAN OF ST. PETERSBURG FIREFIGHTERS' RETIREMENT SYSTEM IN SUPPORT OF: (A) LEAD PLAINTIFFS' MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENTS AND PLAN OF ALLOCATION; AND (B) LEAD COUNSEL'S MOTION FOR AN AWARD OF ATTORNEYS' FEES AND REIMBURSEMENT OF LITIGATION EXPENSES

I, Brett Ciskoski hereby declare under penalty of perjury as follows:

1. I am presently the Chairman of the St. Petersburg Firefighters' Retirement System ("St. Petersburg Firefighters"), a Court-appointed Lead Plaintiff and Class Representative in the above-captioned securities class action (the "Action").[1] I submit this declaration in support of: (a) Lead Plaintiffs' motion for final approval of the proposed Settlements and approval of the proposed Plan of Allocation; and (b) Lead Counsel's motion for an award of attorneys' fees and reimbursement of Litigation Expenses, which includes St. Petersburg Firefighters' request to recover the reasonable costs and expenses it incurred in connection with its representation of the Class in the Action.

[1] All capitalized terms that are not otherwise defined herein shall have the meanings ascribed to them in the Stipulation and Agreement of Settlement with Wilmington Trust Defendants and Underwriter Defendants dated May 15, 2018 (D.I. 821-1) or the Stipulation and Agreement of Settlement with KPMG dated May 25, 2018 (D.I. 821-2).

2. I am aware of and understand the requirements and responsibilities of a lead plaintiff in a securities class action, including those set forth in the Private Securities Litigation Reform Act of 1995 ("PSLRA"). I have personal knowledge of the matters set forth in this Declaration, as I have been directly involved in monitoring and overseeing the prosecution of the Action during my time as Chairman of St. Petersburg Firefighters, as well as the negotiations leading to the Settlements, and I could and would testify competently to these matters.

I. Oversight of the Litigation

3. St. Petersburg Firefighters is a public pension fund that provides retirement and related benefits to retired firefighters and their families in the City of St. Petersburg, Florida. St. Petersburg Firefighters is responsible for the retirement income of these employees and their beneficiaries. As of September 20, 2017, St. Petersburg Firefighters' defined benefit plan served more than 700 active and retired members and their beneficiaries, and maintains over $283 million in assets under management.

4. On March 7, 2011, St. Petersburg Firefighters was appointed by the Court as one of the Lead Plaintiffs in this Action, and on September 3, 2015, St. Petersburg Firefighters was appointed by the Court as a Class Representative for the certified Class. On behalf of St. Petersburg Firefighters, Assistant City Attorney Jane Wallace and I communicated with Saxena White P.A. ("Saxena White"), one of the Court-appointed Class Counsel for the Class, throughout the litigation. Prior to my tenure as Chairman, my predecessor Alan Rosetti, communicated with Saxena White along with Ms. Wallace. St. Petersburg Firefighters, through the active and continuous involvement of those persons detailed below, closely supervised, carefully monitored, and was actively involved in all material aspects of the prosecution and resolution of the Action. St. Petersburg Firefighters received periodic status reports from Saxena

White on case developments, and participated in discussions with attorneys from Saxena White concerning the prosecution of the Action, the strengths of and risks to the claims, and potential settlement. In particular, throughout the course of this Action, I or others on behalf of St. Petersburg Firefighters:

(a) communicated with Saxena White by email and telephone regarding the posture and progress of the case;

(b) reviewed all significant pleadings and briefs filed in the Action;

(c) reviewed the Court's orders and discussed them with Saxena White;

(d) consulted with Saxena White regarding the settlement negotiations; and

(e) evaluated and approved the proposed Settlements.

II. St. Petersburg Firefighters Strongly Endorses Approval of the Settlements

5. St. Petersburg Firefighters was kept informed of the settlement negotiations as they progressed.

6. Based on its involvement in this Action, St. Petersburg Firefighters believes that the proposed Settlements are fair, reasonable, and adequate, and represent an excellent recovery for the Class, particularly in light of the substantial risks of continued litigation. Therefore, St. Petersburg Firefighters strongly endorses approval of the Settlements by the Court.

III. St. Petersburg Firefighters Supports Lead Counsel's Motion for an Award of Attorneys' Fees and Reimbursement of Litigation Expenses

7. Lead Counsels' request for an award of attorneys' fees in the amount of 28% of the Settlement Funds is fair and reasonable in light of the terms of the retainer agreement between St. Petersburg Firefighters and Saxena White and the work that Lead Counsel performed on behalf of the Class. St. Petersburg Firefighters takes seriously its role as a Lead Plaintiff to ensure that attorneys' fees are fair in light of the result achieved for the class and reasonably

compensate plaintiffs' counsel for the work involved and the substantial risks counsel undertake in litigating an action.

8. The Litigation Expenses being requested for reimbursement to Lead Counsel are reasonable and necessary in light of the terms of the retainer agreement between St. Petersburg Firefighters and Saxena White. Based on the foregoing, St. Petersburg Firefighters supports Lead Counsel's motion for an award of attorneys' fees and reimbursement of Litigation Expenses.

9. St. Petersburg Firefighters understands that reimbursement of a lead plaintiff's reasonable costs and expenses is authorized under the PSLRA. For this reason, in connection with Lead Counsel's request for reimbursement of Litigation Expenses, St. Petersburg Firefighters seeks reimbursement for the costs and expenses that were incurred directly relating to its representation of the Class in the Action.

10. As Chairman, my primary responsibility at St. Petersburg Firefighters involves overseeing all aspects of St. Petersburg Firefighters' operations, including monitoring litigation matters involving the System, such as St. Petersburg Firefighters' activities in the securities class actions where (as here) it has been appointed lead plaintiff. I, along with former Chairman Rosetti, participated in the prosecution of this Action for St. Petersburg Firefighters. In addition, the following employees of the City of St. Petersburg also participated in the prosecution of this Action for, and on behalf of, St. Petersburg Firefighters: attorneys Jacqueline Kovilaritch and Jane Wallace of the St. Petersburg City Attorney's Office; and Vicki Grant, Pension and Benefits Manager for the City of St. Petersburg.

11. The time that we devoted to the representation of the Class in this Action was time that we otherwise would have expected to spend on other work for St. Petersburg Firefighters or the City of St. Petersburg and, thus, represented a cost to St. Petersburg

Firefighters and to the City. St. Petersburg Firefighters seeks reimbursement in the amount of $22,109 for the time of City of St. Petersburg personnel on behalf of St. Petersburg Firefighters:

Personnel	Hours[2]	Rate	Total
St. Petersburg Firefighters Chairmen[3]			
Alan Rosetti	11.8	$77	$908
Brett Ciskoski	3.0	$77	$231
Total:			**1,139**
City of St. Petersburg[4]			
Jacqueline Kovilaritch	19.4	$300	$5,820
Jane Wallace	35.7	$300	$10,710
Vicki Grant	14.8	$300	$4,440
Total:			**20,970**
COMBINED TOTAL	**84.7**		**$22,109**

12. A categorial breakdown of the time spent by each of these individuals is as follows:

a. Case strategizing: 59.7 hours. This category includes time spent on consideration of and coordinating involvement in the litigation, calls or meetings with counsel, reading updates, and reviewing documents prior to filing.

b. Discovery consultation: 12 hours. This category includes time spent searching for documents in response to discovery, reviewing document requests, and reviewing and signing interrogatories.

[2] While St. Petersburg Firefighters devoted a significant amount of time to this Action, our request for reimbursement of costs is based on a very conservative estimate of the amount of time we spent on this litigation as documented by our records.

[3] The hourly rates used for purposes of this request are based on the annual salaries and benefits of the firefighters who worked on this Action.

[4] The hourly rate used for purposes of this request is based on the approximate blended average billing rates of Lead Counsel's paraprofessionals who billed time to this Action.

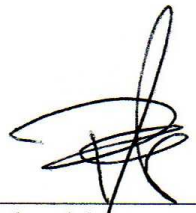
c. Depositions and deposition preparation: 13 hours. This category includes time spent preparing for depositions and being deposed.

IV. Conclusion

13. St. Petersburg Firefighters respectfully requests that the Court approve (a) Lead Plaintiffs' motion for final approval of the proposed Settlements and Plan of Allocation; and (b) Lead Counsels' motion for an award of attorneys' fees and reimbursement of Litigation Expenses, which includes St. Petersburg Firefighters' request for reimbursement for its reasonable costs and expenses incurred in prosecuting the action on behalf of the Class, as set forth above.

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

Executed this 14th day of September 2018.



Brett Ciskoski
Chairman
St. Petersburg Firefighters' Retirement System

EXHIBIT C-4

UNITED STATES DISTRICT COURT
DISTRICT OF DELAWARE

IN RE WILMINGTON TRUST SECURITIES LITIGATION	Master File No. 10-cv-00990-ER (Securities Class Action) Hon. Eduardo Robreno ELECTRONICALLY FILED
This document relates to: ALL ACTIONS	

DECLARATION OF KRISTEN SANTOS, RETIREMENT PLAN ADMINISTRATOR OF MERCED COUNTY EMPLOYEES' RETIREMENT ASSOCIATION IN SUPPORT OF: (A) LEAD PLAINTIFFS' MOTION FOR FINAL APPROVAL OF CLASS ACTIONS SETTLEMENTS AND PLAN OF ALLOCATION; AND (B) LEAD COUNSEL'S MOTION FOR AN AWARD OF ATTORNEYS' FEES AND REIMBURSEMENT OF LITIGATION EXPENSES

I, Kristen Santos, hereby declare under penalty of perjury as follows:

1. I am the Retirement Plan Administrator of the Merced County Employees' Retirement Association ("MCERA"), a Court-appointed Lead Plaintiff and Class Representative in the above-captioned securities class action (the "Action").[1] I submit this declaration in support of: (a) Lead Plaintiffs' motion for final approval of the proposed Settlements and approval of the proposed Plan of Allocation; and (b) Lead Counsel's motion for an award of attorneys' fees and reimbursement of Litigation Expenses, which includes MCERA's request to recover the reasonable costs and expenses it incurred in connection with its representation of the Class in the Action.

[1] All capitalized terms that are not otherwise defined herein shall have the meanings ascribed to them in the Stipulation and Agreement of Settlement with Wilmington Trust Defendants and Underwriter Defendants dated May 15, 2018 (D.I. 821-1) or the Stipulation and Agreement of Settlement with KPMG dated May 25, 2018 (D.I. 821-2).

2. I am aware of and understand the requirements and responsibilities of a lead plaintiff in a securities class action, including those set forth in the Private Securities Litigation Reform Act of 1995 ("PSLRA"). I have personal knowledge of the matters set forth in this Declaration, as I have been directly involved in monitoring and overseeing the prosecution of the Action, as well as the negotiations leading to the Settlements, and I could and would testify competently to these matters.

I. Oversight of the Litigation

3. MCERA is a multiple-employer defined benefit plan that administers death, disability, and survivor benefits for eligible employees of Merced County, California. MCERA is responsible for the retirement income of these employees and their beneficiaries. As of September 13, 2018, MCERA's defined benefit plans served more than 5,299 active, deferred and retired members and their beneficiaries, and MCERA had over $836,061,295 million in assets under management.

4. On March 7, 2011, MCERA was appointed by the Court as one of the Lead Plaintiffs in this Action, and on September 3, 2015, MCERA was appointed by the Court as a Class Representative for the certified Class. On behalf of MCERA, I (and my predecessor Plan Administrators Steven Bland and Maria Arevalo) had regular communications with Bernstein Litowitz Berger & Grossmann LLP ("BLB&G"), one of the Court-appointed Class Counsel for the Class, throughout the litigation. MCERA, through my and my predecessors' active and continuous involvement, as well as the involvement of others as detailed below, closely supervised, carefully monitored, and was actively involved in all material aspects of the prosecution and resolution of the Action. MCERA received periodic status reports from BLB&G on case developments and participated in regular discussions with attorneys from BLB&G

concerning the prosecution of the Action, the strengths of and risks to the claims, and potential settlement. In particular, throughout the course of this Action, I and other employees of MCERA:

(a) regularly communicated with BLB&G by email and telephone regarding the posture and progress of the case;

(b) reviewed all significant pleadings and briefs filed in the Action;

(c) reviewed the Court's orders and discussed them with BLB&G;

(d) reviewed document requests and interrogatories and MCERA's responses to those requests and interrogatories;

(e) actively participated in MCERA's document collection, review and production;

(f) prepared for and sat for a deposition in connection with Lead Plaintiffs' successful motion for class certification

(g) consulted with BLB&G regarding the settlement negotiations; and

(h) evaluated and approved the proposed Settlements.

II. MCERA Strongly Endorses Approval of the Settlements

5. MCERA was kept informed of the settlement negotiations as they progressed. Prior to and during the settlement negotiations, I conferred with BLB&G regarding the parties' respective positions.

6. Based on its involvement throughout the prosecution and resolution of the claims asserted in the Action, MCERA believes that the proposed Settlements are fair, reasonable, and adequate to the Class. MCERA believes that the Settlements represent an excellent recovery for the Class, particularly in light of the substantial risks of continuing to prosecute the claims in this case. Therefore, MCERA strongly endorses approval of the Settlements by the Court.

III. MCERA Fully Supports Lead Counsel's Motion for an Award of Attorneys' Fees and Reimbursement of Litigation Expenses

7. MCERA believes that the request for an award of attorneys' fees in the amount of 28% of the Settlement Funds – a percentage that was negotiated and set forth in a written retainer between MCERA and BLB&G at the outset of this litigation – is fair and reasonable in light of the work that Plaintiffs' Counsel performed on behalf of the Class. MCERA takes seriously its role as a lead plaintiff to ensure that attorneys' fees are fair in light of the result achieved for the class and reasonably compensate plaintiffs' counsel for the work involved and the substantial risks counsel undertake in litigating an action. MCERA has evaluated Lead Counsel's fee request in this Action by considering the work performed by Plaintiffs' Counsel and the substantial recovery obtained for the Class.

8. MCERA further believes that the Litigation Expenses being requested for reimbursement to Plaintiffs' Counsel are reasonable, and represent costs and expenses necessary for the institution, prosecution, and resolution of the claims in the Action. Based on the foregoing, and consistent with its obligation to the Class to obtain the best result at the most efficient cost, MCERA fully supports Lead Counsel's motion for an award of attorneys' fees and reimbursement of Litigation Expenses.

9. MCERA understands that reimbursement of a lead plaintiff's reasonable costs and expenses is authorized under the PSLRA. For this reason, in connection with Lead Counsel's request for reimbursement of Litigation Expenses, MCERA seeks reimbursement for the costs and expenses that it incurred directly relating to its representation of the Class in the Action.

10. My primary responsibility at MCERA involves overseeing all aspects of MCERA's operations, including monitoring litigation matters involving the fund, such as MCERA's activities in the securities class actions where (as here) it has been appointed lead

plaintiff. The following employees of MCERA also participated in the prosecution of this Action: Steven Bland, former Retirement Plan Administrator; Maria Arevalo, former Retirement Plan Administrator; Forrest W. Hansen, Assistant County Counsel.

11. The time that we devoted to the representation of the Class in this Action was time that we otherwise would have expected to spend on other work for MCERA and, thus, represented a cost to MCERA. MCERA seeks reimbursement in the amount of $10,052.82 for the time of the following MCERA personnel:

Personnel	Hours	Rate[2]	Total
Maria Arevalo	32.5	$77.26	$2,510.95
Steven Bland	63	$77.26	$4,867.38
Kristen Santos	22	$77.26	$1,699.72
Forrest Hansen	7.25	$134.45	$974.77
TOTAL	**124.75**		**$10,052.82**

12. While MCERA devoted a significant amount of time to this Action, our request for reimbursement of costs is based on a very conservative estimate of the amount of time we spent on this litigation as documented by our records. The hours the above individuals spent on this litigation were divided into three general categories. Approximately 66.75 hours were devoted to case strategizing throughout the litigation, from the case's inception through settlement. This includes communications with Lead Counsel, the review of case updates, and the review of pleadings in advance of their filing. Another 34 hours was devoted to discovery consultation, which includes the search for and review of documents for production in this action, the review of document requests, the review of MCERA's responses to those requests, and the review and signing of interrogatory responses. Finally, Steven Bland devoted 24 hours to

[2] The hourly rates used for purposes of this request are based on the annual salaries and benefits of the respective personnel who worked on this Action per the Merced County Human Resources.

the preparation for and attendance at his deposition in 2014 in connection with Lead Plaintiffs' motion for class certification.

13. In addition, MCERA incurred substantial costs in connection with discovery in this matter. Specifically, in September 2014, MCERA paid $4,200.00 for the restoration of certain older email files in order to perform searches for responsive documents. Thus, the total reimbursement sought by MCERA is $14,252.82.

IV. Conclusion

14. In conclusion, MCERA was closely involved throughout the prosecution and settlement of the claims in this Action, strongly endorses the Settlements as fair, reasonable, and adequate, and believes that they represent a significant recovery for the Class. Accordingly, MCERA respectfully requests that the Court approve Lead Plaintiffs' motion for final approval of the proposed Settlements and Plan of Allocation and Lead Counsel's motion for an award of attorneys' fees and reimbursement of Litigation Expenses, including MCERA's request for reimbursement of $14,252.82 for its reasonable costs and expenses incurred in prosecuting the Action on behalf of the Class.

I declare under penalty of perjury under the laws of the United States of America that that the foregoing is true and correct based on my own personal knowledge and records provided by counsel, and that I have authority to execute this Declaration on behalf of MCERA.

Executed this 13th day of September, 2018.

Kristen Santos
Retirement Plan Administrator
Merced County Employees' Retirement Services

#1222544

EXHIBIT C-5

UNITED STATES DISTRICT COURT
DISTRICT OF DELAWARE

IN RE WILMINGTON TRUST SECURITIES LITIGATION	Master File No. 10-cv-00990-ER
	(Securities Class Action)
This document relates to: ALL ACTIONS	Hon. Eduardo Robreno
	ELECTRONICALLY FILED

DECLARATION OF JAMES HENRY BENO, CHAIRMAN OF AUTOMOTIVE INDUSTRIES PENSION TRUST FUND IN SUPPORT OF: (A) LEAD PLAINTIFFS' MOTION FOR FINAL APPROVAL OF CLASS ACTIONS SETTLEMENTS AND PLAN OF ALLOCATION; AND (B) LEAD COUNSEL'S MOTION FOR AN AWARD OF ATTORNEYS' FEES AND REIMBURSEMENT OF LITIGATION EXPENSES

I, James Henry Beno, hereby declare under penalty of perjury as follows:

1. I am the Chairman of the Automotive Industries Pension Trust Fund ("Automotive"), a Court-appointed Lead Plaintiff and Class Representative in the above-captioned securities class action (the "Action").[1] I submit this declaration in support of: (a) Lead Plaintiffs' motion for final approval of the proposed Settlements and approval of the proposed Plan of Allocation; and (b) Lead Counsel's motion for an award of attorneys' fees and reimbursement of Litigation Expenses, which includes a request to recover reasonable fees and expenses incurred by Automotive's counsel that were incurred in connection with Automotive's representation of the Class in the Action.

[1] All capitalized terms that are not otherwise defined herein shall have the meanings ascribed to them in the Stipulation and Agreement of Settlement with Wilmington Trust Defendants and Underwriter Defendants dated May 15, 2018 (D.I. 821-1) or the Stipulation and Agreement of Settlement with KPMG dated May 25, 2018 (D.I. 821-2).

2. I am aware of and understand the requirements and responsibilities of a lead plaintiff in a securities class action, including those set forth in the Private Securities Litigation Reform Act of 1995 ("PSLRA"). I have personal knowledge of the matters set forth in this Declaration, as I have been directly involved in monitoring and overseeing the prosecution of the Action, as well as the negotiations leading to the Settlements, and I could and would testify competently to these matters.

I. Oversight of the Litigation

3. Automotive is a California-based pension trust fund administered in Dublin, California, that consists of participants from three different international unions: the International Association of Machinists and Aerospace Workers, the International Brotherhood of Teamsters, and the International Brotherhood of Painters and Allied Trades. As of September 2018, Automotive manages over $1 billion in assets and serves approximately 25,000 participants, including active participants, inactive vested participants, and retirees and beneficiaries.

4. On March 7, 2011, Automotive was appointed by the Court as one of the Lead Plaintiffs in this Action, and on September 3, 2015, Automotive was appointed by the Court as a Class Representative for the certified Class. On behalf of Automotive, I and my predecessor Chairman Bill Brunelli had regular communications regarding the Action with Philip Miller and Anne Bevington of the law firm of Saltzman & Johnson L.C., counsel for Automotive, and with Bernstein Litowitz Berger & Grossmann LLP ("BLB&G"), one of the Court-appointed Class Counsel for the Class, throughout the litigation. Automotive closely supervised, carefully monitored, and was actively involved in all material aspects of the prosecution and resolution of the Action. Automotive received periodic status reports from Saltzman & Johnson and BLB&G on case developments and participated in regular discussions with these attorneys concerning the

prosecution of the Action, the strengths of and risks to the claims, and potential settlement. In particular, throughout the course of this Action, I and Bill Brunelli:

(a) regularly communicated with Saltzman & Johnson and BLB&G by email and telephone regarding the posture and progress of the case;

(b) reviewed significant pleadings and briefs filed in the Action;

(c) reviewed the Court's orders and discussed them with attorneys at Saltzman & Johnson;

(d) reviewed document requests and interrogatories and Automotive's responses to those requests and interrogatories;

(e) assisted in Automotive's document collection, review and production;

(f) prepared for and sat for a deposition in connection with Lead Plaintiffs' successful motion for class certification;

(g) consulted with Saltzman & Johnson and BLB&G regarding the settlement negotiations; and

(h) evaluated and approved the proposed Settlements.

II. Automotive Strongly Endorses Approval of the Settlements

5. Automotive was kept informed of the settlement negotiations as they progressed. Prior to and during the settlement negotiations, I and counsel from Saltzman & Johnson conferred with BLB&G regarding the parties' respective positions.

6. Based on its involvement throughout the prosecution and resolution of the claims asserted in the Action, Automotive believes that the proposed Settlements are fair, reasonable, and adequate to the Class. Automotive believes that the Settlements represent an excellent recovery for the Class, particularly in light of the substantial risks of continuing to prosecute the claims in this case. Therefore, Automotive strongly endorses approval of the Settlements by the Court.

III. Automotive Fully Supports Lead Counsel's Motion for an Award of Attorneys' Fees and Reimbursement of Litigation Expenses

7. Automotive believes that the request for an award of attorneys' fees in the amount of 28% of the Settlement Funds – a percentage that was negotiated and set forth in a written retainer between Automotive and BLB&G at the outset of this litigation – is fair and reasonable in light of the work that Plaintiffs' Counsel performed on behalf of the Class. Automotive takes seriously its role as a lead plaintiff to ensure that attorneys' fees are fair in light of the result achieved for the class and reasonably compensate plaintiffs' counsel for the work involved and the substantial risks counsel undertake in litigating an action. Automotive has evaluated Plaintiffs' Counsel's fee request in this Action by considering the work performed by Plaintiffs' Counsel and the substantial recovery obtained for the Class.

8. Automotive further believes that the Litigation Expenses being requested for reimbursement to Plaintiffs' Counsel are reasonable, and represent costs and expenses necessary for the institution, prosecution, and resolution of the claims in the Action. Based on the foregoing, and consistent with its obligation to the Class to obtain the best result at the most efficient cost, Automotive fully supports Lead Counsel's motion for an award of attorneys' fees and reimbursement of Litigation Expenses.

9. Automotive understands that reimbursement of a class representative's reasonable costs and expenses is authorized under the PSLRA. Even though I, Bill Brunelli and others at Automotive spent a considerable amount of time monitoring the litigation on behalf of the Class, Automotive is not seeking reimbursement for its costs and expenses incurred in connection with this litigation. We understand that the fees incurred by Saltzman & Johnson in connection with their representation of Automotive in connection with this Action will be paid through the attorneys' fees awarded by the Court.

IV. Conclusion

10. In conclusion, Automotive was closely involved throughout the prosecution and settlement of the claims in this Action, strongly endorses the Settlements as fair, reasonable, and adequate, and believes that they represent a significant recovery for the Class. Accordingly, Automotive respectfully requests that the Court approve Lead Plaintiffs' motion for final approval of the proposed Settlements and Plan of Allocation and Lead Counsel's motion for an award of attorneys' fees and reimbursement of Litigation Expenses.

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

Executed this 14 day of September, 2018.

James Henry Beno
Chairman
Automotive Industries Pension Trust Fund

EXHIBIT D

EXHIBIT D

In Re Wilmington Trust Securities Litigation
Master File No. 10-cv-00990-ER

SUMMARY OF PLAINTIFFS' COUNSEL'S LODESTAR AND EXPENSES

TAB	FIRM	HOURS	LODESTAR	EXPENSES
1	Bernstein Litowitz Berger & Grossmann LLP	91,683.00	$40,450,876.25	$4,016,976.66
2	Saxena White P.A.	100,871.00	$38,346,400.00	$2,759,446.09
3	Chimicles & Tikellis LLP	2,521.13	$1,178,947.25	$13,622.07
	TOTAL:	**195,075.13**	**$79,976,223.50**	**$6,790,044.82**

#1227909

EXHIBIT D-1

UNITED STATES DISTRICT COURT
DISTRICT OF DELAWARE

IN RE WILMINGTON TRUST SECURITIES LITIGATION	Master File No. 10-cv-00990-ER
	(Securities Class Action)
This document relates to: ALL ACTIONS	Hon. Eduardo Robreno
	ELECTRONICALLY FILED

DECLARATION OF HANNAH ROSS 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, Hannah Ross, hereby declare under penalty of perjury as follows:

1. I am a partner of the law firm of Bernstein Litowitz Berger & Grossmann LLP ("BLB&G"), one of the Court-appointed Lead Counsel firms in the above-captioned action (the "Action").[1] 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 one of the Lead Counsel firms, was involved in all aspects of the litigation of the Action and its settlement as set forth in the Joint Declaration of Hannah Ross and Joseph E. White, III in Support of (I) Lead Plaintiffs' Motion for Final Approval of Class Action Settlements and Plan of Allocation and (II) Lead Counsel's Motion for an Award of Attorneys' Fees and Reimbursement of Litigation Expenses.

[1] All capitalized terms that are not otherwise defined herein shall have the meanings ascribed to them in the Stipulation and Agreement of Settlement with Wilmington Trust Defendants and Underwriter Defendants dated May 15, 2018 (D.I. 821-1) and the Stipulation and Agreement of Settlement with KPMG dated May 25, 2018 (D.I. 821-2).

3. The schedule attached hereto as Exhibit 1 is a detailed summary indicating the amount of time spent by attorneys and professional support staff employees of my firm who, from inception of the Action through and including May 25, 2018, worked on the prosecution and settlement of the Action, and the lodestar calculation for those individuals based on my firm's current hourly rates. Exhibit 1 excludes timekeepers whose time was minimal, including all timekeepers who worked under 10 hours on this matter. For personnel who are no longer employed by my firm, the lodestar calculation is based upon the hourly 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. No time expended on the application for fees and expenses has been included.

4. The hourly rates for the attorneys and professional support staff in my firm included in Exhibit 1 are their standard rates, which have been accepted in other securities or shareholder litigation.

5. The total number of hours reflected in Exhibit 1 is 91,683.00. The total lodestar reflected in Exhibit 1 is $40,450,876.25, consisting of $38,164,825.00 for attorneys' time and $2,286,051.25 for professional support staff time.

6. My firm's lodestar figures are based upon the firm's standard hourly rates and do not include expense items. Expense items are being submitted separately and are not duplicated in the firm's hourly rates.

7. As detailed in Exhibit 2, my firm is seeking reimbursement for a total of $4,016,976.66 in expenses incurred from inception of the Action through and including September 14, 2018.

8. The expenses reflected in Exhibit 2 are the actual incurred expenses or reflect "caps" based on the application of the following criteria:

(a) Out-of-Town Travel – airfare is capped at coach rates, hotel charges per night are capped at $350 for "high cost" cities and $250 for "low cost" cities (the relevant cities and how they are categorized are reflected on Exhibit 3); meals are capped at $20 per person for breakfast, $25 per person for lunch, and $50 per person for dinner.

(b) Out-of-Office Meals – capped at $25 per person for lunch and $50 per person for dinner.

(c) In-Office Working Meals – capped at $20 per person for lunch and $30 per person for dinner.

(d) Internal Copying/Printing – charged at $0.10 per page.

(e) On-Line Research – charges reflected are for out-of-pocket payments to the vendors for research done in connection with this litigation. On-line research is charged to each case based on actual time usage at a set charge by the vendor. There are no administrative charges included in these figures.

9. The expenses incurred by BLB&G in the 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. To facilitate the sharing of expenses, the Lead Counsel firms established and jointly contributed to a litigation fund, which my firm was responsible for managing. Attached as Exhibit 3 is a chart reflecting the contributions of the three firms to the litigation fund and the disbursements from the fund. A balance of $36,345.62 remains in the litigation fund that will be repaid to BLB&G. The amount reflected on BLB&G's Expense Report (Exhibit 2) has been reduced by that amount to avoid any double counting of expenditures.

11. 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 the Action.

I declare, under penalty of perjury, that the foregoing facts are true and correct. Executed on September 17, 2018.

Hannah Ross

EXHIBIT 1

In Re Wilmington Trust Securities Litigation
Master File No. 10-cv-00990-ER

BERNSTEIN LITOWITZ BERGER & GROSSMANN LLP

TIME REPORT

Inception through and including May 25, 2018

NAME	HOURS	HOURLY RATE	LODESTAR
Partners			
Max Berger	257.75	1,250.00	322,187.50
Salvatore Graziano	42.25	995.00	42,038.75
Avi Josefson	161.50	850.00	137,275.00
David Kaplan	108.50	750.00	81,375.00
Blair Nicholas	504.75	995.00	502,226.25
Lauren A. Ormsbee	3,298.00	750.00	2,473,500.00
John Rizio-Hamilton	147.25	800.00	117,800.00
Jeremy Robinson	83.00	750.00	62,250.00
Hannah Ross	3,401.50	895.00	3,044,342.50
Gerald Silk	193.50	995.00	192,532.50
Katherine Sinderson	4,150.50	750.00	3,112,875.00
Steven Singer*	282.75	875.00	247,406.25
Senior Counsel			
Richard Gluck	356.75	750.00	267,562.50
Adam Hollander	718.75	725.00	521,093.75
Associates			
Laura Asserfea	221.00	450.00	99,450.00
Jesse Jensen	867.75	550.00	477,262.50
Ann Lipton	205.00	550.00	112,750.00
John Mills	191.75	650.00	124,637.50
Jake Nachmani	1,102.00	500.00	551,000.00
Sean O'Dowd	1,305.00	475.00	619,875.00
Ross Shikowitz	182.25	550.00	100,237.50
Stefanie Sundel	661.00	550.00	363,550.00
Julia Tebor	945.50	475.00	449,112.50

* Steven Singer was a partner of BLB&G until his retirement from the firm in February, 2014. *See* D.I. 214. Mr. Singer became a partner of Saxena White P.A. in January, 2017.

NAME	HOURS	HOURLY RATE	LODESTAR
Staff Attorneys			
Erik Aldeborgh	713.50	395.00	281,832.50
Pedro Ariston	4,411.25	340.00	1,499,825.00
Brian Chau	145.00	375.00	54,375.00
Anne T. Cirasuolo	2,570.50	395.00	1,015,347.50
Chris Clarkin	1,275.50	375.00	478,312.50
Monique Claxton	4,428.50	375.00	1,660,687.50
Andrea Clisura	1,195.00	340.00	406,300.00
Lauren Cormier	923.75	340.00	314,075.00
Cami Daigle	3,993.00	340.00	1,357,620.00
Alex Dickin	4,560.25	340.00	1,550,485.00
Ashley Few	3,605.25	340.00	1,225,785.00
Danielle Garvey	547.00	375.00	205,125.00
Vivian Gayed	2,190.00	395.00	865,050.00
Cristal Gerrick	423.25	375.00	158,718.75
Melissa Glazer	408.00	375.00	153,000.00
Scott Horlacher	3,525.00	395.00	1,392,375.00
Catherine Van Kampen	1,784.50	395.00	704,877.50
Jed Koslow	562.00	375.00	210,750.00
Robert McCarthy	486.00	395.00	191,970.00
Amy McGeever	587.25	340.00	199,665.00
Matt Mulligan	1,782.50	375.00	668,437.50
Daniel Murro	636.50	395.00	251,417.50
Joy A. Nesbitt-Sajous	2,180.50	395.00	861,297.50
Karin Page	676.25	375.00	253,593.75
Marion Passmore	148.25	395.00	58,558.75
Damien Puniello	3,508.50	340.00	1,192,890.00
Jessica Purcell	1,363.00	375.00	511,125.00
Prashantha Ratnayake	2,190.50	395.00	865,247.50
Antonino B. Roman	2,278.00	395.00	899,810.00
Charles Ronan	366.75	340.00	124,695.00
David Serna	823.50	340.00	279,990.00
Allison Tierney	3,495.00	395.00	1,380,525.00
Kesav Wable	783.25	340.00	266,305.00
Mark Weaver	1,972.00	375.00	739,500.00
Joanne Williams	1,735.50	395.00	685,522.50
Jordan Wolff	401.50	375.00	150,562.50
Kit Wong	2,131.75	395.00	842,041.25
Susan Woo-Fukuda	543.50	340.00	184,790.00

NAME	HOURS	HOURLY RATE	LODESTAR
Investigator			
Amy Bitkower	654.00	520.00	340,080.00
Litigation Support			
Babatunde Pedro	488.00	295.00	143,960.00
Andrea R. Webster	156.25	330.00	51,562.50
Jessica M. Wilson	115.50	295.00	34,072.50
Paralegals			
Ricia Augusty	1,388.50	335.00	465,147.50
Martin Braxton	86.50	245.00	21,192.50
Amanda Figueroa	139.25	290.00	40,382.50
Leigh Gagliardi	227.50	310.00	70,525.00
Matthew Gluck	87.75	235.00	20,621.25
Matthew Mahady	352.00	335.00	117,920.00
Larry Silvestro	221.00	310.00	68,510.00
Nyema Taylor	2,346.75	295.00	692,291.25
Gary Weston	329.75	350.00	115,412.50
Financial Analysts			
Nick DeFilippis	48.00	550.00	26,400.00
Adam Weinschel	103.25	465.00	48,011.25
Interns			
Sara Winkler	199.75	150.00	29,962.50
TOTALS	**91,683.00**		**$40,450,876.25**

EXHIBIT 2

In Re Wilmington Trust Securities Litigation
Master File No. 10-cv-00990-ER

BERNSTEIN LITOWITZ BERGER & GROSSMANN LLP

EXPENSE REPORT

Inception through and including September 14, 2018

CATEGORY	AMOUNT
Paid Expenses:	
Court Fees	$350.00
On-Line Legal Research	$257,930.65
On-Line Factual Research	$27,574.57
Telephone	$1,907.37
Postage & Express Mail	$12,093.39
Hand Delivery Charges	$3,905.69
Local Transportation	$28,319.88
Internal Copying/Printing	$45,516.30
Outside Copying	$16,623.04
Out of Town Travel*	$49,237.62
Working Meals	$14,661.76
Court Reporting & Transcripts	$22,702.62
Experts	$1,500.00
Contributions to Litigation Fund	$2,230,000.00
Total Paid:	**$2,712,322.89**
Outstanding Expenses:	
Experts	$1,032,152.81
Document Management/Litigation Support	$235,012.31
Court Reporting & Transcripts	$73,834.27
Total Outstanding:	**$1,340,999.39**
Refund from Litigation Fund:	**($36,345.62)**
TOTAL EXPENSES:	**$4,016,976.66**

* Travel includes lodging for attorneys in the following "high cost" cities capped at $350 per night: Boca Raton, Florida, Oakland, California, Philadelphia, Pennsylvania, and San Francisco, California, and in the following "low cost" cities capped at $250 per night: Buffalo, New York, Merced, California, Park City, Utah, Sante Fe, New Mexico, St. Petersburg, Florida, and Wilmington, Delaware.

EXHIBIT 3

In Re Wilmington Trust Securities Litigation
Master File No. 10-cv-00990-ER

CONTRIBUTIONS TO AND DISBURSEMENTS FROM THE LITIGATION FUND
For Expenses Incurred from Inception through and including September 14, 2018

CONTRIBUTIONS:

Firm	Amount
Bernstein Litowitz Berger & Grossmann LLP	$2,230,000.00
Saxena White, P.A.	$2,210,000.00
TOTAL CONTRIBUTED:	**$4,440,000.00**

DISBURSEMENTS:

Category of Expense	Amount Expended
Experts	$3,639,840.50
Document Management/Litigation Support	$669,748.34
Court Reporting & Transcripts	$60,069.72
Mediation	$18,555.95
Outside Copying	$15,085.53
Local Counsel	$350.00
Bank Charges	$4.34
TOTAL DISBURSED:	**$4,403,654.38**

***BALANCE: $36,345.62**

* The balance in the litigation fund will be repaid to BLB&G. The amount reflected on BLB&G's Expense Report (Exhibit 2) has been reduced by the amount of the balance in the litigation fund.

EXHIBIT 4

In Re Wilmington Trust Securities Litigation
Master File No. 10-cv-00990-ER

BERNSTEIN LITOWITZ BERGER & GROSSMANN LLP

FIRM RESUME

BLB&G

Trusted Advocacy. Proven Results.

Bernstein Litowitz Berger & Grossmann LLP

Attorneys at Law

Firm Resume

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BLB&G Bernstein Litowitz Berger & Grossmann LLP

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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 $32 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 $32 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 many of the largest securities recoveries in history (including 6 of the top 12):

- *In re WorldCom, Inc. Securities Litigation* – $6.19 billion recovery
- *In re Cendant Corporation Securities Litigation* – $3.3 billion recovery
- *In re Bank of America Corp. Securities, Derivative, and Employee Retirement Income Security Act (ERISA) Litigation* – $2.43 billion recovery
- *In re Nortel Networks Corporation Securities Litigation* ("Nortel II") – $1.07 billion recovery
- *In re Merck & Co., Inc. Securities Litigation* – $1.06 billion recovery
- *In re McKesson HBOC, Inc. Securities Litigation* – $1.05 billion recovery*

*Source: ISS Securities Class Action Services

For over a decade, ISS Securities Class Action Services 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 ISS SCAS's "Top 100 Settlements" report, having recovered nearly 40% of all the settlement dollars represented in the report (nearly $25 billion), and having prosecuted nearly a third of all the cases on the list (33 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."

BLB&G Bernstein Litowitz Berger & Grossmann LLP

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.

BLB&G Bernstein Litowitz Berger & Grossmann LLP

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 MERCK & CO., INC. SECURITIES LITIGATION***

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

HIGHLIGHTS: $1.06 billion recovery for the class.

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

BLB&G Bernstein Litowitz Berger & Grossmann LLP

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**

BLB&G Bernstein Litowitz Berger & Grossmann LLP

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).

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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.

BLB&G Bernstein Litowitz Berger & Grossmann LLP

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: ***ECOA - 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.

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 seven of the largest securities fraud settlements in history, each in excess of a billion dollars: *Cendant* ($3.3 billion); *Citigroup–WorldCom* ($2.575 billion); *Bank of America/Merrill Lynch* ($2.4 billion); *JPMorgan Chase–WorldCom* ($2 billion); *Nortel* ($1.07 billion); *Merck* ($1.06 billion); and *McKesson* ($1.05 billion).

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

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 Americ*a/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*).

Since their various inceptions, 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.

Considered the "Dean" of the U.S. plaintiff securities bar, Mr. Berger has lectured extensively for many professional organizations, and is the author and co-author of numerous articles on developments in the securities laws and their implications for public policy. He was chosen, along with several of his BLB&G partners, to author the first chapter – "Plaintiffs' Perspective" – of Lexis/Nexis's seminal industry guide *Litigating Securities Class Actions*. An esteemed voice on all sides of the legal and financial markets, in 2008 the SEC and Treasury called on Mr. Berger to provide guidance on regulatory changes being considered as the accounting profession was experiencing tectonic shifts shortly before the financial crisis.

Mr. Berger also serves the academic community in numerous capacities. A long-time member of the Board of Trustees of Baruch College, he is now the President of the Baruch College Fund. A member of the Dean's Council to Columbia Law School, he has taught Profession of Law, an ethics course at Columbia Law School, and serves on the Advisory Board of Columbia Law School's Center on Corporate Governance. In 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 member of the firm's Management Committee. He also oversees the firm's New Matter department in which he, along with a group of attorneys, financial analysts and investigators, counsels institutional clients on potential legal claims. In December 2014, 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*, he is also named as a "Litigation Star" by *Benchmark*, is recommended by the *Legal 500 USA* guide in the field of plaintiffs' securities litigation, and has been selected by *New York Super Lawyers* every year since 2006.

In the wake of the financial crisis, he advised the firm's institutional investor clients on their rights with respect to claims involving transactions in residential mortgage-backed securities (RMBS) and collateralized debt obligations (CDOs). His work representing Cambridge Place Investment Management Inc. on claims under Massachusetts state law against numerous investment banks arising from the purchase of billions of dollars of RMBS was featured in a 2010 *New York Times* article by Gretchen Morgenson titled, "Mortgage Investors Turn to State Courts for Relief."

Mr. Silk also represented the New York State Teachers' Retirement System in a securities litigation against the General Motors Company arising from a series of misrepresentations concerning the quality, safety, and reliability of the Company's cars which resulted in a $300 million settlement. He was also a member of the litigation team responsible for the successful prosecution of *In re Cendant Corporation Securities Litigation* in the District of New Jersey, which was resolved for $3.2 billion. In addition, he is actively involved in the firm's prosecution of highly successful M&A litigation, representing shareholders in widely publicized lawsuits, including the litigation arising from the proposed acquisition of Caremark Rx, Inc. by CVS Corporation — which led to an increase of approximately $3.5 billion in the consideration offered to shareholders.

A graduate of the Wharton School of Business, University of Pennsylvania and Brooklyn Law School, in 1995-96, 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," 3rd Ed. 2000, Chapter 15; "Derivative Litigation In New York after Marx v. Akers," *New York Business Law Journal*, Vol. 1, No. 1 (Fall 1997).

He has also been a commentator for the business media on television and in print. Among other outlets, he has appeared on NBC's *Today*, and CNBC's *Power Lunch, Morning Call*, and

Squawkbox programs, as well as being featured in *The New York Times, Financial Times, Bloomberg, The National Law Journal*, and the *New York Law Journal*.

EDUCATION: 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.

SALVATORE J. GRAZIANO is widely recognized as one of the top securities litigators in the country. He has served as lead trial counsel in a wide variety of major securities fraud class actions, recovering billions of dollars on behalf of institutional investors and hedge fund clients.

Over the course of his distinguished career, Mr. Graziano has successfully litigated many high-profile cases, including: *Merck & Co., Inc. (Vioxx) Sec. Litig.* (D.N.J.); *In re Schering-Plough Corp./ENHANCE Sec. Litig.* (D.N.J.); *New York State Teachers' Retirement System v. General Motors Co*. (E.D. Mich.); *In re MF Global Holdings Limited Sec. Litig.* (S.D.N.Y); *In re Raytheon Sec. Litig.* (D. Mass.); *In re Refco Sec. Litig.* (S.D.N.Y.); *In re MicroStrategy, Inc. Sec. Litig.* (E.D. Va.); *In re Bristol Myers Squibb Co. Sec. Litig.* (S.D.N.Y.); and *In re New Century Sec. Litig.* (C.D. Cal.).

Industry observers, peers and adversaries routinely honor Mr. Graziano for his accomplishments. He is one of the "Top 100 Trial Lawyers" in the nation according to *Benchmark Litigation*, which credits him for performing *"*top quality work." *Chambers USA* describes Mr. Graziano as "wonderfully talented…a smart, aggressive lawyer who works hard for his clients," while *Legal 500* praises him as a "highly effective litigator." Heralded as one of a handful of Class Action MVPs in the nation by *Law360*, he is also one of *Lawdragon's* 500 Leading Lawyers in America, named as a leading mass tort and plaintiff class action litigator by *Best Lawyers*®, and as a *New York Super Lawyer*.

A highly esteemed voice on investor rights, regulatory and market issues, in 2008 he was called upon by the Securities and Exchange Commission's Advisory Committee on Improvements to Financial Reporting to give testimony as to the state of the industry and potential impacts of proposed regulatory changes being considered. He is the author and co-author of numerous articles on developments in the securities laws, and was chosen, along with several of his BLB&G partners, to author the first chapter – "Plaintiffs' Perspective" – of Lexis/Nexis's seminal industry guide *Litigating Securities Class Actions*.

A managing partner of the firm, Mr. Graziano has previously served as the President of the National Association of Shareholder & Consumer Attorneys, and has served as a member of the Financial Reporting Committee and the Securities Regulation Committee of the Association of the Bar of the City of New York. He regularly lectures on securities fraud litigation and shareholder rights.

Prior to entering private practice, Mr. Graziano served as an Assistant District Attorney in the Manhattan District Attorney's Office.

EDUCATION: New York University College of Arts and Science, B.A., psychology, *cum laude*, 1988. New York University School of Law, J.D., *cum laude*, 1991.

BAR ADMISSIONS: New York; U.S. District Courts for the Southern and Eastern Districts of New York; U.S. Courts of Appeals for the First, Second, Third, Fourth, Ninth and Eleventh Circuits.

HANNAH ROSS is involved in a variety of the firm's litigation practice areas, focusing in particular on securities fraud, shareholder rights and other complex commercial matters. She has two decades of experience as a civil and criminal litigator, and represents the firm's institutional investor clients as counsel in a number of major pending actions.

A key member and leader of trial teams that have recovered billions of dollars for investors, Ms. Ross is widely recognized by industry observers for her professional achievements. *Euromoney/ Legal Media Group* named her one of the top female litigators in the country (1 of 9 finalists for its "Best in Litigation" category). Named a "Litigation Star" and one of the "Top 250 Women in Litigation" in the nation by *Benchmark*, she has earned praise as one of a small elite of notable practitioners from *Legal 500 US* for her achievements, and is one of the "500 Leading Lawyers in America," part of an exclusive list of the top practitioners in the nation as compiled by leading legal journal *Lawdragon*.

In addition to her direct litigation responsibilities, she is one of the senior partners at the firm responsible for client development and client relations. A significant part of her practice is dedicated to initial case evaluation and counseling the firm's institutional investor clients on potential claims.

Ms. Ross was a senior member of the team that prosecuted *In re Bank of America Securities Litigation*, which resulted in a landmark settlement shortly before trial of $2.425 billion, one of the largest securities recoveries ever obtained. She was also a senior member of the trial team that prosecuted the litigation arising from the collapse of former leading brokerage MF Global, which recovered $234.3 million on behalf of investors. In addition, she led the prosecution against Washington Mutual and certain of its former officers and directors for alleged fraudulent conduct in the thrift's home lending operations, an action which settled for $208.5 million and represents one of the largest settlements achieved in a case related to the fallout of the subprime crisis and the largest recovery ever achieved in a securities class action in the Western District of Washington. Ms. Ross was also a key member of the team prosecuting *In re The Mills Corporation Securities Litigation*, which settled for $202.75 million, the largest recovery ever achieved in a securities class action in Virginia and the second largest recovery ever in the Fourth Circuit.

Ms. Ross is currently prosecuting a number of high-profile securities class actions, including the litigation arising from the failure of major mid-Atlantic bank Wilmington Trust as well as a securities fraud class action against home healthcare and pharmaceuticals company, BioScrip, Inc.

She has been a member of the trial teams in numerous other major securities litigations resulting in recoveries for investors in excess of $2 billion. These include securities class actions against Nortel Networks, New Century Financial Corporation, and the Federal Home Loan Mortgage Corporation ("Freddie Mac"), as well as *In re Altisource Portfolio Solutions S.A. Securities Litigation, In re DFC Global Corp. Securities Litigation, In re Tronox Securities Litigation, In re Delphi Corporation Securities Litigation, In re Affiliated Computer Services, Inc. Derivative Litigation* and *In re OM Group, Inc. Securities Litigation.*

Ms. Ross serves on the Corporate Leadership Committee of the New York Women's Foundation and has also served as an adjunct faculty member in the trial advocacy program at the Dickinson School of Law of the Pennsylvania State University.

Before joining BLB&G, Ms. Ross was a prosecutor in the Massachusetts Attorney General's Office as well as an Assistant District Attorney in the Middlesex County (Massachusetts) District Attorney's Office.

EDUCATION: Cornell University, B.A., *cum laude*, 1995. The Dickinson School of Law of the Pennsylvania State University, J.D., *with distinction*, 1998; Woolsack Honor Society; Comments Editor of the *Dickinson Law Review;* D. Arthur Magaziner Human Services Award.

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

JOHN RIZIO-HAMILTON is involved in a variety of the firm's litigation practice areas, focusing specifically on securities fraud, corporate governance, and shareholder rights. He currently represents the firm's institutional investor clients as counsel in a number of major pending actions, including the securities class action arising from Facebook's IPO, captioned *In re Facebook, Inc. IPO Securities Litigation*.

Mr. Rizio-Hamilton was a member of the trial team prosecuting *In re Bank of America Securities Litigation*, which settled for $2.425 billion, the single largest securities class action recovery ever resolving violations of Sections 14(a) and 10(b) of the Securities Exchange Act, and one of the top securities litigation settlements obtained of all time. He also served as counsel on behalf of the institutional investor plaintiffs in *In re Citigroup, Inc. Bond Action Litigation*, which settled for $730 million, the second largest recovery ever in a securities class action brought on behalf of purchasers of debt securities. In addition, Mr. Rizio-Hamilton was a member of the team that prosecuted the *In re Wachovia Corp. Bond/Notes Litigation*, in which the firm recovered a total of $627 million on behalf of investors, one of the 15 largest securities class action recoveries in history. Most recently, he served as a key member of the team that recovered $150 million for investors in *In re JPMorgan Chase & Co. Securities Litigation*, a securities fraud class action arising out of misrepresentations and omissions concerning JPMorgan's Chief Investment Office, the company's risk management systems, and the trading activities of the so-called "London Whale."

Mr. Rizio-Hamilton has also been a member of the trial teams in several additional securities litigations through which the firm has successfully recovered hundreds of millions of dollars on

behalf of injured investors. Among other matters, he was part of the trial teams that prosecuted *Eastwood Enterprises LLC v. WellCare*, *In re MBIA, Inc. Securities Litigation*, and *In re RAIT Financial Trust Securities Litigation*.

For his remarkable accomplishments, Mr. Rizio-Hamilton was recognized by *Law360* as one of the country's "Top Attorneys Under 40," and a national "Rising Star" in the area of class action litigation.

Before joining BLB&G, Mr. Rizio-Hamilton clerked for the Honorable Chester J. Straub of the United States Court of Appeals for the Second Circuit, and the Honorable Sidney H. Stein of the United States District Court for the Southern District of New York.

EDUCATION: The Johns Hopkins University, B.A., *with honors*, 1997. Brooklyn Law School, J.D., *summa cum laude;* Editor-in-Chief of the *Brooklyn Law Review;* first-place winner of the J. Braxton Craven Memorial Constitutional Law Moot Court Competition.

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

KATHERINE M. SINDERSON is involved in a variety of the firm's practice areas, including securities fraud, corporate governance, and advisory services. She is currently leading the teams prosecuting securities class actions against FleetCor Technologies and Frontier Communications, as well as litigation arising from the failure of SunEdison, Inc.

Ms. Sinderson played a key role in two of the firm's largest cases in its history, both of which settled near trial for billions of dollars on behalf of investors. In *In re Merck Securities Litigation*, she was a member of the small trial team that achieved a $1.062 billion settlement. This settlement is the second largest recovery ever obtained in the Third Circuit, one of the top 10 recoveries of all time, and the largest recovery ever achieved against a pharmaceutical company. She was also a member of the trial team prosecuting *In re Bank of America Securities Litigation*, which resulted in a recovery of $2.425 billion, the single largest securities class action recovery ever resolving violations of Sections 14(a) and 10(b) of the Securities Exchange Act and one of the largest shareholder recoveries in history. Most recently, Ms. Sinderson was a senior member of the team that led the securities litigation concerning Wilmington Trust, which resulted in a $210 million recovery for the class (pending court approval).

Ms. Sinderson has also been part of the trial teams in numerous other securities litigations that have successfully recovered hundreds of millions of dollars on behalf of injured investors. Most recently, she served as a senior member of the teams that recovered $210 million in *In re Salix Pharmaceuticals, Ltd. Securities Litigation*, and $74 million in the take-private merger litigation *San Antonio Fire and Police Pension Fund et al v. Dole Food Co. et al*. She was also a member of the trial team that prosecuted the action against Washington Mutual, Inc. and certain of its former officers and directors for alleged fraudulent conduct in the thrift's home lending operations. The action resulted in a recovery of $208.5 million, the largest recovery ever achieved in a securities class action in the Western District of Washington. Some of her other prominent prosecutions include the *In re Bristol-Myers Squibb Co. Securities Litigation*, which resulted in a recovery of $125 million; and *In re Biovail Corporation Securities Litigation*, which resulted in a recovery of $138 million for defrauded investors and represents the second largest recovery in any securities case involving a Canadian issuer.

In 2016, Ms. Sinderson was recognized as a national "Rising Star" by *Law360* for her work in securities litigation and was named to *Benchmark Litigation*'s "Under 40 Hot List," which recognizes her as one the nation's most accomplished legal partners under the age of 40. She is also regularly selected as a New York "Rising Star" by *Super Lawyers*.

EDUCATION: Baylor University, B.A., *cum laude*, 2002. Georgetown University, J.D., *cum laude*, 2006; Dean's Scholar; Articles Editor for *The Georgetown Journal of Gender and the Law*.

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

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.

LAUREN MCMILLEN ORMSBEE practices out of the firm's New York office, focusing on complex commercial and securities litigation. She has prosecuted a variety of class and direct actions involving securities fraud and other fiduciary violations, obtaining hundreds of millions of dollars in recoveries on behalf of the firm's institutional and private investor clients.

Ms. Ormsbee has been an integral part of trial teams in numerous major actions, including: *In re HealthSouth Bondholder Litigation*, which obtained $230 million for the HealthSouth bondholder Class; *In re New Century Securities Litigation*, which resulted in $125 million for its investors after the mortgage originator became one of the first casualties of the subprime crisis; *In re State Street Corporation Securities Litigation*, which obtained $60 million in the wake of a series of alleged misrepresentations about the company's own internal portfolio; *In re Ambac Financial Group Securities Litigation*, which obtained $33 million from the now-bankrupt insurer; *In re Altisource Portfolio Solutions, S.A. Securities Litigation*, which obtained $32 million from the mortgage loan servicer*; In re Goldman Sachs Mortgage Pass-Through Litigation*, which obtained $26.6 million for the benefit of the class of RMBS purchasers; and *Barron v. Union Bancaire Privée*, which recovered $8.9 million on behalf of the class of investors harmed by investments with Bernard Madoff, among others.

Ms. Ormsbee graduated from the University of Pennsylvania Law School, where she was an editor of the Law Review. Following law school, she served as a law clerk for the Honorable Colleen McMahon of the Southern District of New York. Prior to joining the firm in 2007, Ms. Ormsbee

was a litigation associate at Paul, Weiss, Rifkind, Wharton & Garrison LLP, where she had extensive experience in securities litigation and complex commercial litigation.

EDUCATION: Duke University, B.A., History, 1996. University of Pennsylvania Law School, J.D., *cum laude*, 2000; Research Editor for the *University of Pennsylvania Law Review*.

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

DAVE KAPLAN practices in the firm's California office and has over fifteen years of experience in the field of securities and shareholder litigation. He has helped investors achieve hundreds of millions of dollars in recoveries in federal and state courts nationwide. Mr. Kaplan currently represents lead plaintiffs in numerous high-profile class action lawsuits, including *In re Qualcomm Inc. Securities Litigation* pending in the Southern District of California, and *In re Fannie Mae/Freddie Mac Senior Preferred Stock Purchase Agreement Class Action Litigations* pending in the District of Columbia, each of which involves billions of dollars in damages.

As a member of the firm's New Matter department, Mr. Kaplan, along with a team of attorneys, financial analysts, forensic accountants, and investigators, counsels the firm's institutional clients on potential legal claims concerning a wide variety of financial instruments and investment products. Additionally, Mr. Kaplan has extensive experience advising the firm's institutional clients on securities claims outside the United States. His work in this area includes shareholder group actions and collective settlements in Canada, Australia, England, the Netherlands, Germany, Italy, France, Japan, Taiwan, Israel, Brazil and Russia.

Mr. Kaplan's practice also focuses on advising institutional investors on whether to remain passive participants in securities class actions, or to pursue larger recoveries through strategic "opt-out" actions. He currently represents prominent institutional investors in opt-out cases pending in federal courts nationwide, including in New York, New Jersey, Connecticut, and Texas, and has also successfully represented institutional investors in opt-out actions in California state and federal courts.

Mr. Kaplan is an editor of the American Bar Association's Class Actions and Derivative Suits Committee's Newsletter. He has authored multiple articles relating to class actions and the federal securities laws, which have been published in *The National Law Journal*, the *Daily Journal*, *Law360*, *Pensions & Investments*, and *The NAPPA Report*, among other national publications. For his achievements, Mr. Kaplan has repeatedly been selected as a "Rising Star" by Super Lawyers.

Prior to joining BLB&G, Mr. Kaplan was a senior litigation associate at the law firm of Irell & Manella LLP, where he successfully prosecuted and defended claims in a variety of complex litigation matters.

EDUCATION: Washington & Lee University, B.A., *cum laude*, 1999. Duke University School of Law, J.D., 2003; High Honors; *Duke Law Journal*; Stanley Starr Scholar.

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

BLAIR A. NICHOLAS was a former senior and managing partner of the firm and widely recognized as one of the leading securities and consumer litigators in the country. He has extensive experience representing prominent private and public institutional investors in high-stakes actions involving federal and state securities and consumer laws, accountants' liability, market manipulation, antitrust violations, shareholder appraisal actions, and corporate governance matters. Mr. Nicholas has recovered billions of dollars in courts throughout the nation on behalf of some of the largest mutual funds, investment managers, insurance companies, public pension plans, sovereign wealth funds, and hedge funds in North America and Europe.

EDUCATION: University of California, Santa Barbara, B.A., Economics. University of San Diego School of Law, J.D.; Lead Articles Editor of the *San Diego Law Review*.

BAR ADMISSIONS: California; U.S. Courts of Appeals for the Fifth and Ninth Circuits; U.S. District Courts for the Southern, Central and Northern Districts of California; U.S. District Court for the District of Arizona; U.S. District Court for the Eastern District of Wisconsin.

STEVEN B. SINGER, a former partner of the firm, was a member of the firm's Management Committee, and was the lead partner responsible for prosecuting a number of the most significant and high-profile securities cases in the country, which collectively recovered billions of dollars for investors. For example, Mr. Singer led the litigation against Bank of America Corp. relating to its acquisition of Merrill Lynch, which resulted in a landmark settlement shortly before trial of $2.43 billion, one of the largest recoveries in history. The BLB&G *Bank of America* trial team, including Mr. Singer, were the subject of *The New York Times* October 2012 feature article, "Investors' Billion-Dollar Fraud Fighter."

Mr. Singer has substantial trial experience and was one of the lead trial lawyers on the *WorldCom Securities Litigation*, which culminated in a four-week trial against WorldCom's auditors, and resulted in the historic recovery of over $6.15 billion from the professionals associated with *WorldCom*. In addition, Trial Lawyers for Public Justice named Mr. Singer as a finalist for "Trial Lawyer of the Year" for his role in the prosecution of the celebrated race discrimination litigation, *Roberts v. Texaco*, which resulted in the largest discrimination settlement in history.

Mr. Singer has also been a speaker at various continuing legal education programs offered by the Practising Law Institute ("PLI").

EDUCATION: Duke University, B.A., *cum laude*, 1988. Northwestern University School of Law, J.D., 1991.

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

SENIOR COUNSEL

RICHARD D. GLUCK has almost 25 years of litigation and trial experience in bet-the-company cases. His practice focuses on securities fraud, corporate governance, and shareholder rights litigation. He has been recognized for achieving "the highest levels of ethical standards and professional excellence" by Martindale Hubbell®, and has been named one of San Diego's "Top Lawyers" practicing complex business litigation.

Since joining BLB&G, Mr. Gluck has been a key member of the teams prosecuting a number of high-profile cases, including several RMBS class and direct actions against a number of large Wall Street Banks. He was a senior attorney on the team prosecuting the *In re Lehman Brothers Equity/Debt Securities Litigation*, which resulted in over $615 million for investors and is considered one of the largest total recoveries for shareholders in any case arising from the financial crisis. Specifically, he was instrumental in developing important evidence that led to the

$99 million settlement with Lehman's former auditor, Ernst & Young – one of the top 10 auditor settlements ever achieved. He also was a senior member of the teams that prosecuted the RMBS class actions against Bear Stearns, which settled for $500 million; JPMorgan, which settled for $280 million; and Morgan Stanley, which settled for $95 million. He also is a key member of the team prosecuting *In re MF Global Holdings Limited Securities Litigation*, which to date has resulted in settlements totaling more than $200 million, pending court approval.

Before joining BLB&G, Mr. Gluck represented corporate and individual clients in securities fraud and consumer class actions, SEC investigations and enforcement actions, and in actions involving claims of fraud, breach of contract and misappropriation of trade secrets in state and federal courts and in arbitration. He has substantial trial experience, having obtained verdicts or awards for his clients in multi-million dollar lawsuits and arbitrations. Prior to entering private practice, Mr. Gluck clerked for Judge William H. Orrick of the United States District Court for the Northern District of California.

Mr. Gluck currently is a member of the teams prosecuting *In re Wilmington Trust Securities*, *In re MF Global Holdings Limited Securities Litigation*, *Mark Roberti v. OSI Systems Inc., et al.*, *In re Genworth Financial Inc. Securities Litigation*, and *In re Allergan, Inc. Proxy Violation Securities Litigation*. He practices out of the firm's San Diego office.

Mr. Gluck is a former President of the San Diego Chapter of the Association of Business Trial Lawyers and currently is a member of its Board of Governors.

EDUCATION: California State University Sacramento, B.S., Business Administration, *with honors*, 1987. Santa Clara University, J.D., *summa cum laude*, 1990; Articles Editor of the *Santa Clara Computer and High Technology Law Journal.*

BAR ADMISSIONS: California; U.S. District Courts for the Central, Northern and Southern Districts of California.

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

Mr. Hollander has represented investors and corporations in state and federal trial and appellate courts throughout the country. He was an integral member of the teams that prosecuted, among other cases, *In re Salix Pharmaceuticals Ltd.*, recovering $210 million for investors; *San Antonio Fire & Police Pension Fund v. Dole Food Company, Inc.*, recovering $74 million for investors; and *Bach v. Amedisys, Inc.*, recovering $43.75 million for investors after a successful appeal to the U.S. Court of Appeals for the Fifth Circuit following a previous dismissal.

Currently, Mr. Hollander represents clients in a number of disputes relating to corporate misconduct and alleging harm to investors, including a securities-fraud class action against Volkswagen arising out of the "Dieselgate" emissions-cheating scandal; a securities-fraud class action on behalf of investors in the now-bankrupt renewable energy company SunEdison, Inc.; a securities-fraud class action against Novo Nordisk concerning pricing of its insulin drugs; and a class action on behalf of Puerto Rico investors to whom UBS improperly recommended risky Puerto Rico securities.

Prior to joining BLB&G, Mr. Hollander clerked for the Honorable Barrington D. Parker, Jr. of the U.S. Court of Appeals for the Second Circuit, and for the Honorable Stefan R. Underhill of the U.S. 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.

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.

ASSOCIATES

JESSE JENSEN prosecutes securities fraud, corporate governance and shareholder rights litigation on behalf of the firm's institutional clients.

Prior to joining the firm, Mr. Jensen was a litigation associate at Hughes Hubbard & Reed, where he represented accounting firms, banks, investment firms and high-net-worth individuals in complex commercial, securities, commodities and professional liability civil litigation and alternative dispute resolution. He also gained considerable experience in responding to investigations and inquiries by government regulators such as the SEC and CFTC. In addition, Mr. Jensen actively litigated several *pro bono* civil rights cases, including a federal suit in which he secured a favorable settlement for an inmate alleging physical abuse by corrections officers.

Since joining the firm, he helped investors achieve a $32 million cash settlement in an action against real estate service provider Altisource Portfolio Solutions, S.A. He currently assists the firm in its prosecutions of *Fresno County Employees' Retirement Association v. comScore, Inc.*; *In re Virtus Investment Partners, Inc., Securities Litigation*; *In re Wilmington Trust Securities Litigation*; and *Roofer's Pension Fund v. Papa et al.*

In recognition of his professional achievements and reputation, Mr. Jensen has been named a "Rising Star" for the past five years by Thomson Reuters *Super Lawyers* (no more than 2.5% of the lawyers in New York are selected to receive this honor each year).

EDUCATION: New York University School of Law, J.D., 2009; Staff Editor, *NYU Journal of Law and Business*.

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.

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 significant cases involving wrongdoing related to the securitization and sale of residential mortgage-backed securities ("RMBS"), and has recovered hundreds of millions of dollars on behalf of injured investors. He successfully represented Allstate Insurance Co., Metropolitan Life Insurance Company, Teachers Insurance and Annuity Association of America, Bayerische Landesbank, Dexia SA/NV, Sealink Funding Limited, and Landesbank Baden-Württemberg against various issuers of RMBS in both state and federal courts.

Currently, Mr. Shikowitz serves as a member of the litigation team prosecuting the securities fraud class action against Volkswagen AG, which arises out of Volkswagen's illegal use of defeat devices in millions of purportedly clean diesel cars to cheat emissions standards worldwide. He also serves as a member of the team litigating the securities class action concerning GT Advanced Technologies Inc., which alleges that defendants knew that the company's $578 million deal to supply Apple, Inc. with product was an onerous and massively one-sided agreement that allowed GT executives to sell millions worth of stock. The case concerning GT has resulted in $36.7 million in recoveries to date.

For his accomplishments, Mr. Shikowitz has consistently been named by *Super Lawyers* as a New York "Rising Star" in the area of securities litigation.

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.

JULIA TEBOR practices out of the New York office and prosecutes securities fraud, corporate governance, and shareholder rights litigation on behalf of the firm's institutional investor clients. She is currently a member of the teams prosecuting *In re Green Mountain Coffee Roasters, Inc. Securities Litigation*, *In re Wilmington Trust Securities Litigation* and *St. Paul Teachers' Retirement Fund Association v. HeartWare International, Inc.*

A former litigation associate with Seward & Kissel, Ms. Tebor also has broad experience in white collar, general commercial, and employment litigation matters on behalf of clients in the financial services industry, as well as in connection with SEC and DOJ investigations.

EDUCATION: Tufts University, B.A., Spanish and English, 2006; *Dean's List.* Boston University School of Law, J.D., *cum laude*, 2012; Notes Editor, *American Journal of Law and Medicine.*

BAR ADMISSIONS: Massachusetts; 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.

ANN LIPTON (former associate) practiced out of the New York office, where she focused on complex commercial and appellate litigation. Following law school, Ms. Lipton clerked for Chief Judge Edward R. Becker of the Third Circuit Court of Appeals and Associate Justice David H. Souter of the United States Supreme Court. She has also served as an adjunct professor of legal writing at Benjamin N. Cardozo School of Law, and as an instructor of Legal Writing Through a Lawsuit for Yale Law School.

EDUCATION: Stanford University, B.A., with distinction, 1995; Phi Beta Kappa. Harvard Law School, J.D., magna cum laude, 2000; Sears Prize for 2nd-Year GPA; Articles and Commentaries Committee of Harvard Law Review; Best Brief in 1st-Year Ames Moot Court Competition; Prison Legal Assistance Project.

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

JAKE NACHMANI (former associate) practiced out of the New York office, where he prosecuted securities fraud, corporate governance and shareholder rights litigation on behalf of the firm's institutional investor clients.

Prior to joining the firm, Mr. Nachmani represented clients in complex commercial litigation, consumer class actions, and False Claims Act cases. He also briefly served as Special Counsel and Policy Advisor in the Office of the Chief Advisor to Mayor Michael Bloomberg for Policy and Strategic Planning. During law school, Mr. Nachmani clerked for the Head Deputy District Attorney in the Major Crimes Division of the Office of the District Attorney in Los Angeles.

EDUCATION: Brown University, B.A., *magna cum laude*, History, 2002; Phi Beta Kappa. Georgetown University Law Center, J.D., 2010; Farrell Scholarship.

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

SEAN O'DOWD is a former associate of the firm. Prior to joining BLB&G, Mr. O'Dowd was an associate at Latham & Watkins LLP, where his practice focused on trial and appellate litigation, including civil and criminal investigations by the Department of Justice and the SEC. In addition, Mr. O'Dowd litigated on behalf of torture victims seeking asylum in the United States and represented domestic violence survivors in proceedings under the Violence Against Women Act.

Following law school, Mr. O'Dowd served as a judicial law clerk to the Honorable William M. Acker, Jr., Senior United States District Judge, Northern District of Alabama.

EDUCATION: Cornell University, B.A., with distinction in all subjects, 2001. Northwestern University, J.D., *cum laude*, 2005; Senior Editor, *Journal of International Law & Business*; Recipient, Francis Kosmerl Merit Scholarship, Rubinowitz Public Interest Fellowship and Public Service Star Award.

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

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

A frequent author, Ms. Sundel has published several articles, including "Many Lessons, Many Mentors: From the Alpha Girl," (*New York Law Journal*, November 2010), "Corporate Democracy in Action after 'Citizens United,'" (*New York Law Journal*, 2010), as well as "Revisions to Rules by Committee on Standards of Attorney Conduct," (*NYLitigator*, 2008), among several others.

She was a member of the teams prosecuting *In re Bank of America Corp. Securities, Derivative and ERISA Litigation*, *In re Citigroup Inc. Bond Litigation*, *In re JPMorgan Foreign Exchange Trading Litigation* and *In re MF Global Holdings Limited Securities Litigation*.

EDUCATION: Franklin College Switzerland, B.A., International Relations, *magna cum laude*, 2001. New York Law School, J.D., cum laude, 2004.

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

STAFF ATTORNEYS

Erik Aldeborgh has worked on numerous matters at BLB&G, including *St. Paul Teachers' Retirement Fund Association v. HeartWare International, Inc.*, *Levy v. Gutierrez, et al. (GTAT Securities Litigation)*, *Fresno County Employees' Retirement Association v. comScore, Inc.*, *Medina, et al v. Clovis Oncology, Inc., et al*, *In re Virtus Investment Partners, Inc. Securities Litigation*, *In re Wilmington Trust Securities Litigation* and *Bear Stearns Mortgage Pass-Through Litigation.*

Prior to joining the firm in 2014, Mr. Aldeborgh was an associate at Goodwin Proctor, LLP, and litigation counsel at Liberty Mutual Insurance Company.

EDUCATION: Union College, B.A., *with Honors*, 1981. Northeastern University School of Law, J.D., 1987.

BAR ADMISSIONS: Massachusetts.

PEDRO ARISTON has worked on numerous matters at BLB&G, including *Fresno County Employees' Retirement Association v. comScore, Inc.*, *Arkansas Teacher Retirement System, et al. v. Insulet Corp., et al.*, *In re Salix Pharmaceuticals, Ltd. Securities Litigation*, *Kohut v. KBR, Inc. et al.*, *In re Genworth Financial Inc. Securities Litigation* and *In re Wilmington Trust Securities Litigation.*

EDUCATION: Ateneo de Manila University School of Arts and Sciences, B.A., *cum laude*, 1990. Ateneo de Manila University School of Law, J.D., 2002. Georgetown University Law Center, LL.M., 2007.

BAR ADMISSIONS: New York.

BRIAN CHAU has worked on numerous matters at BLB&G, including *Hefler et al. v. Wells Fargo & Company et al.*, *In re Salix Pharmaceuticals, Ltd. Securities Litigation*, *In re Genworth Financial Inc. Securities Litigation*, *In re Facebook, Inc., IPO Securities and Derivative Litigation*, *In re MF Global Holdings Limited Securities Litigation*, *SMART Technologies, Inc. Shareholder Litigation* and *In re Bank of America Securities Litigation*.

Prior to joining the firm in 2010, Mr. Chau was an associate at Conway & Conway where he worked on securities litigation on behalf of individual investors.

EDUCATION: New York University, Stern School of Business, B.S., 2003. Fordham University School of Law, J.D., 2006.

BAR ADMISSIONS: New York.

ANNE CIRASUOLO worked on numerous matters at BLB&G, including *In re Salix Pharmaceuticals, Ltd. Securities Litigation*, *In re Wilmington Trust Securities Litigation* and *In re Bankrate, Inc. Securities Litigation*.

Prior to joining the firm in 2014, Ms. Cirasuolo was a discovery attorney at Willkie Farr & Gallagher, LLP and an associate at Hughes, Hubbard & Reed, LLP.

EDUCATION: Barnard College, B.S., 1991. Brooklyn Law School, J.D., 1994.

BAR ADMISSIONS: New York.

CHRISTOPHER CLARKIN has worked on numerous matters at BLB&G, *Hefler et al. v. Wells Fargo & Company et al.*, *Fresno County Employees' Retirement Association v. comScore, Inc.*, *In re Wilmington Trust Securities Litigation*, *In re Salix Pharmaceuticals, Ltd. Securities Litigation*, *West Palm Beach Police Pension Fund v. DFC Global Corp.*, *In re NII Holdings, Inc. Securities Litigation*, *In re Facebook, Inc., IPO Securities and Derivative Litigation*, *In re Bank of New York Mellon Corp. Forex Transactions Litigation*, *SMART Technologies, Inc. Shareholder Litigation*, *In re Citigroup Inc. Bond Litigation* and *In re Pfizer Inc. Shareholder Derivative Litigation*.

Prior to joining the firm in 2010, Mr. Clarkin worked as a contract attorney on several large scale litigations.

EDUCATION: Trinity College, B.A., 2000. New York Law School, J.D., 2006.

BAR ADMISSIONS: New York, Connecticut.

MONIQUE CLAXTON worked on numerous matters while at BLB&G, including *Hefler et al. v. Wells Fargo & Company et al.*, *Fresno County Employees' Retirement Association v. comScore, Inc.*, *In re Allergan, Inc. Proxy Violation Securities Litigation*, *In re Wilmington Trust Securities Litigation*, *Allstate Insurance Company v. Morgan Stanley & Co., Inc.* and *JPMorgan Mortgage Pass-Through Litigation.*

Prior to joining the firm in 2013, Ms. Claxton clerked for the Honorable Reggie B. Walton of the United States District Court for the District of Columbia and the Honorable Virginia E. Hopkins of the United States District Court for the Northern District of Alabama. Previously, Ms. Claxton was an associate at Swidler Berlin Shereff Friedman, LLP, where she worked on corporate securities transactions.

EDUCATION: New York University, B.A., *cum laude*, 1997. University of Virginia School of Law, J.D., 2003.

BAR ADMISSIONS: New York.

ANDREA CLISURA worked on *In re Wilmington Trust Securities Litigation* while at BLB&G.

Prior to joining the firm in 2014, Ms. Clisura was a litigation associate at Faruqi & Faruqi, LLP, where she worked on complex consumer class actions.

EDUCATION: New York University, B.A., *magna cum laude*, 2005. Brooklyn Law School, J.D., *magna cum laude*, 2011.

BAR ADMISSIONS: New York, New Jersey.

LAUREN CORMIER has worked on numerous matters at BLB&G, including *Hefler et al. v. Wells Fargo & Company et al.*, *Fresno County Employees' Retirement Association v. comScore, Inc.*, *In re MF Global Holdings Limited Securities Litigation* and *In re Merck & Co., Inc. Securities Litigation (VIOXX-related).*

Prior to joining the firm in 2013, Ms. Cormier was a staff attorney at Brower Piven, where she worked on complex securities class action litigation.

EDUCATION: University of Richmond, B.A., *cum laude*, 2002. St. John's University School of Law, J.D., 2010.

BAR ADMISSIONS: New York.

CAMI DAIGLE worked on several matters at BLB&G, including *In re Genworth Financial Inc. Securities Litigation* and *In re Wilmington Trust Securities Litigation.*

Prior to joining the Firm in 2014, Ms. Daigle was a staff attorney at Labaton Sucharow and Boies, Schiller & Flexner LLP.

EDUCATION: Texas State University, B.S., 2002. Albany Law School, J.D., *cum laude*, 2009.

BAR ADMISSIONS: New York.

ALEX DICKIN has worked on numerous matters at BLB&G, including *Hefler et al. v. Wells Fargo & Company et al., Fresno County Employees' Retirement Association v. comScore, Inc., In re Salix Pharmaceuticals, Ltd. Securities Litigation* and *In re Wilmington Trust Securities Litigation.*

Prior to joining the firm in 2014, Mr. Dickin was an attorney at Labaton Sucharow, where he focused on residential mortgage-backed securities litigation. Previously, Mr. Dickin was an associate at Herbert Smith Freehills, where he worked on M&A, private equity and corporate restructuring agreements, among other responsibilities.

EDUCATION: Macquarie University, B.B.A. 2005; L.L.B. 2008, with *Honors*.

BAR ADMISSIONS: New York.

ASHLEY FEW worked on numerous matters at BLB&G, including *In re Wilmington Trust Securities Litigation, JPMorgan Mortgage Pass-Through Litigation, SMART Technologies, Inc. Shareholder Litigation, In re The Reserve Fund Securities and Derivative Litigation, Merrill Lynch Mortgage Pass-Through Litigation* and *XPoint Texhnologies, Inc., v. Microsoft Corp., et al.*

Prior to joining the firm in 2010, Ms. Few was a patent associate at a New York law firm and a patent research project manager at New York University School of Medicine.

EDUCATION: University of Connecticut, B.S., 2004. University Connecticut, M.A., 2006. New York University School of Law, J.D., 2009.

BAR ADMISSIONS: New York.

DANIELLE GARVEY worked on *In re Wilmington Trust Securities Litigation* while at BLB&G.

Prior to joining the firm in 2014, Ms. Garvey was lead e-discovery project manager at Constantine Cannon LLP, where she managed all aspects of complex litigations.

EDUCATION: Loyola University Maryland, B.A., 2000. Roger Williams School of Law, J.D., 2003.

BAR ADMISSIONS: New Jersey, District of Columbia.

VIVIAN GAYED worked on *In re Wilmington Trust Securities Litigation* while at BLB&G.

Prior to joining the firm in 2014, Ms. Gayed was an associate at Lynch, Licata, Timoshenko & Scotto, LLP and Caesar & Napoli, where she litigated personal injury claims.

EDUCATION: Rutgers University, B.A., 1995. St. John's University School of Law, J.D., 1999.

BAR ADMISSIONS: New York, New Jersey.

CRISTAL J. GERRICK (former staff attorney) worked on *In re Wilmington Trust Securities Litigation* while at BLB&G.

Prior to joining the firm in 2014, Ms. Gerrick was of counsel at The Mogin Firm, and a staff attorney at Robbins Geller Rudman & Dowd, LLP.

EDUCATION: Illinois State University, Davis, B.S. in Psychology, 1999. California Western School of Law, J.D., 2013.

BAR ADMISSIONS: California, Illinois

MELISSA GLAZER worked on *In re Wilmington Trust Securities Litigation* while at BLB&G.

Prior to joining the firm in 2014, Ms. Glazer was a contract attorney at Cravath, Swaine & Moore LLP, where she worked on numerous securities litigations. Previously, Ms. Glazer was an associate at Freiberg & Peck LLP, where she worked on all phases of state court civil litigation.

EDUCATION: University of Maryland, B.A., 2003. St. Thomas University School of Law, J.D., 2006.

BAR ADMISSIONS: New York.

SCOTT HORLACHER worked on numerous matters at BLB&G, including *In re Wilmington Trust Securities Litigation, JPMorgan Mortgage Pass-Through Litigation, In re State Street Corporation Securities Litigation, In re The Reserve Fund Securities and Derivative Litigation* and *In re Tronox, Inc., Securities Litigation*.

Prior to joining the firm in 2011, Mr. Horlacher was Vice President at Richard C. Breeden & Co. LLC, where he worked on corporate governance matters.

EDUCATION: University of Virginia, B.A., *with Distinction*, 1997. University of Virginia School of Law, J.D., 2000.

BAR ADMISSIONS: New York, Connecticut.

CATHERINE VAN KAMPEN has worked on numerous matters at BLB&G, *including In re Wilmington Trust Securities Litigation, In re Bank of New York Mellon Corp. Forex Transactions Litigation, In re Merck & Co., Inc. Securities Litigation (VIOXX-related), Dexia Holdings, Inc. v. JP Morgan, In re Citigroup Inc. Bond Litigation, In re Pfizer Inc. Shareholder Derivative Litigation, In re WellCare Securities Litigation, In re Merrill Lynch & Co., Inc. Securities, Derivative and ERISA Litigation (Bond Action), In re State Street Bank and Trust Co. ERISA Litigation, In re Converium Holding AG Securities Litigation, In re Monster Worldwide, Inc. Derivative Litigation* and *Stonington Partners, Inc. v. Dexia Bank Belgium*.

Prior to joining the firm in 2005, Ms. van Kampen was corporate counsel at Centric Communications Worldwide.

EDUCATION: Indiana University, B.A, 1988. Seton Hall University, School of Law, J.D., 1998.

BAR ADMISSIONS: New Jersey.

JED KOSLOW has worked on numerous matters at BLB&G, including *In re SunEdison, Inc., Securities Litigation*, *In re NII Holdings, Inc. Securities Litigation*, *In re Bank of New York Mellon Corp. Forex Transactions Litigation*, *JPMorgan Mortgage Pass-Through Litigation*, *In re Wilmington Trust Securities Litigation*, *In re Merck & Co., Inc. Securities Litigation (VIOXX-related)*, *Dexia Holdings, Inc. v. JP Morgan* and *In re Schering-Plough Corp./ENHANCE Securities Litigation* and *In re Merck & Co., Inc. Vytorin/Zetia Securities Litigation*.

Prior to joining the firm in 2009, Mr. Koslow was Of Counsel at Lebowitz Law Office, LLC.

EDUCATION: Wesleyan University, B.A., 1999. Brooklyn Law School, J.D., 2006.

BAR ADMISSIONS: New York.

ROBERT J. MCCARTHY (former staff attorney) worked on *In re Wilmington Trust Securities Litigation* while at BLB&G.

Prior to joining the firm in 2014, Mr. McCarthy was an associate attorney at Shustak, Frost & Partners, LLC, and an associate attorney at Byron Edwards Mostofi, APC.

EDUCATION: University of Pittsburgh, B.A., Legal Studies, 1997. University of San Diego School of Law, J.D., 2001, University of San Diego Graduate School of Business, MBA, 2002.

BAR ADMISSIONS: California

AMY MCGEEVER (former staff attorney) worked on *In re Wilmington Trust Securities Litigation* while at BLB&G.

Prior to joining the firm in 2014, Ms. Geever worked at the University of San Diego Ninth Circuit Appellate clinic.

EDUCATION: University of San Diego, B.A., Business, 2007. University of San Diego School of Law, J.D., 2013.

BAR ADMISSIONS: California

MATTHEW MULLIGAN has worked on numerous matters at BLB&G, including *In re Green Mountain Coffee Roasters, Inc. Securities Litigation*, *In re Wilmington Trust Securities Litigation*, *In re Merck & Co., Inc. Securities Litigation (VIOXX-related)*, *In re State Street Corporation Securities Litigation*, *Dexia Holdings, Inc. v. JP Morgan*, *Minneapolis Firefighters' Relief Association v. Medtronic, Inc. et al.*, *In re Pfizer Inc. Shareholder Derivative Litigation* and *In re The Mills Corporation Securities Litigation*.

Prior to joining the firm in 2008, Mr. Mulligan worked as a contract attorney on numerous complex matters, including securities fraud litigation.

EDUCATION: Trinity University, B.A, 2001. Tulane Law School, J.D., 2004.

BAR ADMISSIONS: New York.

DANIEL MURRO worked on numerous matters at BLB&G, including *In re Wilmington Trust Securities Litigation, Bear Stearns Mortgage Pass-Through Litigation, Allstate Insurance Company v. Morgan Stanley & Co., Inc.* and *In re Bankrate, Inc. Securities Litigation*.

Prior to joining the firm in 2014, Mr. Murro was a staff attorney at Labaton Sucharow LLP, where he worked on class action securities litigation. Previously, Mr. Murro was a tax examiner at the Internal Revenue Service.

EDUCATION: St. John's University, B.S., 1997. University of Maryland School of Law, J.D., 2001.

BAR ADMISSIONS: New York.

JOY (NESBITT) SAJOUS worked on numerous cases at BLB&G, including *In re Wilmington Trust Securities Litigation, Allstate Insurance Company v. Morgan Stanley & Co., Inc., Dexia Holdings, Inc. v. JP Morgan, In re Citigroup Inc. Bond Litigation, Merrill Lynch Mortgage Pass-Through Litigation* and *In re Washington Mutual, Inc. Securities Litigation*.

Prior to joining the firm in 2010, Ms. Sajous was a litigation associate at Whatley, Drake & Kallas, LLC and Milberg LLP, where she worked on complex class action litigation.

EDUCATION: Florida A&M University, B.S, cum laude, 1996. Northeastern University, M.S., 1997. Northeastern University School of Law, J.D., 2001.

BAR ADMISSIONS: New York.

KARIN PAGE worked on numerous matters at BLB&G, including *In re Wilmington Trust Securities Litigation, Bear Stearns Mortgage Pass-Through Litigation, In re Bankrate, Inc. Securities Litigation, In re MF Global Holdings Limited Securities Litigation* and *Allstate Insurance Company v. Morgan Stanley & Co., Inc.*

Prior to joining the firm in 2013, Ms. Page was a staff attorney for Labaton Sucharow LLP, where she worked on complex securities fraud cases, including preparation for and participating in a seven-week jury trial.

EDUCATION: University of Northern Iowa, B.A., 2000. Western New England College School of Law, J.D., 2004. University of the Pacific, McGeorge School of Law, LL.M., 2005.

BAR ADMISSIONS: New York, Connecticut

MARION C. PASSMORE (former staff attorney) worked on *In re Wilmington Trust Securities Litigation* while at BLB&G. She practiced out of the firm's California office.

EDUCATION: Ms. Passmore received her B.A. from the University of Southern California in 2000, and her J.D. and M.B.A from the University of San Diego in 2003 and 2004, respectively. While at the University of San Diego, Ms. Passmore was a member of the *Beta Gamma Sigma* honor society.

BAR ADMISSIONS: California

DAMIEN PUNIELLO has worked on numerous matters at BLB&G, including *Hefler et al. v. Wells Fargo & Company et al.*, *Fresno County Employees' Retirement Association v. comScore, Inc.*, *In re Allergan, Inc. Proxy Violation Securities Litigation*, *In re Genworth Financial Inc. Securities Litigation* and *In re Wilmington Trust Securities Litigation*.

Prior to joining the firm in 2014, Mr. Puniello was an attorney at Labaton Sucharow LLP, where he worked on securities litigation. Previously, Mr. Puniello was an associate at Hoagland, Longo, Moran, Dunst & Dukas LLP, where he worked on mass and environmental tort litigation.

EDUCATION: Rutgers University, B.A., cum laude, 2000. Brooklyn Law School, J.D., 2009.

BAR ADMISSIONS: New York, New Jersey.

JESSICA PURCELL has worked on numerous matters at BLB&G, including *Hefler et al. v. Wells Fargo & Company et al.*, *Fresno County Employees' Retirement Association v. comScore, Inc.*, *In re Wilmington Trust Securities Litigation*, *In re Allergan, Inc. Proxy Violation Securities Litigation*, *In re Bank of New York Mellon Corp. Forex Transactions Litigation* and *In re Citigroup Inc. Bond Litigation*.

Prior to joining the firm in 2011, Ms. Purcell was a contract attorney at Constantine & Cannon, LLP.

EDUCATION: Georgetown University, B.S., Business Administration (Accounting) 2002. Catholic University of America, Columbus School of Law, J.D., *cum laude*, 2006.

BAR ADMISSIONS: New York, Connecticut

PRASHANTHA RATNAYAKE worked on numerous matters at BLB&G, including *In re Salix Pharmaceuticals, Ltd. Securities Litigation*, *In re Kinder Morgan Energy Partnership, L.P. Derivative Litigation* and *In re Wilmington Trust Securities Litigation*.

Prior to joining the firm in 2014, Mr. Ratnayake was contract attorney at various firms where he worked on complex litigation, including residential mortgage-backed securities litigation. Previously, Mr. Ratnayake worked as a prosecutor in the Criminal Law Division of the Attorney General's Department in Colombo, Sri Lanka.

EDUCATION: Sri Lanka Law College (School of Law) Attorneys-at-Law, December 1993. Benjamin N. Cardozo School of Law, LL.M., January 2002.

BAR ADMISSIONS: New York.

ANTONINO ROMAN worked on *In re Wilmington Trust Securities Litigation* while at BLB&G.

Prior to joining the firm in 2014, Mr. Roman was an associate at Wilson Elser Moskowitz Edelman & Dicker LLP and Kaye Scholer LLP, where he worked on anti-trust, product liability and other complex litigation.
EDUCATION: Ateneo de Manila University, B.A., 1989; J.D., 1993. Columbia University School of Law, LL.M., 1997.

BAR ADMISSIONS: New York.

CHARLES RONAN (former staff attorney) worked on *In re Wilmington Trust Securities Litigation* while at BLB&G.
Prior to joining the firm in 2015, Mr. Ronan was a sole practitioner.

EDUCATION: Park University, B.S., Management, 2009. University of San Diego School of Law, J.D., 2013.

BAR ADMISSIONS: California

DAVID SERNA worked on numerous matters at BLB&G, including *In re Wilmington Trust Securities Litigation, In re Bank of New York Mellon Corp. Forex Transactions Litigation, In re State Street Corporation Securities Litigation, SMART Technologies, Inc. Shareholder Litigation, In re Citigroup Inc. Bond Litigation* and *In re Washington Mutual, Inc. Securities Litigation.*

Prior to joining the firm in 2010, Mr. Serna worked as a litigation associate at Latham & Watkins LLP, where he worked on white collar investigations. Prior to attending law school, Mr. Serna was a senior associate at KPMG LLP.

EDUCATION: Florida International University, Bachelor of Accounting, summa cum laude, 1999; Master of Accounting, 2000. New York University School of Law, J.D., 2007.

BAR ADMISSIONS: New York.

ALLISON TIERNEY worked on several matters at BLB&G, including In re Wilmington Trust Securities Litigation and Allstate Insurance Company v. Morgan Stanley & Co., Inc.

Prior to joining the firm in 2013, Ms. Tierney worked as a staff attorney at Labaton Sucharow LLP and McGuireWoods LLP, where she worked on complex securities litigation.

EDUCATION: Boston University, B.A, magna cum laude, 1998. Hofstra University School of Law, J.D., 2001.

BAR ADMISSIONS: New York.

KESAV WABLE has worked on several matters at BLB&G, including *In re SunEdison, Inc., Securities Litigation, In re Wilmington Trust Securities Litigation* and *Bear Stearns Mortgage Pass-Through Litigation.*

Prior to joining the firm in 2014, Mr. Wable was contract attorney at Quinn Emanuel Urquhart & Sullivan, LLP. Previously, Mr. Wable was an associate at Lowey Dannenberg Cohen & Hart, P.C., where he worked on securities and anti-trust class action litigation.

EDUCATION: Haverford College, B.A., 2002. Brooklyn Law School, J.D., *cum laude*, 2008.

BAR ADMISSIONS: New York.

MARK WEAVER has worked on numerous matters at BLB&G, including *General Motors Securities Litigation, In re Wilmington Trust Securities Litigation, Bear Stearns Mortgage Pass-Through Litigation, Allstate Insurance Company v. Morgan Stanley & Co., Inc., JPMorgan Mortgage Pass-Through Litigation, Dexia Holdings, Inc. v. JP Morgan, Goldman Sachs Mortgage Pass-Through Litigation, Merrill Lynch Mortgage Pass-Through Litigation* and *In re Washington Mutual, Inc. Securities Litigation.*

Prior to joining the firm in 2010, Mr. Weaver was a contract attorney at several major law firms. Mr. Weaver also provides pro bono legal services through InMotion, Inc. and the New York County Lawyers Association.

EDUCATION: New School University, B.A, 1998. Brooklyn Law School, J.D., 2006.

BAR ADMISSIONS: New York.

JOANNE WILLIAMS worked on numerous cases while at the Firm, including *In re Wilmington Trust Securities Litigation, JPMorgan Mortgage Pass-Through Litigation, Dexia Holdings, Inc. v. JP Morgan, In re Citigroup Inc. Bond Litigation* and *Minneapolis Firefighters' Relief Association v. Medtronic, Inc. et al.*

Prior to joining the firm in 2011, Ms. Williams was litigation counsel at Bristol-Myers Squibb and Union Carbide.

EDUCATION: Chestnut Hill College, B.S., 1976. University of Pennsylvania, M.S.W., 1982. Brooklyn Law School, J.D., 1988.

BAR ADMISSIONS: New York.

JORDAN WOLFF worked on numerous matters at BLB&G, including *3-Sigma Value Financial Opportunities LP et al. v. Jones et al. ("CertusHoldings, Inc."), In re Genworth Financial Inc. Securities Litigation, General Motors Securities Litigation, In re Wilmington Trust Securities Litigation , Bear Stearns Mortgage Pass-Through Litigation, Allstate Insurance Company v. Morgan Stanley & Co., Inc., In re State Street Corporation Securities Litigation, Dexia Holdings, Inc. v. JP Morgan, Minneapolis Firefighters' Relief Association v. Medtronic, Inc. et al.* and *In re Pfizer Inc. Shareholder Derivative Litigation*.

Prior to joining the firm in 2010, Mr. Wolff was an associate at Greenberg Traurig LLP and a staff attorney at Labaton Sucharow LLP.

EDUCATION: Brown University, B.A, 1999. University of Georgia Law School, J.D., *magna cum laude*, 2006.

BAR ADMISSIONS: New York.

KIT WONG has worked on numerous matters at BLB&G, including *Hefler et al. v. Wells Fargo & Company et al., Fresno County Employees' Retirement Association v. comScore, Inc., In re Wilmington Trust Securities Litigation* and *In re Merck & Co., Inc. Securities Litigation (VIOXX-related).*

Prior to joining the firm in 2012, Ms. Wong was staff attorney at Labaton Sucharow LLP.

EDUCATION: City College of New York, B.A., *magna cum* laude, 1994; Phi Beta Kappa. New York Law School, J.D., 1999.

BAR ADMISSIONS: New York.

SUSAN D. WOO-FUKUDA (former staff attorney) worked on *In re Wilmington Trust Securities Litigation* while at BLB&G.

Prior to joining the firm in 2011, Ms. Woo-Fukuda was a staff attorney at the Law Offices of John J. Kang, and an associate attorney at Booth, Mitchel & Strange, LLP.

EDUCATION: University of Arizona, B.A., Language & Culture, 2004. University of San Diego School of Law, J.D., 2008.

BAR ADMISSIONS: California

EXHIBIT D-2

UNITED STATES DISTRICT COURT
DISTRICT OF DELAWARE

IN RE WILMINGTON TRUST SECURITIES LITIGATION	Master File No. 10-cv-00990-ER (Securities Class Action) Hon. Eduardo Robreno ELECTRONICALLY FILED
This document relates to: ALL ACTIONS	

DECLARATION OF JOSEPH E. WHITE, III IN SUPPORT OF LEAD COUNSEL'S MOTION FOR AN AWARD OF ATTORNEYS' FEES AND REIMBURSEMENT OF LITIGATION EXPENSES FILED ON BEHALF OF SAXENA WHITE P.A.

I, Joseph E. White, III, hereby declare under penalty of perjury as follows:

1. I am a Shareholder of the law firm of Saxena White P.A., one of the Court-appointed Lead Counsel firms in the above-captioned action (the "Action").[1] I submit this declaration in support of Lead Counsels' 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 one of the Lead Counsel firms, was involved in all aspects of the litigation of the Action and its settlement as set forth in the Joint Declaration of Joseph E. White, III and Hannah Ross in Support of (I) Lead Plaintiffs' Motion for Final Approval of Class Action

[1] All capitalized terms that are not otherwise defined herein shall have the meanings ascribed to them in the Stipulation and Agreement of Settlement with Wilmington Trust Defendants and Underwriter Defendants dated May 15, 2018 (D.I. 821-1) and the Stipulation and Agreement of Settlement with KPMG dated May 25, 2018 (D.I. 821-2).

Settlements and Plan of Allocation and (II) 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 professional support staff employees of my firm who, from inception of the Action through and including May 25, 2018, worked ten or more hours on the prosecution and settlement of the Action, and the lodestar calculation for those individuals based on my firm's current hourly rates. For personnel who are no longer employed by my firm, the lodestar calculation is based upon the hourly 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. No time expended on the application for fees and expenses has been included.

4. The hourly rates for the attorneys and professional support staff in my firm included in Exhibit 1 are their standard rates, which have been accepted in other securities or shareholder litigation.

5. The total number of hours reflected in Exhibit 1 is 100,871.00. The total lodestar reflected in Exhibit 1 is $38,346,400.00, consisting of $37,971,867.50 for attorneys' time and $374,532.50 for professional support staff time. This results in a blended hourly rate of $380.15 for my firm, which is reduced to $281.31 when taking into account the negative multiplier.

6. My firm's lodestar figures are based upon the firm's standard hourly rates and do not include expense items. Expense items are being submitted separately and are not duplicated in the firm's hourly rates.

7. As detailed in Exhibit 2, my firm is seeking reimbursement for a total of $2,759,446.09 in expenses incurred from inception of the Action through and including September 14, 2018.

8. The expenses reflected in Exhibit 2 are the actual incurred expenses or reflect "caps" based on the application of the following criteria:

(a) Out-of-Town Travel – airfare is capped at coach rates, hotel charges per night are capped at $350 for "high cost" cities and $250 for "low cost" cities (the relevant cities and how they are categorized are reflected on Exhibit 3); meals are capped at $20 per person for breakfast, $25 per person for lunch, and $50 per person for dinner.

(b) Out-of-Office Meals – capped at $25 per person for lunch and $50 per person for dinner.

(c) In-Office Working Meals – capped at $20 per person for lunch and $30 per person for dinner.

(d) Internal Copying/Printing – charged at $0.10 per page.

(e) On-Line Research – charges reflected are for out-of-pocket payments to the vendors for research done in connection with this litigation. On-line research is charged to each case based on actual time usage at a set charge by the vendor. There are no administrative charges included in these figures.

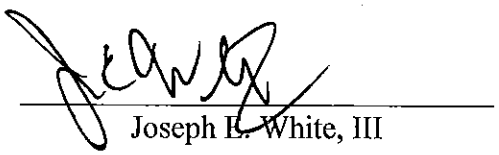
9. The expenses incurred by Saxena White P.A. in the Action are reflected on the books and records of my firm. These books and records are prepared from expense vouchers, check records, and other source materials and are an accurate record of the expenses incurred.

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

11. As stated at the July 2, 2018 hearing, my firm entered into fee sharing agreements with Ronald J. Cohen ("Cohen"), Board Counsel to Lead Plaintiff Pompano Beach General Employees Retirement System, and with Stephen H. Cypen ("Cypen"), General Counsel to Lead Plaintiff Coral Springs Police Pension Fund. Subsequent to that hearing, and in recognition of the

substantial negative multiplier that Lead Counsels' fee requests represents to their time, the magnitude of the recovery for the Class, as well as principles of equity, Cohen and Cypen each agreed to enter into amended fee sharing agreements. The amended fee sharing agreement with Cohen, along with his Declaration in support, are attached hereto as Exhibit 4. The amended fee sharing agreement with Cypen, along with his Declaration in support, are attached hereto as Exhibit 5.

I declare, under penalty of perjury, that the foregoing facts are true and correct. Executed on September 17, 2018.



Joseph E. White, III

EXHIBIT 1

In Re Wilmington Trust Securities Litigation
Master File No. 10-cv-00990-ER

SAXENA WHITE P.A.

TIME REPORT

Inception through and including May 25, 2018

NAME	HOURLY RATE	HOURS	LODESTAR
Shareholders			
Joseph E White	$890.00	2,208.25	$1,965,342.50
Maya S Saxena	$890.00	2,012.75	$1,791,347.50
Directors			
Steven B Singer*	$890.00	442.00	$393,380.00
Lester R Hooker	$750.00	1,286.00	$964,500.00
Attorneys			
Adam D Warden	$600.00	48.00	$28,800.00
Brandon T. Grzandziel	$575.00	6,864.00	$3,946,800.00
Carol Dutra Ellis**	$365.00	577.50	$210,787.50
Christine Sciarrino**	$365.00	2,217.25	$809,296.25
Christopher S Jones	$730.00	126.75	$92,527.50
Denise H Bryan**	$365.00	1,938.25	$707,461.25
Dianne Anderson	$450.00	555.25	$249,862.50
Jill Miller**	$450.00	2,493.25	$1,121,962.50
Jonathan M Stein	$735.00	331.25	$243,468.75
Jordan Utanski	$355.00	648.25	$230,128.75
Jorge A Amador	$675.00	1,253.25	$845,943.75
Kathryn W Weidner	$575.00	4,762.75	$2,738,581.25
Kylie M Wagenet	$385.00	95.50	$36,767.50
Michelle Harper**	$365.00	2,621.25	$956,756.25
Renato Pinto e Silva	$445.00	67.50	$30,037.50
Sean Kelly**	$365.00	1,846.75	$674,063.75
Timothy Lezama**	$365.00	375.00	$136,875.00
Tonia D Sibblies**	$365.00	1,528.00	$557,720.00
Tyler A. Mamone	$375.00	40.75	$15,281.25
William N Irvine	$345.00	11.50	$3,967.50
Discovery Attorneys			
Alan Stone	$295.00	581.25	$171,468.75

NAME	HOURLY RATE	HOURS	LODESTAR
Bensy Benjamin	$295.00	62.75	$18,511.25
Brian Danker	$295.00	1,022.25	$301,563.75
Carol Dutra Ellis**	$295.00	580.00	$171,100.00
Carolyn Zegeer	$295.00	844.50	$249,127.50
Christine Sciarrino**	$295.00	3,250.25	$958,823.75
Christopher Roemer	$295.00	1,009.50	$297,802.50
Danae Dunkley	$295.00	285.50	$84,222.50
Daphne Duverney	$295.00	1,096.00	$323,320.00
David Sholl	$295.00	1,287.00	$379,665.00
Davit Hor	$295.00	2,479.75	$731,526.25
Denise Bryan**	$295.00	1,526.25	$450,243.75
Dorota Trzeciecka	$295.00	1,233.75	$363,956.25
Elise Weakley	$295.00	5,573.00	$1,644,035.00
Elizabeth Goldberg	$295.00	563.25	$166,158.75
Elizabeth Kim	$295.00	1,193.75	$352,156.25
Greg Schneck	$295.00	900.75	$265,721.25
Hollis Hamilton	$295.00	290.25	$85,623.75
Jenny Dziorney	$295.00	963.50	$284,232.50
Jessenia Canot.	$295.00	84.00	$24,780.00
Jill Miller**	$295.00	885.00	$261,075.00
John D'Arecca	$295.00	2,612.00	$770,540.00
Jorge Herrera	$295.00	1,175.50	$346,772.50
Le Xiang Tsang	$295.00	25.00	$7,375.00
Lindsay Ervin	$295.00	998.25	$294,483.75
Mario Alvite	$295.00	5,469.00	$1,613,355.00
Maryleen Thomas	$295.00	1,587.00	$468,165.00
Matthew Kamula	$295.00	1,567.50	$462,412.50
Michelle Harper**	$295.00	749.50	$221,102.50
Nancy Zelch	$295.00	1,616.50	$476,867.50
Nicholas Atkinson	$295.00	6,173.25	$1,821,108.75
Raymond Garrigan	$295.00	1,965.75	$579,896.25
Rebecca Nilsen	$295.00	1,690.75	$498,771.25
Sean Kelly.	$295.00	3,410.50	$1,006,097.50
Shantee Patton	$295.00	673.00	$198,535.00
Tara Sidney	$295.00	1,042.75	$307,611.25
Timothy Lezama**	$295.00	1,416.50	$417,867.50
Tonia D. Sibblies**	$295.00	2,279.75	$672,526.25
Vanesti Brown	$295.00	334.00	$98,530.00
Victoria Cook	$295.00	1,536.25	$453,193.75
Wendy Manswell	$295.00	2,310.75	$681,671.25
William Convey	$295.00	639.25	$188,578.75
William Wright	$295.00	168.25	$49,633.75

NAME	HOURLY RATE	HOURS	LODESTAR
Professional Support			
Charlene Wallace	$250.00	20.50	$5,125.00
Gilda R De La Cruz	$275.00	500.50	$137,637.50
Gregory Stone	$295.00	299.00	$88,205.00
Jardana S Dallal	$250.00	89.50	$22,375.00
Kara King	$250.00	70.50	$17,625.00
LaJoi Thompson	$250.00	59.25	$14,812.50
Loren Ryan	$250.00	10.75	$2,687.50
Marc D Grobler	$295.00	47.00	$13,865.00
Melanie Totten	$250.00	65.25	$16,312.50
Michelle Hernandez	$250.00	14.00	$3,500.00
Stefanie Leverette	$275.00	190.50	$52,387.50
FIRM TOTAL		**100,871.00**	**$38,346,400.00**

*Mr. Singer joined Saxena White in January 2017. He was previously a partner at Bernstein Litowitz Berger & Grossman LLP. Only his time billed while at Saxena White is included in this Declaration.

**Certain Discovery Attorneys were offered full Attorney positions during the course of this Action. Those who accepted have their time billed as Discovery Attorneys listed separately from their time billed as Attorneys. No time is duplicated between these entries.

EXHIBIT 2

In Re Wilmington Trust Securities Litigation
Master File No. 10-cv-00990-ER

SAXENA WHITE P.A.

EXPENSE REPORT

Inception through and including September 14, 2018

CATEGORY	AMOUNT
Court Fees	$254.00
On-Line Legal Research	$68,660.90
On-Line Factual Research	$6,550.00
Telephones/Faxes	$468.48
Postage & Express Mail	$8,948.53
Internal Copying/Printing	$22,146.28
Outside Copying	$31,503.08
Out of Town Travel*	$105,764.31
Working Meals	$15,357.36
Court Reporting & Transcripts	$6,378.13
Deposition Expenses/Conference Rooms	$24,935.46
Cars/Mileage/Taxi/Tolls	$13,102.22
Service of Process	$1,140.00
Contributions to Litigation Fund	$2,210,000.00
Discovery and Document Management	$244,237.34
TOTAL EXPENSES:	**$2,759,446.09**

EXHIBIT 3

In Re Wilmington Trust Securities Litigation
Master File No. 10-cv-00990-ER

SAXENA WHITE P.A.

FIRM RESUME

SAXENA WHITE

"A highly experienced group of lawyers with national reputations in large securities class actions..."

– The Honorable Alan S. Gold of the Southern District of Florida

FIRM RESUME

150 East Palmetto Park Road, Suite 600, Boca Raton, FL 33432
ph 561.394.3399 *fax* 561.394.3382 www.saxenawhite.com

SAXENA WHITE

Saxena White P.A. was founded in 2006 by Maya Saxena and Joseph White. After spending many years at one of the country's largest class action law firms, we wanted to do business a different way. Our goal in forming the Firm was to become big enough to handle prominent and complex litigation while remaining small enough to offer each client responsive, ethical, and personalized service.

Today our Firm's capabilities rival those of our largest competitors. We obtain victories against major corporations represented by the nation's top defense firms. We represent some of the largest pension funds in major securities fraud cases and have recovered over $2 billion on behalf of injured investors. We have succeeded in improving how corporations do business by requiring the implementation of significant corporate governance reforms. We have formed long-lasting relationships with our clients who know we are only a phone call away. However, the most important attribute of the firm, and the key to its continued success, is the people. Saxena White was built upon the quality, integrity, and camaraderie, of its people — attributes that continue to be its greatest legacy.

What Makes us Different?

- *We are proud to be the only certified minority and female-owned firm in the securities litigation business representing institutional investors and have an ongoing commitment to diversity.*

- *We take a selective approach to litigation, recommending only a few fraud cases per year and litigating them aggressively.*

- *The securities fraud cases in which we have served as lead counsel are rarely dismissed due to our careful selection criteria.*

- *We offer tailored portfolio monitoring services to our clients that reflect their individual philosophies toward litigation.*

- *We emphasize community outreach and welcome opportunities to support our clients in their communities.*

RECENT RECOVERIES

In re Rayonier Inc. Securities Litigation

Saxena White served as co-lead counsel in a class action against Rayonier that accused the company and its senior executives of misleading investors about its timber inventory and timber harvesting rates in the Pacific Northwest. When the company's new management ultimately disclosed that Rayonier had overharvested its premium Pacific Northwest timberlands by over 40% each year for over a decade and overstated its merchantable timber by 20% in this critical region, the company's stock price declined significantly, causing investors substantial losses.

After litigating this case for nearly three years and defeating defendants' motion to dismiss, plaintiffs ultimately negotiated a $73 million cash settlement on behalf of the Class, the second largest recovery from a securities class action achieved in the Middle District of Florida. The $73 million settlement is nearly nine times the national median settlement and nearly ten times greater than the median recovery in the Eleventh Circuit. As noted by Judge Timothy J. Corrigan, M.D. Fla., this was an "exceptional result[] achieved for the benefit of the Settlement Class."

Westchester Putnam Counties Heavy & Highway Laborers Local 60 Benefit Funds v. Brixmor Property Group, Inc. et al.

Saxena White filed an original action in the United States District Court for the Southern District of New York against Brixmor and certain of its senior executives for securities fraud on May 31, 2016. Following the appointment of Westchester Putnam Counties Heavy & Highway Laborers Local 60 Benefit Funds, Teamsters Local 456 Annuity Fund, and the City of Birmingham Retirement and Relief System as Lead Plaintiffs and Saxena White as Lead Counsel, Lead Plaintiffs filed a comprehensive amended complaint alleging that throughout the Class Period, Defendants purposefully falsified Brixmor's income items for over two years in order to portray consistent quarterly same property NOI growth; the Company lacked adequate internal and financial controls; and as a result, Defendants' Class Period statements about Brixmor's business, operations, and prospects were false and misleading.

After extensive litigation efforts and negotiation, Lead Plaintiffs obtained a $28 million settlement. The Settlement is an exceptional recovery for the Class, representing a significant percentage of the Class's maximum estimated aggregate damages that was multiples ahead of the typical recovery in securities class actions. After a fairness hearing to evaluate the merits of the settlement, on December 13, 2017, the Honorable Analisa Torres issued an order granting the final approval of the Settlement as fair, adequate and reasonable. Saxena White is pleased to achieve such a favorable settlement for shareholders.

In re Jefferies Group, Inc. Shareholders Litigation

Saxena White served as co-lead counsel in a class action involving breach of fiduciary duty claims against the board of directors of Jefferies Group, Inc., in connection with that company's merger with Leucadia National Corporation. In 2012, Jefferies entered into a merger agreement with Leucadia, a holding company which owned 28% of Jefferies and whose founders served on Jefferies' board. Leucadia's founders had a longstanding personal and professional relationship with Jefferies CEO, Richard Handler, which included lucrative joint ventures, personal investment advice and support, numerous financing transactions, and off-market stock purchases. As Leucadia's founders neared retirement, Handler recognized an opportunity to merge his company with Leucadia and serve as CEO of the much larger, combined company. Negotiating in secret for months before informing the independent board members, Handler and Leucadia's founders structured a deal that greatly benefitted Leucadia, to the

detriment of Jefferies shareholders.

After aggressively litigating this case for almost two years and defeating the defendants' motion to dismiss and motion for summary judgment, the plaintiffs ultimately negotiated a settlement which required Leucadia to pay $70 million to class members, an outstanding result for former Jefferies shareholders.

City Pension Fund for Firefighters and Police Officers in the City of Miami Beach v. Aracruz Celulose S.A., et al.

One of our firm's areas of expertise is litigating cases against foreign corporations. We recently obtained a significant victory against a Brazilian corporation, Aracruz Celulose. Accomplishing what no other law firm has ever done, Saxena White successfully served process on all three individual executives under the Inter-American Convention on Letters Rogatory. Our efforts included working closely with a Brazilian law firm to defeat the defendants' challenges to service in both the Brazilian trial and appellate courts.

After defeating three motions to dismiss filed by the foreign defendants, Saxena White began the massive and highly technical discovery process. Because the vast majority of the documents were in Portuguese, we hired native Brazilian attorneys to analyze and translate the tens of thousands of documents that were produced. These documents were also incredibly complex, dealing with five dozen separate financial derivative instruments. Simply valuing one instrument required approximately 50,000 calculations. We consulted closely with highly-respected industry and academic experts to gain an unprecedented understanding of the workings of these instruments and how they were valued.

In the end, our hard work paid off. Saxena White successfully negotiated a $37.5 million settlement against Aracruz and its executives. This represents up to 50% of maximum provable damages – an outstanding result compared to the average national recovery of just 2.5% in cases of this magnitude.

In re Bank of America Securities, Derivative and ERISA Litigation

This derivative case arose out of Bank of America's acquisition of Merrill Lynch during the height of the financial crisis in late 2008. After successfully defending the complaint's core allegations against multiple motions to dismiss, Saxena White embarked on an extensive discovery process that included 31 depositions of senior BofA and Merrill executives and their attorneys, the review and analysis of 3 million pages of documents from BofA, Merrill and multiple third parties, and close consultation with nationally recognized financial and economic experts.

On January 11, 2013, the Court approved the Settlement, which includes a $62.5 million cash component and fundamental corporate governance reforms. The cash component alone ranks this Settlement among the top ten derivative settlements approved by federal courts. The extensive corporate governance reforms include the creation of a Board-level committee tasked with special oversight of mergers and acquisitions, which is aimed at preventing the alleged deficiencies surrounding the Merrill Lynch acquisition. The corporate governance reforms also include other components, including revisions to committee charters and director education requirements, which caused one noted scholar to observe that BofA is now at the forefront of corporate governance practices.

In re Lehman Brothers Equity/Debt Securities Litigation

After conducting an extensive investigation into Lehman and its executives, Saxena White was the first firm to file a complaint alleging violations of the federal securities laws. Subsequent events, including the largest bankruptcy

filing in U.S. history, interjected unique challenges to prosecuting this case – not the least of which was that because Lehman itself was in bankruptcy, damaged shareholders could not recover damages from it.

Despite these formidable obstacles, we continued to prosecute the case. Our efforts paid off. In the spring of 2012, the Court approved a $90 million partial settlement with Lehman's senior executives and directors, and a $426 million settlement with several dozen underwriters of its securities. After nearly two more years of hard-fought litigation, we reached a $99 million settlement with E&Y, Lehman's outside auditor, which was approved in the spring of 2014. The $99 million settlement ranks among the largest ever obtained from an outside auditor and is an outstanding recovery for damaged shareholders.

FindWhat Investor Group v. FindWhat.com

Saxena White also has significant appellate experience. In this Eleventh Circuit appeal, we won a precedent-setting opinion with the court holding that corporations and their executives who make fraudulent statements that prevent artificial inflation in a company's stock price from dissipating are just as liable under the securities laws as those whose fraudulent statements introduce artificial inflation into the stock price in the first place. The Eleventh Circuit rejected the defendants' position that the mere repetition of lies already transmitted to the market cannot damage investors. "We decline to erect a per se rule," wrote the court, that "once a market is already misinformed about a particular truth, corporations are free to knowingly and intentionally reinforce material misconceptions by repeating falsehoods with impunity."

The Eleventh Circuit's opinion is a significant win for aggrieved investors. It is the first such ruling from any of the Courts of Appeals in the nation, and will help defrauded investors seeking to recover damages due to fraud.

Central Laborers' Pension Fund v. Sirva

Saxena White served as sole lead counsel in this case, which was litigated in the Northern District of Illinois (SIRVA is the parent company of North American Van Lines). After two and a half years of hard-fought litigation, an extensive investigation which involved conducting nearly 120 witness interviews, and the review of approximately 2.7 million documents produced by Defendants, a two day mediation was conducted at which we were able to reach a global $53.3 million settlement on behalf of the proposed shareholder class. In addition, Saxena White conducted a comprehensive review of SIRVA's corporate governance procedures in an effort to ensure that securities fraud and accounting violations were less likely to occur at the Company in the future. This careful and comprehensive review, which was spearheaded in conjunction with retained corporate governance experts, confirmed that SIRVA had made great strides in improving its governance standards over the course of our lawsuit. This was especially true in the area of its internal controls, which was a primary concern. The company formally recognized, in writing, that the lawsuit was one of the main reasons it reformed its governance standards, which confirmed that Saxena White was the key catalyst compelling SIRVA to recognize the need to change the way it does business.

In addition, Saxena White was able to obtain even more governance improvements by convincing the Board to discard their plurality (also known as "cumulative") standard for the election of their directors in favor of a modified majority standard (also known as the "Pfizer model"). This important change gives every SIRVA shareholder a greater voice, as well as improving director accountability, by forcing directors who do not receive a majority of the votes to tender their resignation for the Board's consideration. Furthermore, SIRVA also agreed to strengthen its requirements regarding director attendance at shareholder meetings, which created more director accountability and increased shareholder input. Importantly, judges are unable to order these types of governance changes – it

was only the negotiation and litigation pressure that we imposed upon the Company that allowed these changes to be implemented.

In re Sadia S.A. Securities Litigation

Sadia was a Brazilian company specializing in poultry and frozen goods that exported a majority of its products. Like Aracruz, it engaged in wildly speculative currency hedging while telling investors that its hedges were conservative and used to protect against sudden changes in currency fluctuation. The Plaintiffs filed a securities fraud complaint against Sadia and its senior executives and board members alleging violations of the federal securities laws. Because the individual Defendants in this case were also citizens of Brazil, they had to be served pursuant to the Inter-American Convention on Letters Rogatory. We were successful in serving the individuals, once again accomplishing what few other law firms have been able to do.

We prevailed on the motion to dismiss and on the motion for class certification. Discovery was greatly complicated by the fact that the vast majority of the documents were in Portuguese, and the Court had no subpoena power to force witnesses to appear for deposition. In spite of this, we hired attorneys fluent in Portuguese to help us with the review, and we were able to depose one of the Company's executives. After three mediations over the course of eight months, we were able to reach a $27 million cash settlement with the Defendants.

In re Cox Radio, Inc. Shareholders Litigation

Saxena White represented a Florida Police Pension Plan in an action against Cox Radio. The Pension Plan alleged that the initial price offered to public shareholders in the tender offer was unfair and did not properly value the assets of Cox Radio. After considerable discovery and expedited motion practice, we were instrumental in raising the price of the deal by nearly 30%, creating nearly $18 million in additional value for all public shareholders, including the Pension Plan. We also obtained the issuance of additional meaningful disclosures regarding the valuation process used in the deal.

In re Clear Channel Outdoor Holdings, Inc. Derivative Litigation

On March 23, 2012, Saxena White, on behalf of an institutional investor client, filed a derivative action on behalf of nominal defendant Clear Channel Outdoor Holdings ("Outdoor" or the "Company") against certain of the Company's current and former directors; its majority stockholder, Clear Channel Communications, Inc. ("Clear Channel"); and other entities with respect to a 2009 agreement between the Company and Clear Channel. The derivative action brought forth claims that Outdoor's directors breached their fiduciary duties by approving a $1 billion unsecured loan on highly unfavorable terms to Clear Channel. In response to the claims brought forth in the derivative action, the Company's Board of Directors established a Special Litigation Committee (the "SLC") and empowered it to investigate the matters and claims raised in the action.

After an extensive evaluation and investigation of the derivative claims, the SLC initiated discussions with certain of the Defendants to explore the prospects of settlement. The SLC also initiated discussions with Plaintiffs in order to explore the prospects of settling the derivative action. After several months of working with the SLC, the parties to the derivative action reached an agreement in principle to resolve the action on terms that will provide substantial and meaningful benefits to the Company and its shareholders, including an agreement that would provide a dividend to shareholders in the amount of $200 million, as well as additional corporate governance reforms. The settlement agreement acknowledges that Plaintiffs' involvement in the settlement negotiations was a factor in achieving the benefits received by Outdoor and its shareholders as a result of the settlement.

Maya Saxena

Maya Saxena, co-founder of the Firm, has been practicing exclusively in the securities litigation field for over twenty years, representing institutional investors in shareholder actions involving breaches of fiduciary duty and violations of the federal securities laws. Prior to forming Saxena White, Ms. Saxena served as the Managing Partner of the Florida office of one of the nation's largest securities litigation firms, successfully directing numerous high profile securities cases. Ms. Saxena gained valuable trial experience before entering private practice while employed as an Assistant Attorney General in Ft. Lauderdale, Florida. During her time as an Assistant Attorney General, Ms. Saxena represented the State of Florida in civil cases at the appellate and trial level and prepared amicus curiae briefs in support of state policies at issue in state and federal courts. In addition, Ms. Saxena represented the Florida Highway Patrol and other law enforcement agencies in civil forfeiture trials.

Ms. Saxena has been instrumental in recovering nearly a billion dollars on behalf of investors including cases against Rayonier, Inc. ($73 million settlement), Sirva Inc. ($53.3 million settlement), Aracruz Celulose ($37.5 million settlement), Brixmor Property Group ($28 million settlement), and Sunbeam (settled with Arthur Andersen LLP for $110 million - one of the largest settlements ever with an accounting firm - and a $15 million personal contribution from former CEO Al Dunlap). She is a frequent speaker at educational forums involving public pension funds and advises public and multi-employer pension funds on how to address fraud-related investment losses.

Ms. Saxena graduated from Syracuse University *summa cum laude* in 1993 with a dual degree in policy studies and economics, and graduated from Pepperdine University School of Law in 1996. Ms. Saxena is a member of the Florida Bar, and is admitted to practice before the United States District Courts for the Southern, Northern, and Middle Districts of Florida, as well as the Fifth and Eleventh Circuit Courts of Appeals. She was recently recognized in the South Florida Business Journal's "Best of the Bar" as one of the top lawyers in South Florida, and has been selected to the Florida Super Lawyers list ten years in a row. Ms. Saxena was also selected by her peers for inclusion in The Best Lawyers in America © three years in a row, as well recently recognized as a Florida Legal Elite.

Joseph White

Joseph E. White, III, co-founder of Saxena White, has represented shareholders as lead counsel in major securities fraud class actions and derivative actions for over fifteen years. He has represented lead and representative plaintiffs in front-page cases, including actions against Bank of America, Lehman Brothers and Washington Mutual. He has successfully settled cases yielding over one billion dollars against numerous publicly traded companies, including cases against Rayonier, Inc. ($73 million settlement), Brixmor Property Group ($28 million settlement), and Sirva Inc. ($53.3 million settlement). Mr. White has developed an expertise in litigating precedent setting cases against foreign publicly traded companies, and recently settled two cases involving Brazilian corporations: Sadia, ($27 million settlement) and Aracruz Celulose ($37.5 million settlement).

Mr. White has also helped achieve meaningful corporate governance and monetary recoveries for shareholders in merger related and derivative lawsuits. In *In re Clear Channel Outdoor Holdings Derivative Litigation*, Mr. White's efforts obtained repayment of a $200 million loan from Outdoor's parent which was then paid as a special dividend to Outdoor shareholders. Mr. White regularly lectures on topics of interest to pension trustees, and advises municipal, state, and international institutional investors on instituting effective systems to monitor and prosecute securities and related litigation.

Mr. White earned an undergraduate degree in Political Science from Tufts University before obtaining his Juris Doctor from Suffolk University School of Law. Mr. White is a member of the Massachusetts, Florida, New York and Pennsylvania Bars, as well as the United States District Courts for the Southern, Middle and Northern Districts of Florida, the Southern District of New York, and the District of Massachusetts. Mr. White is also a member of the United States Supreme Court and the United States Circuit Courts of Appeals for the First, Second and Eleventh Circuits.

STEVE SINGER

Steven B. Singer is the Director of Litigation at Saxena White P.A., where he oversees the Firm's securities litigation practice. Prior to joining the Firm, Mr. Singer was employed for more than twenty years at Bernstein Litowitz Berger & Grossmann LLP, a well-known plaintiffs' firm, where he served as a senior partner and member of the firm's management committee.

During his career, Mr. Singer has been the lead partner responsible for prosecuting many of the most significant and high-profile securities cases in the country, which collectively have recovered billions of dollars for investors. He led the litigation against Bank of America relating to its acquisition of Merrill Lynch, which resulted in a landmark settlement shortly before trial of $2.43 billion, one of the largest recoveries in history. Mr. Singer's work on that case was the subject of extensive media coverage, including numerous articles published in The New York Times. He also has substantial trial experience, and was one of the lead trial lawyers on the WorldCom Securities Litigation, which settled for more than $6 billion after a four-week jury trial.

In addition, Mr. Singer has been lead counsel in numerous other actions that have resulted in substantial settlements, including cases involving Citigroup Inc. ($730 million settlement, representing the second largest recovery in a case brought on behalf of bond purchasers), Lucent Technologies ($675 million settlement), Mills Corp. ($203 million settlement), WellCare Health Plans ($200 million settlement), Satyam Computer Services ($150 million settlement), Biovail Corporation ($138 million settlement), Bank of New York Mellon ($180 million settlement) and JP Morgan Chase ($150 million settlement).

At Saxena White, Mr. Singer serves as lead counsel in many highly significant securities matters, including *In re Wells Fargo & Company Shareholder Derivative Litigation*, and securities class actions involving Wilmington Trust, Universal Health Services and DaVita Inc.

Mr. Singer has been consistently recognized by industry observers for his legal excellence and achievements. He has been selected by Lawdragon magazine as one of the "500 Leading Lawyers in America," by Benchmark Plaintiff as a "litigation star", and by the Legal 500 US guide as one of the "Leading Lawyers" in securities litigation – one of only seven plaintiffs' attorneys so recognized.

Mr. Singer graduated cum laude from Duke University in 1988, and from Northwestern University School of Law in 1991. He is an active member of the New York State and American Bar Associations.

DOUG MCKEIGE

Douglas McKeige, Director at Saxena White, brings unparalleled experience investigating, commencing and prosecuting meritorious securities fraud and corporate governance cases to Saxena White. Mr. McKeige was co-managing partner of Bernstein Litowitz Berger & Grossmann, a well-known plaintiffs' firm, for many years.

During his time at that firm, he spearheaded the firm's institutional investor practice and developed and led its case starting department. Utilizing his extensive knowledge of the securities markets, Mr. McKeige counseled pension funds, hedge funds, private equity firms and, most importantly, hardworking men and women saving for their retirement, on potential claims and avenues for case prosecution. Under Mr. McKeige's supervision, the firm successfully commenced and prosecuted hundreds of cases in state and federal courts throughout the country, and recovered more than $12 billion on behalf of defrauded investors, including cases involving WorldCom ($6.2 billion), Nortel Networks ($2.45 billion), Freddie Mac ($410 million), Bristol-Myers Squibb ($300 million) and Mills Corporation ($203 million).

Mr. McKeige combines at Saxena White his more than two decades of legal experience with years of knowledge as a hedge fund Managing Director, during which time he helped build two multi-billion dollar hedge funds. As a result of his hedge fund experience, Mr. McKeige has extensive experience with macroeconomic themes, company-specific opportunities and trade implementation strategies across all asset classes (equities, fixed income, foreign exchange and commodities), and with using derivatives across all major geographies. His unique perspective on the workings of the financial markets provides Saxena White's institutional clients with valuable information when considering strategies for recovering investment losses.

Mr. McKeige earned his B.A. in Economics from Tufts University, cum laude, and his J.D. from Tulane Law School, *magna cum laude*, Order of the Coif. Mr. McKeige was Articles Editor of the Tulane Law Review and is admitted to the Bar of the State of New York.

WILLIAM J. FORGIONE

Prior to joining Saxena White, William Forgione served as a senior legal executive with Teachers Insurance and Annuity Association("TIAA") and its subsidiaries for over 25 years. While at TIAA, he held a variety of leadership positions, including as Executive Vice President and General Counsel with TIAA Global Asset Management and Nuveen, a leading financial services group of companies that provides investment advice and portfolio management through TIAA and numerous investment advisors. He oversaw the legal, compliance and corporate governance aspects associated with the organization's $900 billion investment portfolios and asset management businesses, including TIAA's general account, various separate accounts, registered and unregistered funds and institutional investment mandates.

Under Mr. Forgione's leadership, TIAA was actively involved in a number of significant investment litigation matters in order to recover the maximum amount for the benefit of its investment portfolios and the beneficial owners. These included acting as lead plaintiff in class action lawsuits, initiating proxy contests, pursuing direct actions where appropriate and asserting appraisal rights when it felt the consideration to be paid to shareholders in connection with various merger and acquisition activity involving portfolio companies was inadequate.

Mr. Forgione also served as Deputy General Counsel to TIAA, where among his many responsibilities, he acted as a strategic partner and advisor to the heads of TIAA's pension and insurance business lines. He also served as a member of TIAA's Senior Leadership Team, actively participating on a number of management committees. In addition, Mr. Forgione has valuable corporate governance experience, having advised and served on a number of Boards, including Nuveen, the Westchester Group, several foreign operating subsidiaries of TIAA, as well as various Risk Management, Investment, Asset-Liability and Audit Committees. He also has served as lead counsel on several large business acquisitions.

After graduating summa cum laude from Binghamton University with a B.S. in Accounting, Mr. Forgione received his J.D. Degree from Boston University. Among many industry associations, he has served as President and a member of the Board of Trustees of the Association of Life Insurance Counsel, President and Trustee of the American College of Investment Counsel and Chairman of the Investment Committee of the Life Insurance Council of New York. Mr. Forgione has spoken at many industry conferences and seminars, taught undergraduate and graduate courses in Accounting and Law and has won such awards as The *Charlotte Business Journal's* Corporate Counsel Award for his success in corporate law. Mr. Forgione has spoken at many industry conferences and seminars and taught undergraduate and graduate courses in Accounting and Law.

Prior to joining TIAA, Mr. Forgione was associated with the law firms, Fried, Frank, Harris, Shriver & Jacobson, in New York and Csaplar & Bok, in Boston, where he practiced in the areas of mergers and acquisitions and corporate finance. He is admitted to the Bar of the State of New York.

Lester Hooker

Lester Hooker, Director, is involved in all of Saxena White's practice areas, including securities class action litigation, shareholder derivative actions, merger & acquisition litigation and class actions on behalf of consumers. During his tenure at Saxena White, Mr. Hooker has obtained substantial monetary recoveries and secured valuable corporate governance reforms on behalf of investors nationwide.

Mr. Hooker has served on the litigation teams that successfully prosecuted securities fraud class actions such as *In re Jefferies Group, Inc. Shareholders Litigation,* ($70 million settlement); *Central Laborers' Pension Fund v. Sirva, Inc.*, ($53.3 million settlement along with the adoption of important corporate governance reforms); *City Pension Fund for Firefighters and Police Officers in the City of Miami Beach v. Aracruz Celulose S.A., et al.*, ($37.5 million settlement); *In re Sadia, Inc. Securities Litigation*, ($27 million settlement); and *In re Tower Group International, Ltd. Securities Litigation*, ($20.5 million settlement). Mr. Hooker is currently part of the litigation teams prosecuting securities fraud class actions against companies such as Wells Fargo, Universal Health Services and DaVita, Inc.

Mr. Hooker received a Bachelor of Arts degree with a major in English from the University of California at Berkeley. He earned his Juris Doctor from the University of San Diego School of Law, where he was awarded the Dean's Outstanding Scholar Scholarship. Mr. Hooker received his Master's degree in Business Administration with an emphasis in International Business from the University of San Diego School of Business, where he was awarded the Ahlers Center International Graduate Studies Scholarship. Mr. Hooker has recently been recognized as a Super Lawyer's Rising Star for 2017 and 2018, and a South Florida Legal Elite Up and Comer in 2017.

Mr. Hooker is a member of the State Bars of California, Florida and the District of Columbia, and is admitted to practice law in the United States District Courts for the Northern, Central, Southern and Eastern Districts of California, the Southern, Middle and Northern Districts of Florida, and the Western District of Michigan. Mr. Hooker is also admitted to practice law in the United States Courts of Appeals for the Ninth and the Eleventh Circuits.

Mario Alvite

Mario Alvite, Staff Attorney, performs analysis of potential securities and shareholder rights actions. Mr. Alvite is experienced in e-discovery and project management in the corporate litigation, transactional, and regulatory areas. He serves on teams representing investors against Wilmington Trust and Wells Fargo.

Mr. Alvite received his Bachelor of Business Administration from Florida International University. He later earned his Juris Doctor from Nova Southeastern University. He is a member of the Florida Bar, and the United States District Courts for the Southern and Middle Districts of Florida.

Dianne Anderson

Dianne Anderson is currently a member of the litigation teams prosecuting significant securities fraud class actions against DaVita Inc., Credit Suisse Group AG, and TransDigm Group Inc. and the federal shareholder derivative action brought on behalf of Wells Fargo & Company. Ms. Anderson has served on the litigation teams that successfully prosecuted securities fraud class actions such as *In re Rayonier Inc. Securities Litigation* ($73 million settlement), *Westchester Putnam Counties Heavy and Highway Laborers Local 60 Benefit Funds v. Brixmor Property Group, Inc. et al.*, ($28 million settlement), *In re Tower Group International, Ltd. Securities Litigation*, ($20.5 million settlement) and *Fernandez v. Knight Capital Group, Inc.*, ($13 million settlement).

Before joining Saxena White, Ms. Anderson was a legal intern for Jack in the Box, Inc. and Alliant Insurance Services, Inc. She worked extensively with their in-house departments, assisting in a variety of corporate, employment, and government regulation matters. Ms. Anderson was an intern for Jewish Family Service of San Diego and Housing Opportunities Collaborative, two San Diego pro bono legal organizations. Additionally, she served as a Legal Intern for the San Diego City Attorney's Office with their Advisory Division, Public Works Section. Ms. Anderson has recently been recognized as a Super Lawyer's Rising Star for 2018.

Ms. Anderson graduated from the University of California, San Diego in 2008, where she received a Bachelor of Arts degree, majoring in Political Science with a minor in Law and Society. In 2012, she received her Juris Doctor degree from the University of San Diego School of Law. While attending law school, Ms. Anderson earned various scholarships and awards, including the San Diego La Raza Lawyers Association Scholarship and Frank E. and Dimitra F. Rogozienski Scholarship for outstanding academic performance in business law courses. Her outstanding law school academic achievements culminated in two CALI Excellence for the Future Awards for receiving the top grade in her Fall 2011 International Sports Law and Entertainment Law classes. Ms. Anderson is an alumnus of Phi Delta Phi, the international legal honor society and oldest legal organization in continuous existence in the United States.

Ms. Anderson is a member of the Florida and California State Bars. She is admitted to practice before the United States District Courts for the Southern and Northern Districts of Florida and the Northern, Central, Southern, and Eastern Districts of California.

Rhonda Cavagnaro

Rhonda Cavagnaro is Special Counsel to Saxena White and a member of the Firm's Institutional Outreach group. She brings extensive expertise in many areas of employee benefits and pension administration with nearly two decades of public fund experience. Ms. Cavagnaro frequently speaks at industry conferences to further trustee education on fiduciary issues facing institutional investors.

Ms. Cavagnaro began her legal career as an Assistant District Attorney in New York City, where she was instrumental in creating the office's General Crimes Unit, covering major crimes. As an ADA, Ms. Cavagnaro gained valuable trial experience and prosecuted hundreds of misdemeanor and felony cases.

Ms. Cavagnaro started her career serving public pensions as Assistant General Counsel at the New York City Employees' Retirement System. She then went on to become the first General Counsel to the New York City Police Pension Fund in February 2002, where she worked for over 11 years, providing advice to the Board of Trustees and 140 member staff with respect to benefits administration, fiduciary issues, employment issues, legislation, and transactional matters. Ms. Cavagnaro last served as the Assistant CEO for the Santa Barbara County Employee's Retirement System, where under the general direction of the CEO and Board of Trustees, she oversaw the day to day operations of the System.

Ms. Cavagnaro graduated with a Bachelor of Arts in Political Science and History from the University of Rochester, in Rochester, New York and earned her Juris Doctor from the California Western School of Law in San Diego, California. She is a member of the New York and New Jersey State Bars and is admitted in the Southern and Eastern Districts of New York, and is a current member of the National Association of Public Pension Attorneys.

Sara M. DiLeo

Sara DiLeo has extensive experience in federal securities class action lawsuits, derivative litigation and complex commercial litigation in both federal and state courts. She is currently a member of the teams prosecuting I*n re Wells Fargo & Company Shareholder Litigation, In re TrueCar, Inc.* and *City of Birmingham Firemen's and Policemen's Supplemental Pension System v. Credit Suisse Group AG, et al*. Before joining Saxena White, Ms. DiLeo practiced securities litigation for nine years at a top-ranked global law firm, Skadden, Arps, Slate, Meagher & Flom LLP.

Ms. DiLeo graduated from New York University's College of Arts & Sciences program in 2003, where she received a Bachelor of Arts degree with a double major in Political Science and Psychology. She received her Juris Doctor degree from Fordham University School of Law in 2008. While attending law school, Ms. DiLeo was an Articles Editor for the Fordham Urban Law Journal and interned for the Hon. Barbara Jones in the United States District Court for the Southern District of New York.

Ms. DiLeo is a member of the New York Bar.

Kyla Grant

Kyla Grant has extensive experience in federal securities class action suits, securities enforcement, and complex commercial litigation in both federal and state courts. Before joining Saxena White, Ms. Grant practiced securities litigation at two top-ranked global law firms, Shearman & Sterling LLP and WilmerHale.

Mrs. Grant graduated from the University of Hawai'i at Manoa with distinction in 2004, where she received a Bachelor of Arts degree, majoring in both English and Political Science. She received her Juris Doctor degree from the University of Virginia School of Law in 2008. While attending law school, she was a recipient of the Dean's Scholarship, was appointed as a Dillard Fellow (a role in which she worked with first year students to improve their persuasive writing skills), and was an Articles Editor for the Virginia Journal of International Law.

Ms. Grant is a member of the New York State Bar and the United States District Court for the Southern District of New York.

Brandon Grzandziel

Brandon Grzandziel focuses his practice on representing institutional investors in class action securities fraud and complex shareholder derivative cases. He is currently a member of the teams prosecuting cases against Wilmington Trust, Universal Health Services, Novo Nordisk and Transdigm Group Inc.

Recently, Mr. Grzandziel has been a member of the teams securing significant recoveries for investors *In re Rayonier Securities Litigation* ($73 million recovery), *City Pension Fund v. Aracruz Celulose S.A.* ($37.5 million recovery against a foreign defendant), *In re Bank of America* ($62.5 million settlement, which ranks among the top ten derivative settlements approved by the federal courts); and *In re Sadia, S.A. Securities Litigation* ($27 million settlement against foreign defendants). Having extensive appellate experience, Mr. Grzandziel has also successfully secured important new precedent for the protection of investors in cases such as *FindWhat Investor Group v. FindWhat.com*.

Mr. Grzandziel earned his Bachelor of Arts from Wake Forest University, where he graduated with Honors in 2005. In 2008, he received his Juris Doctor from the University of Miami School of Law while being Executive Editor of the University of Miami Business Law Review. His article, "A New Argument for Fair Use Under the Digital Millennium Copyright Act," was published in the Spring/Summer 2008 issue. During his recent legal career, Mr. Grzandziel has been recognized as a Super Lawyer's Rising Star for 2017 and 2018.

Mr. Grzandziel is a member of the Florida Bar, the United States District Courts for the Southern and Middle Districts of Florida, and the United States Court of Appeals for the Second Circuit.

Jill Miller

Jill Miller focuses her practice on e-discovery, including project management and litigation support services for class actions and other complex litigation. Ms. Miller is currently a member of the teams prosecuting *In re Wells Fargo & Company Shareholder Derivative Litigation, Kandell v. Niv et.al* and *In re Wilmington Trust Securities Litigation*. Prior to joining Saxena White, Ms. Miller served as team lead at various law firms for discovery in large, complex class actions and mass torts in the areas of securities fraud, software technology, pharmaceutical and patent infringement.

Prior to her litigation experience, Ms. Miller was an associate at Ruden McClosky where she practiced real estate law. During her eleven years with the firm, she represented large developers of residential and commercial real estate throughout the South Florida area. Ms. Miller began her legal career as an associate in the real estate practice division of a major New Jersey law firm where she concentrated her practice on residential and commercial real estate transactions and development. She also dedicated a significant portion of her practice to casino licensing and compliance.

For the past several years, Ms. Miller has volunteered her time as a Guardian ad Litem, protecting the rights of abused and neglected children in Broward County, Florida.

Ms. Miller received her law degree from Hofstra University in New York where she was the Articles Editor of the International Property Investment Journal. She also interned at the United States Federal Court, Eastern District of New York during her third year of law school.

Ms. Miller is a member of the Florida Bar.

Kenneth Rehns

Kenneth M. Rehns represents institutional and individual investors in state and federal securities litigations nationwide. His work includes complex shareholder class-actions and individual actions, shareholder derivative actions and merger and proxy challenges. Prior to joining Saxena White, Mr. Rehns was a Senior Associate at Cohen Milstein Sellers & Toll PLLC, a well-known national securities litigation firm where he was as an active member of litigation teams that recovered nearly $2 billion on behalf of investors and achieved meaningful corporate reforms over the span of just eight years, including cases against Countrywide Financial Corp. ($500 million recovery), Royal Bank of Scotland (a $275 million recovery), Bear Stearns ($505 million recovery), Credit Suisse (a $110 million recovery), IntraLinks Holdings (a $14 million recovery) and Ally Securities, Citigroup, Deutsche Bank, Goldman Sachs and UBS Securities (a $335 million recovery).

Mr. Rehns' efforts have focused on all stages of litigation from case origination through pre-trial discovery and resolution. In particular, Mr. Rehns lead discovery efforts in a securities fraud action in which nearly two million pages were produced and 21 depositions were taken in just a short time period, which ultimately led to a successful settlement at the conclusion of fact discovery.

Mr. Rehns has been regularly recognized for his legal abilities as well. Before moving to South Florida in mid-2017, Mr. Rehns was selected as a Rising Star in Securities Litigation by SuperLawyers Magazine in 2015, 2016, and 2017 in the New York Metro Area.

Mr. Rehns earned his Bachelor of Business Administration degree from The George Washington University in 2005 with a concentration in Business, Economics and Public Policy, graduating with honors. He received his Juris Doctor from the Syracuse University College of Law in 2008, again graduating *cum laude*. During law school, Mr. Rehns served as an Associate Editor of the *Syracuse University Journal of International Law and Commerce* and a member of the Business and Community Development Law Clinic.

Mr. Rehns is a member of the New York, New Jersey and Florida Bars. He is admitted to the United States Court of Appeals for the Second Circuit and the United States District Court for the Southern District of New York, District of New Jersey and the Northern District of Florida.

Joshua Saltzman

Joshua Saltzman focuses his practice on securities and derivative litigation. Before joining Saxena White, Mr. Saltzman litigated investor class actions, opt-out securities actions and derivative actions at two boutique law firms in New York City.

Mr. Saltzman received a Bachelor of Arts degree in English from Rutgers University in 2002, and a Juris Doctor degree from Brooklyn Law School in 2011, graduating magna cum laude. During law school, Mr. Saltzman served as an editor on the Brooklyn Law Review, where he published a note, and interned for the Hon. Victor Marrero in the United States District Court for the Southern District of New York.

Mr. Saltzman is a member of the New York Bar, the United States District Court for the Southern District of New York, and the United States Court of Appeals for the Third Circuit.

ADAM WARDEN

Adam Warden focuses his practice on merger and acquisition litigation, shareholder derivative actions, and consumer class actions. During his tenure at Saxena White, Mr. Warden has served as a member of the litigation team on *In re Jefferies Group, Inc. Shareholders Litigation*, a case involving conflicts of interest arising from the merger of an investment bank and a holding company. The Jefferies case ultimately settled for $70 million, one of the largest settlements in the history of the Delaware Court of Chancery. He was also part of the litigation team on *In re Lender Processing Services, Inc., Shareholder Litigation*, where the defendants agreed to provide shareholders with significant corporate governance reforms and additional financial disclosures related to a proposed merger, which allowed the shareholders to make a more fully informed vote on the transaction. Further, Mr. Warden served on the litigation team in *In re Sunoco Inc.*, where the defendants agreed to provide the public shareholders of Sunoco with additional material information about the proposed sale of the company, along with $100,000 in outplacement assistance services to local employees laid off within one year of the merger.

Mr. Warden has been recognized in the legal field with awards such as Super Lawyer's Rising Star in 2018 and South Florida Legal Guide's Up and Comer in 2018. Mr. Warden also sits as a member on Saxena White's Diversity and Social Responsibility Committee.

Mr. Warden earned his Bachelor of Arts degree from Emory University in 2001 with a double major in Political Science and Psychology. He received his Juris Doctor from the University of Miami School of Law in 2004. During law school, Mr. Warden served as the Articles Editor of the *University of Miami International and Comparative Law Review*. His article, "The Battle in Seattle and Beyond: A Brief History of the Antiglobalization Movement" was published in the Review's Winter 2004 issue.

Mr. Warden is a member of the Florida Bar and the District of Columbia Bar. He is admitted to the United States District Courts for the Southern, Middle, and Northern Districts of Florida.

KATHRYN WEIDNER

Kathryn Weidner has a strong background in e-discovery, providing project management and litigation support services to national organizations and Fortune 500 companies for large-scale corporate litigations, mergers, and acquisitions. Ms. Weidner is currently a member of the team prosecuting *In re Wilmington Trust Securities Litigation* and has been a member of the teams securing significant recoveries for investors in cases such as *In re Rayonier Securities Litigation* ($73 million recovery) and *In re Tower Group International, Ltd. Securities Litigation* ($20.5 million recovery).

Prior to joining Saxena White, Ms. Weidner developed valuable litigation skills as a full-time Certified Legal Intern for the Department of Homeland Security. Currently, Ms. Weidner is very involved in the community and is a member of organizations such as FAWL, NAWL and NAPPA. Ms. Weidner is also a regular speaker at conferences, CLE courses and chairs Saxena White's Diversity and Social Responsibility Committee. In addition, Ms. Weidner has been recognized as a Super Lawyer's Rising Star for 2017 and 2018, and South Florida Legal Elite's Up and Comer for 2018.

Ms. Weidner earned a Bachelor of Business Administration from the University of Miami in 2003, with a major in Political Science. During college, she studied abroad at Oxford University, England as part of an Honors program for law and politics. Ms. Weidner received her Juris Doctor from Nova Southeastern University in 2006, where she graduated with a concentration in International Law. While at Nova, her outstanding course work regularly earned

Dean's List and Provost Honor Roll, and she was honored with CALI Book Awards for Secured Transactions and Business Planning Law. Upon graduation, Ms. Weidner was the recipient of the Larry Kalevitch Scholarship Award for exhibiting the most promise in Business and Bankruptcy law.

Ms. Weidner is a member of the Florida Bar, and the United States District Courts for the Southern and Northern Districts of Florida.

STAFF ATTORNEYS

Denise Bryan

With over twenty years of overall professional experience, Ms. Bryan began her legal career in New York at Prudential Securities. While at Prudential Securities, she reviewed claims alleging fraudulent practices and determined settlements in accordance with the guidelines of the Limited Partnership Settlement Fund as established by the Securities and Exchange Commission.

Ms. Bryan gained experience in the insurance industry as an attorney in the Environmental Claims Department of American International Group, and as an underwriter focusing on Professional Liability coverage for financial institutions including banks, insurance companies, and broker dealers. She was an Assistant Vice President at Marsh Inc. in New York and Chicago, where she was an insurance broker focused on providing Professional Liability coverage to fortune 500 companies.

Ms. Bryan has been working in the area of e-discovery since 2007. She supervised teams of attorneys conducting large scale document reviews at a consulting group specializing in providing litigation support services to national and international companies.

Ms. Bryan is a member of the New York Bar.

Rebecca Nilsen

Ms. Nilsen is experienced in e-Discovery and litigation support services for class actions and other complex litigation. She is currently a member of the team prosecuting In re Wells Fargo & Company Shareholder Derivative Litigation. She has been a member of the teams securing significant recoveries for investors In re Rayonier Securities Litigation and In re Wilmington Trust Securities Litigation.

Rebecca Nilsen has over 15 years of litigation experience in matters related to Federal Trade Commission, U.S Securities and Exchange Commission, Fair Debt Collection Practices and Consumer Financial Protection Bureau.

Ms. Nilsen graduated cum laude from Florida Atlantic University where she received a Bachelor of Arts with a major in Criminal Justice. In 2002, she received her Juris Doctorate degree from Nova Southeastern University, Shepard Broad College of Law. While attending law school, Ms. Nilsen interned in the Pro Bono Honor Program earning the Gold Award for 2001 - 2002.

Ms. Nilsen is a member of the Florida Bar. She is admitted to practice before the United States District Courts for the Southern and Northern Districts of Florida.

Christine Sciarrino

Christine Sciarrino has extensive experience in e-discovery as a projects attorney for class action securities fraud litigation, working in Boca Raton, FL. Her legal practice has focused primarily on early resolution of matters with an objective toward achieving optimum results for litigating parties through superb pre-trial preparation and informed decision making. She has practiced in many areas of complex civil litigation, including cases involving natural disasters caused by hurricanes, fires, floods, and structural roof collapse. As an experienced practitioner

for plaintiffs who have been wronged by financial institutions and other entities, Ms. Sciarrino has most recently dedicated her expertise exclusively to this area.

Ms. Sciarrino graduated from Florida Atlantic University in 1988, where she received a Bachelor of Arts degree with a major in History. In 1992, she received her Juris Doctor from the St. Thomas University School of Law. Ms. Sciarrino also earned a Masters of Fine Arts in Creative Writing at Florida Atlantic University in 2004.

Ms. Sciarrino is a member of the Florida Bar.

MARC GROBLER

Director of Case Analysis

Marc Grobler plays a key role in new case development including performing in-depth investigations into potential securities fraud class actions, derivative, and other corporate governance related actions. By using an array of financial and legal industry research tools, Marc analyzes information that helps support the theories behind our litigation efforts. Mr. Grobler is also responsible for protecting the financial interests of our clients by managing the Firm's portfolio monitoring services and performing complex loss and damage calculations.

Marc joined Saxena White as the Director of Case Analysis in 2012. Prior to joining the Firm, he served as the Senior Business Analyst in the New York office of a leading securities class action law firm and has worked within the securities litigation industry for over fifteen years.

Marc graduated cum laude from Tulane University's A.B. Freeman School of Business in 1997, with a concentration in Accounting. With over twenty years of overall professional financial experience, Marc started his career in New York at PricewaterhouseCoopers performing audit within the Financial Services Group--audit clients included Prudential Financial and Wasserstein Perella. Prior to entering the securities litigation industry, Marc worked within the asset management group at Goldman Sachs where he was responsible for the financial reporting of a group of billion dollar fund-of-fund investments. Marc also previously worked at UBS Warburg as a Financial Analyst in the investment banking division that focused on financial institutions such as banks, asset managers, insurance and start-up financial technology companies.

CHUCK JEROLOMAN

Client Services

Mr. Jeroloman, Director of Marketing, has been with the Firm since 2010. He is a frequent speaker at national conferences including the Florida Public Pension Trustee Association and the American Alliance. Mr. Jeroloman's topics include evaluating service providers, maximizing pension benefits, VEBA's and securites litigation. He also serves on the Florida Public Pension Trustees Association Advisory Board.

Prior to joining Saxena White, Mr. Jeroloman served as a police officer for the Delray Beach Police Department for 23 years. During his tenure he was a homicide/robbery detective, street level narcotics investigator, field training officer and a member of the S.W.A.T. and Terrorists Task Force.

He served on the Delray Beach Police and Fire Pension Board for 14 years and as a Trustee and Chairman during his last five years. Mr. Jeroloman was also a member of the Delray Beach Fire and Police VEBA Board. He has spoken at many national pension conferences and has authored several articles about pension benefits and issues. He has conducted several financial seminars for members of the pension plan.

Mr. Jeroloman served 23 years as the president and union representative for the Police Benevolent Association (PBA) and Fraternal Order of Police. During his years with the Delray Beach Police Department, Mr. Jeroloman spent five years as a Deputy Sheriff with the Rockland County Sheriff's Department. He was a member of Joint Terrorists Task Force with the FBI, NYPD and Rockland County Sheriff's Department and union treasurer for the PBA.

Mr. Jeroloman worked as a social worker for Saint Dominic's Home (Part of the Roman Catholic Archdiocese of New York with locations in Manhattan, The Bronx, Staten Island, Dutchess, Orange, Putnam, Rockland, Sullivan, Ulster and Westchester Counties)

Mr. Jeroloman earned his Associate Degree in Criminal Justice. He was an associate scout with the Anaheim Angels and Texas Rangers, and volunteered as a youth baseball coach through high school levels.

Mr. Jeroloman also served as a director vice president for the Okeeheelee Athletic Association. Mr. Jeroloman started and was Chairman to Wellington High Baseball Booster Association and Palm Beach Central Baseball Booster Association.

STEFANIE LEVERETTE

Manager of Client Services

Stefanie Leverette is Saxena White's Manager of Client Services. In this role, she manages the Firm's client outreach and developmental programs and oversees the Firm's portfolio monitoring program. Since joining Saxena White in 2008, Ms. Leverette has coordinated the Firm's presence at industry conferences attended by representatives of various institutional clients throughout the United States. In addition, Ms. Leverette is responsible for the timely dissemination of all reports, notifications and all new cases and class action settlements that may have an impact to an investment portfolio. Ms. Leverette's main role is acting as the liaison between institutional clients and the Firm.

Ms. Leverette is a member of the Firm's Diversity and Social Responsibility Committee and a member of the Women's Initiative Subcommittee. She is also a member of the Firm's Case Starting Team, providing institutional clients with important information regarding potential litigation.

Ms. Leverette earned her undergraduate degree in Business Administration with a focus on Management from the University of Central Florida, and her Master's in Business Administration with a focus on International Business at Florida Atlantic University.

EXHIBIT 4

SAXENA WHITE

Joseph E. White, III
jwhite@saxenawhite.com

June 12, 2012

Ronald J. Cohen
Ronald J. Cohen, P.A.
8100 Oak Lane, Suite 403
Miami Lakes, FL 33016

Re: Wilmington Trust Corporation Securities Litigation

Dear Ron:

The City of Pompano Beach General Employees Retirement System (the "Fund" or "Pompano GERS") is currently serving as a Lead Plaintiff along with The Merced County Employees' Retirement Association, the Coral Springs Police Pension Fund, the St. Petersburg Firefighters' Retirement System, and the Automotive Industries Pension Trust Fund (collectively the "Institutional Investor Group"). We have agreed that in consideration for your work and counsel in connection with the case, your firm will receive a share of 16% of any fee that may be received by Saxena White P.A. ("Saxena White") from prosecuting the action. The above percentage is shared amongst any referring attorneys present in this action to which Saxena White owes a similar obligation.

This agreement is subject to your client's written approval pursuant to Rule 4-1.5(g)(2) of the Rules Regulating the Florida Bar. If this proposal is acceptable, you and your client should countersign where indicated below, and return to me. We look forward to working with you and representing the Fund in this action.

Very truly yours,

Joseph E. White, III

Ronald J. Cohen, P.A.

By: _____
Ronald J. Cohen, Esq.

Pompano GERS

By: _____
John J. Hackett

RICE PUGATCH ROBINSON STORFER & COHEN, PLLC
101 N.E. THIRD AVENUE, SUITE 1800
FORT LAUDERDALE, FLORIDA 33301
TELEPHONE: (954) 462-8000
FACSIMILE: (954) 462-4300

www.rprslaw.com

September 15, 2018

Joseph E. White, III, Esq.
Saxena White, P.A.
150 E Palmetto Park Road 6th Floor
Boca Raton, FL 33432

Re: *In re Wilmington Trust Corp. Sec. Litig.*, No. 10-cv-990 (D. Del.)
(the "Wilmington Trust Action" or "the Litigation")

Dear Joe:

Reference is made to that certain letter agreement dated June 12, 2012 (the "Agreement") executed by you, on behalf of Saxena White P.A., John J. Hackett, on behalf of the Pompano Beach General Employees Retirement System (the "Pompano GERS") and I, on behalf of Ronald J. Cohen, P.A. (the "Cohen Firm" and collectively, the "Parties") relating to the above referenced Litigation and the proposed payment of a consulting/referral fee by Saxena White to the Cohen Firm (the "Fee"). Specifically, the Agreement provides in relevant part that:

> We [Saxena White] have agreed that in consideration for your [Cohen Firm] work and counsel in connection with the case, your firm will receive a share of 16% of any fee that may be received by Saxena White P.A. ("Saxena White") from prosecuting this action. The above percentage is shared amongst any referring attorneys present in this action to which Saxena White owes a similar obligation.

The Parties recognize the substantial work and efforts of Saxena White leading to a beneficial settlement of the Litigation, including without limitation, (i) Saxena White's investigation into possible violations of the securities laws by Wilmington Trust, its senior executives, directors, and others, (ii) Saxena White's presentation of the results of its investigation to the Board of Trustees of Coral Springs Police on November 15, 2010 and to the Board of Trustees of the Pompano GERS on November 16, 2010, which lead both Boards to execute retainer agreements with Saxena White and authorize the initiation of the Litigation, (iii) Saxena White's commencement of the Litigation, (iv) the Court in the Litigation appointing, among others, the Coral Springs Police and Pompano GERS as Lead Plaintiffs, (v) the Court in the Litigation appointing Saxena White and Bernstein Litowitz Berger & Grossman LLP as Lead Counsel under the Private Securities Litigation Reform Act ("PSLRA") on behalf of the Lead Plaintiffs, (vi) the Lead Plaintiffs in the Litigation seeking to certify the Class, be appointed as Class Representative and have Saxena White and the Bernstein Firm appointed as Class Counsel, and the Court in the Litigation granting such relief on or about

September 3, 2015, (vii) the execution of a Stipulation and Agreement of Settlement between Lead Plaintiffs and the Wilmington Trust Defendants and Underwriter Defendants on or about May 15, 2018, (viii) the execution of a Stipulation and Agreement of Settlement between Lead Plaintiffs and KPMG on or about May 18, 2018, (ix) the Court in the Litigation conducting a hearing on July 2, 2018 upon Lead Plaintiffs' Motion for (I) Preliminary Approval of the Settlements, and (II) Approval of Notice to the Class, and (x) the Court's issuance on July 10, 2018 of a Memorandum and Order preliminarily approving the Settlement, the form and manner of notice and setting a Fairness Hearing for November 5, 2018. The Parties also recognize contributions of the Cohen Firm.

Based upon the Parties' recognition of the foregoing, and in recognition of the substantial negative multiplier that Lead Counsels' fee requests represents to their time, the magnitude of the recovery for the Class, as well as principles of equity, the Parties agree and consent to a modification of the foregoing Fee arrangement contained in the Agreement as set forth below:

> The Cohen Firm, on behalf of itself and any successor firm which otherwise would be entitled to any portion of the Fee on behalf of the Cohen Firm, and in consideration for its work and counsel on behalf of the Pompano GERS, shall be entitled to receive 4.5% of the fee awarded and paid to Saxena White in the Litigation. Any such payment shall be subject to the direction and control of the Court in the Litigation, and the Cohen Firm agrees that in the event the Court orders that the Agreement cannot be honored in full, any remedy for redress lies solely with the Court or through appeals in the Litigation. It is further understood and agreed that: (i) Saxena White shall make full disclosure of this Agreement pertaining to such Fee and the modification thereof in the Litigation, and (ii) Saxena White has as separate agreement with Stephen H. Cypen ("Cypen") with respect to a fee that Cypen may otherwise by paid by Saxena White. In the event that Saxena White has any unreimbursed expenses, such expenses shall be reduced from its awarded fee prior to the calculation of any fee sharing amongst the Parties.

Pursuant to Rule 4-1.5(g)(2) of the Rules Regulating the Florida Bar, this modification of the Agreement has been provided and explained to the Chairman of the Pompano GERS, which by countersigning a copy of this Agreement below, acknowledges that he has authority to sign this Fee Modification Agreement on behalf of the Pompano GERS.

Yours truly,
RICE PUGATCH ROBINSON STORFER & COHEN, PLLC

Ronald J. Cohen
For the Firm

KBR/

TERMS DISCLOSED AND AGREED TO:

Saxena White P.A.

By:_____
Joseph E. White, III

Pompano Beach General Employees Retirement System

By:_____
George Mitchell

Ronald J. Cohen, P.A.

By:_____
Ronald J. Cohen

UNITED STATES DISTRICT COURT
DISTRICT OF DELAWARE

IN RE WILMINGTON TRUST SECURITIES LITIGATION	Master File No. 10-cv-00990-ER
	(Securities Class Action)
This document relates to: ALL ACTIONS	Hon. Eduardo Robreno
	ELECTRONICALLY FILED

DECLARATION OF RONALD J. COHEN, BOARD COUNSEL FOR POMPANO BEACH GENERAL EMPLOYEES RETIREMENT

I, Ronald J. Cohen, pursuant to this Court's Memorandum dated July 9, 2018 [DE 824], and having reviewed the transcript from the hearing upon preliminary approval, conducted on July 2, 2018, declares and states:

1. My name is Ronald J. Cohen. I am a member of the Florida Bar and have been a member of the Florida Bar since 1977. I have practiced law full time since that time, and have not engaged in any other occupation. For many years, part of my practice has been representing governmental pension plans in Florida. I started doing this in 1979 as an Assistant City Attorney in the City of Miami. At present, it is a major portion of my practice.

2. I am a member of the law firm of Rice Pugatch Robinson Storfer & Cohen PLLC. I submit this Declaration in connection with the services that both I and the law firms with which I have been affiliated since 2010, rendered in this Action to Lead Plaintiff and Class Representative Pompano Beach General Employees Retirement Fund ("Pompano Beach GERS") and the modification of the fee division agreement between my firm, Ronald J. Cohen, P.A., and Saxena White P.A., Lead Counsel and Court appointed Class Counsel. I have personal knowledge of the matters set forth herein.

3. I am presently, and have been at all material times, Board Counsel for the Pompano Beach GERS, which is one of the lead plaintiffs in this case. I have been Board Counsel to Pompano Beach GERS for over 14 years. I have practiced at two firms since I became Board Counsel.[1] I am the senior partner ultimately in charge of the legal work my firms have performed for Pompano Beach GERS and the work has, in large measure, been performed by my associate, Brent J. Chudachek and by me.

4. As Board Counsel, I and the law firms I practice with, handle all of the legal work of Pompano Beach GERS and supervise and oversee the work of specialized attorneys retained by the Pompano Beach GERS.

5. As Board Counsel, I and, other attorneys who I practice with, have attended and presently attend all meetings of the Board of Trustees of Pompano Beach GERS ("Board") (except the August meeting, which is only a bill-paying meeting). We are responsible for advising the Board on all legal matters that may come before it, and making certain that the Board members comply with Florida open meetings laws, ethics laws, and public records laws. We also review all contracts for the Board, provide legal opinions, assist the Board in conducting quasi-judicial hearings and advise on benefit and state regulatory compliance matters.

6. Pompano Beach GERS has been and presently is an institutional investor in securities. As a result, and throughout my time as Board Counsel, on occasion, Pompano Beach GERS has sought my legal advice on whether it can participate as a plaintiff in securities class action cases. I do note that in connection with these potential securities class actions, I have not in

[1] When my firm was hired by Pompano Beach GERS, my firm was named Ronald J. Cohen, P.A. Later its name was changed to Cohen & Rind, P.A., and subsequently its name was changed to Ronald J. Cohen, P.A. When I joined this firm in March, 2014, the firm was named Rice Pugatch Robinson & Schiller, P.A. The Firm then changed its name to Rice Pugatch & Robinson, P.A. On January 1, 2016, there was a corporate restructure and name change and the firm is now known as Rice Pugatch Robinson Storfer & Cohen, PLLC. The work on behalf of Pompano Beach GERS has been continuous since 2004.

the past and do not presently steer or control which class action firms are permitted to communicate with the Board. Nor have I in the past or presently attempt to control which cases the Board may consider.

7. In 2010, the Pompano Beach GERS was approached and agreed to act as a lead plaintiff in this Action. Saxena White, a well-known law firm in Boca Raton, Florida, whose offices are close to those of the Pompano Beach GERS, and has a stellar reputation in class action securities litigation, was chosen to act and ultimately appointed by the Court to act as one of the proposed lead class counsel.

8. In December, 2010, Saxena White and the Pompano Beach GERS entered into a formal "Retainer Agreement" wherein Saxena White was retained to represent the Pompano Beach GERS in this Action. The Agreement provided, inter alia that Saxena White would consult with not only Lead Plaintiff but "Lead Plaintiff's counsel, Cohen & Rind, P.A., concerning all major substantive matters related to the litigation, including, but not limited to, the initial and amended complaints, dispositive motions such as motions to dismiss, and mediation and settlement." Retainer Agreement at ¶ IB. A copy of this Retainer Agreement is attached to my Affidavit as Exhibit A.

9. By agreement dated June 12, 2012, executed by Saxena White, Ronald J. Cohen, P.A., my law firm, and the Pompano Beach GERS, my firm's role as liaison counsel and Saxena White's agreement to share a portion of its fee was memorialized. A copy of this letter agreement is attached as Exhibit B. Since then, we have entered into a modified fee agreement, reducing our fee, in light of the hours and work performed by Saxena White, and the magnitude of the settlements obtained. A copy of this modified agreement is attached as Exhibit C.

10. As required by Florida Bar Rules, at all times Pompano Beach GERS has been

made fully aware of and consented to the agreement that exists between Saxena White and my former law firm, Ronald J. Cohen, P.A. Indeed, it was precisely to ensure that our mutual client was aware of Saxena White's agreement to share with my law firm a portion of any fees it was awarded and paid, the Pompano Beach GERS was a signatory on the June 12, 2012 letter agreement, and the modified fee agreement.

11. I also performed work for Pompano Beach GERS with respect to this Action. Specifically, I (and others acting at my direction) performed the following tasks, among others: (i) at the outset, I evaluated Saxena White's analysis regarding the merits of the case as well as Saxena White's recommendation to pursue litigation in light of Pompano Beach GERS's substantial losses and the serious nature of the allegations; (ii) I continued to evaluate the merits of the case throughout the course of the Action; (iii) throughout the course of the Action, I received drafts of filings for review and comment, as well regular updates concerning the status of the Action, which I shared with Pompano Beach GERS and advised on whether certifications should be executed; (iv) during the class certification stage, I worked with Saxena White to locate responsive documents and prepare Pompano Beach GERS for deposition, reviewed Pompano Beach GERS's responses to document requests and interrogatories, consulted with Pompano Beach GERS concerning its responses to discovery and attended the deposition of Pompano Beach GERS; (v) was advised of the status of settlement negotiations, and analyzed and assessed the amount of the recovery and proposed settlement terms before recommending that Pompano Beach GERS approve the Settlements; and (vii) counseled and arranged for Pompano Beach GERS to meet privately, out of the sunshine, in order to evaluate the proposed Settlements.

12. For a number of years after the Action was commenced, I was asked to report at every meeting of the Pompano Beach GERS on the status of this Action. While, at some point, a

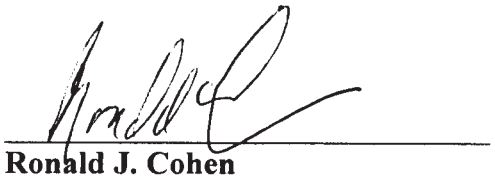
litigation status report was no longer on each meeting's agenda, it always remained our responsibility to keep the Board apprised of the status of the Action with the assistance of updates provided by Saxena White. This was especially important given the protracted nature of the Action

13. When Saxena White advised of a potential settlement in this Action, Florida law allows, under very limited circumstances, the right of a public agency to meet in private to discuss settlement negotiations. My law firm and I were chiefly responsible for assisting in setting up a special meeting and under our legal direction, utilized a mechanism in Florida Statutes to allow a private meeting, closed to the public, to be held to discuss possible settlement. There are a number of very formal actions that the Board must take before they can meet in private, and I made sure that they were scrupulously followed, including some very important notice requirements.

14. The schedule attached as Exhibit 1 is a summary of the amount of time spent by attorneys at my firms and I who were involved with respect to this Action, and the lodestar calculation for those individuals based on the amount billed to Pompano Beach GERS for our other work at the particular time the service was performed. The litigation was discussed at regular meetings, along with other business, and my firms billed for attendance at the meetings. The records attached do not include any of that time. Pompano Beach GERS did not otherwise compensate my firms during the relevant period for legal counsel associated with this matter. I did not always keep contemporaneous time records, and some of this time has been entered based on emails, and recollection. The time listed is conservative. Time expended in preparing this application has not been included in this request. The hourly rates included in Exhibit 1 are the same as the regular rates that were charged to Pompano Beach GERS for matters other than this Action.

I declare under penalty of perjury under 28 U.S.C. § 1746 that the foregoing is true and

correct.



Ronald J. Cohen

RETAINER AGREEMENT

This Retainer Agreement governs the retention of Saxena White P.A. ("Saxena White" or the "Attorneys") by the Pompano Beach General Employees Retirement System ("Client") who has authorized the Attorneys to prosecute claims arising out of purchase of Wilmington Trust Corporation securities.

I. SCOPE OF SERVICES

A. Upon execution by Saxena White, the Attorneys are retained to provide legal services for the purpose of seeking damages and other relief in the Litigation. Client provides authorization to seek appointment as Lead Plaintiff in the class action, while the Attorneys will seek to be appointed Class Counsel. If this occurs, the Litigation will be prosecuted as a class action.

B. The Lead Plaintiff will monitor, review and participate with the Attorneys in the prosecution of the Litigation. The Attorneys shall consult with the Lead Plaintiff and Lead Plaintiff's counsel, Cohen & Rind, P.A., concerning all major substantive matters related to the Litigation, including, but not limited to, the initial and amended complaints, dispositive motions such as the motion to dismiss, and mediation and settlement.

C. The Attorneys shall provide sufficient resources, including attorney time and capital for payment of costs and expenses, to vigorously prosecute the Litigation.

D. Any recovery will be divided among Client and Class Members based on the recognized loss by each Client and Class Member as calculated by a damage allocation plan, which will be prepared by a financial expert, provided to the Lead Plaintiffs, be subject to the Court's approval and will account for such factors as size of stock ownership, date of purchase, date of sale and continued holdings, if any.

II. CONTINGENT FEE AGREEMENT

A. The Attorneys shall advance all expenses in the Litigation. Except as provided in section IV.B below, the Client is not liable to pay any of the expenses of the Litigation, whether attorneys' fees or costs. Recovery of costs and other expenses is contingent upon a recovery being obtained. If no recovery is obtained, Client will owe nothing for costs and other expenses.

B. The sole contingency upon which Attorneys shall be compensated is a recovery in the Litigation, whether by settlement or judgment. Compensation shall be determined by the Court, plus reasonable disbursements in the Litigation. Saxena White shall not seek more than one-third of the settlement as its fee, subject to Court award. "Disbursements" shall include but not be limited to travel expenses, telephone, copying, fax transmission, depositions, investigators, interest, messengers, mediation expenses, computer research fees, court fees, expert fees, other consultation fees and paralegal expenses.

Ex. 4

C. In the event that the Litigation is resolved by settlement under terms involving any "in-kind" payment, such as stock, the contingent fee agreement shall apply to such "in-kind" payment.

III. GENERAL REQUIREMENTS

A. Client understands that Saxena White may, if necessary, work with other law firms to jointly prosecute this Litigation. In the event of such affiliation, the Attorneys will obtain advance consent from Client.

B. Client agrees to cooperate in the prosecution of the suit including providing documents to substantiate the Client's claim, and to cooperate in providing discovery information, including a deposition if necessary.

IV. TERMINATION

A. Client may terminate this Agreement as to any Attorneys, with or without cause and without penalty, by providing the Attorneys with written notice of termination. Attorneys may terminate this agreement with or without cause and without penalty, by providing Client with written notice of termination if the Client fails to cooperate in the prosecution of this action or such other reason as may be approved upon application to the Court.

B. If the Attorneys are terminated for any reason, Attorneys shall be entitled to be paid such compensation as might be payable to them in accordance with this Agreement, when any recovery in the Litigation pursuant to II above is obtained.

V. NOTICE

A. All notices to be given by the parties hereto shall be in writing and sent as follows:

TO THE CLIENT

Pompano Beach General Employees Retirement System
555 South Andrews Avenue
Suite 106
Pompano Beach, Florida 33069
Telephone: (954) 782-2660

TO ATTORNEYS

Ronald J. Cohen
Cohen & Rind, P.A.
2525 N. State Rd. 7
Hollywood, FL 33021

Joseph E. White, III
Saxena White P.A.
2424 North Federal Highway, Suite 257
Boca Raton, FL 33431

B. Any actions arising out of this Agreement shall be governed by the laws of Florida.

C. This agreement, along with the signed Certification and Authorization of Lead Plaintiff, sets forth the entire Agreement between the parties, and supersedes all other oral or written provisions.

Agreed, this 6th day of ~~November,~~ December 2010.

Signature: Maya Saxena

~~Joseph E. White, III~~ Maya Saxena
Saxena White P.A

Signature: [signature]

Pompano Beach General Employees Retirement System

SAXENA WHITE

Joseph E. White, III
jwhite@saxenawhite.com

June 12, 2012

Ronald J. Cohen
Ronald J. Cohen, P.A.
8100 Oak Lane, Suite 403
Miami Lakes, FL 33016

Re: Wilmington Trust Corporation Securities Litigation

Dear Ron:

The City of Pompano Beach General Employees Retirement System (the "Fund" or "Pompano GERS") is currently serving as a Lead Plaintiff along with The Merced County Employees' Retirement Association, the Coral Springs Police Pension Fund, the St. Petersburg Firefighters' Retirement System, and the Automotive Industries Pension Trust Fund (collectively the "Institutional Investor Group"). We have agreed that in consideration for your work and counsel in connection with the case, your firm will receive a share of 16% of any fee that may be received by Saxena White P.A. ("Saxena White") from prosecuting the action. The above percentage is shared amongst any referring attorneys present in this action to which Saxena White owes a similar obligation.

This agreement is subject to your client's written approval pursuant to Rule 4-1.5(g)(2) of the Rules Regulating the Florida Bar. If this proposal is acceptable, you and your client should countersign where indicated below, and return to me. We look forward to working with you and representing the Fund in this action.

Very truly yours,

Joseph E. White, III

Ronald J. Cohen, P.A.

By: _____
Ronald J. Cohen, Esq.

Pompano GERS

By: _____
John J. Hackett

Exh. B

Time Report

Inception through and including September 14, 2018

NAMES	HOURS	HOURLY RATE	LODESTAR
Partners			
Ronald J. Cohen	13.40	$ 300.00	$ 4,020.00
Ronald J. Cohen	2.10	$ 250.00	$ 525.00
Ronald J. Cohen	23.70	$ 200.00	$ 4,740.00
			$ 9,285.00
Associates			
Brent J. Chudachek	1.10	$ 300.00	$ 330.00
Brent J. Chudachek	11.10	$ 250.00	$ 2,775.00
Brent J. Chudachek	0.90	$ 200.00	$ 180.00
			$ 3,285.00
Attorneys Total	52.30		**$ 12,570.00**

EXIHIBIT 1

In Re: Wilmington Trust Securities Litigation

Master File No. 10-cv-00990-ER

Worked Performed

Inception through and including September 14, 2018

Individual	Date	Task	Hours
*	11/10/10	Phone conference with Saxena & White re: potential case; email from Saxena & White re: potential case; email to Executive Director re: Saxena & white; review of Saxena & White memo re: potential case against Wilmington Trust	0.70
*	11/22/10	Review retainer agreement re: Wilmington Trust with Saxena & White; leave message for Joe White.	0.20
RJC	11/23/10	Review email from Saxena White	0.10
*	11/23/10	Email re: retainer	0.20
*	11/24/10	Read retainer letter; read certification; email all re: Wilmington Trust.	0.20
RJC	11/24/10	Review retainer agreement; review certification; email to Saxena White	0.20
RJC	12/2/10	Review complaint draft; email to client	2.00
*	12/3/10	Phone conference with Joe White's office; phone conference with Madelene all re: Wilmington Trust; phone conference re Reg Watkins.	0.20
RJC	12/3/10	Telephone conference with Brandon Grandziel	0.50
RJC	12/7/10	Receipt and review revised retainer agreement and revised confirmation sent by Saxena White	0.20
RJC	12/7/10	Review executed certification agreement and retainer agreement	0.10
BJC	12/7/10	Review of Saxena White/Wilmington Trust Retainer Agreement/Certificate of proposed lead plaintiff; email from Plan Administrator re: Wilmington Trust Lawsuit.	0.50
*	1/18/10	Phone conference with Joe White re Wilmington Trust	0.10
RJC	1/21/11	Review update letter	0.20
RJC	2/3/11	Review email with supplemental joint declaration and study supplemental joint declaration to approve for filing	0.20
RJC	2/3/11	Email to client re: joint declaration	0.70
RJC	2/3/11	Phone conference re: Wilmington Trust; phone conference with Administrator; review document; email re: same; phone conference with White; prepare letter to client	1.00
*	2/3/11	Re: Wilmington Trust; phone conference with Administrator; review documents. Email re: same; phone conference with White; prepare letter to client.	1.00
RJC	2/4/11	Review signed declaration page	0.10
RJC	3/12/11	Review order appointing institutional investor as lead counsel	0.10
RJC	5/11/11	Email from Saxena White re: continuing certification and Consolidated Securities Class Action Complaint	0.10
RJC	5/12/11	Email from Madelene re: certification and Consolidated Securities Class Action Complaint	0.10
BJC	5/13/11	E-mail to/from Klein re: Wilmington Trust/Certification for Filing; review of Wilmington Trust Amended Complaint and Certification for filing.	0.40

EXHIBIT 2

In Re: Wilmington Trust Securities Litigation

Master File No. 10-cv-00990-ER

Worked Performed

Inception through and including September 14, 2018

RJC	5/13/11	Email to Saxena White re: amendments	0.10
RJC	5/13/11	Email from Saxena White re: amendments	0.10
RJC	5/13/11	Office conferences re: amendment	0.10
RJC	5/13/11	Email from Klein re: amendment	0.10
RJC	5/13/11	E-mails; office conference; phone conference with Maya Saxena	0.20
RJC	5/15/11	Study of Consolidated Securities Class Action Complaint	2.60
RJC	5/16/11	E-mails to and from Madelene	0.10
RJC	5/17/11	Email from Saxena White including Final Complaint and review same	0.20
RJC	9/9/11	Email from Saxena White re: lead Plaintiffs' Omnibus Opposition to Defendant's Motions to Dismiss	0.10
RJC	9/14/11	Email from Saxena White enclosing Memos in opposition	0.10
RJC	9/16/11	Review draft opposition brief	2.00
RJC	9/20/11	Email to Saxena White requesting copy of Motion to Dismiss	0.10
RJC	9/20/11	Receive all motion to dismiss briefing notices	0.10
RJC	9/24/11	Study all motions to dismiss and memos	2.00
RJC	11/14/11	Email to Saxena White asking for update	0.10
RJC	11/14/11	Email from Saxena White with update	0.10
RJC	11/18/11	Phone conference with Joe White re: Wilmington Trust	0.10
RJC	1/16/12	Email to Saxena White re: status	0.10
RJC	1/16/12	Email from Saxena White re: status	0.10
RJC	2/13/12	Review update letter	0.10
RJC	3/30/12	Email from Saxena White and study order dismissing complaint	1.30
RJC	3/30/12	Email from general counsel for other institutional investor	0.10
RJC	5/4/12	Email from Saxena White enclosing draft amended complaint	0.10
RJC	5/31/12	Email from Saxena White re: mediation	0.10
RJC	5/31/12	Phone conference with Madelene; phone conference with Maya re: status; mediation	0.40
RJC	6/10/12	Review amended complaint	1.00
RJC	6/26/12	Email from Saxena White re: mediation	0.10
RJC	8/1/12	Review letter re: status	0.10
RJC	8/6/12	Email enclosing motions to dismiss	0.10
RJC	8/7/12	Review motions to dismiss	3.00
RJC	11/6/12	Email from Saxena White including information about government investigation	0.30
RJC	11/18/12	Emails with Maya; review memo re: update	0.40
RJC	1/9/13	Emails from individual investor	0.10
RJC	2/6/13	Telephone conference with Maya Saxena	0.30
RJC	8/27/13	Review update letter; 4th Amended Complaint was filed	0.10
RJC	2/6/14	Review update letter	0.10
RJC	2/7/14	Emails from Plan to Saxena White	0.10
RJC	10/14/14	Emails re: deposition issues	0.50
BJC	10/16/14	Emails re: deposition issues	0.10

EXHIBIT 2

In Re: Wilmington Trust Securities Litigation

Master File No. 10-cv-00990-ER

Worked Performed

Inception through and including September 14, 2018

BJC	10/17/14	Attend pre-depo prep meeting for Mitchell; prepare for pre- depo prep meeting for Mitchell	4.80
RJC	10/17/14	Emails re: deposition issues	0.10
BJC	10/19/14	Emails re: depositions	0.10
BJC	10/20/14	Email from Saxena White re: deposition issues	0.10
BJC	10/20/14	Attend deposition of Mitchell; Meet re: Deposition preparation of Mitchell	6.00
RJC	1/8/16	Review update letter	0.10
RJC	2/9/16	Phone conference with Stephanie from Saxena White re: status and possible status report to the Board	0.30
RJC	2/12/16	Email from and to Saxena White	0.10
RJC	2/15/16	Email to Brent; phone conference with Brent re: reporting to client	0.10
RJC	4/15/16	Review update letter	0.10
RJC	9/9/16	Review letter from Maya Saxena	0.10
RJC	1/4/17	Review letter from Saxena White	0.10
RJC	3/28/17	Email re: interrogatories	0.10
RJC	3/29/17	Email from Madelene	0.10
RJC	3/30/17	Phone conference with George Mitchell and conference; telephone call with George Mitchell and Saxena White	0.50
RJC	4/21/17	Email from Saxena White re: status	0.10
RJC	5/12/17	Review update letter	0.10
RJC	6/7/17	Phone conference with Madelene; phone conference with Saxena White re: court order	0.40
RJC	6/15/17	Numerous emails re: discovery	0.40
RJC	6/16/17	Email re: interrogatory response and review same	1.00
RJC	6/19/17	Review supplemental response; email re: response	1.00
RJC	6/20/17	Review final response	1.00
RJC	8/5/17	Email from Saxena White	0.10
RJC	8/7/17	Email from Madelene	0.10
RJC	8/9/17	Email from Saxena White	0.10
RJC	8/9/17	Email from Kathryn re: discovery	0.10
RJC	8/11/17	Receive email on final interrogatory responses	0.10
RJC	8/23/17	Review email from Saxena White re: interrogatories	0.10
RJC	8/23/17	Review answers to interrogatories	0.10
RJC	8/24/17	Email; texts; phone conference	0.30
RJC	9/1/17	Receipt and review final answers	0.10
RJC	10/21/17	Review of settlement with bank and email to White	0.40
RJC	10/23/17	Email from Joe White re: status	0.10
RJC	10/27/17	Review report re: Wilmington Trust; phone conference with Saxena White	0.20
RJC	12/7/17	Review status update	0.10
RJC	12/15/17	Review update letter	0.10
RJC	12/27/17	Review status report	0.10
RJC	3/16/18	Review letter re: status of litigation	0.10

EXHIBIT 2

In Re: Wilmington Trust Securities Litigation

Master File No. 10-cv-00990-ER

Worked Performed

Inception through and including September 14, 2018

RJC	3/20/18	Research re: shade meeting; emails re: same and work on notice and agenda; numerous office conferences re: same	2.50
BJC	3/21/18	Emails with Klein re: Notice requirement/Executive Session minutes; emails with counsel re: Executive Session; Research re: court reporter/minutes re: executive Session	0.80
BJC	3/23/18	Emails re: Executive Session/Court Reporter/Identification of Court Reporter	0.30
RJC	3/23/18	Emails and prepare for shade meeting	0.50
RJC	3/26/18	Prepare for and attend executive session	2.00
RJC	3/27/18	Review minutes; email to Madelene	0.10
RJC	5/11/18	Phone conference with Joe White re: status of settlement; review letter re: status from Saxena White	0.20
RJC	5/22/18	Phone message from Katherine re: settlement	0.10
RJC	5/23/18	Message from Saxena White: phone conference with Saxena White	0.20
RJC	5/30/18	Emails and phone conference with Kathryn Widener re: settlement	0.10
RJC	5/31/18	Email to Madelene re: final approval	0.10
RJC	6/1/18	Review status letter from Stefanie	0.10
RJC	6/5/18	Phone conference with Madelene re: discovery of compensation for time	0.10
RJC	6/5/18	Review Time records to assist client with determining reimbursements; phone conference with Kathryn	0.40
		*The person who performed these tasks in not known, but we believe it is Mr. Cohen. The rates for Mr. Cohen and Mr. Chudachek are being presented as the same. In the summary they are represented as Mr. Cohen's.	

EXHIBIT 2

EXHIBIT 3

In Re Wilmington Trust Securities Litigation
Master File No. 10-cv-00990-ER

FIRM RESUME

Rice Pugatch Robinson Storfer & Cohen, PLLC ("RPRSC") is a well-known and highly respected Florida law firm. The firm has a sophisticated business practice and offers practical litigation and transactional solutions to the complicated legal problems encountered in today's marketplace. It provides its clients a broad base of sophisticated legal representation in matters including creditor rights, bankruptcy, insolvency, business reorganizations, commercial litigation, business and real estate transactions.

The firm has three lawyers in what is loosely referred to as the employee benefits and labor and employee group. These attorneys provide extensive representation to public pension funds throughout the State of Florida. Included in the work we perform as pension fund attorneys is:

Drafting Plan Changes

Statutes are reviewed regularly for the purposes of maintaining compliance with current and pending regulations affecting public plans. We have extensive experience drafting new plan language on behalf of our clients when the need arises.

Fiduciary Education

The primary duty of a pension fund lawyer is to ensure that the trustees do not do the wrong thing. We regularly apprise boards of trustees of changes in the law, both legislatively and judicially, which impact their duties. We also conduct training workshops to improve the trustees' skills in conducting disability and other benefit hearings, and in making decisions while being mindful of their fiduciary responsibility.

Administrative Rule Making

We advise and guide our Trustee Clients in developing rules and regulations for the uniform administration of the trust fund. The development of these administrative rules ensures uniformity of procedure and guarantees the due process rights of persons appearing before boards of trustees. They also serve to help organize and highlight those situations in which the legislation creating the fund may be vague or incomplete. By utilizing rule-making powers, boards of trustees can help give definition and more practical application to oftentimes vague legislative language.

Legal Counseling

Our trustee clients have the sole authority to administer their pension plans and interpret the applicable plan documents. In the course of those duties, the trustees will be called upon from time to time to interpret various provisions of the ordinance and statutes which govern its conduct. They will also be presented with various factual situations which do not lend themselves to easy interpretation. As a result, as counsel we are responsible for issuing legal opinions to assist the trustees in performing their function in managing the trust.

Litigation

Despite the best efforts and intentions of the trustees, there may be times when a board of trustees finds itself as either a plaintiff or defendant in a legal action. We have successfully defended boards of trustees in claims for benefits, actions regarding under-funding and allegations of plan fiduciaries to fulfill their responsibilities to the trust, at both the trial and appellate level. We have extensive trial and appellate experience and pride ourselves on the vigorous representation of our clients while maintaining close watch on the substantial costs that are often associated with litigation. We have handled numerous appeals and writs of certiorari on matters such as disability appeals.

Summary Plan Descriptions

Under the terms of Chapter 112, Part VII, Florida Statutes, governmental pension plans are required to provide their members with a plain language explanation of their benefits and rights under the plan. We regularly prepare or review these Summary Plan Descriptions that must be revised as plan provisions change.

Domestic Relations Orders

The Retirement Equity Act is a federal law which allows the value of a pension to be divided between the spouses in the event of dissolution of marriage. While it applies to private pension plans, it does not apply to governmental pension plans. Unfortunately, many attorneys who handle divorce cases are unaware of this, and often governmental pension plans receive court orders in connection with the divorce of a member in which the plan is ordered to make payments that it is not permitted to make. We are fully familiar with the law in this area, and work with the divorce attorneys to prevent the plan from receiving court orders instructing it to take action which it is not allowed to take, and if necessary, we file and argue the appropriate motions in court.

Investment Issues

We regularly provide advice on legal issues concerning investments. These legal issues involve such matters as the legality of particular investments, and the legal sufficiency of investment policies. In recent years, pension plans have been engaging in more varied investment opportunities, and we are on the cutting edge of these issues.

Florida's Sunshine Law and Public Records Act

We understand the importance of Florida's Sunshine Law and Public Records Act and we must be able to regularly assist and advise pension boards on understanding and following the strict requirements and exemptions to Florida's open government laws. We are well versed in all

areas relating to open meeting and notice requirements, agenda-related materials including but not limited to special meetings, calling for executive sessions when there is pending litigation and addressing public records requests.

The individual resumes of the lawyers who worked on this matter are attached.

Ronald J. Cohen

rcohen@rprslaw.com

Bar Memberships: Florida, 1977; U.S. District Court, Southern District of Florida, 1981; U.S. Court of Appeals, Eleventh Circuit, 1992; Montana, 1992; U.S. District Court, Middle District of Florida, 2009

Education:

University of Miami College of Law (1976)
Juris Doctor

University of Florida (1973)
Bachelor of Arts, with Honors

Employment History:

Rice Pugatch Robinson Storfer & Cohen, PLLC. March 2014- Present (Via merger with Ronald J. Cohen, P.A)

Ronald J. Cohen, P.A., 1997 – March 2014

Klausner & Cohen, P.A., 1987 – 1997 (for a period of time Klausner & Cohen merged with Atkinson, Jenne, Diner, Stone & Cohen, P.A. and Mr. Cohen was a partner in that firm.

Paul, Landy, Beiley, & Harper, P.A., 1983 – 1987

Miami City Attorney's Office, 1979 – 1983

Assistant City Attorney

Certifications: Board Certified in Labor and Employment Law

Member: The Florida Bar, including sections on Labor and Employment Law and Local Government Law; The Montana Bar (inactive); United States District Court for the Southern District of Florida; United States District Court for the Middle District of Florida; United States Court of Appeals for the Eleventh Circuits; *AV* rating in the Martindale-Hubbell Law Directory

Brent J. Chudachek

bchudachek@rprslaw.com

Bar Memberships: Florida, 2006
United States District Court, Southern District of Florida
United States Court of Appeals, Eleventh Circuit

Professional Memberships: Florida Bar Association – Labor & Employment Law Section; Broward County Bar Association – Labor & Employment Section

Education: St. Thomas School of Law, (May 2006) Miami, Florida
Juris Doctor, *cum laude*

Hobart and William Smith Colleges, (May 2002) Geneva, New York
Bachelor of Arts, Economics

Honors/ Certifications: Super Lawyers Magazine, Florida Rising Star in the field of Employee Benefits Law for the years 2012-2017
Selected as a Top Up and Comer, by the South Florida Legal Guide, 2016 and 2017 Editions
Certified Public Pension Trustee by the FPPTA

Employment History: Rice Pugatch Robinson Storfer & Cohen, PLLC
March 2014- Present
(via merger with Ronald J. Cohen, P.A.)
Associate

Ronald J. Cohen, P.A., May 2007 – March 2014
Associate

Corcoran & Elkins, LLP, September 2006- April 2007
Associate; Law Clerk

Honorable David L. Levy, Chief Judge (Ret.) Third District Court of Appeal, Spring 2005
Judicial Internship

EXHIBIT 5

SAXENA WHITE

Joseph E. White, III
jwhite@saxenawhite.com

November 15, 2010

Stephen H. Cypen
Cypen & Cypen
777 Arthur Godfrey Road
Suite 320
Miami, FL 33140

Re: Wilmington Trust Corporation Securities Litigation

Dear Steve:

Coral Springs Police Pension Fund (the "Fund") has provided a signed certification as required by the PSLRA to serve as a plaintiff. We have agreed that in consideration for your work and counsel in connection with the case, your firm will receive 16% of any fee that may be received by Saxena White P.A. ("Saxena White") from prosecuting the action, if the Fund is appointed as one of the lead plaintiffs.

This agreement is subject to your client's written approval pursuant to Rule 4-1.5(g)(2) of the Rules Regulating the Florida Bar. If this proposal is acceptable, you and your client should countersign where indicated below, and return to me. We look forward to working with you and representing the Fund in this action.

Very truly yours,

Joseph E. White, III

Cypen & Cypen

By: _____
Stephen H. Cypen, Esq.

Coral Springs Police Pension Fund

By: _____
Robert Feigenbaum

Amended Division of Fee Agreement Pursuant to Florida Bar Rule 4-1.5(g)(2)

This Amended Division of Fee Agreement pursuant to Florida Bar Rule 4-1.5(g)(2) dated as of September 17, 2018 (the "Agreement"), is entered into between Saxena White P.A. ("Saxena White") and Stephen H. Cypen ("Cypen"), with the explicit approval of Coral Springs Police Pension Fund ("Coral Springs Police"). This Agreement embodies the amended terms and conditions under which Saxena White may share its portion of the fee awarded by the Court in *In re Wilmington Trust Corp. Sec. Litig.*, No. 10-cv-990 (D. Del.) (the "Wilmington Trust Action") with Cypen, subject to Court approval:

WHEREAS, on November 1, 2010, Wilmington Trust Corp. announced certain disclosures, including deteriorating financial information and that it had finalized an agreement whereby it would be purchased by M&T Bank;

WHEREAS, upon these disclosures, Saxena White began an investigation into possible violations of the securities laws by Wilmington Trust, its senior executives, directors, and others;

WHEREAS, on November 15, 2010, Saxena White presented the results of its investigation to the Board of Trustees of Coral Springs Police;

WHEREAS, based on the results of Saxena White's investigation and analysis, on November 15, 2010, the Board of Trustees of Coral Springs Police unanimously voted to initiate litigation against Wilmington Trust and others to recover its losses due to violations of the federal securities laws;

WHEREAS, a retainer agreement dated November 15, 2010 between Saxena White and Coral Springs Police was executed;

WHEREAS, a November 15, 2010 letter regarding the division of fees arising from the Wilmington Trust Action between Saxena White and Cypen was explicitly made pursuant to Rule 4-1.5(g)(2) of the Florida Bar Rules of Professional Conduct, and signed by an authorized representative of Coral Springs Police;

WHEREAS, on March 7, 2011, the Court appointed Coral Springs Police as Lead Plaintiff under the Private Securities Litigation Reform Act ("PSLRA"), along with the Pompano Beach General Employees Retirement System, St. Petersburg Firefighters' Retirement System, Merced County Employees' Retirement Association, and Automotive Industries Pension Trust Fund;

WHEREAS, on March 7, 2011, the Court appointed Saxena White as Lead Counsel under the PSLRA, along with Bernstein Litowitz Berger & Grossman LLP ("BLB&G");

WHEREAS, on September 12, 2014, Coral Springs Police and the other Lead Plaintiffs moved to certify a class and be appointed as Class Representatives, and for Saxena White to be appointed as Class Counsel;

WHEREAS, in connection with class certification proceedings, Coral Springs Police Board of Trustees Chairman Scott Myers was deposed on October 20, 2014, which deposition was defended by Saxena White;

WHEREAS, on September 3, 2015, Coral Springs Police was certified as a Class Representative, along with the other Lead Plaintiffs, pursuant to Fed. R. Civ. P. 23;

WHEREAS, on September 3, 2015, Saxena White was certified as Class Counsel pursuant to Fed. R. Civ. P. 23, along with BLB&G;

WHEREAS, on May 15, 2018, a Stipulation and Agreement of Settlement with Wilmington Trust Defendants and Underwriter Defendants was executed;

WHEREAS, on May 25, 2018, a Stipulation and Agreement of Settlement with KPMG was executed;

WHEREAS, a hearing on the Motion for (I) Preliminary Approval of the Settlements and (II) Approval of Notice to the Class was held on July 2, 2018 (the "Preliminary Approval Hearing");

WHEREAS, during the Preliminary Approval Hearing, the Court ordered Lead Counsel to disclose all referral fee obligations, explained that any such referral fees would be subject to the Court's approval, and ordered that as part of the disclosure of all referral fee obligations, referring counsel must submit detailed descriptions of the work performed and time they spent as it relates to the Wilmington Trust Action; and

WHEREAS, on July 10, 2018, the Court issued a Memorandum and Order preliminarily approving the Settlements, the form and manner of notice, and setting a Settlement Fairness Hearing for November 5, 2018.

NOW THEREFORE, THE BASIS FOR SHARING FEES AMONGST COUNSEL IS HEREBY AGREED:

In recognition of the substantial negative multiplier that Lead Counsels' fee requests represents to their time, the magnitude of the recovery for the Class, as well as principles of equity, Cypen agrees that the letter regarding the division of fees referenced above shall be modified as follows:

- Cypen will receive 4.5% of the fee awarded to Saxena White (exclusive of Saxena White's expenses),[1] if allowed by the Court;
- In the event that the Court reduces the agreed-upon 4.5% fee Cypen agrees that such order of the Court shall be final, non-appealable, and not subject to any collateral attack, and Cypen waives any and all rights to pursue statutory,

[1] In the event that Saxena White has any unreimbursed expenses, such expenses shall be reduced from its fee prior to the calculation of any fee sharing.

equitable or other claims against Saxena White and Saxena White attorneys and employees related to the reduced fee in any jurisdiction;

- Saxena White agrees to move the Court, or otherwise obtain permission to share the agreed-upon 4.5% fee share with Cypen.

This Agreement is subject to the written approval, evidenced below, of Coral Springs Police, pursuant to Florida Rule of Professional Conduct 4-1.5(g)(2).

All parties to this Agreement agree that the Agreement is made pursuant to, and fully satisfies the requirements of, Florida Rule of Professional Conduct 4-1.5(g)(2).

Dated: September 17, 2018

Joseph E. White, III
Shareholder
Saxena White P.A.

Stephen H. Cypen
Sole Owner
Cypen & Cypen

Scott Myers
Chairman
Coral Springs Police Pension Fund

UNITED STATES DISTRICT COURT
DISTRICT OF DELAWARE

IN RE WILMINGTON TRUST SECURITIES LITIGATION	Master File No. 10-cv-00990-ER (Securities Class Action) Hon. Eduardo Robreno ELECTRONICALLY FILED
This document relates to: ALL ACTIONS	

DECLARATION OF STEPHEN H. CYPEN

I, Stephen H. Cypen, hereby declare under penalty of perjury as follows:

1. I am currently sole owner of the firm Cypen & Cypen. I submit this Declaration with respect to the Amended Division of Fee Agreement Pursuant to Florida Bar Rule 4-1.5(g)(2) (the "Amended Fee Agreement"), in connection with services rendered in this Action to Lead Plaintiff and Class Representative Coral Springs Police Pension Fund ("Coral Springs Police"). I have personal knowledge of the matters set forth herein.

2. I have been outside general counsel to Coral Springs Police since 1990. In this capacity, I provide general legal services with respect to all matters to Coral Springs Police, including representation in court, before state agencies, and in contractual matters. In my 50 years in practice, I have represented over 40 public funds across Florida.

3. I have performed the following work for Coral Springs Police with respect to this Action: (i) at the outset of the litigation I evaluated Saxena White's analysis regarding the merits of the case as well as Saxena White's recommendation to pursue litigation in light of Coral Springs Police's substantial losses and the serious nature of the allegations, before recommending that Coral Springs Police file a securities fraud action with Saxena White as lead counsel; (ii) throughout the course of the Action, I received drafts of filings for review and comment, as well

regular updates concerning the status of the litigation, which I shared with Coral Springs Police; (iii) during the class certification stage, worked with Saxena White on matters related to discovery served on Coral Springs Police; (iv) evaluated the settlement negotiations, the amount of the recovery, and proposed settlement terms before recommending that Coral Springs Police approve the Settlements. I conservatively estimate that in performing this work, I have spent 80 hours on this Action. My hourly rate is $650, which has remained unchanged for approximately five years.

I declare, under penalty of perjury, that the foregoing facts are true and correct. Executed on September 17, 2018.

Stephen H. Cypen

EXHIBIT D-3

UNITED STATES DISTRICT COURT
DISTRICT OF DELAWARE

IN RE WILMINGTON TRUST SECURITIES LITIGATION	Master File No. 10-cv-00990-ER (Securities Class Action)
This document relates to: ALL ACTIONS	Hon. Eduardo Robreno ELECTRONICALLY FILED

DECLARATION OF ROBERT J. KRINER, JR. IN SUPPORT OF LEAD COUNSEL'S MOTION FOR AN AWARD OF ATTORNEYS' FEES AND REIMBURSEMENT OF LITIGATION EXPENSES FILED ON BEHALF OF CHIMICLES & TIKELLIS LLP

I, Robert J. Kriner, Jr., hereby declare under penalty of perjury as follows:

1. I am a partner of the law firm of Chimicles & Tikellis LLP.[1] My firm serves as Liaison Counsel for Lead Plaintiffs and the Class in the above-captioned action (the "Action"). I submit this declaration in support of Lead Counsel's application for an award of attorneys' fees in connection with services rendered in the Action, as well as for 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 Liaison Counsel, actively participated in the prosecution of the claims on behalf of Lead Plaintiffs and the Class. In particular, my firm performed work on behalf of Lead Plaintiffs and the Class at the direction and under the supervision of the Court-appointed Lead Counsel, Bernstein Litowitz Berger & Grossmann LLP and Saxena White, P.A. My firm

[1] All capitalized terms that are not otherwise defined herein shall have the meanings ascribed to them in the Stipulation and Agreement of Settlement with Wilmington Trust Defendants and Underwriter Defendants dated May 15, 2018 (D.I. 821-1) and the Stipulation and Agreement of Settlement with KPMG dated May 25, 2018 (D.I. 821-2).

participated in, among other tasks, reviewing draft complaints and motions; preparing and filing various *pro hac vice* motions; reviewing documents produced by Defendants in discovery; attending in-person and telephonic court hearings; and ensuring compliance with the District of Delaware local rules.

3. The schedule attached hereto as Exhibit 1 is a detailed summary indicating the amount of time spent by attorneys and professional support staff employees of my firm who, from inception of the Action through and including May 25, 2018, worked ten or more hours on the prosecution and settlement of the Action, and the lodestar calculation for those individuals based on my firm's current hourly rates. For personnel who are no longer employed by my firm, the lodestar calculation is based upon the hourly 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. No time expended on the application for fees and expenses has been included.

4. The hourly rates for the attorneys and professional support staff in my firm included in Exhibit 1 are their standard rates, which rates are the same as the regular rates charged for their services in non-contingent matters and which have been accepted in other securities or shareholder litigation.

5. The total number of hours reflected in Exhibit 1 is 2,521.13. The total lodestar reflected in Exhibit 1 is $1,178,947.25, consisting of $1,113,241.00 for attorneys' time and $65,706.25 for professional support staff time.

6. My firm's lodestar figures are based upon the firm's standard hourly rates and do not include expense items. Expense items are being submitted separately and are not duplicated in the firm's hourly rates.

7. As detailed in Exhibit 2, my firm is seeking reimbursement for a total of $13,622.07 in expenses incurred from inception of the Action through and including August 31, 2018.

8. The expenses reflected in Exhibit 2 are the actual incurred expenses or reflect "caps" based on the application of the following criteria:

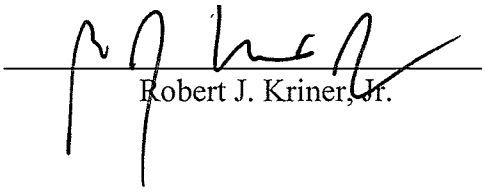
(a) Internal Copying/Printing – charged at $0.10 per page.

(b) On-Line Research – charges reflected are for out-of-pocket payments to the vendors for research done in connection with this litigation. On-line research is charged to each case based on actual time usage at a set charge by the vendor. There are no administrative charges included in these figures.

9. The expenses incurred by Chimicles & Tikellis LLP in the 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 3 is a brief biography of my firm and attorneys in my firm who were involved in the Action.

I declare, under penalty of perjury, that the foregoing facts are true and correct. Executed on September 17, 2018.



Robert J. Kriner, Jr.

EXHIBIT 1

In Re Wilmington Trust Securities Litigation
Master File No. 10-cv-00990-ER

CHIMICLES & TIKELLIS LLP

TIME REPORT

Inception through and including May 25, 2018

NAME	HOURS	HOURLY RATE	LODESTAR
Partners			
Pamela Tikellis	52.80	$895.00	$47,256.00
Robert Kriner	19.93	$750.00	$14,947.50
A. Zachary Naylor	577.75	$650.00	$375,537.50
Associates			
Tiffany Cramer	18.15	$500.00	$9,075.00
Vera Belger	603.50	$475.00	$286,662.50
Staff Attorney			
Joanne Noble	763.50	$390.00	$297,765.00
Kay Sickle	210.25	$390.00	$81,997.50
Paralegals			
Louise Connor	207.75	$250	$51,937.50
Laura McDermott	35.00	$220	$7,700.00
Ashley Morley	15.25	$200	$3,050.00
Samantha LaFaive	17.25	$175	$3,018.75
TOTALS	**2521.13**		**$1,178,947.25**

EXHIBIT 2

In Re Wilmington Trust Securities Litigation
Master File No. 10-cv-00990-ER

CHIMICLES & TIKELLIS LLP

EXPENSE REPORT

Inception through and including August 31, 2018

CATEGORY	AMOUNT
Court Fees	$372.50
On-Line Legal Research	$1,141.96
On-Line Factual Research	$86.70
Telephones/Faxes	$773.54
Postage & Express Mail	$75.01
Local Transportation	$35.42
Internal Copying/Printing	$5,675.70
Outside Copying	$210.00
Court Reporting & Transcripts	$5,251.24
TOTAL EXPENSES:	**$13,622.07**

EXHIBIT 3

In Re Wilmington Trust Securities Litigation
Master File No. 10-cv-00990-ER

CHIMICLES & TIKELLIS LLP

FIRM RESUME

Chimicles & Tikellis LLP

Attorneys At Law

HAVERFORD, PA

361 West Lancaster Avenue
Haverford, PA 19041
Voice: 610-642-8500
Toll Free: 866-399-2487

WILMINGTON, DE

P.O. Box 1035
222 Delaware Avenue
Suite 1100
Wilmington, DE 19899
Voice: 302-656-2500
Fax: 302-656-9053

OUR ATTORNEYS

Partners

3 Nicholas E. Chimicles

5 Robert J. Kriner, Jr.

6 Steven A. Schwartz

9 Kimberly Donaldson Smith

10 Timothy N. Mathews

12 Benjamin F. Johns

14 Scott M. Tucker

Of Counsel

15 Anthony Allen Geyelin

Associates

16 Vera G. Belger

17 Tiffany J. Cramer

18 Andrew W. Ferich

20 Alison G. Gushue

21 Mark B. DeSanto

23 Stephanie E. Saunders

24 Zachary P. Beatty

25 Beena M. McDonald

26 PRACTICE AREAS

39 REPRESENTATIVE CASES

Our Attorneys-Partners

Practice Areas:

- Antitrust
- Automobile Defects and False Advertising
- Corporate Mismanagement & Shareholder Derivative Action
- Defective Products and Consumer Protection
- Mergers & Acquisitions
- Non-Listed REITs
- Other Complex Litigation
- Securities Fraud

Education:

- University of Virginia School of Law, J.D., 1973
- University of Virginia Law Review; co-author of a course and study guide entitled "Student's Course Outline on Securities Regulation," published by the University of Virginia School of Law
- University of Pennsylvania, B.A., 1970

Memberships & Associations:

- Supreme Court of Pennsylvania Disciplinary Board Hearing Committee Member, 2008-2014.
- Past President of the National Association of Securities and Commercial Law Attorneys based in Washington, D.C., 1999-2001
- Chairman of the Public Affairs Committee of the American Hellenic Institute, Washington, D.C.
- Member of the Boards of Directors of Opera Philadelphia, Pennsylvanians for Modern Courts, and the Public Interest Law Center of Philadelphia.

Admissions:

- Supreme Court of Pennsylvania
- United States Supreme Court
- Second Circuit Court of Appeals
- Third Circuit Court of Appeals

NICHOLAS E. CHIMICLES



Mr. Chimicles has been lead counsel and lead trial counsel in major complex litigation, antitrust, securities fraud and breach of fiduciary duty suits for over 40 years. Representative Cases include:

⇒ *Ardon v. City of Los Angeles,* No. BC363959 (Superior Ct. of California, Los Angeles), judgment was entered in December 2016, approving a settlement whereby the City will reimburse from a $92.5 million fund anyone who paid the improperly imposed telephone utility users tax between October 2005 and March 2008. The settlement was reached after the Supreme Court of California unanimously upheld the rights of taxpayers to file class-wide tax refund claims under the CA Government Code.

⇒ *W2007 Grace Acquisition I, Inc., Preferred Stockholder Litigation,* Civ. No. 2:13-cv-2777, involved various violations of contractual, fiduciary and corporate statutory duties by defendants who engaged in various related-party transactions, wrongfully withheld dividends and financial information, and failed to timely hold an annual preferred stockholder meeting. This litigation resulted in a swift settlement valued at over $76 million after ten months of hard-fought litigation.

⇒ *Lockabey v. American Honda Motor Co.,* Case No. 37-2010-87755 (Superior Ct., San Diego). A settlement valued at over $170 million resolved a consumer action involving false advertising claims relating to the sale of Honda Civic Hybrid vehicles as well as claims relating to a software update to the integrated motor assist battery system of the HCH vehicles. As a lead counsel, Mr. Chimicles led a case that, in the court's view, was "difficult and risky" and provided "significant public value."

⇒ *City of St. Clair Shores General Employees Retirement System, et al. v. Inland Western Retail Real Estate Trust, Inc.*, Case No. 07 C 6174 (N.D. Ill.). A $90 million settlement was reached in 2010 in this class action challenging the accuracy of a proxy statement that sought (and received) stockholder approval of the merger of an external advisor and property managers by a multi-billion dollar real estate investment trust, Inland Western Retail Real Estate Trust, Inc. The settlement provided that the owners of the advisor/property manager entities (who are also officers and/or directors of Inland Western) had to return nearly 25% of the Inland Western stock they

- Fourth Circuit Court of Appeals
- Sixth Circuit Court of Appeals
- Ninth Circuit Court of Appeals
- Tenth Circuit Court of Appeals
- Eleventh Circuit Court of Appeals
- Court of Appeals for the D.C. Circuit
- Eastern District of Pennsylvania
- Eastern District of Michigan
- Northern District of Illinois
- District of Colorado
- Eastern District of Wisconsin
- Court of Federal Claims
- Southern District of New York

Honors:

- Fellow of the American Bar Foundation (2017) - an honorary organization of lawyers, judges and scholars whose careers have demonstrated outstanding dedication to the welfare of their communities and to the highest principles of the legal profession.
- Prestigious 2016 Thaddeus Stevens Award of the Public Interest Law Center (Philadelphia) in recognition of his leadership and service to this organization.
- Ellis Island Medal of Honor in May 2004, in recognition of his professional achievements and history of charitable contributions to educational, cultural and religious organizations.
- Pennsylvania and Philadelphia SuperLawyers, 2006-present.
- AV® rated by Martindale-Hubbell

received in the merger.

⇒ *In re Real Estate Associates Limited Partnerships Litigation*, No. CV 98-7035 DDP, was tried in the federal district court in Los Angeles before the Honorable Dean D. Pregerson. Mr. Chimicles was lead trial counsel for the Class of investors in this six-week jury trial of a securities fraud/breach of fiduciary duty case that resulted in a $185 million verdict in late 2002 in favor of the Class (comprising investors in the eight REAL Partnerships) and against the REALs' managing general partner, National Partnership Investments Company ("NAPICO") and the four individual officers and directors of NAPICO. The verdict included an award of $92.5 million in punitive damages against NAPICO. This total verdict of $185 million was among the "Top 10 Verdicts of 2002," as reported by the National Law Journal (verdictsearch.com). On post-trial motions, the Court upheld in all respects the jury's verdict on liability, upheld in full the jury's award of $92.5 million in compensatory damages, upheld the Class's entitlement to punitive damages (but reduced those damages to $2.6 million based on the application of California law to NAPICO's financial condition), and awarded an additional $25 million in pre-judgment interest. Based on the Court's decisions on the post-trial motions, the judgment entered in favor of the Class on April 28, 2003 totaled over $120 million.

⇒ *CNL Hotels & Resorts, Inc. Securities Litigation*, Case No. 6:04-cv-1231 (M.D. Fla., Orl. Div. 2006). The case settled Sections 11 and 12 claims for $35 million in cash and Section 14 proxy claims by significantly reducing the merger consideration by nearly $225 million (from $300 million to $73 million) that CNL paid for internalizing its advisor/manager.

⇒ *Prudential Limited Partnerships Litigation*, MDL 1005 (S.D.N.Y.). Mr. Chimicles was a member of the Executive Committee in this case where the Class recovered from Prudential and other defendants $130 million in settlements, that were approved in 1995. The Class comprised limited partners in dozens of public limited partnerships that were marketed by Prudential.

⇒ *PaineWebber Limited Partnerships Litigation*, 94 Civ. 8547 (S.D.N.Y.). Mr. Chimicles was Chairman of the Plaintiffs' Executive Committee representing limited partners who had invested in more than 65 limited partnerships that PaineWebber organized and/or marketed. The litigation was settled for a total of $200 million, comprising $125 million in cash and $75 million in additional benefits resulting from restructurings and fee concessions and waivers.

⇒ *In Re Phoenix Leasing Incorporated Limited Partnership Litigation*, Superior Court of the State of California, County of Marin, Case No. 173739. In February 2002, the Superior Court of Marin County, California, approved the settlement of this case which involved five public partnerships sponsored by Phoenix Leasing Incorporated and its affiliates and resulting in entry of a judgment in favor of the class

Practice Areas:

- Corporate Mismanagement & Shareholder Derivative Action
- Mergers & Acquisitions

Education:

- Delaware Law School of Widener University, J.D., 1988
- University of Delaware, B.S. Chemistry, 1983

Memberships:

- Delaware State Bar Association

Admissions:

- Supreme Court of Delaware

ROBERT J. KRINER, JR.



Robert K. Kriner, Jr. is a Partner in the Firm's Wilmington, Delaware office. From 1988 to 1989, Mr. Kriner served as law clerk to the Honorable James L. Latchum, Senior Judge of the United States District Court for the District of Delaware. Following his clerkship and until joining the Firm, Mr. Kriner was an associate with a major Wilmington, Delaware law firm, practicing in the areas of corporate and general litigation.

Mr. Kriner has prosecuted actions, including class and derivative actions, on behalf of stockholders, limited partners and other investors with claims relating to mergers and acquisitions, hostile acquisition proposals, the enforcement of fiduciary duties, the election of directors, and the enforcement of statutory rights of investors such as the right to inspect books and records. Among his recent achievements are Sample v. Morgan, C.A. No. 1214-VCS (obtaining full recovery for shareholders diluted by an issuance of stock to management), In re Genentech, Inc. Shareholders Litigation, Consolidated C.A. No. 3911-VCS (leading to a nearly $4 billion increase in the price paid to the Genentech stockholders) and In re Kinder Morgan, Inc. Shareholders Litigation, Consolidated Case No. 06-C-801 (action challenging the management led buyout of Kinder Morgan, settled for $200 million).

Recently, Mr. Kriner led the prosecution of a derivative action in the Delaware Court of Chancery by stockholders of Bank of America Corporation relating to the January 2009 acquisition of Merrill Lynch & Co. In re Bank of America Corporation Stockholder Derivative Litigation, C.A. No. 4307-CS. The derivative action concluded in a settlement which included a $62.5 million payment to Bank of America.

Steven A. Schwartz

Practice Areas:

- Antitrust
- Corporate Mismanagement & Shareholder Derivative Action
- Defective Products and Consumer Protection
- Other Complex Litigation
- Securities Fraud

Education:

- Duke University School of Law, J.D., 1987
  - ◊ Law & Contemporary Problems Journal, Senior Editor
- University of Pennsylvania, B.A., 1984 - *cum laude*

Memberships & Associations:

- National Association of Shareholder and Consumer Attorneys (NASCAT) Executive Committee Member
- American Bar Association
- Pennsylvania Bar Association

Admissions:

- United States Supreme Court
- Pennsylvania Supreme Court
- Third Circuit Court of Appeals
- Sixth Circuit Court of Appeals
- Eighth Circuit Court of Appeals
- Ninth Circuit Court of Appeals
- Eastern District of Pennsylvania
- Western District of Pennsylvania
- Eastern District of Michigan
- District of Colorado

Honors:

- National Trial Lawyers Top 100
- AV Rating from Martindale Hubbell
- Pennsylvania Super Lawyer, 2006-Present



Steven A. Schwartz has prosecuted complex class actions in a wide variety of contexts. Notably, Mr. Schwartz has been successful in obtaining several settlements where class members received a full recovery on their damages. Representative cases include:

⇒ *Rodman v. Safeway Inc.*, No. 11-3003-JST (N.D. Cal.). Mr. Schwartz served as Plaintiffs' Lead Trial Counsel and presented all of the district court and appellate arguments in this national class action regarding grocery delivery overcharges. He was successful in obtaining a national class certification and a series of summary judgment decisions as to liability and damages resulting in a $42 million judgment, which represents a full recovery of class members' damages plus interest. The $42 million judgment was entered shortly after a scheduled trial was postponed due to Safeway's discovery misconduct, which resulted in the district court imposing a $688,000 sanction against Safeway. The Ninth Circuit affirmed the $42 million judgment. 2017 U.S. App. LEXIS 14397 (9th Cir. Aug. 4, 2017).

⇒ *In re Apple iPhone/iPod Warranty Litig.*, No. 3:10-1610-RS (N.D. Cal.). Mr. Schwartz served as co-lead counsel in this national class action in which Apple agreed to a $53 million non-reversionary, cash settlement to resolve claims that it had improperly denied warranty coverage for malfunctioning iPhones due to alleged liquid damage. Class members were automatically mailed settlement checks for more than 117% of the average replacement costs of their iPhones, net of attorneys' fees, which represented an average payment of about $241.

⇒ *In re Sears, Roebuck & Co. Front-Loading Washer Prods. Liab. Litig.*, No. 06 C 7023, (N.D. Ill.) & Case 1:09-wp-65003-CAB (N. D. Ohio) (MDL No. 2001). Mr. Schwartz served as co-lead class counsel in this case which related to defective central control units ("CCUs") in front load washers manufactured by Whirlpool and sold by Sears. After extensive litigation, including two trips to the Seventh Circuit and a trip to the United States Supreme Court challenging the certification of the plaintiff class, he negotiated a settlement shortly before trial that the district court held, after a contested proceeding approval proceeding, provided a "full-value, dollar-for-dollar recovery" that was "as good, if not a better, [a] recovery for Class Members than could have been achieved at trial." 2016 U.S. Dist. LEXIS 25290 at *35 (N.D. Ill. Feb. 29, 2016).

⇒ *Chambers v. Whirlpool Corp., et al., Case No.* 11-1773 FMO (C.D. Cal.). Mr. Schwartz served as co-lead counsel in this national class action involving alleged defects resulting in fires in Whirlpool, Kenmore, and KitchenAid dishwashers. The district court approved a settlement which he negotiated that provides wide-ranging relief to owners of approximately 24 million implicated dishwashers, including a full recovery of out-of-pocket damages for costs to repair or replace dishwashers that suffered

Overheating Events. In approving the settlement, Judge Olguin of the Central District of California described Mr. Schwartz as "among the most capable and experienced lawyers in the country in [consumer class actions]." 214 F. Supp. 3d 877, 902 (C.D. Cal. 2016).

⇒ ***Wong v. T-Mobile,*** No. 05-cv-73922-NGE-VMM (E.D. Mich.). In this billing overcharge case, Mr. Schwartz served as co-lead class counsel and negotiated a settlement where T-Mobile automatically mailed class members checks representing a 100% net recovery of the overcharges and with all counsel fees paid by T-Mobile in addition to the class members' 100% recovery.

⇒ ***In re Certainteed Corp. Roofing Shingle Products Liability Litig.***, No, 07-md-1817-LP (E.D. Pa.). In this MDL case related to defective roof shingles, Mr. Schwartz served as Chair of Plaintiffs' Discovery Committee and worked under the leadership of co-lead class counsel. The parties reached a settlement that provided class members with a substantial recovery of their out-of-pocket damages and that the district court valued at between $687 to $815 million.

⇒ ***Shared Medical Systems 1998 Incentive Compensation Plan Litig.,*** Mar. Term 2003, No. 0885 (Phila. C.C.P.). In this case on behalf of Siemens employees, after securing national class certification and summary judgment as to liability, on the eve of trial, Mr. Schwartz negotiated a net recovery for class members of the full amount of the incentive compensation sought (over $10 million) plus counsel fees and expenses. At the final settlement approval hearing, Judge Bernstein remarked that the settlement "should restore anyone's faith in class action[s]. . . ." Mr. Schwartz served as co-lead counsel in this case and handled all of the arguments and court hearings.

⇒ ***In re Pennsylvania Baycol: Third-Party Payor Litig.***, Sept. Term 2001, No. 001874 (Phila. C.C.P.) ("Baycol"). Mr. Schwartz served as co-lead class counsel in this case brought by health and welfare funds and insurers to recover damages caused by Bayer's withdrawal of the cholesterol drug Baycol. After extensive litigation, the court certified a nationwide class and granted plaintiffs' motion for summary judgment as to liability, and on the eve of trial, he negotiated a settlement providing class members with a net recovery that approximated the maximum damages (including pre-judgment interest) that class members suffered. That settlement represented three times the net recovery of Bayer's voluntary claims process (which AETNA and CIGNA had negotiated and was accepted by many large insurers who opted out of the class early in the litigation).

⇒ ***Wolens v. American Airlines, Inc.*** Mr. Schwartz served as plaintiffs' co-lead counsel in this case involving American Airlines' retroactive increase in the number of frequent flyer miles needed to claim travel awards. In a landmark decision, the United States Supreme Court held that plaintiffs' claims were not preempted by the Federal Aviation Act. 513 U.S. 219 (1995). After eleven years of litigation, American Airlines agreed to provide class members with mileage certificates that approximated the full extent of their alleged damages, which the Court, with the assistance of a court-appointed expert and after a contested proceeding, valued at between $95.6 million and $141.6 million.

⇒ ***In Re ML Coin Fund Litigation,*** (Superior Court of the State of California for the County of Los Angeles). Mr. Schwartz served as plaintiffs' co-lead counsel and successfully obtained a settlement from defendant Merrill Lynch in excess of $35 million on behalf of limited partners, which represented a 100% net recovery of their initial investments (at the time of the settlement the partnership assets were virtually worthless due to fraud committed by Merrill's co-general partner Bruce McNall, who was convicted of bank fraud).

⇒ ***Nelson v. Nationwide,*** July Term 1997, No. 00453 (Phila. C.C.P.). Mr. Schwartz served as lead counsel on behalf of a certified class. After securing judgment as to liability in the trial court (34 Pa. D. & C. 4th 1 (1998)), and defeating Nationwide's Appeal before the Pennsylvania Superior Court, 924 PHL 1998 (Dec. 2, 1998), he negotiated a settlement whereby Nationwide agreed to pay class members approximately 130% of their bills.

Kimberly Donaldson Smith



Kimberly Donaldson Smith is a partner in the Firm's Haverford Office. Kimberly has been counseling clients and prosecuting cases on complex issues involving securities, business transactions and other class actions for over 15 years.

Kimberly concentrates her practice in sophisticated securities class action litigation in federal courts throughout the country, and has served as lead or co-lead counsel in over a dozen class actions. She is very active in investigating and initiating securities and shareholder class actions.

Kimberly is currently prosecuting federal securities claims on behalf of investors in numerous cases. Kimberly was instrumental in the outstanding settlements achieved for the investors in: *W2007 Grace Acquisition I, Inc., Preferred Stockholder Litigation,* Civ. No. 2:13-cv-2777 (W.D. Tenn.)(a settlement valued at over $76 million for current and former W2007 Grace preferred stockholders); *In re Empire State Realty Trust, Inc. Investor Litigation*, Case 650607/2012, NY Supreme Court (a $55,000,000 cash settlement fund and $100 million tax savings for the Empire investors); *CNL Hotels & Resorts Inc. Federal Securities Litigation*, Case No. 04-cv-1231 (M.D. Fla.)(a $35,000,000 cash settlement fund and a $225 million savings for the CNL shareholders); *Inland Western Retail Real Estate Trust, Inc., et al. Litigation*, Case 07 C 6174 (U.S.D.C. N.D. Ill) (a $90 million savings for the Inland shareholders subjected to a self-dealing transaction); and *Wells REIT Securities Litigation*, Case 1:07-cv-00862/1:07-cv-02660 (U.S.D.C. N.D. GA)(a $7 million cash settlement fund for the Wells REIT investors).

Notably, Kimberly was an integral member of the trial team that successfully litigated *the In re Real Estate Associates Limited Partnership Litigation*, No. CV 98-7035 DDP (CD. Cal.) through a six-week jury trial that resulted in a landmark $184 million plaintiffs' verdict, which is one of the largest jury verdicts since the passage of the Private Securities Litigation Reform Act of 1995. The Real Estate Associates judgment was settled for $83 million, which represented full recovery for the Class (and an amount in excess of the damages calculated by Plaintiffs' expert).

Kimberly's pro bono activities include serving as a volunteer attorney with the Support Center for Child Advocates, a Philadelphia-based, nonprofit organization that provides legal and social services to abused and neglected children. Since 2006, Kimberly has been recognized by Law & Politics and the publishers of Philadelphia Magazine as a Pennsylvania Super Lawyer or Rising Star, as listed in the Super Lawyers' publications.

Practice Areas:

- Securities Fraud
- Non-Listed REITs
- Corporate Mismanagement & Shareholder Derivative Action
- Mergers & Acquisitions

Education:

- Villanova University School of Law, J.D., 1999 - *cum laude*
- Boston University, B.A. Political Science, 1996
-

Memberships & Associations:

- Pennsylvania Bar Association
- Villanova Law School Alumni Association

Admissions:

- Pennsylvania Supreme Court
- New Jersey Supreme Court
- Third Circuit Court of Appeals
- District of New Jersey
- Eastern District of Pennsylvania

Honors:

- Pennsylvania SuperLawyer: 2013– Present
- Named Pennsylvania Rising Star by Super Lawyers: 2006-2012
- Sutton Who's Who in American Law

Timothy N. Mathews



Tim Mathews is a partner in the firm's Haverford office. He has been described "among the most capable and experienced lawyers in the country" in consumer class action litigation. Chambers v. Whirlpool, 214 F. Supp 3d 877 (C.D.Cal. 2016). He is also an experienced appellate attorney in the United States Courts of Appeals for the Third, Fourth, Ninth, and Eleventh Circuits, as well as the Supreme Court of California. Representative cases in which Mr. Mathews has held a lead role include:

- *Rodman v. Safeway, Inc.* (N.D.Cal.) – $42 million judgment against Safeway, Inc., representing 100% of damages plus interest for grocery delivery overcharges.
- *Ardon v. City of Los Angeles* (Superior Court, County of Los Angeles) – $92.5 million tax refund settlement with the City of Los Angeles after winning landmark decision in the Supreme Court of California securing the rights of taxpayers to file class-wide tax refund claims under the CA Government Code.
- *McWilliams v. City of Long Beach* (Superior Court, County of Los Angeles) - $16.6 million telephone tax refund settlement.
- *Granados v. County of Los Angeles* - $16.9 million telephone tax refund settlement.
- *In re 24 Hour Fitness Prepaid Memberships. Litig.* (N.D.Cal.) - Full-relief settlement providing over $8 million in refunds and an estimated minimum of $16 million in future rate reductions, for class of consumers who purchased prepaid gym memberships.
- *Chambers v. Whirlpool Corp.* (C.D.Cal.) – Settlement providing 100% of repair costs and other benefits for up to 24 million dishwashers that have an alleged propensity to catch fire due to a control board defect.
- *In re Apple iPhone Warranty Litig.* (N.D.Cal.) – $53 million settlement in case alleging improper iPhone warranty denials; class members received on average 118% of their damages.
- *In re Colonial Bancgroup, Inc.*– Settlements totaling $18.4 million for shareholders in securities lawsuit involving one of the largest U.S. bank failures of all time.
- *International Fibercom* (D.Ariz.) – Represented plaintiff in insurance coverage actions against D&O carriers arising out of securities fraud claims; achieved a near-full recovery for the plaintiff.
- *In re Mutual Funds Investment Litigation*, MDL 1586 (D.Md.) – Lead Fund Derivative Counsel in the multidistrict litigation arising out of the market timing and late trading scandal of 2003, which involved

Practice Areas:

- Antitrust
- Corporate Mismanagement
- Consumer Fraud & Deceptive Products
- Securities Fraud Litigation

Education:

- Rutgers School of Law-Camden, J.D., 2003 - *with High Honors*
- Rutgers University-Camden, B.A., 2000 - *with Highest Honors*

Memberships & Associations:

- National Association of Shareholder and Consumer Attorneys (NASCAT) Amicus Committee Member
- Rutgers Journal of Law & Religion – Lead Marketing Editor (2002-2003)

Admissions:

- Pennsylvania
- New Jersey
- Eastern District of Pennsylvania
- District of New Jersey
- United States Court of Appeals for the Third Circuit
- United States Court of Appeals for the Fourth Circuit
- United States Court of Appeals for the Ninth Circuit
- United States Court of Appeals for the Eleventh Circuit

Honors:

- Pennsylvania Super Lawyers Rising Star 2008, 2010, 2013-2014
- Rutgers Law Legal Writing Award 2003

seventeen mutual fund families and hundreds of parties, and resulted in over $250 million in settlements.

Mr. Mathews graduated from Rutgers School of Law-Camden with high honors, where he served as Lead Marketing Editor for the Rutgers Journal of Law & Religion, served as a teaching assistant for the Legal Research and Writing Program, received the 1L legal Writing Award, and received a Dean's Merit Scholarship and the Hamerling Merit Scholarship. He received his B.A. from Rutgers University-Camden in 2000 with highest honors, where he was inducted into the Athenaeum honor society.

Mr. Mathews also serves as a member of the Planning Commission for the township of Lower Merion. His pro bono work has included representation of the Holmesburg Fish and Game Protective Association in Philadelphia. He also served on the Amicus Committee for the National Association of Shareholder and Consumer Attorneys (NASCAT) for over ten years.

Benjamin F. Johns



Benjamin F. Johns first began working at the firm as a Summer Associate while pursuing a J.D./M.B.A. joint degree program in business school and law school. He became a full-time Associate upon graduation, and is now a Partner. Over the course of his legal career, Ben has argued in the United States Court of Appeals for the District of Columbia Circuit, the Commonwealth Court of Pennsylvania sitting *en banc*, and in other state and federal district courts across the country. He has argued and briefed dispositive motions to dismiss, for class certification and for summary judgment. He has also deposed prison guards, lawyers, bankers, engineers, I.R.S. officials, information technology personnel, and other witnesses.

Specifically, he has provided substantial assistance in the prosecution of the following cases:

⇒ *In re Checking Account Overdraft Litig.,* No. 1:09-MD-02036-JLK (S.D. Fla.). (Ben is actively involved in these Multidistrict Litigation proceedings, which involve allegations that dozens of banks reorder and manipulate the posting order of debit transactions. Settlements collectively in excess of $1 billion have been reached with several banks. Ben was actively involved in prosecuting the actions against U.S. Bank ($55 million settlement) and Comerica Bank ($14.5 million settlement);

⇒ *In re Flonase Antitrust Litig.,* 2:08-cv-03301-AB (E.D. Pa.). (indirect purchaser plaintiffs alleged that the manufacturer of Flonase (a nasal allergy spray) filed "sham" citizen petitions with the FDA in order to delay the approval of less expensive generic versions of the drug. A $46 million settlement was reached on behalf of all indirect purchasers. Ben argued a motion before the District Court.);

⇒ *In re: Elk Cross Timbers Decking Marketing, Sales Practices and Products Liability Litig.,* No. 15-cv-18-JLL-JAD (D.N.J.) (Ben was appointed by the Court to the Plaintiffs' Steering Committee in this MDL proceeding, which involved allegedly defective wood-composite decking, and which ultimately resulted in a settlement valued at approximately $20 million);

⇒ *In re TriCor Indirect Purchasers Antitrust Litig.,* No. 05-360-SLR (D. Del.). ($65.7 million settlement on behalf of indirect purchasers who claimed that the manufacturers of a cholesterol drug engaged in anticompetitive conduct designed to keep generic versions off of the market.);

⇒ *Physicians of Winter Haven LLC, d/b/a Day Surgery Center v. STERIS Corporation,* No. 1:10-cv-00264-CAB (N.D. Ohio). ($20 million settlement on behalf of hospitals and surgery centers that purchased a sterilization device that allegedly did not receive the required pre-sale authorization from the FDA.);

⇒ *West v. ExamSoft Worldwide, Inc.*, No. 14-cv-22950-UU (S.D. Fla.) ($2.1 million settlement on behalf of July 2014 bar exam applicants in several states who paid to use software for the written portion of the exam which allegedly failed to function properly);

Practice Areas:

- Antitrust
- Automobile Defects and False Advertising
- Defective Products and Consumer Protection
- Other Complex Litigation
- Securities Fraud
- Data Breach

Education:

- Penn State Dickinson School of Law, J.D., 2005 - Woolsack Honor Society
- Penn State Harrisburg, M.B.A., 2004 - Beta Gamma Sigma Honor Society
- Washington and Lee University, B.S., 2002 - *cum laude*

Memberships & Associations:

- Executive Committee, Young Lawyers Division of the Philadelphia Bar Association (2011-2014)
- Board Member, The Dickinson School of Law Alumni Society
- Editorial Board, Philadelphia Bar Reporter (2013-2016)

Admissions:

- Third Circuit Court of Appeals
- D.C. Circuit Court of Appeals
- Eastern District of Pennsylvania
- Middle District of Pennsylvania
- District of New Jersey
- District of Colorado
- U.S. Court of Federal Claims

Honors:

- Named a "Lawyer on the Fast Track" by The Legal Intelligencer
- Named a Pennsylvania "Rising Star" 2010-2018
- Recognized as a "Top 40 Under 40" lawyer by The National Trial Lawyers

- ⇒ *Henderson, v. Volvo Cars of North America, LLC,* No. 2:09-cv-04146-CCC-JAD (D. N.J.). (provided substantial assistance in this consumer automobile case that settled after the plaintiffs prevailed, in large part, on a motion to dismiss);
- ⇒ *In re Marine Hose Antitrust Litig.,* No. 08-MDL-1888 (S.D. Fla.) (Settlements totaling nearly $32 million on behalf of purchasers of marine hose);
- ⇒ *In re Philips/Magnavox Television Litig.,* No. 2:09-cv-03072-CCC-JAD (D. N.J.). (Settlement in excess of $4 million on behalf of consumers whose flat screen televisions failed due to an alleged design defect. Ben argued against one of the motions to dismiss.);
- ⇒ *Allison, et al. v. The GEO Group*, No. 2:08-cv-467-JD (E.D. Pa.), and *Kurian v. County of Lancaster*, No. 2:07-cv-03482-PD (E.D. Pa.). (Settlements totaling $5.4 million in two civil rights class action lawsuits involving allegedly unconstitutional strip searches at prisons);
- ⇒ *In re Canon Inkjet Printer Litig*., No. 2-14-cv-03235-LDW-SIL (E.D.N.Y.) (Ben was co-lead counsel in this consumer class action involving allegedly defective printers that resulted in a $930,000 settlement.);
- ⇒ *In re Recoton Sec. Litig.*, 6:03-cv-00734-JA-KRS (M.D.Fla.). ($3 million settlement for alleged violations of the Securities Exchange Act of 1934); and
- ⇒ *Smith v. Gaiam, Inc.*, No. 09-cv-02545-WYD-BNB (D. Colo.). (Obtained a settlement in this consumer fraud case that provided full recovery to approximately 930,000 class members).

Ben has also had success at the appellate level in cases to which he substantially contributed. *See Cohen v. United States*, 578 F.3d 1 (D.C. Cir. 2009), *reh'g granted per curiam*, 599 F.3d 652 (D.C. Cir. 2010), *remanded by*, 650 F.3d 717 (D.C. Cir. 2011) (en banc) (reversing district court's decision to the extent that it dismissed taxpayers' claims under the Administrative Procedure Act); *Lone Star Nat'l Bank, N.A. v. Heartland Payment Sys.*, No. 12-20648, 2013 U.S. App. LEXIS 18283 (5th Cir. Sept. 3, 2013) (reversing district court's decision dismissing financial institutions' common law tort claims against a credit card processor).

Ben was elected to and served a three year term on the Executive Committee of the Philadelphia Bar Association's Young Lawyers Division (2011-2014). He also served on the Editorial Board of the Philadelphia Bar Reporter, and is presently on the Board of Directors for the Dickinson School of Law Alumni Society. Ben was also a head coach in the Narberth basketball summer league for several years. He has been published in the Philadelphia Lawyer magazine and the Philadelphia Bar Reporter, presented a Continuing Legal Education course to fellow lawyers, and spoken to a class of law school students about the practice. While in college, Ben was on the varsity basketball team and spent a semester studying abroad in Osaka, Japan. Ben has been named a "Lawyer on the Fast Track" by The Legal Intelligencer, a "Top 40 Under 40" attorney by The National Trial Lawyers, and a Pennsylvania "Rising Star" for the past five years.

Scott M. Tucker



Scott M. Tucker is a Partner in the Firm's Wilmington Office. Mr. Tucker is a member of the Firm's Mergers & Acquisitions and Corporate Mismanagement and Shareholder Derivative Action practice areas. Together with the Firm's Partners, Mr. Tucker assisted in the prosecution of the following actions:

- *In re Kinder Morgan, Inc. Shareholders Litigation*, Consol. C.A. No. 06-C-801 (Kan.) (action challenging the management led buyout of Kinder Morgan Inc., which settled for $200 million).
- *In re J.Crew Group, Inc., Shareholders Litigation.* C.A. No. 6043-CS (Del. Ch.) (action that challenged the fairness of a going private acquisition of J.Crew by TPG and members of J.Crew's management which resulted in a settlement fund of $16 million and structural changes to the go-shop process, including an extension of the go-shop process, elimination of the buyer's informational and matching rights and requirement that the transaction be approved by a majority of the unaffiliated shareholders).
- *In re Genentech, Inc. Shareholder Litigation*, C.A. No. 3911-VCS (Del. Ch.) (action challenging the attempt by Genentech's controlling stockholder to take Genentech private which resulted in a $4 billion increase in the offer).
- *City of Roseville Employees' Retirement System, et al. v. Ellison, et al.*, C.A. No. 6900-VCP (Del. Ch.) (action challenging the acquisition by Oracle Corporation of Pillar Data Systems, Inc., a company majority-owned and controlled by Larry Ellison, the Chief Executive Officer and controlling shareholder of Oracle, which led to a settlement valued at $440 million, one of the larger derivative settlements in the history of the Court of Chancery.
- *In re Sanchez Derivative Litigation*, C.A. No. 9132-VCG (Del. Ch.) (action challenging a related party transaction between Sanchez Energy Inc. and Sanchez Resources, LLC a privately held company, which settled for roughly $30 million in cash and assets)

Mr. Tucker is a Member of the Richard S. Rodney Inn of Court. While attending law school, Mr. Tucker was a member of the Securities Arbitration Clinic and received a Corporate Counsel Certificate from the Center for Law and Business Enterprise.

Practice areas:

- Corporate Mismanagement and Shareholder Derivative Actions
- Mergers and Acquisitions

Education:

- SUNY Cortland, B.S., 2002, *cum laude*
- Syracuse University College of Law, 2006, J.D., *cum laude*
- Whitman School of Management at Syracuse University, 2006, M.B.A

Memberships and Associations:

- Board of Bar Examiners of the Supreme Court of the State of Delaware, Secretary

Admissions:

- Supreme Court of Delaware
- Supreme Court of Connecticut
- District of Colorado
- District of Delaware
- Third Circuit Court of Appeals

Honors:

- Named a 2016 and 2017 Delaware "Rising Star"
- Martindale Hubbell-Distinguished rated
- 2015–2017 Secretary of the Board of Bar Examiners of the Supreme Court of the State of Delaware
- 2013 – 2015 Assistant Secretary of the Board of Bar Examiners of the Supreme Court of the State of Delaware
- 2010 – 2013 Associate Member of the Board of Bar Examiners of the Supreme Court of the State of Delaware
- Member, Richard S. Rodney Inn of Court

Anthony Allen Geyelin



Tony is of Counsel to the firm at the Haverford office, where for the last decade he has used his extensive private and public sector corporate and regulatory experience to assist the firm in the effective representation of its many clients. Tony has previously worked as an associate in the business department of a major Philadelphia law firm; served as Chief Counsel and then Acting Insurance Commissioner with the Pennsylvania Insurance Department in Harrisburg; and represented publicly traded insurance companies based in Pennsylvania and Georgia as their senior vice president, general counsel and corporate secretary.

Tony has represented the firm's clients in a number of significant litigations, including the AHERF, Air Cargo, Certainteed, Cipro, Clear Channel, Del Monte, Honda Hybrid Vehicles, Insurance Brokers, iPhone LDI, Intel, Marine Hoses, Phoenix Leasing, and Reliance Insolvency matters.

Outside of the office Tony's pro bono, professional and charitable activities have included volunteering as a Federal Public Defender; service as a member and officer of White-Williams Scholars, the Schuylkill Canal Association, and the First Monday Business Club of Philadelphia; and serving as a member of the National Association of Insurance Commissioners and the Radnor Township (PA) Planning Commission.

Practice Areas:

- Antitrust
- Automotive Defects and False Advertising
- Defective Products and Consumer Protection
- Other Complex Litigation

Education:

- Villanova Law School, J.D. - *cum laude*
  - ◊ *Villanova Law Review*, Associate Editor
  - ◊ *Villanova Moot Court Board*
  - ◊ Obert Corporation Law Prize
- University of Virginia, B.A., English literature

Memberships & Associations:

- Pennsylvania Bar Association
- Passe´ International

Admissions:

- Pennsylvania
- Eastern District of Pennsylvania
- Federal Circuit

Our Attorneys-Associates

Practice Areas:

- Corporate Mismanagement & Shareholder Derivative Action
- Mergers & Acquisitions
- Securities Fraud

Education:

- University of Virginia School of Law, J.D., 2008
- University of Virginia, B.A., 2004

Memberships & Associations:

- Delaware State Bar Association
- The Richard S. Rodney American Inn of Court

Admissions:

- Supreme Court of Delaware
- District of Delaware
- Supreme Court of New York
- ·Supreme Court of Connecticut

Vera G. Belger



Vera G. Belger is an associate in the Wilmington office. Ms. Belger's practice focuses on shareholder and unitholder class and derivative actions arising pursuant to Delaware law. Together with the Firm's Partners, Ms. Belger has assisted in the prosecution of the following actions:

- *In re Barnes & Noble Stockholder Derivative Litigation,* C.A. No. 4813-CS (Del. Ch.) (Co-Lead Counsel in the Court of Chancery derivative litigation arising from Barnes & Noble, Inc.'s acquisition of Barnes & Noble College Booksellers, Inc., which resulted in a settlement of nearly $30 million).
- *City of Roseville Employees' Retirement System, et al. v. Ellison, et al.,* C.A. No. 6900-VCP (Del. Ch.) (Co-Lead Counsel in the Court of Chancery derivative action challenging the acquisition by Oracle Corporation of Pillar Data Systems, Inc., a company majority-owned and controlled by Larry Ellison, the Chief Executive Officer and largest shareholder of Oracle, which led to a settlement valued at $440 million, one of the larger derivative settlements in the history of the Court of Chancery).
- *In re Freeport McMoRan Copper & Gold, Inc. Derivative Litig.,* C.A. No. 8145-VCN (Del. Ch.) (Co-Lead Counsel in the Court of Chancery derivative litigation which produced an unprecedented result including a $147.5 million dividend to be paid to Freeport's shareholders and substantial corporate governance and other benefits).
- *In re Wilmington Trust Securities Litigation,* C.A. No. 10-cv-990-EJR (U.S. Dist. Ct. Del. (Liaison Counsel in federal action alleging reckless failure of a banking institution that had been one of Delaware's most respected corporations for generations).

Ms. Belger's pro bono activities include serving as a guardian ad litem through the Office of the Child Advocate. While attending law school, Ms. Belger was a Board Member of the Public Interest Law Association Board and a participant in the William Minor Lile Moot Court Competition. Following graduation, Ms. Belger was an associate with an international law firm where she practiced complex commercial litigation.

Practice Areas:

- Corporate Mismanagement & Shareholder Derivative Action
- Mergers & Acquisitions

Education:

- Villanova University School of Law, J.D., 2007
  - ◊ Co-President of Asian-Pacific American Law Students Association
- Tufts University, B.A., 2002 – *cum laude* in Political Science

Memberships & Associations:

- Delaware State Bar Association
- The Richard S. Rodney American Inn of Court

Admissions:

- Delaware, 2007
- U.S. District Court for the District of Delaware, 2008

Tiffany J. Cramer



Tiffany J. Cramer is an associate in the Wilmington office. Her entire practice is devoted to litigation, with an emphasis on corporate mismanagement & derivative stockholder actions and mergers & acquisitions.

Together with the Firm's Partners, Ms. Cramer has assisted in the prosecution of numerous shareholder and unitholder class and derivative actions arising pursuant to Delaware law, including:

- *In re Barnes & Noble Stockholder Derivative Litigation*, C.A. No. 4813-CS (Del. Ch.) (Co-Lead Counsel in the Court of Chancery derivative litigation arising from Barnes & Noble, Inc.'s acquisition of Barnes & Noble College Booksellers, Inc., which resulted in a settlement of nearly $30 million).
- *In re Atlas Energy Resources, LLC Unitholder Litigation*, Consol. C.A. No. 4589-VCN (Co-Lead Counsel in the Court of Chancery class action litigation challenging Atlas America, Inc.'s acquisition of Atlas Energy Resources, LLC, which resulted in a settlement providing for an additional $20 million fund for former Atlas Energy Unitholders).
- *In Re Genentech, Inc. Shareholders Litigation*, Consol. C.A. No. 3911-VCS (Del. Ch.) (Co-Lead Counsel in the Court of Chancery class action litigation challenging Roche Holding's buyout of Genentech, Inc., which resulted in a settlement providing for, among other things, an additional $4 billion in consideration paid to the minority shareholders of Genentech, Inc.).
- *City of Roseville Employees' Retirement System, et al. v. Ellison, et al.*, C.A. No. 6900-VCP (Del. Ch.) (Co-Lead Counsel in the Court of Chancery derivative action challenging the acquisition by Oracle Corporation of Pillar Data Systems, Inc., a company majority-owned and controlled by Larry Ellison, the Chief Executive Officer and largest shareholder of Oracle, which led to a settlement valued at $440 million, one of the larger derivative settlements in the history of the Court of Chancery).
- *In re Freeport McMoRan Copper & Gold, Inc. Deriv. Litig.,* C.A. No. 815-VCN (Del. Ch.) (Co-Lead Counsel in Court of Chancery derivative litigation arising from Freeport McMoRan Copper & Gold, Inc.'s acquisition of Plains Exploration Production Co. and McMoran Exploration Production Co, which led to a settlement valued at nearly $154 million, including an unprecedented $147.5 million dividend paid to Freeport's stockholders).

While in law school, she served as law clerk to the Honorable Jane R. Roth of the United States Court of Appeals for the Third Circuit. While in college, she played the bassoon as a member of the Tufts Symphony Orchestra.

Practice Areas:

- Antitrust
- Corporate Mismanagement
- Consumer Fraud & Defective Products
- Whistleblower/False Claims Act
- Employee Benefits/ ERISA

Education:

- Villanova University School of Law, J.D., 2012
    - ♦ Journal of Catholic Social Thought – Executive Editor (2011-2012),
- Georgetown University, B.A. (Government), 2009

Memberships and Associations:

- Member, Philadelphia Bar Association
- Member, Georgetown University Alumni Admissions Program (AAP)
- Member, Young Friends of the Philadelphia Orchestra

Admissions:

- Admitted, Pennsylvania Bar
- Admitted, New Jersey Bar
- Admitted, District of Columbia Bar
- Admitted, United States District Court for the Eastern District of Pennsylvania
- Admitted, United States District Court for the District of New Jersey
- Admitted, United States District Court for the District of Columbia
- Admitted, United States District Court for the District of Colorado

Honors:

- Pennsylvania Super Lawyers Rising Star 2016, 2017, & 2018

Andrew W. Ferich



Andrew W. Ferich is an associate in the Firm's Haverford office. Andy focuses his practice on complex litigation, including in the Firm's consumer protection and whistleblower/qui tam practice groups. Prior to joining the Firm, Andy was an associate at an international litigation firm in Philadelphia where he focused his practice on commercial litigation, financial services litigation, and antitrust matters. Andy possesses major jury trial experience. Andy has assisted in prosecuting the following matters, among others:

- Brickman, et al. v. HomeAway, Inc., et al., No. 1:16-cv-00733-LY (W.D. Tex.) (consumer class action on behalf of owners of rental/ vacation properties across the country alleging that owners entered into rental listing subscription agreements with HomeAway and its websites based upon the false and broken promise that renters and travelers would never be assessed a fee at booking);
- DeMarco, et al. v. AvalonBay Communities, Inc., et al., No. 2:15-cv-00628-JLL-JAD (D.N.J.) (settled class action lawsuit on behalf of hundreds of tenants and former tenants of AvalonBay community that was destroyed in a massive fire, in which case C&T has been appointed interim co-lead counsel);
- In re Anadarko Basin Oil and Gas Lease Antitrust Litigation, No. 16-cv-0238-M (W.D. Okla.) (antitrust action under federal antitrust laws brought on behalf of a class of landowners who leased land to defendants for drilling for natural gas and received less in lease bonuses and royalties than they should have due to defendants' anticompetitive lease bid-rigging scheme);
- In re: Elk Cross Timbers Decking Marketing, Sales Practices and Products Liability Litigation, No. 2;15-cv-00018-JLL-JAD (D.N.J.) (litigated this products liability case relating to allegedly defective wood-composite decking to a settlement; C&T was appointed to the Plaintiffs' Steering Committee in this MDL proceeding which ultimately resulted in a settlement valued at approximately $20 million);
- Rollolazo et al. v. BMW of North America, LLC, et al, No. 8:16-cv-00966-BRO-SS (C.D. Cal.) (prosecuting a class action lawsuit against BMW on behalf of owners of the BMW i3 REx—a plug-in electric hybrid vehicle with a gas engine known as a Range Extender—wherein Plaintiffs have alleged that a defect in the Range Extender causes class vehicles;
- Gordon, et al. v. Chipotle Mexican Grill, Inc., No. 1:17-cv-01415-

CMA (D. Colo.) (litigating this class action relating to a data breach suffered by Chipotle that allegedly exposed consumers' payment card data to hackers, in which case C&T has been appointed interim co-lead counsel);

- In re Nexus 6P Prods. Liab. Litig., No. 5:17-cv-02185-BLF (N.D. Cal.) (class action lawsuit alleging that smartphones manufactured by Google and Huawei contain defects that cause the phones to "bootloop" and experience sudden battery drain; C&T has been appointed interim co-lead class counsel);
- Williams v. Butler & Hosch, P.A., No. 0:15-cv-61139-CMA (S.D. Fla.) (obtained class certification in this class action lawsuit on behalf of hundreds of former employees improperly terminated under the WARN Act);
- Davis, et al. v. Washington University in St. Louis, et al., No. 4:17-cv-01641-RLW (E.D. Mo.) (ERISA class action alleging excessive fees and other breaches of fiduciary duty relating to university 403(b) retirement plan);
- Weeks, et al. v. Google LLC, No. 5:18-cv-00801-NC (N.D. Cal.) (consumer class action against Google relating to Pixel smartphones alleging that Google sold these phones with a known defect);
- Bray, et al. v. GameStop Corp., No. 1:17-cv-01365 (D. Del.) (consumer class action relating to a data breach that exposed the personal and payment card information of consumers who made purchases through defendant's website; C&T has been appointed interim co-lead counsel) and;
- Stanley, et al. v. The George Washington University, No. 1:18-cv-00878 (D.D.C.)(ERISA class action alleging excessive fees and other breaches of fiduciary duty relating to university 403(b) retirement plan).

Andy received his law degree from Villanova University School of Law in 2012. While in law school, Andy clerked for a small suburban Philadelphia law firm. Prior to law school, Andy attended Georgetown University and was a member of the baseball team. During his time in college, Andy also worked on Capitol Hill and for a well-known D.C. think tank. Andy is admitted to practice in Pennsylvania, New Jersey, and the District of Columbia.

Alison Gabe Gushue



Alison G. Gushue is an associate in the Firm's Haverford Office. Her practice is devoted to litigation, with an emphasis on consumer fraud, securities, and derivative cases. Ms. Gushue also provides assistance to the Firm's Institutional Client Services Group.

Prior to joining the firm, Ms. Gushue was counsel to the Pennsylvania Securities Commission in the Division of Corporation Finance. In this capacity, she was responsible for reviewing securities registration filings for compliance with state securities laws and for working with issuers and issuers' counsel to bring noncompliant filings into compliance.

Together with the Partners, Ms. Gushue has provided substantial assistance in the prosecution of the following cases:

- *Lockabey et al. v. American Honda Motor Co., Inc.*, Case No. 37-2010 -00087755-CU-BT (San Diego Super. Ct.) (settlement valued by court at $170 million for a class of 460,000 purchasers and lessees of Honda Civic Hybrids to resolve claims that the vehicle was advertised with fuel economy representations it could not achieve under real-world driving conditions, and that a software update to the IMA system further decreased fuel economy and performance)
- *In re DVI Inc. Securities Litigation*, Case No. 2:03-cv-05336-LDD (over $17m in settlements recovered for the shareholder class in lawsuit alleging that the company's officers and directors, in conjunction with its external auditors and outside counsel, violated the federal securities laws)
- *In re LG Front Loading Washing Machine Litigation*, Case No. 2:08-cv -61 (D.N.J); and In re Whirlpool Front Loading Washing Machine Litigation, Case No. 1:08-wp-65000 (N.D. Oh.) (pending cases which allege that LG and Whirlpool's front loading washing machines suffer from a defect that leads to the formation of mold and mildew on the inside of the washing machines and production of foul and noxious odors)

Ms. Gushue has also provided pro bono legal services to nonprofit organizations in Philadelphia such as the Philadelphia Bankruptcy Assistance Project and the Public Interest Law Center of Philadelphia.

Practice Areas:

- Automobile Defects and False Advertising
- Defective Products and Consumer Protection
- Other Complex Litigation
- Securities Fraud

Education:

- Villanova University School of Law, J.D., 2006
  - ◊ Villanova Environmental Law Journal – managing editor of student works (2006), staff writer (2005)
- University of California, Los Angeles, B.A., 2003 – *cum laude*

Membership & Associations:

- Member, Philadelphia Bar Association

Admissions:

- Pennsylvania
- New Jersey
- Eastern District of Pennsylvania
- District of New Jersey

Honors:

- Pennsylvania Super Lawyers Rising Star 2013-2016

Practice Areas:

- Securities Fraud Class Actions & Complex Litigation
- Consumer Protection and Multi-District Litigation
- Antitrust
- Other Complex Litigation/ Mass Actions

Education:

- University of Miami School of Law, J.D. 2013– cum laude
  - ◊ University of Miami NSAC Law Review
  - ◊ Dean's List-Spring 2013 (4.0 GPA); Spring 2012; Fall 2012
  - ◊ Advanced Business Litigation Skills-honors recognition
- University of Miami, B.B.A.,2009-Finance

Admissions:

- Member, Florida Bar
- Member, Pennsylvania Bar
- Member, New Jersey Bar
- Admitted, United States District Court for the Southern District of Florida
- Admitted, United States District Court for the District of New Jersey

Publications:

- Practicing Law Institute's 23rd Annual Consumer Financial Services Institute - Chapter 57: The Impact of *Payment Card II* on Class Action Litigation & Settlements

Honors:

- Pennsylvania Super Lawyers Rising Star 2018

Mark B. DeSanto



Mark B. DeSanto is an Associate Attorney in the Firm's Haverford office. He has extensive experience in securities, consumer protection, and data privacy class actions. Prior to joining the Firm, he was an attorney in the Radnor office of a national class action law firm where he represented sophisticated institutional and individual investors in complex class actions against corporate defendants and their executives for violations of federal securities laws, as well as consumers in nationwide consumer protection class actions, including the following:

- *In re St. Jude Medical, Inc. Securities Litigation*, Civ. No. 10-0851 (D. Minn.) (settled — $39.25 million) (represented financial institutions in class action lawsuit brought on behalf of all St. Jude Medical Inc. shareholders, alleging that the company and its executives violated Sections 10(b) and 20(a) of the Securities Exchange Act of 1934);
- *In re Target Corporation Customer Data Security Breach Litigation*, MDL No. 14–2522 (D. Minn.) (settled — $39 million) (represented a class of payment card issuing financial institutions in nationwide class action against Target for its highly-publicized 2013 data breach in which roughly 110 million Target customers' personal and financial information was compromised by hackers);
- *Washtenaw County Employees' Retirement System v. Walgreen Co. et al.*, Civ. No. 1:15-cv-03187 (N.D. Ill.) (represented financial institutions in class action lawsuit brought on behalf of all Walgreens shareholders, alleging that the company and its executives violated Sections 10(b) and 20(a) of the Securities Exchange Act of 1934);
- *Louisiana Municipal Police Employees' Retirement System v. Green Mountain Coffee Roasters, Inc. et al.*, Civ. No. 2:11-cv-00289 (D. Vt.) (represented financial institutions in class action lawsuit brought on behalf of all Keurig Green Mountain shareholders, alleging that the company and its executives violated Sections 10(b) and 20(a) of the Securities Exchange Act of 1934);
- *Hotz v. Galectin Therapeutics, Inc. et al.*, No. 16-10324-EE (11th Cir.) (represented individual investor in class action lawsuit, and Eleventh Circuit appeal, on behalf of all Galectin shareholders, alleging that the company and its executives violated Sections 10(b) and 20(a) of the Securities Exchange Act of 1934);
- *Maeve Investment Company Limited Partnership v. Teekay Corp. et al.*, Civ. No. 2:16-cv-01908-JLR (W.D. Wash.) (represented financial institutions in class action lawsuit brought on behalf of all Teekay

shareholders, alleging that the company and its executives violated Sections 10(b) and 20(a) of the Securities Exchange Act of 1934);

- *Dennington et al. v. State Farm Fire & Casualty Co. et al*., Civ. No. 4:14-cv-04001-SOH (W.D. Ark.) (represented a class of State Farm insureds in nationwide class action against State Farm alleging that it breached its homeowners insurance policies by unlawfully depreciating labor when calculating actual cash value payments to insureds);
- *Green v. American Modern Home Ins. Co.*, Civ. No. 4:14-cv-04074-SOH (W.D. Ark.) (represented a class of American Modern insureds in nationwide class action against American Modern alleging that it breached its homeowners insurance policies by unlawfully depreciating labor when calculating actual cash value payments to insureds); and
- *Larey et al. v. Allstate Property and Casualty Co.*, Civ. No. 14-cv-04008-SOH (W.D. Ark.) (represented a class of Allstate insureds in nationwide class action against Allstate alleging that it breached its homeowners insurance policies by unlawfully depreciating labor when calculating actual cash value payments to insureds).

Mr. DeSanto is admitted to practice law in Pennsylvania, New Jersey, and Florida. He earned his Juris Doctor, cum laude, from the University of Miami School of Law in 2013, where he was also a member of the NSAC Law Review. During his second and third years of law school, Mr. DeSanto worked at a boutique securities litigation firm on Brickell Avenue in Downtown Miami. Mr. DeSanto earned his Bachelor of Business Administration, with a major in Finance, from the University of Miami in 2009.

Stephanie E. Saunders



Stephanie E. Saunders is an associate in the Firm's Haverford office. She focuses her practice on complex litigation including securities fraud, shareholder derivative, and consumer protection cases. She also provides assistance to the Firm's Client Development Group which is responsible for establishing and maintaining strong client relations.

Stephanie received her law degree from the Drexel University Thomas R. Kline School of Law in 2015. Her law school career was marked by several academic honors which included being named the CALI Excellence for the Future Award® recipient in Legal Methods & Legal Writing for earning the highest grade in the class. While in law school, she clerked for the Firm and conducted her practice-intensive semester long co-op with the Firm during her second year of law school.

Upon graduating from Drexel University's LeBow College of Business in 2005, Stephanie began her professional career in marketing. She was an integrated marketing and promotions manager with Condé Nast Publications in Manhattan where she managed and executed print and digital advertising campaigns. Upon returning to the Philadelphia region, she joined PNC Wealth Management where she was the marketing segment manager of Hawthorn, an ultra-high net worth multi-family office, where she was responsible for the development of integrated marketing plans, advertising, and client events.

Practice Areas:

- Securities Fraud
- Corporate Mismanagement and Shareholder Derivative Action
- Defective Products and Consumer Protection
- Other Complex Litigation

Education:

- Drexel University Thomas R. Kline School of Law, J.D., 2015
- Drexel University, B.S. in Business Administration, 2005

Memberships and Associations:

- Member, Philadelphia Bar Association
- Member, Pennsylvania Bar Association

Admissions:

- Pennsylvania, 2015

Zachary P. Beatty

Practice Areas:

- Securities Fraud
- Corporate Mismanagement and Shareholder Derivative Action
- Defective Products and Consumer Protection
- Other Complex Litigation

Education:

- Michigan State University College of Law, J.D. *summa cum laude*, 2017
- Michigan State Law Review – managing editor (2016-2017), staff editor (2015-2016)
- York College of Pennsylvania, B.A. *magna cum laude*, 2013

Admissions:

- Pennsylvania



Zachary P. Beatty is an associate in the Firm's Haverford office. He focuses his practice on complex litigation including securities fraud, shareholder derivative suits, and consumer protection class actions.

Zachary received his law degree from Michigan State University College of Law in 2017. While in law school, Zachary served as a managing editor for the Michigan State Law Review. His law school career was marked by several academic honors including earning Jurisprudence Awards for receiving the highest grades in his Corporate Finance, Business Enterprises, Constitutional Law II, and Advocacy classes. Zachary clerked for a small central Pennsylvania law firm and clerked for the Honorable Carol K. McGinley in the Lehigh County Court of Common Pleas. He also clerked for the Firm's Haverford office. Zachary graduated from York College of Pennsylvania where he majored in history.

Beena M. McDonald



Beena Mallya McDonald is a staff attorney in the Firm's Haverford office. She focuses her practice on complex litigation including securities fraud and consumer protection cases. She also serves as a part of the firm's Client Business Development group, responsible for overseeing client portfolio monitoring and evaluation services, and establishing and maintaining client relationships.

Upon receiving her law degree from Widener University Delaware Law School in 1998, Beena successfully tried hundreds of criminal cases as an Assistant Defender with Defender Association of Philadelphia. She has also served as lead counsel in civil trials and arbitrations throughout the Philadelphia area while in-house at Allstate Insurance Company. Most recently, she served as a Special Assistant U.S. Attorney in the Southern District of California where she prosecuted major corruption and drug importation cases.

Beena's extensive trial experience is also bolstered by her business management experience working for a Fortune 200 company, allowing her to bring this business acumen to her current practice on behalf of defrauded investors and consumers

Practice Areas:

- Securities Fraud
- Corporate Mismanagement and Shareholder Derivative Action
- Defective Products and Consumer Protection
- Other Complex Litigation
- Client Business Development

Education:

- Widener University Delaware Law School, J.D., 1998
- Pennsylvania State University, B.A., 1995

Memberships and Associations:

- Member, Philadelphia Bar Association
- Member, South Asian Bar Association, Philadelphia Chapter

Admissions:

- Pennsylvania
- District of Columbia

Practice Areas

Health & Welfare Fund Assets

C&T Protects Clients' Health & Welfare Fund Assets Through Monitoring Services & Vigorously Pursuing Health & Welfare Litigation.

At no cost to the client, C&T seeks to protect its clients' health & welfare fund assets against fraud and other wrongdoing by monitoring the health & welfare fund's drug purchases, Pharmacy benefit Managers and other health service providers. In addition, C&T investigates potential claims and, on a fully-contingent basis, pursues legal action for the client on meritorious claims involving the clients' heath & welfare funds. These claims could include: the recovery of excessive charges due to misconduct by health service providers; antitrust claims to recover excessive prescription drug charges and other costs due to corporate collusion and misconduct; and, cost-recovery claims where welfare funds have paid for health care treatment resulting from defective or dangerous drugs or medical devices.

Monitoring Financial Investments

C&T Protects Clients' Financial Investments Through Securities Fraud Monitoring Services.

Backed by extensive experience, knowledge of the law and successes in this field, C&T utilizes various information systems and resources (including forensic accountants, financial analysts, seasoned investigators, as well as technology and data collection specialists, who can cut to the core of complex financial and commercial documents and transactions) to provide our institutional clients with a means to actively protect the assets in their equity portfolios. As part of this no-cost service, for each equity portfolio, C&T monitors relevant financial and market data, pricing, trading, news and the portfolio's losses. C&T investigates and evaluates potential securities fraud claims and, after full consultation with the client and at the client's direction, C&T will, on a fully-contingent basis, pursue legal action for the client on meritorious securities fraud claims.

Corporate Transactional

C&T Protects Shareholders' Interest by Holding Directors Accountable for Breaches of Fiduciary Duties

Directors and officers of corporations are obligated by law to exercise good faith, loyalty, due care and complete candor in managing the business of the corporation. Their duty of loyalty to the corporation and its shareholders requires that they act in the best interests of the corporation at all times. Directors who breach any of these "fiduciary" duties are accountable to the stockholders and to the corporation itself for the harm caused by the breach. A substantial part of the practice of Chimicles & Tikellis LLP involves representing shareholders in bringing suits for breach of fiduciary duty by corporate directors.

Practice Areas

Securities Fraud

C&T Protects and Recovers Clients' Assets Through the Vigorous Pursuit of Securities Fraud Litigation.

C&T has been responsible for recovering over $1 billion for institutional and individual investors who have been victims of securities fraud. The prosecution of securities fraud often involves allegations that a publicly traded corporation and its affiliates and/or agents disseminated materially false and misleading statements to investors about the company's financial condition, thereby artificially inflating the price of that stock. Often, once the truth is revealed, those who invested at a time when the company's stock was artificially inflated incur a significant drop in the value of their stock. C&T's securities practice group comprises seasoned attorneys with extensive trial experience who have successfully litigated cases against some of the nation's largest corporations. This group is strengthened by its use of forensic accountants, financial analysts, and seasoned investigators.

Antitrust and Unfair Competition

C&T Enforces Clients' Rights Against Those Who Violated Antitrust Laws.

C&T successfully prosecutes an array of anticompetitive conduct, including price fixing, tying agreements, illegal boycotts and monopolization, anticompetitive reverse payment accords, and other conduct that improperly delays the market entry of less expensive generic drugs . As counsel in major litigation over anticompetitive conduct by the makers of brand-name prescription drugs, C&T has helped clients recover significant amounts of price overcharges for blockbuster drugs such as BuSpar, Coumadin, Cardizem, Flonase , Relafen, and Paxil, Toprol-XL, and TriCor.

Real Estate Investment Trusts

C&T is a Trail Blazer in Protecting Clients' Investments in Non-Listed Equities.

C&T represents limited partners and purchaser of stock in limited partnerships and real estate investment trusts (non-listed REITs) which are publicly-registered but not traded on a national stock exchange. These entities operate outside the realm of a public market that responds to market conditions and analysts' scrutiny, so the investors must rely entirely on the accuracy and completeness of the financial and other disclosures provided by the company about its business, its finances, and the value of its securities. C&T prosecutes: (a) securities law violations in the sale of the units or stock; (b) abusive management practices including self-dealing transactions and the payment of excessive fees; (c) unfair transactions involving sales of the entities' assets; and (d) buy-outs of the investors' interests.

Practice Areas

Shareholder Derivative Action

C&T is a Leading Advocate for Prosecuting and Protecting Shareholder Rights through Derivative Lawsuits and Class Actions.

C&T is at the forefront of persuading courts to recognize that actions taken by directors (or other fiduciaries) of corporations or associations must be in the best interests of the shareholders. Such persons have duties to the investors (and the corporation) to act in good faith and with loyalty, due care and complete candor. Where there is an indication that a director's actions are influenced by self-interest or considerations other than what is best for the shareholders, the director lacks the independence required of a fiduciary and, as a consequence, that director's decisions cannot be honored. A landmark decision by the Supreme Court of Delaware underscored the sanctity of this principal and represented a major victory for C&T's clients.

Corporate Mismanagement

C&T is a Principal Advocate for Sound Corporate Governance and Accountability.

C&T supports the critical role its investor clients serve as shareholders of publicly held companies. Settlements do not provide exclusively monetary benefits to our clients. In certain instances, they may include long term reforms by a corporate entity for the purpose of advancing the interests of the shareholders and protecting them from future wrongdoing by corporate officers and directors. On behalf of our clients, we take corporate directors' obligations seriously. It's a matter of justice. That's why C&T strives not to only obtain maximum financial recoveries, but also to effect fundamental changes in the way companies operate so that wrongdoing will not reoccur.

Defective Products and Consumer Protection

C&T Protects Consumers from Defective Products and Deceptive Conduct.

C&T frequently represents consumers who have been injured by false advertising, or by the sale of defective goods or services. The firm has achieved significant recoveries for its clients in such cases, particularly in those involving defectively designed automobiles and other consumer products. C&T has also successfully prosecuted actions against banks and other large institutions for engaging in allegedly deceptive conduct.

Representative Cases

Securities Cases Involving Real Estate Investments

***CNL Hotels & Resorts Inc. Securities Litigation*, Case No. 6:04-CV-1231, United States District Court, Middle District of Florida.**

C&T was Lead Litigation Counsel in CNL Hotels & Resorts Inc. Securities Litigation**,** representing a Michigan Retirement System, other named plaintiffs and over 100,000 investors in this federal securities law class action that was filed in August 2004 against the nation's second largest hotel real estate investment trust, CNL Hotels & Resorts, Inc. (f/k/a CNL Hospitality Properties, Inc.) ("CNL Hotels") and certain of its affiliates, officers and directors. CNL raised over $3 billion from investors pursuant to what Plaintiffs alleged to be false and misleading offering materials. In addition, in June 2004 CNL proposed an affiliated-transaction that was set to cost the investors and the Company over $300 million ("Merger").

The Action was filed on behalf of: (a) CNL Hotels shareholders entitled to vote on the proposals presented in CNL Hotels' proxy statement dated June 21, 2004 ("Proxy Class"); and (b) CNL Hotels' shareholders who acquired CNL Hotels shares pursuant to or by means of CNL Hotels' public offerings, registration statements and/or prospectuses between August 16, 2001 and August 16, 2004 ("Purchaser Class").

The Proxy Class claims were settled by (a) CNL Hotels having entered into an Amended Merger Agreement which significantly reduced the amount that CNL Hotels paid to acquire its Advisor, CNL Hospitality Corp., compared to the Original Merger Agreement approved by CNL Hotels' stockholders pursuant to the June 2004 Proxy; (b) CNL Hotels having entered into certain Advisor Fee Reduction Agreements, which significantly reduced certain historic, current, and future advisory fees that CNL Hotels paid its Advisor before the Merger; and (c) the adoption of certain corporate governance provisions by CNL Hotels' Board of Directors. **In approving the Settlement, the Court concluded that in settling the Proxy claims, "a substantial benefit [was] achieved (estimated at approximately $225,000,000)" and "this lawsuit was clearly instrumental in achieving that result."** The Purchaser Class claims were settled by Settling Defendants' payment of **$35,000,000**, payable in three annual installments (January 2007 to January 2009).

On August 1, 2006, the Federal District Court in Orlando, Florida granted final approval of the Settlement as fair, reasonable, and adequate, and in rendering its approval of an award of attorneys' fees and costs to Plaintiffs' Counsel, the Court noted that "Plaintiffs' counsel pursued this complex case diligently, competently and professionally" and "achieved a successful result." More than 100,000 class members received notice of the proposed settlement and no substantive objection to the settlement, plan of allocation or fee petition was voiced by any class member.

Representative Cases

Securities Cases Involving Real Estate Investments

***In re Real Estate Associates Limited Partnership Litigation*, Case No. CV 98-7035, United States District Court, Central District of California.**

Chimicles & Tikellis LLP achieved national recognition for obtaining, in a federal securities fraud action, the first successful plaintiffs' verdict under the PSLRA. Senior partner Nicholas E. Chimicles was Lead Trial Counsel in the six-week jury trial in federal court in Los Angeles, in October 2002. The jury verdict, in the amount of $185 million (half in compensatory damages; half in punitive damages), was ranked among the top 10 verdicts in the nation for 2002. After the court reduced the punitive damage award because it exceeded California statutory limits, the case settled for $83 million, representing full recovery for the losses of the class**.** At the final hearing, held in November 2003, the Court praised Counsel for achieving both a verdict and a settlement that "qualif[ied] as an exceptional result" in what the Judge regarded as "a very difficult case…" In addition, the Judge noted the case's "novelty and complexity…and the positive reaction of the class. Certainly, there have been no objections, and I think Plaintiffs' counsel has served the class very well."

Case Summary: In August of 1998, over 17,000 investors ("Investor Class") in 8 public Real Estate Associates Limited Partnerships ("REAL Partnerships") were solicited by their corporate managing general partner, defendant National Partnership Investments Corp. ("NAPICO"), and other Defendants via Consent Solicitations filed with the Securities and Exchange Commission ("SEC"), to vote in favor of the sale of the REAL Partnerships' interests in 98 limited partnerships ("Local Partnerships"). In a self-dealing and interested transaction, the Investor Class was asked to consent to the sale of these interests to NAPICO's affiliates ("REIT Transaction"). In short, Plaintiffs alleged that defendants structured and carried out this wrongful and self-dealing transaction based on false and misleading statements, and omissions in the Consent Solicitations, resulting in the Investor Class receiving grossly inadequate consideration for the sale of these interests. Plaintiffs' expert valued these interests to be worth a minimum of $86,523,500 (which does not include additional consideration owed to the Investor Class), for which the Investor Class was paid only $20,023,859.

Plaintiffs and the Certified Class asserted claims under Section 14 of the Securities Exchange Act of 1934 ("the Exchange Act"), alleging that the defendants caused the Consent Solicitations to contain false or misleading statements of material fact and omissions of material fact that made the statements false or misleading. In addition, Plaintiffs asserted that Defendants breached their fiduciary duties by using their positions of trust and authority for personal gain at the expense of the Limited Partners. Moreover, Plaintiffs sought equitable relief for the Limited Partners including, among other things, an injunction under Section 14 of the Exchange Act for violation of the "anti-bundling rules" of the SEC, a declaratory judgment decreeing that defendants were not entitled to indemnification from the REAL Partnerships.

Trial: This landmark case is the *first* Section 14 – proxy law- securities class action seeking damages, a significant monetary recovery, for investors that has been tried, and ultimately won, before a jury anywhere in the United States since the enactment of the Private Securities Litigation Reform Act of 1995 ("PSLRA"). Trial began on October 8, 2002 before a federal court jury in Los Angeles. The jury heard testimony from over 25 witnesses, and trial counsel moved into evidence approximately 4,810 exhibits; out of those 4,810 exhibits, witnesses were questioned about, or referred to, approximately 180 exhibits.

Representative Cases

Securities Cases Involving Real Estate Investments

On November 15, 2002, the ten-member jury, after more than four weeks of trial and six days of deliberation, unanimously found that Defendants knowingly violated the federal proxy laws and that NAPICO breached its fiduciary duties, and that such breach was committed with oppression, fraud and malice. The jury's unanimous verdict held defendants liable for compensatory damages of $92.5 million in favor of the Investor Class. On November 19, 2002, a second phase of the trial was held to determine the amount of punitive damages to be assessed against NAPICO. The jury returned a verdict of $92.5 million in punitive damages. In total, trial counsel secured a unanimous jury verdict of $185 million on behalf of the Investor Class.

With this victory, Mr. Chimicles and the trial team secured the 10th largest verdict of 2002. (See, National Law Journal, "The Largest Verdicts of 2002", February 2, 3003; National Law Journal, "Jury Room Rage", Feb. 3. 2002). Subsequent to post-trial briefing and rulings, in which the court reduced the punitive damage award because it exceeded California statutory limits, the case settled for $83 million. The settlement represented full recovery for the losses of the class.

Prosecuting and trying this Case required dedication, tenacity, and skill: This case involved an extremely complex transaction. As Lead Trial Counsel, C&T was faced with having to comprehensively and in an understandable way present complex law, facts, evidence and testimony to the jury, without having them become lost (and thus, indifferent and inattentive) in a myriad of complex terms, concepts, facts and law. The trial evidence in this case originated almost exclusively from the documents and testimony of Defendants and their agents. As Lead Trial Counsel, C&T was able, through strategic cross-examination of expert witnesses, to effectively stonewall defendants' damage analysis. In addition, C&T conducted thoughtful and strategic examination of defendants' witnesses, using defendants' own documents to belie their testimony.

The significance of the case: The significance of this trial and the result are magnified by the public justice served via this trial and the novelty of issues tried. This case involved a paradigm of corporate greed, and C&T sent a message to not only the Defendants in this Action, but to all corporate fiduciaries, officers, directors and partners, that it does not pay to steal, lie and cheat. There needs to be effective deterrents, so that "corporate greed" does not pay. The diligent and unrelenting prosecution and trial of this case by C&T sent that message.

Moreover, the issues involved were novel and invoked the application of developing case law that is not always uniformly applied by the federal circuit courts. In Count I, Plaintiffs alleged that defendants violated § 14 of the Exchange Act. Subsequent to the enactment of the PLSRA, the primary relief sought and accorded for violations of the proxy laws is a preliminary injunction. Here, the consummation of the REIT Transaction foreclosed that form of relief. Instead, Plaintiffs' Counsel sought significant monetary damages for the Investor Class on account of defendants' violations of the federal proxy laws. C&T prevailed in overcoming defendants' characterization of the measure of damages that the Investor Class was required to prove (defendants argued for a measure of damages equivalent to the difference in the value of the security prior to and subsequent to the dissemination of the Consent Solicitations), and instead, successfully recouped damages for the value of the interests and assets given up by the Investor Class. The case is important in the area of enforcement of fiduciary duties in public partnerships which are a fertile ground for unscrupulous general partners to cheat the public investors.

Representative Cases

Securities Cases Involving Real Estate Investments

Aetna Real Estate Associates LP

Nicholas Chimicles and Pamela Tikellis represented a Class of unitholders who sought dissolution of the partnership because the management fees paid to the general partners were excessive and depleted the value of the partnership. The Settlement, valued in excess of $20 million, included the sale of partnership property to compensate the class members, a reduction of the management fees, and a special cash distribution to the class.

***City of St. Clair Shores General Employees Retirement System, et al. v. Inland Western Retail Real Estate Trust, Inc., Case No. 07 C 6174*, United States District Court, Northern District of Illinois .**

C&T was principal litigation counsel for the plaintiff class of stockholders that challenged the accuracy of a proxy statement that was used to secure stockholder approval of a merger between an external advisor and property managers and the largest retail real estate trust in the country. In 2010, in a settlement negotiation lead by the Firm, we succeeded in having $90 million of a stock, or 25% of the merger consideration, paid back to the REIT.

***Wells and Piedmont Real Estate Investment Trust, Inc., Securities Litigation, Case Nos. 1:07-cv-00862, 02660*, United States District Court, Northern District of Georgia.**

C&T served as co-lead counsel in this federal securities class action on behalf of Wells REIT/Piedmont shareholders. Filed in 2007, this lawsuit charged Wells REIT, certain of its directors and officers, and their affiliates, with violations of the federal securities laws for their conducting an improper, self-dealing transaction and recommending that shareholders reject a mid-2007 tender offer made for the shareholders' stock. On the verge of trial, the Cases settled for $7.5 million and the Settlement was approved in 2013.

***In re Cole Credit Property Trust III, Inc. Derivative and Class Litigation, Case No. 24-C-13-001563,* Circuit Court for Baltimore City.**

In this Action filed in 2013, C&T, as chair of the executive committee of interim class counsel, represents Cole Credit Property Trust III ("CCPT III") investors, who were, without their consent, required to give Christopher Cole (CCPT III's founder and president) hundreds of millions of dollars' worth of consideration for a business that plaintiffs allege was worth far less. The Action also alleges that, in breach of their fiduciary obligations to CCPT III investors, CCPT III's Board of Directors pressed forward with this wrongful self-dealing transaction rebuffing an offer from a third party that proposed to acquire the investors' shares in a $9 billion dollar deal. Defendants have moved to dismiss the complaint, and plaintiffs have filed papers vigorously opposing the motion.

Representative Cases

Securities Cases Involving Real Estate Investments

***Delaware County Employees Retirement Fund v. Barry M. Portnoy, et al.*, Case No. 1:13-cv-10405, United States District Court, District Court of Massachusetts.**

C&T is lead counsel in an action pending in federal court in Boston filed on behalf of Massachusetts-based CommonWealth REIT ("CWH") and its shareholders against CWH's co-founder Barry Portnoy and his son Adam Portnoy ("Portnoys"), and their wholly-owned entity Reit Management & Research, LLC ("RMR"), and certain other former and current officers and trustees of CWH (collectively, "Defendants"). The Action alleges a long history of management abuse, self-dealing, and waste by Defendants, which conduct constitutes violations of the federal securities laws and fiduciary duties owed by Defendants to CWH and its shareholders. Plaintiff seeks damages and to enjoin Defendants from any further self-dealing and mismanagement. The Defendants sought to compel the Plaintiff to arbitrate the claims, and Plaintiff has vigorously opposed such efforts on several grounds including that CWH and its shareholders did not consent to arbitration and the arbitration clause is facially oppressive and illegal. The parties are awaiting the Court's ruling on that matter.

***In re Empire State Realty Trust, Inc. Investor Litigation, Case 650607/2012,* New York Supreme Court.**

In this action filed in 2012, C&T represents investors who own the Empire State Building, as well as several other Manhattan properties, whose interests and assets are proposed to be consolidated into a new entity called Empire State Realty Trust Inc. The investors filed an action against the transaction's chief proponents, members of the Malkin family, certain Malkin-controlled companies, and the estate of Leona Helmsley, claiming breaches of fiduciary for, among other things, such proponents being disproportionately favored in the transaction. A Settlement of the Litigation has been reached and was approved in full by the Court. The Settlement consists of: a cash settlement fund of $55 million, modifications to the transaction that result in an over $100 million tax deferral benefit to the investors, and defendants will provide additional material information to investors about the transaction.

Representative Cases

Securities Cases (Non-Real Estate)

***Continental Illinois Corporation Securities Litigation*, Civil Action No. 82 C 4712, United States District Court, Northern District of Illinois.**

Nicholas Chimicles served as lead counsel for the shareholder class in this action alleging federal securities fraud. Filed in the federal district court in Chicago, the case arose from the 1982 oil and gas loan debacle that ultimately resulted in the Bank being taken over by the FDIC. The case involved a twenty-week jury trial conducted by Mr. Chimicles in 1987. Ultimately, the Class recovered nearly $40 million.

***PaineWebber Limited Partnerships Litigation, 94 Civ. 8547,* United States District Court, Southern District of New York**

The Firm was chair of the plaintiffs' executive committee in a case brought on behalf of tens of thousands of investors in approximately 65 limited partnerships that were organized or sponsored by PaineWebber. In a landmark settlement, investors were able to recover $200 million in cash and additional economic benefits following the prosecution of securities law and RICO (Racketeer Influenced and Corrupt Organizations Act) claims.

***ML-Lee Litigation, ML Lee Acquisition Fund L.P.* and *ML-Lee Acquisition Fund II L.P.* and *ML-Lee Acquisition Fund (Retirement Accounts)*, (C.A. Nos. 92-60, 93-494, 94-422, and 95-724), United States District Court, District of Delaware.**

C&T represented three classes of investors who purchased units in two investment companies, ML-Lee Funds (that were jointly created by Merrill Lynch and Thomas H. Lee). The suits alleged breaches of the federal securities laws, based on the omission of material information and the inclusion of material misrepresentations in the written materials provided to the investors, as well as breaches of fiduciary duty and common law by the general partners in regard to conduct that benefited them at the expense of the limited partners. The complaint included claims under the often-ignored Investment Company Act of 1940, and the case witnessed numerous opinions that are considered seminal under the ICA. The six-year litigation resulted in **$32 million** in cash and other benefits to the investors.

***Orrstown Financial Services, Inc., et al,* Securities Litigation, Case No. 12-cv-00793 United States District Court, Middle District of Pennsylvania.**

In this federal securities fraud class action filed in 2012, C&T serves as Lead Counsel, and the Southeastern Pennsylvania Transportation Authority as Lead Plaintiff. The action alleges that Defendants violated the Securities Act of 1933 and the Securities Exchange Act of 1934 by misleading investors concerning material information about Orrstown's loan portfolio, underwriting practices, and internal controls. After extensive investigation, including having interviewed several confidential witnesses, C&T filed a 100+ page amended complaint in early 2012. Defendants have moved to dismiss the complaint, and plaintiffs have filed papers vigorously opposing the motion.

Representative Cases

Securities Cases (Non-Real Estate)

***In re Colonial BancGroup, Inc. Securities Litigation*, Case No. 09-CV-00104, United States District Court, Middle District of Alabama.**

C&T is actively involved in prosecuting this securities class action arising out of the 2009 failure of Colonial Bank, in which Norfolk County Retirement System, State-Boston Retirement System, City of Brockton Retirement System, and Arkansas Teacher Retirement System are the Court-appointed lead plaintiffs. The failure of Colonial Bank was well-publicized and ultimately resulted in several criminal trials and convictions of Colonial officers and third parties involved in a massive fraud in Colonial's mortgage warehouse lending division. The pending securities lawsuit includes allegations arising out of the mortgage warehouse lending division fraud, as well as allegations that Colonial misled investors concerning its operations in connection with two public offerings of shares and bonds in early 2008, shortly before the Bank's collapse. In April 2012, the Court approved a $10.5 million settlement of Plaintiffs' claims against certain of Colonial's directors and officers. Plaintiffs' claims against Colonial's auditor, PwC, and the underwriters of the 2008 offerings are ongoing.

Representative Cases

Delaware and Other Merger and Acquisition Suits

***In re Genentech, Inc. Shareholders Litigation*, C.A. No. 3911-VCS, Delaware Court of Chancery.**

In this shareholder class action, C&T served as Co-Lead Counsel representing minority stockholders of Genentech, Inc. in an action challenging actions taken by Roche Holdings, Inc. ("Roche") to acquire the remaining approximately 44% of the outstanding common stock of Genentech, Inc. ("Genentech") that Roche did not already own. In particular, Plaintiffs challenged that Roche's conduct toward the minority was unfair and violated pre-existing governance agreements between Roche and Genentech. During the course of the litigation, Roche increased its offer from $86.50 per share to %95 per share, a $4 billion increase in value for Genentech's minority shareholders. That increase and other protections for the minority provided the bases for the settlement of the action, which was approved by the Court of chancery on July 9, 2009.

***In re Kinder Morgan Shareholder Litigation*, C.A. No. 06-c-801, District Court of Shawnee County, Kansas**

In this shareholder class action, C&T served as Co-Lead Counsel representing former stockholders of Kinder Morgan, Inc. (KMI) in an action challenging the acquisition of Kinder Morgan by a buyout group lead by KMI's largest stockholder and Chairman, Richard Kinder. Plaintiffs alleged that Mr. Kinder and a buyout group of investment banks and private equity firms leveraged Mr. Kinder's knowledge and control of KMI to acquire KMI for less than fair value. As a result of the litigation, Defendants agreed to pay $200 million into a settlement fund, believed to be the largest of its kind in any buyout-related litigation. The district Court of Shawnee County, Kansas approved the settlement on November 19, 2010.

***In re Freeport-McMoran Sulphur, Inc. Shareholder Litigation*, C.A. No. 16729, Delaware Court of Chancery.**

In this shareholder class action, C&T serves as Lead Plaintiffs' Counsel representing investors in a stock-for-stock merger of two widely held public companies, seeking to remedy the inadequate consideration the stockholders of Sulphur received as part of the merger. In June 2005, the Court of Chancery denied defendants' motions for summary judgment, allowing Plaintiffs to try each and every breach of fiduciary duty claim asserted in the Action. In denying defendants' motions for summary judgment the Court held there were material issues of fact regarding certain board member's control over the Board including the Special Committee members and the fairness of the process employed by the Special Committee implicating the duty of entire fairness and raising issues regarding the validity of the Board action authorizing the merger. The decision has broken new ground in the field of corporate litigation in Delaware. Before the trial commenced, Plaintiffs and Defendants agreed in principle to settle the case. The settlement, which was approved in April 2006, provides for a cash fund of $17,500,000.

Representative Cases

Delaware and Other Merger and Acquisition Suits

***In re Chiron Shareholder Deal Litigation*, Case No. RG05-230567 (Cal. Super.) & *In re Chiron Corporation Shareholder Litigation*, C.A. No. 1602-N, Delaware Court of Chancery**

C&T represents stockholders of Chiron Corporation in an action which challenged the proposed acquisition of Chiron Corporation by its 42% stockholder, Novartis AG. Novartis announced a $40 per share merger proposal on September 1, 2005, which was rejected by Chiron on September 5, 2005. On October 31, Chiron announced an agreement to merge with Novartis at a price of $45 per share. C&T was co-lead counsel in the consolidated action brought in the Delaware Court of Chancery. Other similar actions were brought by other Chiron shareholders in the Superior Court of California, Alameda City. The claims in the Delaware and California actions were prosecuted jointly in the Superior Court of California. C&T, together with the other counsel for the stockholders, obtained an order from the California Court granting expedited proceedings in connection with a motion preliminary to enjoin the proposed merger. Following extensive expedited discovery in March and April, 2006, and briefing on the stockholders' motion for injunctive relief, and just days prior to the scheduled hearing on the motion for injunctive relief, C&T, together with Co-lead counsel in the California actions, negotiated an agreement to settle the claims which included, among other things, a further increase in the merger price to $48 per share, or an additional $330 million for the public stockholders of Chiron. On July 25, 2006, the Superior Court of California, Alameda County, granted final approval to the settlement of the litigation.

Gelfman v. Weeden Investors, L.P., Civ. Action No. 18519-NC, Delaware Court of Chancery

Chimicles & Tikellis LLP served as class counsel, along with other plaintiffs' firms, in this action against the Weeden Partnership, its General Partner and various individual defendants filed in the Court of Chancery in the State of Delaware. In this Class Action, Plaintiffs alleged that Defendants breached their fiduciary duties to the investors and breached the Partnership Agreement. The Delaware Chancery Court conducted a trial in this action which was concluded in December 2003. Following the trial, the Chancery Court received extensive briefing from the parties and heard oral argument. On June 14, 2004, the Chancery Court issued a memorandum opinion, which was subsequently modified, finding that the Defendants breached their fiduciary duties and the terms of the Partnership Agreement, with respect to the investors, and that Defendants acted in bad faith ("Opinion"). This Opinion from the Chancery Court directed an award of damages to the classes of investors, in addition to other relief. In July 2004, Class Counsel determined that it was in the best interests of the investors to settle the Action for over 90% of the value of the monetary award under the Opinion (over $8 million).

I.G. Holdings Inc., et al. v. Hallwood Realty, LLC, et al., C.A. No. 20283, Delaware Court of Chancery.

In the Delaware Court of Chancery, C& T represented the public unitholders of Hallwood Realty L.P. The action challenged the general partner's refusal to redeem the Partnership's rights plan or to sell the Partnership to maximize value for the public unitholders. Prior to the filing of the action, the Partnership paid no distributions and Units of the Partnership normally traded in the range of $65 to $85 per unit. The prosecution of the action by C&T caused the sale of the Partnership, ultimately yielding approximately $137 per Unit for the unitholders plus payment of the attorneys' fees of the Class.

Representative Cases

Delaware and Other Merger and Acquisition Suits

***Southeastern Pennsylvania Transportation Authority v. Josey*, et. al., C.A. No. 5427, Delaware Court of Chancery.**

Chimicles & Tikellis served as class counsel in this action challenging the acquisition of Mariner Energy, Inc. by Apache Corporation. Following expedited discovery, C&T negotiated a settlement which led to the unprecedented complete elimination of the termination fee from the merger agreement and supplemental disclosures regarding the merger. On March 15, 2011, the Delaware Court of Chancery granted final approval to the settlement of the litigation.

***In re Pepsi Bottling Group, Inc. Shareholders Litigation*, C.A. No. 4526, Delaware Court of Chancery.**

The Firm served as class counsel, along with several other firms challenging PepsiCo's buyout of Pepsi Bottling Group, Inc. C&T's efforts prompted PepsiCo to raise its buyout offer for Pepsi Bottling Group, Inc. by approximately $1 billion and take other steps to improve the buyout on behalf of public stockholders.

***In re Atlas Energy Resources LLC, Unitholder Litigation*, Consol C.A. No. 4589, Delaware Court of Chancery.**

The Firm was co-lead counsel in an action challenging the fairness of the acquisition of Atlas Energy Resources LLC by its controlling shareholder, Atlas America, Inc. After over two-years of complex litigation, the Firm negotiated a $20 million cash settlement, which was finally approved by the court on May 14, 2012.

***In re J. Crew Group, Inc. S'holders Litigation*, C.A. No. 6043, Delaware Court of Chancery.**

The Firm was co-lead counsel challenging the fairness of a going private acquisition of J.Crew by TPG and members of J.Crew's management. After hard-fought litigation, the action resulted in a settlement fund of $16 million and structural changes to the go-shop process, including an extension of the go-shop process, elimination of the buyer's informational and matching rights and requirement that the transaction to be approved by a majority of the unaffiliated shareholders. The settlement was finally approved on December 16, 2011.

Representative Cases

Delaware and Other Merger and Acquisition Suits

***In re McKesson Derivative Litigation, Saito*, et al. v. McCall, et al., C.A. No. 17132, Delaware Court of Chancery.**

As Lead Counsel in this stockholder derivative action, C&T challenged the actions of the officers, directors and advisors of McKesson and HBOC in proceeding with the merger of the two companies when their managements were allegedly aware of material accounting improprieties at HBOC. In addition, C&T also brought (under Section 220 of the Delaware Code) a books and records case to discover information about the underlying events. C&T successfully argued in the Delaware Courts for the production of the company's books and records which were used in the preparation of an amended derivative complaint in the derivative case against McKesson and its directors. Seminal opinions have issued from both the Delaware Supreme Court and Chancery Court about Section 220 actions and derivative suits as a result of this lawsuit. Plaintiffs agreed to a settlement of the derivative litigation subject to approval by the Delaware Court of Chancery, pursuant to which the Individual Defendants' insurers will pay $30,000,000 to the Company. In addition, a claims committee comprised of independent directors has been established to prosecute certain of Plaintiffs' claims that will not be released in connection with the proposed settlement. Further, the Company will maintain important governance provisions among other things ensuring the independence of the Board of Directors from management. On February 21, 2006, the Court of Chancery approved the Settlement and signed the Final Judgment and Order and Realignment Order.

***Barnes & Noble Inc.,* C.A. No. 4813, Delaware Court of Chancery.**

C&T served as Co-Lead Counsel in a shareholder lawsuit brought derivatively on behalf of Barnes & Noble ("B&N") alleging wrongdoing by the B&N directors for recklessly causing B&N to acquire Barnes & Noble College Booksellers, Inc. ("College Books") the "Transaction") from B&N's founder, Chairman and controlling stockholder, Leonard Riggio ("Riggio") at a grossly excessive price, subjecting B&N to excessive risk. The case settled for nearly $30 million and finally approved by the court on September 4, 2012.

***Sample v. Morgan*, et. al., C.A. No. 1214-VCS, Delaware Court of Chancery.**

Action alleging that members of the board of directors of Randall Bearings, Inc. breached their fiduciary duties to the company and its stockholders and committed corporate waste. The action resulted in an eve-of-trial settlement including revocation of stock issued to insiders, a substantial cash payment to the corporation and reformation of the Company's corporate governance. The Court finally approved the settlement on August 5, 2008.

***Manson v. Northern Plain Natural Gas Co*., LLC, et. al., C.A. No. 1973-N, Delaware Court of Chancery.**

Chimicles & Tikellis served as counsel in a class and derivative action asserting contract and fiduciary duty claims stemming from dropdown asset transactions to a partnership from an affiliate of its general partner. The case settled for a substantial adjustment (valued by Plaintiff's expert to be worth more than $100 million) to the economic terms of units issued by the partnership in exchange for the assets. The settlement was finally approved by the Court on January 18, 2007

Representative Cases

Consumer Cases

***Lockabey v. American Honda Motors Co., Inc.*, Case No. 37-2010-00087755-CU-BT-CTL, San Diego County Superior Court**

Mr. Chimicles is co-lead counsel in a nationwide class action involving fuel economy problems encountered by purchasers of Honda Civic Hybrids ("HCH"). *Lockabey v. American Honda Motors Co., Inc.*, Case No. 37-2010-00087755-CU-BT-CTL (Super. Ct. San Diego). After nearly five years of litigation in both the federal and state courts in California, a settlement benefiting nearly 450,000 consumers who had leased or owned HCH vehicles from model years 2003 through 2009. Following unprecedented media scrutiny and review by the attorneys general of each state as well as major consumer protection groups, the settlement was approved on March 16, 2012 in a 40 page opinion by the Honorable Timothy B. Taylor of the San Diego County (CA) Superior Court in which the Court stated:

> *The court views this as a case which was difficult and risky… The court also views this as a case with significant public value which merited the 'sunlight' which Class Counsel have facilitated.*

Depending on the number of claims that are filed (deadline will not expire until 6 months after a pending single appeal is resolved), the Class will garner benefits ranging from $100 million to $300 million.

***In re Pennsylvania Baycol: Third-Party Payor Litigation*, Case No. 001874, Court of Common Pleas, Philadelphia County**.

In connection with the withdrawal by Bayer of its anti-cholesterol drug Baycol, C&T represents various Health and Welfare Funds, including the Pennsylvania Employees Benefit Trust Fund, and a certified national class of "third party payors" seeking damages for the sums paid to purchase Baycol for their members/insureds and to pay for the costs of switching their members/insureds from Baycol to an another cholesterol-lowering drug. The Philadelphia Court of Common Pleas granted plaintiffs' motion for summary judgment as to liability; this is the first and only judgment that has been entered against Bayer anywhere in the United States in connection with the withdrawal of Baycol. The Court subsequently certified a national class, and the parties reached a settlement (recently approved by the court) in which Bayer agreed to pay class members a net recovery that approximates the maximum damages (including pre-judgment interest) suffered by class members. The class settlement negotiated by C&T represents a net recovery for third party payors that is between double and triple the net recovery pursuant to a non-litigated settlement negotiated by lawyers representing third party payors such as AETNA and CIGNA that was made available to and accepted by numerous other third party payors (including the TRS). C&T had advised its clients to reject that offer and remain in the now settled class action. On June 15, 2006 the court granted final approval of the settlement.

Representative Cases

Consumer Cases

Shared Medical Systems 1998 Incentive Compensation Plan Litigation, Philadelphia County Court of Common Pleas, Commerce Program, No. 0885.

Chimicles & Tikellis LLP is lead counsel in this action brought in 2003 in the Philadelphia County Court of Common Pleas. The case was brought on behalf of approximately 1,300 persons who were employees of Defendant Siemens Medical Solutions Health Services Corporation (formerly Shared Medical Systems, Inc.) who had their 1998 incentive compensation plan ("ICP") compensation reduced 30% even though the employees had completed their performance under the 1998 ICP contracts and had earned their incentive compensation based on the targets, goals and quotas in the ICPs. The Court had scheduled trial to begin on February 4, 2005. On the eve of trial, the Court granted Plaintiffs' motion for summary judgment as to liability on their breach of contract claim. With the rendering of that summary judgment opinion on liability in favor of Plaintiffs, the parties reached a settlement in which class members will receive a net recovery of the full amount of the amount that their 1998 ICP compensation was reduced. On May 5, 2005, the Court approved the settlement, stating that the case "should restore anyone's faith in class actions as a reasonable way of proceeding on reasonable cases."

***Wong v. T-Mobile USA, Inc.*, Case No. CV 05-cv-73922-NGE-VMM, United States District Court, Eastern District of Michigan.**

Chimicles & Tikellis LLP and the Miller Law Firm P.C. filed a complaint alleging that defendant T-Mobile overcharged its subscribers by billing them for data access services even though T-Mobile's subscribers had already paid a flat rate monthly fee of $5 or $10 to receive unlimited access to those various data services. The data services include Unlimited T-Zones, Any 400 Messages, T-Mobile Web, 1000 Text Messages, Unlimited Mobile to Mobile, Unlimited Messages, T-Mobile Internet, T-Mobile Internet with corporate My E-mail, and T-Mobile Unlimited Internet and Hotspot. Chimicles & Tikellis LLP and the Miller Law Firm defeated a motion by T-Mobile to force resolution of these claims via arbitration and successfully convinced the Court to strike down as unconscionable a provision in T-Mobile's subscription contract prohibiting subscribers from bringing class actions. After that victory, the parties reached a settlement requiring T-Mobile to provide class members with a net recovery of the full amount of the un-refunded overcharges with all costs for notice, claims administration, and counsel fees paid in addition to class members' 100% net recovery. The gross amount of the overcharges, which occurred from April 2003 through June 2006, is approximately $6.7 million. To date, T-Mobile has refunded approximately $4.5 million of those overcharges. A significant portion of those refunds were the result of new policies T-Mobile instituted after the filing of the Complaint. Pursuant to the Settlement, T-Mobile will refund the remaining $2.2 million of un-refunded overcharges.

***In re Checking Account Overdraft Litig*., No. 1:09-MD-02036-JLK, United States District Court, Southern District of Florida.**

These Multidistrict Litigation proceedings involve allegations that dozens of banks reorder and manipulate the posting order of consumer debit transactions to maximize their revenue from overdraft fees. Settlements in excess of $1 billion have been reached with several banks. C&T was active in the overall prosecution of these proceedings, and was specifically responsible for prosecuting actions against US Bank (pending $55 million settlement) and Comerica Bank (pending $14.5 million settlement).

Representative Cases

Consumer Cases

***In re Apple iPhone/iPod Warranty Litig.,* No. 10-CV-01610, United States District Court, Northern District of California** .

C&T is interim co-lead counsel in this case brought by consumers who allege that that Apple improperly denied warranty coverage for their iPhone and iPod Touch devices based on external "Liquid Submersion Indicators" (LSIs). LSIs are small paper-and-ink laminates, akin to litmus paper, which are designed to turn red upon exposure to liquid. Plaintiffs alleged that external LSIs are not a reliable indicator of liquid damage or abuse and, therefore, Apple should have provided warranty coverage. The district court recently granted preliminary approval to a settlement pursuant to which Apple has agreed to pay $53 million to settle these claims.

***Henderson v. Volvo Cars of North America LLC, et al.,* No. 2:09-CV-04146-CCC-JAD, United States District Court, District of New Jersey.**

C&T was lead counsel in this class action lawsuit brought behalf of approximately 90,000 purchasers and lessees of Volvo vehicles that contained allegedly defective automatic transmissions. After the plaintiffs largely prevailed on a motion to dismiss, the district court granted final approval to a nationwide settlement in March 2013.

***In re Philips/Magnavox Television Litig.*, No. 2:09-cv-03072-CCC-JAD, United States District Court, District of New Jersey.**

This class action was brought by consumers who alleged that a defective electrical component was predisposed to overheating, causing their televisions to fail prematurely. After the motion to dismiss was denied in large part, the parties reached a settlement in excess of $4 million.

***Physicians of Winter Haven LLC, d/b/a Day Surgery Center v. STERIS Corporation*, No. 1:10-cv-00264-CAB, United States District Court, Northern District of Ohio.**

This case was brought on behalf of a class of hospitals and surgery centers that purchased a sterilization device that allegedly did not receive the required pre-sale authorization from the FDA. The case settled for approximately $20 million worth of benefits to class members. C&T, which represented an outpatient surgical center, was the sole lead counsel in this case.

***Smith v. Gaiam, Inc.*, No. 09-cv-02545-WYD-BNB, United States District Court, District of Colorado.**

C&T was co-lead counsel in this consumer case in which a settlement that provided full recovery to approximately 930,000 class members was achieved.

***In re Certainteed Corp. Roofing Shingle Products Liability Litigation*, No, 07-MDL-1817-LP, United States District Court, Eastern District of Pennsylvania.**

This was a consumer class action involving allegations that CertainTeed sold defective roofing shingles. The parties reached a settlement which was approved and valued by the Court at between $687 to $815 million.

Representative Cases

Antitrust Cases

***In re TriCor Indirect Purchasers Antitrust Litig.*, No. 05-360-SLR, United States District Court, District of Delaware.**

C&T was liaison counsel in this indirect purchaser case which resulted in a $65.7 million settlement. The plaintiffs alleged that manufacturers of a cholesterol drug engaged in anticompetitive conduct, such as making unnecessary changes to the formulation of the drug, which was designed to keep generic versions off of the market.

***In re Flonase Antitrust Litig.*, No. 2:08-cv-3301, United States District Court, Eastern District of Pennsylvania.**

C&T was liaison counsel and trial counsel on behalf of indirect purchaser plaintiffs in this pending antitrust case. The plaintiffs allege that the manufacturer of Flonase engaged in campaign of filing groundless citizens petitions with the Food and Drug Administration which was designed to delay entry of cheaper, generic versions of the drug. The court has granted class certification, and denied motions to dismiss and for summary judgment filed by the defendant. A $46 million settlement was reached on behalf of all indirect purchasers a few months before trial was to commence.

***In re In re Metoprolol Succinate End-Payor Antitrust Litig.*, No. 1:06-cv-00071, United States District Court, District of Delaware.**

C&T was liaison counsel for the indirect purchaser plaintiffs in this case, which involved allegations that AstraZeneca filed baseless patent infringement lawsuits in an effort to delay the market entry of generic versions of the drug Toprol-XL. After the plaintiffs defeated a motion to dismiss, the indirect purchaser case settled for $11 million.

***In re Insurance Brokerage Antitrust Litigation*, No. 2:04-cv-05184-GEB-PS, United States District Court, District of New Jersey.**

This case involves allegations of bid rigging and steering against numerous insurance brokers and insurers. The district court has granted final approval to settlements valued at approximately $218 million.

EXHIBIT E

EXHIBIT E

In Re Wilmington Trust Securities Litigation
Master File No. 10-cv-00990-ER

BREAKDOWN OF PLAINTIFFS' COUNSEL'S LITIGATION EXPENSES BY CATEGORY

CATEGORY	AMOUNT
Court Fees	$976.50
On-Line Legal Research	$327,733.51
On-Line Factual Research	$34,211.27
Discovery/Document Management/Litigation Support	$1,148,997.99
Telephone/Faxes	$3,149.39
Postage & Express Mail	$21,116.93
Hand Delivery	$3,905.69
Local Transportation	$28,355.30
Cars/Mileage/Taxi/Tolls	$13,102.22
Internal Copying/Printing	$73,338.28
Outside Copying	$63,421.65
Out of Town Travel	$155,001.93
Working Meals	$30,019.12
Deposition Expenses/Conference Rooms	$24,935.46
Service of Process	$1,140.00
Court Reporting & Transcripts	$168,235.98
Mediation	$18,555.95
Bank Charges	$4.34
Local Counsel	$350.00
Experts	$4,673,493.31
TOTAL EXPENSES:	**$6,790,044.82**

EXHIBIT F

UNITED STATES DISTRICT COURT
DISTRICT OF DELAWARE

IN RE WILMINGTON TRUST SECURITIES LITIGATION	Master File No. 10-cv-00990-ER
	(Securities Class Action)
This document relates to: ALL ACTIONS	Hon. Eduardo Robreno
	ELECTRONICALLY FILED

DECLARATION OF ANNE M. BEVINGTON IN SUPPORT OF LEAD COUNSEL'S MOTION FOR AN AWARD OF ATTORNEYS' FEES AND REIMBURSEMENT OF LITIGATION EXPENSES

I, ANNE M. BEVINGTON, hereby declare under penalty of perjury as follows:

1. I am Senior Counsel at the law firm of Saltzman & Johnson Law Corporation, additional counsel for Lead Plaintiff the Automotive Industries Pension Trust Fund ("Automotive") in the above-captioned securities class action (the "Action").[1] I submit this declaration in support of Lead Counsel's motion for an award of attorneys' fees and reimbursement of Litigation Expenses. I have personal knowledge of the facts set forth herein and, if called upon, could and would testify thereto.

2. My firm, as counsel for Automotive, advised Automotive regarding the litigation, reviewed documents, assisted in deposition preparation, and communicated with Lead Counsel

[1] All capitalized terms that are not otherwise defined herein shall have the meanings ascribed to them in the Stipulation and Agreement of Settlement with Wilmington Trust Defendants and Underwriter Defendants dated May 15, 2018 (D.I. 821-1) or the Stipulation and Agreement of Settlement with KPMG dated May 25, 2018 (D.I. 821-2).

Bernstein Litowitz Berger & Grossmann LLP ("BLB&G") regarding developments in the litigation and settlement discussions.

3. From the inception of this litigation through May 25, 2018, attorneys and professional support staff at Saltzman & Johnson spent a total of 100.60 hours on behalf of Automotive in connection with this Action. The hourly rates for the attorneys and professional support staff in my firm included below are their standard rates, which have been accepted in other securities or shareholder litigation:

Name	Hours	Hourly Rate	Total
Phillip M. Miller, Shareholder	11.90	$240	$2,856.00
Anne M. Bevington, Senior Counsel	48.00	$230	$11,040.00
Kimberly A. Hancock, Associate	0.50	$230	$115.00
Julie Jellen, Paralegal	40.00	$125	$5,000.00
Edward Rowell, Paralegal	0.20	$135	$27.00
TOTAL	**100.6**		**$19,038.00**

4. The hours the above individuals spent on this litigation were divided into three general categories. Approximately 13.6 hours were devoted to case strategizing throughout the litigation, from the case's inception through settlement. This includes communications with BLB&G, communications with Automotive's Trustees, the review of case updates, and the review of pleadings in advance of their filing. Another 56.9 hours was devoted to discovery consultation, which includes the search for and review of documents for production in this action, the review of document requests, the review of Automotive's responses to those requests, and the review of interrogatory responses. Finally, another 30.10 hours were spent on the preparation for and attendance at the deposition of Automotive's Chairman, James Beno, in connection with Lead Plaintiffs' motion for class certification.

5. In addition, my firm is seeking reimbursement for a total of $58.19 in overnight delivery expenses incurred in connection with its representation of Automotive in connection with this Action.

6. With respect to the standing of my firm, attached hereto as Exhibit 1 is a brief biography of my firm and the attorneys involved in the firm who were involved in this Action.

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

Executed this 13th day of September, 2018.

Anne M. Bevington



1141 Harbor Bay Parkway, Suite 100
Alameda, CA 94502
(510) 906-4710

Saltzman & Johnson has specialized in the representation of multiemployer, collectively-bargained employee benefit plans for over 40 years in both the private and public sectors. Over 90% of our work involves the representation of employee benefit plans. We do not represent either labor or management in labor relations and, therefore, are able to provide independent, legal advice to jointly managed benefit plan trustees.

We are an 11-attorney law firm with four shareholders and seven associates. All of our attorneys have experience resolving legal issues pertaining to multiemployer collectively bargained benefit plans which are jointly managed by representatives of labor and management. We also have skilled paralegals to provide support to our attorneys.

Attorneys Who Provided Services in This Action

PHILIP M. MILLER (Retired)

Mr. Miller graduated from the Boalt Hall School of Law, University of California, Berkeley, in 1979. In law school he was a member of the California Law Review. He served as a law clerk for the Ninth Circuit Court of Appeals during 1979-1981, being selected to be a division chief of the court's Staff Attorneys in 1980. Mr. Miller worked for a San Francisco law firm, Carroll, Burdick and McDonough, during the period 1981-1988. He provided legal services to public sector employee organizations, primarily representing public safety officers in collective bargaining, grievances and litigation. He also represented in litigation two collectively bargained employee benefit trusts governed by ERISA.

In 1988 Mr. Miller joined Saltzman & Johnson and from then until his retirement he specialized exclusively in the representation of collectively bargained employee benefit trusts. He became a shareholder of the firm in 1991. He provided all aspects of legal representation as principal attorney to benefit trusts for more than 20 years, including general legal counseling, compliance reviews of plan documents, recommendations on benefit appeals, preparation of plan and trust amendments, updating subscriber agreement provisions, review of service provider contracts, preparing responses to qualified domestic relations orders, responding to government audits, commenting on draft minutes, general legal advice and initiating and defending litigation. Mr. Miller retired from the practice of law on March 31, 2016.

ANNE M. BEVINGTON

Ms. Bevington graduated from University of California, Hastings College of the Law in 1983 with a Juris Doctor (J.D.), magna cum laude. In law school she served as Technical Editor of the Hastings Law Review for 1982-83, received an American Jurisprudence Award in Evidence, and was a member of the national honor society, Order of the Coif. In her third year of law school she worked as a judicial extern for Hon. Allen E. Broussard, Justice of the Supreme Court of California.

Ms. Bevington worked at Knecht, Haley, Lawrence and Smith as an associate from 1984 and as a partner from 1989-1995. She served as managing partner from 1992-1995. Her practice involved construction law, insurance coverage, and fidelity and surety bond litigation. She then had a more general civil litigation practice that included construction industry disputes, other contract disputes and employment law. In 2005, she began representing collectively bargained employee benefit trusts in litigation. Ms. Bevington joined Saltzman & Johnson in 2010, focusing on the representation of multiemployer employee benefit trust clients in ERISA litigation matters. She is Senior Counsel.

Ms. Bevington is a member of the State Bar of California. She is also a member of the Federal Bar Association, the San Francisco Bar Association and the International Foundation of Employee Benefit Plans. She is admitted to practice before the Ninth Circuit and the United States District Courts in all districts in California. Cases she has handled include:

Davis v. Pension Tr. Fund for Operating Eng'rs, 694 F. App'x 586, 2017 U.S. App. LEXIS 13727, 2017 WL 3207151 (9th Cir. 2017); *Auto. Indus. Pension Tr. Fund v. Tractor Equip. Sales, Inc.*, 672 F. App'x 685, 2016 U.S. App. LEXIS 23204, 2016 WL 7422710 (9th Cir. 2016); *S. City Motors, Inc. v. Auto. Indus. Pension Tr. Fund*, No. 17-cv-04475-JST, 2018 U.S. Dist. LEXIS 88452, 2018 WL 2387854 (N.D. Cal. May 25, 2018); ***Davis v. Pension Trust Fund for Operating Eng'rs***, 2015 U.S. Dist. LEXIS 148373 (N.D. Cal. Nov. 2, 2015); ***South City Motors, Inc. v. Auto. Indus. Pension Trust Fund***, 2015 U.S. Dist. LEXIS 102128, 60 Employee Benefits Cas. (BNA) 1369 (N.D. Cal. Aug. 4, 2015); ***Bay Area Roofers Health v. Sun Life Assur. Co.***, 73 F. Supp. 3d 1154 (N.D. Cal. 2014); ***Auto. Indus. Pension Trust Fund v. Tractor Equip. Sales, Inc.***, 73 F. Supp. 3d 1173 (N.D. Cal. 2014); ***Cal. Serv. Emples. Health & Welfare Trust Fund v. Command Sec. Corp.***, 2012 U.S. Dist. LEXIS 95352, 2012 WL 2838863 (N.D. Cal. July 10, 2012); ***Auto. Indus. Pension Trust Fund v. South City Ford, Inc.***, 2012 U.S. Dist. LEXIS 51807, 193 L.R.R.M. 3114, 53 Employee Benefits Cas. (BNA) 2745 (N.D. Cal. Apr. 12, 2012);***Auto. Indus. Pension Trust Fund v. Fitzpatrick Chevrolet Inc.***, 833 F. Supp. 2d 1162, 191 L.R.R.M. 2445, 52 Employee Benefits Cas. (BNA) 1156 (N.D. Cal. 2011);***Board of Trustees of the Automobile Industries Welfare Fund v. Groth Oldsmobile/Chevrolet***, 2011 U.S. Dist. LEXIS 39151, 51 Employee Benefits Cas. (BNA) 1178 (N.D. Cal. 2011); ***Totten v. Hill***,154 Cal. App. 4th 40 (2007); ***Wm. R. Clarke Corp. v. Safeco Ins. Co.***, 15 Cal.4th 882 (1997); ***Union Asphalt, Inc. v. Planet Ins. Co.***, 21 Cal.App.4th 1762 (1994).

KIMBERLY A. HANCOCK

Ms. Hancock graduated from the University of California at Berkeley in 1988 with a Bachelor of Arts degree in Economics, and from the University of California at Berkeley School of Law (Boalt Hall) in 1999 with a Juris Doctor (J.D.). Ms. Hancock initially practiced law for 2 years at Pillsbury Winthrop (now Pillsbury Winthrop Shaw Pittman) representing both established and start-up technology companies in technology licensing and commercial transactions. Thereafter,

Ms. Hancock joined Katzenbach and Khtikian as an associate attorney for 7 years representing individuals in employment, disability and civil rights litigation as well as representing joint union-management employee benefit trusts in ERISA litigation regarding collection of delinquent employer contributions. In 2010, Ms. Hancock joined Saltzman and Johnson where she provides all aspects of legal representation as principal attorney to benefit trusts, including general legal counseling, compliance reviews of plan documents, recommendations on benefit appeals, preparation of plan and trust amendments, updating subscriber agreement provisions, review of service provider contracts, preparing responses to qualified domestic relations orders, responding to government audits, commenting on draft minutes, general legal advice and initiating and defending litigation.

Ms. Hancock is a member of the State Bar of California. She is also a member of the San Francisco Bar Association and the International Foundation of Employee Benefit Plans. She is admitted to practice before the Ninth Circuit and the United States District Court for the Northern District of California and the Eastern District of California.

EXHIBIT G

UNITED STATES DISTRICT COURT
DISTRICT OF DELAWARE

IN RE WILMINGTON TRUST SECURITIES LITIGATION	Master File No. 10-cv-00990-SLR-SRF (Securities Class Action) Hon. Sue L. Robinson
This document relates to: ALL ACTIONS	

DECLARATION OF ALEXANDER VILLANOVA REGARDING (A) MAILING OF THE NOTICE AND CLAIM FORM; AND (B) PUBLICATION OF THE SUMMARY NOTICE

I, Alexander Villanova, hereby declare under penalty of perjury as follows:

1. I am a Project Manager employed by Epiq Class Action & Claims Solutions, Inc. ("Epiq"). Pursuant to the Court's July 10, 2018 Order Preliminarily Approving Settlements and Providing for Notice ("Preliminary Approval Order") (D.I. 825), Epiq was authorized to act as the Claims Administrator in connection with the Settlements reached in the above-captioned action (the "Action").[1] The following statements are based on my personal knowledge and information provided by other Epiq employees working under my supervision, and if called on to do so, I could and would testify competently thereto.

DISSEMINATION OF THE SETTLEMENT NOTICE PACKET

2. Pursuant to the Preliminary Approval Order, Epiq mailed the Notice of (I) Proposed Settlements and Plan of Allocation; (II) Settlement Fairness Hearing; and (III) Motion for an

[1] Unless otherwise defined herein, all capitalized terms have the meanings set forth in the Stipulation and Agreement of Settlement with Wilmington Trust Defendants and Underwriter Defendants dated May 15, 2018, or the Stipulation and Agreement of Settlement with KPMG dated May 25, 2018 (collectively, the "Stipulations of Settlement") previously filed with the Court. *See* D.I. 821-1, 821-2.

Award of Attorneys' Fees and Reimbursement of Litigation Expenses (the "Settlement Notice"), as well as the Proof of Claim and Release Form (the "Claim Form") (collectively, the Settlement Notice and Claim Form are referred to as the "Settlement Notice Packet"), to potential Class Members.

3. As more fully described in the Supplemental Affidavit of Stephanie A. Thurin Regarding (A) Mailing of the Notice and (B) Report on Requests for Exclusion Received, executed on July 12, 2016 and previously filed with the Court (D.I. 453), Epiq previously conducted a mailing campaign (the "Class Notice Mailing") in which it mailed the Notice of Pendency of Class Action (the "Class Notice") to persons and entities identified as potential Class Members. To identify these potential Class Members, Epiq received information from Defendants containing the names and addresses of potential Class Members. Epiq mailed Class Notices to the investors listed. Epiq also mailed the Class Notice to brokerage firms, banks, institutions, and other potential nominees (the "Nominees") listed in Epiq's proprietary nominee database. In response, Epiq received from the Nominees either (i) the names and addresses of their clients who were potential Class Members or (ii) requests for additional copies of the Class Notice so that the Nominees could forward the Class Notice directly to their clients. Epiq also received names and addresses directly from potential Class Members in this Action.

4. Through this process, Epiq created a mailing list of all known potential Class Members, and their nominees, for use in connection with the Class Notice and any future notices.

5. After the Preliminary Approval Order was entered, Epiq created a mailing file for the Settlement Notice Packet consisting of 50,784 names and addresses compiled as a result of the Class Notice Mailing.

6. Beginning on July 25, 2018 (the "Notice Date"), Settlement Notice Packets were mailed to these 50,784 potential Class Members and to 1,369 Nominees listed in Epiq's proprietary nominee database, by first-class mail. The 1,369 Settlement Notice Packets mailed to Nominees included a letter explaining that if the Nominee had previously submitted names and addresses in connection with the Class Notice Mailing, or had previously requested copies of the Class Notice in bulk, it did not need to submit that information again unless it had additional names and addresses to provide or needed a different number of Settlement Notice Packets. A true and accurate copy of the letter sent to Nominees is attached as Exhibit A.

7. On July 25, 2018, 52,153 copies of the Settlement Notice Packet were mailed. A copy of the Settlement Notice Packet is attached hereto as Exhibit B.

8. Since the initial mailing, through September 14, 2018, Epiq has mailed additional copies of the Settlement Notice Packet to potential members of the Class whose names and addresses were provided by individuals or Nominees, and mailed additional Settlement Notice Packets to Nominees who requested Settlement Notice Packets in bulk for forwarding to their customers. Epiq will continue timely to respond to any additional requests for Settlement Notice Packets.

9. As of September 14, 2018, a total of 92,330 Settlement Notice Packets have been disseminated to potential Class Members and Nominees by first-class mail.

10. As of September 14, 2018, 5,688 Settlement Notice Packets have been returned by the United States Postal Service to Epiq as undeliverable as addressed ("UAA"). Of those returned UAA, 1,512 had forwarding addresses and were promptly re-mailed to the updated address.

PUBLICATION OF THE SUMMARY NOTICE

11. Pursuant to the Preliminary Approval Order, Epiq caused the Summary Notice of (I) Proposed Settlements and Plan of Allocation; (II) Settlement Hearing; and (III) Motion for an Award of Attorneys' Fees and Reimbursement of Litigation Expenses (the "Summary Notice") to be published once in *Investor's Business Daily* and to be transmitted over *PR Newswire* on August 6, 2018. Attached as Exhibit C is a Confirmation of Publication attesting to the publication of the Summary Notice in *Investor's Business Daily* and a screen shot attesting to the transmittal of the Summary Notice over *PR Newswire*.

CALL CENTER SERVICES

12. Epiq reserved a toll-free phone number for this Action, (866) 800-6639, which was set forth in the Settlement Notice, the Claim Form, the Summary Notice, and on the case website.

13. The toll-free number connects callers with an Interactive Voice Recording ("IVR"). The IVR provides callers with pre-recorded information, including a brief summary about the Action and the option to request a copy of the Settlement Notice Packet. The toll-free telephone line with pre-recorded information is available 24 hours a day, 7 days a week.

14. Epiq made the IVR available on July 25, 2018, the same date Epiq began mailing the Settlement Notice Packets.

15. In addition, Monday through Friday from 6:00 a.m. to 6:00 p.m. Pacific Time (excluding official holidays), callers are able to speak to a live operator regarding the status of the Action and/or obtain answers to questions they may have about communications they receive from Epiq. During other hours, callers may leave a message for an agent to call them back.

CASE WEBSITE

16. Epiq established and is maintaining a website dedicated to this Action (www.WilmingtonTrustSecuritiesLitigation.com) to provide additional information to Class Members. Users of the website can download copies of the Settlement Notice, the Claim Form, the Stipulations of Settlement, the Preliminary Approval Order, and the Complaint. The web address was set forth in the Settlement Notice, the Summary Notice, and on the Claim Form. The website was operational beginning on July 25, 2018, and is accessible 24 hours a day, 7 days a week. Epiq will continue operating, maintaining and, as appropriate, updating the website until the conclusion of this administration.

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.

Executed on September 14, 2018, at Beaverton, Oregon.



Alexander Villanova

EXHIBIT A

Wilmington Trust Securities Litigation
P.O. Box 2838
Portland, OR 97208-2838

Website: www.WilmingtonTrustSecuritiesLitigation.com
Email: info@WilmingtonTrustSecuritiesLitigation.com
Phone: 866-800-6639

NOTICE TO BROKERS, BANKS AND OTHER NOMINEES

**TIME-SENSITIVE, COURT-ORDERED,
REQUIRED ACTION ON YOUR PART**

In re Wilmington Trust Securities Litigation, Master File No. 10-cv-00990-ER

Proposed Settlements of the above-noted securities class action lawsuit (the "Action") have been reached. Enclosed is the Settlement Notice and Claim Form (the "Claim Packet") that the Court has ordered to be timely sent to potential Class Members. The Claim Packet includes important deadlines for Class Members. The deadline for them to object is **October 12, 2018**, and the deadline for Claims is **November 26, 2018**.

Subject to certain exclusions, the "Class" consists of all persons and entities who purchased or otherwise acquired Wilmington Trust Corporation ("Wilmington Trust" or the "Bank") common stock during the period January 18, 2008 up to November 1, 2010 (the "Class Period"), including all persons or entities who purchased shares of Wilmington Trust common stock issued in the secondary common stock offering that occurred on or about February 23, 2010 (the "Offering"), and were damaged thereby.

You were previously sent a Notice of Pendency of Class Action (the "Notice of Pendency") in March 2016 requesting names and addresses of persons and entities for the beneficial interest of whom you traded Wilmington Trust common stock during the period January 18, 2008 up to November 1, 2010, inclusive ("Potential Class Members"). If, in connection with the mailing of the Notice of Pendency, you provided the Claims Administrator with a list of names and addresses of Potential Class Members, **DO NOT** resubmit those names and addresses. Copies of the Claim Packet will be forwarded to those Potential Class Members by the Claims Administrator. (Also, see below.)

If, in connection with the mailing of the Notice of Pendency, you requested that the notices be sent to you for forwarding by you to Potential Class Members **WITHOUT** providing the names and addresses to the Claims Administrator, you will be mailed the same number of Claim Packets to forward to those Potential Class Members. If you require a different number of copies than you requested in connection with the mailing of the Notice of Pendency, please send an email to info@WilmingtonTrustSecuritiesLitigation.com and let the Claims Administrator know how many Claim Packets you require. You must mail the Claim Packet to the beneficial owners within **seven (7) calendar days** of your receipt of packets. Please note, in the Notice of Pendency, you were advised that if you elected to forward the notice, you must retain your mailing records for use in connection with any further notices that may be provided in the Action.

If you **NEITHER** previously submitted names and addresses of Potential Class Members **NOR** requested notices to send to Potential Class Members, as outlined above, **OR** if you have names and addresses of Potential Class Members that were not included in your previous submission to the Claims Administrator, you **MUST** submit a request for Claim Packets or submit the names and addresses of Potential Class Members to the Claims Administrator, no later than **seven (7) calendar days** from receipt of this notice. If you request copies of the Claim Packet for forwarding by you, they must be mailed to the beneficial owners within **seven (7) calendar days** of your receipt of the packets from the Claims Administrator.

If you are providing a list of names and addresses to the Claims Administrator:

I. Compile a list of names and addresses of beneficial owners who purchased or acquired Wilmington common stock during the period from January 18, 2008 up to November 1, 2010, or Wilmington Trust common stock issued in the Secondary Common Stock Offering.

II. Prepare the list in Microsoft Excel format following the "Electronic Name and Address File Layout" below. A preformatted spreadsheet can also be found on the "Nominees" page of the website www.WilmingtonTrustSecuritiesLitigation.com. Then, do one of the following:

A. Email the list to info@WilmingtonTrustSecuritiesLitigation.com;

B. Upload the list to the "Nominees" page of the website www.WilmingtonTrustSecuritiesLitigation.com; or

C. Burn the Microsoft Excel file(s) to a CD or DVD and mail the CD or DVD to Epiq, the Claims Administrator, at:

Wilmington Trust Securities Litigation
P.O. Box 2838
Portland, OR 97208-2838

If you are mailing the Claim Packet to beneficial owners:

If you elect to mail the Claim Packet to beneficial owners yourself, additional copies of the Claim Packet may be requested via email to info@WilmingtonTrustSecuritiesLitigation.com. As noted above, you must forward the requested additional copies of the Claim Packet to the beneficial owners within seven (7) calendar days of your receipt of those Claim Packets. **You must also send a statement to the Claims Administrator at the address above confirming that the mailing was made, and you must retain your mailing records for use in connection with any further notices that may be provided in the Action.**

Expense Reimbursement

Reasonable expenses are eligible for reimbursement (including postage and costs to compile names and addresses), provided an invoice documenting the expenses is timely submitted to the Claims Administrator. Please provide any invoice within one month of completion of the mailing or delivery of your list.

Electronic Name and Address File Layout

Column	Description	Length	Notes
A	Account #	15	Unique identifier for each record
B	Beneficial owner's first name	25	
C	Beneficial owner's middle name	15	
D	Beneficial owner's last name	30	
E	Joint beneficial owner's first name	25	
F	Joint beneficial owner's middle name	15	
G	Joint beneficial owner's last name	30	
H	Business or record owner's name	60	Businesses, trusts, IRAs, and other types of accounts
I	Representative or contact name	45	
J	Address 1	35	
K	Address 2	25	
L	City	25	
M	U.S. state or Canadian province	2	U.S. and Canada addresses only[1]
N	ZIP Code	10	
O	Country (other than U.S.)	15	

If you have any questions, you may contact the Claims Administrator at 866-800-6639 or by email: info@WilmingtonTrustSecuritiesLitigation.com. Thank you for your cooperation.

[1] For countries other than the U.S. and Canada, place any territorial subdivision in "Address 2" field.

EXHIBIT B

UNITED STATES DISTRICT COURT
DISTRICT OF DELAWARE

IN RE WILMINGTON TRUST SECURITIES LITIGATION	Master File No. 10-cv-00990-ER (Securities Class Action) Hon. Eduardo C. Robreno
This document relates to: ALL ACTIONS	

NOTICE OF (I) PROPOSED SETTLEMENTS AND PLAN OF ALLOCATION; (II) SETTLEMENT FAIRNESS HEARING; AND (III) MOTION FOR AN AWARD OF ATTORNEYS' FEES AND REIMBURSEMENT OF LITIGATION EXPENSES

TO: All persons or entities who purchased or otherwise acquired Wilmington Trust Corporation ("Wilmington Trust" or the "Bank") common stock during the period January 18, 2008 up to November 1, 2010 (the "Class Period"), including all persons or entities who purchased shares of Wilmington Trust common stock issued in the secondary common stock offering that occurred on or about February 23, 2010 (the "Offering"), and were damaged thereby.

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

NOTICE OF SETTLEMENTS: This notice has been sent to you pursuant to Rule 23 of the Federal Rules of Civil Procedure and an Order of the United States District Court for the District of Delaware (the "Court"). Please be advised that the Court-appointed representatives for the Court-certified Class (as defined in ¶ 24 below), Lead Plaintiffs, the Coral Springs Police Pension Fund, the St. Petersburg Firefighters' Retirement System, the Pompano Beach General Employees Retirement System, the Merced County Employees' Retirement Association, and the Automotive Industries Pension Trust Fund (collectively, "Lead Plaintiffs" or "Class Representatives"), on behalf of themselves and the Class, have reached two proposed all-cash settlements in the above-captioned securities class action (the "Action"), as follows: (i) a $200 million settlement with the Wilmington Trust Defendants[1] and Underwriter Defendants[2] (the "Wilmington Trust/Underwriter Settlement") and (ii) a $10 million settlement with KPMG LLP ("KPMG") (the "KPMG Settlement," and together with the Wilmington Trust/Underwriter Settlement, the "Settlements").[3] If the Settlements are approved, they will resolve all claims asserted in the Action against Defendants and bring the Action to an end.[4]

[1] The "Wilmington Trust Defendants" consist of (i) defendant Wilmington Trust and (ii) defendants Ted T. Cecala, David R. Gibson, Robert V.A. Harra, Jr., William B. North, Kevyn N. Rakowski, Carolyn S. Burger, R. Keith Elliott, Donald E. Foley, Gailen Krug, Stacey J. Mobley, Michele M. Rollins, Oliver R. Sockwell, Robert W. Tunnell, Jr., Susan D. Whiting, Rex L. Mears, and Louis Freeh (collectively, the "Individual Defendants").

[2] The "Underwriter Defendants" consist of defendants J.P. Morgan Securities LLC, formerly known as J.P. Morgan Securities Inc. and named in the Complaint as "J.P. Morgan Securities," and Keefe, Bruyette & Woods, Inc.

[3] The Wilmington Trust Defendants, Underwriter Defendants, and KPMG are collectively referred to as the "Defendants" or "Settling Defendants."

[4] The terms and provisions of the Settlements are contained in the: (i) Stipulation and Agreement of Settlement with Wilmington Trust Defendants and Underwriter Defendants dated May 15, 2018, entered into by and among Lead Plaintiffs, the Wilmington Trust Defendants, M&T Bank (an affiliate company to Wilmington Trust), and the Underwriter Defendants (the "Wilmington Trust/Underwriter Stipulation"); and (ii) Stipulation and Agreement of Settlement with KPMG dated May 25, 2018, entered into by and between Lead Plaintiffs and KPMG (the "KPMG Stipulation" and together with the Wilmington Trust/Underwriter Stipulation, the "Stipulations"). The Stipulations can be viewed at www.WilmingtonTrustSecuritiesLitigation.com. Any capitalized terms used in this notice that are not otherwise defined shall have the meanings given to them in the Stipulations.

This notice is directed to you in the belief that you may be a member of the Class. If you do not meet the Class definition, or if you previously excluded yourself from the Class in connection with the Notice of Pendency of Class Action that was mailed to potential Class Members beginning on March 1, 2016 (the "Class Notice") and are listed on Appendix 1 to the Stipulations, this notice does not apply to you.

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

If you have any questions about this notice, the proposed Settlements, or your eligibility to participate in the Settlements, please DO NOT contact the Court, the Clerk's office, any of the Defendants, M&T Bank, or their counsel. All questions should be directed to Lead Counsel or the Claims Administrator (*see* ¶ 85 below).

1. **Description of the Action and the Class:** This notice relates to Settlements of claims in a pending securities class action brought by investors alleging that Defendants violated the federal securities laws by, among other things, making false and misleading statements regarding Wilmington Trust or were statutorily liable for false and misleading statements in the offering materials for the Offering. A more detailed description of the Action is set forth in ¶¶ 11-23 below. If the Court approves the proposed Settlements, the claims asserted in the Action against the respective Settling Defendants will be dismissed with prejudice and members of the Class (defined in ¶ 24 below) will settle and release all Released Plaintiffs' Claims (defined in ¶ 30 below) against the respective Settling Defendants' Releasees (defined in ¶ 32 below).

2. **Statement of the Class's Recovery:** Subject to Court approval, Lead Plaintiffs, on behalf of themselves and the Class, have agreed to settle the Action in exchange for settlement payments totaling $210,000,000 in cash. Specifically, Lead Plaintiffs have agreed to settle with the Wilmington Trust Defendants and Underwriter Defendants for $200,000,000 in cash (the "Wilmington Trust/Underwriter Defendant Settlement Amount") and to settle with KPMG for a payment of $10,000,000 in cash (the "KPMG Settlement Amount" and together with the Wilmington Trust/Underwriter Defendant Settlement Amount, the "Settlement Amounts"). The respective Net Settlement Funds (*i.e.*, the respective Settlement Amounts plus any and all interest earned thereon (the "Settlement Funds") less (i) any Taxes; (ii) any and all Notice and Administration Costs; (iii) any attorneys' fees awarded by the Court; (iv) any Litigation Expenses awarded by the Court; and (v) any other costs or fees approved by the Court) will be distributed in accordance with a plan of allocation that is approved by the Court, which will determine how the Net Settlement Funds shall be allocated among members of the Class. The proposed plan of allocation (the "Plan of Allocation") is set forth in ¶¶ 47-69 below.

3. **Estimate of Average Amount of Recovery Per Share:** Based on Lead Plaintiffs' damages expert's estimates of the number of shares of Wilmington Trust common stock purchased during the Class Period that may have been affected by the conduct alleged in the Action, and assuming that both Settlements are approved and that all Class Members elect to participate in the Settlements, the estimated average recovery (before the deduction of any Court-approved fees, expenses, and costs as described below) per eligible share would be $1.61. Class Members should note, however, that the foregoing average recovery per share is only an estimate. Some Class Members may recover more or less than this estimated amount depending on, among other factors, the price at which they purchased shares of Wilmington Trust common stock, whether they sold their shares of Wilmington Trust common stock, and the total number and value of valid Claim Forms submitted. Distributions to Class Members will be made based on the Plan of Allocation set forth in this notice (*see* pages 10–13 below) or such other plan of allocation as may be ordered by the Court.

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 Lead Plaintiffs were to prevail in the Action. Among other things, the Settling Defendants do not agree with the assertion that they violated the federal securities laws or that any damages were suffered by any members of the Class as a result of their conduct.

5. **Attorneys' Fees and Expenses Sought:** Lead Counsel, which have been prosecuting the Action on a wholly contingent basis since its inception in 2010, have not received any payment of attorneys' fees for their representation of the Class and have advanced the funds to pay expenses necessarily incurred to prosecute this Action. Court-appointed Lead Counsel – Bernstein Litowitz Berger & Grossmann LLP and Saxena White P.A. – will apply to the Court for an award of attorneys' fees in an amount not to exceed 28% of each Settlement Fund. Lead Counsel will also apply for reimbursement of Litigation Expenses in an amount not to exceed $7,500,000, which amount may include an application for reimbursement of the reasonable costs and expenses incurred by Lead Plaintiffs directly related to their representation of the Class. Class Members are not personally liable for any such fees or expenses. Assuming both Settlements are approved, if the Court approves Lead Counsel's fee and expense application, the estimated average cost per eligible share of Wilmington Trust common stock would be $0.51. **Please note that this amount is only an estimate.**

6. **Identification of Counsel Representatives and Further Information:** Lead Plaintiffs and the Class are represented by Hannah Ross, Esq. of Bernstein Litowitz Berger & Grossmann LLP, 1251 Avenue of the Americas, 44th Floor, New York, NY 10020, 1-800-380-8496, blbg@blbglaw.com, and Joseph E. White, III, Esq. of Saxena White P.A., 150 E. Palmetto Park Rd., Ste. 600, Boca Raton, FL 33432, 561-394-3399, settlements@saxenawhite.com. Further information regarding the Action, the Settlements, and this notice may be obtained by contacting Lead Counsel, or the Court-appointed Claims Administrator at Wilmington Trust Securities Litigation, c/o Epiq Class Action & Claims Solutions, Inc., P.O. Box 2838, Portland, OR 97208-2838.

7. **Reasons for the Settlements:** Lead Plaintiffs' principal reason for entering into the Settlements is the substantial immediate cash benefits for the Class without the risk or the delays inherent in further litigation. Moreover, the substantial cash benefits provided under the Settlements must be considered against the significant risk that a smaller recovery – or indeed no recovery at all – against Defendants might be achieved after further contested motions, a trial of the Action, and the likely appeals that would follow a trial. This process could last several additional years. Defendants, who deny all allegations of wrongdoing or liability whatsoever, are entering into their respective Settlements to eliminate the uncertainty, burden, and expense of further protracted litigation.

YOUR LEGAL RIGHTS AND OPTIONS IN THE SETTLEMENTS	
SUBMIT A CLAIM FORM POSTMARKED NO LATER THAN NOVEMBER 26, 2018.	This is the only way to be eligible to receive a payment from the Net Settlement Funds. If you are a Class Member, you will be bound by the Settlements as approved by the Court and you will give up any and all Released Plaintiffs' Claims (defined in ¶ 30 below) that you have against Defendants and the other Settling Defendants' Releasees (defined in ¶ 32 below), so it is in your interest to submit a Claim Form.
OBJECT TO THE SETTLEMENTS BY SUBMITTING A WRITTEN OBJECTION SO THAT IT IS *RECEIVED* NO LATER THAN OCTOBER 12, 2018.	If you do not like the proposed Settlements, the proposed Plan of Allocation, and/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 Settlements, the Plan of Allocation, or the fee and expense request unless you are a Class Member.
GO TO A HEARING ON NOVEMBER 5, 2018 AT 10:00 A.M., AND FILE A NOTICE OF INTENTION TO APPEAR SO THAT IT IS *RECEIVED* NO LATER THAN OCTOBER 12, 2018.	Filing a written objection and notice of intention to appear by **October 12, 2018** allows you to speak in Court, at the discretion of the Court, about the fairness of the proposed Settlements, the proposed 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, at the discretion of the Court, speak to the Court about your objection.
DO NOTHING.	If you are a member of the Class and you do not submit a valid Claim Form, you will not be eligible to receive any payment from the Settlement Funds. You will, however, remain a member of the Class, which means that you give up your right to sue about the claims that are resolved by the Settlements and you will be bound by any judgments or orders entered by the Court in the Action.

The rights and options set forth above — and the deadlines to exercise them — are explained in this notice.

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WHY DID I GET THIS NOTICE?

8. 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 or otherwise acquired Wilmington Trust common stock during the Class Period (*i.e.*, the period January 18, 2008 up to November 1, 2010). The Court has directed us to send you this notice because, as a potential Class Member, you have a right to know about your options before the Court rules on the proposed Settlements. Additionally, you have the right to understand how this class action lawsuit and the Settlements will affect your legal rights. If the Court approves the Settlements, and the Plan of Allocation (or some other plan of allocation), the claims administrator selected by Lead Plaintiffs and approved by the Court will make payments pursuant to the Settlements after any objections and appeals are resolved.

9. The purpose of this notice is to inform you of the terms of the proposed Settlements, and of a hearing to be held by the Court to consider the fairness, reasonableness, and adequacy of the Settlements, the proposed Plan of Allocation, and the motion by Lead Counsel for an award of attorneys' fees and reimbursement of Litigation Expenses (the "Settlement Fairness Hearing"). *See* ¶ 73 below for details about the Settlement Fairness Hearing, including the date and location of the hearing.

10. The issuance of this notice is not an expression of any opinion by the Court concerning the merits of any claim in the Action, and the Court still has to decide whether to approve the Settlements. If the Court approves the Settlements 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 arises out of allegations that Defendants violated Sections 10(b) and 20(a) of the Securities Exchange Act of 1934 (the "Exchange Act") and Section 11 of the Securities Act of 1933. Among other things, the Action alleges that, during the Class Period, the Wilmington Trust Defendants engaged in a broad conspiracy to fraudulently conceal Wilmington Trust's true financial condition by representing to the investing public that Wilmington Trust managed risk conservatively. Specifically, Lead Plaintiffs allege that, among other things, unbeknownst to investors, (i) the Bank's senior executives manipulated the loan loss reserve by concealing hundreds of millions of dollars in past due and nonperforming loans; (ii) the Bank's senior executives fraudulently extended $1.74 billion of matured and past due loans; (iii) the Bank regularly engaged in fraudulent underwriting practices by lending money in violation of the Bank's underwriting policies; (iv) the Bank's officers fraudulently manipulated the Bank's asset review process by understaffing and overriding the credit risk function; and (v) in 2009, the Federal Reserve issued a Memorandum of Understanding identifying these fundamental failures at the Bank. Lead Plaintiffs allege that Defendants misled the investing public by fraudulently concealing Wilmington Trust's true financial condition and lending practices, which caused Class Members to purchase their stock at artificially inflated prices, and to suffer damages when the truth was revealed before the stock market opened on November 1, 2010.

12. The Action was commenced in November 2010. On March 7, 2011, the Court issued an Order that (i) consolidated all related actions under the caption, *In re Wilmington Trust Securities Litigation*, Master File No. 10-cv-00990-LPS; (ii) appointed the Coral Springs Police Pension Fund, the St. Petersburg Firefighters' Retirement System, the Pompano Beach General Employees Retirement System, the Merced County Employees' Retirement Association, and the Automotive Industries Pension Trust Fund as Lead Plaintiffs pursuant to the Private Securities Litigation Reform Act of 1995 ("PSLRA"); and (iii) approved Lead Plaintiffs' selection of Bernstein Litowitz Berger & Grossmann LLP and Saxena White P.A. as Lead Counsel for the Class.

13. Lead Plaintiffs filed an Amended Complaint on May 16, 2011. On March 29, 2012, the Court dismissed the May 2011 complaint on largely non-substantive grounds. Lead Plaintiffs filed a Second Amended Complaint on May 10, 2012.

14. Later in 2012, before the Court could rule on Defendants' fully briefed motions to dismiss the Second Amended Complaint, documents were publicly released in connection with the criminal prosecution of one of the Bank's former clients. Those documents provided new information concerning the Bank's most fraudulent banking practices, and caused Lead Counsel to further amend the allegations and file a Third Amended Complaint on January 9, 2013. Lead Counsel fully briefed Defendants' motions to dismiss the Third Amended Complaint.

15. However, before those motions could be decided, two of Wilmington Trust's most senior lending officers pled guilty to bank fraud. The information provided by these individuals in their guilty pleas provided additional evidence of misconduct. Based upon this and other information coming to light, Lead Counsel amended the pleadings and filed a Fourth Amended Complaint (the "Complaint") on June 13, 2013, this time adding claims against the Bank's former auditor, KPMG. Motions to dismiss were briefed yet again. On March 20, 2014, the Court rejected Defendants' motions to dismiss the Fourth Amended Complaint.

16. In October 2014, once Lead Counsel served the first round of notices to take fact depositions, the United States Attorney for the District of Delaware ("USAO") moved to intervene in the Action and stay all depositions to allow a USAO investigation into the same conduct as alleged in Lead Plaintiffs' complaints. While the Court never ruled on the motion, its pendency caused discovery with regard to the taking of fact depositions to be stayed until December 2016. In May 2015, the USAO indicted Wilmington Trust and four of the individual defendants (David R. Gibson, Robert V.A. Harra, Jr., William B. North, and Kevyn N. Rakowski) in connection with the conduct alleged in Lead Plaintiffs' Complaint in *U.S. v. Wilmington Trust Corporation*, No. 15-cr-00023 (D. Del.).

17. Despite the stay of fact depositions, the parties continued producing and reviewing documents and Lead Plaintiffs moved to certify the Class on September 12, 2014. The Court granted the motion to certify the Class on September 3, 2015. In connection with discovery, counsel for the parties completed extensive class, fact, and expert discovery, which included 39 depositions, the production and review of more than 12.7 million pages of documents, the preparation of hundreds of pages of written discovery, and the litigation of numerous discovery motions.

18. On January 15, 2016, the Court granted Lead Plaintiffs' motion, pursuant to Rule 23 of the Federal Rules of Civil Procedure, for approval of the notice of pendency of the Action and entered an Order approving the form, content, and method of notice to the Class (the "Notice Order"). Among other things, the Notice Order found that the form, content, and method of notice of pendency of the Action met the requirements of Rule 23 and due process, constituted the best notice practicable under the circumstances, and constituted due and sufficient notice to all persons and entities entitled to receive notice.

19. Beginning on March 1, 2016, the Notice of Pendency of Class Action (the "Class Notice") was mailed to potential Class Members, and on March 8, 2016, the Summary Notice of Pendency of Class Action was published in the *Investor's Business Daily* and transmitted over the *PR Newswire*.

20. The Class Notice provided Class Members with the opportunity to request exclusion from the Class, explained that right, and set forth the deadline and procedures for doing so. The Class Notice stated that it would be within the Court's discretion whether to permit a second opportunity to request exclusion if there were a settlement. The Class Notice informed Class Members that if they chose to remain a member of the Class, they would "be bound by all past, present and future orders and judgments in the Action, whether favorable or unfavorable." The deadline for requesting exclusion from the Class was June 13, 2016. Eight (8) requests for exclusion from the Class were received in connection with the dissemination of the Class Notice, as listed on Appendix 1 to the Stipulations.[5]

[5] Pursuant to its Order Preliminarily Approving Settlements and Providing for Notice (the "Preliminary Approval Order") dated July 9, 2018, the Court is not permitting Class Members a second opportunity to exclude themselves from the Class in connection with the Settlements.

21. The criminal trial against Wilmington Trust and the four individual defendants was set to begin on October 10, 2017. That morning, Wilmington Trust and the USAO announced that they had reached a civil settlement whereby they agreed that all criminal charges against Wilmington Trust would be dismissed with prejudice, and Wilmington Trust would pay $44 million to resolve civil claims against the Bank. At the individual defendants' request, the criminal trial was postponed again, setting the trial date for March 12, 2018.

22. Following extensive arm's-length negotiations, Lead Plaintiffs, the Wilmington Trust Defendants, M&T Bank, and the Underwriter Defendants reached an agreement in principle to settle for $200,000,000 in cash, which was memorialized in a settlement term sheet executed on April 9, 2018. On May 3, 2018, while the settling parties were finalizing the terms of the Wilmington Trust/Underwriter Settlement, the jury in the criminal trial found the four individual defendants guilty of all charges, including charges of securities fraud, conspiracy, and making false statements to federal regulators. On May 15, 2018, the Wilmington Trust settling parties entered into the Wilmington Trust/Underwriter Stipulation, which sets forth the final terms and conditions of the Wilmington Trust/Underwriter Settlement. Following further negotiations, Lead Plaintiffs and KPMG reached an agreement in principle to settle for $10,000,000 in cash, the final terms and conditions of which are set forth in the KPMG Stipulation. The Stipulations can be viewed at www.WilmingtonTrustSecuritiesLitigation.com.

23. On July 10, 2018, the Court entered an Order that preliminarily approved the Settlements, authorized this notice to be disseminated to potential Class Members, and scheduled the Settlement Fairness Hearing to consider whether to grant final approval of the Settlements.

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

24. If you are a member of the Class who has not previously sought exclusion from the Class in connection with the Class Notice, you are subject to the Settlements. The Class certified by Order of the Court on September 3, 2015 consists of:

> all persons or entities who purchased or otherwise acquired Wilmington Trust common stock during the period January 18, 2008 up to November 1, 2010 (the "Class Period"), including all persons or entities who purchased shares of Wilmington Trust common stock issued in the secondary common stock offering that occurred on or about February 23, 2010 (the "Offering"), and were damaged thereby.

Excluded from the Class are: (i) Defendants; (ii) members of the Immediate Family of each Individual Defendant; (iii) any person who was an Officer or director of Wilmington Trust, KPMG, or any of the Underwriter Defendants during the Class Period; (iv) any firm, trust, corporation, Officer, or other entity in which any Defendant has or had a controlling interest; (v) any person who participated in the wrongdoing alleged herein; and (vi) the legal representatives, agents, affiliates, heirs, beneficiaries, successors-in-interest, or assigns of any such excluded party, *provided, however,* that any investment company, separately managed account or pooled investment fund, including but not limited to mutual fund families, exchange-traded funds, fund of funds and hedge funds, retirement accounts and employee benefit plans in which any Underwriter Defendant has or may have a direct or indirect interest, or as to which its affiliates may act as an investment advisor, as well as any trust, trust account, custodial account, and any other accounts controlled by a Settling Defendant in a fiduciary capacity rather than for the Settling Defendant's own benefit (any such entity or fund, an "Investment Vehicle"), shall in no event be excluded; and *further provided, however,* that (i) any Claim Form submitted by an Investment Vehicle shall be limited to purchases or acquisitions made on behalf of or for the benefit of persons or entities other than persons or entities that are excluded from the Class by definition, and (ii) the definition of Investment Vehicle shall not bring into the Class any of the Settling Defendants. Also excluded from the Class are the persons and entities that submitted a request for exclusion from the Class in connection with the Class Notice as set forth on Appendix 1 to the Stipulations.

PLEASE NOTE: RECEIPT OF THIS NOTICE DOES NOT MEAN THAT YOU ARE A CLASS MEMBER OR THAT YOU WILL BE ENTITLED TO RECEIVE PROCEEDS FROM THE SETTLEMENTS.

IF YOU ARE A CLASS MEMBER AND YOU WISH TO BE ELIGIBLE TO PARTICIPATE IN THE DISTRIBUTION OF PROCEEDS FROM THE SETTLEMENTS, 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 NOVEMBER 26, 2018.

WHAT ARE LEAD PLAINTIFFS' REASONS FOR THE SETTLEMENTS?

25. Lead Plaintiffs and Lead Counsel believe that the claims asserted against Defendants have merit. They recognize, however, the expense and length of continued proceedings necessary to pursue their claims against Defendants through expert discovery, summary judgment, trial, and appeals, as well as the very substantial risks they would face in establishing liability at trial. For example, in addition to credible arguments concerning liability and scienter for the entire Class Period alleged in the Action, Defendants would have likely argued that Lead Plaintiffs cannot establish that Defendants' alleged false and misleading statements and omissions caused any investor losses, or at least did not cause all of the losses that Lead Plaintiffs allege. Specifically, Defendants would likely argue that the drops in the price of Wilmington Trust common stock that Lead Plaintiffs asserted were caused by Defendants' alleged fraud did not relate to the disclosure of any new information corrective of—or the materialization of any risks concealed by—Defendants' alleged false statements and omissions. While Lead Plaintiffs believe they had compelling arguments in response, Lead Plaintiffs acknowledge that a serious risk exists that Defendants' arguments would persuade the Court to reduce dramatically, or even eliminate altogether, the damages that they could recover from Defendants.

26. In light of these risks, the amount of the Settlements, and the immediacy of recovery to the Class, Lead Plaintiffs and Lead Counsel believe that the proposed Settlements are fair, reasonable, and adequate, and in the best interests of the Class. Lead Plaintiffs and Lead Counsel believe that the Settlements, which total $210 million in cash (less the various deductions described in this notice), individually and collectively provide substantial benefits to the Class now as compared to the risk that the claims asserted in the Action would produce a smaller, or zero, recovery after trial and appeals, possibly years in the future.

27. Defendants have denied all claims asserted against them in the Action and deny having engaged in any wrongdoing or violation of law of any kind whatsoever. Defendants have agreed to the respective Settlements solely to eliminate the burden and expense of continued litigation. Accordingly, the Settlements may not be construed as an admission of any wrongdoing by Defendants.

WHAT MIGHT HAPPEN IF THERE WERE NO SETTLEMENTS?

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

HOW ARE CLASS MEMBERS AFFECTED BY THE SETTLEMENTS?

29. If you are a Class Member, you will be bound by any orders issued by the Court. As to each Settlement that is approved, the Court will enter a judgment (the "Judgment"). The Judgment will dismiss with prejudice the claims against the applicable Settling Defendant(s) and will provide that, upon the Effective Date of each Settlement, Lead Plaintiffs and each of the other Class Members, on behalf of themselves, and their respective heirs, executors, administrators, predecessors, successors, and assigns in their capacities as such, will have fully, finally and forever compromised, settled, released, resolved, relinquished, waived, and discharged each and every Released Plaintiffs' Claim (as defined in ¶ 30 below) against the applicable Settling Defendants' Releasees (as defined in ¶ 32 below), and will forever be barred and enjoined from prosecuting any or all of the Released Plaintiffs' Claims against any of the applicable Settling Defendants' Releasees.

30. "Released Plaintiffs' Claims" means all claims and causes of action of every nature and description, whether known claims or Unknown Claims, whether arising under federal, state, common or foreign law, that Lead Plaintiffs or any other member of the Class (i) asserted in the Complaint, or (ii) could have asserted in any forum, that arise out of or are based upon the allegations, transactions, facts, matters or occurrences, representations or omissions involved, set forth, or referred to in the Complaint and that relate to the purchase or acquisition of Wilmington Trust common stock during the Class Period.[6]

[6] Released Plaintiffs' Claims do not include: (i) with respect to the Wilmington Trust/Underwriter Settlement, any claims asserted against KPMG, and with respect to the KPMG Settlement, any claims asserted against the Wilmington Trust Defendants or Underwriter Defendants; (ii) any claims to any funds paid to the United States Government as part of a settlement or judgment in *United States v. Wilmington Trust Corp.*, *et al.*, No. 15-cr-23-RGA (D. Del.) or settlement of Securities and Exchange Commission Administrative Proceeding No. 3-16098; (iii) any claims relating to the enforcement of the Settlements; (iv) any claims of the persons and entities that submitted a request for exclusion from the Class in connection with the Class Notice as set forth on Appendix 1 to the Stipulations; and (v) if and only if the Court permits a second opportunity for Class Members to request exclusion from the Class, any claims of any person or entity that submits a request for exclusion from the Class in connection with the Settlement Notice and whose request is accepted by the Court (the "Excluded Plaintiffs' Claims").

31. "Unknown Claims" means any Released Plaintiffs' Claims which Lead Plaintiffs or any other Class Member does not know or suspect to exist in his, her, or its favor at the time of the release of such claims, and any Released Settling Defendants' Claims (as defined in ¶ 34 below) which, as applicable, the Wilmington Trust Defendants, the Underwriter Defendants, M&T, and KPMG do 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 the applicable Settlement. With respect to any and all Released Claims, the applicable Settling Parties stipulate and agree that, upon the Effective Date of the applicable Settlement, Lead Plaintiffs and, as applicable, the Wilmington Trust Defendants, the Underwriter Defendants, M&T, and KPMG shall expressly waive, and each of the other Class Members shall be deemed to have waived, and by operation of the Judgment or the Alternate Judgment, if applicable, shall have expressly waived, any and all provisions, rights, and benefits conferred by any law of any state or territory of the United States, or principle of common law or foreign law, which is similar, comparable, or equivalent to California Civil Code §1542, which provides:

> A general release does not extend to claims 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.

Lead Plaintiffs and, as applicable, the Wilmington Trust Defendants, the Underwriter Defendants, M&T, and KPMG acknowledge, and each of the other Class Members shall be deemed by operation of law to have acknowledged, that the foregoing waiver was separately bargained for and a key element of the applicable Settlement.

32. "Settling Defendants' Releasees" or "Settling Defendant's Releasees" means as to the respective Settlements:

> Wilmington Trust/Underwriter Settlement: the Wilmington Trust Defendants, the Underwriter Defendants, Thomas DuPont, David P. Roselle, and M&T, and their respective employees, officers, directors, agents, counsel, insurers, affiliates, parents, predecessors, successors, assigns, heirs, executors, administrators, and legal and/or authorized representatives.
>
> KPMG Settlement: KPMG and its current and former employees, officers, principals, partners, directors, and agents, and its counsel, insurers, affiliates, parents, predecessors, successors, assigns, heirs, executors, administrators, and legal and/or authorized representatives.

33. The Judgments will also provide that, upon the Effective Date of each Settlement, each of the applicable Settling Defendants, and with respect to the Wilmington Trust/Underwriter Settlement, Thomas DuPont, David P. Roselle, and M&T, 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 Settling Defendants' Claim (as defined in ¶ 34 below) against Lead Plaintiffs and the other Plaintiffs' Releasees (as defined in ¶ 35 below), and will forever be barred and enjoined from prosecuting any or all of the Released Settling Defendants' Claims against any of the Plaintiffs' Releasees.

34. "Released Settling Defendants' Claims" means all claims and causes of action of every nature and description, whether known claims or Unknown Claims, whether arising under federal, state, common or foreign law, that arise out of or relate in any way to the institution, prosecution, or settlement of the claims asserted in the Action against the Settling Defendants.[7]

35. "Plaintiffs' Releasees" means Lead Plaintiffs, and their respective counsel, and all other Class Members, and Lead Plaintiffs' and all other Class Members' respective employees, officers, directors, agents, counsel, insurers, affiliates, parents, predecessors, successors, assigns, heirs, executors, administrators and legal and/or authorized representatives.

HOW DO I PARTICIPATE IN THE SETTLEMENTS? WHAT DO I NEED TO DO?

36. To be eligible for a payment from the proceeds of the Settlements, you must be a member of the Class and you must timely complete and return the Claim Form with adequate supporting documentation **postmarked no later than November 26, 2018**. A Claim Form is included with this notice, or you may obtain one from the website maintained by the Claims Administrator for the Action, www.WilmingtonTrustSecuritiesLitigation.com, or you may request that a Claim Form be mailed to you by calling the Claims Administrator toll free at 1-866-800-6639

[7] Released Settling Defendants' Claims do not include: (i) any claims relating to the enforcement of the Settlements; (ii) any claims against the persons and entities that submitted a request for exclusion from the Class in connection with the Class Notice as set forth on Appendix 1 to the Stipulations; and (iii) if and only if the Court permits a second opportunity for Class Members to request exclusion from the Class, any claims against any person or entity that submits a request for exclusion from the Class in connection with the Settlement Notice and whose request is accepted by the Court (the "Excluded Settling Defendants' Claims").

or by emailing the Claims Administrator at info@WilmingtonTrustSecuritiesLitigation.com. Please retain all records of your ownership of and transactions in Wilmington Trust common stock, as they may be needed to document your Claim. If you previously requested exclusion from the Class in connection with Class Notice or do not submit a timely and valid Claim Form, you will not be eligible to share in the Net Settlement Funds.

37. Participants in and beneficiaries of any employee retirement and/or benefit plan ("Employee Plan") should NOT include any information relating to shares of Wilmington Trust common stock purchased/acquired through an Employee Plan in any Claim Form they submit in this Action. They should include ONLY those shares of Wilmington Trust common stock purchased/acquired during the Class Period outside of an Employee Plan. Claims based on any Employee Plan(s)' purchases/acquisitions of eligible Wilmington Trust common stock during the Class Period may be made by the Employee Plan(s)' trustees. To the extent any of the Defendants or any of the other persons or entities excluded from the Class are participants in an Employee Plan(s), such persons or entities shall not receive, either directly or indirectly, any portion of the recovery that may be obtained from the Settlements by such Employee Plan(s).

38. Unless the Court otherwise orders, any Class Member who fails to submit a Claim Form postmarked on or before **November 26, 2018** shall be fully and forever barred from receiving payments pursuant to the Settlements but will in all other respects remain a Class Member and be subject to the provisions of the Stipulations, including the terms of any Judgment(s) entered and the releases given. This means that each Class Member releases the Released Plaintiffs' Claims (as defined in ¶ 30 above) against the applicable Settling Defendants' Releasees (as defined in ¶ 32 above) and will be barred and enjoined from filing, prosecuting, or pursuing any of the Released Plaintiffs' Claims against any of the applicable Settling Defendants' Releasees whether or not such Class Member submits a Claim Form.

HOW MUCH WILL MY PAYMENT BE? WHAT IS THE PROPOSED PLAN OF ALLOCATION?

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

40. Pursuant to the Settlements, Wilmington Trust has agreed to pay $200,000,000 in cash and KPMG has agreed to pay $10,000,000 in cash. The Settlement Amounts have been deposited into separate escrow accounts. The respective Settlement Amounts plus any interest earned thereon are referred to as the "Settlement Funds." If the Settlements are approved by the Court and the Effective Date occurs, the respective "Net Settlement Funds" (that is, the respective Settlement Funds less (i) any Taxes; (ii) any and all Notice and Administration Costs; (iii) any attorneys' fees awarded by the Court; (iv) any Litigation Expenses awarded by the Court; and (v) any other costs or fees approved by the Court) will be distributed to Class Members who submit valid Claim Forms, in accordance with the proposed Plan of Allocation or such other plan of allocation as the Court may approve. The Court may revise the plan of allocation without notifying the Class. Any modified plan of allocation will be posted on the website for the Action, www.WilmingtonTrustSecuritiesLitigation.com.

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

42. Neither the Settling Defendants, M&T, nor any other person or entity that paid any portion of the Settlement Amount on their behalves are entitled to get back any portion of the respective Settlement Funds once the Court's order or judgment approving the relevant Settlement becomes Final. Settling Defendants shall not have any liability, obligation, or responsibility for the administration of the Settlements, the disbursement of the Net Settlement Funds, or the plan of allocation.

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

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

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

46. Only Class Members or persons authorized to submit a Claim on their behalf will be eligible to share in the distribution of the Net Settlement Funds. Persons and entities that are excluded from the Class by definition or that previously excluded themselves from the Class pursuant to request in connection with the Class Notice will not be eligible to receive a distribution from the Net Settlement Funds and should not submit Claim Forms.

PROPOSED PLAN OF ALLOCATION

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

48. In developing the Plan of Allocation, Lead Plaintiffs' damages expert calculated the estimated amount of artificial inflation in the per share closing price of Wilmington Trust common stock which allegedly was proximately caused by Defendants' alleged false and misleading statements and material omissions.

49. In calculating the estimated artificial inflation allegedly caused by Defendants' alleged misrepresentations and omissions, Lead Plaintiffs' damages expert considered price changes in Wilmington Trust 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 Wilmington Trust common stock is stated in Tables A-1 and A-2 at the end of this notice.

50. In order to have recoverable damages, the disclosure of the allegedly misrepresented information must be the cause of the decline in the price of Wilmington Trust common stock. In this case, Lead Plaintiffs allege that Defendants made false statements and omitted material facts during the period between January 18, 2008 and October 31, 2010, inclusive, which had the effect of artificially inflating the price of Wilmington Trust common stock. Lead Plaintiffs further allege that corrective information was released to the market on: January 29, 2010 (before the opening of trading), April 23, 2010 (before the opening of trading), June 3, 2010 (after the close of trading), June 23, 2010 (before the opening of trading), July 23, 2010 (before the opening of trading), and November 1, 2010 (before the opening of trading), which partially removed the artificial inflation from the price of Wilmington Trust common stock on: January 29, 2010, April 23, 2010, June 4, 2010, June 23-24, 2010, July 23, 2010, and November 1, 2010.[8]

51. Recognized Loss Amounts are based primarily on the difference in the amount of alleged artificial inflation in the price of Wilmington Trust common stock at the time of purchase or acquisition and at the time of sale or the difference between the actual purchase price and sale price. Accordingly, in order to have a Recognized Loss Amount under the Plan of Allocation, a Class Member who or which purchased or otherwise acquired Wilmington Trust common stock prior to the first corrective disclosure, which occurred prior to the opening of trading on January 29, 2010, must have held his, her, or its shares of Wilmington Trust common stock through at least the opening of trading on that day. A Class Member who purchased or otherwise acquired Wilmington Trust common stock from the opening of trading on January 29, 2010 through and including October 31, 2010, must have held those shares through at least one of the later dates where new corrective information was released to the market and partially removed the artificial inflation from the price of Wilmington Trust common stock.

CALCULATION OF RECOGNIZED LOSS AMOUNTS

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

53. For each share of Wilmington Trust common stock purchased or otherwise acquired during the Class Period (*i.e.*, during the period from January 18, 2008 through and including the close of trading on October 31, 2010), and:

    (i) Sold before the opening of trading on January 29, 2010, the Recognized Loss Amount will be $0.00;

    (ii) Sold from the opening of trading on January 29, 2010 through and including the close of trading on October 31, 2010, the Recognized Loss Amount will be ***the lesser of***: (i) the amount of artificial inflation per share on the date of purchase/acquisition as stated in Table A-1 *minus* the amount of artificial inflation per share on the date of sale as stated in Table A-2; or (ii) the purchase/acquisition price *minus* the sale price.

[8] With respect to the partial corrective disclosure that occurred on June 23, 2010, the alleged artificial inflation was removed from the price of Wilmington Trust common stock over two days: June 23, 2010 and June 24, 2010.

(iii) Sold from November 1, 2010 through and including the close of trading on January 28, 2011, the Recognized Loss Amount will be ***the least of***: (i) the amount of artificial inflation per share on the date of purchase/acquisition as stated in Table A-1; (ii) the purchase/acquisition price *minus* the average closing price between November 1, 2010 and the date of sale as stated in Table B below; or (iii) the purchase/acquisition price *minus* the sale price

(iv) Held as of the close of trading on January 28, 2011, the Recognized Loss Amount will be ***the lesser of***: (i) the amount of artificial inflation per share on the date of purchase/acquisition as stated in Table A-1; or (ii) the purchase/acquisition price minus $4.25.[9]

ADDITIONAL PROVISIONS

54. **Calculation of Claimant's "Recognized Claims":** A Claimant's "Class Period Recognized Claim" will be the sum of his, her, or its Recognized Loss Amounts as calculated above with respect to shares of Wilmington Trust common stock purchased or otherwise acquired during the full Class Period. A Claimant's "Auditor Recognized Claim" will be the sum of his, her, or its Recognized Loss Amounts as calculated above with respect to any shares of Wilmington Trust common stock purchased or otherwise acquired from February 22, 2010 through and including the close of trading on October 31, 2010 (the "Auditor Class Period").

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

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

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

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

59. **Common Stock Purchased/Sold Through the Exercise of Options:** With respect to Wilmington Trust common stock purchased or sold through the exercise of an option, the purchase/sale date of the common stock is the exercise date of the option and the purchase/sale price is the exercise price of the option.

60. **Class Period Market Gains and Losses:** The Claims Administrator will determine if the Claimant had a "Market Gain" or a "Market Loss" with respect to his, her, or its overall transactions in Wilmington Trust common stock during the Class Period. For purposes of making this calculation, the Claims Administrator shall determine the difference between (i) the Claimant's Total Purchase Amount[10] and (ii) the sum of the Claimant's Total Sales

[9] Pursuant to Section 21D(e)(1) of the Exchange Act, "in any private action arising under this title in which the plaintiff seeks to establish damages by reference to the market price of a security, the award of damages to the plaintiff shall not exceed the difference between the purchase or sale price paid or received, as appropriate, by the plaintiff for the subject security and the mean trading price of that security during the 90-day period beginning on the date on which the information correcting the misstatement or omission that is the basis for the action is disseminated to the market." Consistent with the requirements of the Exchange Act, Recognized Loss Amounts are reduced to an appropriate extent by taking into account the closing prices of Wilmington Trust common stock during the "90-day look-back period," November 1, 2010 through and including January 28, 2011. The mean (average) closing price for Wilmington Trust common stock during this 90-day look-back period was $4.25.

[10] The "Total Purchase Amount" is the total amount the Claimant paid (excluding all fees, taxes, and commissions) for all shares of Wilmington Trust common stock purchased/acquired during the Class Period.

Proceeds[11] and the Claimant's Holding Value.[12] If the Claimant's Total Purchase Amount ***minus*** the sum of the Claimant's Total Sales Proceeds and the Holding Value is a positive number, that number will be the Claimant's Market Loss; if the number is a negative number or zero, that number will be the Claimant's Market Gain.

61. If a Claimant had a Market Gain with respect to his, her, or its overall transactions in Wilmington Trust common stock during the Class Period, the value of the Claimant's Class Period Recognized Claim will be zero, and the Claimant will in any event be bound by the Settlements. If a Claimant suffered an overall Market Loss with respect to his, her, or its overall transactions in Wilmington Trust common stock during the Class Period but that Market Loss was less than the Claimant's Class Period Recognized Claim, then the Claimant's Class Period Recognized Claim will be limited to the amount of the Market Loss.

62. **Auditor Market Gains and Losses:** The Claims Administrator will also determine if the Claimant had an "Auditor Market Gain" or an "Auditor Market Loss" with respect to his, her, or its overall transactions in Wilmington Trust common stock during the Auditor Class Period. For purposes of making this calculation, the Claims Administrator shall determine the difference between (i) the Claimant's Auditor Purchase Amount[13] and (ii) the sum of the Claimant's Auditor Sales Proceeds[14] and the Claimant's Auditor Holding Value.[15] If the Claimant's Auditor Purchase Amount ***minus*** the sum of the Claimant's Auditor Sales Proceeds and the Auditor Holding Value is a positive number, that number will be the Claimant's Auditor Market Loss; if the number is a negative number or zero, that number will be the Claimant's Auditor Market Gain.

63. If a Claimant had an Auditor Market Gain with respect to his, her, or its overall transactions in Wilmington Trust common stock during the Auditor Class Period, the value of the Claimant's Auditor Recognized Claim will be zero, and the Claimant will in any event be bound by the Settlements. If a Claimant suffered an overall Auditor Market Loss with respect to his, her, or its overall transactions in Wilmington Trust common stock during the Auditor Class Period but that Auditor Market Loss was less than the Claimant's Auditor Recognized Claim, then the Claimant's Auditor Recognized Claim will be limited to the amount of the Auditor Market Loss.

64. **Allocation of Wilmington Trust/Underwriter Net Settlement Fund:** The Net Settlement Fund for the Wilmington Trust/Underwriter Settlement (the "Wilmington Trust/Underwriter Net Settlement Fund") will be allocated on a *pro rata* basis among Authorized Claimants. An Authorized Claimant's *pro rata* share of the Wilmington Trust/Underwriter Net Settlement Fund will be his, her, or its Class Period Recognized Claim divided by the total Class Period Recognized Claims of all Authorized Claimants, multiplied by the total amount in the Wilmington Trust/Underwriter Net Settlement Fund.

65. **Allocation of KPMG Net Settlement Fund:** The Net Settlement Fund for the KPMG Settlement (the "KPMG Net Settlement Fund") will be allocated on a *pro rata* basis among Authorized Claimants. An Authorized Claimant's *pro rata* share of the KPMG Net Settlement Fund will be his, her, or its Auditor Recognized Claim divided by the total Auditor Recognized Claims of all Authorized Claimants, multiplied by the total amount in the KPMG Net Settlement Fund.

66. **Determination of Distribution Amount:** An Authorized Claimant's "Distribution Amount" will be the sum of (i) his, her, or its *pro rata* share of the Wilmington Trust/Underwriter Net Settlement Fund; and (ii) his, her, or its *pro rata* share, if any, of the KPMG Net Settlement Fund. If an Authorized Claimant's Distribution Amount calculates to less than $10.00, no distribution will be made to that Authorized Claimant.

67. After the initial distribution of the Net Settlement Funds, the Claims Administrator will make reasonable and diligent efforts to have Authorized Claimants cash their distribution checks. To the extent any monies remain in the Net Settlement Funds 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

[11] The Claims Administrator shall match any sales of Wilmington Trust common stock during the Class Period first against the Claimant's opening position in Wilmington Trust common stock (the proceeds of those sales will not be considered for purposes of calculating market gains or losses). The total amount received (excluding all fees, taxes, and commissions) for sales of the remaining shares of Wilmington Trust common stock sold during the Class Period is the "Total Sales Proceeds."

[12] The Claims Administrator shall ascribe a "Holding Value" of $4.21 to each share of Wilmington Trust common stock purchased/acquired during the Class Period that was still held as of the close of trading on October 31, 2010.

[13] The "Auditor Purchase Amount" is the total amount the Claimant paid (excluding all fees, taxes, and commissions) for all shares of Wilmington Trust common stock purchased/acquired during the Auditor Class Period.

[14] The Claims Administrator shall match any sales of Wilmington Trust common stock during the Auditor Class Period first against the Claimant's opening position in Wilmington Trust common stock and against Class Period purchases/acquisitions prior to the Auditor Class Period (the proceeds of those sales will not be considered for purposes of calculating market gains or losses). The total amount received (excluding all fees, taxes, and commissions) for sales of the remaining shares of Wilmington Trust common stock sold during the Auditor Class Period is the "Auditor Sales Proceeds."

[15] The Claims Administrator shall ascribe an "Auditor Holding Value" of $4.21 to each share of Wilmington Trust common stock purchased/acquired during the Auditor Class Period that was still held as of the close of trading on October 31, 2010.

re-distribution of the funds remaining after payment of any unpaid fees and expenses incurred in administering the Settlements, 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 Settlements, 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 Funds is not cost-effective, the remaining balances will be contributed to non-sectarian, not-for-profit, 501(c)(3) organization(s), to be recommended by Lead Counsel and approved by the Court.

68. Payment pursuant to the Plan of Allocation, or such other plan of allocation as may be approved by the Court, will be conclusive against all Authorized Claimants. No person or entity shall have any claim against Lead Plaintiffs, Plaintiffs' Counsel, Lead Plaintiffs' damages expert, Lead Plaintiffs' consulting experts, the Settling Defendants, Settling Defendants' Counsel, or any of the other Plaintiffs' Releasees or Settling Defendants' Releasees, or the Claims Administrator or other agent designated by Lead Counsel arising from distributions made substantially in accordance with the Stipulations, the plan of allocation approved by the Court, or further Orders of the Court. Lead Plaintiffs, the Settling Defendants, and their respective counsel, and all other Settling Defendants' Releasees, shall have no responsibility or liability whatsoever for the investment or distribution of the Settlement Funds or the Net Settlement Funds; the plan of allocation; the determination, administration, calculation, or payment of any Claim or nonperformance of the Claims Administrator; the payment or withholding of Taxes; or any losses incurred in connection therewith.

69. The Plan of Allocation stated herein is the plan that is being proposed to the Court for its approval by Lead Plaintiffs after consultation with their damages expert. The Court may approve this plan as proposed or it may modify the Plan of Allocation without further notice to the Class. Any Orders regarding any modification of the Plan of Allocation will be posted on the case website, www.WilmingtonTrustSecuritiesLitigation.com.

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

70. As a Class Member, you are represented by Lead Plaintiffs 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, but if you choose to do so, such counsel must file a notice of appearance on your behalf and must serve copies of his or her appearance on the counsel listed in the section entitled, "When And Where Will The Court Decide Whether To Approve The Settlements?," below.

71. Lead Counsel have not received any payment for their services in pursuing claims against Defendants on behalf of the Class, nor have Lead Counsel been paid for their Litigation Expenses. Before final approval of the Settlements, Lead Counsel will apply to the Court for an award of attorneys' fees in an amount not to exceed 28% of each Settlement Fund. At the same time, Lead Counsel also intend to apply for reimbursement of Litigation Expenses to be paid from the Settlement Funds in an amount not to exceed $7,500,000, which may include an application for reimbursement of the reasonable costs and expenses incurred by Lead Plaintiffs directly related to their representation of the Class. The Court will determine the amount of any award of attorneys' fees or reimbursement of Litigation Expenses. Should the Court approve only one of the two Settlements, attorneys' fees will be paid only on the approved Settlement from the Settlement Fund created by that approved Settlement, and the Litigation Expenses approved by the Court will be paid proportionally from the Settlement Fund created by the approved Settlement. Class Members are not personally liable for any such fees or expenses.

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

72. **Class Members do not need to attend the Settlement Fairness Hearing. The Court will consider any submission made in accordance with the provisions below even if a Class Member does not attend the hearing. You can participate in the Settlements without attending the Settlement Fairness Hearing.** Please Note: The date and time of the Settlement Fairness Hearing may change without further written notice to the Class. You should monitor the Court's docket and the website maintained by the Claims Administrator, www.WilmingtonTrustSecuritiesLitigation.com, before making plans to attend the Settlement Fairness Hearing. You may also confirm the date and time of the Settlement Fairness Hearing by contacting Lead Counsel.

73. The Settlement Fairness Hearing will be held on **November 5, 2018 at 10:00 a.m.**, at the United States District Court for the Eastern District of Pennsylvania, James A. Byrne Courthouse, 601 Market Street, Philadelphia, Pennsylvania 19106 in Courtroom 15A. The Court reserves the right to approve the Settlements, 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 Settlements at or after the Settlement Fairness Hearing without further notice to the members of the Class.

74. Any Class Member may object to the Settlements, the proposed Plan of Allocation, and/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 District of Delaware at the address set forth below on or before **October 12, 2018**. You must also serve the papers on Lead Counsel and on Representative Defendants' Counsel at the addresses set forth below so that the papers are ***received*** **on or before October 12, 2018**.

Clerk's Office

United States District Court
District of Delaware
Office of the Clerk of the Court
844 North King Street, Unit 18
Wilmington, DE 19801-3570

Lead Counsel

Bernstein Litowitz Berger & Grossmann LLP
Hannah Ross, Esq.
1251 Avenue of the Americas, 44th Floor
New York, NY 10020

Saxena White P.A.
Joseph E. White, III, Esq.
150 E. Palmetto Park Rd., Ste. 600
Boca Raton, FL 33432

Representative Defendants' Counsel

Williams & Connolly LLP
Margaret A. Keeley, Esq.
725 Twelfth Street NW
Washington, D.C. 20005

Venable LLP
James A. Dunbar, Esq.
210 West Pennsylvania Avenue
Suite 500
Towson, MD 21204

Hogan Lovells US LLP
George A. Salter, Esq.
875 Third Avenue
New York, NY 10022

75. Any objections, filings, and other submissions (i) must state the name, address, and telephone number of the person or entity objecting and must be signed by the objector; (ii) must state whether the objector is represented by counsel and, if so, the name, address, and telephone number of the objector's counsel; (iii) must contain a statement of the Class Member's objection or objections, and the specific reasons for each objection, including any legal and evidentiary support the Class Member wishes to bring to the Court's attention; and (iv) must include documents sufficient to prove membership in the Class, consisting of documents showing the number of shares of Wilmington Trust common stock that the objector (a) owned as of the opening of trading on January 18, 2008, and (b) purchased/acquired and/or sold during the period January 18, 2008 up to November 1, 2010 (*i.e.*, through and including October 31, 2010), as well as the number of shares, dates, and prices for each such purchase/acquisition and sale. Documentation establishing membership in the Class must 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. You may not object to the Settlements, the Plan of Allocation, or Lead Counsel's motion for attorneys' fees and reimbursement of Litigation Expenses if you are not a member of the Class or if you excluded yourself from the Class in connection with the Class Notice and are listed on Appendix 1 to the Stipulations.

76. You may file a written objection without having to appear at the Settlement Fairness Hearing. You may not, however, appear at the Settlement Fairness 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.

77. If you wish to be heard orally at the hearing in opposition to the approval of the Settlements, the Plan of Allocation, and/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 Representative Defendants' Counsel at the addresses set forth in ¶ 74 above so that it is ***received*** **on or before October 12, 2018**. Persons who intend to object and desire to present evidence at the Settlement Fairness 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.

78. You are not required to hire counsel to represent you in making written objections or in appearing at the Settlement Fairness Hearing. However, if you decide to hire counsel, it will be at your own expense, and your counsel must file a notice of appearance with the Court and serve it on Lead Counsel and Representative Defendants' Counsel at the addresses set forth in ¶ 74 above so that the notice is ***received*** **on or before October 12, 2018**.

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

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

WHAT IF I BOUGHT WILMINGTON TRUST SHARES ON SOMEONE ELSE'S BEHALF?

81. **IMPORTANT: If you previously provided the names and addresses of persons and entities on whose behalf you purchased/acquired Wilmington Trust common stock during the period January 18, 2008 up to November 1, 2010 (*i.e.*, through and including October 31, 2010), in connection with the Class Notice, and (i) those names and addresses remain current and (ii) you have no additional names and addresses for potential Class Members to provide to the Claims Administrator, *you need do nothing further at this time*. The Claims Administrator will mail a copy of this notice (the "Settlement Notice") and the Claim Form (together, the "Settlement Notice Packet") to the beneficial owners whose names and addresses were previously provided in connection with the Class Notice.** If you elected to mail the Class Notice directly to beneficial owners, you were advised that you must retain the mailing records for use in connection with any further notices that may be provided in the Action. If you elected this option, the Claims Administrator will forward the same number of Settlement Notice Packets to you to send to the beneficial owners. If you require more copies of the Settlement Notice Packet than you previously requested in connection with the Class Notice mailing, please contact the Claims Administrator, Epiq Class Action & Claims Solutions, Inc., toll-free at 1-866-800-6639 and let them know how many additional packets you require. You must mail the Settlement Notice Packets to the beneficial owners within seven (7) calendar days of your receipt of the packets.

82. If you have not already provided the names and addresses for persons and entities on whose behalf you purchased/acquired Wilmington Trust common stock during the period January 18, 2008 up to November 1, 2010 (*i.e.*, through and including October 31, 2010), in connection with the Class Notice, then, the Court has ordered that you must, WITHIN SEVEN (7) CALENDAR DAYS OF YOUR RECEIPT OF THIS NOTICE, either: (i) send the Settlement Notice Packet to all beneficial owners of such Wilmington Trust common stock, or (ii) send a list of the names and addresses of such beneficial owners to the Claims Administrator at Wilmington Trust Securities Litigation, c/o Epiq Class Action & Claims Solutions, Inc., P.O. Box 2838, Portland, OR 97208-2838, in which event the Claims Administrator shall promptly mail the Settlement Notice Packet to such beneficial owners. **AS STATED ABOVE, IF YOU HAVE ALREADY PROVIDED THIS INFORMATION IN CONNECTION WITH THE CLASS NOTICE, UNLESS THAT INFORMATION HAS CHANGED (*E.G.*, BENEFICIAL OWNER HAS CHANGED ADDRESS), IT IS UNNECESSARY TO PROVIDE SUCH INFORMATION AGAIN.**

83. Upon full and timely compliance with these directions, nominees who mail the Settlement Notice Packet to beneficial owners 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. Such properly documented expenses incurred by nominees shall be paid from the Settlement Fund, with any disputes as to the reasonableness or documentation of expenses incurred subject to review by the Court.

84. Copies of the Settlement Notice and the Claim Form may also be obtained from the website maintained by the Claims Administrator, www.WilmingtonTrustSecuritiesLitigation.com, by calling the Claims Administrator toll-free at 1-866-800-6639, or by emailing the Claims Administrator at info@WilmingtonTrustSecuritiesLitigation.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 Settlements. For more detailed information about the matters involved in this Action, you are referred to the papers on file in the Action, including the Stipulations, which may be inspected during regular office hours at the Office of the Clerk, Office of the Clerk of the Court, 844 North King Street, Unit 18, Wilmington, DE 19801-3570. Additionally, copies of the Stipulations and any related orders entered by the Court will be posted on the website maintained by the Claims Administrator, www.WilmingtonTrustSecuritiesLitigation.com.

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

Wilmington Trust Securities Litigation
c/o Epiq Class Action & Claims Solutions, Inc.
P.O. Box 2838
Portland, OR 97208-2838
Toll-Free Number: 1-866-800-6639
Email: info@WilmingtonTrustSecuritiesLitigation.com
Website: www.WilmingtonTrustSecuritiesLitigation.com

and/or

Bernstein Litowitz Berger & Grossmann LLP
Hannah Ross, Esq.
1251 Avenue of the Americas
New York, NY 10020
1-800-380-8496
blbg@blbglaw.com

Saxena White P.A.
Joseph E. White, III, Esq.
150 E. Palmetto Park Rd., Ste. 600
Boca Raton, FL 33432
1-561-394-3399
settlements@saxenawhite.com

DO NOT CALL OR WRITE THE COURT, THE OFFICE OF THE CLERK OF THE COURT, DEFENDANTS (INCLUDING WILMINGTON TRUST), M&T BANK, OR THEIR COUNSEL REGARDING THIS NOTICE.

Dated: July 25, 2018

By Order of the Court
United States District Court
District of Delaware

TABLE A-1

Estimated Artificial Inflation With Respect to Purchases/Acquisitions of Wilmington Trust Common Stock from January 18, 2008 through and including October 31, 2010

Date Range	Artificial Inflation Per Share
January 18, 2008 - January 28, 2010	$8.83
January 29, 2010 - April 22, 2010	$6.97
April 23, 2010 - June 3, 2010	$5.74
June 4, 2010 - June 22, 2010	$5.29
June 23, 2010	$3.88
June 24, 2010 - July 22, 2010	$3.88
July 23, 2010 - October 31, 2010	$2.67

TABLE A-2

Estimated Artificial Inflation With Respect to Sales of Wilmington Trust Common Stock from January 18, 2008 through and including October 31, 2010

Date Range	Artificial Inflation Per Share
January 18, 2008 - January 28, 2010	$8.83
January 29, 2010 - April 22, 2010	$6.97
April 23, 2010 - June 3, 2010	$5.74
June 4, 2010 - June 22, 2010	$5.29
June 23, 2010	$4.14
June 24, 2010 - July 22, 2010	$3.88
July 23, 2010 - October 31, 2010	$2.67

TABLE B

90-Day Look-back Table for Wilmington Trust Common Stock
(Closing Price and Average Closing Price — November 1, 2010 through January 28, 2011)

Date	Closing Price	Average Closing Price Between November 1, 2010 and Date Shown		Date	Closing Price	Average Closing Price Between November 1, 2010 and Date Shown
11/1/2010	$4.21	$4.21		12/15/2010	$4.07	$4.16
11/2/2010	$4.11	$4.16		12/16/2010	$4.12	$4.16
11/3/2010	$4.19	$4.17		12/17/2010	$4.08	$4.15
11/4/2010	$4.28	$4.20		12/20/2010	$4.28	$4.16
11/5/2010	$4.31	$4.22		12/21/2010	$4.29	$4.16
11/8/2010	$4.23	$4.22		12/22/2010	$4.36	$4.17
11/9/2010	$4.11	$4.21		12/23/2010	$4.28	$4.17
11/10/2010	$4.20	$4.21		12/27/2010	$4.31	$4.17
11/11/2010	$4.39	$4.23		12/28/2010	$4.32	$4.18
11/12/2010	$4.33	$4.24		12/29/2010	$4.41	$4.18
11/15/2010	$4.36	$4.25		12/30/2010	$4.39	$4.19
11/16/2010	$4.29	$4.25		12/31/2010	$4.34	$4.19
11/17/2010	$4.28	$4.25		1/3/2011	$4.48	$4.20
11/18/2010	$4.23	$4.25		1/4/2011	$4.38	$4.20
11/19/2010	$4.23	$4.25		1/5/2011	$4.42	$4.21
11/22/2010	$4.04	$4.24		1/6/2011	$4.46	$4.21
11/23/2010	$4.03	$4.22		1/7/2011	$4.38	$4.22
11/24/2010	$4.06	$4.22		1/10/2011	$4.29	$4.22
11/26/2010	$4.04	$4.21		1/11/2011	$4.36	$4.22
11/29/2010	$3.98	$4.20		1/12/2011	$4.41	$4.22
11/30/2010	$3.92	$4.18		1/13/2011	$4.33	$4.23
12/1/2010	$3.95	$4.17		1/14/2011	$4.40	$4.23
12/2/2010	$4.07	$4.17		1/18/2011	$4.35	$4.23
12/3/2010	$4.08	$4.16		1/19/2011	$4.33	$4.23
12/6/2010	$4.00	$4.16		1/20/2011	$4.29	$4.23
12/7/2010	$4.01	$4.15		1/21/2011	$4.36	$4.24
12/8/2010	$4.15	$4.15		1/24/2011	$4.36	$4.24
12/9/2010	$4.18	$4.15		1/25/2011	$4.37	$4.24
12/10/2010	$4.29	$4.16		1/26/2011	$4.35	$4.24
12/13/2010	$4.25	$4.16		1/27/2011	$4.39	$4.25
12/14/2010	$4.19	$4.16		1/28/2011	$4.37	$4.25

Wilmington Trust Securities Litigation
c/o Epiq Class Action & Claims Solutions, Inc.
P.O. Box 2838
Portland, OR 97208-2838

Toll-Free Number: 1-866-800-6639
Email: info@WilmingtonTrustSecuritiesLitigation.com
Website: www.WilmingtonTrustSecuritiesLitigation.com

PROOF OF CLAIM AND RELEASE FORM

TO BE ELIGIBLE TO RECEIVE A SHARE OF THE NET SETTLEMENT FUNDS IN CONNECTION WITH THE PROPOSED SETTLEMENTS, YOU MUST COMPLETE AND SIGN THIS PROOF OF CLAIM AND RELEASE FORM ("CLAIM FORM") AND MAIL IT BY PREPAID, FIRST-CLASS MAIL TO THE ABOVE ADDRESS, **POSTMARKED NO LATER THAN NOVEMBER 26, 2018**.

FAILURE TO SUBMIT YOUR CLAIM FORM BY THE DATE SPECIFIED WILL SUBJECT YOUR CLAIM TO REJECTION AND MAY PRECLUDE YOU FROM BEING ELIGIBLE TO RECOVER ANY MONEY IN CONNECTION WITH THE PROPOSED SETTLEMENTS.

DO NOT MAIL OR DELIVER YOUR CLAIM FORM TO THE COURT, THE PARTIES TO THIS 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 – GENERAL INSTRUCTIONS

1. It is important that you completely read and understand the Notice of (I) Proposed Settlements and Plan of Allocation; (II) Settlement Fairness Hearing; and (III) Motion for an Award of Attorneys' Fees and Reimbursement of Litigation Expenses (the "Settlement Notice") that accompanies this Claim Form, including the proposed Plan of Allocation of the Net Settlement Funds set forth in the Settlement Notice (the "Plan of Allocation"). The Settlement Notice describes the proposed Settlements, how Class Members are affected by the Settlements, and the manner in which the Net Settlement Funds will be distributed if the Settlements and Plan of Allocation are approved by the Court. The Settlement 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 Settlement Notice, including the terms of the releases described therein and provided for herein.

2. This Claim Form is directed to all persons or entities who purchased or otherwise acquired Wilmington Trust Corporation ("Wilmington Trust") common stock during the period from January 18, 2008 up to November 1, 2010 (*i.e.*, through and including October 31, 2010) (the "Class Period"), including all persons or entities who purchased shares of Wilmington Trust common stock issued in the secondary common stock offering that occurred on or about February 23, 2010 (the "Offering"), and were damaged thereby (the "Class"). Certain persons and entities are excluded from the Class by definition as set forth in Paragraph 24 of the Settlement Notice.

3. By submitting this Claim Form, you will be making a request to share in the proceeds of the Settlements described in the Settlement Notice. IF YOU ARE NOT A CLASS MEMBER (see the definition of the Class in Paragraph 24 of the Settlement Notice, which sets forth who is included in and who is excluded from the Class), DO NOT SUBMIT A CLAIM FORM. **YOU MAY NOT, DIRECTLY OR INDIRECTLY, PARTICIPATE IN THE SETTLEMENTS.** THUS, IF YOU ARE EXCLUDED FROM THE CLASS, ANY CLAIM FORM THAT YOU SUBMIT, OR THAT MAY BE SUBMITTED ON YOUR BEHALF, WILL NOT BE ACCEPTED.

4. **Submission of this Claim Form does not guarantee that you will share in the proceeds of the Settlements. The distribution of the Net Settlement Funds will be governed by the Plan of Allocation set forth in the Settlement Notice, if it is approved by the Court, or by such other plan of allocation as the Court approves.**

5. 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 Wilmington Trust common stock. On this schedule, please provide all of the requested information with respect to your holdings, purchases, acquisitions, and sales of Wilmington Trust 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.**

6. **Please note:** Only Wilmington Trust common stock purchased or otherwise acquired during the Class Period, *i.e.*, during the period from January 18, 2008 through and including October 31, 2010, is eligible under the Settlements. However, under the "90-day look-back period" (described in the Plan of Allocation set forth in the Settlement Notice), your sales of Wilmington Trust common stock during the period from November 1, 2010 through and including January 28, 2011, 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.

7. You are required to submit genuine and sufficient documentation for all of your transactions in and holdings of Wilmington Trust 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 and the Claims Administrator do not independently have information about your investments in Wilmington Trust common stock. IF SUCH DOCUMENTS ARE NOT IN YOUR POSSESSION, PLEASE OBTAIN COPIES OF THE DOCUMENTS OR EQUIVALENT DOCUMENTS FROM YOUR BROKER. FAILURE TO SUPPLY THIS DOCUMENTATION MAY RESULT IN THE REJECTION OF YOUR CLAIM. DO NOT SEND ORIGINAL DOCUMENTS. **Please keep a copy of all documents that you send to the Claims Administrator. Also, do not highlight any portion of the Claim Form or any supporting documents.**

8. All joint beneficial owners each must sign this Claim Form and their names must appear as "Claimants" in Part II of this Claim Form. The complete name(s) of the beneficial owner(s) must be entered. If you purchased or otherwise acquired Wilmington Trust common stock during the Class Period and held the shares in your name, you are the beneficial owner as well as the record owner. If you purchased or otherwise acquired Wilmington

Trust common stock during the Class Period and the shares 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.

9. **One Claim should be submitted for each separate legal entity**. 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).

10. 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 Wilmington Trust 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.)

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

    (a) own(ed) the Wilmington Trust common stock you have listed in the Claim Form; or

    (b) are expressly authorized to act on behalf of the owner thereof.

12. 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.

13. If the Court approves the Settlement(s), 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.

14. **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 Funds. 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.

15. If you have questions concerning the Claim Form, or need additional copies of the Claim Form or the Settlement Notice, you may contact the Claims Administrator, Epiq Class Action & Claims Solutions, Inc., at the above address, by email at info@WilmingtonTrustSecuritiesLitigation.com, or by toll-free phone at 1-866-800-6639, or you can visit the case website, www.WilmingtonTrustSecuritiesLitigation.com, where copies of the Claim Form and Settlement Notice are available for downloading.

16. 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 case website at www.WilmingtonTrustSecuritiesLitigation.com or you may email the Claims Administrator's electronic filing department at info@WilmingtonTrustSecuritiesLitigation.com. **Any file not in accordance with the required electronic filing format will be subject to rejection.** Only one claim should be submitted for each separate legal entity (*see* Paragraph 9 above) and the ***complete*** name of the beneficial owner of the securities must be entered where called for (*see* Paragraph 8 above). No electronic files will be considered to have been properly submitted unless the Claims Administrator issues an email to that effect. **Do not assume that your file has been received until you receive this email. If you do not receive such an email within 10 days of your submission, you should contact the Claims Administrator's electronic filing department at info@WilmingtonTrustSecuritiesLitigation.com to inquire about your file and confirm it was received.**

IMPORTANT: PLEASE NOTE

YOUR CLAIM IS NOT DEEMED FILED UNTIL YOU RECEIVE AN ACKNOWLEDGEMENT POSTCARD. 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, CALL THE CLAIMS ADMINISTRATOR TOLL FREE AT 1-866-800-6639.

PART II – CLAIMANT IDENTIFICATION

Please complete this PART II in its entirety. 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.

Beneficial Owner's First Name | MI | Beneficial Owner's Last Name

Co-Beneficial Owner's First Name | MI | Co-Beneficial Owner's Last Name

Entity Name (if Beneficial Owner is not an individual)

Representative or Custodian Name (if different from Beneficial Owner(s) listed above)

Address 1 (street name and number)

Address 2 (apartment, unit, or box number)

City | State | ZIP Code

Country

Last four digits of Social Security Number or Taxpayer Identification Number

Telephone Number (home) – – Telephone Number (work) – –

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

Account Number (where securities were traded)[1]:

Claimant Account Type (check appropriate box):

- ☐ Individual (includes joint owner accounts)
- ☐ Pension Plan
- ☐ Trust
- ☐ Corporation
- ☐ Estate
- ☐ IRA/401K
- ☐ Other _____ (please specify)

[1] If the account number is unknown, you may leave blank. If filing for more than one account for the same legal entity you may write "multiple." Please see Paragraph 9 of the General Instructions above for more information on when to file separate Claim Forms for multiple accounts.

PART III – SCHEDULE OF TRANSACTIONS IN WILMINGTON TRUST COMMON STOCK

Complete this Part III if and only if you purchased or acquired Wilmington Trust common stock during the period from January 18, 2008 through and including October 31, 2010. Please be sure to include proper documentation with your Claim Form as described in detail in Part I – General Instructions, Paragraph 7, above. Do not include information regarding securities other than Wilmington Trust common stock.

1. HOLDINGS AS OF JANUARY 18, 2008 – State the total number of shares of Wilmington Trust common stock held as of the opening of trading on January 18, 2008. (Must be documented.) If none, write "zero" or "0."

2. PURCHASES/ACQUISITIONS FROM JANUARY 18, 2008 THROUGH OCTOBER 31, 2010 – Separately list each and every purchase/acquisition (including free receipts) of Wilmington Trust common stock from after the opening of trading on January 18, 2008 through and including October 31, 2010. (Must be documented.)

Date of Purchase/ Acquisition (List Chronologically) (MMDDYY)	Number of Shares Purchased/Acquired	Purchase/Acquisition Price Per Share	Total Purchase/Acquisition Price (excluding taxes, commissions, and fees)

3. PURCHASES/ACQUISITIONS FROM NOVEMBER 1, 2010 THROUGH JANUARY 28, 2011 – State the total number of shares of Wilmington Trust common stock purchased/acquired (including free receipts) from November 1, 2010 through and including the close of trading on January 28, 2011. (Must be documented.) If none, write "zero" or "0."[2]

4. SALES FROM JANUARY 18, 2008 THROUGH JANUARY 28, 2011 – Separately list each and every sale/disposition (including free deliveries) of Wilmington Trust common stock from after the opening of trading on January 18, 2008 through and including the close of trading on January 28, 2011. (Must be documented.)

IF NONE, CHECK HERE ☐

Date of Sale (List Chronologically) (MMDDYY)	Number of Shares Sold	Sale Price Per Share	Total Sale Price (excluding taxes, commissions, and fees)

5. HOLDINGS AS OF JANUARY 28, 2011 – State the total number of shares of Wilmington Trust common stock held as of the close of trading on January 28, 2011. (Must be documented.) If none, write "zero" or "0."

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 ☐

[2] **Please note:** Information requested with respect to your purchases/acquisitions of Wilmington Trust common stock from November 1, 2010 through and including the close of trading on January 28, 2011 is needed in order to balance your claim; purchases/acquisitions during this period, however, are not eligible transactions and will not be used for purposes of calculating Recognized Loss Amounts 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 8 OF THIS CLAIM FORM.

Release of Claims Against Wilmington Trust Defendants and Underwriter Defendants:

I (we) hereby acknowledge that, pursuant to the terms set forth in the Wilmington Trust/Underwriter Stipulation, upon the Effective Date of the Wilmington Trust/Underwriter 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 entered with respect to the Wilmington Trust/Underwriter Settlement, shall have, fully, finally, and forever compromised, settled, released, resolved, relinquished, waived, and discharged each and every Released Plaintiffs' Claim (as defined in the Wilmington Trust/Underwriter Stipulation and the Settlement Notice) against the Wilmington Trust Defendants, M&T Bank, the Underwriter Defendants and the other Settling Defendants' Releasees (as defined in the Wilmington Trust/Underwriter Stipulation and the Settlement Notice), and shall forever be barred and enjoined from prosecuting any or all of the Released Plaintiffs' Claims against any of the Settling Defendants' Releasees.

Release of Claims Against KPMG:

I (we) hereby acknowledge that, pursuant to the terms set forth in the KPMG Stipulation, upon the Effective Date of the KPMG 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 entered with respect to the KPMG Settlement, shall have, fully, finally, and forever compromised, settled, released, resolved, relinquished, waived, and discharged each and every Released Plaintiffs' Claim (as defined in the KPMG Stipulation and the Settlement Notice) against KPMG and the other Settling Defendant's Releasees (as defined in the KPMG Stipulation and the Settlement Notice), and shall forever be barred and enjoined from prosecuting any or all of the Released Plaintiffs' Claims against any of the Settling Defendant's 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 Settlement Notice and this Claim Form, including the releases provided for in the Settlements and the terms of the Plan of Allocation;
2. that the claimant(s) is a (are) member(s) Class Member(s), as defined in the Settlement Notice, and is (are) not excluded by definition from the Class as set forth in the Settlement Notice;
3. that the claimant has **not** submitted request(s) for exclusion from the Class;
4. that I (we) own(ed) the Wilmington Trust common stock identified in the Claim Form and have not assigned the claim against any of the Settling Defendants or any of the other Settling 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 Wilmington Trust 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, agree(s) to the determination by the Court of the validity or amount of this Claim and waives any right of appeal or review with respect to such determination;
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.

	Date MM – DD – YY
Signature of claimant	
Print claimant name here	
Signature of joint claimant, if any	Date MM – DD – YY
Print joint claimant name here	

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

	Date MM – DD – YY
Signature of person signing on behalf of claimant	
Print name of person signing on behalf of claimant here	
Capacity of person signing on behalf of claimant, if other than an individual, *e.g.*, executor, president, trustee, custodian, etc. (Must provide evidence of authority to act on behalf of claimant – *see* Paragraph 10 on page 3 of this Claim Form.)	

REMINDER CHECKLIST:

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

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

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

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

5. 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 1-866-800-6639.**

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

7. If you have any questions or concerns regarding your claim, please contact the Claims Administrator at the address below, by email at info@WilmingtonTrustSecuritiesLitigation.com, or by toll-free phone at 1-866-800-6639 or you may visit www.WilmingtonTrustSecuritiesLitigation.com. DO NOT call Wilmington Trust, any of the other Defendants, M&T Bank, 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 NOVEMBER 26, 2018**, ADDRESSED AS FOLLOWS:

Wilmington Trust Securities Litigation
c/o Epiq Class Action & Claims Solutions, Inc.
P.O. Box 2838
Portland, OR 97208-2838

A Claim Form received by the Claims Administrator shall be deemed to have been submitted when posted, if a postmark date on or before **November 26, 2018** 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 C

CONFIRMATION OF PUBLICATION

IN THE MATTER OF: ***Wilmington Trust Securities Litigation***

I, Kathleen Komraus, hereby certify that

(a) I am the Media & Design Manager at Epiq Systems Class Action & Claims Solutions, a noticing administrator, and;

(b) The Notice of which the annexed is a copy was published in the following publications on the following dates:

8.6.18 – Investor's Business Daily
8.6.18 – PR Newswire

x Kathleen Komraus
(Signature)

Media + Design Manager
(Title)

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36 Mos Fund Performance Rating	2018 Chg	12 Wks % Chg	5 Yr % Chg	Net Asset Value	NAV After Asset Chg	Chg Year To Date
A+ CSLgCapGr	+13	+5.4	102	50.67	n	-0.77
A SmCapS	+8	+5.5	+85	18.38	+.03	
Litman Gregory						
$ 1.1 bil 415-461-8999						
A+ MetrEqtl	+6	+2.2	+68	20.26	+.02	
LKCM Funds						
$ 864 mil 817-332-3235						
A Equityinstl	+11	+5	+62	28.77	+.04	
Lennie Syhs						
$ 39.5 bil 800-433-3330						
A+ SmCapGrInstl	+18	+5.5	+69	29.85	+.13	
Lord Abbett A						
$ 120 bil 888-522-2388						
A+ CapitStruc	+3	+5.5	+51	15.71	+.10	
A GrowthLstrs	+14	+3	+86	31.79	-.24	
A+ ShortDurInc	0	+0		4.18	+.00	
Lord Abbett B						
$ 82.5 bil 888-522-2388						
E+ **ShortDurInc**	**0**	**+0**	**-2**	**4.19n**	**+.00**	
Lord Abbett C						
$ 107 bil 888-522-2388						
E+ ShortDurInc	0	+0	-1	4.20n	+.00	
Lord Abbett F						
$ 96.4 bil 888-522-2388						
E+ ShortDurInc	0	+0	+1	4.17n	+.00	
Lord Abbett I						
$ 90.4 bil 888-522-2388						
A+ CashDivGr	+3	+5	+52	15.85n	+.09	
E+ ShortDurInc	0	+0	+1	4.17n	+.00	

—M–N–O—

MainStay A Fds
$ 35.6 bil 800-624-6782
A LrgCpGrowA +7 +4 +88 10.63 +.02
A+ SPGrowth +7 +4 +71 52.13n +.25
Mains & Power
$ 6.1 bil 866-304-7404
A SmallCap +10 +9 +68 27.91n -.02
MAS Funds Instl Cl
$ 327 mil 800-354-8185
A+ RsseInInt + 9 +4 -83 14.38n -.08
Mass Mutl Instl
$ 2.5 bil 866-272-2216
A PrmSlctSmVA +11 +5 +68 13.66 +.03
Mass Mutl Prem
$ 17.0 bil 800-272-2216
A DiscpInvGrwL +11 +5 +70 14.04n +.04
A+ BlkrcpIntGrwS +11 +5 +71 13.86n +.03
A+ BlkrcpInGrwY +11 +5 +71 13.90n +.04
Mass Mutl Select
$ 68.0 bil 800-272-2216
A Growth +13 +6 +86 13.92n +.00
A+ MidMrktIdx +6 +3 +58 16.99n +.00
A+ S&P500Idx +7 +4 +70 17.13n +.00
A+ SmMrktIdx +10 +5 +56 15.47n +.00
Nationwide Funds Service
$ 11.2 bil 800-321-6064
A S&P500Inv +7 +4 +68 17.80n +.00
A+ S&P500Svc +6 +4 +67 16.99n +.00
Natixis Funds
$ 653.5 bil 617-449-2100
A+ GrowthY +8 +4 +80 16.71n -.06
A+ HarrisLrgVal A +4 +2 +67 25.2k +.14
A+ LgCapVal +4 +2 +62 21.90n +.12
A+ OSMICapEqA +7 +4 +85 26.91n +.25
A+ OSMICapEqY +7 +4 +85 26.75n +.11
A+ OSMIICapEqY + 8 + 4 +90 45.32n +.10
Neuberg Berm
$ 49.4 bil 800-223-6468
A+ LgCapVal +4 +4 +115 32.36 +.21
A+ MultiCpGr +5 +5 +85 19.56n +.06
A+ MultiCpOppC +5 +4 +65 18.64n -.05
A+ RsnFd96 +7 +4 +80 40.09n +.09
A+ ResponsG +6 +3 +71 40.70n +.09
A+ ResponsGrowthA +7 +3 +83 40.74n +.09
A+ SocResp83 +7 +3 +249 40.70n +.09
Neuberg Berm Adv
$ 5.4 bil 800-223-6468
A+ Genesis +8 +4 +72 62.04n -.23
A+ LgCapVal +3 +2 +64 32.38n +.20
Neuberg Berm Instl
$ 22.2 bil 800-223-6468
A MltcapEdge +6 +4 +72 19.70n -.05
Neuberg Berm Inv
$ 35.4 bil 800-223-6468
A+ Genesis +8 +4 +62 62.07n -.23
A+ GenesisI +8 +4 +56 62.07n -.23
A+ GuardianI +8 +4 +59 19.80n -.07
Neuberg Brm Tr
$ 16.2 bil 800-223-6468
A+ Genesis +8 +4 +75 32.28n -.31
A+ SocResponsi +7 +3 +252 40.75n -.09
NorthCoastAssetMgmt
$ 80 mil 800-774-5048
C+ SelGr +7 +3 +0 -32 14.56n -.02
Northern
$ 401.1 bil 800-595-9111
A+ Incomeq +6 +5 +49 15.56n -.09
A+ LrgCapCore +7 +5 +71 20.14n -.09
A+ MidCpIdx +6 +3 +64 20.49n +.05
A+ SmCapIdx +10 +4 +63 14.93n -.09
A+ SmCapVal +5 +4 +56 24.67n -.10

36 Mos Fund Performance Rating	2018 Chg	12 Wks % Chg	5 Yr % Chg	Net Asset Value	NAV After Asset Chg	Chg Year To Date
A MAInvtyStk	+10	+6	+78	30.66	+.14	
A MidCapGr	+15	+5	+85	18.38	+.03	
A+ NewWorldInv	+20	+4	+136	43.91	-.01	
A+ Research	+8	+5	+67	45.49	+.23	
A+ Technology	+20	+4	+136	43.91	-.01	
B+ Valuel	+1	+3	+55	40.62	+.25	
MFS Funds B						
$ 40.9 bil 800-257-8787						
A+ CoreEquity	+8	+4	+65	29.61n	+.12	
A+ Growth	+15	+5	+93	83.31n	-.82	
A+ MidCapGr	+15	+5	+85	18.46n	+.04	
A+ MidCapOp	+15	+5	+71	14.81n	+.03	
A+ Technology	+19	+4	+136	37.99n	-.00	
A+ Value	+1	+3	+53	40.14n	+.25	
MFS Funds C						
$ 168 bil 800-225-2606						
A+ CoreEquity	+8	+4	+65	29.26n	+.12	
A+ Growth	+15	+5	+93	83.12n	-.82	
A+ MidCapGr	+15	+5	+85	18.46n	+.04	
A+ MidCapOp	+15	+5	+71	14.81n	+.03	
A+ Technology	+19	+4	+136	37.99n	-.00	
A+ Value	+1	+3	+53	40.14n	+.25	
MFS Funds I						
$ 141 bil 800-225-2606						
A+ CoreEquity	+8	+5	+103	109.81n	+.83	
A MAInvtyStk	+10	+6	+81	31.52n	+.15	
A+ MassInvTr	+7	+4	+68	33.11n	+.14	
A MidCapGr	+15	+5	+85	18.46n	+.04	
A+ NewDiscovery	+16	+5	+56	35.85n	-.13	
A+ Technology	+19	+4	+136	37.99n	-.00	
B+ Value	+1	+3	+56	40.85n	+.25	
Morgan Stan						
$ 4.6 bil 888-454-3965						
A MltiCpStrgy	+23	+4	+109	29.16n	-.19	
Morgan Stan A						
$ 2.3 bil 888-454-3965						
A+ MltiCpGrt	+24	+4	+119	39.45	-.26	
Morgan Stan B						
$ 2.3 bil 888-454-3965						
A+ MltiCpGrt	+23	+4	+116	28.73n	-.20	
Morgan Stan I						
$ 2.1 bil 888-454-3965						
A+ MltiCapGrI	+24	+4	+124	43.45n	-.29
Morgan Stan Ins						
$ 283.5 bil 888-454-3965						
A+ CapGrI	+21	+4	+128	49.49n	-.31
A+ CapGrP	+21	+4	+124	47.13	-.29
Nationwide A						
$ 13.0 bil 800-321-6064						
A+ Growth	+12	+6	+84	13.09	+.00
A+ S&P500Idx	+7	+4	+68	17.80	+.00
A+ SmallIdx	+10	+5	+54	15.11	-.00
Nationwide Funds Inst						
$ 7.8 bil 800-321-6064						
A Growth	+13	+6	+86	13.92n	+.00
A+ MidMrktIdx	+6	+3	+58	16.99n	+.00
A+ S&P500Idx	+7	+4	+70	17.13n	+.00
A+ SmMrktIdx	+10	+5	+56	15.47n	+.00
Nationwide Funds Service						
$ 11.2 bil 800-321-6064						
A S&P500Inv	+7	+4	+68	17.80n	+.00
A+ S&P500Svc	+6	+4	+67	16.99n	+.00
Natixis Funds						
$ 653.5 bil 617-449-2100						
A+ GrowthY	+8	+4	+80	16.71n	-.06
A+ HarrisLrgVal A	+4	+2	+67	25.2k	+.14
A+ LgCapVal	+4	+2	+62	21.90n	+.12
A+ OSMICapEqA	+7	+4	+85	26.91n	+.25
A+ USMICapEqC	+7	+4	+75	26.75n	+.11
A+ USMICapEqY	**+8**	**+4**	**+90**	**45.32n**	**+.10**
Neuhg Brm						
$ 49.4 bil 800-223-6468						
A+ LgCapVal	+4	+4	+115	32.36	+.21
A+ MultiCpGr	+5	+5	+85	19.56n	+.06
A+ MultiCpOppC	+5	+4	+65	18.64n	-.05
A+ RsnFd96	+7	+4	+80	40.09n	+.09
A+ ResponsG	+6	+3	+71	40.70n	+.09
A+ ResponsGrowthA	+7	+3	+83	40.74n	+.09
A+ SocRespS83	+7	+3	+249	40.70n	+.09
Neuhg Brm Adv						
$ 5.4 bil 800-223-6468						
A+ Genesis	+8	+4	+72	62.04n	-.23
A+ LgCapVal	+3	+2	+64	32.38n	+.20
Neuhg Brm Instl						
$ 22.2 bil 800-223-6468						
A MltcapEdge	+6	+4	+72	19.70n	-.05
Neuhg Brm Inv						
$ 35.4 bil 800-223-6468						
A+ Genesis	+8	+4	+62	62.07n	-.23
A+ GenesisI	+8	+4	+56	62.07n	-.23
A+ GuardianI	+8	+4	+59	19.80n	-.07
Neuhg Brm Tr						
$ 16.2 bil 800-223-6468						
A+ Genesis	+8	+4	+75	32.28n	-.31
A+ SocResponsi	+7	+3	+252	40.75n	-.09
NorthCoastAssetMgmt						
$ 80 mil 800-774-5048						
C+ SelGr	+7	+3	+0	-32	14.56n	-.02
Northern						
$ 401.1 bil 800-595-9111						
A+ Incomeq	+6	+5	+49	15.56n	-.09
A+ LrgCapCore	+7	+5	+71	20.14n	-.09
A+ MidCpIdx	+6	+3	+64	20.49n	+.05
A+ SmCapIdx	+10	+4	+63	14.93n	-.09
A+ SmCapVal	+5	+4	+56	24.67n	-.10

36 Mos Fund Performance Rating	2018 Chg	12 Wks % Chg	5 Yr % Chg	Net Asset Value	NAV After Asset Chg	Chg Year To Date
A StocksIndex	+7	+5	+77	33.76n	+.16	
Nuveen CI A						
$ 57.7 bil 800-257-8787						
C+ DivVal	+4	+4	+3	15.33	+.07	
A+ LgCapGrOpp	+11	+5	+73	56.28	-.30	
A+ SmallCapVal	+11	+2	+2	70	26.31	-.16
Nuveen CI I						
$ 40.9 bil 800-257-8787						
C+ DivVal	+5	+3	+48	15.53n	+.07	
A+ NWIDSmVal	+7	+3	+70	57.84n	-.31	
A+ SmlCapVal	+2	+2	+22	77.23n	-.17	
Oak Associates						
$ 3.1 bil 888-462-5386						
A+ PinOakEqty	+7	+3	+84	70.47n	+.17	
A+ RedOak Tech	+14	+3	+134	28.02n	+.11	
A+ WhiteOakSpGr	+11	+4	+68	95.49n	-.60	
Oakmark I						
$ 119 bil 800-625-6275						
C+ Intl	+7	+8	+27	26.66n	-.20	
A Intrnl-I	+4	+2	+73	80.05n	-.67	
Oppenheimer A						
$ 31 bil 800-525-7048						
B+ DevelopMkt	+2	-5	+27	42.72	+.14	
A+ DiscoveryA	+15	+3	+69	89.00	-.63	
A+ GlobOppty	+6	+3	+125	51.85n	-.45	
A+ GrowthOpp	+11	+7	+111	74.8n	-.60	
A+ IntlSmCo	+9	+2	+104	53.93	+.03	
Oppenheimer H						
$ 19.9 bil 800-525-7048						
A+ IntlSmCo	+9	+2	+102	51.48n	+.02	
Oppenheimer Y						
$ 19.9 bil 800-525-7048						
A+ Discovery	+15	+4	+72	110.36n	-.71
A+ GlobOppty	+6	+3	+127	72.33n	-.65
A+ IntlSmCo	+9	+3	+106	53.54n	+.03
Oppenhmr C&M						
$ 153 bil 800-525-7048						
A+ GlobOppC	+6	-4	-3	+116	62.86n	-.60
A+ GoldGlbOpMn	+10	-7	-14	13.56n	+.03	
A+ IntlSmCoC	+8	+2	+98	49.48n	+.02

—P–Q–R—

Pimmintvest
$ 132 bil 973-367-7000
A+ ConservGr +13 +2 +67 11.65n +.02
A+ Growth +13 +3 +107 41.07 -.11
A Growth +13 +2 +98 32.85n -.09
PIMCO A + 6 + 4 **+97 17.69 +.09**
A+ GblEqtStrC +17 +3 +90 12.33n -.02
E TotlRetBd -2 +1 +7 14.10n +.03
PIMCO A
$ 167 bil 888-877-4626
A+ RiseFund +5 +4 +51 7.62 +.00
A+ **StockPlus +10 +5 +48 11.38 +.00**
A+ StockPLUS +6 +4 +68 11.38 +.00
A StocksSelInt +7 +4 +66 11.24 +.00
PIMCO Admin
$ 244 bil 888-877-4626
D IncomeFd -1 +1 +8 12.01n +.01
A+ RAERFund +5 +4 +54 7.81n +.00
D Realpath +1 +1 +13 8.23n +.02
PIMCO C
$ 149 bil 888-877-4626
A+ **StockPlus +10 +5 +45 10.42n +.00**
A+ StocksPLIRet +7 +4 +60 10.23n +.00
PIMCO P
$ 319 bil 888-877-4626
D Income -1 +1 +8 12.01n +.01
A RAEFund +5 +4 +54 7.94n +.00
A StockPlus +11 +5 +62 11.47n +.00
A+ StockPlusLIS +6 +4 +71 12.04n +.00
Pioneer Y
$ 31.8 bil 800-225-6292
A+ CullenVal +2 +3 +58 27.31n +.26
Pioneer A
$ 34.4 bil 800-225-6292
A+ CullenVal +3 +2 +59 27.91n +.26
A+ Equityinc +3 +2 +59 36.65 +.19
A+ GlobalHiYld +10 +3 +73 46.94 -.19
Price Advisor
$ 284 bil 800-638-7890
D+ IntlStock 0 -1 -36 18.66n +.07
A+ SmallCapVal + 7 + 4 +56 52.28n -.32
Price Funds
$ 165 bil 800-638-7890
A+ GlobalStock +10 +2 +101 43.83n +.01
A+ GrowthStock +9 +3 +93 59.56n -.05
A+ SmCapStkAd +12 +6 +65 52.89n -.10
PrincEqs
$ 135k bil 800-638-7890
A+ BluChipGr +15 +3 +120 108.14n -.84

36 Mos Fund Performance Rating	2018 Chg	12 Wks % Chg	5 Yr % Chg	Net Asset Value	NAV After Asset Chg	Chg Year To Date
A+ BluChipGr	+15	+3	+117	105.99n	-.83	
A+ BluChipGrPrv	+15	+3	+122	110.89n	-.83	
B+ CapitalStrA	+5	+3	+54	20.49n	-.11	
A CapOpport	+7	+4	-78	27.99n	+.00	
A+ DiversMidCp	+9	+4	+82	32.13n	-.04	
A+ DiversMidCpG	+9	+4	+74	16.89n	+.25	
A+ DividendGr	+6	+4	+69	45.67n	+.25	
A+ EmrgMrktsEq	-5	-6	-44	20.02n	-.22	
A+ EmrgMrktsOA	-5	-6	-43	19.82n	-.22	
A+ EqIndexS50	+7	+5	+78	75.96n	+.03	
A+ GlbBrGrowth	+8	+1	+68	37.43n	+.03	
A+ GlobTech	+9	+3	+151	18.28n	+.06	
A+ GrowthStOk	+13	+4	+103	68.95n	-.03	
A+ GrowthStrk	+13	+4	+106	70.63n	-.02	
A+ GrowthStkR	**+12**	**+4**	**+101**	**66.60n**	**-.03**
A+ IntstBlkEq	+8	+1	+71	29.79n	-.03	
A+ IntstUSRsch	+8	+1	+73	30.41n	-.03	
A+ IntlDiscov	+1	-3	+69	72.37n	-.17	
A+ Japan	+4	-1	+70	15.66n	-.01	
A+ LgCornrst	+5	+3	+126	43.09n	-.01	
A+ LgCpGrInstl	+16	+5	+123	42.81n	+.03	
A+ MediaSciEntern	+9	+6	+161	16.56n	+.29	
A MidCapOp	+9	+3	+82	40.94n	+.08	
A+ MidCapOpR	+9	+3	+82	91.98n	-.08	
A+ MidCapOpR	**+9**	**+3**	**+81**	**91.14n**	**-.08**
A+ MidCapStrA	+8	+3	+74	18.89n	+.04	
A+ MidCapVal	+6	+3	+58	32.99n	+.14	
A+ NewAmerGr	+8	+4	+97	54.77n	-.07	
A+ NewAmerGrR	+8	+4	+95	53.24n	-.06	
A+ NewHorizons	+8	+7	+99	62.06n	-.24	
E Newincome	-2	+1	+6	9.16n	+.01	
E NewIncomeR	-2	+1	+5	9.16n	+.01	
A+ SciTec	+13	+3	+125	51.25n	-.06	
A+ SciTecAdv	+13	+3	+125	50.79n	-.06	
A+ SmCapGrA	+13	+5	+85	30.77n	-.11	
A SmCapStk	+12	+6	+66	53.47n	-.11	
A+ SmCapStkA	+12	+6	+71	26.83n	-.05	
A+ SmCapValueA	+12	+5	+57	52.59n	-.32	
A+ TotRetMktStk	+7	+4	+76	32.35n	+.11	
A+ TotRetMktStk	+7	+4	+74	32.56n	+.11	
A+ TxMgdCap	+7	+3	+78	45.91n	+.19	
PRINCAP/Odyssey						
$ 25.1 bil 800-729-2307						
A+ AggrGrowth	+12	+1	+123	49.79n	-.21	
A+ Growth	+12	+2	+105	41.84n	+.03	
A+ Stock	+5	+3	+87	33.65n	+.19	
Principal Investors						
$ 282 bil 800-222-5852						
A+ EqtInc	+4	+5	+63	32.65	+.18	
A+ LgCapGr	+6	+5	+97	56.80n	-.01	
A+ LgCapS&P	+7	+5	+76	18.76n	+.08	
A+ LgCapS&P30A	+7	+4	+74	18.78	+.09	
A+ LgCapS&P50J	+7	+4	+74	18.66n	+.09	
A+ LrgGrowJ	**+16**	**+5**	**+93**	**13.96n**	**+.01**
A+ MidCpStrtJ	+6	+4	+79	27.34n	-.08
A+ SmMrktInst	+4	+5	+68	15.81n	-.12
A+ SmMrktJ	+13	+5	+63	11.81n	-.08
A+ SmS&P600J	+13	+7	+73	29.95n	-.13
A+ SmS&P90J	+13	+7	+73	29.95n	-.13
ProFunds Inv						
$ 2.1 bil 888-776-3637						
A+ AlternativeEnrgy	+28	+5	+271	94.94n	-.63
Prudential A						
$ 46.9 bil 800-225-1852						
A+ ConservGr	+13	+2	+74	13.97	+.01
A+ GlbEqtyA	+17	+3	+100	15.31	-.04
A+ LgCpCoreGr	+6	+4	+63	16.71n	-.08
Prudential B						
$ 46.1 bil 800-225-1852						
A+ ConservGr	+12	+2	+66	11.60n	-.01
A+ GlbEqtyB	+17	+3	+90	12.36n	-.03
E TotRtnBd	-2	+1	+3	14.11n	+.03
Prudential C						
$ 13.9 bil 800-225-1852						
A+ Growth	+13	+3	+98	32.99n	-.09
A+ LgCpCoreGr	+6	+4	+63	16.71n	-.08
Prudential Z&I						
$ 32.3 bil 800-225-1852						
A+ 2W20Focus	+9	+2	+57	17.60n	+.02
A+ GrowthZ	+14	+3	+111	44.25n	-.11
A+ SmallCapVal	+11	+5	+62	20.19n	-.27
A Stockidxl	+7	+4	+74	56.96n	+.26
A Stockidxz	+7	+4	+74	56.96n	+.26
E TotRetBdZ	-2	+1	+11	14.01n	+.04
Putnam						
$ 13.9 bil 800-225-1581						
A+ GrowthOpp	+14	+6	+98	37.59n	-.01
Putnam A						
$ 46.2 bil 800-225-1581						
A+ GrowthOpp	+14	+6	+98	35.74	+.01
A+ LargeCapVal	+4	+3	+78	20.06n	+.04
A+ Research	+7	+4	+80	35.52	+.14
Putnam B						
$ 4.6 bil 800-225-1581						
A+ GrowthOpp	+14	+6	+90	30.35n	+.01
A Leaders	+11	+3	+82	78.95n	+.97
Putnam C						
$ 54.5 bil 800-225-1581						
A+ GrowthOpp	+14	+6	+90	30.99n	+.01
A+ LargeCapVal	+4	+3	+83	85.46n	+.97
Putnam M						
$ 50.9 bil 800-225-1581						
A+ GrowthOpp	+14	+6	+93	32.25	+.01
A+ LargeCapVal	+4	+3	+85	86.66	+.98
Putnam Y						
$ 48.6 bil 800-225-1581						
A+ GrowthOpp	+14	+6	+100	37.30n	-.01
A+ LargeCapVal	+4	+3	+92	116.8n	+.10

36 Mos Fund Performance Rating	2018 Chg	12 Wks % Chg	5 Yr % Chg	Net Asset Value	NAV After Asset Chg	Chg Year To Date
A+ Research	+8	+5	+81	35.89n	+.15	
A+ SmCapVal	+4	+4	+49	14.79n	-.02	
RedRks						
$ 12.5 bil 888-473-8637						
A+ EnEqtInst	+14	+5	+89	28.81n	-.00	
A+ LgCapGrInv	+12	+5	+101	32.34n	-.07	
A+ SmlCapEqPrm	+7	+5	+61	20.43n	-.03	
A+ SmlCtEqPrm	+7	+4	+65	20.43n	-.04	
A+ SmlCapEqty	+7	+4	+66	20.51n	-.08
Royce Funds						
$ 13.3 bil 800-221-4268						
A+ Opportinv	+6	+3	+50	14.36n	-.01
A PAMutlStrt	+9	+5	+38	9.28n	-.01
A+ PAMutlInv	+9	+5	+66	11.55n	-.01
A Premierinv	+9	+5	+2	44.17.4n	+.01
A+ SelectEd	+11	+4	+81	13.99n	-.01
Russell Funds S						
$ 23.2 bil 800-787-7354						
A+ USSzeEqtyOp	+9	+5	+67	33.94n	-.00
A+ USSzeEqtyS	+7	+2	+48	9.38n	-.00
Rydex C						
$ 659 mil 800-820-0888						
A+ Nova	+8	+4	+69	64.11n	-.43
Rydex Dyn						
$ 2.3 bil 800-820-0888						
A+ BasicFIXXX	+29	+12	+337	159.86n	+.95
A+ NsbyDjSnC	+28	+12	+315	127.51n	-.75
Rydex Investor						
$ 2.5 bil 800-820-0888						
A+ Nsbj100	+15	+6	+124	39.20n	+.12
A+ Nova	+9	+5	+69	120.77.54n	-.53
Rydex/Sg A						
$ 957 mil 800-820-0888						
A+ MidCapValA	+6	+2	+41	36.30	+.13
Rydex/Sg C						
$ 306 mil 800-820-0888						
A+ MidCapValC	+5	+2	+33	26.16n	+.10

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Schroder Funds
$ 4.6 bil 800-464-3108
A+ NorthAmerEq +6 +4 +67 17.97n +.00
Schwab Funds
$ 74.9 bil 800-435-4000
A 1000Investmr +7 +4 +73 67.28 +.28
A+ FdsSlctLg +7 +4 +81 18.11n +.11
A+ FmdlSlSmX +8 +4 +63 16.08n +.00
A+ LrgCpIdx +9 +5 +76 19.46n +.04
A+ S&P500Idx +7 +5 +78 44.23n +.21
A+ SmCapSelect +10 +4 +62 33.66n -.17
A+ SlktdcSel +8 +5 +76 50.85n +.18
Schwartz Funds
$ 757 mil 754-855-7777
A AveMarGr +10 +4 +74 33.94n +.13
Scout Funds
$ 4.0 bil 877-776-8842
A+ MidCap +4 +4 +61 19.86n -.02
A+ SmallCap +12 +7 +82 29.08n -.14
SEI Portfolios
$ 35.1 bil 610-676-1000
A+ DiscpEqtyIn +13 +5 +76 38.52n +.06
A+ S&P500IdxA +7 +5 +77 66.99n +.32
Selig
$ 86.7 bil 800-535-7948
A+ GlbBdOppIn +4 -3 +122 68.61n -.43
A+ GoldSpecMin -10 -7 -12 14.15n -.03
Selected Funds
$ 5.2 bil 800-243-1574
A AmericanS +6 +3 +57 40.36n +.18
A AmericanS + 6 + 3 +56 40.29n +.18
Sentinel Group
$ 4.8 bil 800-282-3863
A CmmnStkA +8 +4 +64 45.68 +.15
A SmallCoA +10 +5 +54 5.76 +.00
A SmlCpGrC +10 +5 +43 3.36n +.00
SmeadCapMan
$ 2.8 bil 877-701-2883
A+ MFGrEqt +13 +4 +84 24.38n +.08
SSGA Funds
$ 21.1 bil 617-786-3000
A S&P500Idx +7 +5 +74 39.85n +.19
State Farm Ret
$ 25.9 bil 855-733-7333
A+ Equityinst +8 +3 +76 11.58n +.05
A+ EquityIA +8 +3 +76 12.10n +.05
A+ EquityIIn +8 +3 +74 12.08n +.04
A+ GrowthIn +16 +6 +105 102.71n -.10
A+ Explorer +16 +6 +105 102.71n -.10
A+ EstMktIdxIn +9 +4 +68 91.56n -.21
A+ FrntrIdx +2 +2 +9 77.59n -.13
C+ BalanceIdxIn +5 +3 +56 18.61n +.06
C+ DJIthCarer + 8 + 9 + 73 91.56n + 25
A+ IndexStAdr +2 +3 +78 73.69n -.05
A+ IndexStIn +5 +3 +76 18.61n +.06
E IntmdFixEx +0 +1 +11 13.88n +.00
A+ LargeCapIdx +7 +5 +78 65.66n -.36
A+ MutlndxAdmn -1 +1 +58 68.47n +.60
A+ MutlndxIn +5 +3 +60 70.71n +.29
A+ MutlndxSv +5 +3 +60 70.71n +.29
A+ MorganIdx +12 +4 +88 101.76n +.05
A+ Primecapr +11 +6 +89 148.72n -.40
D RETIDer +2 +7 +30 117.61n +1.2
C SrtIncAdmr +1 +1 +4 10.66n +.01
C SrtIncIdxIr +1 +1 +2 10.24n +.01
E TotRetBdIdx +1 +1 +48 76.51n -.11
A TotStkMktIdx +8 +5 +78 73.22n +.25
A IndexS00 +7 +5 +77 66.99n +.32
Steadman Funds
$ 1.1 bil 800-262-3863
A+ DowJonesIdx +7 +4 +75 18.99n +.07
Stewart Funds
$ 1.1 bil 800-451-3623
A+ GrowthInv +8 +4 +68 72.31 +.07
Stratton Funds
$ 1.7 bil 800-634-5726
A+ SmallCapVal +11 +4 +70 46.19n -.44
Strong Funds
$ 1.1 bil 800-368-3863
A+ DiscpValInv +6 +4 +71 36.69n +.07
A+ SmallCap +9 +6 +67 56.56n -.19
Strong Funds Inv
$ 5.7 bil 800-368-3863
A+ DiscpValInv +7 +5 +77 36.69n +1.3
C Balanced +4 +3 +45 35.73n +.10
C BondMrkt -3 +0 -1 10.42n -.02
C+ EmgMrktSr +5 +6 +20 27.73n -.11
C+ EmgMrktSr1 +5 +6 +20 27.25n -.10
C+ EmgMrktSr2 +5 +6 +20 26.91n -.25
A+ Growth +9 +4 +67 91.61n -.21
A+ FrstSCStckInx +8 +5 +83 18.81n +.09
A+ IntlStkIdxInv +6 +3 +58 12.99n +.03
E+ LrgCpStkIdxInv +2 +2 +20 109.8n -.08
E+ MegaCap +2 +2 +20 109.8n -.08
A+ MidCapIdxInv +5 +3 +61 17.66n +.02
A+ MegaCapIdx +8 +5 +80 113.1n -.99
A+ MidCap +5 +3 +67 44.24n +.06
D REITr +1 +4 +27 30.58n -.25
A+ InfoTechAdmr +7 +5 +149 90.47n +.04
C+ IntlBd -2 +1 -7 10.94n +.02
C Intl BdAdm -2 +1 -7 10.94n +.02
C IntlBdIdxI -2 +1 -7 10.94n +.02
A LargeCapInv +7 +4 +77 52.67n +.34
A+ MidCpIdxInvPl +5 +3 +61 17.66n +.02
A+ MegaCap +8 +5 +80 113.1n -.99
A+ MidCap +5 +3 +67 44.24n +.06
A+ SmCpIdxInvPl +9 +4 +67 76.46n -.11
A+ SmCapIdxInvSl +9 +4 +67 76.46n -.11
A+ SmallCapInv +8 +4 +71 47.72n +.25
C+ TotBdMkt -2 +1 +7 10.42n +.02
C+ TotBdMktAdm -2 +1 +7 10.42n +.02
C+ TotBdMktSIr -2 +1 +7 10.42n +.02
C+ TotIntStkIr -2 +3 +23 17.71n -.20
C+ TotIntStkIr -2 +2 +17 17.66n +.03
C+ TotMrktIdxIr +3 +0 +3 18.26n +.02
C+ TotStkMkt +8 +5 +78 73.22n +.25
A+ TotStkMkt +8 +5 +78 71.79n +.25
A+ UtilitIdxAdmr +5 +4 +59 79.56n +.32
A+ ValueIndex +4 +4 +59 32.34n +.16
A+ VangEmrMrkt r -2 -3 -7 10.81n -.01
A+ VangEmrMrkt -2 -3 -7 10.81n -.01
Vanguard Instl
$ 143.8 bil 877-662-7447
C Balancedinl +4 +3 +46 35.74n +.10
A+ DevMktsIdxInst +8 +5 +84 18.86n +.

Bernstein Litowitz Berger & Grossmann LLP and Saxena White P.A. Announce Proposed Settlements of In re Wilmington Trust Securities Litigation, Master File No. 10-cv-00990-ER (D. Del.)

NEWS PROVIDED BY
United States District Court for the District of Delaware →
08:00 ET

WILMINGTON, Del., Aug. 6, 2018 /PRNewswire/ --

UNITED STATES DISTRICT COURT
DISTRICT OF DELAWARE

IN RE WILMINGTON TRUST SECURITIES LITIGATION This document relates to: ALL ACTIONS	Master File No. 10-cv-00990-ER (Securities Class Action) Hon. Eduardo C. Robreno

SUMMARY NOTICE OF (I) PROPOSED SETTLEMENTS AND PLAN OF ALLOCATION; (II) SETTLEMENT HEARING; AND (III) MOTION FOR AN AWARD OF ATTORNEYS' FEES AND REIMBURSEMENT OF LITIGATION EXPENSES

To: All persons or entities who purchased or otherwise acquired Wilmington Trust Corporation ("Wilmington Trust") common stock during the period January 18, 2008 up to November 1, 2010 (the "Class Period"), including all persons or entities who purchased shares of Wilmington Trust common stock issued in the secondary common stock offering that occurred on or about February 23, 2010, and were damaged thereby (the "Class").[1]

PLEASE READ THIS NOTICE CAREFULLY; YOUR RIGHTS WILL BE AFFECTED BY THE SETTLEMENT OF 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 District of Delaware, that Court-appointed Lead Plaintiffs, the Coral Springs Police Pension Fund, the St. Petersburg Firefighters' Retirement System, the Pompano Beach General Employees Retirement System, the Merced County Employees' Retirement Association, and the Automotive Industries Pension Trust Fund, on behalf of themselves and the Court-certified Class in the above-captioned securities class action (the "Action"), have reached

proposed Settlements with Defendants Deloitte & Touche LLP and Ernst & Young LLP, and with Wilmington Trust's auditor during the Class Period, KPMG LLP, for $10 million in cash (collectively, the "Settlements") for a total settlement amount of $210 million in cash, plus interest thereon, if both Settlements are approved by the Court.

A hearing will be held on **November 5, 2018 at 10:00 a.m.** at the United States District Court for the Eastern District of Pennsylvania, James A. Byrne Courthouse, 601 Market Street, Philadelphia, Pennsylvania 19106 in Courtroom 15A to determine: (i) whether the proposed Settlements should be approved as fair, reasonable, and adequate; (ii) whether the Action should be dismissed with prejudice against the Settling Defendants in the respective Settlements, and the releases specified and described in the respective Stipulations of Settlement 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 expenses should be approved.

If you are a member of the Class, your rights will be affected by the pending Action and the Settlements, and you may be entitled to share in the Net Settlement Funds. If you have not yet received the full printed Notice of (I) Proposed Settlements and Plan of Allocation; (II) Settlement Fairness Hearing; and (III) Motion for an Award of Attorneys' Fees and Reimbursement of Litigation Expenses (the "Settlement Notice") and the Claim Form, you may obtain copies of these documents from the website for the Action, www.WilmingtonTrustSecuritiesLitigation.com, or you may request that a Claim Form be mailed to you by calling the Claims Administrator toll free at 1-866-800-6639 or by emailing the Claims Administrator at info@WilmingtonTrustSecuritiesLitigation.com.

If you are a Class Member, in order to be eligible to receive a payment under the proposed Settlements, you must submit a Claim Form ***postmarked*** **no later than November 26, 2018**. If you are a Class Member and do not submit a proper Claim Form, you will not be eligible to share in the distribution of the net proceeds of the Settlements but you will nevertheless be bound by any judgments or orders entered by the Court in the Action.

Any objections to the proposed Settlements, the proposed Plan of Allocation, and/or Lead Counsel's application for attorneys' fees and reimbursement of expenses, must be filed with the Court and delivered to Lead Counsel and Representative Defendants' Counsel such that they are ***received*** **no later than October 12, 2018**, in accordance with the instructions set forth in the Settlement Notice.

Please do not contact the Court, the Clerk's office, any Defendants in the Action (including Wilmington Trust), M&T Bank, or their counsel regarding this notice. All questions about this notice, the proposed Settlements, or your eligibility to participate in the Settlements should be directed to the Claims Administrator or Lead Counsel.

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

Wilmington Trust Securities Litigation
c/o Epiq Class Action & Claims Solutions, Inc.
P.O. Box 2838
Portland, OR 97208-2838
1-866-800-6639
info@WilmingtonTrustSecuritiesLitigation.com

Bernstein Litowitz Berger & Grossmann LLP
Hannah Ross, Esq.
1251 Avenue of the Americas
New York, NY 10020
1-800-380-8496
blbg@blbglaw.com

Saxena White P.A.
Joseph E. White, III, Esq.
150 E. Palmetto Park Rd., Ste. 600
Boca Raton, FL 33432
561-394-3399
settlements@saxenawhite.com

By Order of the Court

[1] Certain persons and entities are excluded from the Class by definition and others are excluded pursuant to request. The full definition of the Class including a complete description of who is excluded from the Class is set forth in the full Settlement Notice referred to in this notice.

SOURCE United States District Court for the District of Delaware

EXHIBIT H

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

CITY PENSION FUND FOR FIREFIGHTERS AND POLICE OFFICERS IN THE CITY OF MIAMI BEACH, Individually and On Behalf Of All Others Similarly Situated,	)
Plaintiff,	)
vs.	)
ARACRUZ CELULOSE S.A., CARLOS ALBERTO VIEIRA, CARLOS AUGUSTO LIRA AGUIAR, and ISAC ROFFE ZAGURY,	)
Defendants.	)

DECLARATION OF ROBERT GLENN HUBBARD

September 28, 2012

I, Robert Glenn Hubbard, declare under penalty of perjury that the following is true and correct:

I. QUALIFICATIONS

1. I am the Dean of the Graduate School of Business at Columbia University, where I hold the Russell L. Carson Professorship in Finance and Economics. In addition, I am a Professor of Economics in the Department of Economics of the Faculty of Arts and Sciences. At the National Bureau of Economic Research, I am a Research Associate in programs on corporate finance, public economics, industrial organization, monetary economics, and economic fluctuations and growth. I am also a visiting scholar at the American Enterprise Institute in programs on tax policy and financial markets. Since 2006, I have been the Co-chair of the Committee on Capital Markets Regulation, a nonpartisan organization offering analyses and policy advice on financial regulation. Prior to joining the Columbia faculty as Professor of Economics and Finance in 1988, I taught in the Department of Economics at Northwestern University. I have also served as Visiting Professor of Business Administration at Harvard Business School, John M. Olin Visiting Professor at the University of Chicago, Visiting Professor and Research Fellow of the Energy and Environmental Policy Center at Harvard University's John F. Kennedy School of Government, and John M. Olin Fellow at the National Bureau of Economic Research. I hold A.M. and Ph.D. degrees in Economics from Harvard University, and B.A. and B.S. degrees in Economics from the University of Central Florida, *summa cum laude*.

2. My professional work has centered on problems in corporate finance, public economics, industrial organization, monetary economics, and natural resource economics. I have authored more than 100 publications, edited a number of books, and authored a leading

textbook on money and financial markets and a textbook on principles of economics. I have examined issues relevant to financing and the macroeconomy and written on the recent financial crisis and the real estate market in particular.[1]

3. I have been an advisor or consultant to the Board of Governors of the Federal Reserve System, Congressional Budget Office, Federal Reserve Bank of New York, Internal Revenue Service, International Trade Commission, National Science Foundation, U.S. Department of Energy, and U.S. Department of the Treasury. From 1991 to 1993, I served as Deputy Assistant Secretary (Tax Analysis) of the U.S. Department of the Treasury, where I was responsible for economic analysis of tax policy, the administration's revenue estimates, and health care policy issues. From 2001 to 2003, I served as Chairman of the President's Council of Economic Advisers. Over that time period, I also served as Chair of the Economic Policy Committee for the Organization for Economic Cooperation and Development in Paris. A copy of my *curriculum vitae* is attached as Appendix A.

II. CASE BACKGROUND

4. This action is brought by Plaintiff City Pension Fund for Firefighters and Police Officers in the City of Miami Beach seeking class treatment for all purchasers of the American Depositary Receipts ("ADRs") of Aracruz S.A. ("Aracruz") between April 7, 2008 and October 2, 2008 (the "Purported Class Period").[2]

[1] *See*, for example, Hubbard, R. Glenn, and Christopher Mayer, "The Mortgage Market Meltdown and House Prices," *The B.E. Journal of Economic Analysis & Policy*, 9: Issue 3 (Symposium), Article 8, 2009.
[2] *City Pension Fund for Firefighters and Police Officers in the City of Miami Beach, et al. vs. Aracruz Celulose S.A., et al.*, Amended Class Action Complaint for Violation of Federal Securities Law ("Complaint").

5. The Plaintiffs allege that Aracruz made false and misleading statements regarding its hedging activities in its SEC filings on April 7, 2008 and July 7, 2008. In its ruling on Defendants' Motion to Dismiss, the Court allowed Plaintiff to proceed with its allegations with respect to three purported misstatements concluding that:

> the only potentially actionable false or misleading statements pled with particularity are Aracruz's statements in April and July that, "[t]he Company's foreign currency risk and interest rate management strategy may use derivative transactions to protect against foreign exchange and interest rate volatility," and its statement in the July earnings report that, "[p]rotecting the company's exposure to the local currency, according to the financial policy approved by the Board and outlined on Aracruz's website, the management maintained its strategy of hedging the cash flow and balance sheet exposure to the local currency, using derivative instruments to protect against foreign exchange and local interest rate exposure.[3]

III. ASSIGNMENTAND COMPENSATION

6. I have been retained by White & Case LLP, counsel for Defendants Aracruz and Carlos Augusto Aguiar, to examine factors relevant to class certification. Specifically, counsel has asked me to assess whether a disclosure on April 7, 2008 and July 7, 2008 that Aracruz's derivative trading practices were not solely "protective" ("Alternative Disclosure") would have impacted Aracruz's ADR price on those days, and whether there is reliable evidence that Aracruz's stock price was affected during the Purported Class Period by the alleged false statements regarding the nature of its foreign currency derivative trading in light of its purchases of target forward contracts.[4] I have also been asked to opine on whether damages can be calculated on a class-wide basis.

[3] *City Pension Fund for Firefighters & Police Officers in the City of Miami Beach v. 13.Aracruz, et. al.,* No. 08-23317-CIV, (S.D. Fla. Sept. 16, 2011) [Docket No. 109], pp. 32-33.

[4] The losses incurred by Aracruz in its currency hedging activities were generated by a type of derivative called a "target forward" contract. For purposes of this report, I assume that target forward contracts were not "protective." However, I have made no finding that target forward contracts were not "protective."

7. In working on this assignment, I have relied upon the documents and data listed in Appendix B. Others working under my supervision and direction have assisted me in this matter.

8. I am being compensated at a rate of $1,200 per hour for my work on this matter. In addition, I receive compensation based on the professional fees of those working under my supervision and direction. Payment for my work and those working under my supervision and direction on this matter is in no way contingent on the opinions I express or the outcome of this matter.

IV. SUMMARY OF OPINIONS

9. Based on my research and analyses to date, it is my opinion that:

   i. As of April 7, 2008, Aracruz had not yet entered into the target forward contracts that are the subject of this litigation.[5] As such, the nature of Aracruz's foreign exchange derivative trading activities had not changed and its ADR price could not have been inflated at that point as a consequence of such contracts.

   ii. The Alternative Disclosure on July 7, 2008 that Aracruz's derivative trading operations were not "protective" as a result of its exposure to target forward contracts would not have affected Aracruz's ADR price on that day:

      a. As of the July 7, 2008 disclosure, the aggregate value of the target forwards was positive, meaning that Aracruz would have earned a financial gain by unwinding the target forward contracts on that day. A different description of the nature of Aracruz's foreign exchange derivative trading activities or a more detailed enumeration of Aracruz's holdings would not have caused its ADR price to decline.

      b. Furthermore, there is no *a priori* reason to believe that the Alternative Disclosure would *per se* have caused a significant change (positive or negative) in Aracruz's ADR price on July 7, 2008. As an initial matter, according to financial research, there is no consensus as to whether use of derivatives adds value to a firm. Some investors may have sold their ADRs due to a perception of Aracruz's increased risk taking, while others may have purchased ADRs because they were attracted to the same risk

[5] As I discuss in more detail below, Aracruz first entered into a target forward contract on April 29, 2008.

taking. In fact, many sophisticated institutional investors continued holding their ADRs well after Aracruz disclosed its exposure to currency movements. Moreover, with the Alternative Disclosure, investors could have chosen to hedge their currency risk by entering into zero-cost contracts. In any event, Aracruz could have liquidated its target forward contracts at a profit on July 7, 2008. Additionally, while some analysts covering Aracruz during the Purported Class Period considered Aracruz's hedging activities, none of the analyst reports I reviewed indicated that analysts were attributing additional (or negative) value to the ADRs based on Aracruz's hedging activities, which is consistent with academic research.

iii. I have valued Aracruz's target forward positions through the Purported Class Period. Between April 29, 2008, the first date that Aracruz entered into a target forward contract, and August 7, 2008, the aggregate value of Aracruz's target forward contracts was positive for all but for four days, meaning that Aracruz would have received a net *benefit* by unwinding or selling its target forward contracts prior to August 7, 2008.[6] The aggregate value of Aracruz's target forward contracts became nominally negative from August 8, 2008 to September 3, 2008. After September 3, 2008, the value of Aracruz's target forwards rapidly decreased as a global financial crisis unfolded and the Brazilian *real* rapidly depreciated against the dollar. I conclude that the alleged misstatements would not have been associated with a measurable decline[7] in Aracruz's ADR price until the value of Aracruz's target forward contracts became materially negative on September 4, 2008.[8] Prior to September 4, 2008, any mark-to-market declines in the value of Aracruz's target forward contracts would be indistinguishable from the random movements in the price of Aracruz's ADRs, thus no price impact on Aracruz's ADRs can be found. Indeed, given the nature of the Alternative Disclosure, which only would address non-protective elements of Aracruz's derivative trading, there would need to be significant changes in the dollar/*real* exchange rate, as manifested in the change in the mark-to-market value of Aracruz's target forwards, before any change in Aracruz's ADR price could be ascertained.

[6] As I discuss below, prior to August 8, 2008, the aggregate value of the target forward contracts was never less than -$2.4 million dollars.

[7] Throughout this declaration I define a measurable decline in Aracruz's ADR price as one that would be associated with a statistically significant change in Aracruz's ADR price. This means that excess returns that cannot be distinguished statistically from zero are not measurable. I used the standard error from the event study conducted by plaintiff expert Chad Coffman to determine the minimum stock price movement that would be considered statistically significant. See Exhibit 6 to the Declaration of Chad Coffman, CFA ("Coffman Declaration"), dated July 20, 2012. The standard error of the event study regression was 2 percent, which means that a decline in Aracruz's ADR price of approximately 3.92 percent would be considered statistically significant at the 95 percent confidence level.

[8] I define a materially negative market-to-market value of Aracruz's target forwards as one that would be associated with a measurable decline in Aracruz's ADR price.

iv. Because there is no measurable effect of the alleged misstatements on Aracruz's ADR price prior to September 4, 2008, I conclude that there was no artificial inflation in Aracruz's ADR price prior to that date and therefore damages cannot be calculated on a class-wide basis prior to that date. To the extent potential class members purchased Aracruz ADRs prior to that date and claim damages as a result of alleged misstatements, they cannot use artificial inflation in the ADR price at the time of purchase to prove their claim. Instead, individualized inquiry would be required on a plaintiff by plaintiff basis to determine what, if any, damages were incurred by plaintiffs who purchased their ADRs at a time that the price was not inflated due to the alleged misstatements.

10. I provide the bases for these opinions in the remainder of my declaration.

V. ARACRUZ'S TARGET FORWARD CONTRACTS

11. Aracruz was the world's largest producer of bleached hardwood kraft market pulp.[9] Sales to foreign customers accounted for approximately 98 percent of its revenue in 2006 and 2007.[10] Because most of Aracruz's revenues were dollar-denominated but its expenses were mostly in *reals*, Aracruz considered itself to be exposed to variations of the exchange rate between the U.S. dollar and the Brazilian *real* ("*real*/USD exchange rate").[11]

12. In August and September 2008, the value Aracruz's financial derivative instruments called target forward contracts nominally became negative on a mark-to-market basis. This negative value resulted when the *real*/USD exchange rate increased around August and more rapidly in September of 2008 during the global financial crisis, meaning that the *real* depreciated relative to the dollar.[12] In the sections below, I describe target

[9] Aracruz 20-F, for the Fiscal Year Ended December 31, 2007, p. 18.
[10] Aracruz 20-F, for the Fiscal Year Ended December 31, 2007, p. 19.
[11] Aracruz 20-F, for the Fiscal Year Ended December 31, 2007, p. 81.
[12] An increase in the *real*/USD exchange rate means that the *real* is depreciating in value relative to the dollar.

forward contracts including their attributes and their uses by Aracruz and other companies.

A. Description of Target Forward Contracts

13. Target forwards first emerged in mid-2005 "in response to the specific hedging requirements of Asian clients."[13] Since their introduction and up through 2008, target forwards were considered "a core part of corporates' risk management toolbox."[14] For example, BNP Paribas alone executed $7 billion in target forwards in 2006 and $30 billion in 2007 with its Asian and European clients.[15] Additionally, BNP transacted $2 billion worth of target forwards with Brazilian clients, including Aracruz.[16,17]

14. Similar to a standard, or "plain vanilla" forward contract,[18] the purchaser such as Aracruz of a target forward contract (also referred to as target redemption notes or "TARNs") takes a long position in their domestic currency—thereby profiting when the domestic currency appreciates relative to the foreign currency and losing money when the domestic currency depreciates relative to the foreign currency.[19] Unlike a plain vanilla forward, with a target forward, there is a cap on the purchaser's profit. More specifically, if the accumulated profit of the swap reaches the maximum profit level (or "knockout value"),

[13] "Targeted hedging," BNP Paribas, 2008 (http://db.riskwaters.com/data/risknet/pdf/2008/072-074_Risk_0508.pdf).
[14] "Targeted hedging," BNP Paribas, 2008 (http://db.riskwaters.com/data/risknet/pdf/2008/072-074_Risk_0508.pdf).
[15] Target Exact Forward Presentation, BNP Paribas, (Aracruz_0012990 - Aracruz_0013005 at Aracruz_0012991).
[16] Target Exact Forward Presentation, BNP Paribas, (Aracruz_0012990 - Aracruz_0013005 at Aracruz_0012991).
[17] See Exhibit 2.
[18] A currency forward contract is an agreement to exchange an amount of currency (the notional amount) at an agreed-to exchange rate (called the forward price) in the future. While a forward contract is typically an agreement to exchange cash flows at a single point in the future (for example, in one month or in one year), a target forward contract typically involves an agreement to exchange cash flows over multiple periods for a period of time (for example, each month for a period of one year). One could thus think of a single target forward as multiple forward contracts along with additional differences discussed below.
[19] "Targeted hedging," BNP Paribas, May 2008 (http://db.riskwaters.com/data/risknet/pdf/2008/072-074_Risk_0508.pdf).

the swap terminates, and all future payments are cancelled ("knocked out").[20] While target forward contracts have a cap on the amount of profit in the domestic currency available to the purchaser, the contracts (like plain vanilla forwards) have unlimited downside in the domestic currency; however, this downside is typically magnified, as was the case with Aracruz's target forward contracts, by a leverage factor of two.[21]

15. In order to compensate the purchaser for the capped profit and levered downside exposure, target forward contracts provide the purchaser with a strike price[22] that is better than that of a plain vanilla forward contract. These instruments are generally used by risk managers who expect exchange rates to remain within a particular range.[23] On Exhibit 1, I show a simplified example that compares the payoffs of a target forward contract and a plain vanilla forward contract. For this comparison, I have assumed that the target forward contract has a single payoff rather than a series of payoffs and that the capped profit amount is equal to the typical amount of one of Aracruz's target forward contracts. As can be seen on the exhibit, the payoff from a target forward exceeds that for a plain vanilla forward contract over periods of relatively small changes in exchange rates.

B. USES OF TARGET FORWARD CONTRACTS

16. As described above, target forwards provide the purchaser with a currency hedge at "better than market rates" compared to a plain vanilla swap when the purchaser believes the exchange rate will remain relatively constant. This reasoning was presented to

[20] "Targeted hedging," BNP Paribas, May 2008 (http://db.riskwaters.com/data/risknet/pdf/2008/072-074_Risk_0508.pdf).
[21] "Targeted hedging," BNP Paribas, May 2008 (http://db.riskwaters.com/data/risknet/pdf/2008/072-074_Risk_0508.pdf).
[22] The strike price is similar to the forward price in a plain vanilla forward. It is the exchange rate above which the purchaser loses money and below which it profits.
[23] "Targeted hedging," BNP Paribas, 2008 (http://db.riskwaters.com/data/risknet/pdf/2008/072-074_Risk_0508.pdf).

Aracruz by various banks through marketing materials. For example, a June 2008 Goldman Sachs marketing piece draws much attention to the benefits of the target forward transaction stating that the target forward "enables the client to sell the USD/BRL at strikes significantly higher than current par forward with no upfront costs."[24]

C. ARACRUZ'S USE OF TARGET FORWARD CONTRACTS

17. Based on the Declaration of Sergio Malacrida, I understand that Aracruz entered into a total of 49 target forward contracts with 11 different counterparty banks between April 29, 2008 and September 9, 2008.[25] I was provided with and reviewed the trade confirmations of these target forward contracts. As of the end of the Purported Class Period, Aracruz still held 28 of these contracts.[26] Between July and September 2008, 15 of the target forward contracts were knocked out, meaning that Aracruz had received the maximum contractual profit. In addition, Aracruz unwound four of its target forward contracts in September 2008, prior to the 6-K filed on September 26, 2008.

18. While the general structures of the 49 target forward contracts were similar, there were differences in terms of specific characteristics such as: length (term), strike price, knockout value, and notional amount. For example, the monthly notional amount ranged from $5 to $20 million, and the term of the target contracts ranged from 10 to 14 months. Exhibit 2 summarizes the attributes for each of the target forward contracts.

[24] TARN Forward: Discussion Materials for Aracruz, Goldman Sachs, June 2008, (Aracruz_0019599 - Aracruz_0019604 at Aracruz_0019600).
[25] These 11 banks are: Barclays, BNP Paribas, Calyon, Citibank, Deutsche Bank, Goldman Sachs, HSBC, Itau, JPMorgan, Lehman Brothers, and Merrill Lynch.
[26] Two of these target forwards contracts, entered into in September, replaced earlier target forwards from June 2008.

D. VALUE OF THE TARGET FORWARD CONTRACTS

19. I have analyzed the value of Aracruz's target forward contract positions every day during the Purported Class Period. I used a simulation model, which is a standard derivative valuation methodology.[27] In Appendix C, I provide a detailed description of the simulation method I used. This model accounts for the relevant features of Aracruz's target forward contracts including the knockout provision and double leverage factor. On Exhibit 3, I show the daily aggregate value of the outstanding target forward contracts along with the *real*/USD exchange rate.[28] As the exhibit shows, the aggregate value of Aracruz's target forward contract positions was positive until August 8, 2008, except for four days prior to June 13, 2008, meaning that from April 29, 2008 to August 7, 2008, Aracruz generally expected to receive a net benefit from having entered into the target forward contracts.[29] The exhibit also shows that the value of the target forward contracts remained nominally negative between -$28 million and -$164 million from August 8 through September 3, 2008, an amount, which as discussed below, would not have measurably affected the value of Aracruz's ADRs. I based the threshold for statistical significance on the results of the event study analysis in the Coffman Declaration. The Coffman Declaration's event study analysis shows that a decline in Aracruz's ADR price of approximately 3.92 percent would be considered statistically significant at the 95 percent confidence level.[30] I then compared the aggregate value of Aracruz's target forward contracts to the market capitalization of Aracruz. For example, on September 3,

[27] See, for example, Hull, John C., *Options, Futures, and Other Derivatives*, 7th ed., New Jersey: Pearson Prentice Hall, 2009, pp. 407 and 426-428.
[28] The value that I obtain on September 30, 2008 is within five percent of the value announced by Aracruz in its October 3, 2008 disclosure.
[29] On these four days the lowest aggregate value of the target forward swaps was -$-2.4 million, which would not measurably affect the value of Aracruz's ADRs.
[30] See Coffman Declaration, Exhibit 6.

2008, when the mark-to-market value of the target forwards was -$164 million, Aracruz's market capitalization was approximately $5.5 billion,[31] which means that the mark-to-market decline in value represented approximately three percent of the Aracruz's market capitalization on that day. Because this is less than the 3.92 percent threshold for statistical significance, such a mark-to-market decline would not have had a measurable price impact on Aracruz's ADR price.

20. However, as the global financial crisis set in, the value of Aracruz's target forward contracts became materially negative (-$259 million) on September 4, 2008[32] and rapidly deteriorated as the *real*/USD ask exchange rate rose from 1.6780 on September 3, 2008 to 2.0450 on October 3, 2008, a change of more than 20 percent over the exchange rate on September 3, 2008.[33]

21. This rapid and dramatic increase of the *real*/USD ask exchange rate that occurred during the global financial crisis and caused the rapid deterioration in the value of Aracruz's target forward contracts was not easily anticipated and was viewed as highly unlikely by the market even a month prior to the end of the Purported Class Period. For example, on September 3, 2008, the *real*/USD exchange rate was 1.6780 with the one month forward rate of 1.6938 implying the market expected only a small increase in the exchange rate between September 3 and October 3, 2008 rather than the 20 percent increase that

[31] The market capitalization of Aracruz's ADRs on September 3, 2008 was approximately $1.95 billion ($53.26 per ADR * 36.6 million ADRs outstanding), and the ADRs represented approximately 35 percent of the total 1.03 billion Aracruz shares outstanding (Common Stock, Class A Preferred Stock, and Class B Preferred Stock. 1 ADR = 1/10 share of Class B Preferred Stock). My estimate of Aracruz's market capitalization ($5.5 billion = $1.95 billion market cap of ADRs / 35 percent ADR share of total shares outstanding) is conservative because Aracruz's Common Stock generally traded at a premium to the Class B Preferred Stock throughout the Class Period.

[32] September 4, 2008 is the first day that the aggregate mark-to-market losses on Aracruz's target forward contracts exceeded the 3.92 percent threshold for statistical significance of the market capitalization of Aracruz. The losses remained significant on each day through the end of the Class Period.

[33] Exchange rates are ask *real*/USD exchange rates obtained from Bloomberg.

actually occurred.[34] Additionally, given the one month forward rate on September 3, 2008 and the expected volatility in the exchange rate of 11.5 percent, the market expected a less than a one in 100 million chance that the exchange rate would have risen so drastically between September 3, 2008 and October 3, 2008.[35]

VI. IMPACT OF ALTERNATIVE DISCLOSURE ON ARACRUZ ADR PRICE

22. As discussed above, counsel has asked me to determine what, if any, impact the Alternative Disclosure would have had on Aracruz's ADR price on either April 7, 2008 or July 7, 2008, and whether there is reliable evidence that Aracruz's ADR price was affected during the Purported Class Period. Based on my analysis, there would have been no measurable price movement in Aracruz's ADRs from the Alternative Disclosure on either of those two days.[36] Moreover, there would not have been a measurable price movement in Aracruz's ADRs until September 4, 2008.[37]

A. APRIL 7, 2008

23. As I discussed above, Aracruz did not enter into its first target forward contract until April 29, 2008. Therefore on April 7, 2008, the date that Aracruz filed its form 20-F with the SEC, it would have reported no exposure from target forward contracts and therefore Aracruz was adhering to its stated risk management policy. I understand the lead plaintiff made its ADR purchases on May 2 and May 5, 2008. As I explain below, even after Aracruz entered into its first target forward contract, it is my opinion that the

[34] Exchange rate and forward rate obtained from Bloomberg.
[35] The implied volatility, obtained from Bloomberg, represents the market's expectation of future volatility of the *real*/USD exchange rate based on the prices of currency options.
[36] During this period, the losses on Aracruz's target value forwards never exceeded 3.92 percent of the market capitalization of Aracruz.
[37] This is the first day where the losses on Aracruz's target forward contracts exceeded 3.92 percent of the market capitalization of Aracruz.

Alternative Disclosure would not have measurably affected Aracruz's stock price through September 3, 2008.

B. JULY 7, 2008

24. The two alleged misstatements from July 7, 2008 are from Aracruz's statement in its Form 6-K that:

> "[t]he Company's foreign currency risk and interest rate management strategy may use derivative transactions to protect against foreign exchange and interest rate volatility,"[38]

and its statement in the July earnings report that,

> "[p]rotecting the company's exposure to the local currency, according to the financial policy approved by the Board and outlined on Aracruz's website, the management maintained its strategy of hedging the cash flow and balance sheet exposure to the local currency, using derivative instruments to protect against foreign exchange and local interest rate exposure."[39]

25. Based on finance theory, there is no *a priori* reason to believe that the Alternative Disclosure would have caused Aracruz's ADR price to decline on that day, when the target forward swaps had positive value. Some investors may have sold their ADRs due to a negative perception of Aracruz's increased risk taking, while others may have purchased ADRs because they were attracted to the same risk taking. My analysis of institutional holdings data of Aracruz's ADRs shows that this shift is what happened.[40] As shown on Exhibit 4, following Aracruz's disclosures that they had exceeded their risk limits, some institutional investors decreased their holdings of Aracruz's ADRs, while

[38] Aracruz 6-K, filed July 7, 2008, p. 30. (6-K 1 f080707a.htm FORM 6-K)
[39] Aracruz 6-K, filed July 7, 2008, p. 9. (6-K 1 f080707b.htm FORM 6-K)
[40] Institutional investors with over $100 million in assets report their holdings to the SEC in a form 13-F. I used report from Thomson Financial that collects the information from the form 13-F filings and shows the quarterly institutional holdings of Aracruz's ADRs from March 31, 2008 through December 31, 2008. These data are used in the Coffman Declaration.

others increased their holdings or did not change their holdings.[41] Some institutions continued holding the ADRs despite the continued risk of loss from the target forwards even following Aracruz's September and October disclosures. For example, an analyst report stated that "Aracruz has not yet settled its position in these instruments, indicating that the potential loss could be even higher than the one announced today, particularly if the U.S. dollar continues to appreciate against the *real*."[42]

26. In addition, I reviewed analysts' reports published during the Purported Class Period. While some analysts covering Aracruz during the Purported Class Period mentioned the effects that Aracruz's hedging activities had on its earnings, none of the analyst reports I reviewed indicated that analysts attributed extra (or negative) value to the ADRs because of Aracruz's hedging activities. One analyst report stated that they "assume that the net [currency] risk is minimized through effective hedging strategies. As a result, the impact of currency movements on the ADR price is assumed to be neutral."[43] However the analyst's report does not say that it ascribed any additional (or negative) value to this hedging activity.

27. Additionally, with the Alternative Disclosure, investors could have chosen to hedge their currency risk by entering into zero-cost forward contracts. For example, an investor who thought that Aracruz was taking on too much risk in its target forward contract portfolio could have taken the opposite position to Aracruz in target forward swaps of their own for zero cost and eliminated risk generated by Aracruz's alleged "non-protective"

[41] The institutional investors shown on the exhibit held approximately two-thirds of the outstanding ADRs during the Class Period.
[42] "Implications of US$ Billion in Losses on FX Derivatives," Santander Investment Securities, Inc., October 3, 2008, p.1.
[43] "Aracruz Celulose S.A. Update Report - 1Q 08 Results: Strong fundamentals already priced in," Independent International Investment Research PLC, July 2, 2008, p. 1.

transactions.[44] Furthermore, academic studies confirm that there is no conclusive evidence to conclude that the Alternative Disclosure by Aracruz on July 7, 2008 would have caused Aracruz's ADR price to decline on that day or that the use of financial derivatives affects shareholder value of non-financial firms. For example, a recent survey paper concluded that the numerous studies of the effects of the use of financial derivatives on stock prices do not provide a "clear bottom line" as to whether such activity increases firm value even though financial risk management may in general provide benefits to investors.[45] Moreover, the authors conclude that because of the challenges of empirical research in this area, the conclusions that can be drawn from the existing studies may be limited.[46]

28. Additional studies that I reviewed, including more recent papers not included in the survey paper discussed above, support the conclusion that the evidence is mixed as to whether the use of derivatives increases the value of non-financial firms. Two papers look specifically at the use of derivatives and the market value of Brazilian companies. The first, appearing in 2008, suggests that using derivatives, including currency derivatives, increases firm value.[47] However, a second paper, appearing in 2011, looked at a different set of Brazilian companies as the first paper and focused solely on the use of

[44] Transacting parties generally structure target forward contracts (and many other forward contracts and swaps) in such a way that neither party makes a payments upon the inception of the contract. Furthermore, while individual investors may not have had sufficient knowledge to enter into a target forward contract, according to the Coffman Declaration, "a vast majority" of the ADRs were held by institutional investors who are "considered to be sophisticated and well-informed" and "have substantial resources to analyze the securities they purchase for their portfolios,"(Coffman Declaration, p. 26). This observation is consistent with the levels of institutional holdings shown in Exhibit 4.

[45] Aretz, Kevin, and Söhnke M. Bartram, "Corporate Hedging and Shareholder Value," *The Journal of Financial Research*, Vol. 33, No. 4, pp. 317-371 (2010).

[46] For example, the authors cite technical econometric issues not accounted for in some studies as well as the failure to account for various dimensions of corporate financial policy and strategy as well as other corporate policies and characteristics.

[47] Rossi, Jr. Jose Luiz, "Does the use of derivatives add value to the firm? A study using Brazilian data," *Revista de Administração de Empresas*, Vol. 48, No.4, pp. 94-107 (2008).

currency derivatives. This second paper found no statistically significant increase in firm value from the use of currency derivatives.[48]

29. Furthermore, academic studies looking specifically at the disclosure of increased risk management activities on firm value provide similarly mixed results. One study examines whether published announcements of the formation or expansion of a risk management department in a firm affects its stock price.[49] While the authors determine there is a small, statistically significant increase of less than 0.5 percent that occurs, that increase occurs 11 days prior to the announcement. The authors also acknowledge that the information on the formation of risk management departments was "not deemed important enough to be reported in the *Wall Street Journal*" and that "measuring the value of risk management activities has been difficult."[50] On the other hand, another study finds that announcements of increases in use of derivatives are associated with negative abnormal returns in the corresponding firm's equity.[51] The authors posit that the negative relationship between announced increases in derivative use and returns could be due to the fact that changes in derivative use reveal private information about changes in the firms' expected financial condition. Overall, while there are certainly academic papers that find some positive effects on shareholder value of derivatives, there are also many which find that the effect on firm value is weak or minimal. Exhibit 5 provides some examples of excerpts from these studies. Given this mix of findings of financial

[48] Serafini, Danilo Guedine and Hsia Hua Sheng, "The use of foreign currency derivatives and the market value of Brazilian companies listed on Bovespa," *Revista de Administração Contemporânea,* Vol. 15, No.2, pp. 283-303 (2011).
[49] Cassidy, Steven M., Richard L Constad, and Richard B. Corbett, "The Market Value of the Corporate Risk Management Function," *The Journal of Risk and Insurance,* Vol. 57, No. 4, pp. 664-670 (1990).
[50] Cassidy, Steven M., Richard L Constad, and Richard B. Corbett, "The Market Value of the Corporate Risk Management Function," *The Journal of Risk and Insurance,* Vol. 57, No. 4, pp. 664-670 (1990).
[51] Raman, Vikas, and Chitru S. Fernando, "Is Hedging Bad News? Evidence from Corporate Hedging Announcements?," July 2010, Working Paper.

research, there is no conclusive evidence that use of financial derivatives affects the shareholder value of non-financial firms.

30. Thus, there is no reason to expect that Aracruz's ADR price would have changed upon an Alternative Disclosure on July 7, 2008. Furthermore, based on the analysis above, I conclude that there would not have been a measureable price impact from the alleged misstatements on Aracruz's ADRs until September 4, 2008, using a standard method of measuring statistical significance in stock price declines.

31. Additionally, because there is no measurable effect of the alleged misstatements on Aracruz's ADR price prior to September 4, 2008, I conclude that there was no artificial inflation in Aracruz's ADR price prior to that date and therefore that damages cannot be calculated on a class-wide basis for purchasers of Aracruz's ADRs prior to that date. To the extent potential class members purchased Aracruz ADRs prior to September 4, 2008 and claim damages as a result of alleged misstatements, they cannot point to artificial inflation in the ADR price at the time of purchase to prove their claim of damages. Instead, individualized inquiries would be required on a plaintiff by plaintiff basis to determine what, if any, damages were incurred by plaintiffs who purchased their ADRs at a time that the price was not inflated due to the alleged misstatements.

R Glenn Hubbard

Robert Glenn Hubbard

ROBERT GLENN HUBBARD

Curriculum Vitae

PERSONAL DATA

Born: In Orlando, Florida.
Marital Status: Married, two children.

FIELDS OF SPECIALIZATION

Public Economics, Corporate Finance and Financial Institutions, Macroeconomics, Industrial Organization, Natural Resource Economics, Public Policy.

EDUCATION

Ph.D., Economics, Harvard University, May 1983.
Dissertation: *Three Essays on Government Debt and Asset Markets*, supervised by Benjamin M. Friedman, Jerry A. Hausman, and Martin S. Feldstein.

A.M., Economics, Harvard University, May 1981.

B.A., B.S., Economics, University of Central Florida, June 1979, *summa cum laude*.

HONORS AND AWARDS

National Association of Corporate Directors, Directorship 100: People to Watch, 2011

Joint American Economic Association/American Finance Association Distinguished Speaker, 2008.

Cairncross Lecture, University of Oxford, 2007.

Fellow of the National Association of Business Economists, 2005.

William F. Butler Memorial Award, New York Association of Business Economists Award, 2005.

Exceptional Service Award, The White House, 2002**.**

Michelle Akers Award for Distinguished Service, University of Central Florida, 2001.

Alumni Hall of Fame, University of Central Florida, 2000.

Best Paper Award for Corporate Finance, Western Finance Association, 1998.

Exceptional Service Award, U.S. Department of the Treasury, 1992.

Distinguished Alumnus Award, University of Central Florida, 1991.

John M. Olin Fellowship, National Bureau of Economic Research, 1987-1988.

Teaching Commendations, Graduate School of Business, Columbia University.

Northwestern University Associated Student Government Teaching Awards, announced in 1985, 1986, and 1987.

Graduate Distinctions: National Science Foundation Fellowship, Alfred P. Sloan Foundation Fellowship.

Undergraduate Distinctions: National Merit Scholarship, National Society of Professional Engineers Award, Florida Society of Professional Engineers Award, National Council of Teachers of English Award, Omicron Delta Kappa, Financial Management Association Honor Society.

POSITIONS HELD

2004-present	Dean, Graduate School of Business, Columbia University
1994-present	Russell L. Carson Professor of Economics and Finance, Graduate School of Business, Columbia University
1997-present	Professor of Economics, Faculty of Arts and Sciences, Columbia University
2007-present	Panel of Economic Advisors, Federal Reserve Bank of New York (also 1993-2001)
2003-present	Featured commentator, *Nightly Business Report*
2003-2010	Featured commentator, *Marketplace*
2003-2007	Visiting Scholar American Enterprise Institute (also 1995-2001)
1999-2004	Co-Director, Columbia Business School Entrepreneurship Program
2004-2005	Viewpoint Columnist, *Business Week*
2004-2006	Member, Panel of Economic Advisors, Congressional Budget Office
2001-2003	Chairman, President's Council of Economic Advisers
2001-2003	Chairman, Economic Policy Committee, Organization for Economic Cooperation and Development
2001-2003	Member, White House National Economic Council and National Security Council
2001-2003	Member, President's Council on Science and Technology
1997-1998	Visiting Professor of Business Administration, Harvard Business School
1995-2001	Visiting Scholar and Director of Tax Policy Program, American Enterprise Institute
1994-1997	Senior Vice Dean, Graduate School of Business, Columbia University
1994	MCI Fellow, American Council for Capital Formation
1994	John M. Olin Visiting Professor, Center for the Study of Economy and the State, University of Chicago
1991-1993	Deputy Assistant Secretary (Tax Analysis), U.S. Department of the Treasury
1988-present	Professor of Economics and Finance, Graduate School of Business, Columbia University
1987-1988	John M. Olin Fellow in residence at the National Bureau of Economic Research
1983-1988	Assistant Professor of Economics, Northwestern University, with half-time research appointment in the Center for Urban Affairs and Policy Research
1985	Visiting Scholar, Center for Business and Government, John F. Kennedy School of Government, Harvard University
1981-1983	Teaching Fellow (Department of Economics) and Resident Tutor in Economics (Dunster House), Harvard University

DIRECTORSHIPS

2007-present	Met Life
2006-2008	Capmark Financial Corporation; Information Services Group
2004-present	ADP, Inc.; KKR Financial Corporation; BlackRock Closed-End Funds
2004-2008	Duke Realty Corporation
2004-2006	Dex Media/R.H. Donnelley
2003-2005	ITU Ventures
2000-2001	Angel Society, LLC; Information Technology University, LLC

CONSULTING OR ADVISORY RELATIONSHIPS

2005-2009	Arcapita
2005-2010	Nomura Holdings America
2006-present	Consulting or Speaking Engagements in the Past Five Years: U.S. Department of Justice, Airgas, Alternative Investment Group, American Century, America's Health Insurance Plans, Association for Corporate Growth, Bank of America, Bank of New York Mellon, Capital Research, Citigroup, Fidelity, Franklin Resources, Intel, JP Morgan Chase, Microsoft, National Rural Utilities Cooperative Finance Corporation, Oracle, Pension Real Estate Association, Real Estate Roundtable, Reynolds American, Value Act Capital, Visa, Wells Fargo
2008	Laurus Funds
2005-2008	Chart Venture Partners
2003-2009	Ripplewood Holdings

POSTS IN NON-PROFIT ORGANIZATIONS

2006-present	Co-Chair, Committee on Capital Markets Regulation
2004-present	Member, Advisory Board, National Center on Addiction and Substance Abuse
2003-present	Member, Manhattan District Council Board, Boy Scouts of America
2010-2011	Co-Chair, The Study Group on Corporate Boards
2008-2011	Elder, Fifth Avenue Presbyterian Church
2008-2010	Chairman, Economic Club of New York
2006-2008	Member, Board of Directors, Resources for the Future
2003-2008	Trustee, Tax Foundation
2004-2010	Trustee, Economic Club of New York
2004-2007	Trustee, Fifth Avenue Presbyterian Church, New York

PROFESSIONAL ACTIVITIES

1987-present	Research Associate, National Bureau of Economic Research (Monetary Economics, Corporate Finance, Public Economics, Economic Fluctuations, Industrial Organization)
2007-present	Life Member, Council on Foreign Relations
2003	Member, Committee of Visitors, National Science Foundation
2000	Panelist, Graduate Fellowship Selection Committee, National Science Foundation
1999-2001	Director, Project on Nonprofit Organizations, National Bureau of Economic Research
1997-2001	Member, COSSA-Liaison Committee, American Economic Association
1993-2001	Board of Advisors, Institutional Investor Project, School of Law, Columbia University
1995-1999	Member, Board of Academic Consultants, American Law Institute
1997	Member, Grants Panel for Integrative Graduate Education and Research Training Program, National Science Foundation
1994-1996	Member, Economics Grants Panel, National Science Foundation
1993-1996	Member, Federal Taxation and Finance Committee, National Tax Association
1990-1995	Co-organized research program on International Aspects of Taxation at the National Bureau of Economic Research, Cambridge, Massachusetts
1995	Member, Program Committee, American Economic Association Meeting
1983-1987	Faculty Research Fellow, National Bureau of Economic Research
1983-1986	Adjunct Faculty Research Fellow, Energy and Environmental Policy Center, John F. Kennedy School of Government, Harvard University, Cambridge, Massachusetts
1986, 1988, 1994	Member of the Brookings Panel on Economic Activity
1985, 1987	Special guest of the Brookings Panel on Economic Activity
1990-1991	Organized research program on Environmental Economics and Public Policy at the National Bureau of Economic Research, Cambridge, Massachusetts
1988-1990	Co-organized research program on Dynamic Models of Firms and Industries at the National Bureau of Economic Research, Cambridge, Massachusetts
1985-1989	Organized research program and workshops on contracting in financial markets at the Summer Institute, National Bureau of Economic Research, Cambridge, Massachusetts
1988	Organized Economic Fluctuations program on Industrial Economics and Macroeconomics, National Bureau of Economic Research, Stanford, California
1986-1988	Organized research program and workshop on links between macroeconomics and industrial organization at the Summer Institute, National Bureau of Economic Research, Cambridge, Massachusetts
1991	Member, Program Committee, Econometric Society Winter Meetings

1982-1983	Member, Energy Modeling Forum VII Study Group, Stanford University, Stanford, California
1981-present	Consultant on research projects with private corporations and government and international agencies, including the Internal Revenue Service, Social Security Administration, U.S. Department of Energy, U.S. Department of State, U.S. Department of Treasury, and U.S. International Trade Commission; National Science Foundation; The World Bank; Board of Governors of the Federal Reserve System; Federal Reserve Bank of New York; Congressional Budget Office
Member:	American Economic Association, American Finance Association, Association for Public Policy and Management, Econometric Society, International Association of Energy Economists, National Tax Association, the Royal Economic Society, and the Institute for Management Science
Referee:	*American Economic Review; Canadian Journal of Economics; Columbia Journal of World Business; Econometrica; Economic Journal; Energy Economics; Energy Journal; International Finance; International Tax and Public Finance; Journal of Business; Journal of Business and Economic Statistics; Journal of Economic History; Journal of Economic Literature; Journal of Finance; Journal of Financial Economics; Journal of Financial Intermediation; Journal of Financial and Quantitative Analysis, Journal of Financial Services Research; Journal of Industrial Economics; Journal of International Money and Finance; Journal of Law and Economics; Journal of Macroeconomics; Journal of Money, Credit, and Banking; Journal of Monetary Economics; Journal of Political Economy; Journal of Public Economics; Journal of Regulatory Economics; Journal of Small Business Finance; Management Science; National Tax Journal; Quarterly Journal of Economics; Quarterly Review of Economics and Finance; RAND Journal of Economics; Review of Economic Dynamics; Review of Economic Studies; Review of Economics and Statistics; Review of Financial Economics; Scandinavian Journal of Economics; Southern Economic Journal; National Science Foundation*; C.V. Starr Center for Applied Economics (New York University); Addison-Wesley Publishing Company; Ballinger Press; Cambridge University Press; Harvard Business School Press; MIT Press; W.W. Norton; Oxford University Press
Associate Editor:	*Journal of Applied Corporate Finance*
Former Associate Editor:	*Federal Reserve Bank of New York Economic Policy Review; International Finance*; *International Tax and Public Finance; Journal of Industrial Economics; Journal of Macroeconomics; Journal of Small Business Finance; National Tax Journal*

PUBLICATIONS AND PAPERS

Edited Volumes

Transition Costs of Fundamental Tax Reform (with K.A. Hassett), Washington, DC: AEI Press, 2001.

Inequality and Tax Policy (with K.A. Hassett), Washington, DC: AEI Press, 2001.

Effects of Taxation on Multinational Corporations (with M. Feldstein and J.R. Hines), Chicago: University of Chicago Press, 1995.

Taxing Multinational Corporations (with M. Feldstein and J. R. Hines), Chicago: University of Chicago Press, 1995.

Studies in International Taxation (with A. Giovannini and J. B. Slemrod), Chicago: University of Chicago Press, 1993.

Financial Markets and Financial Crises, Chicago: University of Chicago Press, 1991.

Asymmetric Information, Corporate Finance, and Investment, Chicago: University of Chicago Press, 1990.

Books

Healthy, Wealthy, and Wise (with J.F. Cogan and D.P. Kessler), Hoover Institution Press and AEI Press, 1st ed., 2005; 2nd ed., 2011.

Seeds of Destruction (with P. Navarro), FT Publishing, 2010.

The Mutual Fund Industry: Competition and Investor Welfare (with M.F. Koehn, S.I. Ornstein, M. Van Audenrode, and J. Royer), New York: Columbia Business School Publishing, 2010.

The Aid Trap: Hard Truths About Ending Poverty (with W. Duggan), Columbia Business School Publishing, 2009.

Textbooks

Principles of Economics (with A.P. O'Brien), Pearson Prentice Hall, 1st ed., 2006; 2nd ed., 2008; 3rd ed., 2010; 4th ed., 2012.

Money, Banking, and the Financial System (with A.P. O'Brien), Pearson Prentice Hall, 1st ed. 2012

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Money, the Financial System, and the Economy, Reading: Addison-Wesley Publishing Company, 1st ed., 1994; 2nd ed., 1997; 3rd ed., 2000; 4th ed., 2002; 5th ed., 2004; 6th ed., 2007.

Publications

Articles

"Reforming the Tax Preference for Employer Health Insurance" (with J. Bankman, J.F. Cogan, and D.P. Kessler), *Tax Policy and the Economy*, volume 26, Cambridge, University of Chicago Press, 2012.

"The Effect of Tax Preferences on Health Spending" (with J.F. Cogan and D.P. Kessler), *National Tax Journal*, 64 (2011): 795-816.

"The Effect of Medicare Coverage for the Disabled on the Market for Private Insurance" (with J.F. Cogan and D.P. Kessler), *Journal of Health Economics* 29 (2010): 418-428.

"The Effect of Massachusetts' Health Reform on Employer-Sponsored Insurance Premiums" (with J.F. Cogan and D.P. Kessler), *Forum for Health Economics and Policy*, 2010.

"The Mortgage Market Meltdown and House Prices" (with C. Mayer), *The B.E. Journal of Economic Analysis & Policy* 9: Issue 3 (Symposium), Article 8 (2009).

"Competition in the Mutual Fund Industry: Evidence and Implications for Policy" (with J. Coates), *Journal of Corporation Law*, 33 (Fall 2007).

"Evaluating Effects of Tax Preferences on Health Care Spending and Federal Revenues" (with J.F. Cogan and D.P. Kessler), in J.M. Poterba, ed., *Tax Policy and the Economy*, volume 21, Cambridge: MIT Press, 2007.

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"The Effects of Progressive Income Taxation on Job Turnover" (with W.M. Gentry), *Journal of Public Economics* 88 (September 2004): 2301-2322.

"Business, Knowledge, and Global Growth", *Capitalism and Society*, 1 (2006).

“Precautionary Savings and the Governance of Nonprofit Organizations” (with R. Fisman), *Journal of Public Economics*, 2005.

“Government Debt and Interest Rates” (with E. Engen), in M. Gertler and K. Rogoff, *NBER Macroeconomics Annual 2004*, Cambridge: MIT Press, 2005.

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“Tax Policy and Investment,” (with K.A. Hassett), in A.J. Auerbach, ed., *Fiscal Policy: Lessons from Economic Research*, Cambridge: MIT Press, 1997.

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"Tax Reforms and Investment: A Cross-Country Comparison" (with J.G. Cummins and K.A. Hassett), *Journal of Public Economics* 62 (1996): 237-273.

"Benefits of Control, Managerial Ownership, and the Stock Returns of Acquiring Firms" (with D. Palia), *RAND Journal of Economics* 26 (Winter 1995): 782-792.

"Executive Pay and Performance: Evidence from the U.S. Banking Industry" (with D. Palia), *Journal of Financial Economics* 39 (1995): 105-130.

"Tax Policy, Internal Finance, and Investment: Evidence from the Undistributed Profits Tax of 1936-1937" (with C. Calomiris), *Journal of Business* 68 (October 1995): 443-482.

"A Reconsideration of Investment Behavior Using Tax Reforms as Natural Experiments" (with J.G. Cummins and K.A. Hassett), *Brookings Papers on Economic Activity* (1994:2): 1-59.

"Precautionary Saving and Social Insurance" (with J. Skinner and S. Zeldes), *Journal of Political Economy* 105 (April 1995): 360-399.

"Expanding the Life-Cycle Model: Precautionary Saving and Public Policy" (with J. Skinner and S. Zeldes), *American Economic Review* 84 (May 1994): 174-179.

"The Tax Sensitivity of Foreign Direct Investment: Evidence from Firm-Level Panel Data" (with J. Cummins), in M. Feldstein, J.R. Hines, and R.G. Hubbard, eds., *Effects of Taxation on Multinational Corporations*, Chicago: University of Chicago Press, 1995.

"International Adjustment Under the Classical Gold Standard: Evidence for the U.S. and Britain, 1879- 1914" (with C. Calomiris), in T. Bauoumi, B. Eichengreen, and M. Taylor, eds., *Modern Perspectives on the Gold Standard*, Cambridge: Cambridge University Press, 1995.

"Internal Finance and Firm-Level Investment" (with A. Kashyap and T. Whited), *Journal of Money, Credit, and Banking* 27 (August 1995): 683-701.

"Do Tax Reforms Affect Investment?" (with J.G. Cummins and K.A. Hassett), in J.M. Poterba, ed., *Tax Policy and the Economy*, vol. 9, Cambridge: MIT Press, 1995.

"The Importance of Precautionary Motives for Explaining Individual and Aggregate Saving" (with J. Skinner and S. Zeldes), *Carnegie-Rochester Conference Series on Public Policy* 40 (June 1994): 59-126.

"Corporate Financial Policy, Taxation, and Macroeconomic Risk" (with M. Gertler), *RAND Journal of Economics* 24 (Summer 1993): 286-303.

"Internal Net Worth and the Investment Process: An Application to U.S. Agriculture" (with A. Kashyap), *Journal of Political Economy* 100 (June 1992): 506-534.

"Long-Term Contracting and Multiple-Price Systems" (with R. Weiner), *Journal of Business* 65 (April 1992): 177-198.

"Efficient Contracting and Market Power: Evidence from the U.S. Natural Gas Industry" (with R. Weiner), *Journal of Law and Economics* 34 (April 1991): 25-67.

"Interest Rate Differentials, Credit Constraints, and Investment Fluctuations" (with M. Gertler and A. Kashyap), in R.G. Hubbard, ed., *Financial Markets and Financial Crises*, Chicago: University of Chicago Press, 1991.

"Taxation, Corporate Capital Structure, and Financial Distress" (with M. Gertler), in L.H. Summers, ed., *Tax Policy and the Economy*, volume 4, Cambridge: MIT Press, 1990.

"Firm Heterogeneity, Internal Finance, and Credit Rationing" (with C. Calomiris), *Economic Journal* 100 (March 1990): 90-104.

"Coming Home to America: Dividend Repatriations in U.S. Multinationals" (with J. Hines), in A. Razin and J.B. Slemrod, eds., *Taxation in the Global Economy*, Chicago: University of Chicago Press, 1990.

"Price Flexibility, Credit Availability, and Economic Fluctuations: Evidence from the U.S., 1894-1909" (with C. Calomiris), *Quarterly Journal of Economics* 104 (August 1989): 429-452.

"Financial Factors in Business Fluctuations" (with M. Gertler), in Federal Reserve Bank of Kansas City, *Financial Market Volatility--Causes, Consequences, and Policy Responses*, 1989.

"Contracting and Price Adjustment in Commodity Markets: Evidence from Copper and Oil" (with R. Weiner), *Review of Economics and Statistics* 71 (February 1989): 80-89.

"Financing Constraints and Corporate Investment" (with S. Fazzari and B.C. Petersen), *Brookings Papers on Economic Activity*, 1988:1: 141-195; Reprinted in Z.J. Acs, ed., *Small Firms and Economic Growth*, Cheltenham, U.K.: Edward Elgar Publishing Ltd., 1995.

"Investment, Financing Decisions, and Tax Policy" (with S. Fazzari and B.C. Petersen), *American Economic Review* 78 (May 1988): 200-205.

"Market Structure and Cyclical Fluctuations in U.S. Manufacturing" (with I. Domowitz and B.C. Petersen), *Review of Economics and Statistics* 70 (February 1988): 55-66.

"Capital Market Imperfections and Tax Policy Analysis in the Life-Cycle Model" (with K. Judd), Annales d' *Economie et de Statistique* 9 (January-March 1988): 111-139.

"Social Security and Individual Welfare: Precautionary Saving, Borrowing Constraints, and the Payroll Tax" (with K. Judd), *American Economic Review* 77 (September 1987): 630-646.

"Oligopoly Supergames: Some Empirical Evidence on Prices and Margins" (with I. Domowitz and B.C. Petersen), *Journal of Industrial Economics* 36 (June 1987): 379-398.

"Uncertain Lifetimes, Pensions, and Individual Saving," in Zvi Bodie, John B. Shoven, and David A. Wise (eds.), *Issues in Pension Economics,* Chicago: University of Chicago Press, 1987, pp. 175-205.

"The Farm Debt Crisis and Public Policy" (with C. Calomiris and J. Stock), *Brookings Papers on Economic Activity*, 1986:2: 441-479.

"Liquidity Constraints, Fiscal Policy, and Consumption" (with K. Judd), *Brookings Papers on Economic Activity*, 1986:1: 1-50.

"The Intertemporal Stability of the Concentration-Margins Relationship" (with I. Domowitz and B.C. Petersen), *Journal of Industrial Economics* 35 (September 1986): 13-34.

"Pension Wealth and Individual Saving: Some New Evidence," *Journal of Money, Credit, and Banking* 18 (May 1986): 167-178.

"Supply Shocks and Price Adjustment in the World Oil Market," *Quarterly Journal of Economics* 101 (February 1986): 85-102.

"Regulation and Long-Term Contracts in U.S. Natural Gas Markets" (with R. Weiner), *Journal of Industrial Economics* 35 (September 1986): 51-71.

"Business Cycles and the Relationship Between Concentration and Price-Cost Margins" (with I. Domowitz and B.C. Petersen), *RAND Journal of Economics* 17 (Spring 1986): 1-17.

"Inventory Optimization in the U.S. Petroleum Industry: Empirical Analysis and Implications for Energy Emergency Policy" (with R. Weiner), *Management Science 32* (July 1986): 773-790.

"Social Security, Liquidity Constraints, and Pre-Retirement Consumption," *Southern Economic Journal* 51 (October 1985): 471-484.

"Personal Taxation, Pension Wealth, and Portfolio Composition," *Review of Economics and Statistics* 67 (February 1985): 53-60.

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"Oil Supply Shocks and International Policy Coordination" (with R. Weiner), *European Economic Review* 30 (February 1986): 91-106.

"Do IRAs and Keoghs Increase Saving?," *National Tax Journal* 37 (March 1984): 43-54.

The Financial Impacts of Social Security: A Study of Effects on Household Wealth Accumulation and Allocation, in Monograph Series in Finance and Economics, New York University, 1983.

Writings on Public Policy

"Consequences of Government Deficits and Debt," *International Journal of Central Banking* (January 2012).

"Putting Economic Ideas Back into Innovation Policy," in J. Lerner and S. Stern, eds., *The Rate and Direction of Inventive Activity Revisted*. Chicago: University of Chicago Press, 2012.

"Back to the Future: The Marshall Plan" (with W. Duggan), in C. Schramm, ed. Entrepreneurship and Expeditionary Economics, Kansas City: Kauffman Foundation (2011): 8-19.

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"The Best Business Education Ever," *BizEd* 6:5 (2007).

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"Nondestructive Creation," *strategy+business* 27 (Summer 2007): 30-35.

"The Productivity Riddle," *strategy+business* 45 (Winter 2006): 28-33.

"Overview of the Japanese Deficit Question," (with Takatoshi Ito), "Tackling Japan's Fiscal Challenges: Strategies to Cope with High Public Debt and Population Aging (International Monetary Fund Book) Palgrave Macmillan (October 31, 2006).

"The U.S. Current Account Deficit and Public Policy," *Journal of Policy Modeling* 28 (2006): 665-671.

"Making Markets Work," (with J.F. Cogan and D.P. Kessler), *Health Affairs* 24 (November/December 2005): 1447-1457.

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"Would a Consumption Tax Favor the Rich?," In A.J. Auerbach and K.A. Hassett, eds., *Toward Fundamental Tax Reform*. Washington, DC: AEI Press, 2005.

"The Economist as Public Intellectual," *Journal of Economic Education* 35 (Fall 2004): 391-394.

"Success Taxes, Entrepreneurship, and Innovation," (with W.M. Gentry), in *Innovation and the Economy*, volume 5, forthcoming.

"Tax Policy and International Competitiveness," *Taxes-The Tax Magazine* (March 2004): 233-241.

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"The Growth of Institutional Stock Ownership: A Promise Unfulfilled,"(with F.R. Edwards), *Journal of Applied Corporate Finance* 13 (Fall 2000): 92-104.

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“The Elasticity of Deferred Income With Respect to Marginal Income Tax Rates” (with K.A. Hassett and A. Mathur), Working Paper, Columbia University, 2011.

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"Corporate Board Study Group," Rockefeller Foundation, 2009.

"Institutional Investors, Boards of Directors, and Corporate Governance," Korn/Ferry, 1997.

"An Economic Analysis of Saving Incentives," Securities Industry Association, 1994, with Jonathan Skinner.

"Securities Transactions Taxes: Tax Design, Revenue, and Policy Considerations," Catalyst Institute, 1993.

"Precautionary Saving in the U.S. Economy," Bradley Foundation, 1989-1990, with Jonathan Skinner and Stephen Zeldes.

"Taxation, Corporate Leverage, and Financial Distress," Garn Institute for Finance, 1989-1990.

"Precautionary Saving in a Dynamic Model of Consumption and Labor Supply," National Science Foundation (Economics Group SES-8707997), 1987-1989, with Jonathan Skinner and Stephen Zeldes.

"Industrial Behavior and the Business Cycle: A Panel Data Study of U.S. Manufacturing," National Science Foundation (Economics Group SES-8420152), 1985-1987, with Ian Domowitz and Bruce Petersen.

"Efficient Contracting and Market Power: Evidence from the U.S. Natural Gas Market," Transportation Center, Northwestern University, Summer 1985.

"Constructing a Panel Data Base for Studies of U.S. Manufacturing," University Research Grants Committee, Northwestern University, 1985-1986.

"Economic Analysis of Multiple-Price Systems: Theory and Application, "National Science Foundation (Regulatory Analysis and Policy Group, SES-8408805), 1984-1985.

"Contracting and Price Adjustment in Product Markets," University Research Grants Committee, Northwestern University, 1983-1984.

PAPERS PRESENTED

University Seminars

Bard College, University of Bergamo, University of California (Berkeley), University of California (Los Angeles), University of California (San Diego), Carleton, University of Chicago, Columbia, University of Dubuque, Emory, University of Florida, University of Central Florida, Florida Atlantic University, George Washington, Georgetown, Harvard, Hendrix College, University of Illinois, Indiana University, Johns Hopkins, Laval, Lehigh, University College (London), University of Kentucky, London School of Economics, MIT, University of Maryland, University of Miami, Miami University, University of Michigan, University of Minnesota, New York University, Northwestern, Oxford, University of Pennsylvania, Princeton, Rice, University of Rochester, Stanford, Syracuse, University of Miami, University of Texas, Texas Tech University, Tufts, University of Virginia, University of Wisconsin (Madison), University of Wisconsin (Milwaukee), Virginia Tech, and Yale.

Conference Papers Presented

American Council for Capital Formation, Washington, DC, June 1994.

American Economic Association, Chicago, 2012; New Orleans, 2008; Chicago, 2007; Boston, 2006; Philadelphia, 2005; San Diego, January 2004; Atlanta, January 2002; New Orleans, January 2001; Boston, January 2000; New York, January 1999; New Orleans, January 1997; San Francisco, January 1996; Washington, D.C., January 1995; Boston, January 1994; Anaheim, January 1993; Washington, D.C., December 1990; Atlanta, December 1989; New York, December 1988; Chicago, December 1987; New Orleans, December 1985; Dallas, December 1984.

American Enterprise Institute, Conference on Private Equity, 2007; Conference on Corporate Taxation, 2006; Conference on Multinational Corporations, 2004, 2003; Conference on Multinational Corporations, February 1999; Conference on Income Inequality, January 1999; Conference on Transition Costs of Fundamental Tax Reform, November 1998; Conference Series on Social Insurance Reform, 1997-1998; Conference Series on Fundamental Tax Reform, 1995-1998; Conference on Distributional Analysis of Tax Policies, Washington, D.C., December 1993.

American Finance Association, New Orleans, January 2008; San Diego, January 2004; Boston, January 2000; New York, January 1999; New Orleans, January 1997.

Association of Environmental and Resource Economists, Dallas, December 1984; San Francisco, December 1983.

Association of Public Policy Analysis and Management, New Orleans, October 1984; Philadelphia, October 1983.

Bipartisan Commission on Entitlement and Tax Reform, Washington, DC, June 1994.

Brookings Panel on Economic Activity, September 1994, April 1988, September 1987, September 1986, April 1986, September 1985.

Centre for Economic Policy Research Conference on Capital Taxation and European Integration, London, September 1989.

Conference on International Perspectives on the Macroeconomic and Microeconomic Implications of Financing Constraints, Centre for Economic Policy Research, Bergamo, Italy, October 1994.

Congressional Research Service Conference for New Members of Congress, Williamsburg, January 1999.

Congressional Research Service Conference for Members of the Ways and Means Committee, Baltimore, October 2001.

Deutsche Bundesbank Conference on Investing for the Future, Frankfurt, Germany, May 2000.

Eastern Economic Association, Boston, March 1988; Boston, February 1983.

Econometric Society, New Orleans, January 1997; San Francisco, January 1996; Washington, D.C., January 1995; New Orleans, January 1992; Washington, December 1990; Atlanta, December 1989; New York, December 1988; Chicago, December 1987; New Orleans, December 1986; New York, December 1985; Boston, August 1985; Madrid, September 1984; San Francisco, December 1983; Pisa, August 1983.

Energy Modeling Forum, Stanford University, August 1983; February 1983; August 1982.

European Commission, Conference on Taxation of Financial Instruments, Milan, June 1998.

European Institute for Japanese Studies, Tokyo, September 2002; March 2002.

Federal Reserve Bank of Boston, Annual Economic Conference, North Falmouth, Massachusetts, June 1995.

Federal Reserve Bank of Kansas City Symposium on "Financial Market Volatility – Causes, Consequences, and Policy Responses," Jackson Hole, Wyoming, August 1988; Comment of Rogoff, August 2004.

Federal Reserve Bank of New York, Conference on Consolidation of the Financial Services Industry, New York, March 1998.

Federal Reserve Bank of Philadelphia Conference on Economic Policy, Philadelphia, November 2007; November 2001.

Federal Reserve Bank of St. Louis, Conference on Economic Policy, St. Louis, October 1994.

Harvard Law School U. S.-Japan Symposium, Tokyo, December 2003; Washington, D. C., September 2002; Tokyo, December 2001.

Hoover Institution, Conference on Fundamental Tax Reform, December 1995.

The Institute of Gas Technology, Washington, DC, May 1982.

The Institute of Management Science/Operations Research Society of America, Orlando, November 1983; Chicago, April 1983.

International Association of Energy Economists, Boston, November 1986; Philadelphia, December 1985; Bonn, June 1985; San Francisco, November 1984; Washington, DC, June 1983; Denver, November 1982; Cambridge (England), June 1982; Houston, November 1981.

International Conference on the Life Cycle Model, Paris, June 1986.

International Institute of Public Finance, Innsbruck, August 1984.

International Seminar on Public Economics, Amsterdam, April 1997.

National Academy of Sciences, February 1997.

National Association of Business Economists, Orlando, September 2003; Washington, September 2002; New York, September 2001; Boston, September 1996; Dallas, September 1992; New Orleans, October 1987.

National Bureau of Economic Research - IMEMO Conference on the American Economy, Moscow, August 1989.

National Bureau of Economic Research Summer Institute, August 2006; August 2005; July-August 2003; July-August 2000; July-August 1999; July-August 1998; August 1997; July 1995; July 1994; July 1993; August 1992; July-August 1991; July-August 1990; July-August 1989; July-August 1988; July-August 1987; July-August 1986; July 1985; July 1984; July 1983.

National Bureau of Economic Research Conference on Asymmetric Information, Corporate Finance, and Investment, Cambridge, May 1989.

National Bureau of Economic Research Conference on Chinese Economic Reform, Shanghai, China, July 2000.

National Bureau of Economic Research Conference on Financial Crises, Key Biscayne, March 1990.

National Bureau of Economic Research Conference on Government Expenditure Programs, Cambridge, November 1986.

National Bureau of Economic Research Conference on Indian Economic Reform, Rajasthan, India, December 1999.

National Bureau of Economic Research Conference on Innovation Policy, Washington, DC, April 2004, April 2003.

National Bureau of Economic Research Conference on International Taxation, Washington, DC, April 1994; Cambridge, January 1994; New York, September 1991; Nassau, Bahamas, February 1989.

National Bureau of Economic Research, Macroeconomic Annual Conference, Cambridge, MA, April 2004.

National Bureau of Economic Research Conference on Macroeconomics and Industrial Organization, Cambridge, July 1988; Cambridge, July 1987; Cambridge, July 1986; Chicago, November 1985.

National Bureau of Economic Research Conference on Nonprofit Organizations, Cheeca Lodge, January 2002; Cambridge, October 2001.

National Bureau of Economic Research Conference on Pensions, Baltimore, March 1985; San Diego, April 1984.

National Bureau of Economic Research Conference on Productivity, March 1988; March 1987.

National Bureau of Economic Research Conference on Public Economics, Cambridge, April 1999, April 1994, April 1993, November 1991, April 1991, March 1988, November 1987, March 1987.

National Bureau of Economic Research Conference on Tax Policy and the Economy, Washington, DC, October 2001, November 1998, November 1996, November 1994, November 1991, November 1989.

National Bureau of Economic Research Trans-Atlantic Public Economics Seminar, London, May 2002; Gerzensee, May 2000; Turin, May 1994.

Organization for Economic Cooperation and Development, Economic Policy Committee Meeting, Paris, November 2002, April 2002, November 2001, April 2001.

National Tax Association/Tax Institute of America, Washington, DC, June 2000; Atlanta, October 1999; Arlington, May 1992; Seattle, October 1983.

Organization for Economic Cooperation and Development, Ministerial Meeting, Paris, May 2002, May 2001.

Princeton Center for Economic Policy Conference, October 2000, October 1995.

Sveriges Riksbank/Stockholm School of Economics Conference on Asset Markets and Monetary Policy, Stockholm, Sweden, June 2000.

U.S. House of Representatives, Budget Committee, June 2001.

U.S. House of Representatives, Committee on Ways and Means, Washington, DC, June 2006; June 2005; June 1999; April 1997, June 1996, July 1992.

U.S. Joint Economic Committee, Washington, DC, February 2003, October 2002, October 2001, May 2001.

U. S. Senate Committee on Banking, Housing, and Urban Affairs, Washington, DC, October 2001, May 2001.

U.S. Senate Committee on Budget, February 2003, September 2001.

U. S. Senate Committee on Commerce, Science, and Technology, July 2002.

U.S. Senate Committee on Finance, Washington, DC, February 2003, February 2002, February 1997, January 1995, January 1992, December 1981.

ROBERT GLENN HUBBARD

Testimony as an expert witness 2006 – 2012

MBIA Insurance Corporation v. Countrywide Home Loans, Inc., Countrywide Securities Corp., Countrywide Financial Corp., Countrywide Home Loans Servicing, LP and Bank of America Corp., 08/602825, Supreme Court of the State of New York, County of New York. Provided deposition testimony in 2012.

City of St. Petersburg, Florida v. Wells Fargo Bank, N.A., 8:10-CV-693-T-26 TBM, United States District Court, Middle District of Florida. Provided deposition testimony in 2011 and trial testimony in 2012.

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Securities and Exchange Commission against Ralph Cioffi and Matthew Tannin, 08 Civ. 2457 (FB), United States District Court, Eastern District of New York. Provided deposition testimony in 2011.

Chemtech Royalty Associates, L.P., by Dow Europe, S.A., as Tax Matters Partner v. United States of America, 06-258-BAJ-DLD, United States District Court, Middle District of Louisiana. Provided deposition testimony in 2009 and trial testimony in 2011.

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Novell, Inc. v. Microsoft Corporation, MDL Docket No. 1332, Civil Action No. JRM-05-1087, United States District Court, District of Maryland. Provided deposition testimony in 2009.

In Re American Mutual Funds Fee Litigation, 2:04-cv-05593-GAF-RNB, United States District Court, Central District of California, Western Division. Provided deposition testimony in 2009.

Convolve, Inc., and Massachusetts Institute of Technology v. Compaq Computer Corporation and Seagate Technology, LLC, 00-CIV-5141, United States District Court for the Southern District of New York. Provided deposition testimony in 2008.

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Documents Relied Upon

Court Related Documents

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Cassidy, Steven M., Richard L. Constad, and Richard B. Corbett, "The Market Value of Corporate Risk Management Function," *The Journal of Risk and Insurance* , Vol. 57, No. 4 (1990).
Choi, Jongmoo Jay and Cao Jiang, "Does multinationality matter? Implications of operational hedging for the exchange risk exposure," *Journal of Banking & Finance* , Vol. 33 (2009).
Fauver, Larry and Andy Naranjo, "Derivative usage and firm value: The influence of agency costs and monitoring problems," *Journal of Corporate Finance* , Vol. 16, (2010).
Hagelin, Niclas, Martin Holmen, John D. Knopf, and Bengt Pramborg, "Managerial Stock Options and the Hedging Premium," *European Financial Management* , Vo. 13, No. 4 (2007).
Haushalter, G. David , "Financing Policy, Basis Risk, and Corporate Hedging: Evidence from Oil and Gas Producers," *The Journal of Finance* , Vol. 55, No. 1 (2000).
Jin, Yanbo and Philippe Jorion,"Firm Value and Hedging: Evidence from U.S. oil and Gas Producers," *The Journal of Finance* , Vol. LXI, No. 2 (2006).
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Appendix C: Target Forward Valuation Methodology

I. OVERVIEW

Because, the value of a target forward on a given date is dependent upon the security's past cash flow ,—that is, whether the security had already knocked out and how much profit has been previously earned, I value Aracruz's target forwards, using a Monte Carlo simulation, a generally accepted valuation method for path-dependent instruments.[1]

Monte Carlo simulation handles path dependency by simulating a number of "paths," or in this case, a series of future *real*/USD exchange rates, which are used to determine the future payouts on a target forward. To calculate the value of a target forward on a particular day, a path consisting of future exchange rates is simulated starting on the valuation date through the end of the term of the target forward. For each path, using the simulated exchange rates, the cash flows of the target forward are determined based on its characteristics. These cash flows are discounted to determine the value of the target forward for a particular path based on these simulated exchange rates. The value of each target forward is computed as the average of the values across the different paths and the individual values of each target forward contract are added to arrive at the aggregate value of Aracruz's target forward contracts.

II. DESCRIPTION OF DATA USED

In order to run the Monte Carlo simulation model, both source data inputs and calculated data inputs are required.

A. Source data inputs

1. Transaction summary data

Trade date, strike rates, last date of first strike, knockout value, notional value, and fixing dates are from the Aracruz target forward transaction confirmation documents. This information (except for listing all the fixing dates) is summarized in Exhibit 2.

[1] See Hull, John C., *Options, Futures, and Other Derivatives*, 7th ed., New Jersey: Pearson Prentice Hall, 2009, Chapter 19.

2. Bloomberg data

All the data listed below, except for PTAX ask and *real*/USD ask, are obtained from Bloomberg for every maturity available up to two years. Data are collected from April 2008 through November 2009 (corresponding to the first and last fixing dates of any of the 49 target forwards).

a. **PTAX ask** – the contracts specify that the Brazil Central Bank's PTAX Ask prices should be used as the settlement rate. PTAX is: "The official [*real*]/USD spot rate for most financial operations in the Brazilian market [and is] is calculated as the volume-weighted average rate in the interbank market. The Brazilian Central Bank is responsible for the calculation and disclosure of the Ptax rate."[2,3]

b. **DI futures** - the cash flows from the Aracruz target forwards are discounted using DI futures rates (also known as "One-day Interbank Deposit Future Contract"). The DI futures are "the most-liquid interest rate instrument in the Brazilian market and [are] listed on the Brazil Mercantile & Futures Exchange (BM&F)."[4] As a liquid interbank rate, the DI futures analogous to the LIBOR rate used in the United States.

c. **Implied volatility for *real*/USD at-the-money call options** - a volatility measure in the simulation of exchange rates detailed further below.

d. **Forward ask rates for *real*/USD** - used to calculate the implied interest rate difference between the *real* and US dollar detailed below.

e. ***real*/USD ask spot rate** - used in conjunction with forward ask rates to calculate the implied interest rate difference.

[2] "Brazil: Guide to local markets," Barclays Capital, January 12, 2009, p. 11.
[3] The transaction documents for five of the Aracruz target forwards indicate that the PTAX mid value should be used, however I have valued all Aracruz target forward contracts using the PTAX ask. Using the PTAX mid in would result in slightly more positive valuations of those target forward contracts to Aracruz.
[4] "Brazil: Guide to local markets," Barclays Capital, January 12, 2009, p. 5.

B. Calculated data inputs

1. Implied interest rate difference

Based upon the forward ask rates for *real*/USD, the implied interest rate differential between the Brazil and U.S. risk-free interest rates that is consistent with observed forward prices is calculated as[5]:

$$R_{BR} - R_{US} = \frac{\ln\left(\frac{F_T}{S_0}\right)}{T},$$

where:

$R_{BR} - R_{US}$ = implied interest rate difference between Brazil and US risk-free rates

F_T = *real*/USD forward rate for *T* years in the future

S_0 = *real*/USD spot rate

T = time in years from valuation date to the current period's fixing date

2. Interpolated data values

In order to value the Aracruz target forward contracts on every day in the class period, the simulation linearly interpolates daily values for the implied interest rate difference, DI rate, and *real*/USD implied volatility when necessary. For example, I calculate a five month *real*/USD implied volatility rate is calculated by linearly interpolating between the four-month and six-month *real*/USD implied volatility rates.

3. Forward rates

a. **Forward implied interest rate difference**[6]

The forward differences between the Brazil and U.S. risk-free interest rates are calculated as:

$$Diff_{(t,T)} = \frac{Diff_{(0,T)}T - Diff_{(0,t)}t}{T - t},$$

where:

$Diff_{(t.T)}$ = the forward implied interest rate difference of the current period

$Diff_{(0.T)}$ = the interpolated implied interest rate difference from the valuation date through the current period's fixing date

[5] See Hull, John C., *Options, Futures, and Other Derivatives*, 7th ed., New Jersey: Pearson Prentice Hall, 2009, pp. 112-115.

[6] See Hull, John C., *Options, Futures, and Other Derivatives*, 7th ed., New Jersey: Pearson Prentice Hall, 2009, p. 83.

$Diff_{(0.t)}$ = the interpolated implied interest rate difference from the valuation date through the prior period's fixing date

T = time in years from valuation date to current period's fixing date

t = time in years from valuation date to the prior period's fixing date

b. **Forward *real*/USD implied volatility**[7]

The forward implied volatilities in the *real*/USD exchange rate are calculated as:

$$\sigma_{t,T} = \sqrt{\frac{T\sigma_{0,T}^2 - t\sigma_{0,t}^2}{T-t}},$$

where:

$\sigma_{t,T}$ = the forward implied volatility of the current period

$\sigma_{0,T}^2$ = the interpolated implied volatility from the valuation date through the current period's fixing date

$\sigma_{0,t}^2$ = the interpolated implied volatility from the valuation date through the prior period's fixing date

T = time in years from valuation date to current period's fixing date

t = time in years from valuation date to the prior period's fixing date

III. VALUATION OF TARGET FORWARD CONTRACTS

1. Using the source and calculated data inputs, the simulated *real*/USD exchange rates for each target leg are calculated as follows based on the assumption that exchange rates follow a lognormal distribution, or equivalently that percent changes in exchange rates are normally distributed. Under this assumption, the simulated spot exchange rate on the maturity date of the first leg on a given simulation path is:[8]

$$\hat{S}_1 = S_0 e^{\left(\left(\left(R_{BR_{0,1}} - R_{US_{0,1}}\right) - \frac{1}{2}\sigma_{0,1}^2\right)\tau + \theta\sigma_{0,1}\sqrt{\tau}\right)},$$

where:

[7] Taleb, Nassim Nicholas, *Dynamic Hedging: Managing Vanilla and Exotic Options*. New York: John Wiley & Sons, 1997, pp. 154-155.

[8] See Hull, John C., *Options, Futures, and Other Derivatives*, 7th ed., New Jersey: Pearson Prentice Hall, 2009, pp. 269-271.

$\hat{S}_1$ = The simulated spot *real*/USD exchange rate on the maturity date of the first leg

S_0 = The spot *real*/USD exchange rate on the valuation date

$R_{BR_{0,1}} - R_{US_{0,1}}$ = The difference in the risk free interest rates. The difference is backed out based on the forward exchange rate

$\sigma_{0,1}$ = The implied volatility of the exchange rate based on at the money currency options

τ = the time to maturity of the first leg in years

θ = a random number from a standard normal distribution

2. After calculating the simulated exchange rate for the maturity date of the first leg, the simulated spot exchange rate for the maturity date of the second leg on a given simulation path is:

$$\hat{S}_2 = \hat{S}_1 e^{\left(\left(\left(R_{BR_{1,2}} - R_{US_{1,2}}\right) - \frac{1}{2}\sigma_{1,2}^2\right)\tau + \theta\sigma_{1,2}\sqrt{\tau}\right)},$$

where:

$\hat{S}_2$ = the simulated spot *real*/USD exchange rate on the maturity date of the second leg

$\hat{S}_1$ = the simulated spot *real*/USD exchange rate on the maturity date of the first leg from the same simulation path

$R_{BR_{1,2}} - R_{US_{1,2}}$ = the forward difference in the risk free interest rates. The forward difference is backed out based on the forward exchange rates

$\sigma_{1,2}$ = the forward implied volatility of the exchange rate based on at the money currency options

τ = the time to maturity in years from the maturity date of the first leg to the maturity date of the second leg

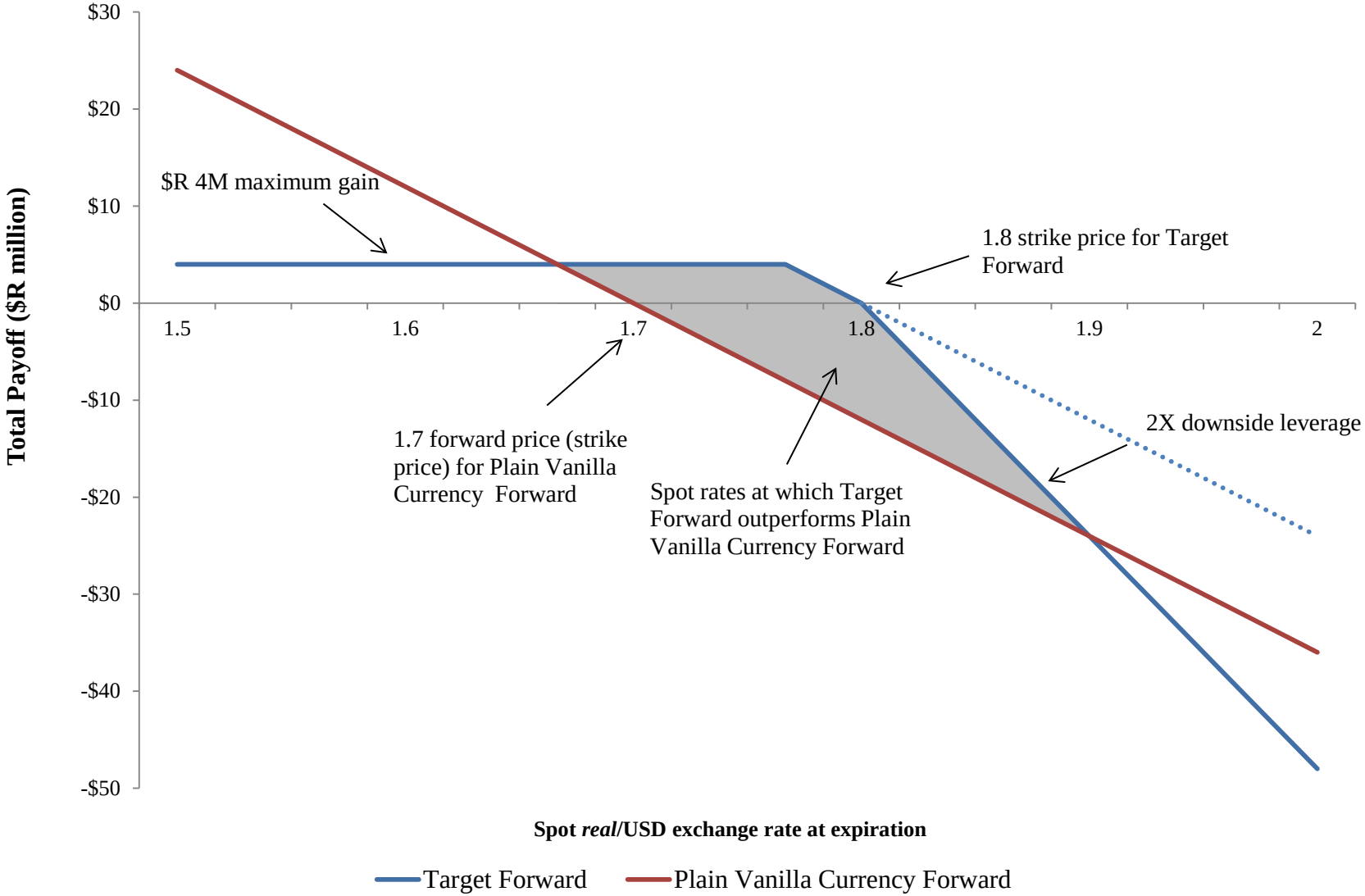
θ = a random number from a standard normal distribution

Simulated spot *real*/USD exchange rates for subsequent legs are calculated in a similar manner.

3. On each simulation path, the value of each leg of a given target forward is calculated in *reals* based on the simulated spot exchange rate on that leg's maturity date. The value of each leg considers whether a "knock out" event has occurred. The present value of each leg is discounted to valuation date using the Brazilian DI rate. The present values of the legs on each path are then added together to provide the value of the target forward in *reals*.
4. Steps 1-3 are repeated 50,000 times for each target forward contract. The average of the 50,000 paths is the value of the target forward in *reals*. This value is converted to dollars using the PTAX ask rate on the valuation date.
5. Finally I repeat this simulation for each target forward contract on each trading day during the class period that Aracruz's ADR had a price reported in Bloomberg. The value of the Aracruz target forward position on any given day in the class period is the sum of the individual target forward contract valuations. I do not value the target forwards on days on which I do not have reported data from Bloomberg (May 1, May 22, July 9, August 20, August 27, and September 2, 2008).

Exhibit 1

Example Target Forward Payoff Compared to a Plain Vanilla Currency Forward Payoff



Note: This diagram represents a simplified single period target forward with a $120 million notional amount and a 0.033 knockout value.

Exhibit 2

Summary of Aracruz Target Forward Contracts

Transaction	Trade Date	Bank	Monthly Notional (USD)	Term (Months)	Maturity	Knockout	Strike 1	Strike 2	First Fixing Date	Last Strike 1 Fixing Date	Knock Out Date	Unwind Date
1.	4/29/2008	Calyon	10,000,000	12	5/15/2009	0.40	1.9545	1.8500	6/16/2008	8/15/2008	7/16/2008	
2.	5/30/2008	Calyon	15,000,000	12	6/15/2009	0.40	1.8745	1.7500	7/15/2008	9/15/2008	8/18/2008	
3.	5/30/2008	BNP	10,000,000	12	6/12/2009	0.40	1.8700	1.7500	7/14/2008	9/12/2008	8/15/2008	
4.	6/3/2008	Merrill Lynch	10,000,000	12	6/15/2009	0.40	1.8600	1.7510	7/15/2008	9/15/2008	8/18/2008	
5.	6/4/2008	Calyon	5,000,000	12	6/15/2009	0.40	1.8600	1.7780	7/15/2008	9/15/2008	8/18/2008	
6.	6/6/2008	Calyon	7,500,000	12	6/15/2009	0.40	1.8500	1.7432	7/15/2008	9/15/2008	8/18/2008	
7.	6/6/2008	Citibank	7,500,000	12	6/12/2009	0.40	1.8500	1.7450	7/14/2008	9/12/2008	8/18/2008	
8.	6/9/2008	Citibank	7,500,000	12	6/12/2009	0.40	1.8500	1.7275	7/14/2008	9/12/2008	8/18/2008	
9.	6/9/2008	Calyon	7,500,000	12	6/15/2009	0.40	1.8500	1.7275	7/15/2008	9/15/2008	8/18/2008	
10.	6/10/2008	BNP	10,000,000	12	6/12/2009	0.40	1.8750	1.7500	7/14/2008	9/12/2008	8/15/2008	
11.	6/10/2008	BNP	10,000,000	12	6/12/2009	0.40	1.8700	1.7500	7/14/2008	9/12/2008	8/15/2008	
12.	6/16/2008	BNP	10,000,000	12	6/12/2009	0.40	1.8200	1.7500	7/14/2008	9/12/2008	8/15/2008	
13.	6/16/2008	Merrill Lynch	10,000,000	12	6/15/2009	0.40	1.8165	1.7500	7/15/2008	9/15/2008	8/18/2008	
14.	6/17/2008	BNP	10,000,000	12	6/30/2009	0.40	1.8170	1.7300	7/31/2008	9/30/2008	9/1/2008	
15.	6/17/2008	Deutsche Bank	10,000,000	12	6/30/2009	0.40	1.8175	1.7300	7/31/2008	9/30/2008	9/1/2008	
16.	6/20/2008	JP Morgan	20,000,000	10	7/15/2009	0.50	1.8913	1.8000	10/15/2008	12/15/2008		
17.	6/25/2008	Lehman	10,000,000	10	7/14/2009	0.50	1.8800	1.8000	10/14/2008	12/15/2008		
18.	6/26/2008	BNP	10,000,000	10	7/14/2009	0.50	1.8750	1.8000	10/14/2008	12/12/2008		
19.	6/26/2008	Lehman	10,000,000	10	7/14/2009	0.50	1.8900	1.8000	10/14/2008	12/15/2008		
20.	6/26/2008	Citibank	10,000,000	10	7/14/2009	0.50	1.8700	1.8000	10/14/2008	12/12/2008		
21.	6/27/2008	Merrill Lynch	10,000,000	10	7/14/2009	0.50	1.9050	1.8000	10/14/2008	12/12/2008	9/9/2008	[A]
22.	6/27/2008	Barclays	10,000,000	10	7/14/2008	0.50	1.9001	1.8000	10/14/2008	12/14/2008	9/10/2008	[B]
23.	7/1/2008	Goldman Sachs	10,000,000	10	7/31/2009	0.50	1.9210	1.8000	10/31/2008	12/31/2008	9/23/2008	
24.	7/1/2008	Deutsche Bank	10,000,000	12	8/31/2009	0.50	1.8580	1.8000	9/30/2008	11/28/2008	9/22/2008	
	7/16/2008					Transaction 1 (Calyon 4/29) Knocked Out						
25.	8/4/2008	Deutsche Bank	20,000,000	12	8/31/2009	0.40	1.8000	1.6750	9/30/2008	11/28/2008		
26.	8/4/2008	BNP	20,000,000	12	8/31/2009	0.40	1.8000	1.6700	9/30/2008	11/28/2008		
27.	8/4/2008	Calyon	20,000,000	12	8/31/2009	0.40	1.8000	1.6715	9/30/2008	11/28/2008		
28.	8/5/2008	JP Morgan	20,000,000	12	8/31/2009	0.40	1.8100	1.6820	9/30/2008	11/28/2008		
29.	8/5/2008	Citibank	20,000,000	12	8/31/2009	0.40	1.8100	1.6720	9/30/2008	11/28/2008		
30.	8/5/2008	Calyon	10,000,000	12	8/31/2009	0.40	1.8100	1.6820	9/30/2008	11/28/2008		
31.	8/7/2008	Goldman Sachs	10,000,000	12	8/31/2009	0.40	1.8100	1.7005	9/30/2008	11/28/2008		
32.	8/7/2008	BNP	10,000,000	12	8/31/2009	0.40	1.8100	1.7030	9/30/2008	11/28/2008		
33.	8/7/2008	Citibank	15,000,000	12	8/31/2009	0.40	1.8300	1.6770	9/30/2008	11/28/2008		
34.	8/7/2008	Calyon	15,000,000	12	8/31/2009	0.40	1.8100	1.7045	9/30/2008	11/28/2008		
35.	8/8/2008	Deutsche Bank	10,000,000	12	8/31/2009	0.40	1.8700	1.7000	9/30/2008	11/28/2008		
36.	8/8/2008	HSBC	10,000,000	12	8/31/2009	0.40	1.8695	1.7000	9/30/2008	11/28/2008		
37.	8/14/2008	HSBC	10,000,000	12	9/30/2009	0.40	1.9000	1.7350	10/31/2008	11/28/2008		
38.	8/14/2008	Deutsche Bank	10,000,000	12	9/30/2009	0.40	1.9000	1.7435	10/31/2008	12/31/2008		
	8/15/2008					Transaction 2 (Calyon 5/30) Knocked Out						
	8/15/2008					Transaction 3 (BNP 5/30) Knocked Out						

Exhibit 2

Summary of Aracruz Target Forward Contracts

Transaction	Trade Date	Bank	Monthly Notional (USD)	Term (Months)	Maturity	Knockout	Strike 1	Strike 2	First Fixing Date	Last Strike 1 Fixing Date	Knock Out Date	Unwind Date
	8/15/2008	Transaction 10 (BNP 6/10) Knocked Out										
	8/15/2008	Transaction 11 (BNP 6/10) Knocked Out										
	8/15/2008	Transaction 12 (BNP 6/16) Knocked Out										
	8/18/2008	Transaction 4 (Merrill Lynch 6/3) Knocked Out										
	8/18/2008	Transaction 5 (Calyon 6/4) Knocked Out										
	8/18/2008	Transaction 6 (Calyon 6/6) Knocked Out										
	8/18/2008	Transaction 7 (Citibank 6/6) Knocked Out										
	8/18/2008	Transaction 8 (Citibank 6/9) Knocked Out										
	8/18/2008	Transaction 9 (Calyon 6/9) Knocked Out										
	8/18/2008	Transaction 13 (Merrill Lynch 6/16) Knocked Out										
39.	8/19/2008	Deutsche Bank	10,000,000	12	8/31/2009	0.40	1.9000	1.7200	9/30/2008	11/28/2008		
40.	8/19/2008	Calyon	20,000,000	12	8/31/2009	0.40	1.9000	1.7085	9/30/2008	11/28/2008		
	9/1/2008	Transaction 14 (BNP 6/17) Knocked Out										
	9/1/2008	Transaction 15 (Deutsche Bank 6/17) Knocked Out										
41.	9/2/2008	Deutsche Bank	10,000,000	12	9/30/2009	0.40	1.9200	1.7320	10/31/2008	12/30/2008		
42.	9/2/2008	Calyon	10,000,000	12	9/30/2009	0.40	1.9500	1.7100	10/31/2008	12/31/2008		
43.	9/2/2008	Itau	10,000,000	12	9/30/2009	0.40	1.9200	1.7750	10/31/2008	12/31/2008		
44.	9/4/2008	Deutsche Bank	10,000,000	12	9/30/2009	0.40	2.0000	1.8450	10/31/2008	12/30/2008		9/22/2008
45.	9/4/2008	HSBC	10,000,000	12	9/30/2009	0.40	1.9500	1.8750	10/31/2008	12/31/2008		
46.	9/4/2008	JP Morgan	10,000,000	12	9/30/2009	0.40	2.0000	1.8400	10/31/2008	12/31/2008		
47.	9/4/2008	BNP	5,000,000	12	9/30/2009	0.40	1.9500	1.8500	10/31/2008	12/31/2008		9/23/2008
	9/9/2008	Transaction 21 (Merrill Lynch 6/27) Superseded [A]										
48.	9/9/2008	Merrill Lynch	10,000,000	14	11/13/2009	0.50	1.9500	1.7500	10/14/2008	1/14/2009		
	9/10/2008	Transaction 22 (Barclays 6/27) Superseded [B]										
49.	9/10/2008	Barclays	10,000,000	13	10/14/2009	0.50	1.9920	1.7500	10/14/2008	12/15/2008		
	9/22/2008	Transaction 24 (Deutsche Bank 7/1) Unwound										
	9/22/2008	Transaction 44 (Deutsche Bank 9/4) Unwound										
	9/23/2008	Transaction 23 (Goldman Sachs 7/1) Unwound										
	9/23/2008	Transaction 47 (BNP 9/4) Unwound										

Notes:

Orange highlighting reflects knock out events. Green highlighting denotes superseded contracts. Blue highlighting denotes unwinding of target forwards.

[A] Transaction 21 is superseded by a new target forward on September 9, 2008. Therefore, transaction 21 is treated as if it was unwound on September 9, 2008--the same day that the new transaction (transaction 48) begins.

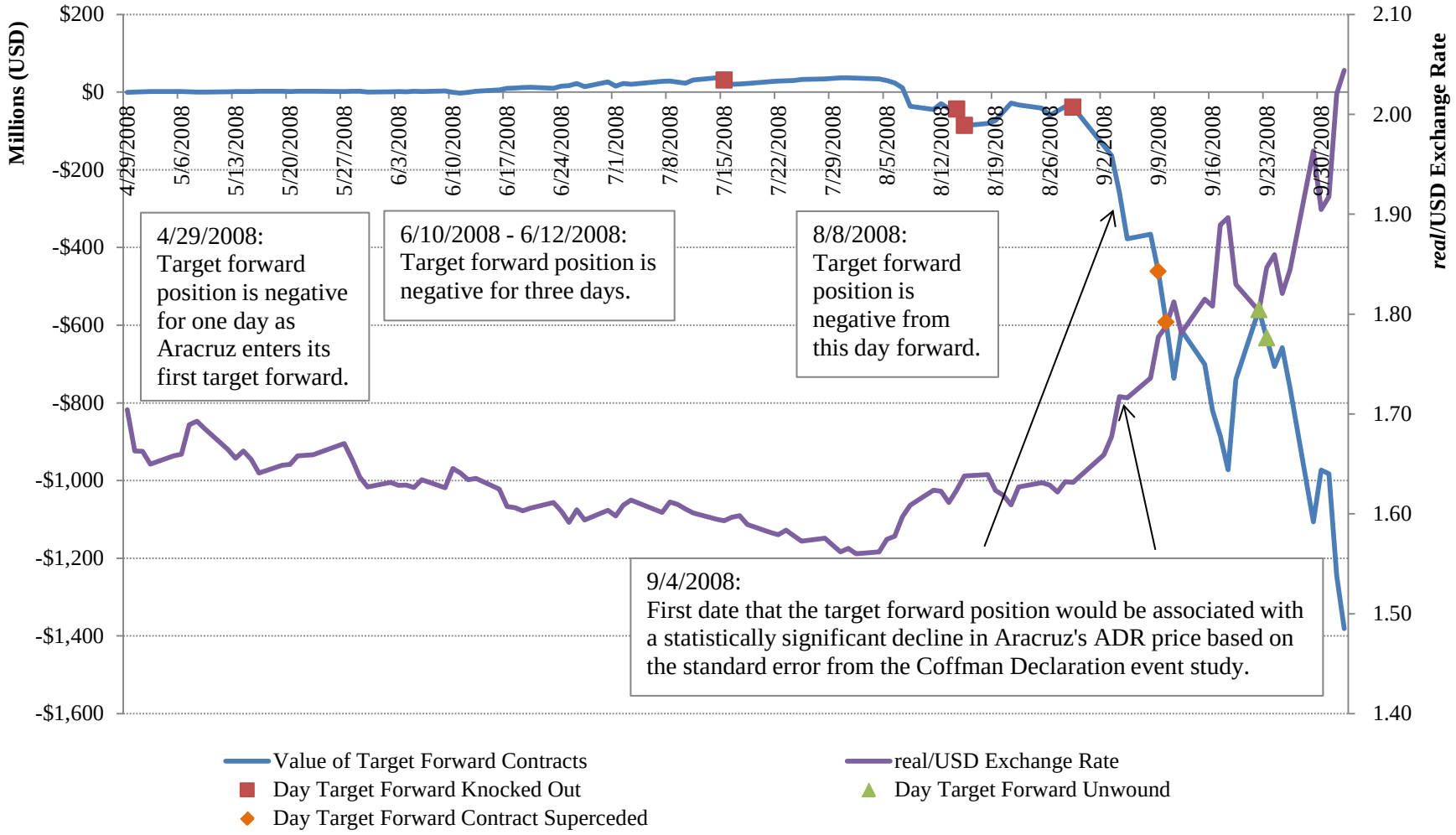
[B] Transaction 22 is superseded by a new target forward on September 10, 2008. Therefore, transaction 22 is treated as if it was unwound on September 10, 2008--the same day that the new transaction (transaction 49) begins.

Sources: Declaration of Sergio Malacrida and target forward confirmation documents.

Exhibit 3

Aggregate Value of Target Forward Contracts

April 29, 2008 - October 3, 2008



Notes:
[A] The value of the target forward contracts is based on a valuation model utilizing a Monte Carlo simulation for each of the 49 contracts. See Appendix C for valuation model details.
[B] The target forwards are not valued on the following days because of at least one missing data input: May 1, May 22, July 9, August 20, August 27, and September 2, 2008.
Sources:
Bloomberg, ADR outstanding ex- Aracruz_2008 e 2009.xlsx, and Exhibit 2.

Exhibit 4

Aracruz ADR Institutional Ownership by Quarter
March 2008 - December 2008

	Institution Name	March 2008	June 2008	September 2008	December 2008
1	Northern Cross Investments Limited	5,010,250	5,010,250	5,390,250	5,390,250
2	Capital World Investors	4,603,472	4,603,472	4,603,472	3,190,523
3	U.S. Trust, Bank of America Private Wealth Management	4,411,706	4,411,706	4,411,706	4,411,706
4	Wellington Management Company, LLP	3,414,186	3,393,046	4,046,908	5,262,544
5	Columbia Management Advisors, LLC	4,159,995	3,776,268	3,509,924	409,222
6	Comgest S.A.	1,895,000	2,030,000	1,880,000	1,750,000
7	Capital Research Global Investors	1,673,000	1,673,000	1,673,000	839,522
8	BlackRock Institutional Trust Company, N.A.	-	1,234,409	1,360,517	1,645,644
9	M & G Investment Management Ltd.	912,000	983,500	983,500	912,000
10	Wentworth, Hauser & Violich, Inc.	836,245	932,132	938,036	743,077
	Top 10 Institutions	26,915,854	28,047,783	28,797,313	24,554,488
	All Other Institutions	10,683,762	10,575,987	10,098,558	7,511,083
	Total	37,599,616	38,623,770	38,895,871	32,065,571

Notes:

Institutions are sorted by holdings as of September 2008.

Northern Cross LLC is assumed to be the same entity as Northern Cross Investments Limited and has been removed.

Source:

Coffman's Thomson institutional holdings data (ARA Final Report 40584292.xls).

Exhibit 5

Academic Articles Finding Little or No Impact of the Usage of Derivatives on Firm Value

[Alphabetical by Author]

No.	Quote	Citation	Page Number
1	"...empirical challenges and potential shortcomings may limit the conclusions that can be drawn from some of the existing evidence."	Aretz, Kevin and Söhnke M. Bartram, "Corporate Hedging and Shareholder Value," *The Journal of Financial Research* , Vol. 33, No. 4, pp. 317-371 (2010).	318
2	"...the value effects of derivative use are quite sensitive to selection bias. This result may explain the differences in inferences in the literature; even small differences in sample construction, control variables, and testing method could change the estimated effect."	Bartram, Söhnke M., Gregory W. Brown and Jennifer Conrad, "The Effects of Derivatives on Firm Risk and Value," *Journal of Financial and Quantitative Analysis* , Vol. 46, No. 4, pp. 967-999 (2011).	997
3	"[In evaluating its impact on firms' exchange risk exposure and stock returns, the results] show statistically insignificant coefficients for financial hedging."	Choi, Jongmoo Jay and Cao Jiang, "Does multinationality matter? Implications of operational hedging for the exchange risk exposure," *Journal of Banking & Finance* , Vol. 33, pp. 1973-1982 (2009).	1981
4	"After using regression procedures that control for firm characteristics including firm profitability, growth opportunities, size, leverage, and ownership concentration, we find that derivatives usage has a mixed effect on firm value."	Fauver, Larry and Andy Naranjo, "Derivative usage and firm value: The influence of agency costs and monitoring problems," *Journal of Corporate Finance* , Vol. 16, pp.719-35 (2010).	733
5	"…results support the theory that although hedging may be positively correlated with firm value it does not cause an increase in firm value."	Hagelin, Niclas, Martin Holmen, John D. Knopf, and Bengt Pramborg, "Managerial Stock Options and the Hedging Premium," *European Financial Management* , Vol. 13, No.4, pp. 721-741 (2007).	738
6	"If hedging enables managers to take on projects without facing scrutiny from the capital markets, it can enable managers to finance projects that benefit managers but reduce shareholders' wealth. So although firms facing financial constraints hedge more extensively, this relation does not imply that hedging increases shareholder value."	Haushalter, G. David , "Financing Policy, Basis Risk, and Corporate Hedging: Evidence from Oil and Gas Producers," *The Journal of Finance* , Vol. 55, No. 1, pp.107-52 (2000).	147

Exhibit 5

Academic Articles Finding Little or No Impact of the Usage of Derivatives on Firm Value

[Alphabetical by Author]

No.	Quote	Citation	Page Number
7	"...we find that hedging does not seem to affect MVs [Market Values] for this industry [oil and gas producers]. [...] An alternative explanation [for hedging adding value in samples of currency derivative users] is that the hedging premium observed for multinationals reflects other factors, such as informational asymmetries or operational hedges, which add value but happen to be positively correlated with the presence of derivatives. In a sample without such spurious correlation, the effect of derivatives disappears."	Jin, Yanbo and Philippe Jorion,"Firm Value and Hedging: Evidence from U.S. oil and Gas Producers," *The Journal of Finance* , Vol. LXI, No.2, pp.893-919 (2006).	893,916
8	"The empirical results suggest that there is no clear evidence that the use of foreign currency derivatives is associated with a firm's market value."	Serafini, Danilo Guedine and Hsia Hua Sheng, "The use of foreign currency derivatives and the market value of Brazilian companies listed on Bovespa," [In Portuguese.] *Revista de Administração Contemporânea* , Vol. 15, No.2, pp. 283-303 (2011).	284

EXHIBIT 98

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE BANK OF AMERICA CORP. SECURITIES, DERIVATIVE, AND EMPLOYEE RETIREMENT INCOME SECURITY ACT (ERISA) LITIGATION	Master File No. 09 MDL 2058 (PKC)
THIS DOCUMENT RELATES TO: The Consolidated Securities Action	

EXPERT REPORT OF ALLEN FERRELL, PH.D.

September 16, 2011

I. QUALIFICATIONS

I am the Greenfield Professor of Securities Law at Harvard Law School where I have taught since 1998. I received a Ph.D. in economics from the Massachusetts Institute of Technology with fields in econometrics and finance and a J.D. from Harvard Law School. My Ph.D. concerned the relationship between stock prices and financial disclosures.

I am also a faculty associate at the Kennedy School of Government at Harvard, a member of the American Law Institute Project on the Application of U.S. Financial Regulations to Foreign Firms and Cross-Border Transactions, a research associate at the European Corporate Governance Institute, and a member of the ABA Task Force on Corporate Governance.

I formerly was a member of the Board of Economic Advisors to the Financial Industry Regulatory Authority ("FINRA"), an executive member of the American Law School section on securities regulation, and the Chairperson of Harvard's Advisory Committee on Shareholder Responsibility (which is responsible for advising the Harvard Corporation on how to vote shares held by its endowment).

I have testified before the U.S. Senate Subcommittee on Securities, Insurance and Investment and presented to, among others, the Securities and Exchange Commission, the World Bank, the Structured Products Association and the National Bureau of Economic Research. I have published approximately thirty articles in leading journals including on event study methodology, materiality and the economics of securities damages. I have also been an expert witness in a variety of securities matters including issues involving event studies, materiality and securities damages. My testimony in the last four years and academic work are summarized on my curriculum vitae, which is attached hereto as Appendix A. I am being compensated at my customary hourly rate of $850 per hour for my work on this matter.

II. INTRODUCTION AND SUMMARY OF CONCLUSIONS

The Consolidated Second Amended Class Action Complaint ("Complaint") alleges two primary disclosure deficiencies by Bank of America and various of its officers and directors. These alleged disclosure deficiencies concern the failure to adequately disclose, first, the merger agreement terms regarding the payment of 2008 bonuses to Merrill Lynch employees and, second, Merrill Lynch's 4Q 2008 after-tax losses of approximately $15.3 billion. The alleged failure to adequately disclose bonus payments first began, according to the Complaint, on September 18, 2008 with the filing of the Bank of America and Merrill Lynch merger agreement (Complaint, ¶218). The alleged failure to adequately disclose Merrill Lynch's 4Q 2008 losses first began, according to the Complaint, as of November 5, 2008 when some Bank of America officers allegedly became aware, at least in part, of Merrill Lynch's 4Q 2008 losses (Complaint, ¶101). There are no allegations in the Complaint that Bank of America officers or directors knew of Merrill Lynch's interim losses in the 4Q 2008 (a quarter that began as of September 27, 2008) at an earlier point in time. The earliest communication in the Complaint referencing the $7.5 billion in Merrill Lynch losses for October, 2008 occurs on November 12, 2008. (Complaint, ¶102).

The Complaint identifies five dates (Complaint, ¶¶ 273-280) on which one or the other of these alleged disclosure deficiencies were purportedly revealed to the market: (1) January 12, 2009; (2) January 13, 2009; (3) January 15, 2009; (4) January 16, 2009; and (5) January 22, 2009 ("corrective disclosure dates"). The Complaint further alleges that there are Bank of America stock price drops associated with each of these corrective disclosure days.

These alleged disclosure deficiencies concerning the Merrill Lynch bonuses and Merrill Lynch's 4Q 2008 losses form the basis for plaintiffs' Rule 10b-5 class action claims (with the putative class period running from September 18, 2008 to January 21, 2009 inclusive), plaintiffs' Section 14(a) claim consisting of holders of Bank of America shares as of October 10, 2008 entitled to vote on the Bank of America-Merrill Lynch merger, and plaintiffs' Section 11 claim consisting of purchasers of Bank of America stock sold pursuant to a October 7, 2008 registered public offering. The Section 14(a)

claim not only relies upon the same disclosure deficiencies concerning Merrill Lynch's bonus payments and Merrill Lynch's 4Q 2008 losses purportedly reflected in the proxy statement and updates thereto as the Rule 10b-5 class action claims (Complaint, ¶336) but also identifies the same five corrective disclosure dates (listed above) as the Rule 10b-5 class action claims (Complaint, ¶338).

I have been asked by counsel for Bank of America to assess the statistical significance, if any, of the price impact (or materiality) of the information disclosed in the purported corrective disclosures identified by the Complaint. I was also asked to analyze the statistical significance, if any, of Bank of America stock price movements on dates when there were disclosures identified by the Complaint concerning bonus payments by Merrill Lynch, as well as publicly reported statements on that subject. I have been also asked to address the economics of Rule 10b-5 and Section 14(a) actions and whether this economic analysis casts light on the appropriateness of the Complaint's Section 14(a) holders class. I have received the assistance of the staff employed by Compass Lexecon. Appendix B lists the materials I have relied on in the course of my analysis.

Based on my analysis, I have reached the following principal conclusions:

● Merrill Lynch's intent (and ability) to make substantial bonus payments in 2008 was already part of the total mix of information by the time of the purported corrective disclosures. Similarly, substantial losses in 4Q 2008 at Merrill Lynch were also part of the total mix of information by that time. Consistent with these conclusions, there were no statistically significant Bank of America stock price reactions on three of the five purported corrective disclosure dates (January 12, 2009; January 13, 2009; and January 16, 2009). As to the other two alleged corrective disclosure dates (January 15, 2009 and January 22, 2009) – and as to January 16, 2009 as well – confounding negative information was also disseminated.

● There was likewise no statistically significant price impact on Bank of America stock when: (i) the merger agreement containing the alleged misrepresentations concerning Merrill Lynch bonus payments was publicly filed on September 18, 2008; (ii) the three preliminary proxy statements and definitive proxy also containing alleged

misrepresentations concerning Merrill Lynch bonus payments were publicly filed; (iii) Merrill Lynch's 10-Q for the third quarter 2008, which reported compensation and benefit accruals, was publicly filed; (iv) various print and other media reported during 4Q 2008 that Merrill Lynch would pay in excess of $6 billion in 2008 bonuses; and (v) the press first reported the so-called "cap" on bonus payments contained in the disclosure schedule attached to the merger agreement. These price non-reactions indicate that the disclosed information concerning Merrill Lynch's bonus payments, all of which relate to the Complaint's allegations of inadequate disclosure of material information in the merger agreement and proxy statements, was in fact not material.

● There was also no statistically significant price impact on Bank of America stock on December 8, 2008, the first trading day after the shareholder vote and the day after a Morgan Stanley analyst issued a report which estimated $11 billion in losses at Merrill Lynch and noted that these "mark to market hits in [Merrill Lynch's] assets . . . have already been reflected in [Bank of America's] share price."[1]

● Despite identifying the cognizable harm as Rule 10b-5 based, the Section 14(a) class consists of holders, which is fundamentally inconsistent with a Rule 10b-5 theory of harm. Such a class would necessarily include shareholders who could not possibly have been harmed as a result of purchasing shares at prices inflated by the alleged disclosure deficiencies, i.e. purchasers prior to September 18, 2008.

● As an economic matter, the Section 14(a) class alleged in the Complaint suffered no direct out-of-pocket damages as voters. The merger at issue in this action was structured as an acquisition of Merrill Lynch by Bank of America. The Bank of America shareholders were asked to approve the issuance of shares necessary to effectuate the merger. However, as the shareholders of the acquiring company, the Bank of America shareholders did not themselves engage in any transaction in connection with the merger. To the extent that the Bank of America shareholders were misled into thinking that the merger made economic sense to Bank of America, e.g., that the value of

[1] Morgan Stanley, "Banking – Large Cap Banks Marking to Market 4Q08, p. 5, Dec. 7, 2008

Merrill Lynch was equal to or greater than the value of the Bank of America stock to be issued in the merger, any economic harm resulting from some economic form of overpayment by Bank of America was suffered directly by Bank of America, and indirectly by its shareholders.

● The Complaint alleges that the members of the putative Section 14(a) class were harmed by the removal of inflation associated with the alleged corrective disclosures in January 2009 – several weeks after the shareholder vote in question. But there is no economic nexus between harm to Section 14(a) class members and the removal of inflation associated with the alleged corrective disclosures since members of the Section 14(a) class are not alleged to have purchased their shares at artificially inflated prices. It is noteworthy that Plaintiffs seek to recover for the identical stock drops on behalf of the members of the putative Section 10(b) class who, by contrast, are alleged to have purchased their shares at artificially inflated prices. As an economic matter, these two groups are differently situated, but the Complaint rests on the economically untenable assumption that they are similarly situated.

● The putative Section 14(a) holders class fails to remove from the definition of the class Bank of America shareholdings offset by Merrill Lynch shareholdings despite the fact that investors who held equal shares in both companies were economically unaffected by the merger.

I explain the bases for these conclusions below.

III. ASSESSING MATERIALITY

I will proceed in four steps in the course of assessing the materiality of the information concerning the Merrill Lynch bonus payments and the Merrill Lynch 4Q 2008 losses that were allegedly inadequately disclosed up until the five corrective disclosure dates in January 2009 alleged in the Complaint. First, before beginning my analysis of materiality I will specifically identify in Section A, in light of the Complaint's

allegations, the time periods for which the materiality of the allegedly misrepresented or omitted information is relevant. Since materiality is typically assessed by reference to both qualitative and quantitative considerations, I will then in Section B analyze the allegedly misrepresented or omitted information qualitatively in order to determine whether one would in fact expect to observe negative stock price reactions to the disclosures that occurred on the five corrective disclosure dates. This entails examining whether the disclosures altered the total mix of information as it existed at the time of the purported corrective disclosures. Then, in Section C, I will assess materiality from a quantitative perspective by analyzing whether any of the alleged misrepresentations and corrective disclosures are associated with statistically significant stock price reactions. I do so through the use of an event study. I will examine in Section C whether the various disclosures made concerning Merrill Lynch bonus payments prior to the corrective disclosure dates, including the alleged Merrill Lynch bonus payment misrepresentation made on September 18, 2008, were associated with statistically significant stock price reactions. Section C will also examine whether news announcements or analyst reports which commented on Merrill Lynch's bonus payments or 4Q 2008 losses prior to the corrective disclosures were associated with statistically significant price reactions.

A. Relevant Time Periods for the Materiality Assessment

According to the Complaint, the relevant time period for the materiality of the allegedly misrepresented information concerning Merrill Lynch's bonus payments for the Rule 10b-5 claim starts as of September 18, 2008 and runs till January 21, 2009 (inclusive). September 18, 2008 is the date of the first alleged misrepresentation concerning the Merrill Lynch bonus payments; on that day Bank of America filed a Form 8-K with the SEC that attached the merger agreement as an exhibit.

It is worth emphasizing, however, that the relevant time period for assessing the materiality of plaintiffs' 10b-5 bonus claim is substantially shortened to the extent that the Complaint is read to allege that what made the allegedly misrepresented bonus provisions material to Bank of America shareholders is that they allowed Merrill Lynch to pay billions of dollars in bonuses even though it was incurring billions of dollars of

losses in 4Q 2008. This is worth highlighting as various sections of the Complaint formulate the claimed disclosure deficiency in this manner.[2] So formulated, the allegedly misrepresented bonus provisions cannot logically be deemed material until November 5, 2008 — the earliest date that the Complaint alleges that Bank of America officials became aware (or were reckless in not knowing) of Merrill Lynch's financial results in October 2008 (Complaint, ¶101).[3] This implies that, at a minimum, the September 18, 2008 – November 4, 2008 period (inclusive) should not be deemed to be part of the Rule 10b-5 class.

As for the 14(a) claim, there is no allegation in the Complaint that as of October 10, 2008, the record date for the shareholder vote on the merger, Bank of America had any knowledge of Merrill Lynch's October 2008 results. As noted above, to the extent that the Complaint is read to allege that the materiality of the proxy statement's alleged misrepresentations regarding Merrill Lynch's intent or ability to make bonus payments turns upon Merrill Lynch's intent to make such payments despite incurring substantial 4Q 2008 losses, there is likewise no allegation in the Complaint that as of October 10, 2008 Bank of America had any knowledge of Merrill Lynch's October 2008 results.

As for the Section 11 putative class, the Section 11 claim (presented in Count VII) centers on a registered offering that occurred on October 7, 2008 (Complaint, ¶24), a mere seven business days into the 4Q of 2008. There is no allegation in the Complaint that at this early point in the 4Q of 2008 there was already a certain quantum of 4Q 2008 losses at Merrill Lynch that rendered the registration statement materially misleading. For the purposes of the Section 11 claim, the disclosure deficiency therefore must concern disclosures concerning the Merrill Lynch bonus payments and not Merrill Lynch's 4Q 2008 interim losses (Complaint, ¶368). Accordingly, for the purposes of the Section 11 claim, accepting the Complaint's allegations as true, the materiality of the allegedly inadequate disclosure concerning Merrill Lynch bonus payments is the relevant issue and not the claim that the Merrill Lynch 4Q 2008 interim losses (or the payment of such

[2] See Complaint ¶ 191 (analyst "described the bonuses as 'ridiculous,' especially in light of Merrill's losses"); ¶ 193 ("Associated Press reported that the revelation of the accelerated bonus payments amidst Merrill's losses triggered Thain's purported 'resignation'"); ¶ 194 ("financial press uniformly reported that the size and accelerated schedule of Merrill's bonus payments – as well as the fact that they were paid amidst historically large losses – was stunning news to the investor community").

[3] Indeed, the Complaint alleges that Bank of America did not become aware of Merrill Lynch's "actual loss" for October 2008 and its initial forecast for 4Q 2008 until November 12, 2008. (Complaint ¶ 102).

bonuses in light of those interim losses) were inadequately disclosed. I will undertake such a materiality assessment in the following sections.

B. QUALITATIVE ANALYSIS

I will now examine whether the purported corrective disclosures on the five dates identified by the Complaint were material in light of the total mix of information that existed as of that point in time. I first analyze the alleged corrective disclosure pertaining to Merrill Lynch's 4Q 2008 interim losses, and then analyze the alleged corrective disclosures pertaining to its payment of bonuses. Based on this analysis, I conclude that there is no qualitative evidentiary basis to conclude that these disclosures were material.

1. The Purported Corrective Disclosures Pertaining to Merrill Lynch's Interim Losses.

January 12, 2009 Corrective Disclosure: The Complaint alleges that "[n]ews that Merrill and BoA would report much higher losses than expected began to leak into the market by no later than Sunday, January 11, 2009, when a Citigroup analyst forecast fourth quarter losses at Merrill to be $6 billion, including $7 billion in writedowns on Merrill's 'high risk assets'" (Complaint, ¶176). The Complaint further alleges that, in response to this analyst report, Bank of America's stock price fell 12% on January 12, the next trading day. (Complaint ¶ 273).

The fact that Merrill Lynch faced substantial losses in 4Q 2008 was not news in light of previously publicly available information, including an analyst estimate of *greater* Merrill Lynch 4Q 2008 losses issued several weeks before. On December 7, 2008, a Morgan Stanley analyst estimated Merrill Lynch writedowns of *$11 billion*, including $8.9 billion of investment bank exposures and an incremental $2.1 billion writedown on other loan exposures. Furthermore, the Morgan Stanley analyst noted that

these "mark to market hits in [Merrill Lynch's] assets . . . have *already been reflected in [Bank of America's] share price*."[4]

While the $11 billion figure was less than the over $21 billion in losses that were ultimately reported after the 4Q ended on December 31, 2008, the Complaint does not allege that Bank of America knew at the time of the shareholder vote on December 5 that Merrill Lynch had incurred $21 billion in losses. To the contrary, according to the Complaint, Bank of America was aware on December 3, 2009 that Merrill Lynch had incurred actual losses of $7.5 billion in October and estimated that its November 2009 losses would reach $4.9 billion. (Complaint ¶¶ 102, 124-25). These losses (actual and estimated) for the two months totaled $12.4 billion, only about $1.4 billion higher than the amount of losses that, according to the Morgan Stanley analyst, had already been priced into the market for Bank of America's stock.

I note in this connection that plaintiffs' own expert, Mr. Coffman, in the course of discussing why in his opinion analyst reports are an important mechanism of market efficiency for Bank of America during this period explains, "These reports served the purpose of disseminating publicly available information along with commentary, news, updates, analysis and recommendations of the analysts to investors." (Coffman, ¶31).

In addition to these prior loss estimates by the Morgan Stanley analyst, the January 12, 2009 Citigroup analyst report did not constitute a corrective disclosure in light of Merrill Lynch's historical pattern of substantial asset writedowns in every quarter since the onset of the financial crisis in the summer of 2007, the other numerous statements made by Bank of America and Merrill Lynch during 4Q 2008 concerning the adverse effects of the financial crisis on Merrill Lynch's financial condition and the market's contemporaneous awareness regarding the impact of widening credit spreads and unprecedented volatility on financial institutions generally. I will address these issues in more detail when discussing the alleged corrective disclosure dates of January 15 and 16, 2009 below.

January 13, 2009 Corrective Disclosure: The Complaint also alleges that, according to a June 1, 2009 article in the *Sydney Morning Herald*, on January 14, 2009

[4] Morgan Stanley, "Banking – Large Cap Banks Marking to Market 4Q08, p. 5, Dec. 7, 2008 (emphasis added)

(which was January 13 in New York), Merrill executives in Australia "had informed Australian bond traders that Merrill was going to report 'awful' news that was going to cause the market to 'plummet' on January 15, 2009." (Complaint ¶177). According to the same article, one trader reported that he was told that "'[t]he market is expecting Merrill Lynch in New York to come out with a bad result on Thursday night.'" The Complaint alleges that Bank of America's stock price dropped approximately 11% on January 13. (*Id*. ¶274).

The Complaint's characterization of this article as a corrective disclosure is puzzling. Not only did the article in question appear on June 1, 2009 – some four-and-a-half months after the alleged fraud was revealed and the putative class period ended – but the Complaint simply misreads the article. The *Sydney Morning Herald*'s story concerned *not* Merrill Lynch's disclosure of its fourth quarter 2008 losses in January *2009*, but its disclosure of its fourth quarter *2007* losses on "January 18, 2008" — a full year earlier. This article is clearly not a "corrective disclosure" with respect to any of the alleged misstatements or omissions at issue here.

January 15, 2009 and January 16, 2009 Corrective Disclosures: The Complaint alleges that "[o]n the morning of January 15, 2009, *The Wall Street Journal* shocked investors with news that '[t]he U.S. government is close to finalizing a deal that would give billions in additional aid to Bank of America Corp. to help it close its acquisition of Merrill Lynch & Co.,' citing larger-than-expected but unquantified fourth quarter losses at Merrill." (Complaint, ¶178). The Complaint goes on to state that "[o]n the morning of January 16, 2009, the Treasury Department issued a press release disclosing the Government bailout of BoA" and, furthermore, on "January 16, 2009, BoA announced terrible fourth quarter results, revealing . . . .the $21.5 billion losses at Merrill and the fact that TARP funding had been necessary to complete the merger." (Complaint, ¶¶180, 275). The $21.5 billion pre-tax figure represented a 4Q 2008 after-tax loss of approximately $15.3 billion (Complaint, ¶181).

As mentioned in my January 12 and January 13, 2009 discussion there had already been analyst estimates of substantial 4Q 2008 Merrill Lynch losses well before the fourth quarter had even ended.

In addition, as has already been touched upon, Merrill Lynch had by this point a history of substantial quarterly writedowns and losses, making it not particularly surprising that Merrill Lynch continued to experience losses in the unprecedented market conditions following the bankruptcy filing of Lehman Brothers on September 15, 2008. Exhibit 1A presents details on Merrill Lynch's holdings of a broad range of assets (including its super seniors, mortgage holdings, monoline hedges, and leveraged loans among other assets) and the associated quarterly writedowns on these assets from Q3 2007 up to and including 4Q 2008 for a total of six quarters. This information was obtained from readily available public sources such as Merrill Lynch's 8-Ks and 10-Qs as well as Bloomberg data. As is apparent from Exhibit 1A, as of the end of Q3 2008, Merrill Lynch had taken over $55 billion in writedowns and still had over $75 billion in remaining exposure. The average quarterly Merrill Lynch writedown for the five quarters prior to 4Q 2008 (3Q 2007; 4Q 2007; 1Q 2008; 2Q 2008; 3Q, 2008) on these assets was approximately $11.2 billion with the 4Q 2008 writedown on these assets being $10.5 billion. Or consider the 3Q 2008 Merrill Lynch writedown, publicly disclosed on October 16, 2008, which reported a $12 billion writedown representing approximately 15.7% of the reported value of these assets. The 4Q 2008 writedowns on these same assets in comparison represented approximately 13.8% of the reported value of Merrill Lynch's asset base at that time of $75.8 billion.

Merrill's quarterly reports from the third quarter of 2007 through the third quarter 2008 (which are incorporated by reference into the proxy), disclosed that since mid-2007, when the credit crisis began, Merrill had suffered five consecutive quarters of multibillion-dollar losses from continuing operations – a total of $38.2 billion pre-tax. The details of these quarterly losses are contained in Exhibit 1B. As indicated in this exhibit, were it not for several one-time gains, Merrill would have actually reported $49.4 billion in pre-tax losses for the five quarters preceding the fourth quarter of 2008.

Moreover, the proxy and the information incorporated therein warned shareholders that credit markets and market conditions generally were not likely to improve in the near term. The proxy reminded shareholders of the extraordinary market

conditions under which the Merger Agreement had been negotiated,[5] and that "market conditions have been extremely volatile."[6] And the proxy enumerated several risk factors relating to the "Business Condition and Prospects of Merrill," including, among others, "the risk of Merrill Lynch's credit ratings being further downgraded," and "challenging and uncertain investment banking industry conditions and risks . . . expected to persist, including. . . the volatile valuations and illiquidity of certain financial assets and exposures. . .[and]. . .generally uncertain national and international economic conditions."[7]

Merrill Lynch's third quarter Form 10-Q, which was incorporated by reference into the proxy and filed approximately one month before the shareholder vote, was even more stark, describing the macro-economic environment as "one of instability, economic slow-down, and potential deflation," resulting in "extreme volatility and continued de-leveraging in the market."[8] It went on to note that, "[t]urbulent market conditions in the short and medium-term will continue to have an adverse impact on our core businesses."[9] And Bank of America's own third quarter Form 10-Q, filed the following day, discussed Merrill Lynch's positions in securities, derivatives, loans and loan commitments and noted that "future results may continue to be materially impacted by the valuation adjustments applied to these positions."[10] Further similar disclosures by both Merrill Lynch and Bank of America in their 3Q 2008 filings are presented in Exhibit 1C.

Both Bank of America and Merrill Lynch also made other statements regarding difficult and deteriorating market conditions during 4Q 2008. On October 6, 2008 during an investor conference call, Ken Lewis, Bank of America's CEO, stated that the Bank's economic outlook now called for a "weaker economy going into 2009," as the recession was going to be "deeper than we originally thought." At a November 11, 2008 financial services conference, John Thain, Merrill Lynch's CEO, stated that the company was "not

[5] The proxy listed, among other conditions, "extremely distressed conditions in the financial services industry generally and the investment banking industry in particular," and an "unprecedented market environment that had triggered significant dislocations, the near-bankruptcy of The Bear Stearns Companies Inc. and the apparently imminent bankruptcy of Lehman Brothers." Proxy at 49.
[6] Proxy at 38.
[7] Id. at 52.
[8] MER Q3 2008 form 10-Q, at 83.
[9] Id.
[10] BofA Q3 2008 Form 10-Q, at 177.

going to get better quickly" and that the "U.S. economy is contracting very rapidly, asset prices are falling, and that is creating a great degree of uncertainty, both in the equity markets and in the debt markets, about the near-term outlook, at least over the next few quarters." Additional statements from 4Q 2008 regarding the difficulties facing financial institutions can be found in Exhibit 1D.

In light of these disclosures, the allegedly omitted information regarding Merrill Lynch's 4Q interim losses was not qualitatively material. Bank of America investors were presented with substantial information during the relevant period that Merrill Lynch's business had been, and continued to be, under severe stress. Assuming Bank of America's common stock was efficient throughout the class period as asserted by Plaintiffs' expert, Mr. Coffman, all of the information discussed above was already incorporated into Bank of America's stock price prior to the alleged corrective disclosures.

2. The Purported Corrective Disclosure Pertaining to Merrill Lynch's Bonus Payments

January 22, 2009 Corrective Disclosure: The Complaint states that "On the night of January 21, 2009, the *Financial Times* reported that, in late December, immediately prior to the closing date, Merrill had paid $3-4 billion in bonuses despite its massive fourth quarter losses." (Complaint, ¶20; see also ¶278). The *Financial Times* article on January 21, 2009 stated, "Despite the magnitude of the losses, Merrill had set aside $15bn for 2008 compensation, a sum that was only 6 per cent (sic) lower than the total in 2007, when the investment bank's losses were smaller. The bulk of $15bn in compensation was paid out as salary and benefits throughout the course of the year . . . [and] about $3bn to $4bn was paid out in bonuses in December."

But the total mix of information already reflected information concerning the Merrill Lynch bonus payments prior to this particular news story. There had been in fact numerous prior announcements and discussions, including several by Merrill Lynch itself, concerning the fact that Merrill Lynch would pay billions of dollars of bonuses in 2008 and that these bonuses would be paid prior to the end of the calendar year. In its

October 16, 2008 earnings release, Merrill Lynch announced accrued compensation and benefits expenses of $3.5 billion for the third quarter, bringing the accrual for the first nine months of the year to $11.2 billion (down 3% from the prior year period). Thereafter *The New York Times* reported on October 27, 2008 that "[f]ive straight quarters of losses and a 70 percent slide in its stock this year have not stopped Merrill Lynch from allocating about $6.7 billion to pay bonuses." Indeed, *The Times* quoted a Merrill Lynch spokeswoman as stating that the firm's accrued bonuses "were not down as much as those at Goldman and Morgan Stanley because Merrill cut expenses last year, when it also had a loss." On December 4, 2008, the day before the shareholder vote, the *Daily Telegraph* reported that "Merrill is due to inform staff of bonuses on December 22, with payment due at the end of the month."[11] And, on January 16, 2009, Bank of America disclosed that Merrill Lynch's total compensation and benefits accrual for fiscal 2008 was $15 billion. As detailed in Exhibit 2, during the putative class period, there were public statements discussing Merrill Lynch's intention to make multi-billion dollar bonus payments in 2008 on at least 10 different days through January, 2009.

In light of these disclosures, the purported corrective disclosure of January 22, 2009 was not qualitatively material. The total mix of information available to Bank of America shareholders prior to that date made clear Merrill Lynch's intent to pay billions of dollars in bonuses and to do so before year-end 2008. Assuming Bank of America's common stock was efficient throughout the class period as asserted by Plaintiffs' expert, Mr. Coffman, all of the information discussed above was already incorporated into Bank of America's stock price prior to the alleged corrective disclosures.

I will now test through the use of an event study my qualitative conclusion that there is no evidentiary basis to conclude that the purported corrective disclosures revealed material information on those dates.

[11] Quinn, J. and Sibun, J., The Telegraph, "Investment Banks Set to Cut 30,000 Jobs," December 4, 2008.

C. QUANTITATIVE ANALYSIS

1. The Event Study Method

An event study is a regression analysis that measures the effect of an event, such as a firm's earnings announcement, on a firm's stock price.[12] As I have previously written, "[e]vent study analysis is a ubiquitous tool in assessing claims of loss causation as well as the 'materiality' of misstatements or fraudulently omitted information."[13] In such an analysis, one must, of course, control for factors other than the event that may also simultaneously affect the stock price (the "control variables"). Because stock prices can reflect market and industry-specific information, it is necessary to extract the market and industry-specific information.[14] More specifically, in controlling for industry effects through the use of an industry control, as I have explained elsewhere, "it is important to pay particular attention to which firms are truly 'comparable' in terms of their line of business and, hence, should be included in the industry index."[15]

Once market and industry control variables have been selected, an estimation window is then used by the researcher to quantify the extent to which the firm's stock price has historically moved with the general market and comparable firms within its industry (the "market model"). Two considerations can be important in selecting the estimation window. First, the estimation window should exclude days on which alleged misrepresentations and corrective disclosures thereof occurred as stock price reactions on these days could potentially reflect this information (assuming the Complaint's allegations are true) rather than the stock's historical relationship with the general market or comparable firms within its industry. Second, market conditions during the estimation

[12] MacKinlay, A. Craig, "Event Studies in Economics and Finance," *Journal of Economic Literature* 35, (1997): 13-39.
[13] Ferrell, Allen, and Atanu Saha, "The Loss Causation Requirement for Rule 10b-5 Causes of Action: The Implications of *Dura Pharmaceuticals v. Broudo,* 63 Bus. Lawyer 163, (2007).
[14] Cavaglia, Stefano, Christopher Brightman, and Michael Aked, "The Increasing Importance of Industry Factors" *Financial Analysis Journal* (2000): 41-54 ("Our results suggest that industry factors have become an increasingly important component of security returns"); Campbell, John, Martin Lettau, Burton Malkiel, and Yexiao Xu, "Have Individual Stocks Become More Volatile? An Empirical Exploration of Idiosyncratic Risk," *Journal of Finance: 56, No. 1* (2001): 1-44 ("Aggregate market return is only one component of the return to an individual stock. Industry-level and idiosyncratic firm-level shocks are also important components of individual stock returns").
[15] Ferrell, Allen, and Atanu Saha, "The Loss Causation Requirement for Rule 10b-5 Causes of Action: The Implications of *Dura Pharmaceuticals v. Broudo,* 63 Bus. Lawyer 163, (2007).

window should not be sufficiently unusual or extreme so as to call into question whether the normal historical relationship between the stock and the general market or comparable firms within the industry is being accurately quantified in the estimation of the market model.

Once market and industry effects are controlled for within a statistical model using an estimation window, standard statistical tests can then be conducted on the remaining unexplained price movements (often referred to as the firm-specific, residual or abnormal price return) to test for significant price changes that may indicate the presence of new, material, firm-specific information to the market. The statistical significance of a stock price change can be assessed either in terms of percentage returns (say, the statistical significance of a 20% negative price reaction when a stock falls from $5 to $4) or in terms of a dollar reaction (say, the statistical significance of the $1 price drop when a stock falls from $5 to $4). These two assessments of the statistical significance of firm-specific stock return reactions and firm-specific dollar price reactions are not necessarily equivalent.[16]

A commonly accepted metric of statistical significance for a stock price change used in the finance and accounting literature is significance at the 5% level.[17] These tests of the statistical significance of the firm-specific price movement take into account the normal random movements in stock prices. These normal random stock price movements are accounted for by using the stock price volatility as measured over the estimation window.

Even if a statistically significant firm-specific price movement, whether it would be a firm-specific stock return or dollar price reaction, has been properly measured on a particular day, the researcher attempting to interpret the import of such a firm-specific price movement must bear in mind a fundamental limitation to any event study analysis. As is widely recognized in the finance and accounting literature, event studies alone can neither determine what information is related to revelation of alleged actionable

[16] See Ferrell, Allen and Atanu Saha, "Event Study Analysis: Correctly Measuring the Dollar Impact of an Event" *The Harvard John M. Olin Discussion Paper Series* (2011): 1-13.

[17] See, e.g., James Stock and Mark Watson, INTRODUCTION TO ECONOMETRICS, p.68 ("In many cases, statisticians and econometricians use a 5% significance level.") (2003). See also Coffman, ¶51 ("However, if on a particular day we observe an abnormal return that has a t-statistic of a magnitude greater than 1.96 ('statistically significant') and we observe new firm-specific information, we reject randomness as the explanation and infer that the new information is the cause of the stock price movement.")

misconduct nor can event studies separate out different pieces of firm-specific information disclosed simultaneously. Thus, though a corrective disclosure may be associated with a statistically significant price movement in a corporation's stock, one must consider the possibility that other news (generally referred to as "confounding news") influences stock price movement on the day in question. Event studies, even properly conducted, can only identify statistically significant firm-specific price changes on a particular day. As Ronald Gilson and Bernard Black in their textbook THE LAW AND FINANCE OF CORPORATE ACQUISITIONS (in the chapter entitled "Event Studies") explain:

> "An event study can tell us that something happened, but it can't tell us *why*. To explain positive or negative abnormal returns, we must closely examine the events and institutions involved. If the market's response was based on a strategy which the investigator does not understand, the [abnormal return] results, though technically accurate, will be used to support an inaccurate explanation of what occurred. The event study technique does not eliminate the need to assess cause through deductive reasoning; it only – though this is substantial – helps delineate what needs to be explained."[18]

This consideration can be quite important if a researcher is attempting to use a statistically significant firm-specific price reaction to infer whether a specific piece of information released on a particular day was material. In making such an assessment it is often necessary to examine all of the information released at the same time, including confounding firm-specific information unrelated to the alleged misrepresentations or omissions, and the market's reactions to this information.

2. Event Study Analysis of Bank of America Stock

The Complaint alleges that on each of the five corrective disclosure dates information concerning Merrill Lynch's bonus payments and/or Merrill Lynch's 4Q 2008 losses was revealed for the first time to the market; that material information, according to the Complaint, was inadequately disclosed to the market earlier. Assuming that plaintiffs' expert, Mr. Coffman, is correct that the market in Bank of America common stock was efficient during this time, one would expect to observe negative price reactions

[18] Ronald Gilson and Bernard Black, THE LAW AND FINANCE OF CORPORATE ACQUISITIONS (Second Edition 1995), p.221.

in that market on the day that the corrective disclosures of this allegedly material information occurred (or the next trading day if the disclosure occurred after the market was closed). And, indeed, the Complaint does allege that there are negative stock price reactions in response to the purported corrective disclosures. (Complaint, ¶¶ 273 – 280).

On the other hand, if the purported corrective disclosures that occurred on these five dates were not material, one would not expect to observe statistically significant negative stock price reactions to these disclosures (putting aside the issue of confounding information in which case one could observe a negative stock price even if the corrective disclosure were not material). My qualitative analysis indicates a lack of an evidentiary basis to conclude that these purported corrective disclosures did in fact release material information given the total mix of information that existed at the time. I will now test this conclusion using an event study.

Estimation Window

For my estimation window, I utilized the 87 days constituting the putative Rule 10b-5 class period (running from September 18, 2008 to January 21, 2009 inclusive) plus an additional 87-days post-class period so that my estimation window runs from September 18, 2008 to May 28, 2009 (inclusive).[19] I exclude from my estimation window (through the use of an indicator dummy) the Complaint's alleged misrepresentations date; potential corrective disclosures thereof; and all the Bank of America's earnings announcements during this period so they will not affect my estimation of the market model. Assuming the allegations in the Complaint are true, the alleged misrepresentations and potential disclosures thereof could potentially constitute material firm-specific information and could therefore bias the estimation of the market model. Bank of America's earnings announcements are obvious candidates for dates on which material firm-specific information might be released and were likewise excluded.

[19] "There are three general choices for the placement of an estimation window: before the event window, surrounding the event window, and after the event window." "The estimation window is often placed at one of [the latter two] locations rather than before the event window because of a lack of relevant prior trading history (for example, because the event window comes shortly after an IPO or change in regulatory environment)." Tabak, David and Frederick Dunbar, "Materiality and Magnitude: Event Studies in the Courtroom" *National Economic Research Associates*, Working Paper #34 (1999): 1-34.

I decided to include the additional 87 days from the post-class period given the highly unusual nature of the markets during the putative class period.[20] September 15, 2008 — only three days before the alleged 10b-5 class period began — was the date that Lehman Brothers filed for bankruptcy. The markets were experiencing unprecedented volatility and disruption in the period immediately following the Lehman Brothers bankruptcy filing. In addition to Lehman Brothers, there were serious problems encountered by a number of other large institutions including AIG, Washington Mutual (which filed for bankruptcy on September 26, 2008), Fannie Mae and Freddie Mac.[21] An indication of the unprecedented nature of the markets during this time is the behavior of The Chicago Board Options Exchange Volatility Index ("VIX"), which measures market volatility and uncertainty based on the 30-day expected volatility of the S&P 500 index.[22] The VIX reached unprecedented levels precisely during the putative class period as can be seen in Exhibit 3. I note in this connection that despite the highly unusual nature of the markets during the putative class period, Mr. Coffman's estimation window is based solely on the putative class period. In my opinion, that is inappropriate because, as I stated above, market conditions during the estimation window should not be sufficiently unusual or extreme so as to call into question whether the normal historical relationship between the stock and the general market or comparable firms within the industry is being accurately quantified in the estimation of the market model.

Industry Control

In order to select an appropriate industry index of comparable firms to Bank of America and Merrill Lynch using an objective methodology, I proceeded in three steps. First, I analyzed whether a pre-existing industry control would be suitable to use as an industry control. To this end, I considered both the S&P 500 Financial Industry Index[23]

[20] I could not use pre-class period days in my estimation window as there simply was no Bank of America-Merrill Lynch combined entity or a merger agreement contemplated such an entity in existence prior to the putative class period. Bank of America's acquisition of Merrill Lynch was announced on September 15, 2008.

[21] A chronology of the extraordinary market events in the fall of 2007 can be found at: Federal Reserve Bank of St. Louis, "The Financial Crisis: A Timeline of Events and Policy Actions," available at http://timeline.stlouisfed.org/pdf/CrisisTimeline.pdf.

[22] Chicago Board Options Exchange, "The CBOE Volatility Index - Vix," 2009, pp. 3-4, available at http://www.cboe.com/micro/vix/vixwhite.pdf.

[23] Mr. Coffman uses the S&P 500 Financial Industry Index in his event study. (Coffman ¶ 48).

and the Dow Jones Financials Index. Both of these indexes, I concluded, were inappropriate as an industry control for Bank of America. As can be seen from Exhibit 4A, only 53% of the firms in the S&P 500 Financial Industry Index are actually banks or financial services firms. For the Dow Jones Financials Index, the percentage of firms in this group is only 46%. A substantial number of the firms in the S&P 500 Financial Industry Index and Dow Jones Financials Index are real estate companies, 18% and 29% respectively, and insurance companies, 28% and 24% respectively. In addition to including non-banking firms such as Vornado Realty Trust and Unum Group, these indices also include non-financial firms such as Moody's Corp and professional services firm Marsh & McLennan. It is difficult to see how many of these firms are comparable to Bank of America, one of the largest commercial banks, or Merrill Lynch, one of the largest investment banks at the time. Exhibit 4B lists a few examples of firms that are included in the S&P 500 Financial Index and that, in my opinion, are comparable to neither Bank of America nor Merrill Lynch.

Given the unsuitability of these indexes as industry controls, I turned to my second step which involves constructing an appropriate industry index consisting of comparable firms (see Appendix C).[24] I analyzed 327 analyst and industry reports as well as the SEC filings for Bank of America and Merrill Lynch over the January 1, 2008 – October 19, 2009 time period. I identified firms that were identified in these publications as a "peer firm" to either Bank of America or Merrill Lynch and ranked peer firms from the most frequently mentioned to the least frequently mentioned for Bank of America and Merrill Lynch.[25]

I then selected the ten most frequently mentioned peer firms to Bank of America[26] and the ten most frequently mentioned peer firms to Merrill Lynch for inclusion in my industry index. Excluding overlap, this procedure resulted in a total of seventeen peer firms. A value-weighted industry control was constructed from these seventeen peer

[24] Mr. Coffman, in contrast, uses as his industry control the S&P 500 Financial Index (minus Bank of America and Merrill Lynch). (Coffman, ¶48).
[25] I dropped Lehman Brothers as a candidate given its bankruptcy filing on September 15, 2008.
[26] There was a tie for tenth place for Bank of America so all firms were included.

firms which I will call the "Peer 17 Index."[27] Not surprisingly, many of the Peer 17 Index firms are the very largest banks and financial services firms by market capitalization in the S&P 500 Financial Index, firms such as JP Morgan, Wells Fargo, Goldman Sachs and Citigroup.

Event Study Results: Corrective Disclosures

Exhibit 5 reports the results of my event study using my estimation window and the Peer 17 Index as a control.[28] The Peer 17 Index is statistically significant (at the 5% level) with a coefficient value of 1.31. This exhibit presents the statistical significance of the five purported corrective disclosure dates both in terms of stock return and dollar price reactions. My event study results are robust to excluding the Merrill Lynch bonus payment disclosure days from the estimation window.

Of the five purported corrective disclosure dates, only January 15, 2009 and January 22, 2009 are statistically significant. The other three purported corrective disclosure dates (January 12, 2009; January 13, 2009; and January 16, 2009) are not statistically significant whether one examines stock returns or dollar price reactions. However, for the reasons explained in the previous section, on each of the purported corrective disclosure dates of January 15 and 22 there was significant confounding news in the market so as to make it impossible to reliably attribute these stock price reactions to either the *Wall Street Journal* article of January 15, 2009 or the *Financial Times* story of January 21, 2009. Such an attribution is particularly problematic in light of my qualitative analysis that the total mix of information already reflected this information.

In sum, my quantitative materiality analysis confirms the conclusions of my qualitative analysis to the extent that three of plaintiffs' five alleged corrective disclosure dates (January 12, January 13 and January 16, 2009) are not associated with material changes in Bank of America's stock price. As to the two remaining dates, on which the drop in Bank of America's stock price is statistically significant (January 15 and January

[27] The seventeen peer firms in alphabetical order were: Barclays, BB&T Corporation, Citigroup, Credit Suisse, Fifth Third, Goldman Sachs, JP Morgan, Key Corp., Lazard, Morgan Stanley, Nomura, Regions Financial, Sun Trust, UBS, US Bancorp, Wachovia, and Wells Fargo.

[28] I also ran the regression using the S&P 500 Index as an additional control variable. The results did not qualitatively change. Given the coefficient on the S&P 500 Index was statistically insignificant I report results just using the Peer 17 Index as a control.

22, 2009), the corrective information as alleged by the plaintiffs was already known in the marketplace. Furthermore, as I will now discuss, there was other confounding news in the market on these days.

Confounding Information: January 15 and 16, 2009

The Complaint alleges that on January 15, 2009, *The Wall Street Journal* reported that Merrill Lynch had suffered "larger-than-expected" but unquantified fourth quarter losses. But that article, which did not itself attempt to quantify those losses, — indeed, the article noted that "[i]t is not known exactly how much Merrill lost [in the fourth quarter]" — contained other information about Bank of America that could well have resulted in a statistically significant impact on its stock price that day. That additional information included the news that the U.S. government was close to finalizing a deal to give billions in additional aid to Bank of America, that (apart from Merrill Lynch) Bank of America itself might report a loss in Q4 2008 (the first quarterly loss suffered by the bank since 1991) and that Bank of America could potentially cut its dividend.

Amidst this bad news, as the *Los Angeles Times* reported on January 15, the "hottest rumor on Wall Street today was that the government was planning to effectively nationalize Citigroup Inc. and Bank of America Corp., perhaps as early as this weekend. That talk has devastated many financial stocks, and hammered the broader market for a second straight session." Any of these new pieces of information had the potential to drive Bank of America's stock price down on January 15, 2009.

In order to be scientifically valid, any attribution of the negative stock price reaction to the Merrill Lynch loss discussion in *The Wall Street Journal* article on January 15, 2009 would have to disentangle whatever negative stock price reactions that occurred as a result of the other confounding news also contained in that article.

Though my event study shows that Bank of America stock did not suffer a statistically significant drop on January 16, 2009, in view of Mr. Coffman's assertion to the contrary, I examined whether there was any confounding news in the market that day that might have caused Bank of America stock to decline (albeit to a statistically

insignificant extent).[29] On January 16, 2009, Bank of America not only disclosed Merrill Lynch's Q4 2008 results, it also released its own results for the quarter – a loss of $1.8 billion.[30] Exhibit 6 presents various analyst commentaries in the aftermath of the January 16, 2009 disclosures. As this Exhibit documents, there were analysts stating that Bank of America's January 16, 2009 results were worse than expected. For example, RBC Capital Markets stated: "The core loss of (-$0.44) widely missed both our $0.10 estimate and the consensus of $0.08 ... ".[31] In addition, there were news stories on this day discussing the possibility "that both Bank of America and Citigroup could be nationalized at taxpayer expense."[32] Finally, there were also news stories on this day concerning the receipt by Bank of America from the government of $20 billion in TARP funding and asset protection for $118 billion in assets.[33] Indeed, the Complaint itself states that the January 16, 2009 disclosure of Bank of America's receipt of TARP funding as one of the causes of Bank of America's price decline on January 16, 2009 (Complaint, ¶275).[34] Each of these additional revelations on January 16 could have resulted in a decline in Bank of America's stock price that day such that it is not possible to attribute the entire stock drop to the disclosure of Merrill Lynch's actual Q4 2008 results.

Confounding Information: January 22, 2009

As to the purported corrective disclosure date of January 22, 2009, there was likewise significant confounding information in the market on that day. That morning, CNBC reported that Ken Lewis, the CEO of Bank of America, and John Thain, the CEO of Merrill Lynch, were to have an "emergency meeting." CNBC also speculated that the meeting would "center on Thain's future with the firm, whether he stays or goes." Later that morning, CNBC reported that Thain would resign immediately. These reports could

[29] Mr. Coffman's discussion of January 16, 2009 fails to address the issue of confounding information. (Coffman, ¶ 54).
[30] SEC, EDGAR, Bank of America Press Release, January 16, 2009.
[31] RBC Capital Markets, "BAC: 4Q08 EPS Fall Short; Government Provides Loss Backstop and Capital Infusion," p.1 (January 20, 2009).
[32] See Rucker, P. and Stempel, J., "Bank of America Gets Big Government Bailout," Reuters, January 16, 2009.
[33] Bloomberg, L.P., "Bank of America Gets $138 billion in U.S. Funds, Asset Backstop," January 16, 2009.
[34] See also Complaint, ¶182 ("The $24 billion of preferred shares that BoA was required to sell to the U.S. Government under the terms of the bailout . . . severely reduc[ed] shareholder returns, and dilute[ed] the value of BoA common stock by approximately thirty cents per share for 2009.")

have resulted in Bank of America's stock price decline on January 22. These reports and prior market reports concerning Mr. Thain's status at Merrill Lynch leading up to the definitive reports of his departure are detailed in Exhibit 7. Furthermore, nearly a week earlier, on January 16, Merrill Lynch had disclosed to the market its actual compensation and benefits expenses – which included its bonus payments – in its Form 8-K filing for the 4Q 2008.

Event Study Results: Prior Bonus News

My event study also shows that there were no statistically significant price movements for Bank of America common stock on September 18, 2008 — the date defendants' first alleged misrepresentation regarding Merrill Lynch's intention to pay bonuses on 2008 — or on any of the other dates on which the Complaint alleges that Merrill Lynch's intention to pay bonuses was misrepresented (including the dates that each iteration of the proxy was filed with the SEC). Furthermore, there were no statistically significant price movements for Bank of America stock on any of the dates (discussed at pp. 14-15 above) on which (a) Merrill Lynch reported its compensation accruals relating to the third quarter of 2008, (b) the media reported that Merrill Lynch intended to pay billions of dollars of bonuses, or (c) the press first reported that the merger agreement imposed a "cap" on the amount of bonus payments Merrill Lynch could make. These results are presented in Exhibit 8. Mr. Coffman's event study analysis also shows that none of these days are statistically significant.[35] Accordingly, the economic evidence is inconsistent with the allegation that defendants' alleged misrepresentations regarding Merrill Lynch's intention to pay bonuses were material.

The fact that none of the prior news regarding Merrill Lynch's bonus payment is statistically significant undermines any attempt to attribute the stock price drop on January 22, 2009 to the *Financial Times* article on the preceding day, particularly given the other confounding news on January 22, 2009.

[35] See column labeled "Abnormal_Ret_T" in COFFMAN0000019-21.

Event Study Results: Morgan Stanley Estimate of 4Q 2008 Losses

Finally, as discussed previously, on December 7, 2008, a Morgan Stanley analyst released a report in which she estimated Merrill Lynch's losses at $11 billion and further commented that these losses were already incorporated into the share price. My event study analysis shows that the following trading day, December 8, 2008, Bank of America's share price did not exhibit a statistically significant price reaction to this news.[36] The absence of a statistically significant stock drop in response to the Morgan Stanley report provides additional support to the conclusion that, at the time of the shareholder vote, the alleged information available to Bank of America regarding Merrill's interim 4Q losses was not material.

This finding is also consistent with the analyst's statement that the estimated writedown had "already been reflected in [Bank of America's] share price." I further note that in his event study Mr. Coffman also did not find a statistically significant stock price drop on December 8; to the contrary, he found a statistically significant stock price *increase.*[37] This finding is inconsistent with the market perceiving the report that Merrill Lynch would suffer $11 billion in losses in the 4Q 2008 being material adverse news.

IV. THE ECONOMICS OF RULE 10B-5 AND SECTION 14(A) DAMAGES

A. ECONOMICS OF RULE 10B-5 DAMAGES

Damages in Rule 10b-5 "fraud on the market" class actions – direct actions by a specific group of security holders typically against a company (and often various of its directors and officers) – are based on the "out of pocket" losses of the class members. As an economic matter, this involves calculating the damages suffered by those class member security holders when they purchased the security at a price "inflated" as a result of the alleged misrepresentation or omission — a security which later fell in value when the "inflation" was removed by the revelation of the omitted information or the truth concerning the misrepresentation (a so-called "corrective disclosure"). Measuring

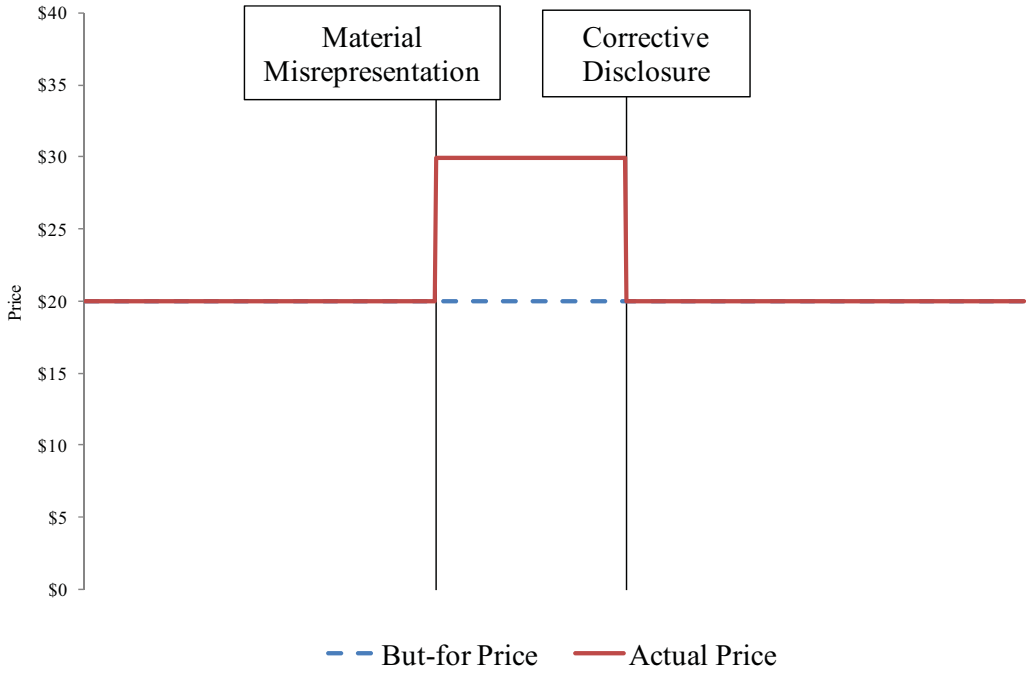
[36] On December 8, 2008, the abnormal return for Bank of America's share price had a coefficient of 0.06 and a t-statistic of 1.19. For abnormal dollar impact, the coefficient is 0.96 and the t-statistic is 1.20.
[37] Mr. Coffman reports an abnormal return of 10.3% and a t-statistic of 3.2 for December 8, 2008. See COFFMAN0000020.

"inflation" as an economic matter involves estimating the difference between the market price of the security and the price the security would have had if the defendants had adequately disclosed the allegedly material information throughout the class period.[38] Of course, this implies, as has been long recognized in the academic literature that for damages so calculated there is a corresponding gain by another set of investors, i.e. the investors who purchased their securities at an uninflated price prior to the fraud and then managed to sell their securities at an "inflated" price before the corrective disclosure was made.

The goal of the Rule 10b-5 fraud on the market securities damages exercise is therefore to estimate the losses suffered by the subset of investors who were damaged "in connection with the purchase or sale" of the security, not the net effect on all holders of the corporation's shares. To illustrate this point graphically, I will present a stylized example of a Rule 10b-5 "fraud on the market" class action matter. Suppose a Rule 10b-5 "fraud on the market" class action case consisted of one material misrepresentation and one corrective disclosure revealing the misrepresentation at a later point in time. Further suppose that there are no factors other than the material misrepresentation and the corrective disclosure affecting the security price, factors such as confounding firm-specific information or market and industry movements. The estimate of inflation during the class period in this stylized example might look something like this:

[38] See Ferrell & Saha, "Forward-casting 10b-5 Damages: A Comparison to Other Methods" *forthcoming* Journal of Corporation Law. See also the seminal articles of Cornell & Morgan (1990); Fischel (1982).

Figure 1. A Hypothetical Example of
Material Misrepresentation and Subsequent Corrective Disclosure



In this particular example, the class members cannot be defined as a matter of logic and economics in terms of a holder class but must rather be defined both by reference to when they purchased the security and whether they held that security through the corrective disclosure.

Within this broad framework of Rule 10b-5 damages, of course, there are any number of issues that must be confronted, such as how to measure "inflation" given various issues, such as confounding information in connection with a corrective disclosure or what in fact constitutes a "corrective disclosure." But regardless of the resolution of these specific issues, the central analytical point remains: Rule 10b-5 "out of pocket" damages are concerned with measuring the extent to which class members suffered losses as a result of paying another set of investors too much (as a result of the security's price being "inflated") for the security.

The basic redistributive nature of the Rule 10b-5 damage analysis has been consistently recognized by proponents of Rule 10b-5 class action claims, by critics of Rule 10b-5 class action claims, and in the general academic commentary on Rule 10b-5

damages. The following are examples from this literature by a range of academics and commentators:

- "As a result, securities litigation in this context inherently results in a wealth transfer between two classes of public shareholders—those in the class period and those outside it . . ."[39]

- "In fraud on the market, for every shareholder who *bought* at a fraudulently-inflated price, another shareholder has *sold*: the buyer's individual loss is offset by the seller's gain."[40]

- "[S]hareholder suits reallocate funds to injured shareholder purchasers from current shareholders. The injured shareholders paid substantially more for a share of the corporation due to the fraud than did the current holders. Thus, a suit merely seeks to readjust this disparity somewhat."[41]

- "Consider a case in which a manager of a firm recklessly announces that the firm has made a fabulous invention that will be worth billions. The price of the firm's stock soars. Two days later the manager sheepishly announces that it was all a false alarm, and the price returns to the original level. Everyone who bought stock during these two days suffers a substantial loss; neither the manager nor the firm gets any gain. Those who violated the rule get no profit. There is, of course, a match between profit and loss; the buyers' loss is exactly offset by gains realized by those who sold stock during the two days."[42]

Simply put, Rule 10b-5 damages, given that they are direct actions brought on behalf of specific security holders, measure harm suffered by a subset of a firm's security holders, the subset of investors who purchased their shares at artificially inflated prices and subsequently suffered a compensable loss as a consequence. Moreover, and crucially,

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[39] John C. Coffee, Jr., "Reforming the Securities Class Action: An Essay On Deterrence and Its Implementation", p. 1557 (Columbia Law Sch. Ctr. for Law & Econ. Studies, Working Paper No. 293, 2006)

[40] A.C. Pritchard, "Markets as Monitors: A Proposal to Replace Class Actions with Exchanges as Securities Fraud Enforcers," 85 VA. L. REV. 925, 939 (1999)

[41] Eisenhofer & Levin, "Investor Litigation in the U.S. – The System is Working," Securities Reform Act Litigator Report (2007).

[42] Frank Easterbook & Daniel Fischel, "Optimal Damages in Securities Cases," 52 U.Chicago L.Rev. 611, 635 (1985).

this subset of security holders cannot as a matter of logic and economics be defined by a class of holders of a firm's securities.

B. ECONOMICS OF SECTION 14(A) DAMAGES

For direct Section 14(a) claims, damage analysis involves measuring the harm suffered by a particular shareholder or group of shareholders with respect to a specific transaction authorized by the proxy statement containing the alleged disclosure deficiency. This economic analysis typically involves shareholders of an acquired firm allegedly suffering losses as a result of receiving inadequate consideration for their shares in a merger transaction. In such a situation, the direct Section 14(a) claim could potentially consist of a holders class if the allegation were that all the shareholders of the acquired firm were misled into voting to exchange their shares for inadequate consideration and hence all the shareholders of the acquired firm should receive additional consideration, e.g., additional shares in the acquirer. Acquired company shareholders in this setting are akin to defrauded sellers of their shares; the potential basis for damages for this class could be the difference between the amount they should have received for their shares absent the defective proxy statement and the amount they actually received. Where, by contrast, shareholders of the *acquiring* firm allege that they were misled by a defective proxy statement into approving the acquisition of another company at, say, too high a price, the acquiring corporation itself is the injured party. The acquiring company shareholders have not exchanged their shares, and they continue to hold shares in the acquiring company. As such, the acquiring company shareholders suffer damages, if any, only indirectly by virtue of their ownership interest in the acquiring corporation.

Neither theory of harm is alleged in the Complaint. First, Bank of America shareholders did not transact their shares as a result of the merger. Rather, the Complaint's Section 14(a) holders' claim sets forth as the cognizable harm to shareholders the harm resulting from the alleged disclosure deficiencies and the revelation thereof, i.e. exactly the harm measured by Rule 10b-5 damages. Specifically, the Complaint in ¶ 338 states when setting forth the Section 14(a) claim:

> The false statements and omissions as set forth above proximately caused foreseeable losses to Lead Plaintiffs and members of the Class, as the risks concealed by these false and misleading statements and omissions materialized through a series of partial disclosures, causing BoA stock to fall from $12.99 at the close of trading on January 9, 2009, the day preceding the first corrective disclosure, to $5.71 at the close of trading on January 22, 2009, as set forth more fully above at ¶¶273-280.

In turn, ¶¶ 273-280 of the Complaint identifies the five purported corrective disclosure dates (January 12, 2009; January 13, 2009; January 15, 2009; January 16, 2009; and January 22, 2009) along with the allegations that there were associated stock price drops in reaction to these disclosures. These purported corrective disclosures and the associated stock price drops are again identical to those alleged in the Complaint's Rule 10b-5 claims (Complaint, ¶271). In essence, the Complaint engrafts onto plaintiffs' Section 14(a) claim a Rule 10b-5 theory of recovery. It seeks to recover for a class of holders of Bank of America stock — whether or not they purchased their shares at artificially inflated prices — the damages that are normally applicable as an economic matter to purchasers of artificially inflated shares.

This Section 14(a) damage theory is fundamentally at odds as an economic matter with a Rule 10b-5 theory of harm. Within the 10b-5 framework, there must be a direct connection between the event at issue and harm to the shareholder with the shareholder itself engaging in a transaction (a purchase or sale).[43] As emphasized in Section A, shareholders injured as a result of the purported corrective disclosures must have purchased their shares at an inflated price to have experienced harm. The Complaint does not allege that shareholders who purchased their shares prior to the alleged misstatements on September 18, 2008 paid an "inflated" price (Complaint, ¶285). Therefore, even if these shareholders were holders as of October 10, 2008, they could not have suffered any harm as a result of the disclosures concerning Merrill Lynch made in January 2009 after it had been acquired by Bank of America. The only shareholders who could conceivably have suffered economic harm, accepting the Complaint's allegations as true, are those

[43] In sharp contrast, a traditional derivative damages analysis is exactly the opposite: there must be a direct connection between the event and harm to the corporation, with shareholders suffering injury indirectly by reason of their ownership interest in the corporation, and the corporation – not the shareholder – engaging in the transaction (a sale, a merger, etc.).

who purchased their Bank of America shares after the alleged misrepresentations and omissions, exactly the same shareholders as represented in the putative Rule 10b-5 class.

The inappropriateness of the Complaint's Section 14(a) class definition and damage theory as a matter of economic logic is best illustrated by the following examples:

Example 1: Purchased before September 18, 2008 and held thereafter.

First consider a shareholder who purchased his Bank of America shares at fair market value at any point prior to September 18, 2008 – the start of the putative Rule 10b-5 class period — and continued to hold his shares as of the record date of October 10 and through the end of the putative class period. The Complaint includes this shareholder as a member of the proposed Section 14(a) holders class even though, accepting the Complaint's allegations as true, he purchased his shares before any of the alleged misstatements or omissions and did so at a price that was not inflated. During the putative class period, moreover, this shareholder never engaged in a transaction (let alone a transaction that resulted in harm to the shareholder); he was simply eligible to vote on the merger by virtue of being a record holder on October 10. After the December 5, 2008 vote, and indeed after the closing of the merger on January 1, 2009 the shareholder held the exact same number of Bank of America shares as he did before the vote.

As an economic matter, this shareholder did not suffer any direct economic injury as a result of the alleged Section 14(a) violations. Because he did not purchase his shares at an inflated price or otherwise engage in a transaction that caused him economic injury, this shareholder did not suffer any direct harm as a result of the inflation that was allegedly introduced into the stock price beginning on September 18, 2008. If Bank of America shareholders were misled into approving the merger with Merrill Lynch (as the Complaint alleges) at, say for example, too high a price, that might potentially have diminished the value of Bank of America, but any harm to this shareholder from such overpayment was, at best, indirect – injury that is simply a reflection of and in proportion to the shareholder's ownership interest in the Bank, for which the remedy is derivative rather than direct in nature.

Example 2: Purchased on or after September 18, 2008 and held thereafter

According to the Complaint, a shareholder who purchased, say, on September 19, 2008, the day after the first alleged misrepresentation was made, and continued to hold his shares thereafter would be a member of both the Section 14(a) and Rule 10b-5 putative classes. This shareholder would not as an economic matter have a claim for damages relating to the alleged disclosure deficiencies concerning Merrill Lynch's 4Q losses as that quarter had not even begun at the time of his purchase. The remaining alleged disclosure deficiency relates to the Merrill Lynch bonus payments.

Even accepting the Complaint's allegations as true, the shareholder in this example is differently situated in terms of potential harm from the shareholder in example 1. The shareholder in example 2 allegedly purchased his shares at an inflated price (based on the alleged bonus misrepresentation on September 18, 2008), while the shareholder in example 1 did not. Nevertheless, the Complaint would treat the shareholder in example 1 and the shareholder in example 2 precisely the same for purposes of the Section 14(a) claim. The Complaint seeks to recover for both shareholders the stock price drop allegedly resulting from the January, 2009 corrective disclosures even though one shareholder allegedly purchased his shares at an artificially inflated price and the other did not.

Moreover, the Complaint would include the example 2 shareholder in the Section 14(a) holders class not because he purchased his shares at an inflated price, but solely by virtue of his having held shares on the October 10, 2008 record date for determining eligibility to vote on the merger and it does so even though this shareholder did not engage in any transaction resulting in harm due to the alleged disclosure deficiencies regarding Merrill Lynch's 4Q interim losses. But, as to this shareholder too, any potential harm that resulted from the merger authorized by the allegedly misleading proxy as a result of the undisclosed Merrill Lynch losses was harm caused to Bank of America flowing from its acquisition of Merrill Lynch. The economic injury, if any, to this shareholder due to that acquisition is merely a consequence of his ownership interest in Bank of America and is therefore as an economic matter indirect in nature.

Example 3: Purchased on or after October 11, 2008

According to the Complaint, a shareholder who purchased on or after October 11, 2008 can be a member of the putative Rule 10b-5 class but not the Section 14(a) class because he purchased his shares *after* the record date. Despite the fact that this shareholder cannot be a member of the Section 14(a) class, the Complaint apparently seeks to recover damages for this shareholder on the same basis as it does for the shareholders in examples 1 and 2 — by reference to the January, 2009 stock drops.

These examples demonstrate the economic illogic of the Complaint's Section 14(a) claim for direct damages to the holders class. By seeking to recover damages for a class of holders on the basis of stock drops that allegedly occurred weeks after the December 5, 2008 shareholder vote, the Complaint attempts to engraft a Rule 10b-5 remedy onto a Section 14(a) direct claim. In doing so, it seeks to recover the same stock-drop based damages for shareholders who allegedly purchased their shares at artificially inflated prices and shareholders who did not. And because the putative Section 14(a) class includes shareholders who did not engage in any transaction that resulted in direct harm to them (such as the shareholder from example 1), their harm (if any) must be indirect in nature. Indeed, the harm, if any, resulting from the merger for *all* shareholders of the acquiring company is, as an economic matter, necessarily indirect. The alleged inflation that was removed from the market for Bank of America shares at the time of the alleged January 2009 stock drops is not a logical measure of their injury.

C. THE PUTATIVE HOLDERS CLASS IS OVER-INCLUSIVE GIVEN CROSS-OWNERSHIP

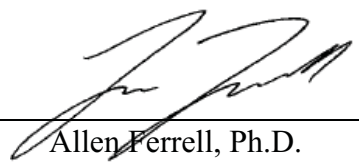
Putting aside the issues raised in the preceding sections, there is another fundamental problem with the Complaint's class definition. There is no adjustment in the definition of the class for the fact that Bank of America shareholders held a substantial number of shares of Merrill Lynch during the relevant time period. This is important because, if Bank of America overpaid for Merrill Lynch, the holders of Merrill Lynch stock were the direct recipients of that overpayment. Thus, to the extent that the members of the putative Section 14(a) class were also holders of Merrill Lynch common

stock, failure to adjust for their Merrill Lynch holdings would result in their being compensated for "losses" they did not incur (even indirectly).

This implies that if, say, a Bank of America shareholder owned 100 shares of Bank of America stock on October 10, 2008 and the equivalent of 100 shares of Bank of America stock in Merrill Lynch,[44] this shareholder should not be a member of the putative class. Likewise, if a shareholder held 100 shares of Bank of America stock and the equivalent of 80 shares of Bank of America stock in Merrill Lynch, only 20 shares should be considered part of the shareholdings included in the definition of the class.

A review of institutional investors' holdings from 13-F filings shows that this cross-ownership issue affects a meaningful number of Bank of America shares. I gathered information from 13-Fs on institutional investors' holdings of Bank of America and Merrill Lynch stock as of September 30, 2008 and December 31, 2008. These are the two dates closest in time to October 10, 2008 that are obtainable from the institutional investor data disclosed in the quarterly 13-Fs. I then calculated the percentage of Bank of America shares held by institutional investors that were offset by holdings of Merrill Lynch institutional shares on these two dates. The results of this analysis are presented in Exhibit 9. As Exhibit 9 documents, approximately 20% of all Bank of America institutional investors' shares are offset by Merrill Lynch shares as of September 30, 2008, representing 552,821,414 Bank of America shares, and approximately 24% of all Bank of America institutional investors' shares as of December 31, 2008, representing 984,626,783 Bank of America shares. Of course, these figures are underestimates of the percent of Bank of America shareholders that cannot be part of the Section 14(a) class given the fact that these numbers are based solely on institutional share holdings.

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



Allen Ferrell, Ph.D.
September 16, 2011

[44] Based on the merger exchange ratio of 0.8595 shares of Bank of America stock for each Merrill Lynch share.

Appendix A

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CURRENT POSITIONS

Greenfield Professor of Securities Law, Harvard Law School

Member, American Law Institute Project on the Application of U.S. Financial Regulations to Foreign Firms and Cross-Border Transactions

Member, ABA Task Force on Corporate Governance

Fellow, Columbia University's Program on the Law and Economics of Capital Markets

Faculty Associate, Kennedy School of Government

Research Associate, European Corporate Governance Institute

EDUCATION

Massachusetts Institute of Technology, Ph.D. in Economics, 2005
Fields in econometrics and finance

Harvard Law School, J.D., 1995, *Magna Cum Laude*

- Recipient of the *Sears Prize* (award given to the two students with the highest grades)
- Editor, *Harvard Law Review*

Brown University, B.A. and M.A., 1992, *Magna Cum Laude*

PREVIOUS POSITIONS

Harvard University Fellow
Harvard Law School, 1997

Law Clerk, Justice Anthony M. Kennedy
Supreme Court of the United States; 1996 Term

Law Clerk, Honorable Laurence H. Silberman
United States Court of Appeals for the District of Columbia; 1995 Term

COURSES TAUGHT

Securities Regulation
Regulation of Market Structure
Law and Finance
Law and Corporate Finance
Contracts

REFEREE FOR FOLLOWING JOURNALS

Quarterly Journal of Economics
American Law and Economics Review
Journal of Corporation Finance
Journal of Law, Economics and Organization
Journal of Legal Studies

TALKS

Third Annual Structured Products Association Meeting, "Current Policy Issues Concerning Structured Products"

Annual Boston Analysts Society Meeting, "The Regulation of Structured Products"

Chairperson, Asian Exchange Conference, Singapore, "Issues Facing Asian Exchanges"

U.S. Senate Subcommittee on Securities, Insurance and Investment, "The Regulation of Cross-border Exchange Mergers"

Joint NASD/SEC Forum, "Law and Economics of Best Execution"

SEC Panel, "Econometrics of Measuring the Effects of Mandatory Disclosure"

American Enterprise Institute/Brookings Institution, "Shareholder Rights"

Brookings Institution, "Financial Innovation"

International Development Law Institute, "Corporate Law and Development"

World Bank, "Financial Market Development Indicators"

Shenzhen Stock Exchange, "Regulation of Insider Trading"

Numerous presentations at the National Bureau of Economic Research

Papers

"Thirty Years of Shareholder Rights and Firm Valuation," with Martijn Cremers, Yale ICF Working Paper No. 09-09, *revise and resubmit at Journal of Finance*

"Forward-casting 10b-5 Damages: A Comparison to other Methods" with Atanu Saha, Working Paper (2011)

"Event Study Analysis: Correctly Measuring the Dollar Impact of an Event" with Atanu Saha, Working Paper (2011)

"Calculating Damages in ERISA Litigation", Working Paper (2011)

"Securities Litigation and the Housing Market Downturn," with Atanu Saha, 35 *Journal of Corporation Law* 97 (2009)

"Legal and Economic Issues in Litigation arising from the 2007-2008 Credit Crisis," with Jennifer Bethel and Gang Hu, in PRUDENT LENDING RESTORED: SECURITIZATION AFTER THE MORTGAGE MELTDOWN (Brookings Institution Press 2009)

"The Supreme Court's 2005-2008 Securities Law Trio: *Dura Pharmaceuticals, Tellabs*, and *Stoneridge*," 9 *Engage* 32 (2009)

"What Matters in Corporate Governance?" with Lucian Bebchuk & Alma Cohen, 22 *Review of Financial Studies* 783 (2009)

"Do Exchanges, CCPs, and CSDs have Market Power?," *forthcoming* in GOVERNANCE OF FINANCIAL MARKET INFRASTRUCTURE INSTITUTIONS (editor Ruben Lee) (2009)

"An Asymmetric Payoff-Based Explanation of IPO 'Underpricing'," Working Paper, with Atanu Saha

"The Law and Finance of Broker-Dealer Mark-Ups," commissioned study for NASD using proprietary database (2008)

"Majority Voting" in REPORT OF THE COMMITTEE ON CAPITAL MARKETS REGULATION (2008)

"The Loss Causation Requirement for Rule 10B-5 Causes of Action: The Implications of *Dura Pharmaceuticals v. Broudo*," 63 BUSINESS LAWYER 163 (2007)

"Mandated Disclosure and Stock Returns: Evidence from the Over-the-Counter Market," 36 *Journal of Legal Studies* 1 (June, 2007)

"Policy Issues Raised by Structured Products," with Jennifer Bethel, in BROOKINGS – NOMURA PAPERS IN FINANCIAL SERVICES, Brookings Institution Press, 2007

"The Case for Mandatory Disclosure in Securities Regulation around the World," 2 *Brooklyn Journal of Business Law* 81 (2007)

"U.S. Securities Regulation in a World of Global Exchanges," with Reena Aggarwal and Jonathan Katz, in EXCHANGES: CHALLENGES AND IMPLICATIONS, Euromoney (2007)

"Shareholder Rights" in REPORT OF THE COMMITTEE ON CAPITAL MARKETS REGULATION (2007)

"Creditor Rights: A U.S. Perspective," 22 *Angler- und Glaubigerschutz bei Handelsgesellschaften* 49 (2006)

"Measuring the Effects of Mandated Disclosure," 1 *Berkeley Business Law Journal* 369 (2004)

"If We Understand the Mechanisms, Why Don't We Understand the Output?", 37 *Journal of Corporation Law* 503 (2003)

"Why European Takeover Law Matters," in REFORMING COMPANY AND TAKEOVER LAW IN EUROPE (Oxford University Press) (2003)

"Does the Evidence Favor State Competition in Corporate Law?", with Alma Cohen & Lucian Bebchuk, 90 *California L. Rev.* 1775 (2002)

"Corporate Charitable Giving," with Victor Brudney, 69 *Univ. Of Chicago Law Review* 1191 (2002)

"A Comment on Electronic versus Floor-Based Securities Trading," *Journal of Institutional and Theoretical Economics* (Spring 2002)

"Much Ado About Order Flow," *Regulation Magazine* (Spring 2002)

"On Takeover Law and Regulatory Competition," with Lucian Bebchuk, 57 *Business Lawyer* 1047 (2002)

"Federal Intervention to Enhance Shareholder Choice," with Lucian Bebchuk, 87 *Virginia Law Review* 993 (2001)

"A New Approach to Regulatory Competition in Takeover Law," with Lucian Bebchuk, 87 *Virginia Law Review* 111 (2001)

"A Proposal for Solving the 'Payment for Order Flow' Problem," 74 *Southern California Law Review* 1027 (2001)

"Federalism and Takeover Law: The Race to Protect Managers from Takeovers," with Lucian Bebchuk, 99 *Columbia L. Rev.* 1168 (1999)

EXPERT REPORTS INVOLVING DEPOSITION/WITNESS TESTIMONY

Bacon et. al. v. Stiefel Laboratories, Case No. 09-21871-CV-KING, Expert Report and deposition on July 22, 2011

Abu Dhabi Investment Authority v. Citigroup, Case No. 50148T 0065009 (Arbitration Proceeding), Expert Reports and Testimony on May 11, 2011

Nacco Industries, et al. v. Applica Incorporated, et al, Case No. 2541-N; Expert Report and deposition on December 15, 2010

Black Horse Capital, et al. v. JP Morgan Chase Bank, et al., Case No. 08-12229; Expert Report and deposition on November 28, 2010

SEC v. John Kelly, Case No. 4612; Expert Report and deposition on May 17, 2010

In re Schwab Corp. Securities Litigation, Case No. 08-cv-1510, Expert Report and deposition on January 15, 2010

In re Ticketmaster Entertainment Shareholder Litigation, Lead Case No. BC407677, Expert Report and deposition on December 3, 2009

In re Boston Scientific, Civil Action No. 1:05-CV-11934, Expert Report and deposition on October 13, 2009

In re Emulex Shareholder Litigation, Civil Action No. 4519-VCS: Expert Report and deposition on June 30, 2009

Selectica v. Trilogy, Civil Action No. 4241-VCN: Trial testimony on April 30, 2009

Selectica v. Trilogy, Civil Action No. 4241-VCN: Expert Report and deposition on February 25, 2009

In re Centerline Holding Company Securities Litigation, Civil Action No. 08-CV-00505: Expert Report and deposition on December 4, 2008

Ehrlich, Schlichtmann, v. Kerry et al., Civil Action No. 06-1403-BLS: Expert Report and deposition on November 7, 2008

In Re Mutual Funds Investment Litigation: Parthasarathy v. RS Investment Management, L.P., Civil Action No. 04-CV-3798-JFM: Expert Report and deposition on June 24, 2008

UnitedGlobalCom Shareholders Litigation, Civil Action No. 1012-N: Expert Report and deposition on November 15, 2007

Appendix B: Materials Relied Upon

Court Documents

- Consolidated Second Amended Class Action Complaint, filed October 22, 2010
- Memorandum & Order Motion to Dismiss, filed August 27, 2010
- Memorandum & Order Motion to Dismiss, filed July 29, 2011

SEC Filings/Forms

- Bank of America 8-K, September 18, 2008
- Bank of America S-4, October 02, 2008
- Bank of America S-4/A, October 22, 2008
- Bank of America S-4/A, October 29, 2008
- Bank of America DEFM14A, November 03, 2008
- Bank of America 10-Q, November 06, 2008
- Merrill Lynch 10-Q, November 07, 2007
- Merrill Lynch 8-K, January 17, 2008
- Merrill Lynch 10-Q, May 06, 2008
- Merrill Lynch 10-Q, August 05, 2008
- Merrill Lynch 8-K, October 16, 2008
- Merrill Lynch 10-Q, November 04, 2008
- Merrill Lynch 10-Q, November 05, 2008

Security Data

- Institutional Holdings Data from Bloomberg, L.P. and Thomson Financial
- Historical data for Bank of America and Merrill Lynch Common Stock, S&P 500 Total Return Index, S&P 500 Financial Index, VIX Index, and Dow Jones Industrial Average Index obtained from Bloomberg, L.P.

News

- Bank of America and Merrill Lynch news headlines and articles downloaded from Lexis Nexis, Bloomberg L.P. and Factiva for the Class Period
- Bank of America Earnings Conference Call and Press Conference transcripts for the Class Period

Bank of America Analyst Reports

- Various analyst and credit rating reports regarding Merrill Lynch, Bank of America, and general market conditions issued during the Class Period

Appendix B: Materials Relied Upon (continued)

Academic Articles/Text

- Campbell, John Y., M. Lettau, B.G. Malkiel and Y. Xu,"Have Individual Stocks Become More Volatile? An Empirical Exploration of Idiosyncratic Risk," *The Journal of Finance* LVI, no. 1 (2001): 1-43.
- Cavaglia, Stefano, C. Brightman and M. Aked, "The Increasing Importance of Industry Factors," *Financial Analysis Journal* , (September/October 2000): 41-54.
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- Federal Reserve Bank of St. Louis, "The Financial Crisis: A Timeline of Events and Policy Actions," http://timeline.stlouisfed.org/pdf/CrisisTimeline.pdf.
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- Ferrell, Allen and A. Saha, "The Loss Causation Requirement for Rule 10b-5 Causes of Action: The Implications of Dura Pharma, Inc. v. Broudo," *Harvard John M. Olin Center for Law, Economics, and Business* , Discussion Paper no. 08/2007 (2007): 2-26.
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- Stock, James H. and Mark W. Watson, *Introduction to Econometrics,* 3 ed. (Addison Welsey: Pearson Education, Inc. 2011), 77.
- Tabak, David I. and Frederick C. Dunbar, "Materiality and Magnitude: Event Studies in the Courtroom," *National Economic Research Associates* , no. 34 (1999): 1-34.

Appendix C: Selection of Peer 17 Firms for Bank of America and Merrill Lynch

Panel A: Banks Mentioned by Analysts as "Peers" of Bank of America[1]

		Frequency of Mentions	Peer Index Firm Number
1.	**Wells Fargo***	**18**	**1**
2.	**JPMorgan Chase***	**17**	**2**
3.	**Citigroup***	**16**	**3**
4.	**U.S. Bancorp***	**13**	**4**
5.	**SunTrust Bank**	**10**	**5**
6.	**Fifth Third**	**9**	**6**
7.	**KeyCorp**	**9**	**7**
8.	**BB&T**	**8**	**8**
9.	**Goldman Sachs***	**8**	**9**
10.	**Regions Financial**	**8**	**10**
11.	**Wachovia[2]**	**8**	**11**
12.	PNC	7	-
13.	Marshall & Ilsley	7	-
14.	Comerica Inc.	7	-
15.	BoNY Mellon	6	-
16.	M&T Bank	6	-
17.	Morgan Stanley*	5	-
18.	UBS AG*	4	-
19.	Northern Trust	4	-
20.	Credit Suisse*	4	-
21.	First Horizon	4	-
22.	Zions Bancorp	4	-
23.	National City Corp	4	-
24.	TCF Financial	4	-
25.	Lehman Brothers*	3	-
26.	State Street	3	-
27.	Barclays Capital	3	-
28.	American Express	3	-
29.	RBC	3	-
30.	Deutsche Bank*	3	-
31.	RBS	3	-
32.	Capital One	3	-
33.	Synovus Financial	3	-
34.	Huntington Bancshares	3	-
35.	Lazard	2	-
36.	HSBC	2	-

Appendix C: Selection of Peer 17 Firms for Bank of America and Merrill Lynch

Panel A: Banks Mentioned by Analysts as "Peers" of Bank of America[1]

		Frequency of Mentions	Peer Index Firm Number
37.	Washington Mutual	2	-
38.	Raymond James	2	-
39.	Sovereign Bancorp	2	-
40.	TriCo Bankshares	2	-
41.	Discover	1	-
42.	Banco Santander	1	-
43.	Alliance Data Systems	1	-
44.	Danske Bank	1	-
45.	Toronto Dominion	1	-
46.	BNP Paribas	1	-
47.	Western Union	1	-
48.	Associated Bancorp	1	-
49.	Commerce Bancshares	1	-
50.	First Merit Corp.	1	-
51.	ING	1	-
52.	Centerview Partners	1	-
53.	BMO Capital Markets	1	-
54.	CIBC World Markets	1	-
55.	Rothschild	1	-
56.	UnionBanCal	1	-
57.	New York Community	1	-
58.	ABN Amro	1	-
59.	Mitsubishi UFJ	1	-
60.	Stifel Financial	1	-
61.	Mizuho Financial	1	-
62.	Texan Capital	1	-
63.	Edward Jones	1	-

Appendix C: Selection of Peer 17 Firms for Bank of America and Merrill Lynch

Panel B: Banks Mentioned by Analysts as "Peers" of Merrill Lynch[1]

		Frequency of Mentions	Peer Index Firm Number
1.	**Morgan Stanley***	**11**	**12**
2.	**Goldman Sachs***	**9**	**already included**
3.	**Citigroup**	**7**	**already included**
4.	**Lehman Brothers***	**7**	**not applicable**
5.	**JPMorgan Chase***	**5**	**already included**
6.	**Credit Suisse***	**4**	**13**
7.	**UBS AG***	**4**	**14**
8.	**Barclays Capital**	**3**	**15**
9.	**Lazard**	**3**	**16**
10.	**Nomura**	**3**	**17**
11.	Deutsche Bank*	2	-
12.	RBS	2	-
13.	HSBC	2	-
14.	Wells Fargo*	1	-
15.	BoNY Mellon	1	-
16.	Wachovia	1	-
17.	State Street	1	-
18.	American Express	1	-
19.	Washington Mutual	1	-
20.	Raymond James	1	-
21.	Jefferies	1	-
22.	Charles Schwab	1	-
23.	Greenhill	1	-
24.	TD Ameritrade	1	-

Notes:

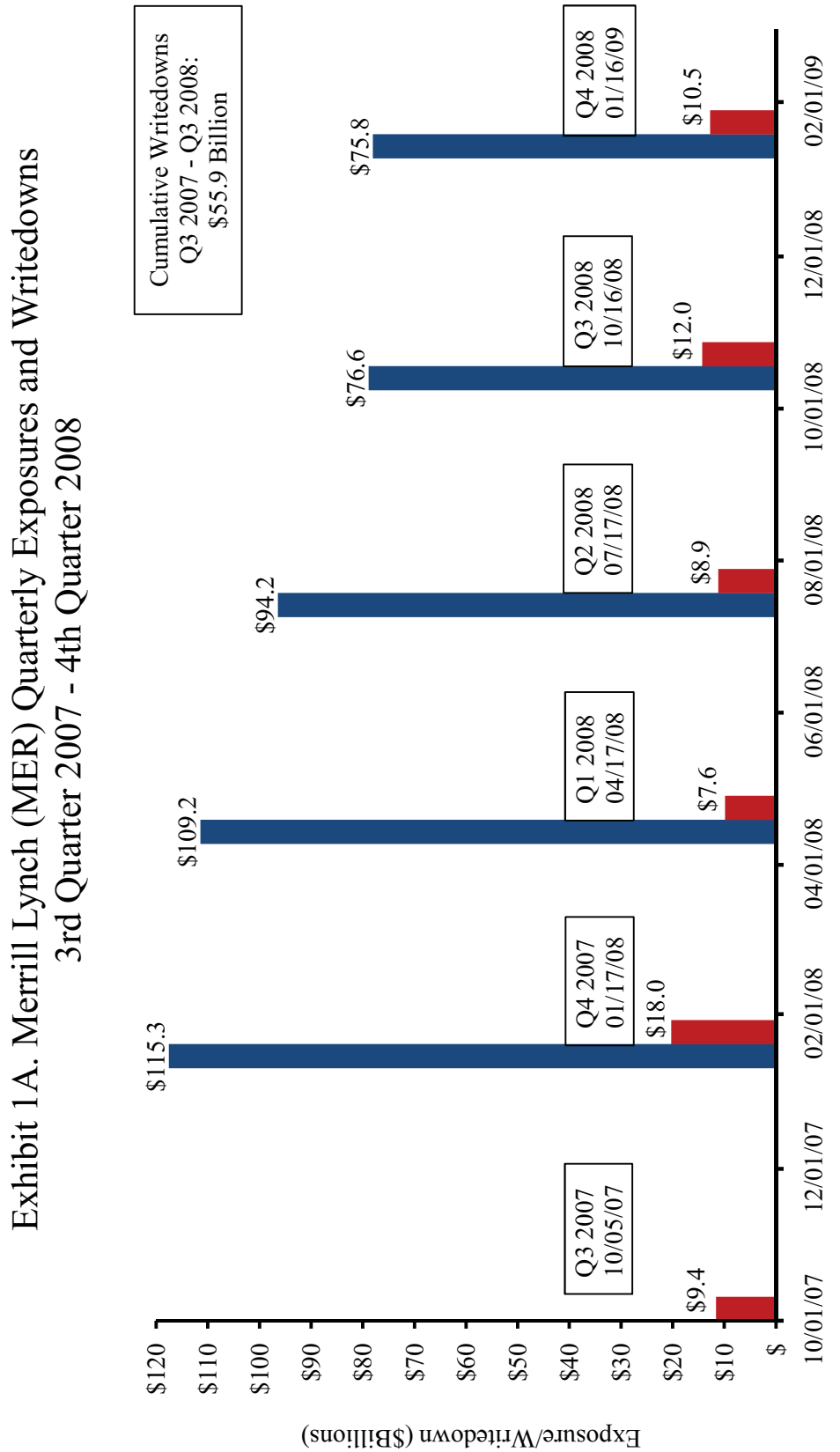
[1] Peer firms were determined after reviewing 327 analyst and industry reports, as well as Bank of America (BAC) and Merrill Lynch (MER) SEC filings for the time period 1/1/2008 - 10/19/2009. The top 10 firms were ranked based on the number of unique analysts that mentioned each bank as "peers" in their reports.

[2] Within the peer listing of Bank of America, the Peer #11 bank Wachovia was mentioned 8 times, which is the same frequency that the Peer #8 firm (BB&T), Peer #9 firm (Goldman Sachs), and Peer #10 Firm (Regions Financials) was mentioned. Therefore, Wachovia was included in the peer index.

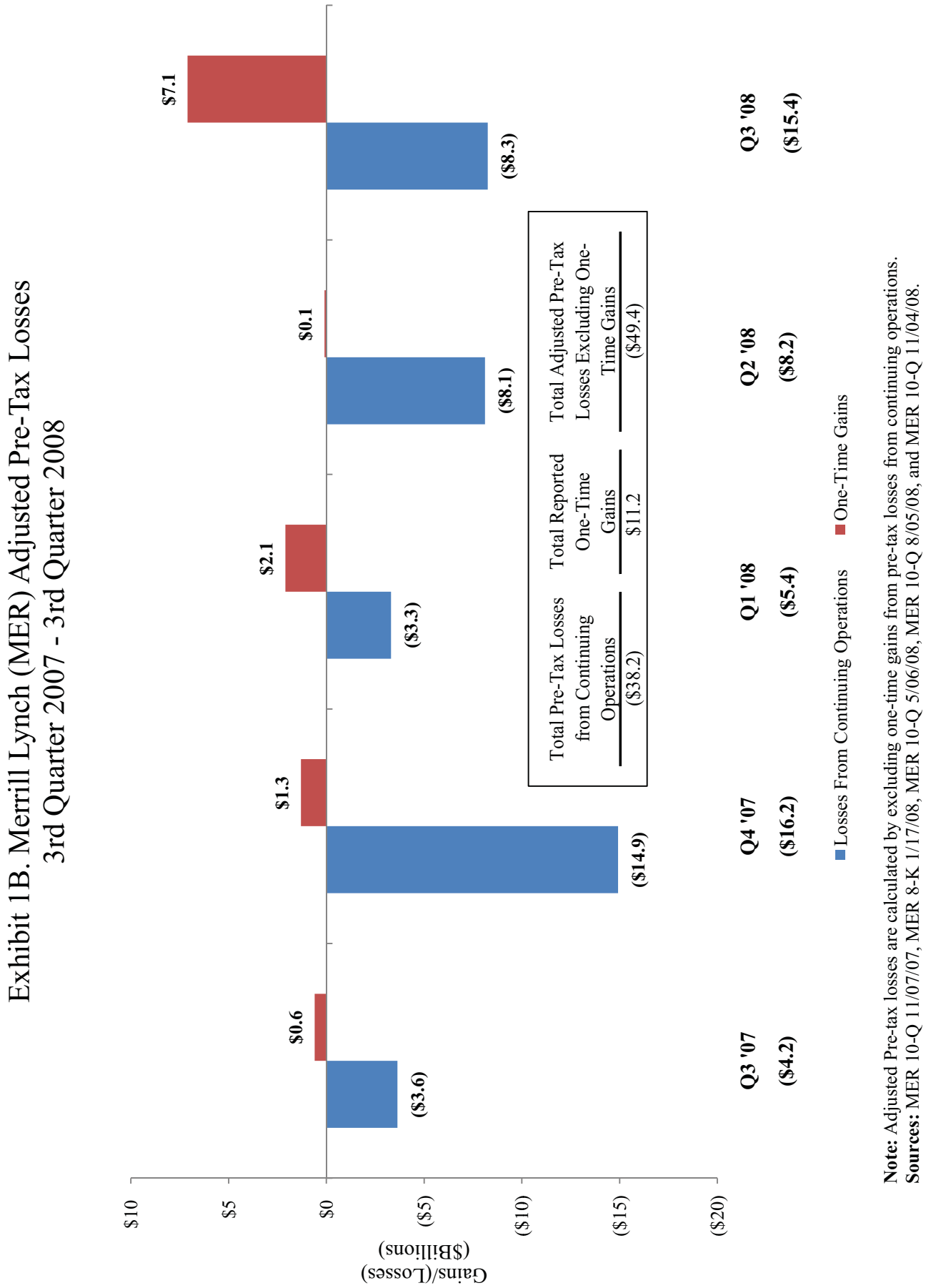
[3] After eliminating Lehman Brothers and duplicate banks from Bank of America's top 10 peers and Merrill Lynch's top 10 peers, there are a total of 17 firms in the Peer Index.

[4] * Indicates firms cited as comparable 'broker dealers' and 'large capitalization money centers and regional banks' for Merrill Lynch and Bank of America respectively in the DEFM 14A Filings by both firms dated 11/3/2008.

Sources: Analyst and Industry Reports, SEC filings and Bloomberg L.P.



Notes:
[1] Total exposures for Q3 2007 were not released by MER.
[2] Quarterly exposures for MER are calculated by summing exposures on Super Senior ABS CDOs, Legacy Leveraged Loans, Commercial Real Estate, Prime Mortgages, Alt-A Mortgages, Subprime Mortgages, Non-U.S. Mortgages, Monoline Hedges on U.S. Super Senior ABS CDOs, and MER's U.S. Banks Investment Securities Portfolio.
[3] Exposures for Legacy Leveraged Loans for Q4 2008 were estimated by marking down exposures from Q3 2008 with their Q4 2008 mark downs.
[4] Exposures and writedowns for Q4 2008 include Monoline Hedges on Non-Super Senior ABS CDOs ($7.8b). This exposure was not included in previous quarters.
Sources: Bloomberg, L.P., MER 8K 01/17/08, MER 8K 04/17/08, MER 10Q 05/6/08, MER 8K 07/17/08, MER 8K 10/16/08, MER 8K 01/20/09 and Citigroup Global Markets Analyst Report 01/16/2009.



Note: Adjusted Pre-tax losses are calculated by excluding one-time gains from pre-tax losses from continuing operations.
Sources: MER 10-Q 11/07/07, MER 8-K 1/17/08, MER 10-Q 5/06/08, MER 10-Q 8/05/08, and MER 10-Q 11/04/08.

Exhibit 1C. Commentaries By Bank of America and Merrill Lynch On Market Conditions, Q3 2008

Merrill Lynch Q3 2008 10-Q

"The challenging conditions that existed in the global financial markets during the first half of the year continued during the third quarter of 2008. The adverse market environment intensified towards the end of the quarter, particularly in September, and was characterized by increased illiquidity in the credit markets, wider credit spreads, lower business and consumer confidence, and concerns about corporate earnings and the solvency of many financial institutions" (page 82).

"In the United States, economic activity continued to weaken, driven in part by the difficult conditions in the credit and residential housing markets. Consumer and business confidence also declined and the rate of unemployment continued to rise, which adversely affected the level of domestic spending. Conditions in the financial services industry were particularly difficult" (page 82).

"Turbulent market conditions in the short and medium-term will continue to have an adverse impact on our core businesses" (page 83).

"The near-term risk of spread-widening and the threat of additional ratings agency downgrades of structured securities, as well as the closure and consolidation of certain financial services institutions, continue[] to impact the industry" (page 83).

"During the third quarter of 2008, and particularly in September, the credit and equity markets continued to experience significant deterioration, as spreads across the financial services sector widened dramatically and equity valuations fell, significantly increasing the cost and decreasing the availability of both funding and capital" (page 109).

Bank of America Q3 2008 10-Q

"[M]arket turmoil and tightening of credit have led to an increased level of commercial and consumer delinquencies, lack of consumer confidence, increased market volatility and widespread reduction of business activity generally.… We do not expect that the difficult conditions in the financial markets are likely to improve in the near future" (page 175).

"In recent weeks, the volatility and disruption has reached unprecedented levels…. If current levels of market disruption and volatility continue to worsen, there can be no assurance that we will not experience an adverse effect, which may be material, on our ability to access capital and on our business, financial condition, and results of operations" (page 176).

Merrill's "future results may continue to be materially impacted by the valuation adjustments applied to" positions in securities, derivatives, loans and loan commitments. "Certain of [the risks described in the 10-Q] may have a differing impact, which in certain cases may be, or may have been, more adverse with respect to Merrill Lynch than with respect to [BofA]" (page 177).

Exhibit 1D. Commentaries On Market Conditions
September 2008 - December 2008

Bank of America Acquires Merrill Lynch Conference Call, September 15, 2008 and Bank of America Press Conference, September 15, 2008

On a September 15 investor call, Ken Lewis stated that "the financial system is operating under almost unprecedented stress" and "the remainder of this year and all of next year will be a relatively tough time for the financial services industry" and accordingly "revenue opportunities will be tough, and high levels of charge-offs will continue...." Thain added in the same September 15 press conference, "[t]his is probably the most difficult environment in the financial markets that I have experienced in my 30 years in the business" and "[i]t is a very, very difficult time and it's not going to get better quickly."

Bank of America Corporation Q3 2008 Earnings Conference Call, October 6, 2008

On October 6, Bank of America announced disappointing third quarter earnings of $1.18 billion and cut its dividend in half. During an investor conference call, Lewis stated that the Bank's economic outlook now called for a "weaker economy going into 2009," as the recession was going to be "deeper than we originally thought," Lewis added that "it is difficult to focus on what is going right at this time" and that "charge-offs are going to remain high for a more extended period of time than we would have thought just since last quarter."

Merrill Lynch & Co. Banking and Financial Services Conference, November 11, 2008

At a November 11 financial services conference, Thain stated that the company was "not going to get better quickly" and that the "U.S. economy is contracting very rapidly, asset prices are falling, and that is creating a great degree of uncertainty, both in the equity markets and in the debt markets, about the near-term outlook, at least over the next few quarters." Thain adds that while he was optimistic, Merrill was "going to be in a difficult credit environment in the near term" and "in a very difficult economic environment for a significant period of time."

Financial Times, "Equities in Retreat as Risk Aversion Returns," November 13, 2008

"[C]redit spreads widened sharply as gloomy macroeconomic and corporate news fueled a fresh bout of risk aversion."

Wall Street Journal, "A Market Rebound? Investors Say Wait Till Next Year," November 24, 2008

"[F]orecasts for the economy are only worsening … banks will likely take bigger losses on mortgages, auto loans, and credit-card debt."

Financial Times, "Bernanke Speech Intensifies Flight to Bonds," December 1, 2008

"Investment-grade credit indices in both the US and Europe … widened sharply as the global economic outlook deteriorated."

Wall Street Journal, "Goldman Faces Loss of $2 Billion for Quarter," December 2, 2008

There existed "growing pressures on financial firms amid a steep and unexpected fall in prices of all kinds of assets."

Bank of America Special Shareholder Meeting, December 5, 2008

Ken Lewis warned the audience: "I mean it's extraordinarily bad times," and "I would say we're in the worst economic slump since the Great Depression...."

Exhibit 2. Merrill Lynch Bonus Disclosure Dates

Alleged Corrective Disclosure on January 22, 2009:[1]

A Financial Times article on January 21, 2009 at 11:52 p.m., stated, "Despite the magnitude of the losses, Merrill had set aside $15bn for 2008 compensation, a sum that was only 6 per cent(sic) lower than the total in 2007, when the investment bank's losses were smaller. The bulk of $15bn in compensation was paid out as salary and benefits throughout the course of the year... [and] about $3bn to $4bn was paid out in bonuses in December."

Bonus Disclosure Dates		Description/Source	Excerpt
1.	10/16/2008	Merrill Lynch 8K	"Compensation and benefits expenses were $11.2 billion for the first nine months of 2008…."[2]
2.	10/27/2008	New York Times	"Five straight quarters of losses and a 70 percent slide in its stock this year have not stopped Merrill Lynch from allocating about $6.7 billion to pay bonuses."[3]
		NBC News: Nightly News	"…and at Merrill Lynch, Bloomberg estimates $6.7 billion set aside for bonuses…."[4]
3.	10/28/2008	NBC News	"…and at Merrill Lynch, Bloomberg estimates $6.7 billion set aside for bonuses…."[5]
4.	10/30/2008	Bloomberg	"Three of the firms, Goldman Sachs Group Inc., Morgan Stanley and Merrill Lynch & Co., have already set aside $20 billion to pay bonuses this year."[6]
5.	11/5/2008	Merrill Lynch 10Q for the 3rd Quarter 2008	"Compensation and benefits: 11,170 [million] For the Nine Months Ended Sept. 26, 2008"[7]
6.	11/14/2008	Fox News (after market closed on 11/13/2008)	"Merrill Lynch, which has experienced five straight quarters of losses and a 70 percent slide in its stock this year, has allocated about $6.7 billion [for year-end bonuses]."[8]

Exhibit 2. Merrill Lynch Bonus Disclosure Dates (continued)

Bonus Disclosure Dates		Description/Source	Excerpt
7.	12/3/2008	Bloomberg	"Merrill Lynch & Co. plans to cut year-end bonuses in half after more than $20 billion of losses that forced the U.S. securities firm to sell itself to Bank of America Corp.… Merrill's costs for compensation and benefits this year through September totaled $11.2 billion, down 3 percent from a year earlier."[9]
8.	12/4/2008	The Telegraph	"Merrill is due to inform staff of bonuses on December 22, with payment due at the end of the month."[10]
9.	1/26/2009	StreetInsider	"The size of the pool, its composition (cash and stock mix), and the timing of the payments for both the cash and stock were all determined together with Bank of America....The total bonus pool was also substantially less than the amount allowed under our merger agreement."[11]
10.	1/30/2009	Wall Street Journal	"Some investment-banking employees at Bank of America could have 2008 bonuses delayed until an unspecified date.…Merrill and Bank of America executives agreed.…to cap Merrill's bonus pool at 2007 levels, or about $6 billion, according to people familiar with the matter."[12]

Notes:

[1] Note that the Complaint lists January 22, 2009 as the date that an alleged corrective disclosure was made regarding Merrill Lynch's payout of executive bonuses. See ¶278 of Complaint.

[2] Merrill Lynch 8K dated October 16, 2008, page 8.

[3] Harper, C., and Saitto, S., The New York Times, "Firms Still Setting Aside Billions for Bonuses," October 27, 2008.

[4] NBC News: Nightly News, "Newscast: Wall Street Firms Still Paying Big Year-End Bonuses Even After Financial Bailouts," October 27, 2008.

[5] Costello, T., National Broadcasting Co. Inc.: News Transcripts, "Wall Street Firms Setting Aside Bonus Money for Employees," October 28, 2008.

[6] Harper, C., Bloomberg, "Wall Street Won't Surrender on Bonuses, Veterans Say," October 30, 2008.

[7] Merrill Lynch 10Q dated November 5, 2008, page 5.

[8] Hume, B., Fox News, "Fox News: Special Report with Brit Hume," November 13, 2008 [after markets closed].

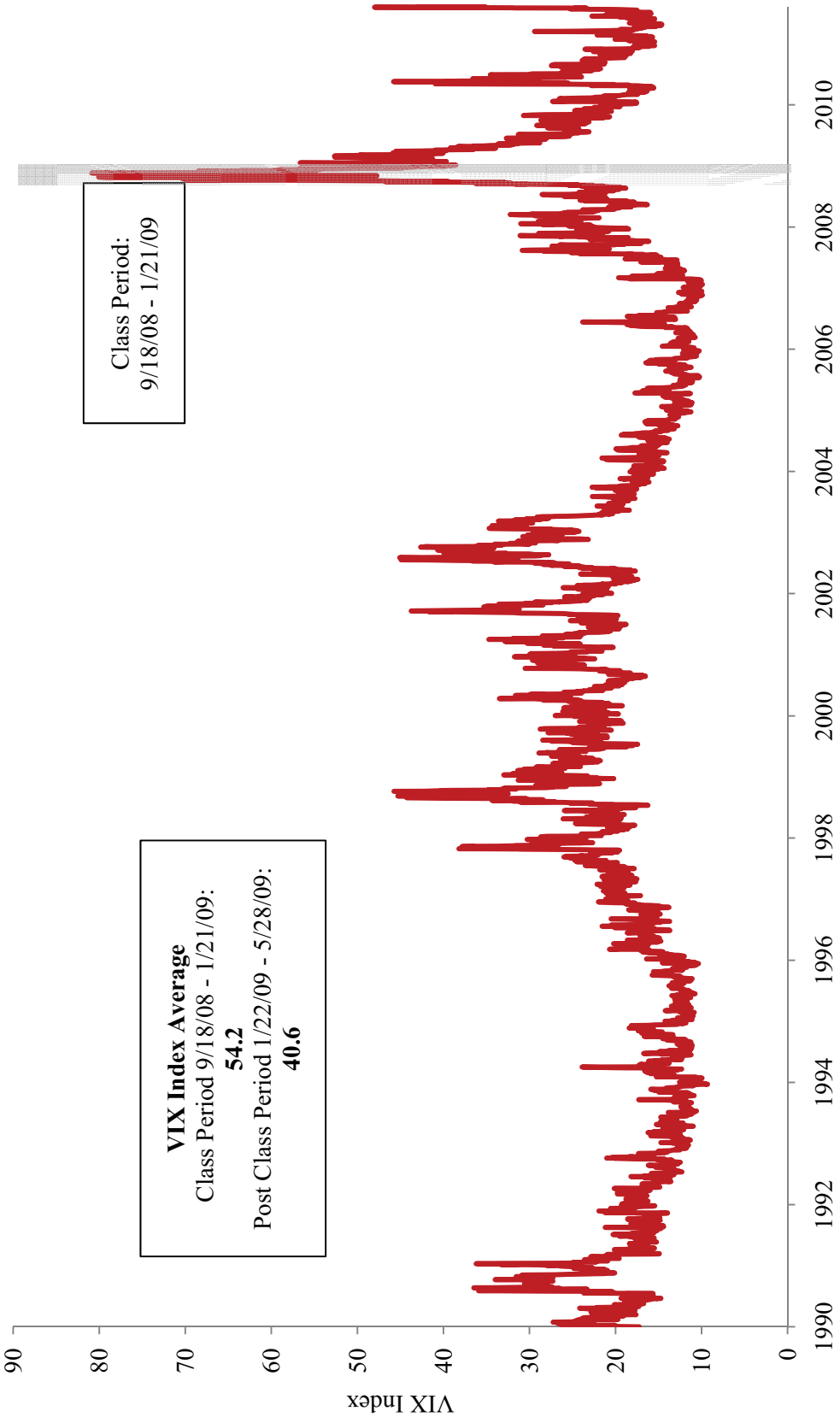
[9] Keoun, B., and Simmons, J., Bloomberg, "Merrill Said to Cut Bonuses by 50% as Revenue Slumps (Update2)," December 3, 2008.

[10] Quinn, J., and Sibum, J., The Telegraph, "Investment Banks Set to Cut 30,000 Jobs," December 4, 2008.

[11] StreetInsider.com, "Copy of John Thain's Memo, Complete With Office-Gate Apology," January 26, 2009.

[12] Fitzpatrick, D., and Craig, S., The Wall Street Journal Online, "Moynihan Tries to Rally the Troops at BofA," January 30, 2009.

Exhibit 3. Chicago Board Options Exchange Market Volatility Index (VIX)
1990 - 2011



Source: Bloomberg, L.P.

Exhibit 4A. Financial Index Constituent Analysis

Index	Total Companies[3]	Number of Companies [Percent of Total]				
		Real Estate	Financial Services	Banks	Insurance	Other
S&P 500 Financials Index[1]	80	14 [18%]	27 [34%]	15 [19%]	22 [28%]	2 [3%]
Dow Jones Financials Index[2]	259	76 [29%]	50 [19%]	70 [27%]	63 [24%]	0 [0%]

Notes:

[1] The S&P 500 Financials Index is a capitalization-weighted index focused on GICS-specified financial companies stemming from the S&P 500. Companies are sorted using GICS Industry Group Name.

[2] The DowJones US Financials Index is an industry index that measures the performance of the stocks in the DowJones US Index classified into Financial Companies using ICB classification standards. Companies are sorted using ICB Sector Name.

[3] Constituents as of 7/16/10.

Source: Bloomberg, L.P.

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Exhibit 4B. Examples of Companies Included in the S&P 500 Financial Index

GICS Industry Subsector	Example Company	Description
Specialized REITs	Health Care REIT, Inc.	Health Care REIT, Inc. is a real estate investment trust. The Trust invests in senior housing and health care real estate. Health Care also provide an extensive array of property management and development services. The trust owns interests in nursing homes, retirement centers, assisted living facilities, and specialty care hospitals.
Property & Casualty Insurance	Berkshire Hathaway, Inc.	Berkshire Hathaway, Inc. is a holding company owning subsidiaries in a variety of business sectors. The company's principal operations are insurance business conducted nationwide on a primary basis and worldwide on a reinsurance basis. Berkshire's other operations include a railway company, a specialty chemical company, and an international association of diversified businesses.
Diversified REITs	Vornado Realty Trust	Vornado Realty Trust is a fully-integrated real estate investment trust. The trust owns, manages and leases office properties in New York City, Washington, DC, and California. The company also owns retail properties Washington, DC and Puerto Rico.
Residential REITs	AvalonBay Communities, Inc.	AvalonBay Communities, Inc. is a real estate investment trust. The company develops, redevelops, acquires, owns and operates multifamily communities in the United States.
Diversified Banks	Comerica, Inc.	Comerica Incorporated is the holding company for business, individual, and investment banks with operations in the United States, Canada, and Mexico. The company's subsidiaries provide services such as corporate banking, international finance, treasury management, community banking, private banking, small business and individual lending, investment services, and institutional trust.
Consumer Finance	Discover Financial Services	Discover Financial Services is a credit card issuer and electronic payment services company. The company issues credit cards and offers student and personal loans, as well as savings products such as certificates of deposit and money market accounts and operates an automated teller machine (ATM)/debit network, which includes ATMs, as well as POS terminals nationwide.
Asset Management & Custody Ban	Janus Capital Group, Inc.	Janus Capital Group, Inc. is a global asset management firm offering individual investors and institutional clients asset management services. The company provides investment management, administration, distribution and related services to individual and institutional investors through mutual funds, separate accounts and subadvised relationships.
Thrifts & Mortgage Finance	People's United Financial, Inc.	People's United Financial, Inc. is a savings and loan holding company. The company provides commercial banking, retail and business banking, and wealth management services to individual, corporate and municipal customers.

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Exhibit 4B. Examples of Companies Included in the S&P 500 Financial Index (continued)

GICS Industry Subsector	Example Company	Description
Multi-Sector Holdings	Leucadia National Corp.	Leucadia National Corporation is a diversified holding company. The company is involved in a variety of businesses, including manufacturing, telecommunications, property management and services, gaming entertainment, real estate activities, medical product development and winery operations.
Real Estate Services	CB Richard Ellis Group, Inc.	CB Richard Ellis Group, Inc. is a global commercial real estate services firm. The company offers a range of services to occupiers, owners, lenders, and investors in office, retail, industrial, multi-family, and other commercial real estate assets. CB Richard Ellis offer services such as advice and execution assistance for property leasing and sales, forecasting, and valuations.
Multi-line Insurance	Hartford Financial Services Group, Inc.	The Hartford Financial Services Group, Inc. provides a range of insurance products. The company's products include property and casualty insurance, annuities, life insurance, investment services, and group insurance. Hartford Financial operates around the world.
Retail REITs	Simon Property Group, Inc.	Simon Property Group, Inc. is a self-administered and self-managed, real estate investment trust. The company owns, develops, and manages retail real estate properties including regional malls, outlet centers, community/lifestyle centers, and international properties.
Specialized Finance	Moody's Corp.	Moody's Corporation is a credit rating, research, and risk analysis firm. The company provides credit ratings and related research, data and analytical tools, quantitative credit risk measures, risk scoring software, and credit portfolio management solutions and securities pricing software and valuation models.
Office REITs	Boston Properties, Inc.	Boston Properties, Inc. is a real estate investment trust. The trust owns, manages, and develops office properties in the United States, with a significant presence in Boston, Washington, D.C., midtown Manhattan and San Francisco.
Life & Health Insurance	Unum Group	Unum Group provides group disability and special risk insurance. The company provides disability insurance, group life insurance, and payroll-deducted voluntary benefits offered to employees at their worksites.
Insurance Brokers	Marsh & McLennan Companies, Inc.	Marsh & McLennan Companies, Inc. is a global professional services firm providing advice and solutions in the areas of risk, strategy and human capital. Marsh & McLennan offers analysis, advice, and transactional capabilities to clients worldwide.
Regional Banks	Zions Bancorporation	Zions Bancorporation is a bank holding company that operates full-service banking offices in the western United States. The company also offers an array of investment, mortgage, insurance, and electronic commerce services. In addition, Zions provides financing solutions for small businesses across the United States.

Source: Bloomberg, L.P.

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Exhibit 5. Results of Regression Analysis of Bank of America's Returns

	Abnormal Returns		Abnormal Dollar Impact	
Independent Variables	Coefficient	t-stat	Coefficient	t-stat
Intercept	0.00	0.06		
Log Return for Peer 17 Value-Weighted Index	1.31	24.56 **		
Bank of America Announcements:				
Indicator for 9/18/08 (BAC 8-K Merger Agreement)	-0.06	1.32	-2.03	1.30
Indicator for 10/07/08 (Seasoned Equity Offering and BAC 8-K Q3 2008 Earnings Announcement)	-0.15	3.19 **	-3.94	2.98 **
Indicator for 04/20/09 (BAC 8-K Q1 2009 Earnings Announcement)	-0.12	2.53 *	-1.04	2.40 *
Alleged Corrective Disclosure Dates:				
Indicator for 1/12/09	-0.06	1.29	-0.74	1.28
Indicator for 1/13/09	-0.08	1.71	-0.91	1.66
Indicator for 1/15/09	-0.11	2.38 *	-1.00	2.27 *
Indicator for 1/16/09	-0.08	1.72	-0.62	1.68
Indicator for 1/22/09	-0.12	2.49 *	-0.72	2.37 *
Number of Observations:				174
Adjusted R-squared:				81%

Notes:

* significant at 5%; ** significant at 1%

[1] Indicator Variables for Bank of America Announcements and Alleged Corrective Disclosure Dates are equal to 1 for the date indicated and 0 otherwise.

[2] The Regression Period is from 9/18/08-5/28/09. In this analysis, an equal number of days following the Class Period is used as the Control Period (1/23/09-5/28/09) because the stock prices following the Class Period reflect the merged Bank of America-Merrill Lynch entity.

[3] The Peer 17 Value Weighted Index is calculated using the daily market value of equity for the following banks: Barclays, BB&T, Citigroup, Credit Suisse, First Third, Goldman Sachs, JPMorgan, Key Corp, Lazard, Morgan Stanley, Nomura, Regions Financial, Sun Trust, UBS, US Bancorp, Wachovia, and Wells Fargo.

[4] Bank of America's acquisition of Merrill Lynch was announced on 9/15/08, but the acquisition was closed on 1/01/09.

[5] Abnormal Dollar Impacts are calculated according to the method outlined in Saha and Ferrell (2011) "Event Study Analysis: Correctly Measuring the Dollar Impact of an Event."

Source: Bloomberg, L.P.

Exhibit 6. Analyst Commentaries and Articles on Bank of America (BAC)
January 16, 2009 and After

Panel A: BAC 4th Quarter 2008 Losses

Morgan Stanley, "Bank of America: Quick Comment: USG Risk Sharing a Partial Offset to Declining EPS Outlook," January 16, 2009

"BAC: reported -48c, missing our estimate of -6c. BAC missed on capital markets/ib as well as higher than expected reserve build (12c)" (page 1, emphasis added).

Buckingham Research, "BAC: Difficult Road, but Looking Oversold," January 16, 2009

"BAC reported its first loss of this cycle in 4Q08, losing $1.8bn or $0.48 per share vs. consensus of a modest profit of $0.08 [...] credit quality was worse than expected, with net charge-offs $500m (or 10%) higher than forecast" (page 2, emphasis added).

Credit Suisse, "BAC: More TARP, More Challenges," January 16, 2009

"BAC reported 4Q08 EPS loss of $0.48 vs. 4Q07 EPS of $0.05. The bottom line loss was due to worse than expected market-related disruption losses/writedowns, as well as outsized credit costs and reserve build" (page 1, emphasis added).

Fox-Pitt Kelton, "BAC: 4Q08 Quick Take: TARP 2 Annc'd (like Citi) Along w/ Worse 4Q," January 16, 2009

"Greater than expected losses driven by higher market w/d's and credit losses" (page 1, emphasis added).

Barclays Capital, "Earnings Review/Sales Analysis," January 16, 2009

"Bottom line – Results at BAC were below expectations due to provisioning, marks and trading." (page 1, emphasis added).

Ladenburg Thalmann, "BAC: Company of Opportunity," January 18, 2009

"Bank of America reported a fourth quarter loss of $0.48 per share. This compared to my estimate of a loss of $0.45 per share and profits of $0.15 per share in the third quarter" (page 1).

Fox-Pitt Kelton, "BAC: Lowering Ests Post 4Q Results/Actions; Reaction Overdone," January 20, 2009

"Asset quality and capital markets worse-than-expected in 4Q with BAC-standalone credit costs of $8.5b (vs our est of $6.6b) driven by higher losses in housing/consumer segments as well as commercial" (page 1, emphasis added).

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Exhibit 6. Analyst Commentaries and Articles on Bank of America (BAC)
January 16, 2009 and After (continued)

Panel A: BAC 4th Quarter 2008 Losses (continued)

Oppenheimer, "BAC 4Q08 Earnings," January 20, 2009

"Friday, Bank of America reported 4Q08 an EPS loss of $0.48 vs. our estimate of $0.07 and consensus of $0.08" (page 1).

RBC Capital Markets, "BAC: 4Q08 EPS Fall Short; Government Provides Loss Backstop and Capital Infusion," January 20, 2009

"Bank of America released its full 4Q08 results early, reporting an EPS loss of (-$0.48) including $0.04/share of merger charges. The core loss of (-$0.44) widely missed both our $0.10 estimate and the consensus of $0.08 largely due to much higher provisions and sizable capital markets-related write-downs/losses" (page 1, emphasis added).

J.P. Morgan, "4Q: Poor Merrill Acquisition, Government Bailout, Credit, Writedowns Much Worse," January 20, 2009

"BAC had higher than expect writedowns on its own exposures, totaling $5.2 bil. Most of these exposures are likely to be covered by the asset guarantee with the government" (page 2, emphasis added).

J.P. Morgan, "BAC: 4Q08 Earnings Review," January 21, 2009

"Bank of America (BAC) reported a 4Q08 net loss of $1.8 billion, before preferred dividends, that was firmly worse than expectations" (page 1, emphasis added).

Panel B: BAC TARP Announcement

Credit Suisse, "BAC: More TARP, More Challenges," January 16, 2009

"BAC announced that it had reached an agreement with the US Treasury surrounding the guarantee of assets, additional capital ($20bn preferred) and liquidity access. Concurrent with this announcement, BAC reduced its quarterly dividend to $0.01/shr (from $0.32/shr)" (page 1).

Fox-Pitt Kelton, "Bank of America: Detailing the Annc'd TARP 2; Deal Similar to Citi," January 16, 2009

"Additional support by Treasury, Fed, FDIC annc'd today […] We estimate $0.30/share annual drag on earnings from the TARP investment and loss guarantee" (page 1).

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Exhibit 6. Analyst Commentaries and Articles on Bank of America (BAC)
January 16, 2009 and After (continued)

Panel B: BAC TARP Announcement (continued)

Morgan Stanley, "Bank of America: Quick Comment: USG Risk Sharing a Partial Offset to Declining EPS Outlook," January 16, 2009

"The government agreed to backstop approx $118B of assets, with BAC taking the next $10 billion of loss and the government backstopping 90% of any additional loss. BAC cut its dividend to 1c/quarter" (page 1).

Fitch, "Fitch Downgrades Bank of America N.A. IDR to 'A+'; Affirms BofA Corp. at 'A+'," January 16, 2009

"Fitch's rating actions reflect our view that the combined BAC/MER franchise is likely to experience ongoing operating and asset quality pressures in the current severe recessionary environment. The actions, which result in a convergence of BAC's IDR at its Support Floor, also reflect the fact that government support has been forthcoming and additional support will likely be provided in the future if necessary, due to BAC's prominence in the global and domestic banking system" (page 1).

Ladenburg Thalmann, "BAC: Company of Opportunity," January 18, 2009

"Bank of America announced that it had cut its dividend to $0.04 per share for the year. This was done because the bank had decided to accept an agreement with the government whereby the bank added to its capital and received a backstop on loan losses" (page 8).

J.P. Morgan, "4Q: Poor Merrill Acquisition, Government Bailout, Credit, Writedowns Much Worse," January 20, 2009

"BAC will receive another $24 bil of capital from the government, of which $20 bil will come from TARP and the other $4 from the Treasury and FDIC" (page 2).

Oppenheimer, "BAC 4Q08 Earnings," January 20, 2009

"BAC also announced that the U.S. government had agreed to assist it in its MER acquisition by making a $20B investment in BAC preferred stock under TARP" (page 1).

RBC Capital Markets, "BAC: 4Q08 EPS Fall Short; Government Provides Loss Backstop and Capital Infusion," January 20, 2009

"BofA announced a loss sharing agreement with the government as well as an additional $20 billion TARP capital injection. In exchange, BofA cut its quarterly dividend from $0.32 to $0.01" (page1).

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Exhibit 6. Analyst Commentaries and Articles on Bank of America (BAC)
January 16, 2009 and After (continued)

Panel B: BAC TARP Announcement (continued)

UBS, "Gov't Actions Don't Address Low Common Equity; Dividend Cut & 4Q Loss," January 16, 2009

"BAC announced it is receiving a total of $24 b of preferred equity (carrying an 8% dividend) from the US Gov't" (page 1).

Barclays Capital, "4Q08 Follow-up: Weak Results = Support," January 20, 2009

"In January 2009, an additional $10 billion of preferred stock (part of the original $25B assigned to BAC and MER) was issued to Treasury as part of the TARP" (page 3).

J.P. Morgan, "4Q: Poor Merrill Acquisition, Government Bailout, Credit, Writedowns Much Worse," January 20, 2009

"BAC will get protection on $118 bil of assets (75% MER, 25% BAC) from the government and will bear first $10 bil of loss with 90% of the loss on the rest borne by the government. BAC received another $20 bil of preferred capital from TARP and will issue an additional $4 bil preferred to the gov't (which will have 7% stake in BAC) for the insurance, which will be expensed through the income statement" (page 1).

Citigroup, "4Q08 Results Reveal Significant Deterioration at MER," January 22, 2009

"In -line with media reports prior to 4Q results, BAC announced implementation of a new government guarantee on a $118 bil pool of risk assets comprised of ~ 75% MER assets and ~25% BAC assets" (page 7).

Panel C: BAC Nationalization

"Nationalization rumors slam Citigroup, Bank of America," *Los Angeles Times,* January 15, 2009

"The hottest rumor on Wall Street today was that the government was planning to effectively nationalize Citigroup Inc. and Bank of America Corp., perhaps as early as this weekend. That talk has devastated many financial stocks, and hammered the broader market for a second straight session...."

"Bank of America gets $138bn lifeline," *Financial Times,* January 15, 2009

"Bank of America will on Friday receive $20bn in fresh capital from the US government and a guarantee on most of a further $118bn of potential losses on toxic assets...."

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Exhibit 6. Analyst Commentaries and Articles on Bank of America (BAC)
January 16, 2009 and After (continued)

Panel C: BAC Nationalization (continued)

"Nationalization Hinted in Rescues," *The New York Times*, January 16, 2009

"The approximately $120 billion aid package on Thursday for Bank of America -- including injections of capital and absorbed losses.… represented displays of financial gymnastics…."

"What if Uncle Sam Takes Over Your Bank," *The Wall Street Journal*, January 22, 2009

"The latest wave of banking problems has investors worried that the government will nationalize deeply wounded institutions, such as Bank of America Corp. and Citigroup Inc."

"Citigroup, Bank of America May Look 'Nationalized' (Update3)," *Bloomberg*, January 23, 2009

"The U.S. government's decision to pledge billions of additional dollars with strings attached to Citigroup Inc. and Bank of America Corp. may be nationalization by another name, according to former bankers and regulators."

Ladenburg Thalmann, "Bank of America (BAC) Fighting for Credibility," February 5, 2009

"These numbers are clear, investors believe that this bank is about to fail and be nationalized by the United States government. If they believed that it would continue as an operating entity it is unlikely that the bank would be selling at such a low value" (page 1).

Note: A total of 75 Analyst Reports from 1/16/2009 - 5/1/2009 were surveyed.

Sources: Equity Research Analyst Reports from Morgan Stanley, Buckingham Research Group, Credit Suisse, Fox-Pitt Kelton, Ladenburg Thalmann, Oppenheimer, RBC Capital Markets, J.P. Morgan, Citigroup, Fitch, UBS, and Barclays Capital; news articles from New York Times, Los Angeles Times, The Wall Street Journal, Financial Times and Bloomberg L.P.

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Exhibit 7. Confounding News on January 22, 2009
John Thain's Resignation from Bank of America/Merrill Lynch

Date	Time	Source	Description
01/19/09	12:40 AM	Charlie Gasparino[1]	"I don't want to convey to you that Ken was delighted in mid-December when he found out about the losses, in fact he was pissed at Thain," according to one person at BofA who is close to Lewis. My guess is that Lewis can't get rid of Thain because if he does, he opens himself up to too much criticism, but at some point he'll find a way and Thain will be gone.
01/21/09	3:25 PM	Charlie Gasparino CNBC Video[2]	"There is a revolt inside Merrill Lynch involving John Thain. It involves the bonuses that were paid to Merrill Lynch executives. Sources tell CNBC that these executives may sue John Thain [due to the high strike price he set for the bonuses]."
01/22/09	10:30 AM	Charlie Gasparino CNBC Video[3]	"Ken Lewis, the CEO of Bank of America, will hold an emergency meeting with John Thain today. This will center on Thain's future with the firm - whether he stays or goes. Sources are telling me that his future is uncertain. The sources inside Merrill say that John Thain's gone."
01/22/09	11:46 AM	Charlie Gasparino CNBC Video[4]	"John Thain came to a mutual agreement with Ken Lewis to resign from Merrill Lynch effective immediately."

Notes:

[1] Charlie Gasparino, "Was John Thain Talking Bull About Merrill?" The Daily Beast, January 19, 2009.

[2] Charlie Gasparino, "John Thain's Future at BofA," CNBC Video, January 21, 2009.

[3] Charlie Gasparino, "Bank of America Emergency Meeting," CNBC Video, January 22, 2009.

[4] Charlie Gasparino, "John Thain to Leave Bank of America," CNBC Video, January 22, 2009.

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Exhibit 8. Results of Regression Analysis of Bank of America's Returns On Bonus Disclosure Dates

Independent Variables	Abnormal Returns		Abnormal Dollar Impact	
	Coefficient	t-stat	Coefficient	t-stat
Bonus Disclosure Dates				
1. Indicator for 9/18/08 (BAC 8-K)	-0.07	1.32	-2.10	1.30
2. Indicator for 10/02/08 (BAC S-4)[1]	-0.02	0.45	-0.85	0.47
3. Indicator for 10/16/08 (ML 8-K)	-0.01	0.26	-0.34	0.29
4. Indicator for 10/22/08 (BAC S-4A)	0.03	0.58	0.60	0.56
5. Indicator for 10/27/08 (NYT/NBC)	0.03	0.64	0.61	0.63
6. Indicator for 10/28/08 (NBC News)	-0.01	0.27	-0.33	0.29
7. Indicator for 10/30/08 (BAC S-4A[1], Bloomberg)	-0.02	0.35	-0.42	0.37
8. Indicator for 11/04/08 (BAC DEF 14A)[1]	-0.03	0.51	-0.65	0.53
9. Indicator for 11/05/08 (ML 10Q)	0.00	0.03	0.00	0.00
10. Indicator for 11/14/08 (Fox News)[1]	0.03	0.59	0.45	0.58
11. Indicator for 12/03/08 (Bloomberg)	-0.03	0.53	-0.41	0.55
12. Indicator for 12/04/08 (The Telegraph)	-0.03	0.67	-0.49	0.68
13. Indicator for 1/26/09 (StreetInsider)	-0.04	0.78	-0.24	0.79
14. Indicator for 1/30/09 (Wall Street Journal)	-0.01	0.28	-0.10	0.30
			Number of Observations:	174
			Adjusted R-squared:	79%

Notes:

* significant at 5%; ** significant at 1%

[1] Indicator Variables for Bank of America Announcements, Alleged Corrective Disclosure Dates, and Bonus Disclosure Dates are equal to 1 for the date indicated and 0 otherwise. Note that the following filings/news articles (BAC S-4 on 10/01/08, BAC S-4 on 10/29/08, BAC DEF 14A on 11/03/08, and Fox News on 11/13/08) were either (a) published after the 4:00 p.m. close of financial markets or (b) on a Saturday or Sunday, so indicator variables are included for the next trading day after the filing.

[2] Independent variables included in the regression but not reported in this exhibit are the following: Log Return for Peer 17 Value-Weighted Index, Indicator Variables for Bank of America Announcements (10/07/08 Seasoned Equity Offering, 4/20/09 8-K), and Indicator Variables for Alleged Corrective Disclosure Dates (1/12/09, 1/13/09, 1/16/09, and 1/22/09).

[3] The Regression Period is from 9/18/08-5/28/09. In this analysis, an equal number of days following the Class Period is used as the Control Period (1/23/09-5/28/09) because the stock prices following the Class Period reflect the merged Bank of America-Merrill Lynch entity.

[4] The Peer 17 Value Weighted Index is calculated using the daily market value of equity for the following banks: Barclays, BB&T, Citigroup, Credit Suisse, First Third, Goldman Sachs, JPMorgan, Key Corp, Lazard, Morgan Stanley, Nomura, Regions Financial, Sun Trust, UBS, US Bancorp, Wachovia, and Wells Fargo.

[5] Bank of America's acquisition of Merrill Lynch was announced on 9/15/08, but the acquisition was closed on 1/01/09.

[6] Abnormal Dollar Impacts are calculated according to the method outlined in Saha and Ferrell (2011) "Event Study Analysis: Correctly Measuring the Dollar Impact of an Event."

Source: Bloomberg, L.P.

Exhibit 9. Estimation of Co-Ownership of Bank of America and Merrill Lynch

	9/30/2008	12/31/2008
Merrill Lynch Shares Held By Institutions	1,111,785,196	1,150,569,895
● Merrill Lynch Shares Held By Institutions Converted to Bank of America (BAC) Equivalent Shares (x.8595)[1]	955,579,376	988,914,825
● Merrill Lynch Shares Held By Institutions (BAC Converted) Held By BAC Owners	716,201,139	985,122,939
● BAC Shares Held By Institutions with Equivalent or Greater MER Holdings	32,679,351	225,615,425
● BAC Shares Held By Institutions Capped By The Same Institution's MER Holdings	520,142,063	759,011,358
Total:	**552,821,414**	**984,626,783**
Bank of America Shares Held By Institutions	**2,722,085,517**	**4,051,905,051**
% Bank of America Shares Held By Institutions Offset By Their Merrill Lynch Shares Held	**20.3%**	**24.3%**

Note:

[1] Each share of Merrill Lynch was exchanged for .8595 of a share of Bank of America. See BAC 10K 2/28/09 p. 17 for more details.

Sources: Thomson Financial and Bloomberg, L.P.

Exhibit 5

Petrobras Depositions Taken or Defended by Class Counsel

No.	Date Taken	Witness	Deposition Type	Language of Deposition	Plaintiffs' Role
1	09/25/2015	Rodrigo Araújo Alves	Petrobras 30(b)(6) Designated Representative	Portuguese	Conducted
2	09/25/2015	João Gonçalves Gabriel	Petrobras 30(b)(6) Designated Representative	Portuguese	Conducted
3	09/28/2015	Carlos Rafael Lima Macedo	Petrobras 30(b)(6) Designated Representative	Portuguese	Conducted
4	09/28/2015	Marcio Polito Fontes	Petrobras 30(b)(6) Designated Representative	Portuguese	Conducted
5	10/20/2015	Chris Shale	USS 30(b)(6) Designated Representative	English	Defended
6	10/21/2015	Jeremy Hill	USS 30(b)(6) Designated Representative	English	Defended
7	10/23/2015	Brian Aburano	Hawaii 30(b)(6) Designated Representative	English	Defended
8	10/26/2015	Steven Feinstein	Plaintiffs' Market Efficiency Expert	English	Defended
9	10/28/2015	Jeff Smith	North Carolina 30(b)(6) Designated Representative	English	Defended
10	11/11/2015	Paul Gompers	Defendants' Expert	English	Conducted
11	12/04/2015	Steven Feinstein	Plaintiffs' Market Efficiency Expert	English	Defended
12	02/05/2016	Gregory Haendel	Bradford & Marzec 30(b)(6) Designated Representative (External Manager for Hawaii)	English	Defended
13	02/16/2016 03/09/2016	Venina Velosa da Fonseca	Witness for Petrobras	Portuguese	Conducted
14	02/19/2016	Gerson Luiz Gonçalves	Witness for Petrobras	Portuguese	Conducted

Petrobras Depositions Taken or Defended by Class Counsel

No.	Date Taken	Witness	Deposition Type	Language of Deposition	Plaintiffs' Role
15	02/25/2016	Pedro Juliano	Witness for Underwriters J.P. Morgan Securities LLC	English, with interpreter	Conducted
16	02/26/2016	Leandro de Miranda Araújo	Witness for Underwriters Banco Bradesco BBI S.A.	English, with interpreter	Conducted
17	03/01/2016	Daniel Summerfield	Witness for USS	English	Defended
18	03/02/2016	Antônio Castro	Witness for Petrobras	Portuguese	Conducted
19	03/02/2016	John Corcoran	Underwriters Itaú BBA USA Securities, Inc. 30(b)(6) Designated Representative	English	Conducted
20	03/09/2016	Maria Claudio Mello Guimaraes	Witness for Underwriters Merrill Lynch, Piece, Fenner & Smith Incorporated	English, with interpreter	Conducted
21	03/10/2016	Mario Jorge da Silva	Witness for Petrobras	Portuguese	Conducted
22	03/21/2016	Julio Lage	Third Party Witness	English	Conducted
23	03/22/2016	Alan Richard	Deloitte Transactions and Business Analytics LLP 30(b)(6) Designated Representative	English	Conducted
24	03/23/2016	Alice Elizabeth Harrison	Witness for North Carolina	English	Defended
25	03/30/2016	Alexandre Castanheira	Underwriters Morgan Stanley & Co. LLC 30(b)(6) Designated Representative	English, with interpreter	Conducted
26	03/31/2016	Theodore Marshall Helms	Witness for Petrobras; Individual Defendant	English	Conducted
27	04/01/2016	Maxim Volkov	Underwriters Merrill Lynch, Piece, Fenner & Smith Incorporated 30(b)(6) Designated Representative	English	Conducted

Petrobras Depositions Taken or Defended by Class Counsel

No.	Date Taken	Witness	Deposition Type	Language of Deposition	Plaintiffs' Role
28	04/06/2016	Felipe Weil Wilberg	Underwriters Itaú BBA USA Securities, Inc. 30(b)(6) Designated Representative	English, with interpreter	Conducted
29	04/07/2016	Daniel Lima De Oliveira	Witness for Petrobras; Individual Defendant	English	Conducted
30	04/08/2016	Paulo José Alves	Witness for Petrobras; Individual Defendant	Portuguese	Conducted
31	04/11/2016 04/12/2016	Almir Guilherme Barbassa	Witness for Petrobras; Individual Defendant	Portuguese	Conducted
32	04/12/2016	Adrian Guzzoni	Underwriters Citigroup Global Markets, Inc. 30(b)(6) Designated Representative	English	Conducted
33	04/13/2016	Philip Searson	Underwriters Banco Bradesco BBI S.A. 30(b)(6) Designated Representative	English, with interpreter	Conducted
34	04/13/2016	Wang Tong	Underwriters Bank of China (Hong Kong) Limited 30(b)(6) Designated Representative	Mandarin, with interpreter	Conducted
35	04/14/2016	Nilton Antônio de Almeida Maia	Witness for Petrobras	Portuguese	Conducted
36	04/14/2016	Ivan de Souza Monteiro	Witness for Petrobras	Portugese	Conducted
37	04/18/2016 04/19/2016	Mauro Rodrigues da Cunha	Third Party Witness Former Petrobras Independent Director	English, with interpreter	Conducted
38	04/18/2016	Alexandre Figueiredo	Witness for PricewaterhouseCoopers Auditores Independentes ("PwC")	Portuguese	Conducted
39	04/18/2016	Jean Marc Dreyer	Witness for Underwriters Citigroup Global Markets, Inc.	English	Conducted
40	04/19/2016 04/20/2016	Marcos Panassol	Witness for PwC; PwC 30(b)(6) Designated Representative	Portuguese	Conducted
41	04/20/2016	José Sergio Gabrielli de Azevedo	Witness for Petrobras; Individual Defendant	Portuguese	Conducted

Petrobras Depositions Taken or Defended by Class Counsel

No.	Date Taken	Witness	Deposition Type	Language of Deposition	Plaintiffs' Role
42	04/21/2016	Wayne Carnall	Witness for PwC LLP; PwC LLP 30(b)(6) Designated Representative	English	Conducted
43	04/21/2016	Richard Dubbs	BB Securities Ltd. 30(b)(6) Designated Representative	English	Conducted
44	04/22/2016	Rodrigo Araújo Alves	Witness for Petrobras	Portuguese	Conducted
45	04/22/2016	Rodrigo Hung Soo Pincanco Choi	Witness for Underwriters J.P. Morgan Securities LLC	English	Conducted
46	04/22/2016	Neil Earnest	Muse Stancil & Co. 30(b)(6) Designated Representative	English	Conducted
47	04/25/2016	Carlos Cesar Borromeu de Andrade	Witness for Petrobras	Portuguese	Conducted
48	04/26/2016	Marianela Espasandinin	Witness for Underwriters J.P. Morgan Securities LLC	English	Conducted
49	04/27/2016	Amos da Silva Cancio	Witness for Petrobras	Portuguese	Conducted
50	04/27/2016	Diane Marie Kenna	Underwriters HSBC Securities (USA) Inc. 30(b)(6) Designated Representative	English	Conducted
51	04/27/2016	Flavio Averbug	Third Party Witness for Underwriters Counsel Shearman & Sterling LLP	English	Conducted
52	04/27/2016	Stein Rasmussen	SBM Offshore USA 30(b)(6) Designated Representative	English	Conducted
53	04/28/2016 04/29/2016	Maria das Graças Silva Foster	Witness for Petrobras; Individual Defendant	Portuguese	Conducted
54	04/28/2016	Stuart Fleischmann	Witness for Shearman & Sterling LLP; 30(b)(6) Designated Representative	English	Conducted
55	04/29/2016	Otávio Lavocat Cintra	Witness for Petrobras	English, with interpeter	Conducted

Petrobras Depositions Taken or Defended by Class Counsel

No.	Date Taken	Witness	Deposition Type	Language of Deposition	Plaintiffs' Role
56	04/29/2016	Robson Cecílio Costa	Witness for Petrobras	Portuguese	Conducted
57	04/29/2016	Bharat Kesavan	BNP Paribas North America Inc. 30(b)(6) Designated Representative	English	Conducted
58	05/03/2016	Vagner Silva dos Santos	Petrobras 30(b)(6) Designated Representative	Portuguese	Conducted
59	05/03/2016	Carlos Alberto Rechelo Neto	Petrobras 30(b)(6) Designated Representative	Portuguese	Conducted
60	05/18/2016	Legal & General	Legal & General 30(b)(6) Designated Representative (External Manager for USS)	English	Defended
61	05/19/2016	Gregory Barry	Wellington 30(b)(6) Designated Representative	English	Defended
62	05/27/2016	Legal & General	Legal & General 30(b)(6) Designated Representative (External Manager for USS)	English	Defended
63	06/08/2016	Bernard Black	Defendants' Expert	English	Conducted
64	06/08/2016	Rene Stulz	Defendants' Expert	English	Conducted
65	06/09/2016	Cagatay Koç	Defendants' Expert	English	Conducted
66	06/14/2016	Matthew Taylor	Defendants' Expert	English	Conducted
67	06/14/2016	Michael Ussery	Defendants' Expert	English	Conducted
68	06/14/2016	Sebastian Edwards	Defendants' Expert	English	Conducted
69	06/15/2016	Gary Lawrence	Defendants' Expert	English	Conducted

Petrobras Depositions Taken or Defended by Class Counsel

No.	Date Taken	Witness	Deposition Type	Language of Deposition	Plaintiffs' Role
70	06/16/2016	Keith Ugone	Defendants' Expert	English	Conducted
71	06/17/2016	Philip Verleger	Defendants' Expert	English	Conducted
72	06/17/2016	Steven L. Henning	Plaintiffs' Materiality Expert	English	Defended
73	06/21/2016	Blaine F. Nye	Plaintiffs' Damages Expert	English	Defended
74	06/21/2016	James F. Miller	Plaintiffs' Due Diligence Expert	English	Defended
75	06/21/2016	Nelson Nery, Jr.	Plaintiffs' Brazilian Federal Court of Accounts ("TCU") Expert	Portuguese	Defended
76	06/22/2016	Harris Devor	Plaintiffs' Accounting Expert	English	Defended
77	06/22/2016	Tsvetan Beloreshki	Defendants' Expert	English	Conducted
78	06/23/2016	Gary Goolsby	Defendants' Expert	English	Conducted
79	06/24/2016	Christopher James	Defendants' Expert	English	Conducted
80	06/27/2016	J. Duross O'Bryan	Defendants' Expert	English	Conducted
81	06/27/2016	Vera Monteiro	Defendants' Expert	English, with interpreter	Conducted

EXHIBIT A

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

SECURITIES AND EXCHANGE COMMISSION,	§	
Plaintiff,	§	**NO. 4:12-cv-00563**
v.	§	
MARK A. JACKSON and JAMES J. RUEHLEN,	§	
Defendants.	§	

EXPERT REPORT OF GARY B. GOOLSBY
NOVEMBER 21, 2013

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I. SUMMARY OF INVOLVEMENT AND BACKGROUND

A. Nature of Involvement

I have been retained by BuckleySandler LLP, which represents Mark A. Jackson ("Jackson") in this matter, to make an independent evaluation of the corporate governance processes and internal control over financial reporting and compliance with applicable laws and regulations in place at Noble Corporation ("Noble" or "the Company") during the period from 2004 through Jackson's departure from Noble in September 2007. Jackson was the Chief Financial Officer ("CFO"), Chief Operating Officer ("COO"), President, Chief Executive Officer ("CEO"), Treasurer, Controller, and Assistant Secretary of Noble, at various times throughout the period covered by this report.[1] Jackson's reliance on the corporate governance processes and internal controls in place is also a part of my independent evaluation.

B. Qualifications and Experience

I am a Certified Public Accountant licensed in Texas and Louisiana and a graduate of Louisiana Tech University with B.S. and M.B.A. degrees. I am a Senior Managing Director in the Forensic and Litigation Consulting Practice in the Houston office of FTI Consulting, Inc. ("FTI").[2] Attached, as Exhibit 1, is my curriculum vitae.

I have over 39 years of experience in accounting and auditing, risk management, resolving auditor malpractice allegations, investigations, governance, internal controls and business processes, board of directors and regulatory interactions, executive management, expert witness testimony and case consultancy, and technical presentations. I have provided professional services to many industries including, among others, oil and gas exploration, development, and production. I have extensive experience evaluating the governance and internal control processes of companies, identifying their strengths and weaknesses and recommending any needed improvements.

FTI is being compensated for my involvement in this matter based upon our standard hourly billing rates. My hourly rate is $655. My fee is not contingent upon my opinions reached or the outcome of this matter. My opinions in this matter are based upon my judgment and expertise in accounting and auditing, governance, internal controls, and investigations, among

[1] Noble Corporation, Form 10-K for the Fiscal Year Ended December 31, 2004 at 13 ("2004 10-K"); Form 10-K for the Fiscal Year Ended December 31, 2005 at 16 ("2005 10-K"); Form 10-K for the Fiscal Year Ended December 31, 2006 at 15 ("2006 10-K").

[2] FTI is not a CPA firm.

other areas as noted above, and my analysis of the information provided to and collected by FTI. FTI is being compensated for time incurred by other professionals who have supported my analysis in this matter at various billing rates.

This report should not be construed to constitute or contain opinions on matters of law, nor as an audit or any other type of attestation opinion. This report is confidential and should not be disclosed or referred to in whole or in part outside of this proceeding without my prior written consent.

C. Information Considered

I have considered and relied on documents, testimony, and other information summarized in Exhibit 2 in forming my opinions in this matter. This report is based on information available as of the date of the report. I understand that discovery in this matter is ongoing. Upon review of any additional relevant information that may become available, I reserve the right to amend or supplement my findings or opinions set forth in this report.

D. Summary of Opinions

My opinions regarding Noble's governance and internal control are based on the hundreds of audits I have conducted or consulted on, including audits in which I made the final decision on whether companies had a material weakness in internal control, or instructed audit teams not to sign audit reports in the presence of unresolved issues. I have seen similar situations to the Noble experience, where specific events and isolated incidences must be judged to determine whether they are indicative of a systemic breakdown in internal control.

In my opinion, Noble's corporate governance processes and internal control provided reasonable assurance for achieving the objectives of reliability of financial reporting, compliance with applicable laws and regulations, and strong governance, consistent with accepted criteria for evaluating internal controls. Put differently, the system of governance and internal control at Noble during the relevant period was well established and operating effectively.

Noble's system of internal control met the requirements of the criteria established by the Internal Control—Integrated Framework of the Committee of Sponsoring Organizations of the Treadway Commission ("COSO"). Noble's internal controls, broadly speaking, fell into several interrelated categories: control environment, risk assessment, control activities, information and communication, and monitoring. This included having the right management team to operate in

a challenging, complex, global oil and gas drilling industry; periodically and appropriately assessing the Company's risk, both enterprise-wide and in specific areas; establishing the right processes to achieve objectives; ensuring effective communication among different segments of the global organization, as well as establishing avenues for reporting concerns; exercising appropriate oversight through its Audit Committee and Internal Audit department; and obtaining independent evaluations from outside law firms and Noble's external auditor, PricewaterhouseCoopers ("PWC"). The *system* of internal control in place at Noble brought together these various components to create an integrated, well-functioning whole.

No system of internal control is perfect, nor does COSO require internal controls to prevent every issue; issues develop even in very well run companies. The handling of these issues helps the internal controls evolve to better prevent issues in the future, along with incorporating new best practices. Even when problems occur, it does not mean the internal control system is ineffective.

Noble had, during the period 2004 to 2007, a strong, positive culture, managed by fully engaged, competent executives of high integrity, focused on meeting the highest standards of governance and internal controls. Noble had the right processes, effected by the right people, to provide reasonable, even if not absolute, assurance to Noble's management and Board of Directors regarding the reliability of financial reporting and Noble's compliance with applicable laws and regulations. Noble's management reacted timely to issues that were identified in practice, showing a willingness to strengthen the system of internal control over time instead of ignoring problems. Even when problems are identified, executive management are justified in relying on the overall effective system of internal control while they address those weaknesses. This repetitive process of evaluation and enhancement never stopped at Noble.

As required by the Sarbanes-Oxley Act, from 2004 through 2007, Noble's management, through its CEO and CFO, publicly confirmed management's responsibility for establishing and maintaining adequate internal control over financial reporting, and certified to the effectiveness of those internal controls. Noble's system of internal control was also assessed in real-time, on the ground, by PWC, Noble's external auditor. From 2004 to 2007, PWC, like Noble's management, issued clean (unqualified) annual audit reports, attesting to the effectiveness of Noble's system of internal control, and PWC's agreement with management's own assessment of effectiveness.

Because Noble's overall system of internal control was effective, Noble management could rely on the control processes to prevent or identify issues with Noble's financial reporting and compliance with laws and regulations. That reliance appropriately eliminated the need for senior management to micro-manage every aspect of the Company, which would not have been realistic given its nature and size. This type of reliance is typical and used every day by thousands of senior executives of companies, and it is appropriate absent a systemic breakdown in internal control—which did not occur at Noble.

In my opinion, Jackson appropriately relied on Noble's corporate governance processes and internal control in conducting his various responsibilities. Jackson regularly participated in the governance activities, which allowed him to see them function in practice, and see their effectiveness. Jackson saw that PWC, Noble's independent external auditor, also concluded that Noble's internal controls were effective. A strong system of governance and internal control made it unnecessary for Jackson to personally manage the multitude of daily details of business issues and transactions occurring at Noble, including in a single area or country such as Nigeria. Jackson could instead rely on the work being done by employees embedded in everyday operating activities, and could have confidence that Noble was conducting its business in accordance with the law, including the FCPA and associated accounting requirements.

E. Plaintiff's Expert Harfenist Did Not Consider Noble's Effective Governance and System of Internal Control

Plaintiff's expert, Jeffrey Harfenist, expressed opinions criticizing Noble's anti-corruption compliance program, and concluding that the Company's anti-corruption compliance policies and controls were often circumvented, ignored or overridden, not effectively implemented or, in the case of facilitating payments, not appropriately accounted for. However, Harfenist extracted his examples out of context and completely ignored Noble's overall system of internal control and governance processes and Jackson's appropriate reliance on that system. Internal controls relating to the FCPA are part of the overall system of internal control and not separate and distinct as a standalone set of procedures. I do not believe it is appropriate to discredit Noble's entire set of policies, procedures and processes, and the business decisions of a senior executive such as Jackson, without evaluating the Company's entire governance and system of internal control as the overarching foundation for such decisions. The areas addressed

by Harfenist are a subset of the extensive policies, procedures, and processes established and effectively operating at Noble.

Harfenist's report references purported problem areas in Noble's controls including the lack of a comprehensive risk assessment of corruption risks, lack of appropriate "tone at the top", circumvention of controls, controls regarding CFO approval of facilitating payments not being effectively implemented, lack of Audit Committee communication, lack of agent analysis, and issues with accounting for facilitating payments, among others. These isolated issues, even if accepted as deficient (which I do not, for the reasons stated in this report), do not communicate the entire picture of the internal control processes in place at Noble from 2004 to 2007. For example, Harfenist did not consider the numerous strong, effective components of Noble's internal control that I discuss below, including control environment, risk assessment, control activities, information and communication, and monitoring.

My analysis included in this report *does* cover the effectiveness of the entire system of internal control and governance processes of Noble, as confirmed by real-time assessments such as the clean audit opinions by PWC. No system of internal control is perfect; however, aberrations do not per se equal systemic breakdowns, as Harfenist appears to assert. Below, I further address many of the issues with Harfenist's analysis, including that he ignores Noble's enterprise risk analyses, erroneously claims that Jackson misunderstood the nature of the risk posed by Noble's operations in Nigeria, and jumps to unsupportable conclusions about circumvention of controls regarding the "paper process."

F. Background of Noble and Allegations

Noble is a leading offshore drilling contractor for the oil and gas industry.[3] It is a large, complex, international company with operating assets primarily in international locations, with primarily local, decentralized management overseen by central senior management in Sugar Land, Texas. The Company performed contract drilling services with a fleet of 60 offshore drilling units located in key markets worldwide during 2004. Approximately 80% of the fleet was deployed in international markets, principally including the Middle East, Mexico, the North Sea, Brazil, West Africa, India, and the Mediterranean Sea. Noble employed approximately 5,300 personnel with approximately 80% engaged in international operations. As of December

[3] Noble Corporation, Form 10-K for the Fiscal Year Ended December 31, 2007 at 1 ("2007 10-K").

31, 2004, Noble's consolidated revenues totaled $1.1 billion with net income of $146 million.[4] Noble continued to expand over the next few years, reaching $3 billion in consolidated revenues and net income of $1.2 billion by year end December 31, 2007.[5]

Noble had a large concentration of drilling rigs in West Africa, which primarily were drilling in Nigerian waters for companies such as Shell or Chevron working with or for Nigerian government-affiliated oil companies. The operating environment in countries such as Nigeria is subject to numerous risks including, among others, political, economic, war, terrorism, civil disturbances, expropriation, nationalization, renegotiation or modification of contracts, and taxation.[6]

Such geographic dispersion, including operations in high risk areas of the world, required strong governance processes and internal controls due to the impossibility of senior management individually dealing with the daily challenges of operating the Company.

In this lawsuit, the SEC alleges violations of the Foreign Corrupt Practices Act ("FCPA") and the Securities Exchange Act of 1934, and associated rules, including that (1) Jackson approved the payments of bribes via Noble's customs agent to Nigerian government officials, to influence or induce them to grant temporary import permits ("TIP") to Noble's drilling rigs based on false paperwork, to process that false paperwork, and to favorably exercise or abuse their discretion in granting TIP extensions; (2) Jackson circumvented Noble's internal controls and falsely recorded the bribes as legitimate operating expenses on Noble's books; (3) Jackson failed to implement internal accounting controls to prevent the bribery and false recording of the bribes; and (4) Jackson misled Noble's auditors about the bribes and signed certifications required by the Sarbanes-Oxley Act of 2002 falsely stating that he had created and maintained effective internal controls.[7]

II. STANDARDS FOR GOVERNANCE AND INTERNAL CONTROLS

Strong governance and an effective system of internal control (including control over compliance with laws and regulations) is the foundation for every company, regardless of size or

[4] 2004 10-K at 2, 7, 39-40; Timothy Thomasson Deposition at 32. Net income is a company's revenues minus its expenses for that period.
[5] 2007 10-K at 42-43.
[6] 2004 10-K at 7, 20. Nigeria also consistently ranked as one of the highest corruption-risk countries in the world, including by Transparency International. http://archive.transparency.org/policy_research/surveys_indices/cpi/2004; http://archive.transparency.org/policy_research/surveys_indices/cpi/2007.
[7] Second Amended Complaint, *SEC v. Mark A. Jackson and James J. Ruehlen*, Civil Action No. 4:12-cv-00563, at 1-2.

complexity. The success or failure of a company can be driven by the strength or weakness of its system of internal control. All internal control activities, to be effective, should be fully integrated in the company and embedded in operational activities to ensure seamless execution.

Appropriate internal controls vary by company, depending on factors such as its size, nature and location of operations, and risk. Internal control must be judged as an entire system, instead of control by control; weaknesses in one area of a company's controls may be overcome by strengths in other areas. Determining the overall effectiveness of a system of internal control is judgmental, guided by standards such as those discussed below. Ultimately, though, the stronger and more effective a system of internal control is, the more management can rely on those internal controls in the day-to-day operation of the entity.

While internal controls are the responsibility of all employees, senior management plays a significant role. Finance and accounting officers have responsibilities regarding documenting and executing certain processes, while all of management has supervisory responsibility for the proper execution of controls by their teams, and identification and mitigation of risks. Management must also establish a strong culture with a positive "tone at the top." Internal Audit groups are primarily responsible for evaluating the effectiveness of the controls, including compliance with documented policies and procedures. The entity's Board of Directors and its Audit Committee have oversight responsibility, and should receive regular reporting by both internal and external auditors regarding the effectiveness of the entity's controls, as well as act proactively to address new risks.

No system of internal control is perfect. There are always areas requiring improvement or enhancement, whether due to identification of weaknesses or recognition of new best practices. It is expected that management will react to resolve the issue or incorporate the new practice. This requires a continuous process of evaluating the system of internal control.

A. Internal Control Framework

The accepted criteria for establishing internal control and evaluating its effectiveness were established by COSO in 1992 and amended in 1994.[8] COSO defines internal control as:

[8] Internal Control—Integrated Framework issued by Committee of Sponsoring Organizations of the Treadway Commission (September 1992, amended May 1994) at 96-97. The National Commission on Fraudulent Financial Reporting ("Treadway Commission") was created in 1985 by the joint sponsorship of the American Institute of Certified Public Accountants, American Accounting Association, Financial Executives Institute, Institute of Internal Auditors and Institute of Management Accountants. The major objective of the Treadway Commission was to

> [A] process, effected by an entity's board of directors, management and other personnel, designed to provide reasonable assurance regarding the achievement of objectives in the following categories:
>
> - Effectiveness and efficiency of operations.
> - Reliability of financial reporting.
> - Compliance with applicable laws and regulations.[9]

The three categories of controls are distinct, yet overlapping, and address different aspects of a company's business. For the purposes of my analysis, which is focused on the internal controls over financial reporting and compliance with laws and regulations, the key attributes of effective internal control include: (1) An effective system of internal control is a process, not a singular control; (2) internal control is implemented by people; and (3) effective internal control must only provide *reasonable assurance* of the reliability of a company's financial reporting or compliance with laws and regulations – not absolute assurance against problems.[10]

Both Sarbanes-Oxley and the FCPA, each of which applied to Noble during the relevant time period, also imposed internal controls requirements on Noble. The FCPA, for example, required Noble to:

> [D]evise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that:
>
> (1) transactions are executed in accordance with management's general or specific authorization;
>
> (2) transactions are recorded as necessary: (a) to permit preparation of financial statements in conformity with generally accepted accounting principles or any other criteria applicable to such statements; and (b) to maintain accountability for assets;
>
> (3) access to assets is permitted only in accordance with management's general or specific authorization.[11]

"Reasonable assurances" is defined, under the FCPA, as "such . . . degree of assurance as would satisfy prudent officials in the conduct of their own affairs."[12]

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identify the causal factors of fraudulent financial reporting and to make recommendations to reduce its incidence. A resulting study was conducted under the auspices of COSO to provide criteria for establishing internal control and evaluating its effectiveness for use by management, internal and external auditors, educators and regulatory bodies, resulting in the Internal Control—Integrated Framework.

[9] *Id.* at 13.

[10] *Id.* at 3, 13.

[11] 15 U.S.C. § 78m(b)(2).

[12] 15 U.S.C. § 78m(b)(7).

Post-Sarbanes Oxley (for Noble, effective as of its 2004 10-K), senior management of public companies like Noble were required to publicly certify to the effectiveness of the company's internal controls over financial reporting, based on management's own assessment of that system of controls. External auditors like PWC were then required to issue opinions in their public audit reports regarding the auditor's *own* opinion on the effectiveness of the company's internal controls over financial reporting (as well as the auditor's opinion on management's assessment of those controls).[13] The SEC adopted COSO as the framework for evaluating the effectiveness of internal controls under Sarbanes-Oxley.[14] For the purposes of my analysis, then, I will focus on the COSO criteria for evaluating effectiveness of internal controls.

B. Components of Effective Internal Control

According to COSO, effective internal control can be evaluated through looking at five overlapping concepts[15]:

Effective Control Environment. Management needs to set the right "tone at the top," or attitude, in the organization, by providing strong, thoughtful, ethical, diligent leadership that motivates employees throughout the organization to do the right thing. The organization should be structured to provide a framework within which activities for achieving company-wide objectives are planned, executed, controlled, and monitored. Key management committees should be established to evaluate and analyze operating and financial reporting decisions, and a company's Audit Committee should focus on risk areas and adherence to codes of conduct.

Effective Risk Assessment. Management needs to establish and implement processes to identify, analyze, and manage the risks the entity faces. Risk assessment should take into account a wide range of risks, both internal and external, that a company faces and which must be dealt with to mitigate the risks. Identification of risks is the responsibility of management and the Board of Directors, and in addition to formal risk assessments, can be accomplished by proactive planning, budgeting, and reacting to weaknesses identified by Internal Audit, external auditors, or others.

Effective Control Activities. Management must establish and execute policies and procedures to ensure that management's chosen actions are accomplished. Control activities

[13] SEC Release No. Rel.T.33-8238.I.
[14] SEC Release No. Rel.T.33-8238.II.A-B.
[15] Internal Control—Integrated Framework at 4-5, 16, 18, 23-32, 33-48, 49-57, 59-67, 69-78.

occur throughout the organization, at all levels and in all functions, and include a wide range of processes including approvals, authorizations, budgets, verifications, reconciliations, securing assets, performance reviews, and segregation of duties. These can be referred to as preventive controls, detective controls, manual controls, computer controls, and management controls. Control activities usually involve both a policy establishing what should be done, and a procedure or process to implement the policy.

Effective Information and Communication. Management must communicate its expectations to employees and establish other lines of communication to enable employees to identify, capture, and exchange information relating to operations, finance, and compliance. Examples include providing training, policies and procedures manuals, and a complaint process. Management may hold meetings to discuss operating and financial issues across the enterprise; distributing Internal Audit reports and action steps helps improve process weaknesses; and issues of all types may be raised to management in Board of Directors or Board committee meetings.

Effective Monitoring. An enterprise must continually assess its system of internal control, whether through ongoing monitoring or oversight, or specific evaluations. Employees should be asked to affirm compliance with a company's policies or laws and regulations; internal and external auditors should audit the company and its operations and provide recommendations for improving any weaknesses in internal controls. Identified issues should be reported to higher levels of authority and resolved on a timely basis.

III. NOBLE'S SYSTEM OF GOVERNANCE AND INTERNAL CONTROL WAS WELL ESTABLISHED AND OPERATED EFFECTIVELY

Based on my analysis of the information available to me, I conclude that Noble had an effective system of internal control during the period 2004-2007, which could be relied upon by senior management, including Jackson. My analysis is based on my findings below, which are not necessarily an all-inclusive list of the attributes of Noble's system of internal control, and which are presented within the COSO framework described in Section II.

A. Noble Had Effective Control Environment

1. Corporate culture of Noble set the right tone at the top

Noble had a strong, effective corporate culture led by competent, ethical senior management throughout a period of significant, challenging growth. Noble's culture was seen within the Company as conservative, ethical, and straightforward. Management took internal

controls and compliance with laws seriously, and invested appropriate resources to comply with legal requirements.[16] Noble's seasoned Board of Directors then oversaw management without becoming a rubber stamp.[17]

Noble's executive management was sufficiently competent, disciplined, ethical, confident, and well versed in the company's business to set the proper tone for the organization. James Day ("Day"), Noble's long-time CEO and Chairman, was viewed as steadfast, forthright and willing to do the right thing, honest, hardworking, disciplined, ethical, a man of integrity, and intolerant of illegal acts committed by employees.[18] Robert Campbell ("Campbell"), Noble's General Counsel during the relevant period, was viewed as a competent, excellent lawyer who was focused on compliance, consulted by employees in need of legal advice, and willing to seek external legal expertise on issues such as the FCPA.[19] While the competence of Internal Audit is discussed in detail later in this report (at Section III.E.2), the head of Internal Audit during most of the relevant time period was Tom O'Rourke ("O'Rourke"), who was viewed as qualified, diligent, conscientious, ethical, and honest.[20]

Operations management with responsibility over West Africa were also key players in establishing Noble's tone at the top. Robert (Bill) Rose ("Rose"), Noble's Vice President for Eastern Hemisphere operations during much of the relevant time period (and formerly Noble's Division Manager for West Africa) was viewed as competent, honest, with high integrity, and an

[16] James Day Deposition at 241-43; Julie Robertson Deposition at 83, 96-100, 148-49, 176-77, 234-37; Robert Campbell Deposition at 226; Thomas O'Rourke Deposition at 47-48; Robert Kayl Deposition at 24-25, 29, 106-12; Timothy Thomasson Deposition at 185-92. Kayl worked at Noble from 1998-2005, initially as Tax Manager, and later advancing to Tax Director. Robert Kayl Deposition at 9, 19-20.

[17] James Day Deposition at 21-30, 39-40, 119-20.

[18] Julie Robertson Deposition at 177-78; Robert Kayl Deposition at 165-66. Day began working at Noble in 1977, ultimately became CEO and Chairman of the Board, and retired from Noble in 2007. James Day Deposition at 15-20.

[19] James Day Deposition at 63-66, 183-86; Michael Lowther Deposition at 86; Thomas Mitchell Deposition at 74; Mark A. Jackson Deposition at 329-30. Campbell joined Noble as its President in 1999 following many years of practicing corporate securities law as a senior partner at Thompson & Knight. He became Noble's in-house General Counsel in June of 2003. Robert Campbell Deposition at 35, 40; Julie Robertson Deposition at 158-60.

[20] Julie Robertson Deposition at 149-52, 215, 218; Timothy Thomasson Deposition at 49; Michael Lowther Deposition at 47-48; Thomas Mitchell Deposition at 129, 257-58; Thomas O'Rourke Deposition at 279, 411-12; Mark A. Jackson Deposition at 334. O'Rourke, who was trained as an auditor at Arthur Andersen early in his career, began working at a predecessor company to Noble in 1989; he served as Director or Vice President of Internal Audit from May 2003 to September 2005 and again from December 2006 to January 2008, when he left Noble. From September 2005 to December 2006, O'Rourke was Noble's Controller. Thomas O'Rourke Deposition at 21-22, 24-25, 411; Exhibit 204.

expert in operating in Nigeria.[21] James (Jim) Ruehlen ("Ruehlen"), Noble's Division Manager for West Africa during the relevant time period following a stint in Internal Audit, was viewed as honest, ethical, with high integrity, and intent on adhering to Noble's policies and procedures while expecting his subordinates to do the same.[22]

Noble's CFOs, including Jackson, similarly adhered to high ethical standards. Jackson was held in high esteem by his colleagues both at Noble and at other companies where he worked prior to Noble. Jackson was viewed as competent, ethical, conservative, truthful, and possessing integrity. While he was demanding of others, he was also a hard worker and demanding of himself. He was viewed as committed to strong internal controls and compliance with laws and regulations. Jackson was promoted a number of times during the relevant time period, including to COO and CEO, demonstrating the confidence the Board of Directors had in his character and ability to lead Noble. While Jackson was seen by some of his colleagues as having a temper and volatile personality, in my experience that is often reflective of a driven executive with high expectations of others—and little patience for those with a lack of focus. Not all executives need to be liked on a personal level. Regardless of his temper, Jackson was seen as honest, ethical, and approachable without threat of retaliation.[23]

The two CFOs after Jackson were Bruce Busmire ("Busmire") and Thomas Mitchell ("Mitchell"). While Busmire only stayed at Noble for a matter of months in 2005 to 2006, his short tenure indicates a strength of Noble's system of internal controls—concerns about his competence, including failing to get Noble's financial filings into shape, were identified and promptly addressed by his removal.[24] By contrast, Mitchell, his ultimate replacement who was

[21] Robert Campbell Deposition at 104, 217-18; Robert Rose Deposition at 73-74; James Day Deposition at 96, 178, 180, 203; Mark A. Jackson Deposition at 336. Rose worked for Noble from 1991-2005, serving as Division Manager for West Africa from 1995-1997, advancing to Vice President of the Eastern Hemisphere in 1998 or early 1999, and serving in that role until his departure in May 2005. Robert Rose Deposition at 10-18.

[22] Julie Robertson Deposition at 175-76, 212-13, 243-44; Robert Kayl Deposition at 166-67; Thomas Mitchell Deposition at 146-47; James Day Deposition at 190; Thomas O'Rourke Deposition at 49-51, 202-04; Johannes Hilhorst Deposition at 29-30, 131-32, 171-72; David Arthur Deposition at 16, 26, 36-37, 39-40, 93-95, 155-57; Exhibit 374; James Ruehlen Deposition at 36; Mark A. Jackson Deposition at 76-77, 320-23; Alan Middleton Deposition at 113-16, 120, 143; Exhibit 221. Ruehlen joined Noble as a Rig Manager in 1993, and worked as Noble's Division Manager in Nigeria from September 2004 to July 2011, when he became Noble's Division Manager in Mexico. James Ruehlen Deposition at 20, 28; James Ruehlen Testimony at 15-16.

[23] James Day Deposition at 30-34, 37, 40; Julie Robertson Deposition at 21-22, 26, 27-28, 32, 34-35, 148-49; Thomas Mitchell Deposition at 17-19, 22-24; Timothy Thomasson Deposition at 25-28, 95; Robert Kayl Deposition at 25-27, 106-12; Michael Lowther Deposition at 19-20, 165; Thomas O'Rourke Deposition at 215-17, 351; James Ruehlen Deposition at 235.

[24] Julie Robertson Deposition at 152-54; Michael Lowther Deposition at 28.

Noble's CFO from November 2006 through mid-2011, was viewed a qualified, competent financial expert who was not hesitant to express his views and not a pushover.[25]

A strong tone at the top, of course, means little without making sure the rest of the organization follows suit. At Noble, the corporate tone at the top was disseminated to employees who were rewarded for their honesty and high ethics, but penalized for unethical or dishonest conduct.[26] Noble had an extensive Code of Business Conduct and Ethics ("Code of Conduct") that covered many areas including compliance with laws, rules, and regulations; honest and ethical conduct; conflicts of interest; insider trading; competition and fair dealing; discrimination and harassment; health and safety; record keeping; procedures for expressing concerns about accounting and auditing matters; confidentiality; protection and proper use of company assets; payments to foreign government personnel and others (i.e., FCPA); reporting any illegal or unethical behavior; and full and fair disclosure including periodic reports and government filings.[27] The Code of Conduct required that all employees, not just top management, had the responsibility to ensure that Noble complied with the FCPA, as well as other laws and regulations. Employees had an obligation to inform their supervisors and, if necessary, senior management, if they became aware of improprieties. Employees could also file reports anonymously using a toll free phone number. These actions resulted in Noble having an open and transparent environment—critical to maintaining a positive, strong culture.[28]

2. Noble's Executive Compensation structure focused attention on the right areas, such as safety, instead of the Company's financial results

The Board of Directors at Noble also exerted positive influence on Noble's control environment by implementing a disciplined executive compensation system under the direction of the Board's Compensation Committee. Appropriate oversight of compensation, particularly bonus plans, is a strong internal control, by ensuring that compensation structure does not lead an executive to make self-interested decisions. For Noble's senior executives, such as Jackson, the

[25] Julie Robertson Deposition at 155-56; Michael Lowther Deposition at 42-43.
[26] James Day Deposition at 29-30, 119-20. As discussed later in this report, for example, Noble senior management reprimanded Bill Rose, the VP of the Eastern Hemisphere, for the numerous lapses at the West Africa Division found by Internal Audit in 2004.
[27] Noble Corporation, Form 10-K for the Fiscal Year Ended December 31, 2003 ("2003 10-K"), Exhibit 14.1.
[28] Julie Robertson Deposition at 85-86; James Day Deposition at 122-24; Michael Lowther Deposition at 9, 17, 36, 62-63.

Compensation Committee engaged an independent compensation consultant, in collaboration with the Senior Vice President-Administration (Julie Robertson) and the Legal Department.[29]

Noble's senior executives were not incentivized by the compensation structure to improperly favor financial performance. The bonus paid to senior executives such as Jackson was half discretionary, and half based on various factors including safety, return on capital, or earnings per share (with both of the latter being measured company-wide, not at a Division level). Safety was the most important, heaviest–weighted factor for senior executive bonuses for the period 2004 through 2006, underscoring Noble's focus on factors other than Divisional profit.[30]

3. Noble used management committees to ensure financial reporting accuracy and focus attention on key issues

Steps taken to enhance the accuracy and credibility of financial reporting are directly relevant to an assessment of internal controls over financial reporting, as are organizational structures established to focus management's attention on the right issues. Noble, for example, established a Disclosure Committee that operated throughout the relevant time period, which brought together key management (including the General Counsel, CFO, Director of Internal Audit, Vice President-Administration, and Controller, among others) to discuss issues related to financial reporting prior to Noble filing its 10-Ks and 10-Qs. PWC and the Audit Committee also weighed in on the public filings, providing additional levels of oversight in the financial reporting area.[31] Senior executives at Noble properly considered the Disclosure Committee to be a key element of the Company's internal controls over financial reporting.[32] Jackson attended many of the Disclosure Committee meetings during the relevant time period, which provided him with considerable insight into the strength of the Company's processes and internal controls.[33]

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[29] Julie Robertson Deposition at 37, 40-43.
[30] Julie Robertson Deposition at 44-53; James Day Deposition at 92; Noble Corporation Form DEF 14A, Mar. 12, 2004, at 11-13; Exhibit 31 at 12-14; Noble Corporation Form DEF 14A, Mar. 30, 2006, at 11-13.
[31] Julie Robertson Deposition at 64-67; Exhibit 32.
[32] Robert Campbell Deposition at 50-52; Timothy Thomasson Deposition at 41, 45; Bruce Busmire Deposition at 168-71; Thomas Mitchell Deposition at 41-52.
[33] Exhibit 32; Exhibit 312; UR NOBLE SEC LIT 004049-50; NOBLE SEC LIT 000492-93; UR NOBLE SEC LIT 004266-68; UR NOBLE SEC LIT 005209-11; UR NOBLE SEC LIT 003907-09; NOBLE SEC LIT 000932-34; UR NOBLE SEC LIT 005123-25; NOBLE SEC LIT 002159-64; NOBLE SEC LIT 002069-70.

The Disclosure Committee also played a key role in monitoring compliance with and assessment of internal controls. Internal controls were discussed at Disclosure Committee meetings, and O'Rourke (head of Internal Audit) periodically reported on the status of Noble's assessment of internal controls over financial reporting that appeared in Noble's public filings starting in 2004.[34] The Disclosure Committee also was the nexus for Noble's internal representation letter process. Starting in 2002, Noble began requiring its Division Managers and Division Controllers to sign representation letters each quarter, attesting to the accuracy of their Division's financial statements, compliance with laws and regulations, financial controls, indemnities, taxes, and the FCPA.[35] The Disclosure Committee considered the Division representation letters and would not approve Noble's public filings if they had not been completed or they contained unresolved issues.[36]

Noble also held other formal meetings to enable broad, healthy discussion among senior management. For example, Noble held lengthy meetings prior to each Board of Directors meeting ("pre-Board meetings") to discuss the topics to be covered in each Board Committee meeting. Senior executives and any individual presenting to the Board or a Committee were required to attend and give reports. This was a disciplined approach to stress testing issues, as well as the preparedness of the participants and their materials. These meetings were strong governance controls because they instilled discipline in senior management and a sense of seriousness regarding reporting to the Board, and ensured that key risks were identified, discussed, and mitigated. The meetings also ensured that any outstanding questions from prior Board meetings were discussed and addressed.[37]

4. Noble's Audit Committee provided proactive and engaged oversight

During the relevant time period, Noble had an effective, proactive, engaged Audit Committee focused on the key challenges and risks of the Company, and how to mitigate those risks. Noble's Audit Committee exercised oversight over Noble's internal controls, financial reporting, Internal Audit, enterprise risk management, complaints process, Disclosure Committee decisions, and other areas of the Company. Audit Committee meetings were held quarterly, in addition to special meetings held prior to public disclosure of financial results, and were attended

[34] Exhibit 32; Exhibit 95.
[35] Timothy Thomasson Deposition at 37-38; Exhibit 59.
[36] Michael Lowther Deposition at 67-72.
[37] Julie Robertson Deposition at 58-62, 208; James Day Deposition at 120-22.

by numerous members of management, the PWC audit engagement partner, the Head of Internal Audit, the General Counsel, and outside legal counsel. The Audit Committee discussed items such as financial filings; Internal Audit plans and results of Internal Audits, including regarding the West Africa Division and the FCPA; PWC's audits of Noble's financial statements and internal controls; internal controls issues and compliance with Sarbanes-Oxley; legal issues and investigations; and risk assessments.[38]

The Audit Committee also received a strong, free flow of information. PWC and Internal Audit both had private sessions with the Audit Committee, providing a clear avenue for communication of any concerns to the Audit Committee.[39] PWC believed that it could raise any issues with the Audit Committee. PWC also assessed Noble's Audit Committee as part of their audit procedures, and came to the same conclusion I have separately reached—Noble's Audit Committee was functioning effectively during the relevant time period. PWC believed that the Audit Committee members were qualified to serve on the Committee, paid attention to the reports provided to them, and exercised adequate oversight over Internal Audit.[40]

Jackson attended Audit Committee meetings while he was CFO and was well aware of its processes and activities. He also attended meetings held with the Chairperson of the Audit Committee, PWC, and others prior to each full Committee meeting (as did later CFOs), which further facilitated the information flow between management and the Committee. As a result, Jackson could reasonably take comfort in the level of oversight provided by the Audit Committee.[41]

B. Noble Had Effective Risk Assessment

1. Enterprise Risk Management assessments focused attention on high risk areas of the Company

Risk assessment is an element of a well-functioning internal control system, to ensure that proper attention and resources are focused on proper areas. Enterprise risk management assessments help to align risk appetite and strategy, enhance risk response decisions, reduce operational surprises and losses, and identify and manage cross-enterprise risks. The board of

[38] NOBLE SEC LIT 008347-551 (Audit Committee materials); Mark A. Jackson Deposition at 145; Thomas Mitchell Deposition at 74.
[39] *Id.*
[40] Richard Shappard Deposition at 73-81.
[41] Thomas Mitchell Deposition at 73-74; Richard Shappard Deposition at 78.

directors and senior management play a significant role in the process.[42] Contrary to the assertion of Harfenist,[43] Noble *did* conduct several enterprise-wide risk assessments, as well as performing various risk assessments during normal business operations.

In 2002 and 2003, Noble and PWC jointly conducted an initial enterprise risk management assessment, and the results were presented to Noble's Audit Committee on April 23, 2003. The exercise was then updated in 2006, and the results were again reported to the Audit Committee.[44] Enterprise-wide risk assessments such as the ones conducted by Noble aid management in mitigating known risks and spotting potential future risks.

Even beyond formal risk assessments, though, Noble management implemented more day-to-day risk assessment activities. As discussed more fully elsewhere in this report, Noble commissioned reviews of its FCPA policies and procedures by an outside law firm, held weekly operations meetings (the Monday morning meetings, described further below) so management could receive reports on risks faced in each Division, and discussed risks with the Audit Committee. Internal Audit also assessed the relative risks facing each Division, including regarding corruption.[45] From 2004-onward, as a result of the risks posed in Nigeria, Internal Audit began auditing the West Africa Division every year.[46]

While Harfenist faults Jackson for supposedly misunderstanding the nature of the risks posed in Nigeria, the fact that the CFO thought about the specific nature of corruption risks in Nigeria versus other Divisions is a positive sign of effective internal controls, not a negative sign.[47]

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[42] Enterprise Risk Management — Integrated Framework, Executive Summary, Committee of Sponsoring Organizations of the Treadway Commission (September 2004) at 1-2, 6-7.
[43] Jeffrey Harfenist Expert Report at 8.
[44] NOBLE SEC LIT 008351-53; NOBLE SEC LIT 008464-69; PWC-NOB-SEC 000851-55.
[45] SEC-CWT-00013260-77; Exhibit 440; SEC-CWT-00011266-322.
[46] Exhibit 78; Exhibit 305; UR NOBLE SEC LIT 003991-95; UR NOBLE SEC LIT 003885-90; NOBLE SEC LIT 002055-58; NOBLE SEC LIT 002279-83.
[47] Jeffrey Harfenist Expert Report at 13-14. Harfenist mischaracterizes Jackson's testimony regarding the corruption risks in Nigeria by suggesting that Jackson believed corruption risk was *only* present if Noble was obtaining contracts directly from a foreign government. Instead, Jackson's testimony was that he believed the corruption risk was *greatest* when Noble contracted directly with a foreign government (as opposed to the reality in Nigeria, where Noble contracted with a multi-national corporation working with or for the Nigerian government). Jackson was not asked about any other types of corruption risk that may have been present in Nigeria, and his testimony did not exclude such risks. To the contrary, he acknowledged that Nigeria was generally known to have high levels of corruption. Mark A. Jackson Deposition at 179-81.

2. Noble engaged and consulted with competent legal counsel in high risk countries such as Nigeria

Noble appropriately reacted to the increased risk posed by operating in high-risk countries such as Nigeria. In addition to the yearly Internal Audits mentioned above, beginning in the early 1990s, Noble engaged competent legal counsel in Nigeria to provide guidance on local laws and regulations, conduct investigations, and provide general legal advice. Noble's legal counsel in Nigeria was viewed as very competent, and indeed came recommended by Noble's clients in Nigeria such as Shell. Noble employees followed the legal counsel's advice. Operating in high-risk countries requires strong legal advice to mitigate operating, legal, and financial risks, and Noble's actions in this regard are indicative of strong internal controls.[48]

C. Noble Had Effective Control Activities

1. The CFOs' approvals of facilitating payments were consistent with their reliance on processes and internal controls

Section 7.6.5 of Noble's Administrative Policy Manual ("APM") required employees to obtain prior written approval from the CFO before making a facilitating payment to a foreign government official.[49] Noble implemented this policy as a result of a 2002 recommendation from Thompson & Knight, Noble's external law firm on FCPA issues.[50] This was an additional layer of required approvals; management approvals of disbursements typically are dictated by amount, with successively higher levels of approval required for larger payments. By requiring approval from the CFO—one of the highest executives in the company[51]—for any facilitating payment, regardless of amount, Noble implemented a strong control to address a high risk area.

My review of the approval process as used in practice at Noble leads me to conclude that, contrary to the assertion of Harfenist,[52] from senior management's perspective, including Jackson, the approval process was working effectively as an internal control. Jackson received numerous requests for approval of a facilitating payment pursuant to the policy, as did the CFOs

[48] Robert Campbell Deposition at 44-45, 48-49, 207; Charles Dowden Deposition at 25, 28-30, 81, 87, 121-24, 212; Robert Rose Deposition at 168; Thomas O'Rourke Deposition at 171-72; James Day Deposition at 187-88; Julie Robertson Deposition at 126-29, 200-01; Exhibit 39; Mark A. Jackson Deposition at 349-50.
[49] Exhibit 38; Alan Middleton Deposition at 27-32, 167-69; Mark A. Jackson Deposition at 65. The APM also required any facilitating payment to be accurately recorded in Noble's books and records. Exhibit 38.
[50] Exhibit 63.
[51] Noble's CFO, whether Jackson or otherwise, had responsibility over areas including accounting, tax, treasury, and budgeting. Thomas Mitchell Deposition at 24-25; Bruce Busmire Deposition at 30.
[52] Jeffrey Harfenist Expert Report at 27-29.

who followed him in that position.[53] The requests were seen or initiated by numerous other employees beyond the CFO, including the head of Internal Audit, the Controller, the General Counsel, the head of operations over West Africa (the VP of the Eastern Hemisphere), the Division Manager in West Africa, and the Division Controller in West Africa. In each case, approving the proposed facilitating payment was recommended to Jackson (or the later CFOs) by the other individuals involved in the process.[54] The process appears to have been transparent, without attempt to hide or cover up the facilitating payments from other members of management, which is consistent with the apparent belief of the involved parties that the payments were proper.

An example illustrates the strength of the process from Jackson's perspective. In October 2004, Ruehlen, the Division Manager in West Africa, sent a request for approval of a facilitating payment related to obtaining a TIP extension for the Noble Ed Noble rig to his immediate supervisor, Rose, the VP of the Eastern Hemisphere, as well as Timothy Thomasson, the Controller of Noble. Ruehlen indicated that the amount of the payment was "similar to previous charges for this same type of service," which would indicate to a reviewer that the payments were similar to past payments that had previously been reviewed. Ruehlen's supervisor, Rose, then forwarded the request to Jackson, stating "I recommend your approval of this facilitating payment."[55] Thomasson separately recommended approval of the same facilitating payment to Jackson in November, and included additional information regarding the purpose of the payment to permit Jackson to conclude that the payment was a lawful facilitating payment made to expedite something Noble was entitled to: "The Noble Ed Noble is eligible, and the law allows for, the extension of this temporary import. The payment is necessary to have the temporary import processed in a reasonable timeframe."[56] With the internal control functioning effectively, Jackson then approved the payment.[57] Thomasson and Rose have since confirmed that they would not have written their recommendations to Jackson if they didn't believe what they

[53] Mark A. Jackson Deposition at 65, 244-49; Exhibits 464-465; Bruce Busmire Deposition at 86-161; Exhibits 191-202; Thomas Mitchell Deposition at 106-30; Exhibits 103-111; Timothy Thomasson Deposition at 175-85; Exhibits 81-83; Robert Rose Deposition at 243-62; Exhibit 289; Exhibits 409-413; James Ruehlen Deposition at 209-11; Exhibit 349.
[54] *Id.*
[55] Exhibit 409 (also marked as Exhibit 464).
[56] Exhibit 83.
[57] *Id.*

wrote,[58] or if they believed the payment was illegal.[59] To my knowledge, no one has testified in this matter that they recommended a facilitating payment to Jackson despite believing the payment was illegal or improper.

From Jackson's perspective, then, during the relevant time period, he could see that facilitating payments were being raised to him for approval in accordance with the policy; that the payments were being recommended to him for approval; that no concerns were raised to him about the propriety of the payments; and that numerous other members of management were involved in or otherwise aware of the payments.[60] This all signified that the internal control was working as designed.

The process followed by the two CFOs who succeeded Jackson also appears to have adhered to the requirements of the control. Busmire, who was the CFO from September 2005 to March 2006, received several requests for approval of facilitating payments from Ruehlen. O'Rourke, at that time the Controller of Noble, was copied on all of those requests.[61] Busmire spoke about the facilitating payment requests with O'Rourke as well as with Campbell, Noble's General Counsel. Busmire received assurances from O'Rourke that the payments were being properly accounted for, and from Campbell that the payments were legal and had been previously reviewed by legal counsel.[62] Busmire could rely on the recommendations he received from the other individuals involved in the process, just as Jackson could before him.

Following Busmire's departure from Noble, my understanding is that Jackson became the Acting CFO, with the assistance of Mike Lowther, a former high-ranking Arthur Andersen audit partner.[63] Jackson delegated, formally or informally, some of his Acting CFO duties to Lowther, with the awareness of Noble's CEO and Audit Committee.[64] During that time period, at least one request to make a facilitating payment was approved by Lowther.[65] Jackson was, at this time, also functioning as Noble's COO, in addition to acting CFO, and it was not improper for him to bring on qualified assistance to aid him in carrying out his duties.

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[58] Timothy Thomasson Deposition at 184.
[59] Robert Rose Deposition at 248-49.
[60] Mark A. Jackson Deposition at 278-81.
[61] Bruce Busmire Deposition at 87, 161; Exhibits 191-202.
[62] Bruce Busmire Deposition at 85, 95, 97-106, 109-11.
[63] Mike Lowther and I were both partners at Arthur Andersen in Houston, and personal friends for many years.
[64] Mark A. Jackson Deposition at 351-52.
[65] Michael Lowther Deposition at 93-100; Exhibit 121.

The next CFO, Mitchell, also received several requests for approval of facilitating payments. Mitchell, on learning that the CFO had responsibility for authorizing facilitating payments, appropriately acted on concerns about whether the CFO should be the only individual approving the payments by raising the issue to others within Noble. Mitchell talked to Jackson, then Noble's CEO, and asked (to the best of Mitchell's recollection) about how the process should be or was being handled. Jackson explained, consistent with documentary evidence I have reviewed, that O'Rourke had been involved in the process of reviewing the facilitating payments.[66] Mitchell then discussed the approval process with both O'Rourke and Campbell, just as Busmire had done, and requested O'Rourke's concurrence with each payment approval, copying Campbell on some such approvals.[67] As with Jackson and Busmire, the process of requesting and approving facilitating payments appears to have been transparent and in compliance with the requirements of the control, from the perspective of the CFO. Mitchell's initiation of discussions about the wisdom of the approval structure in place when he arrived (and continuing to do so for several months[68]) was not an indictment of the internal control system in effect at that point. To the contrary, it showed the strength of the company's internal controls, consistent with the expectation that management continually evaluate the adequacy of internal controls by considering new and different views.

Finally, in addition to specific requests to approve facilitating payments related to Noble's rigs and their TIPs, I am aware that there were numerous, recurring facilitating payments that the West Africa Division paid on a daily basis (such as payments for security, or related to expediting ex pat quotas). To satisfy the APM's requirement of CFO pre-approval, it appears that numerous members of management—including the head of Internal Audit, Jackson, Ruehlen, and the Division Controller in Nigeria—developed a process by which the Division

[66] Thomas Mitchell Deposition at 98-101.
[67] Thomas Mitchell Deposition at 105-30, 172, 178; Thomas O'Rourke Deposition at 252-53; Exhibits 102-112. I understand that it has been suggested that O'Rourke played an improper role by being involved in the process of obtaining facilitating payment approvals. However, O'Rourke headed Internal Audit during most of the relevant time period, and was aware of past practices and past reviews of the process. His involvement appears to have included process-related issues—that the payments were consistent with prior payments, and in accordance with Noble's policies. O'Rourke does not appear to have been giving actual approvals to disburse funds. His actions appear to have been within the acceptable procedures performed by Internal Audit groups and did not appear to impair Internal Audit's independence within the company. Additionally, O'Rourke was Noble's Controller during his involvement with some of the facilitating payment approvals, and it is surely appropriate for the highest accounting officer in a company to be involved in a process that results in high risk disbursements which, by policy, would be accounted for in a special way.
[68] Thomas Mitchell Deposition at 131-32; Exhibit 114.

Controller would seek pre-approval from the CFO to make a certain amount of these frequent facilitating payments in each quarter, and then would report in the following quarter on all facilitating payments that had been made. Different types of facilitating payments, such as more infrequent and unpredictable payments related to expediting TIPs, would still be subject to separate pre-approval. This approach was a prudent solution to an operational problem (the operational impossibility of obtaining specific, item-by-item pre-approval for each facilitating payment).[69] Consistent with the policy, CFO pre-approval was still obtained for all facilitating payments; the process simply focused the CFO's attention on the payments that might warrant separate review. That approach was not a weakness, but rather a strength of the approval process.

2. Budgeting was essential to proper planning and discipline

Noble's budgeting procedure was also an element of its controls. During the relevant period, Noble prepared very detailed divisional budgets that were submitted to the Controller for input and review, and ultimately presented to the CFO and CEO.[70] Budgeting exercises focus management's attention on expense items all over the company. Budgets also provide deterrence against inappropriate behavior, by making it more likely that non-budgeted expenses will be detected.

D. Noble Had Effective Information and Communication

1. Noble's policy manuals, including the APM and separate Accounting Policy Manuals, provided guidelines for all employees to follow

Comprehensive written policy and procedure manuals are a necessary guide for employees to use as a reference tool to fully understand the expectations regarding their behavior. Noble had several such policy and procedure manuals, including its APM (for corporate policies and procedures, including regarding the FCPA), and various Accounting Manuals. These manuals were a foundational element of Noble's internal control system.

Noble's APM, for example, was in place at least since the 1980s, and in addition to policies regarding the FCPA, contained sections on topics such as personnel issues, expatriate issues, rig signage, etc. The APM was available to all Noble employees on Noble's Intranet, and

[69] Thomas O'Rourke Deposition at 86-88; Alan Middleton Deposition at 29-32; James Ruehlen Deposition at 68, 181; Exhibits 103-111; Exhibits 191-202; Exhibit 464.
[70] Julie Robertson Deposition at 53-54.

management believed that employees did use the manual. Members of management were required to periodically certify to their awareness of Noble's policies and procedures.[71] Employees were also required to certify to their compliance with Noble's conflict of interest policies (included in the APM).[72]

As will be discussed in more detail below (at Section III.E.1), the APM was periodically reviewed, evaluated, and adjusted, including regarding Noble's FCPA policies and procedures. As previously discussed, periodic reevaluations of controls and policies are a necessary element of any effective internal control system. Jackson, in particular, was actively involved in the FCPA policy updates, demonstrating his commitment to improving controls.

Noble's Accounting Policy Manual similarly provided guidance to the accounting staff on the specific responsibilities and expectations for employees, as well as accounting instructions. The Accounting Policy Manual was developed in 1998, and included instruction on specific accounting areas such as financial reporting, fixed assets, capitalization of costs, and accruals.[73] While the Accounting Policy Manual applied to all accounting staff worldwide, there also were specific accounting manuals for each Division. The West Africa Accounting Manual, for example, guided the actions of the Division Controller in West Africa during the relevant time period.[74]

2. Monday morning operations meetings enabled communication across Divisions and functions

Each Monday morning, Noble held meetings to gather senior operations personnel, Division operations management, accounting officers, and other management, to discuss operations around the world. Each Division reported on the issues specific to their region, including risks and concerns.[75] One of the key aspects of corporate governance is communication of business issues between executive management and management in operating locations, and Noble's Monday morning meetings were a classic example of encouraging open communications. These meetings provided a forum to share information across areas and communicate senior management's expectations (including tone-at-the-top issues). Management

[71] Julie Robertson Deposition at 69-70, 80-81, 108.
[72] Exhibit 37.
[73] Timothy Thomasson Deposition at 203-19; Exhibit 86; Thomas Mitchell Deposition at 32.
[74] Alan Middleton Deposition at 46-48; Exhibit 421.
[75] Julie Robertson Deposition at 62-64, 225-26; James Day Deposition at 128-30.

needs to understand what is happening on the ground in order to adequately address risks, and that is what Noble management did.

3. Noble implemented an anonymous complaint process for employees, providing an avenue to report potential inappropriate behavior

Noble provided a company hotline available to employees, shareholders, and others to anonymously report anything that could be problematic or indicate potential misconduct. The reports were received by Internal Audit for further research and analysis, and Internal Audit reported every hotline report to the Audit Committee.[76] Hotlines such as the one Noble implemented are indicative of a strong, well-functioning internal control environment, and they provide executive management such as Jackson with additional confidence that risks facing the company, including potential illegal acts, will be identified and addressed.

4. Noble provided training in key areas such as the FCPA

Training is a crucial element of an effective system of internal control, to enable employees to know how to do their jobs in a legal, compliant manner that also furthers the company's business objectives. Relevant to this case, Noble provided several layers of training to employees regarding its FCPA policies and procedures. As already noted, Noble's APM, containing its FCPA policies and procedures, was available to all employees. The FCPA policies and procedures were also included in the orientation for all new employees.[77]

Noble also provided several formal training programs regarding the FCPA to various sets of employees. In 2002, for example, Noble's outside law firm for FCPA issues, Thompson & Knight, gave a comprehensive presentation on the FCPA to management, including Day, Campbell, Jackson, Rose, and Ruehlen. The materials for that FCPA presentation were provided to Noble, and Noble disseminated them throughout the company over the next several years, including to the West Africa Division Controller.[78] FCPA training was also presented at various management or controller meetings after 2002, including in 2006 and 2007.[79] Rose, the VP of the Eastern Hemisphere with significant international experience, specifically traveled to Nigeria

[76] Thomas O'Rourke Deposition at 224-25.
[77] Julie Robertson Deposition at 109-10; Exhibit 37.
[78] Julie Robertson Deposition at 87-88; Robert Rose Deposition at 192-93; Mark A. Jackson Deposition at 125-30; Timothy Thomasson Deposition at 77; Exhibit 24; Exhibits 34-35; Exhibit 152; Exhibit 449.
[79] Exhibit 100; Exhibit 120.

in 2004 to give additional FCPA training to Noble's expatriate employees there to ensure that the problems identified in the FCPA audit earlier that year were addressed.[80]

E. Noble Had Effective Monitoring

1. Noble prudently conducted periodic reviews of its FCPA policies

Internal controls, especially over high risk areas, require periodic review, including by outside parties. Noble, accordingly, prudently conducted several reviews of its FCPA compliance policies and procedures, engaging its outside FCPA counsel, Thompson & Knight, and obtained candid, expert reviews of the effectiveness of those policies.

Thompson & Knight conducted its first review of Noble's FCPA policies in 2002, at the request of Jackson and the then-head of Internal Audit, Tony Edmonds.[81] Thompson & Knight provided the results of its review to Jackson and Edmonds in October 2002, concluding that "Noble has an excellent program of policies and procedures in place." Thompson & Knight then provided a number of "recommendations in light of Noble's commitment to use today's 'best practices,'" including changes to the FCPA policy regarding management oversight, distribution of policies and training, internal accounting controls and procedures, reporting, deterrence, acquisitions, and agency agreements. Noble implemented all of Thompson & Knight's recommendations, incorporating expert advice to increase the effectiveness of what were already, according to Thompson & Knight, an "excellent" set of policies regarding FCPA compliance.[82]

Two years later, Thompson & Knight was again engaged to review Noble's FCPA policies, and to draft various materials including a stand-alone section of the APM regarding the FCPA, and materials for attestation and new-hire packages.[83] After Thompson & Knight provided draft materials to Noble, Jackson, the CFO at the time, proactively worked to improve the policies even further, by suggesting an expanded prohibition on Noble employees' dealings with employees of foreign government-owned enterprises.[84] Later in 2004, Jackson again assisted in amending Noble's FCPA policy to expand the reporting requirement in the event of a potential FCPA violation to include reporting to the head of Internal Audit, who would then

[80] Exhibit 53; Robert Rose Deposition at 73-74; Eelke Strikwerda Deposition at 11, 17, 28; Charles Dowden Deposition at 71, 76-77; David Arthur Deposition at 39-40.
[81] Robert Campbell Deposition at 77-78; Mark A. Jackson Deposition at 125-30, 183, 325.
[82] Robert Campbell Deposition at 80; Mark A. Jackson Deposition at 207-09; Exhibit 63.
[83] Exhibit 37.
[84] Robert Campbell Deposition at 107-10; Exhibit 45 (also marked as Exhibit 153).

report to the General Counsel, Chairperson of the Audit Committee, CFO, and CEO.[85] All of these revisions to the FCPA policy indicated a commitment to continuously enhancing the system of internal control.

2. Noble's Internal Audit department was a strong, competent monitor of Noble's operations and internal controls

Any sizeable company such as Noble requires a strong, effective internal audit department to perform real time reviews and testing of operations, and to act as a deterrent to bad behavior. Noble had a robust, proactive Internal Audit group with strong leadership that effectively planned and executed its audit plans.[86] Importantly, Noble's Internal Audit team had the respect and confidence of management and the external auditors, PWC, that enabled Internal Audit to function confidently and without concern that its conclusions and recommendations would be ignored. Based on the testimony I have reviewed, Noble management, was supportive of Internal Audit; took its recommendations seriously; believed the Internal Audit team was effective, competent, objective, and independent; and allowed the team to issue audit reports without influence or threats. To the best of management's knowledge, no one concealed or withheld information from Internal Audit.[87] PWC, too, had a high assessment of the Internal Audit team's competence and objectivity, placed a significant level of reliance on their work, and considered the team to be an effective component of Noble's control environment.[88] O'Rourke,

[85] Exhibit 38; Exhibit 260; Julie Robertson Deposition at 118-20.

[86] Noble's Internal Audit function was initially provided by PWC (a separate group than the one that performed the external audits), under the direction of a head of Internal Audit (Edmonds) who was a Noble employee. Reacting to Sarbanes-Oxley, which precluded an external auditor serving as internal auditor for the same company, Noble switched Internal Audit providers to Mann Frankfort Stein and Lipp, Inc., later named UHY ("Mann Frankfort/UHY"), with O'Rourke as the head of Internal Audit as previously described, and at least one other in-house Internal Auditor. Both PWC and Mann Frankfort/UHY were extremely competent auditing firms that included professionals that specialized in internal audit and risk and compliance services. Thomas O'Rourke Deposition at 27-30, 53. To my knowledge, no one has questioned the validity of Noble co-sourcing their Internal Audit function in this manner, and indeed it is done at many companies. PWC, for example, judged Mann Frankfort/UHY to be competent and independent. *See* Exhibit 298; Exhibits 321-323. O'Rourke became Noble's Controller for a period of time in 2006, and during that time, while O'Rourke had some level of responsibility to coordinate Mann Frankfort/UHY's work, Noble did not have an internal head of Internal Audit. Bruce Busmire Deposition at 59-60. O'Rourke was moved back to Internal Audit by Mitchell, the new CFO. Thomas Mitchell Deposition at 66-71; Thomas O'Rourke Deposition at 411. Following the inception of Noble's internal investigation in mid-2007, Ernst & Young was brought in to take over Internal Audit duties from Mann Frankfort/UHY. Thomas Mitchell Deposition at 66, 255-56.

[87] James Day Deposition at 47-56; Michael Lowther Deposition at 45-47, 58; Timothy Thomasson Deposition at 50-52; Robert Kayl Deposition at 34.

[88] Robert Welsh Deposition at 90-93; Richard Shappard Deposition at 55-56; Exhibit 298; Exhibits 321-323.

the head of Internal Audit during most of the relevant time period, was considered a competent Director of Internal Audit by PWC.[89]

a) Summary of Internal Audit's function

Internal Audit's[90] responsibility was, in short, to audit the operations and controls of Noble, including in the Divisions, identifying issues and making recommendations for management's consideration. Based on the materials available, and as also concluded by PWC, Internal Audit appears to have fulfilled its function effectively, serving an important role as both a part of, and a monitor for, Noble's internal controls.

Internal Audit developed an audit plan each year, with the involvement of management (including Jackson) and the Audit Committee, to determine the scope of work that Internal Audit would do at the Divisions and the corporate office. The Audit Committee gave final approval to Internal Audit's plans. Internal Audit performed approximately 6-10 audits each year, including not just Division audits but also audits of Sarbanes-Oxley compliance, audits of FCPA compliance, audits of specific rig-building projects, and other functional area audits.[91]

Audit work was performed by both Noble and Mann Frankfort/UHY auditors, and workpapers documented the work performed. Internal Audit performed testing and sampling, among other types of audit work performed, including observations of controls, analytics, and vouching payments. Internal Audit documented the results of each audit in an Audit Report, drafted by Internal Audit, with input along the way from the Division and corporate management relevant to each audit, and review by the Controller, CFO (including Jackson), and others. This process of review and discussion across the enterprise was an effective method to increase the accuracy of the reports and get management buy-in on recommendations and action plans. I am not aware of any testimony suggesting that senior management and Division management were anything but cooperative during the Internal Audit process. There is no evidence that Internal Audit felt pressured by management to omit important points from their final reports.[92]

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[89] *Id.*
[90] As previously discussed, Internal Audit's functions were performed both by Noble employees and by Noble's co-sourced internal audit firm, Mann Frankfort/UHY (during the relevant time period). References to "Internal Audit" are to the Internal Audit function, regardless of who did the specific work at issue, unless otherwise stated.
[91] Thomas O'Rourke Deposition at 29-34, 320-21, 324. *See also* Proposed Internal Audit Plans (UR NOBLE SEC LIT 003991-95; UR NOBLE SEC LIT 003885-90; NOBLE SEC LIT 002055-58; NOBLE SEC LIT 002279-83).
[92] Thomas O'Rourke Deposition at 34-47, 412-14; Mark A. Jackson Deposition at 173-74.

In addition to performing their audits, Noble's Internal Audit group jointly maintained, with PWC, a Summary of Aggregated Deficiencies Report. That report contained a cumulative list of all Sarbanes-Oxley compliance deficiencies, significant deficiencies, and material weakness identified by either Internal Audit or PWC, as well as recommendations and management action plans for timely resolution of any deficiencies. Maintaining a joint list in this manner permitted Noble's internal and external auditors to work from a common pool of knowledge about any challenges facing Noble or its control environment and their resolution. I did not identify anything noted on the Summary of Aggregated Deficiencies reports that was deemed a material weakness in internal controls, either individually or in the aggregate, during the relevant time period.[93]

b) Internal Audit's reporting to Audit Committee was comprehensive

Effective communication between an Internal Audit team and an Audit Committee is essential to an effective system of internal control. Importantly, Internal Audit at Noble had direct access to the Audit Committee both at the planning stage of audits, and to discuss any concerns or issues discovered. The Internal Audit team met regularly with the Audit Committee, not only to present their audit plans, but also to communicate their findings and action plans. Internal Audit reports and follow-ups on prior audit findings were distributed at each Audit Committee meeting, and were discussed at the meetings.[94] Internal Audit had a reporting line to the Audit Committee and, like PWC, held private sessions with the Audit Committee where Internal Audit could discuss issues outside the presence of management.[95] This type of direct communication enhanced both the independence of Internal Audit, and the oversight the Audit Committee could provide, and is a common best practice.

[93] UR NOBLE SEC LIT 005135-48; UR NOBLE SEC LIT 005076-83; NOBLE SEC LIT 002003-12; NOBLE SEC LIT 002264-78.
[94] Audit Committee materials, October 2003 – April 2007 (UR NOBLE SEC LIT 004837-900; UR NOBLE SEC LIT 003984-4045; NOBLE SEC LIT 000466-91; UR NOBLE SEC LIT 004220-64; UR NOBLE SEC LIT 005157-79; UR NOBLE SEC LIT 003880-905; NOBLE SEC LIT 000889-916; NOBLE SEC LIT 001216-33; UR NOBLE SEC LIT 005087-112; NOBLE SEC LIT 002100-41; NOBLE SEC LIT 001908-75; NOBLE SEC LIT 002021-53; NOBLE SEC LIT 002291-314; NOBLE SEC LIT 002187-227.
[95] Thomas O'Rourke Deposition at 45-47, 412-14.

3. When issues arose regarding the FCPA in 2004, Noble's management and Audit Committee reacted timely and effectively to evaluate and remedy the issues

As previously noted, no system of internal control is perfect. Nor is it required to be, to satisfy the requirements of COSO, Sarbanes-Oxley, or the FCPA. All that is required is a system of internal control that provides "*reasonable assurance*" regarding the purpose of the controls, whether the reliability of financial reporting, or compliance with laws and regulations. Because issues will inevitably arise, then, how management addresses and remediates those items becomes important, along with any enhancements that are then made to the overall system of internal controls. Noble, like even the best-controlled company, uncovered issues during the relevant time period (in this case, regarding the West Africa Division and the FCPA). Management reacted appropriately to those issues and remediated them effectively. My opinion is that the events in 2003 and 2004 in West Africa *strengthened* the system of internal control at Noble, and was not an indication of ineffective internal controls.

a) 2003-2004 FCPA Audit

At the end of 2003, as part of the Audit Committee-approved audit plan for 2003, Internal Audit conducted a worldwide audit of Noble's FCPA compliance, including all Divisions. The audit looked at issues such as the effectiveness of Noble's FCPA education and communication programs, the adequacy of controls in the FCPA areas, employees' awareness of the FCPA's requirements, the identification and recording of facilitating payments, and any needed improvement in policies and procedures. The audit concluded that the Brazil Division had made facilitating payments related to obtaining visas for vendors; that management in Nigeria did not fully understand what a "facilitating payment" was (and therefore had not recorded any facilitating payments that were made into Noble's designated facilitating payment account); and that Noble's policies and training in the area could be enhanced.[96] The resulting FCPA Audit Report written by Internal Audit was discussed with the Audit Committee in January 2004.[97]

Management reacted appropriately to Internal Audit's findings. As previously discussed (at Section III.E.1), Noble engaged Thompson & Knight, its outside FCPA experts, to revise its APM to contain a dedicated FCPA section, as well as to draft materials for distribution to new

[96] Exhibit 36.
[97] NOBLE SEC LIT 008364-67; UR NOBLE SEC LIT 003975.

employees, and for Noble's annual attestation package.[98] Management began discussing the FCPA on monthly calls in the Controllers group, as well as quarterly operations reviews.[99] To remedy the issue of Nigerian facilitating payments not having been recorded in Noble's dedicated facilitating payment account, Nigeria management committed to preparing a list of all 2003 payments that might have been facilitating payments, for review by the Controllers' department.[100] Ultimately, Noble management, including individuals in the Controllers' department, Internal Audit, and the General Counsel, worked with Thompson & Knight to review the items identified (about $667,000 worth) to determine whether they should properly be coded to the facilitating payment account, or should be moved out to a different account.[101] After that review, it appears that all Noble management involved—including Jackson, who had been briefed on the progress of the review by O'Rourke—believed that the only payments that remained in the facilitating payment account in Nigeria were appropriately characterized as facilitating payments.[102]

Jackson was involved in ensuring that Noble correctly remediated the issues identified in the FCPA Audit Report. His involvement was the type expected of a CFO—he was not conducting the day-to-day analysis of the issues and their resolution, instead, he was asking high-level questions to the people in charge of investigating and remediating the issues. He critically questioned information presented to him. Jackson was the one who identified the implausibility of Nigeria having made no facilitating payments in 2003, and who directed Internal Audit to take another look at the situation.[103] Jackson also, as previously noted, acted to expand the scope of the APM's prohibition on improper payments to foreign government officials, even when those officials were merely employees of state-owned enterprises.[104]

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[98] Exhibit 37; Robert Campbell Deposition at 95-97, 101; Julie Robertson Deposition at 110.
[99] Thomas O'Rourke Deposition at 78-79.
[100] Exhibit 36.
[101] Exhibits 68-69; Exhibits 155-158; Exhibit 206; Exhibit 215; Exhibit 228; Robert Campbell Deposition at 114-19, 124-30, 133; Thomas O'Rourke Deposition at 63-69, 234-39; Timothy Thomasson Deposition at 107-12, 115-19; Mark A. Jackson Deposition at 174-77.
[102] Thomas O'Rourke Deposition at 70, 75, 169, 240-45, 289-90, 316, 333-34, 399-401; Mark A. Jackson Deposition at 184-92, 198-200.
[103] Exhibit 65 (also marked as Exhibit 227); Timothy Thomasson Deposition at 97-99; Thomas O'Rourke Deposition at 231-33; Mark A. Jackson Deposition at 175-76.
[104] Robert Campbell Deposition at 107-10; Exhibit 153; Mark A. Jackson Deposition at 207-08.

b) 2004 West Africa Division Audit

Internal Audit also properly adapted its own work plans to reflect the increased risk in Nigeria. While FCPA compliance and an audit of facilitating payments was already a part of all Division audits from 2003-on,[105] Internal Audit conducted a full audit of Nigeria in the months following the FCPA Audit report.[106] When that audit also revealed potential FCPA issues, not only did management act appropriately to investigate and remediate those issues, Internal Audit began auditing Nigeria every year thereafter, an increase in frequency for Division audits.[107] This was a proper reaction to a new assessment of higher risk in a particular area, as was repeating a worldwide FCPA Audit in 2006-2007.[108]

Internal Audit conducted its audit of Nigeria in early 2004, including 7-10 days on the ground in Nigeria. In addition to O'Rourke and Mann Frankfort/UHY personnel, Ruehlen, who was rotating through several Noble functions to gain company-wide exposure, was involved in conducting the audit. The audit went beyond the FCPA, of course, and included internal controls assessments, treasury, payroll, revenues, accounts payable, operations, and compliance with Nigerian laws.[109] Internal Audit issued its report on April 12, 2004, and circulated it to various members of management, including Jackson and PWC. Its ultimate conclusion was that the West Africa Division did not have any material internal control weaknesses that would preclude Noble from meeting the internal control requirements of SOX. Nonetheless, Internal Audit identified a number of findings, and made recommendations about their resolution, coupled with action plans supplied by management.[110] The audit report was sent to the Audit Committee and discussed extensively, including at (a) the pre-Board meeting held by Jim Day; (b) the pre-Audit

[105] Exhibit 36.
[106] In 2003, the Audit Committee decided to postpone a planned audit of the West Africa Division in favor of an audit of the Middle East Division. Exhibit 36. This decision reflected the Committee's considered judgment as to where the Company's risks were greatest.
[107] None of the follow-up audits performed by Internal Audit in June 2004, 2005, or 2006, revealed any additional FCPA issues, and none of the follow-up audits identified any material weaknesses in internal controls. Exhibit 78; NOBLE SEC LIT 008376-79; Exhibit 231; Exhibit 440; Jackson0070792-94; UR NOBLE SEC LIT 005087-112; NOBLE SEC LIT 002291-314; Jackson0070154-56; Thomas O'Rourke Deposition at 246-47.
[108] Exhibit 98; Thomas Mitchell Deposition at 77-78. Internal Audit concluded that the Company's FCPA policies and procedures were being followed, worldwide. Exhibit 98.
[109] West Africa Division Audit Work Program, Jackson0070005-21; Thomas O'Rourke Deposition at 88-90.
[110] Exhibit 19; PWC-NOB-SEC 000035-38 and PWC-NOB-SEC 000044-55 (included in Exhibit 306); NOBLE SEC LIT 008370-72; PwC-NC 000508-11; Julie Robertson Deposition at 132, 212.

Committee meeting held between Jackson, PWC, and the Chairperson of the Audit Committee; and (c) at the Audit Committee meeting itself.[111]

Regarding FCPA compliance, Internal Audit made two specific findings, and management promptly remediated both, with the assistance of experts. First, in reviewing the facilitating payment account, Internal Audit found that the West Africa Division had been making monthly cash payments to a local Nigerian labor official, without having received CFO pre-approval to make facilitating payments, and without proper recording in accounting records.[112] Management reacted swiftly and decisively to that finding. Management discontinued the payments,[113] and PWC was notified, along with the Audit Committee Chairperson, about the issue.[114] Noble's General Counsel promptly engaged Thompson & Knight to conduct an investigation.[115] These are all steps that show management's commitment to compliance with laws, willingness to investigate potential issues, and prompt reaction to stop identified potential FCPA violations.

Thompson & Knight issued a draft report in April 2004, and a final report in May 2004, both of which were presented to the Audit Committee. Thompson & Knight concluded that the approximately $18,000 in payments to the labor official did not appear to have been made corruptly or to obtain or retain business, and that the payments may fall within the facilitating payments exception of the FCPA. Importantly, Thompson & Knight's report stated that it had not found evidence of a larger scheme to corruptly influence government officials.[116] The final report also included an Appendix containing the steps that management had taken to investigate and remediate the labor official issue, as well as the review of the Nigeria facilitating payment

[111] Thomas O'Rourke Deposition at 155-58; Mark A. Jackson Deposition at 258-59; NOBLE SEC LIT 008370-72; Exhibit 269. The 2004 West Africa Audit Report was sent to all of the Directors for the April 20-22, 2004 Board Meeting. James Day Deposition at 230-31. The conduct at the pre-Board meeting shows the positive tone-at-the-top that I have previously discussed. Day called Bill Rose (VP for the Eastern Hemisphere, and therefore in charge of Nigeria) into the meeting, and expressed his dissatisfaction with the results of the audit, in particular a multi-million dollar raise that had been given to Nigerian employees without review or consultation by Rose. Day made it clear that Rose was responsible for the events described in the audit report as well as for resolving the issues. *Id.*; Robert Rose Deposition at 34-36. These actions exemplify how seriously management at Noble felt about compliance.
[112] Exhibit 19.
[113] *Id.*
[114] Richard Shappard Deposition at 108-09.
[115] Julie Robertson Deposition at 135-37; Thomas O'Rourke Deposition at 133-46; Exhibit 54; Exhibit 157; Exhibit 215.
[116] Exhibit 54; Exhibit 164; NOBLE SEC LIT 008370-72; NOBLE SEC LIT 008376-79; Robert Campbell Deposition at 145-55.

account, and Thompson & Knight concurred with the steps taken by management (including those already mentioned above),[117] as did PWC.[118]

The second FCPA issue identified by Internal Audit related to certain agents used by Noble in West Africa to obtain rig contracts, and the lack of FCPA compliance language and certifications in their agency contracts.[119] Agency issues at Noble were the responsibility of the Risk Management group, which reported to Campbell (the General Counsel), and of Jim Day, the CEO,[120] but both the Risk Management group and Rose, the VP of the Eastern Hemisphere, committed to revising those agreements to include the necessary language.[121]

As an additional step, Noble management and General Counsel appear to have decided that additional controls should also be in place related to the activities of Noble's customs broker in Nigeria, IC Network, with respect to the FCPA. Campbell and Thompson & Knight together drafted a formal services agreement for IC Network, which included FCPA compliance and certification requirements, instead of relying on purchase orders as had been typical with other customs brokers. The agreement also required IC Network to separately identify on its invoices any facilitating payments that it proposed to make to government officials, which Campbell decided should be described as "special handling charges."[122] These were prudent reactions to a high-risk area, and show a willingness to apply lessons-learned in one area (the lack of FCPA compliance language in rig agent contracts in Nigeria) to another area (the broker Noble used to interact with the customs agency in Nigeria), to enhance Noble's controls.

In addition to the remediation steps already discussed, a number of personnel actions were implemented. Rose, the executive in charge of West Africa, also traveled to Nigeria in May 2004 to retrain Noble's expatriate personnel on the FCPA.[123] Rose was ultimately formally reprimanded as a result of the issues raised in the West Africa audit.[124] Ruehlen was named the West Africa Division's Division Manager in fall 2004, and by early 2005, the Division also had a

[117] Exhibit 54.
[118] Exhibit 308; Robert Welsh Deposition at 122-27; Richard Shappard Deposition at 117-19.
[119] Exhibit 19.
[120] Mark A. Jackson Deposition at 264-70.
[121] Exhibit 19.
[122] Exhibit 54; Exhibits 168-169; Robert Campbell Deposition at 160-69.
[123] Exhibit 20; Exhibits 40-41; Julie Robertson Deposition at 144-47; James Day Deposition at 132-34; Robert Rose Deposition at 268-69; Robert Kayl Deposition at 198; Charles Dowden Deposition at 37-38; James Ruehlen Deposition at 61-62.
[124] Robert Rose Deposition at 274-76; Exhibit 416.

new Division Controller.[125] These are the reactions of a company with strong internal controls, not one seeking to sweep problems under the rug.

4. The identification and resolution of the TIP "Paper Process" issue did not indicate a circumvention of Noble's controls

In addition to the two FCPA issues identified by Internal Audit in the 2004 West Africa Audit, a number of other issues were identified, including large raises and contracts given to Nigerian employees without proper senior management review and authorization; currency exchange issues; payroll system software issues; and inventory issues. Relevant to the current matter, Internal Audit included a finding in their final audit report regarding the process by which Noble's rigs in Nigeria were obtaining "Temporary Import Permits," or "TIPs", which were permits from the Nigerian customs authorities that permitted rigs to remain in Nigeria without payment of large permanent import duties.[126] Contrary to the Harfenist's assertions, Noble management, and Jackson, did not circumvent Noble's internal controls in their reaction to this 2004 TIP finding.[127] Instead, management reacted based on the information available at each point in time. Initially, with little information available, management looked into other options for keeping the rigs in-country, and later, following a more thorough consideration of the process including consultation with local Nigerian counsel, proceeding with a process that all management involved apparently believed was legal. That type of reevaluation on the basis of new evidence, and solicitation of outside expert opinion, is a strength, not a weakness in internal controls.

The Internal Audit finding stated that:

> Noble's rigs are temporarily imported into Nigerian waters based on the existence of a contract. The Temporary Import Permit is valid for twelve months, after which requests for extensions may be granted. Per the terms of the permit, after a 24 month period has been completed, the rig is required to leave Nigerian waters within 90 days; however, information obtained from the PricewaterhouseCoopers Lagos, Nigeria office disclosed that additional renewals of the temporary import license may be obtained as long as the Company can justify continued use of the rig in Nigeria. During our review of the documentation associated with the temporary import process for the *Noble Tommy Craighead*, we determined that instead of applying for an additional extension, documents were filed with the Nigerian Customs Service which represented that the rig was physically removed

[125] James Ruehlen Deposition at 20; Alan Middleton Deposition at 14.
[126] Exhibit 19.
[127] Jeffrey Harfenist Expert Report at 15-17.

> from and subsequently returned to Nigerian waters, when in actuality, the rig never left Nigeria and continued to operate. Per the Administrative Policy Manual, Section 7.5.1, it is the policy of the Company to comply with all laws governing the conduct of its world wide operations.[128]

The audit point appears to have been discovered by Ruehlen, who learned of the issue through a Noble employee and IC Network, the agent obtaining the TIPs, although apparently numerous members of management in Nigeria and above (including Rose) knew of the use of this so-called "paper process."[129]

Management appears to have reacted appropriately to this Internal Audit finding by agreeing with Internal Audit's recommendation that management "obtain a detailed understanding of the risks and liabilities associated with the temporary import process. Based on these findings, guidelines for the process should be developed and communicated to all parties," and committing "to ensuring the division's compliance with all applicable rules and regulations related to importing and exporting assets." Resolution of the issue was assigned to local Nigerian management and the VP of the Eastern Hemisphere, Rose.[130] Investigation of the basis for the practice is a prudent step to address an unknown risk. The paper process was not identified to Jackson or other senior management as an FCPA issue,[131] nor did PWC identify the paper process in its workpapers as a potential issue of fraud or illegal acts.[132]

The Audit Committee received the paper process finding at the same time as the other West Africa findings, although it is unclear how much discussion of the paper process issue occurred at the Audit Committee meeting. I have seen no evidence that the Audit Committee directed the paper process to stop, or for it to never be used again; rather, what I have seen is a typical resolution of unclear issues like this, where the legality of a practice is yet unknown—investigate alternatives, and the legality of the original practice, and proceed on that basis.[133]

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[128] Exhibit 19.
[129] Thomas O'Rourke Deposition at 94-96, 118-25; James Ruehlen Deposition at 41-49; Charles Dowden Deposition at 143-56, 210.
[130] Exhibit 19.
[131] Unlike the "Risk" sections of the FCPA findings described above, which each stated that the risk was "Potential violation of the Foreign Corrupt Practices Act," the "Risk" section of the paper process finding was merely "Potential fines and penalties." Exhibit 19.
[132] Robert Welsh Deposition at 130-32; Exhibit 309.
[133] Exhibit 306; NOBLE SEC LIT 008370-72; Thomas O'Rourke Deposition at 152-55, 161-63, 406; Julie Robertson Deposition at 212, 248-49; James Day Deposition at 226-29, 230-34; Mark A. Jackson Deposition at 303-07.

Pursuant to the agreed-upon action plan, management such as Rose appear to have investigated and identified an alternative method to using the paper process to obtain TIPs—a "free trade zone" where the rigs could be moved instead of moving them out of the country. Jackson, as CFO, would not be expected to be involved in this type of operational issue, and indeed I cannot find evidence that he was involved. That "free trade zone" alternative was presented to the Audit Committee in July 2004, along with a commitment by the Manager of Tax and Rose, the VP of the Eastern Hemisphere, to review applications for new or extended TIPs in the future.[134]

Harfenist asserts that by restarting the use of the paper process in the face of a clear Audit Committee directive to never use the paper process again, Jackson circumvented Noble's internal controls.[135] In addition to the lack of evidence of an Audit Committee directive to forever avoid the paper process, the evidence I have seen does not support Harfenist's conclusion regarding internal controls, and instead, suggests that Noble management took additional steps to investigate the legality of the paper process before making the operational decision to resume what was determined to be a legal process.

The issue of needing to obtain a new TIP, whether through a paper process or moving a rig to a free trade zone, does not appear to have arisen for a number of months after the July 2004 Audit Committee meeting. When the issue next arose, Ruehlen, who had been installed as the Division Manager in Nigeria,[136] appears to have further investigated the alternatives available to Noble. There appears to have been an investigation of whether to pay the permanent import duties and avoid the temporary import process altogether in the future, but Noble was warned to avoid the permanent import process because of corruption issues in the agency (not the Customs Service) in charge of permanent duties.[137] Ruehlen also consulted with Noble's longtime Nigerian legal counsel about the legality of the paper process.[138] The Nigerian counsel, Noble's expert on Nigerian legal issues, advised Ruehlen that the paper process was accepted by and

[134] Exhibit 78; James Day Deposition at 137-39; NOBLE SEC LIT 008376-79; Mark A. Jackson Deposition at 292-308. The same update presented to the Audit Committee in July 2004 included a statement that Rose and the Manager – Tax had "determined that the units currently located in Nigeria meet the criteria necessary for an extension of each Temporary Import Permit (TIP)," Exhibit 78, lending support to senior managements' conclusions that the rigs in Nigeria were and could remain there legally.
[135] Jeffrey Harfenist Report at 15-17.
[136] James Ruehlen Deposition at 20.
[137] Thomas O'Rourke Deposition at 175-84, 209-11; Exhibit 218; Mark A. Jackson Deposition at 237-39; James Ruehlen Deposition at 100-01, 111-13. 244-45.
[138] James Ruehlen Deposition at 89-96; Thomas O'Rourke Deposition at 175-84, 209-11; Exhibit 218.

known to the Nigerian Customs Service.[139] Ruehlen also consulted with Rose and O'Rourke regarding the advisability of resuming the paper process,[140] showing a commitment to transparency. There is no indication that Ruehlen, or anyone else, believed that Noble was doing anything wrong or that the paper process was illegal.

In May 2005, Jackson was asked to approve facilitating payments related to a paper process TIP that had already been authorized by Rose. Jackson reacted as a CFO should. CFOs are not expected to be involved in the day-to-day-details that lead to purely operational decisions like the one to resume the paper process; they simply do not have enough hours in the day. Instead, as a senior executive, CFOs must rely on the work of the people reporting to them. Jackson questioned the information presented to him, applied critical judgment to the issue, and asked whether the legality of the paper process had been investigated. Jackson did not authorize any facilitating payments related to the paper process, or indeed anything related to the paper process, prior to being informed that the process was legal.[141]

While it may have been advisable in the abstract to go back to the Audit Committee in a situation where later-discovered evidence contradicts earlier thinking on an issue, I am not aware of any obligation to do so. Indeed, the Audit Committee process would be brought to a halt if management was required to report back any time new information was obtained that bore on a previously discussed issue.[142] On a whole, Internal Audit, management, and the Audit Committee were involved in identifying and resolving the paper process issue over time.

5. Noble reacted properly to whistleblower allegations regarding Nigeria in 2004

Management must also take seriously and react to issues that are raised through channels other than Internal Audit, whether through complaint hotlines such as the one Noble implemented, or other complaint avenues. In March 2004, Noble received a set of allegations from an anonymous Nigerian group called "The Comrades," which included allegations regarding inappropriate and/or illegal behavior in Noble staff houses, drug related activity, theft

[139] *Id.*
[140] Thomas O'Rourke Deposition at 175-84, 209-11; James Ruehlen Deposition at 156-57, 175.
[141] Mark A. Jackson Deposition at 305-08; Thomas O'Rourke Deposition at 188-94, 257-64; Exhibit 220; Exhibits 233-234; James Ruehlen Deposition at 145-96; Exhibits 342-347; Exhibits 350-353.
[142] One individual who was involved at the time—O'Rourke—was asked about why he did not tell the Audit Committee that the paper process had resumed. O'Rourke confirmed that he did not see it as necessary because the paper process had been determined to be legal and permissible. Thomas O'Rourke Deposition at 195.

of money, and excessive fees charged by the freight forwarding company used by Noble. Noble properly investigated the allegations, utilizing both Internal Audit and Noble's Nigerian counsel (the same counsel consulted regarding the paper process issue mentioned above), and concluded that the allegations lacked merit.[143] This type of investigation, utilizing on-the-ground resources such as a local law expert, was a prudent step to take in the face of allegations that appeared to be very dependent on local business issues. This is also an example of how management took complaints seriously.

F. Senior Management Assessed the Internal Control System in Real Time, and Publicly Asserted to its Effectiveness

As discussed above, following Sarbanes-Oxley's passage and beginning in 2004, Noble senior management was required to make an internal assessment of the effectiveness of the Company's internal control over financial reporting, and to certify to that effectiveness publicly in certifications attached to the Company's 10-K and 10-Q filings. These public certifications are good indicators of well-functioning internal control systems. Before signing, companies such as Noble bring together many stakeholders from various parts of the organization to discuss any issues that have been identified; at Noble, that discussion often took place in the Disclosure Committee meetings previously discussed. Signing the certifications also carried potential liability under the securities laws, which adds a deterrent effect.

Several individuals at Noble signed the public assertions of management over the years, including Day (the CEO for many years), Jackson (as CFO, then CEO), Busmire (as CFO), and Mitchell (as CFO). In each 10-K or 10-Q filing in the relevant time period, Noble's management certifications stated that management had assessed the system of internal controls over financial reporting, and had concluded that it was functioning effectively and without material change from the prior reporting period.[144] Internal control over financial reporting included controls over the Company's processes surrounding the FCPA, including approval of disbursements and

[143] Julie Robertson Deposition at 126-29, 200-01; Exhibit 39; Exhibit 217; ROSESEC-000035-36.

[144] 2004 10-K at 79; 2005 10-K at 83; 2006 10-K at 85; 2007 10-K at 90; Noble Corporation, Form 10-Q for the Quarter Ended March 31, 2004 at 27; Noble Corporation, Form 10-Q for the Quarter Ended June 30, 2004 at 37; Noble Corporation, Form 10-Q for the Quarter Ended September 30, 2004 at 38; Noble Corporation, Form 10-Q for the Quarter Ended March 31, 2005 at 28; Noble Corporation, Form 10-Q for the Quarter Ended June 30, 2005 at 38; Noble Corporation, Form 10-Q for the Quarter Ended September 30, 2005 at 40; Noble Corporation, Form 10-Q for the Quarter Ended March 31, 2006 at 34; Noble Corporation, Form 10-Q for the Quarter Ended June 30, 2006 at 47; Noble Corporation, Form 10-Q for the Quarter Ended September 30, 2006 at 49.

processing of accounts payable, and the same controls overlapped with controls over compliance with laws and regulations.

In order to be able to sign the certifications, Jackson appropriately relied on information provided to him by many people within the organization, at all levels, about their own compliance with policies, procedures, internal controls and processes. Beginning in 2002, as discussed above, Noble began requiring Division Controllers and Division Managers to provide upward representation letters regarding a wide range of issues, including the Division financial statements, financial controls, compliance with laws, knowledge of fraud, and knowledge of FCPA violations.[145] Throughout the relevant time period, the West Africa Division Controllers and Division Managers (who changed over time) consistently represented to Jackson and other senior management that the controls in West Africa had been reviewed and determined to be adequate, and that they were unaware of potential FCPA violations (other than the pending investigation in 2004 of the payments to the labor official, and in 2007 of the TIP issues that led to this litigation).[146] These representation letters were integral in allowing senior management to be able to sign their own public certifications to the effectiveness of Noble's controls.

G. PWC Also Concluded that Noble's Internal Controls Were Effective

1. PWC's audit work in support of its opinions was comprehensive

In the relevant period, PWC, as Noble's independent, external auditor, was required by Sarbanes-Oxley to evaluate Noble's internal controls over financial reporting and provide a public audit opinion attesting to the effectiveness of those internal controls, and to PWC's concurrence with Noble management's own assessment of those internal controls. This independent assessment was a strong reinforcing factor for management, such as Jackson, and his belief in the strength of the controls. Strong independent audits also provide a valuable deterrent effect.

For the fiscal years 2004 through 2007, in every one of Noble's 10-Ks, PWC issued clean (unqualified) audit reports, publicly attesting that Noble's internal controls over financial

[145] Timothy Thomasson Deposition at 37-39; Exhibit 59.
[146] SUB 00011574-77; SEC-CWT-00025019-28; NOBLE0037296-315; SEC-CWT-00025051-57; NOBLE0037342-45; SUB 00009695-98; SEC-CWT-00007128-34; BB-NOB 02628-39; BB-NOB 02616-23; Alan Middleton Deposition at 172-75; Robert Rose Deposition at 201-03; Exhibit 402; Exhibits 447-448.

reporting were functioning effectively, with no material weaknesses, and that PWC concurred with Noble management's own assessment of effectiveness.[147]

While the assessments of PWC in real-time provides a great deal of insight into the strength of Noble's internal controls at the time, it is also instructive to look at what PWC did, or didn't do, after Noble's internal investigation began in 2007. Even in hindsight, PWC did not decide to qualify or amend any of its prior audit opinions concluding that Noble's internal controls over financial reporting were effective.[148]

To reach those conclusions, PWC performed comprehensive audit work regarding Noble's operations and controls pursuant to the requirements of the Public Company Accounting Oversight Board. Overall, PWC's work appears highly competent and its audit plan met high standards. Just as Noble performed risk assessments, PWC too had to assess Noble's risk; PWC concluded that Noble was not a high risk client, in the context of its standard client retention procedures.[149] PWC used a rigorous audit planning process, including consideration of the Company's business environment, public filings and other external information, assessment of risks and audit response to such risks, assessment of Noble's internal control, meetings with Noble management and Internal Audit, and selection of accounts for qualitative and quantitative analysis and testing. PWC delved deep into Noble's internal control environment to gain an understanding of any design deficiencies, and planned tests to ensure the internal control processes were operating effectively.[150] PWC also had to decide whether it could rely on Noble's Internal Audit group to provide reliable audit evidence, and as previously discussed, concluded that it could rely on Internal Audit.[151]

During their audits, PWC assessed Noble's anti-fraud controls, including controls to prevent illegal acts. During the relevant time period, each year, PWC evaluated Noble's risk of fraud to be normal, and concluded that Noble's anti-fraud controls were appropriately designed

[147] 2004 10-K at 37-38; 2005 10-K at 40-41; 2006 10-K at 38-39; 2007 10-K at 41. PWC also performed procedures with respect to the Company's quarterly filings with the SEC, but quarterly review procedures do not result in audit opinions appended to Noble's 10-Qs. NOBLE SEC LIT 000688-97; NOBLE SEC LIT 003485-94; NOBLE SEC LIT 003363-73; NOBLE SEC LIT 001657-66.

[148] Richard Shappard Deposition at 148.

[149] Robert Welsh Deposition at 48; Richard Shappard Deposition at 36.

[150] Robert Welsh Deposition at 45-53; Richard Shappard Deposition at 34-37.

[151] Exhibit 298; Exhibits 321-323. PWC closely monitored what Internal Audit was doing throughout the year and during the year-end audit, including through frequent meetings, comment on Internal Audit workplans, review of Internal Audit's reports, access to their workpapers, and re-validation of some of Internal Audit's conclusions. *Id.*; Exhibit 305; PWC-NOB 000922-24; Robert Welsh Deposition at 88-98, 103, 175-77; Richard Shappard Deposition at 55-59.

and operating effectively.[152] PWC also frequently met with Noble management and other employees, as well as the Audit Committee, to obtain insight into Noble's operations and controls and any issues that were arising.[153] Jackson, as CFO, met with PWC frequently, and occasionally later as COO and CEO.[154]

Before signing off on the audit opinions referenced above, PWC worked with Noble management to develop and obtain representation letters, which are a standard—and necessary—component of providing an external audit opinion. Representation letters, signed by the CEO, CFO, Chief Accounting Officer, and Controller of a company, are direct communications by management to the external auditors with final confirmation of issues raised in the audit or general issues regarding controls. External auditors, such as PWC for the Noble audit, would not have signed their audit opinions without receiving the signed general representation letter from management. By accepting the representation letters, PWC indicated that it believed management had sufficient integrity to be trustworthy, and indeed, PWC audit partners testified in this litigation that if they had concerns about the integrity of management, they would not have accepted the representation letter.[155] For every year-end and quarter in the relevant time period, PWC accepted the representation letters from Noble management, which included letters signed by Jackson.[156]

PWC was, and is, one of the largest, most prestigious auditing firms in the world, and that prestige comes at a price. By engaging PWC, Noble hired quality and discipline to obtain a rigorous audit performed by a global audit team, and was willing to pay what it took to obtain that world-class audit, instead of sacrificing quality for lower audit fees. This fact speaks well of

[152] Robert Welsh Deposition at 60-69; Richard Shappard Deposition at 42-43, 47-48, 50-51; Exhibit 301; PWC-NOB 000312-17; PWC-NOB 000279-81; PWC-NOB 002221-22; PWC-NOB 002211-14; PWC-NOB 002208-10; PWC-NOB 002205-07; PWC-NOB 000378-80; PWC-NOB 002637-38; PWC-NOB 002620-33; PWC-NOB 000507-08; PWC-NOB 002929-31; PWC-NOB 002927-28; PWC-NOB 002934.

[153] Exhibit 304; PWC-NOB 000393-402; Robert Welsh Deposition at 76-83; Richard Shappard Deposition at 86-87, 140.

[154] Robert Welsh Deposition at 84-86; Richard Shappard Deposition at 90-92.

[155] Robert Welsh Deposition at 76-83; Richard Shappard Deposition at 86-87, 140. PWC assumed, and accepted, that in signing the representation letters, management was relying on information received from others at Noble, including internal Division representation letters. Robert Welsh Deposition at 252-53; Richard Shappard Deposition at 70-71; James Day Deposition at 40-47; Michael Lowther Deposition at 59, 61-62, 123-25; Thomas O'Rourke Deposition at 286-87, 291-92; *see also* Exhibit 97.

[156] NOBLE SEC LIT 000713-18; NOBLE SEC LIT 000722-24; NOBLE SEC LIT 000728-30; NOBLE SEC LIT 000731-40; NOBLE SEC LIT 001197-201; NOBLE SEC LIT 001266-68; NOBLE SEC LIT 001269-72; NOBLE SEC LIT 001273-84; NOBLE SEC LIT 001494-97; NOBLE SEC LIT 001498-501; NOBLE SEC LIT 001502-05; NOBLE SEC LIT 001506-17; NOBLE SEC LIT 001592-95; NOBLE SEC LIT 001596-99; NOBLE SEC LIT 001602-06; NOBLE SEC LIT 001619-30.

Noble's commitment to sound financial reporting and compliance with applicable laws and regulations.

2. PWC prudently obtained assistance in Nigeria from its affiliate office, who confirmed the effectiveness of controls in the West Africa Division

Noble had worldwide operations, which required global audit procedures as well. PWC-Houston engaged its affiliate offices in other locations, such as Nigeria, to conduct audit procedures on PWC-Houston's behalf, and communicate back the results. The auditing, which included testing of internal controls, was done at the direction of PWC in Houston, with instructions given through formal Interoffice Instructions sent to the PWC office in Lagos, Nigeria.[157] This is a standard element of auditing global companies with international offices, and particularly for high risk countries. PWC would not have been able to sign off on Noble's overall internal controls and financial statements without being confident that sufficient audit work had been done in those countries.

In the relevant time period, PWC's Nigeria office audited Noble's Nigeria operations, including its controls in areas such as accounts payable and petty cash, and provided positive reports back to PWC in Houston. For example, PWC in Nigeria did not uncover any material weaknesses or significant deficiencies in internal controls in the West Africa Division, nor did it find any illegal acts occurring, or any lack of cooperation from Noble employees, or attempts to evade internal controls or falsify accounting records.[158]

Notably, in addition to the quarterly Division Representation letters previously discussed, Division management also provided PWC's Nigeria audit team with similar representation letters in the course of PWC Nigeria's separate statutory audits for the West Africa Division.[159] The representations provided additional confirmation to PWC Nigeria, and to PWC-Houston, of the Division's compliance efforts.[160]

[157] Exhibits 313-319; Robert Welsh Deposition at 151-69.
[158] Robert Welsh Deposition at 172-74, 249-52; Richard Shappard Deposition at 168-70.
[159] Statutory audits are audits of a company's financial records that are required by a country such as Nigeria.
[160] SUB 00012016-19; SUB 00012053-56. While we have located representation letters from Noble Nigeria to PWC Nigeria for the years ended December 31, 2005 and 2006 statutory audits, we assume that a similar representation letter was provided for the 2004 statutory audit and simply was not a part of the litigation productions in this case, which I understand came from various sources.

H. Jackson Appropriately Relied upon Noble's Effective System of Internal Control

My opinion, as stated above, is that during the relevant time period, Noble had an effective system of internal control, including regarding compliance with applicable laws and regulations. Senior executives, including Jackson, could rely on that system of internal control confidently as they conducted their daily management activities.

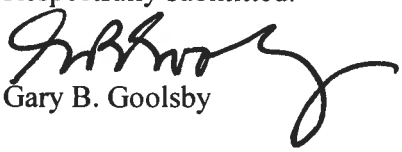
Jackson was engaged as an active participant in Noble's system of internal control who understood the strength and the effectiveness of the many processes underlying the overall system. Jackson was proactively involved with Internal Audit, including in planning, reviewing, and acting upon audit reports, and with ensuring information flow to internal and external auditors. He was a party to numerous internal controls evaluations and discussions, such as those at the Disclosure Committee and in Monday morning operations updates, and with the Audit Committee. He was involved with evaluating and enhancing policy and procedure manuals. He was integrally involved with interacting and communicating with other executives and management about issues facing the enterprise. Jackson displayed discipline and had high expectations for others, which are both attributes contributing to setting the right "tone at the top."

All of the information Jackson received allowed him to rely on the functioning of the internal controls as well as the output from those controls, without becoming immersed in the daily details of the many groups reporting to him and losing focus on his extensive senior executive responsibilities. His decisions and actions appropriately reflected such reliance, and provided a sound basis for him to believe that Noble had no unaddressed significant control weaknesses or violations of law.

IV. RIGHT TO UPDATE AND SUPPLEMENT

I reserve the right to amend or supplement my findings or opinions set forth in this report based on any additional information that may become available.

Respectfully submitted.



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Gary Goolsby is a senior managing director in the FTI Consulting Forensic and Litigation Consulting practice and is based in Houston. Mr. Goolsby has 39 years of experience in accounting and auditing, risk management, resolving auditor malpractice allegations, investigations, governance, internal controls and business processes, board of directors and regulatory interactions, executive management, expert witness testimony and case consultancy and technical presentations.

Mr. Goolsby has provided professional services to many industries including oil and gas exploration, development, services, refining; mining; financial institutions including brokerage, banks, savings and loans, mortgage banking, insurance; construction and real estate. In addition to serving clients in North America, Mr. Goolsby has experience on a global basis assisting with business and regulatory issues in Asia, Europe and Latin America. He has also served on various U.S. and global committees with representatives from other major professional services firms focusing on ethics, banking, financial reporting, auditing and risk management issues. Mr. Goolsby has made numerous presentations during his career covering a wide range of financial reporting, risk and investigation issues. He has also previously served as liaison to the Professional Liability Litigation and Energy Litigation Committees of the American Bar Association Section of Litigation.

Mr. Goolsby's experience includes involvement in the resolution of various business, accounting, auditing or disclosure issues relating to revenue recognition, going concern and liquidity, whistleblower allegations, alleged fraud, management integrity and credibility, fraudulent transfers, purchase accounting, retirement plans, financial instruments, stock options, loan loss reserves, income taxes, forecasts, bank asset/liability management, financial institution regulatory capital requirements, internal control weaknesses, SEC and financial institution regulatory filings, alleged illegal acts (including anti-corruption) and various types of contingencies. This experience was gained during many crisis periods including the banking, savings and loan and real estate difficulties in the late 1980s and early 1990s; oil and gas industry downturn during the mid-1980s; Asian real estate and financial crisis during the late 1990s; Mexico peso valuation issues during the mid-1990s; bull and dot com market during the late 1990s and financial crisis during the late 2000s. Mr. Goolsby has met frequently with audit committees, boards of directors and SEC and financial institution regulators discussing these various issues.

Mr. Goolsby's investigation experience includes investigating alleged inappropriate accounting for income taxes; inappropriate use of investor funds for condominium project; accounting irregularities related to transactions of a company in China; transactions of U.S. energy companies with other non-U.S. companies; claim related to political risk insurance; accounting irregularities related to revenue recognition; misleading forward guidance; violations of anti-corruption regulations including Foreign Corrupt Practices Act, sanction country and United Nations Iraq Oil for Food Program; and inappropriate accounting for granting and pricing of employee stock options. These engagements have involved analyzing company documents; understanding company internal controls and processes; tracing of transactions; interviewing personnel; and interacting with and making presentations to company executive management, internal and external auditors, audit and special committees of the board of directors, SEC Enforcement

Division, Office of Foreign Asset Control and Department of Justice.

He has also provided expert testimony relating to fraudulent transfers and consultation on various cases including auditor professional malpractice.

Prior to joining FTI Consulting, Mr. Goolsby was a managing director for 5 years in the Disputes and Investigations practice of Navigant Consulting. Prior to Navigant Consulting, he served in executive level positions of Chief Financial Officer and President for a Houston financial services company.

Mr. Goolsby's career includes 28 years (18 as a partner) with Arthur Andersen as an audit and leadership partner. He held many leadership positions at Arthur Andersen over several years including managing partner --- Global Risk Management for the worldwide firm, managing partner of Practice Directors (risk management) for Global Audit and Business Advisory Practice, chairman of Global Risk Management Executive Committee, represented the firm on several professional committees and was responsible for resolution of professional malpractice claims against the firm and the firm's professional malpractice insurance.

Professional Experience

Forensic and Financial Investigation

- Expert consultant regarding a Ponzi scheme investigation including extensive forensic analysis of transactions with victims.
- Expert consultant relating to anti-corruption compliance and investigation issues in Mexico for a public international company.
- Expert consultant regarding an SEC Enforcement matter relating to certain business transactions of a company in China.
- Expert consultant relating to certain oil and gas product transactions of U.S. energy companies with other non-U.S. companies.
- Expert consultant in a special investigation relating to Foreign Corrupt Practices Act matters in Angola for a public international oil and gas service company.
- Expert consultant relating to use of investor funds for investment in a condominium project.
- Expert consultant regarding analysis of transactions of an oil and gas partnership for consistency with partnership agreement.
- Expert consultant relating to analysis of a political risk insurance claim for a public international oil and gas company.
- Expert consultant regarding accounting for income taxes in a special investigation of whistleblower allegations for a public international company.
- Expert consultant regarding appropriate basis of accounting for certain oil and gas producing properties.
- Expert consultant in a special investigation relating to allegations of misleading forward guidance by a public real estate company.
- Expert consultant in a special investigation relating to authorization, granting and pricing of

employee stock options for a public software company.

- Expert consultant in a special investigation relating to authorization, granting and pricing of employee stock options for a public oil and gas service company.
- Expert consultant in a special investigation relating to authorization, granting and pricing of employee stock options for a public specialty environmental company.
- Expert consultant in a special investigation relating to Foreign Corrupt Practices Act matters for a public international oil and gas service company.
- Expert consultant in a special investigation relating to the United Nations Oil for Food Program for a public international company.
- Expert consultant in a special investigation relating to sanctioned country matters for a public international company.
- Expert consultant in a special investigation relating to a revenue restatement issue for a public company in the oil and gas services industry.

Financial Consulting

- Involved in the resolution of various business, accounting, auditing or disclosure issues relating to a wide range of financial matters including, among others, auditor malpractice, revenue recognition, going concern and liquidity, alleged fraud, management integrity and credibility, purchase accounting, retirement plans, income taxes, financial instruments, stock options, loan loss reserves, forecasts, bank asset/liability management, financial institution regulatory capital requirements, internal control weaknesses, SEC and financial institution regulatory filings, alleged illegal acts (including anti-corruption), various types of contingencies and appropriate audit reports. Various industries involved including oil and gas exploration, development, services, refining; financial institutions including brokerage, banks, savings and loans, mortgage banking, insurance; construction and real estate.
- Frequent meetings with audit committees, boards of directors and SEC and financial institution regulators discussing various issues.

Other Experience

- Expert witness (trial and deposition testimony) in areas of fraudulent transfers, reasonably equivalent value, liquidity, insolvency and use of lender funds relating to oil and gas drilling rig program, 2007-2008, Biliouris, et al v. Sundance Resources Inc., et al, Texas Northern District Court, No. 3:2007cv01591.
- Expert witness in arbitration (arbitration hearing and deposition testimony) relating to accounting for hydrocarbon products, October 2013.
- Assisted in enhancing processes and internal controls for a large oil refiner.

Publications

- *Investigations Quarterly, Navigant Consulting,* “Mining Wall Street, What’s In Store for 2007 and Beyond,” with John Geron, March 2007.

EXHIBIT 2
INFORMATION CONSIDERED

Depositions
Deposition of David Arthur dated October 2, 2013 and Exhibits
Deposition of Bruce Busmire dated August 1, 2013 and Exhibits
Deposition of Robert Campbell dated July 16, 2013 and Exhibits
Deposition of James Day dated September 9 and October 8, 2013 and Exhibits
Deposition of Charles Richard Dowden dated July 15, 2013 and Exhibits
Deposition of Johannes Hilhorst dated August 27, 2013 and Exhibits
Deposition of Mark A. Jackson dated October 22, 2013 and Exhibits
Deposition of Robert Kayl dated May 14, 2013 and Exhibits
Deposition of Michael Lowther dated June 25, 2013 and Exhibits
Deposition of Alan Middleton dated October 17, 2013 and Exhibits
Deposition of Thomas Mitchell dated June 11, 2013 and Exhibits
Deposition of Thomas Francis O'Rourke dated August 22 and September 10, 2013 and Exhibits
Deposition of Julie Robertson dated May 22, 2013 and Exhibits
Deposition of Robert Rose dated October 9, 2013 and Exhibits
Deposition of James J. Ruehlen dated September 17, 2013 and Exhibits
Deposition of Richard Shappard dated September 18, 2013 and Exhibits
Deposition of Eelke Strikwerda dated September 11, 2013 and Exhibits
Deposition of Timothy Thomasson dated June 4, 2013 and Exhibits
Deposition of Robert J. Welsh dated September 12, 2013 and Exhibits

Complaint and Related Filings
Second Amended Complaint, *SEC v. Mark A. Jackson and James J. Ruehlen,* Civil Action No. 4:12-cv-00563
Memorandum and Order dated December 11, 2012
Mark A. Jackson's Objections and Responses to Plaintiff's First Set of Interrogatories
Mark A. Jackson's Objections and Responses to Plaintiff's Second Set of Interrogatories
James J. Ruehlen's Objections and Responses to Plaintiff's First Set of Interrogatories
Plaintiff's Responses and Objections to Mark A. Jackson's First Set of Interrogatories to Plaintiff
Plaintiff's Responses and Objections to Mark A. Jackson's Second Set of Interrogatories to Plaintiff
Plaintiff's Responses and Objections to Mark A. Jackson's Third Set of Interrogatories to Plaintiff
Plaintiff's Responses and Objections to James J. Ruehlen's First Set of Interrogatories
Plaintiff's Supplemental Response to James J. Ruehlen's First Set of Interrogatories, Interrogatory No. 1
Plaintiff's Responses and Objections to James J. Ruehlen's Second Set of Interrogatories to Plaintiff

Prior Investigative Testimony
Investigative Testimony of Bruce Busmire dated March 29, 2011
Investigative Testimony of Robert Campbell dated March 11, 2011
Investigative Testimony of Mark Jackson dated March 22, 2011
Investigative Testimony of Robert Kayl dated February 8, 2011
Investigative Testimony of Thomas Mitchell dated December 9, 2011
Investigative Testimony of Thomas O'Rourke dated February 9-11, 2011
Investigative Testimony of Robert Rose dated February 17, 2011
Investigative Testimony of Jame Ruehlen dated March 17-18, 2011
Investigative Testimony of Timothy Thomasson dated February 18, 2011

Plaintiff Expert Reports
Expert Report of Jeffrey Harfenist dated October 25, 2013 and documents referenced in footnotes

EXHIBIT 2
INFORMATION CONSIDERED

Expert Report of Wayne Kelley dated October 25, 2013
Expert Report of Kofo Olugbesan dated October 28, 2013

SEC Filings
Noble Corporation Form 10-K for the years ended December 31, 2003 - 2007
Noble Corporation Form 10-Q for the quarters ended March 31, June 30, September 30, 2004
Noble Corporation Form 10-Q for the quarters ended March 31, June 30, September 30, 2005
Noble Corporation Form 10-Q for the quarters ended March 31, June 30, September 30, 2006
Noble Corporation Schedule 14A (Proxy Statement) 2004 - 2007

Documents Produced

Beginning	End
BB-NOB 02305	BB-NOB 02307
BB-NOB 02449	BB-NOB 02453
BB-NOB 02458	BB-NOB 02461
BB-NOB 02474	BB-NOB 02485
BB-NOB 02497	BB-NOB 02503
BB-NOB 02519	BB-NOB 02521
BB-NOB 02525	BB-NOB 02533
BB-NOB 02543	BB-NOB 02550
BB-NOB 02555	BB-NOB 02562
BB-NOB 02564	BB-NOB 02571
BB-NOB 02582	BB-NOB 02590
BB-NOB 02595	BB-NOB 02603
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EXHIBIT 2
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INFORMATION CONSIDERED

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UNITED STATES DISTRICT COURT

MIDDLE DISTRICT OF TENNESSEE

NASHVILLE DIVISION

KARSTEN SCHUH, Individually and on Behalf of All Others Similarly Situated, Plaintiff, vs. HCA HOLDINGS, INC., et al., Defendants.	Civil Action No. 3:11-cv-01033 **(Consolidated)** Chief Judge Kevin H. Sharp Magistrate Judge Barbara D. Holmes CLASS ACTION MEMORANDUM OF LAW IN SUPPORT OF LEAD PLAINTIFF'S MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT AND THE PLAN OF ALLOCATION AND LEAD COUNSEL'S MOTION FOR AN AWARD OF ATTORNEYS' FEES AND EXPENSES AND AWARD TO THE LEAD PLAINTIFF PURSUANT TO 15 U.S.C. §77z-1(a)(4)

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I. INTRODUCTION

Lead Plaintiff and Class Representative New England Teamsters & Trucking Industry Pension Fund ("Pension Fund" or "Lead Plaintiff") respectfully submits this memorandum of law in support of its motion for approval of (1) the Settlement, (2) the Plan of Allocation, and (3) Lead Counsel's motion for an award of attorneys' fees and expenses and award to Lead Plaintiff.[1] The $215,000,000 cash Settlement reached here is extraordinary. It was achieved shortly before pre-trial *Daubert* hearings and only after extensive fact and expert discovery had been completed, a class had been certified and briefing on summary judgment and *Daubert* motions finalized. The Settlement is the product of vigorous and extensive negotiations overseen by retired United States District Court Judge Layn R. Phillips, a highly respected and experienced mediator. *See* accompanying Declaration of Layn R. Phillips ("Phillips Decl."), ¶¶6-12.

This Settlement is particularly remarkable in several respects. First, it is the largest securities class action recovery ever in Tennessee. Second, the recovery achieved here is between 34% and 70% of aggregate class wide damages, far exceeding the typical recovery in a securities class action. In fact, as a percentage of damages, the Settlement represents a recovery that is between 10 and 35 times greater than the median securities class action recovery of 2%-3%. Whether measured by a percentage of the damages recovered or in absolute dollar terms, this Settlement is an excellent result for the Class.

Lead Counsel meticulously prepared this case for trial. The prosecution of the case involved extensive (and often hotly contested) motion practice, dozens of depositions that occurred around the

[1] In lieu of filing three separate memoranda in support of: (1) the Settlement; (2) the Plan of Allocation; and (3) attorneys' fees and expenses and Lead Plaintiff's award, Lead Plaintiff has respectfully requested leave to file one 34-page memorandum in support of all three requests, which the HCA Defendants do not oppose. Capitalized terms not otherwise defined herein have the same meaning as set forth in the Stipulation of Settlement filed with the Court on December 18, 2015 ("Stipulation"). Dkt. No. 534.

country and exhaustive consultation with highly respected experts in a number of fields.[2] Much of the evidence presented in opposition to Defendants' motions for summary judgment was obtained only after in-depth expert analysis and countless hours of preparation, which enabled Lead Counsel to effectively cross examine HCA's senior executives and its nationally renowned defense experts in cardiology and economics regarding their highly specialized areas of expertise. These efforts had the dual effect of allowing Lead Counsel to gain a full understanding of both the strengths and weaknesses of the case and at the same time demonstrating to Defendants that Lead Counsel was prepared to try this case.[3]

At the time the Settlement was reached two summary judgment motions were pending, which created a significant risk to any recovery. Among other things, these motions raised issues of first impression regarding SEC Item 303 and the proof required thereunder. Likewise, Defendants' *Daubert* challenges to three of Lead Plaintiff's four experts were *sub judice* when the proposed Settlement was agreed to. Adverse decisions with respect to one or more of the motions would have greatly limited or eliminated Lead Plaintiff's ability to establish that any declining trend in cardiovascular procedures was material to HCA's overall operations and thus actionable under SEC Item 303. Defendants also challenged the scope of the claims to be tried, disputing Lead Plaintiff's ability to even pursue an omissions theory of liability.

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[2] Lead Plaintiff's experts included a Professor at the Yale University School of Medicine, a Professor Emeritus at the University of San Francisco, School of Management, a preeminent forensic accountant and a Yale trained economist.

[3] The Court is respectfully referred to the accompanying Declaration of Scott H. Saham in Support of Lead Plaintiff's Motion for Final Approval of Class Action Settlement and the Plan of Allocation and Lead Counsel's Motion for an Award of Attorneys' Fees and Expenses and Award to the Lead Plaintiff Pursuant to 15 U.S.C. §77z-1(a)(4) ("Saham Decl.") for a more detailed history of the Litigation, the extensive efforts of Lead Counsel, and the factors bearing on the reasonableness of the Settlement, the Plan of Allocation, and counsel's request for an award of attorneys' fees and expenses.

Also pending at the time the Settlement was reached were motions relating to the discoverability and the ultimate admissibility of key documents and testimony evidencing HCA's internal investigation of unnecessary cardiac procedures. Resolution in Defendants' favor would have had a dramatic adverse impact on Lead Plaintiff's likelihood of success at trial. Lead Plaintiff's claimed damages were also contested. For example, Defendants' damages expert opined that the majority of the decline in HCA common stock was the result of the Budget Control Act of 2011, rather than the omission of information from the Registration Statement. Had any of Defendants' challenges been successful, the ability to prove Lead Plaintiff's case would have been significantly undermined or even eliminated. Even if Lead Plaintiff had prevailed at summary judgment, *Daubert* proceedings and at trial, a significant appellate risk remained, particularly with respect to the interpretation of Item 303. Despite the risks, Lead Counsel made it clear that it would continue to prosecute the case through trial and post-trial appeals rather than settle for less than an amount that was in the Class' best interest. The $215 million Settlement proposed here is fair, reasonable, and adequate and should be approved by the Court.

Lead Plaintiff also requests that the Court approve the Plan of Allocation. The Plan of Allocation was set forth in the Notice sent to Class Members. The Plan of Allocation was prepared in consultation with Lead Plaintiff's damages expert and governs how claims will be calculated and ultimately how the settlement proceeds will be equitably distributed among Authorized Claimants. The Plan of Allocation tracks the 1933 Act's statutory damage formula. It too is fair, reasonable, and adequate, and should be approved.

In addition, Lead Plaintiff seeks an award of $6,081.25, pursuant to 15 U.S.C. §77z-1(a)(4), for its time spent and costs incurred in representing the Class.

Lead Counsel also respectfully moves this Court for an award of attorneys' fees in the amount of thirty percent of the Settlement Amount, plus expenses incurred in prosecuting this

Litigation of $2,016,508.52, plus interest on both amounts. The fee request is well within the range of percentages awarded in class actions in the this District, in this Circuit, and across the country, even when the results obtained pale in comparison to the extraordinary result obtained here. The fee request is also warranted in light of the extensive efforts of counsel in obtaining the result and the significant risk in bringing and prosecuting this complex action on a contingency basis on behalf of the Class for over four years. *See* Declaration of Aubrey B. Harwell, Jr. ("Harwell Decl."), ¶¶4-6; Declaration of Martin Holmes ("Holmes Decl."), ¶¶6-9, submitted herewith.

II. THE NOTICE OF SETTLEMENT SATISFIES RULE 23 AND DUE PROCESS REQUIREMENTS

Pursuant to Federal Rule of Civil Procedure 23(e)(1), when approving a class action settlement, a district court "'must direct notice in a reasonable manner to all class members who would be bound by the proposal.'" *Fidel v. Farley*, 534 F.3d 508, 513 (6th Cir. 2008) (citation omitted). In addition to the requirements of Rule 23, the Constitution's Due Process Clause also guarantees unnamed class members the right to notice of certification and settlement. *See id.* Generally, "[f]or any class certified under Rule 23(b)(3), the court must direct to class members the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort." Fed. R. Civ. P. 23(c)(2)(B). A notice of settlement satisfies due process when it is "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." *Mullane v. Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306, 314 (1950).

Here, the Notice advises potential Class Members of the essential terms of the Settlement, in plain, easily-understood language. It sets forth the procedure and deadline for submitting objections to the Settlement and requests for exclusion from the Class, provides whom to contact for additional

information, and provides specifics regarding the date, time, and place of the Settlement Hearing.[4] The Notice also contains information regarding the Plan of Allocation and the Fee and Expense Application. *See Yost v. First Horizon Nat'l Corp.*, No. 08-02293, 2012 U.S. Dist. LEXIS 191010, at *6-*7 (W.D. Tenn. Sept. 13, 2012) (due process and Rule 23 satisfied where "the Class has been given proper and adequate notice of the Settlement Agreement and the Plan of Allocation, as well as of Class Counsel's application for an award of attorneys' fees, and for reimbursement of costs and expenses"). Thus, the Notice provides the necessary information for Class Members to make an informed decision regarding the Settlement and their rights with respect to it.

The Notice includes all information required by the Private Securities Litigation Reform Act of 1995 ("PSLRA").[5] In the Order Preliminarily Approving Settlement and Providing for Notice ("Preliminary Approval Order") (Dkt. No. 535), the Court approved the proposed notice plan. Preliminary Approval Order, ¶¶6-10. Lead Plaintiff has satisfied the elements of the notice plan approved by the Court. *See generally* the accompanying Declaration of Carole K. Sylvester ("Sylvester Decl."). As the Court concluded in ¶10 of its Preliminary Approval Order, the notice

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[4] *See In re Gen. Tire & Rubber Co. Sec. Litig.*, 726 F.2d 1075, 1086 (6th Cir. 1984) (upholding notice that "described the terms of the settlement, the reasons for [class representatives' decision to settle], the legal effect of the settlement and the rights of the [class members] to voice their objections"); *In re Packaged Ice Antitrust Litig.*, No. 08-MD-01952, 2011 U.S. Dist. LEXIS 17255, at *38 (E.D. Mich. Feb. 22, 2011) ("'The contents of a Rule 23(e) notice are sufficient if they inform the class members of the nature of the pending action, the general terms of the settlement, that complete and detailed information is available from the court files, and that any class member may appear and be heard at the hearing.'") (citation omitted).

[5] Class action settlement notices are to include: (1) "[t]he amount of the settlement proposed to be distributed to the parties to the action, determined in the aggregate and on an average per share basis"; (2) "[i]f the parties do not agree on the average amount of damages per share that would be recoverable if the plaintiff prevailed on each claim alleged under this title, a statement from each settling party concerning the issue or issues on which the parties disagree"; (3) "a statement indicating which parties or counsel intend to make . . . an application [for attorneys' fees or costs], the amount of fees and costs that will be sought (including the amount of such fees and costs determined on an average per share basis), and a brief explanation supporting the fees and costs sought"; (4) "[t]he name, telephone number, and address of one or more representatives of counsel for the plaintiff class who will be reasonably available to answer questions from class members"; and (5) "[a] brief statement explaining the reasons why the parties are proposing the settlement." 15 U.S.C. §77z-1(a)(7).

program implemented in this Litigation constitutes the best notice practicable under the circumstances and satisfies the requirements of due process, Federal Rule of Civil Procedure 23, and the PSLRA.[6]

III. THE SETTLEMENT SHOULD BE APPROVED BY THE COURT

A. The Standards for Judicial Approval

It is well settled that compromises of disputed claims are favored by the courts. *Williams v. First Nat'l Bank*, 216 U.S. 582, 595 (1910); *UAW v. GMC*, 497 F.3d 615, 632 (6th Cir. 2007) (noting "the federal policy favoring settlement of class actions"). "'Settlement agreements should therefore be upheld whenever equitable and policy considerations so permit.'" *Robinson v. Shelby Cty. Bd. of Educ.*, 566 F.3d 642, 648 (6th Cir. 2009) (quoting *Ford Motor Co. v. Mustangs Unlimited, Inc.*, 487 F.3d 465, 469 (6th Cir. 2007)).

Pursuant to Rule 23(e), a court should approve a class action settlement if it is fair, adequate, and reasonable. *UAW*, 497 F.3d at 631; *Williams v. Vukovich*, 720 F.2d 909, 921 (6th Cir. 1983); *Skelaxin*, 2014 U.S. Dist. LEXIS 60214, at *16. In determining whether a proposed class action settlement is fair, adequate and reasonable, courts are to consider: (1) the likelihood of ultimate success on the merits balanced against the amount and form of relief offered in the settlement; (2) the complexity, expense, and likely duration of the litigation; (3) the risk of fraud or collusion; (4) the stage of the proceedings and the amount of discovery completed; (5) the judgment of

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[6] *See, e.g.*, *Manners v. Am. Gen. Life Ins. Co.*, No. 3-98-0266, 1999 U.S. Dist. LEXIS 22880, at *31 (M.D. Tenn. Aug. 11, 1999) (finding individual notice mailed to class members combined with summary publication constituted "'the best practicable notice'" and were "'reasonably calculated, under the circumstances'" to meet the requirements of Rule 23 and due process) (citation omitted); *In re Skelaxin Metaxalone Antitrust Litig.*, MDL No. 2343, 2014 U.S. Dist. LEXIS 60214, at *18 (E.D. Tenn. Apr. 30, 2014) (same); *Garden City Emps. Ret. Sys. v. Psychiatric Sols., Inc.*, No. 3:09-cv-00882, slip op. (M.D. Tenn. Oct. 21, 2014) (same); *In re Prison Realty Sec. Litig.*, No. 3:99-0458, 2001 U.S. Dist. LEXIS 21943, at *3-*4 (M.D. Tenn. Feb. 9, 2001) (notice plan that "includ[ed] the individual notice to all members of the Settlement Classes who could be identified through reasonable effort" was the "best notice practicable under the circumstances" and satisfied Rule 23 and due process).

experienced trial counsel; (6) the nature of the negotiations; (7) the objections raised by the class members; and (8) the public interest. *Williams*, 720 F.2d at 922; *Poplar Creek Dev. Co. v. Chesapeake Appalachia, L.L.C.*, 636 F.3d 235, 244 (6th Cir. 2011); *Gascho v. Global Fitness Holdings, LLC*, No. 2:11-cv-436, 2014 U.S. Dist. LEXIS 46846, at *47 (S.D. Ohio Apr. 4, 2014); *In re Se. Milk Antitrust Litig.*, No. 2:08-MD-1000, 2013 U.S. Dist. LEXIS 70163, at *10-*11 (E.D. Tenn. May 17, 2013).

These factors are not to be applied in a formulaic fashion. *Whitford v. First Nationwide Bank*, 147 F.R.D. 135, 140 (W.D. Ky. 1992). That is, a "class action settlement cannot be measured precisely against any particular set of factors." *Id*. Rather, "[c]ourts judge the fairness of a proposed compromise by weighing the plaintiff's likelihood of success on the merits against the amount and form of the relief offered in the settlement. They do not decide the merits of the case or resolve unsettled legal questions." *Carson v. Am. Brands, Inc.*, 450 U.S. 79, 88 n.14 (1981); *see also Dick v. Sprint Commc'ns Co. L.P.*, 297 F.R.D. 283, 295 (W.D. Ky. 2014) ("[T]he 'restricted, tightly focused role' that Rule 23(e) prescribes does not consign a district court with broad powers to intrude upon the private, consensual bargain negotiated by the parties.").

The view of experienced counsel favoring the Settlement is entitled to significant weight. *Se. Milk*, 2013 U.S. Dist. LEXIS 70163, at *15-*16; *Williams*, 720 F.2d at 922-23. *See also Manners*, 1999 U.S. Dist. LEXIS 22880, at *81; *Kogan v. AIMCO Fox Chase, L.P.*, 193 F.R.D. 496, 501 (E.D. Mich. 2000) (citing *Bronson v. Bd. of Educ.*, 604 F. Supp. 68, 73 (S.D. Ohio 1984)). Where, as here, a settlement is endorsed as fair by experienced and sophisticated counsel after years of litigation and rigorous arm's-length negotiations, there is a strong initial presumption that the compromise is fair and reasonable. *Skelaxin*, 2014 U.S. Dist. LEXIS 60214, at *16. Particularly so when the court appointed lead plaintiff has endorsed the settlement and each of the provisions thereof. *See* Declaration of Edward F. Groden ("Groden Decl."), ¶¶5-7, submitted herewith.

When examined under applicable criteria, this $215 million Settlement is not just an adequate outcome, but rather an outstanding result for the Class. Lead Counsel believes that there are serious questions as to whether a more favorable monetary result against Defendants could or would be attained after the pending summary judgment and *Daubert* motions were decided and trial, and the inevitable post-trial motions and appeals, were completed. The Settlement achieves a substantial and certain recovery for Class Members and is unquestionably superior to the distinct possibility that were the Litigation to proceed to trial, there could be no recovery at all.

B. The Settlement Satisfies the Criteria for Final Approval

1. The Likelihood of Success on the Merits Balanced Against Relief Offered

The most important factor courts consider in approving a class action settlement is the plaintiff's likelihood of success on the merits, balanced against the amount and form of relief offered in settlement. *Poplar Creek*, 636 F.3d at 245.

Lead Plaintiff faced formidable obstacles to recovery if this Litigation was not settled. While Lead Counsel believes that it could prove the claims asserted, securities cases present a great deal of risk generally, and here in particular, there was certainly no guarantee that Lead Plaintiff would prevail at summary judgment, at trial, or on appeal. *See, e.g.*, *Glickenhaus & Co. v. Household Int'l, Inc.*, 787 F.3d 408 (7th Cir. 2015) (vacating $2.46 billion PSLRA judgment against securities fraud defendants and remanding for a new trial on limited issues); *In re JDS Uniphase Corp. Sec. Litig.*, No. C-02-1486-CW(EDL), 2007 WL 4788556 (N.D. Cal. Nov. 27, 2007) (defense verdict against shareholders class); *Robbins v. Koger Props.*, 116 F.3d 1441, 1448-49 (11th Cir. 1997) (reversal on loss causation grounds of $81 million jury verdict in favor of plaintiff class against an accounting firm and judgment entered for defendant); *In re Apple Computer Sec. Litig.*, No. C-84-20148(A)-JW, 1991 U.S. Dist. LEXIS 15608, at *1-*2 (N.D. Cal. Sept. 6, 1991) (court vacated judgment with respect to two individual defendants on motion for judgment notwithstanding the verdict); *In re*

Vivendi Universal, S.A. Sec. Litig., 765 F. Supp. 2d 512 (S.D.N.Y. 2011) (declining to enter judgment on jury verdict in favor of plaintiff class and modifying class definition after intervening change in Supreme Court precedent); *Erica P. John Fund, Inc. v. Halliburton Co.*, No. 15-90038, 2015 U.S. App. LEXIS 19519, at *8 (5th Cir. Nov. 4, 2015) (granting a "third interlocutory appeal in a [securities] case that has remained in the class certification stage for thirteen years," with two successive appeals to the U.S. Supreme Court); *In re BankAtlantic Bancorp, Sec. Litig.*, No. 07-61542, 2011 U.S. Dist. LEXIS 48057 (S.D. Fla. Apr. 25, 2011) (setting aside jury verdict in favor of plaintiffs and granting securities defendants' post-trial motion for judgment as a matter of law), *aff'd sub nom. Hubbard v. BankAtlantic Bancorp, Inc.*, 688 F.3d 713 (11th Cir. 2012).

Securities litigation often involves complex issues of fact and law. Here, the Class faced significant risk of no recovery as two summary judgment motions were pending at the time settlement was agreed to, which raised issues of first impression regarding SEC Item 303 and the proof required thereunder, the materiality of the trend at issue, and the scope of the claims to be tried. Saham Decl., ¶¶128-136. *Daubert* challenges to three of Lead Plaintiff's four experts also were pending when the case was settled, which could have eliminated Lead Plaintiff's ability to contest issues relating to the performance of unnecessary cardiac procedures and whether or not the trend alleged was quantitatively material. *Id.*, ¶¶118-127. Defendants also disputed the amount of damages as well as the discoverability and admissibility of much of the evidence relating to HCA's internal investigation of allegedly unnecessary cardiac procedures. *Id.*, ¶¶147-148. Had any of these challenges been successful, the ability to prove Lead Plaintiff's case would have been significantly undermined or even eliminated. And, even if Lead Plaintiff had prevailed at summary judgment, *Daubert* proceedings and trial, significant appellate risk existed as to the Sixth Circuit's interpretation of SEC Item 303. *See generally Robbins*, 116 F.3d 1441. Thus, Lead Plaintiff and Lead Counsel considered the significant risks associated with proceeding to trial and proving the

claims alleged prior to determining that the $215 million Settlement was in the best interest of the Class.

"While Lead Counsel believes that substantial evidence existed to support a jury verdict in favor of the Class, it recognizes that there were considerable risks and uncertainties if the case had proceeded to trial." Saham Decl., ¶138. Moreover, although Lead Plaintiff retained outstanding and well-respected experts, Defendants had challenged much of their testimony under *Daubert* and had hired their own equally-competent experts to counter Lead Plaintiff's experts' theories. Thus, there was no guarantee that the jury would hear Lead Plaintiff's proffered expert testimony, and if they did, that Lead Plaintiff would win the "battle of the experts." *See id.*, ¶¶139, 146.

Beyond liability, itself, Lead Plaintiff faced substantial risk relating to proving damages and loss causation. Saham Decl., ¶¶147-148. Defendants asserted that virtually all of the decline in HCA common stock at issue in this case was caused by factors other than revelations relating to the allegedly false statements contained in the Registration Statement. Defendants' damage expert opined that the majority of the decline in HCA common stock was the result of the Budget Control Act of 2011, not the disclosure of the allegedly omitted information at issue. *Id.*, ¶148. Thus, the damages suffered by Class Members would have been hotly contested at trial, as damages were subject to a statutory offset if the jury determined that the stock price declines did not result entirely from risks or conditions allegedly omitted from the IPO Registration Statement. *Id.*, ¶¶147-148.

The reaction of a jury to competing expert testimony is unpredictable. A jury could have been swayed by Defendants' experts and found that there were no damages or only just a fraction of the damages claimed by Lead Plaintiff.[7] Lead Plaintiff obtained a substantial recovery, without the

[7] *In re Nationwide Fin. Servs. Litig.*, No. 2:08-cv-00249, 2009 U.S. Dist. LEXIS 126962, at *8 (S.D. Ohio Aug. 18, 2009) ("The Settlement agreement reached by the parties avoids the risks attendant to this 'battle of the experts,' which could result in a ruling against Plaintiffs."); *In re Polyurethane Foam Antitrust Litig.*, No. 1:10-MD-2196, 2015 U.S. Dist. LEXIS 23482, at *16 (N.D. Ohio Feb. 26, 2015) (approving settlement and noting that "[plaintiffs], who carry the burden of

risk of trial. The $215 million proposed settlement amount represents at least 34% of the damages that Lead Plaintiff estimated could be recovered at trial, and exceeds 70% of what Defendants' expert opined was recoverable damages in the event Lead Plaintiff prevailed at trial. *See* Dkt. No. 461-28 at 4. Courts routinely approve securities class action settlements for *much* smaller percentages of the estimated damages than was recovered here. *See, e.g.*, Laarni T. Bulan, Ellen M. Ryan & Laura E. Simmons, *Securities Class Action Settlements – 2014 Review & Analysis*, at 8 (Cornerstone Research 2015) ("Cornerstone Report"), attached as Exhibit A hereto (median 2014 recovery in all PSLRA cases is ***2.2%*** of estimated damages). Even in smaller 1933 Act cases, where the median settlement is just $3.9 million, recoveries as a percent of estimated damages average ***7.3%***. *Id*. at 13. Accordingly, the recovery here is far superior to a typical securities class action settlement.

2. The Complexity, Expense and Likely Duration of the Litigation

"Courts have consistently held that the expense and possible duration of litigation are major factors to be considered in evaluating the reasonableness of a settlement." *In re Delphi Corp. Sec.*, 248 F.R.D. 483, 497 (E.D. Mich. 2008). "'[M]ost class actions are inherently complex and settlement avoids the costs, delays, and multitude of other problems associated with them.'" *Se. Milk*, 2013 U.S. Dist. LEXIS 70163, at *14 (citation omitted). For decades courts have recognized that "stockholder litigation is notably difficult and notoriously uncertain." *Lewis v. Newman*, 59 F.R.D 525, 528 (S.D.N.Y. 1973). And, "securities actions have become more difficult from a plaintiff's perspective in the wake of the PSLRA." *In re Ikon Office Solutions, Inc., Sec. Litig.*, 194 F.R.D. 166, 194 (E.D. Pa. 2000); *see also New Eng. Health Care Emps. Pension Fund v. Fruit of the*

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proof, face the threat that their experts will fail to communicate their testimony in a way that is comprehensible to laypeople"); *In re Cardizem CD Antitrust Litig.*, 218 F.R.D. 508, 523 (E.D. Mich. 2003) ("no matter how confident trial counsel may be, they cannot predict with 100% accuracy a jury's favorable verdict").

Loom, Inc., 234 F.R.D. 627, 631 (W.D. Ky. 2006) ("'Securities class actions are often "difficult and . . . uncertain" . . . .'") (citations omitted). As Justice O'Connor so aptly stated "[t]o be successful, a securities class-action plaintiff must thread the eye of a needle made smaller and smaller over the years by judicial decree and congressional action." *Alaska Elec. Pension Fund v. Flowserve Corp.*, 572 F.3d 221, 235 (5th Cir. 2009) (Justice O'Connor sitting by designation).

There is no doubt that this action involves complex issues relating to cardiology, accounting trends, initial public offerings, causation and damages. The complexity of the case is underscored by the fact that the parties collectively engaged 12 expert witnesses. First, both parties designated highly trained interventional cardiologists to opine on the medical necessity of percutaneous coronary interventions performed at HCA facilities. As a basis for their opinions these experts analyzed angiograms in order to determine whether the level of ischemia present warranted intervention under the existing clinical guidelines. Additionally, both parties engaged accountants, economists and due diligence experts who performed extensive analyses of massive data sets maintained by HCA. Saham Decl., ¶¶105-117. Thus, the issues involved in this case were highly technical and required detailed expert analysis.

Moreover, the trial would have involved the expenditure of enormous amounts of judicial and litigant resources as it was scheduled to last several weeks and involve dozens of attorneys, witnesses, experts, and the introduction of voluminous documentary and deposition evidence. Even if successful at trial, an appeal would be virtually assured.[8] Taking into account the likelihood of appeal, absent the Settlement, the Litigation (already pending for four years) likely would have continued for years and caused Class Members to wait several more years for a resolution of their

[8] *See In re Broadwing, Inc. ERISA Litig.*, 252 F.R.D. 369, 373-74 (S.D. Ohio 2006) (explaining "the difficulty Plaintiffs would encounter in proving their claims, the substantial litigation expenses, and a possible delay in recovery due to the appellate process, provide justifications for this Court's approval of the proposed Settlement").

claims.[9] "To most people, a dollar today is worth a great deal more than a dollar ten years from now." *Reynolds v. Benefit Nat'l Bank*, 288 F.3d 277, 284 (7th Cir. 2002). And this is not merely an academic argument. *See, e.g.*, *Household Int'l*, 787 F.3d 408 (vacating in part $2.46 billion judgment against securities fraud defendants and remanding for a new trial on limited issues - after 13 years of litigation); *Anixter v. Home-Stake Prod. Co.*, 77 F.3d 1215, 1233 (10th Cir. 1996) (overturning securities fraud class action jury verdict for plaintiffs after over 20 years of litigation). The benefits provided by this Settlement, in light of the complexity, expense and duration of this Litigation, including the risk and delay of an appeal, strongly favor approval of the Settlement.

3. The Stage of Proceedings and Extent of Discovery

To ensure that a plaintiff had access to sufficient information to evaluate its case and to assess the adequacy of the settlement proposal, courts evaluate the stage of the proceedings and the extent of discovery. *In re Se. Milk Antitrust Litig.*, No. 2:07-CV-208, 2012 U.S. Dist. LEXIS 83703, at *14-*15 (E.D. Tenn. June 15, 2012). "'[W]hen significant discovery has been completed, the Court should defer to the judgment of experienced trial counsel who has evaluated the strength of his case.'" *Id.* (citation omitted); *see also Williams*, 720 F.2d at 922-23.

Trial had until recently been scheduled to begin on January 12, 2016 and the case was vigorously litigated from start to finish. *See* Saham Decl., ¶¶32-137. Prior to settlement, Lead Counsel, had among other things:

[9] *See Olden v. Gardner*, 294 F. App'x 210, 217 (6th Cir. 2008) (affirming settlement and noting that, among other factors in favor of settlement, "[f]ollowing the trial, there would most likely have been an appeal that would have required an additional investment of substantial resources and time"); *Se. Milk*, 2013 U.S. Dist. LEXIS 70163, at *15 ("[T]he likelihood of an appeal was great [and] [t]he Court agrees with plaintiffs that the immediate recovery of substantial monetary and structural relief provided by the settlement far outweighs the risk and commitment of time inherent in further litigation of this complex matter, especially in view of the risks, expenses and delays noted above."); *In re Countrywide Fin. Corp. Customer Data Sec. Breach Litig.*, No. 3:08-MD-01998, 2010 U.S. Dist. LEXIS 87409, at *19 (W.D. Ky. Aug. 23, 2010) ("Even if litigation is successful for the plaintiff class, appeals are likely to delay any sort of meaningful relief. In contrast, the settlement provides recovery without delay.").

- Successfully opposed Defendants' motion to dismiss the Consolidated Complaint for Violation of the Federal Securities Laws (the "Complaint");

- Obtained certification of this action as a class action, and vigorously opposed Defendants' efforts to reverse that certification via a Rule 23(f) petition;

- Completed fact discovery, including reviewing and analyzing the electronic equivalent of more than 13 million pages of documents produced by Defendants and third parties, and taking or defending 44 depositions;

- Retained four experts in the fields of cardiology, finance, accounting, and economics to prepare opening and rebuttal reports and deposed eight defense experts and fully briefed cross-motions under *Daubert*;

- Opposed Defendants' motions for summary judgment which sought complete dismissal of Lead Plaintiff's claims on multiple grounds, including failure to plead a trend and lack of materiality of the impact on HCA's operations;

- Prepared witness outlines, cross examinations, jury instructions, deposition designations, and document designations in advance of the pre-trial *Daubert* evidentiary hearing and trial; and

- Attended four separate full day mediations, where detailed evidence was presented in the form of deposition testimony and expert analysis and where detailed arguments akin to opening statements at trial were presented to the mediator.

Thus, Lead Plaintiff and Lead Counsel were in an excellent position to evaluate the strengths and weaknesses of the claims asserted and defenses raised, as well as the risks of continued litigation and the propriety of settlement. "[T]his settlement comes on the eve of trial at a time when the class representatives and counsel are thoroughly familiar with the evidence and are in the best position to realistically evaluate the strengths and weaknesses of their case." *Se. Milk*, 2013 U.S. Dist. LEXIS 70163, at *17 ("Counsel's recommendation and that of the class representatives is clearly supported by an incredibly extensive base of data and this gives added weight and deference to the judgment of trial counsel and the class representatives.").

4. The Settlement Is the Result of "Arm's-Length" Negotiations Among Competent and Experienced Counsel

In assessing the fairness of a proposed settlement, a court is entitled to rely on the opinion of competent counsel. *Williams*, 720 F.2d at 922-23; *In re Telectronics Pacing Sys.*, 137 F. Supp. 2d

985, 1015-16 (S.D. Ohio 2001). This is especially true where, as here, the stage of the proceedings indicates that counsel and the court are fully capable of evaluating the merits of plaintiff's case and the probable course of future litigation. *See Armstrong v. Gallia Metro. Hous. Auth.*, No. 2:98-CV-373, 2001 U.S. Dist. LEXIS 26945, at *9-*10 (S.D. Ohio Apr. 20, 2001).

When examining the negotiating process, courts recognize that a "mediator's involvement in . . . settlement negotiations helps to ensure that the proceedings were free of collusion and undue pressure." *See D'Amato v. Deutsche Bank*, 236 F.3d 78, 85 (2d Cir. 2001). This Settlement is the product of hard fought, arm's-length negotiations between the parties over a lengthy period of time with the substantial assistance of Judge Phillips. Phillips Decl., ¶¶6-12; Saham Decl.,¶¶153-159. In fact, Judge Phillips continued to be involved in negotiations even after agreement was reached as to the amount of the Settlement. This involvement was necessitated because Lead Counsel remained vigilant in its effort to protect the Class even after the Settlement Amount was reached, insisting that particular terms of the Stipulation be structured in a manner favorable to the Class and that the Settlement Fund be paid into an escrow account in short order to insure that interest would begin accruing for the benefit of the Class. The extensive involvement of Judge Phillips, as well as the hard fought nature of the negotiations, further support approval of the Settlement. *See Se. Milk*, 2013 U.S. Dist. LEXIS 70163, at *20 (settlement approved following five years of "vigorous" litigation reached with assistance of court-appointed mediator).

5. The Reaction of the Class

To further support approval of a settlement, courts have also looked to the reaction of the class to the settlement. *Brotherton v. Cleveland*, 141 F. Supp. 2d 894, 906 (S.D. Ohio 2001). "The lack of objections by class members in relation to the size of the class highlights the fairness of the settlements to unnamed class members and supports approval of the settlements." *Se. Milk*, 2013 U.S. Dist. LEXIS 70163, at *19. Of course, "[t]he fact that some class members object to the Settlement does not by itself

prevent the court from approving the agreement." *Brotherton*, 141 F. Supp. 2d at 906. "'A certain number of . . . objections are to be expected in a class action.'" *Thacker v. Chesapeake Appalachia, L.L.C.*, 695 F. Supp. 2d 521, 523 (.D. Ky. 2010), *aff'd*, 636 F.3d 235 (6th Cir. 2011) (citation omitted).

In this case, copies of the Notice were mailed to over 67,000 potential Class Members and their nominees. Sylvester Decl., ¶¶4-11. The Summary Notice was also published in *Investor's Business Daily* and over the *PR Newswire*. *Id.*, ¶14. In addition, the Notice, Proof of Claim and Release form, the Stipulation, and the Preliminary Approval Order were posted on a case specific website established by Gilardi, the Claims Administrator. *Id.*, ¶13. While the deadline for filing objections – March 21, 2016 – has not yet passed, to date, no Class Member has objected to the Settlement or the Plan of Allocation.

6. The Public Interest

The Supreme Court has repeatedly recognized "that meritorious private actions to enforce federal antifraud securities laws are an essential supplement to criminal prosecutions and civil enforcement actions." *Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308, 313 (2007). And "'there is a strong public interest in encouraging settlement of complex litigation and class action suits because they are "notoriously difficult and unpredictable" and settlement conserves judicial resources.'" *Hyland v. Homeservices of Am., Inc.*, No. 3:05-CV-612-R, 2012 U.S. Dist. LEXIS 61994, at *23 (W.D. Ky. May 3, 2012) (citations omitted). As discussed above, the Settlement provides $215 million in cash, plus interest. The Settlement puts an end to litigation, which absent settlement would have likely continued in this Court and in the Court of Appeals. *See Broadwing*, 252 F.R.D. at 376 ("[T]here is certainly a public interest in settlement of disputed cases that require substantial federal judicial resources to supervise and resolve.").

Accordingly, Lead Counsel submits that all of the relevant factors, taken together, weigh in favor of approval of the Settlement.

IV. THE PLAN OF ALLOCATION IS FAIR AND REASONABLE AND SHOULD BE APPROVED

The Notice contains the Plan of Allocation, describing how the settlement proceeds are to be divided among Authorized Claimants. A trial court has broad discretion in approving a plan of allocation. *See Sullivan v. DB Invs., Inc.*, 667 F.3d 273, 328 (3d Cir. 2011); *In re Chicken Antitrust Litig.*, 810 F.2d 1017, 1019 (11th Cir. 1987). The test is simply whether the proposed plan, like the settlement itself, is fair, reasonable, and adequate. *See, e.g.*, *In re Packaged Ice Antitrust Litig.*, No. 08-MDL-01952, 2011 U.S. Dist. LEXIS 150427, at *65 (E.D. Mich. Dec. 13, 2011). """Courts generally consider plans of allocation that reimburse class members based on the type and extent of their injuries to be reasonable.""" *Id.* (citations omitted).

In determining whether a proposed plan of allocation of settlement proceeds is fair, courts give "considerable weight to the opinion of experienced and competent counsel that is based on their informed understanding of the legal and factual issues involved." *White v. NFL*, 822 F. Supp. 1389, 1420 (D. Minn. 1993); *City of Providence v. Aéropostale, Inc.*, No. 11 Civ. 7132 (CM) (GWG), 2014 U.S. Dist. LEXIS 64517, at *29 (S.D.N.Y. May 9, 2014) ("A plan of allocation 'need only have a reasonable, rational basis, particularly if recommended by "experienced and competent" class counsel.'") (citations omitted), *aff'd sub nom. Arbuthnot v. Pierson*, 677 F. App'x 73 (2d Cir. 2015). Approval is particularly warranted here where Lead Counsel consulted with a damages expert to develop a plan of allocation predicated on the statutory provisions of the 1933 Act. Saham Decl., ¶162.[10]

The Plan of Allocation provides for the distribution of the Net Settlement Fund among Authorized Claimants on a *pro rata* basis based on their "Recognized Loss." The Plan of Allocation ensures that the net settlement proceeds will be fairly and equitably distributed to those who have

[10] As of the date of this memorandum, no Class Members have objected to the Plan of Allocation.

losses consistent with the statutory damage framework of the 1933 Act. Thus, the Plan of Allocation is fair and reasonable and wholly consistent with the damages recoverable as expressed by Congress in the 1933 Act.

V. AWARD OF ATTORNEYS' FEES

A. Plaintiff's Counsel Are Entitled to a Fee From the Common Fund They Obtained

The Supreme Court has long recognized the "common fund" exception to the American rule that a litigant is responsible for his or her own attorneys' fees. *Trs. v. Greenough*, 105 U.S. 527 (1882). The rationale for the common fund principle was explained in *Boeing Co. v. Van Gemert*, 444 U.S. 472 (1980), as follows:

> [T]his Court has recognized consistently that a litigant or a lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorney's fee from the fund as a whole. . . . Jurisdiction over the fund involved in the litigation allows a court to prevent . . . inequity by assessing attorney's fees against the entire fund, thus spreading fees proportionately among those benefited by the suit.

Id. at 478. The common fund doctrine both prevents unjust enrichment and encourages counsel to protect the rights of those who have small claims. This is particularly applicable to claims brought under the federal securities laws as the Supreme Court has emphasized that private actions provide "'a most effective weapon in the enforcement' of the securities laws and are 'a necessary supplement to [Securities and Exchange] Commission action.'" *Bateman Eichler, Hill Richards, Inc. v. Berner*, 472 U.S. 299, 310 (1985) (quoting *J. I. Case Co. v. Borak*, 377 U.S. 426, 432 (1964)).[11]

B. The Court Should Award Attorneys' Fees Using the Percentage Approach

The diligent efforts of Lead Plaintiff's counsel have resulted in the creation of a $215 million common fund. Courts generally favor awarding fees from a common fund based on "a percentage of

[11] *See also Tellabs*, 551 U.S. at 313 (noting that the Court has "long recognized that meritorious private actions to enforce federal antifraud securities laws are an essential supplement to criminal prosecutions and civil enforcement actions").

the fund bestowed on the class." *See Blum v. Stenson*, 465 U.S. 886, 900 n.16 (1984); *Cent. R.R. & Banking Co. v. Pettus*, 113 U.S. 116, 124-25 (1885); *Greenough*, 105 U.S. at 532; *Sprague v. Ticonic Nat'l Bank*, 307 U.S. 161, 165-66 (1939). Congress followed the Supreme Court's lead and endorsed the efficacy of the percentage of the fund approach to fee awards in the context of common fund PSLRA cases. *See* 15 U.S.C. §77z-1(a)(6).

The Sixth Circuit has likewise endorsed the use of the percentage approach for determining attorneys' fee awards in common fund cases. *E.g.*, *Rawlings v. Prudential-Bache Props.*, 9 F.3d 513, 515-16 (6th Cir. 1993). District courts in this Circuit have almost uniformly shifted to the percentage method in awarding fees in common fund cases,[12] recognizing that "the lodestar method is cumbersome," while "the percentage-of-the-fund approach more accurately reflects the result achieved [and] . . . has the virtue of reducing the incentive for Plaintiffs' attorneys to over-litigate or 'churn' cases." *Skelaxin*, 2014 U.S. Dist. LEXIS 91661, at *4. The Sixth Circuit is not alone in its adoption of the percentage approach.[13]

[12] *See In re Skelaxin (Metaxalone) Antitrust Litig.*, No. 2:12-CV-83, 2014 U.S. Dist. LEXIS 91661, at *4 (E.D. Tenn. June 30, 2014) ("The Court recognizes that the trend in 'common fund cases has been toward use of the percentage method.'") (citation omitted); *In re Se. Milk Antitrust Litig.*, No. 2:07-CV-208, 2013 U.S. Dist. LEXIS 70167, at *14 (E.D. Tenn. May 17, 2013) ("The percentage-of-the-fund method, however, clearly appears to have become the preferred method in common fund cases."); *Thacker*, 695 F. Supp. 2d at 528; *Fruit of the Loom*, 234 F.R.D. at 633 ("[T]he Court will apply the percentage-of-the-fund method which is consistent with the majority trend."); *In re Telectronics Pacing Sys.*, 186 F.R.D. 459, 483 (S.D. Ohio 1999) ("the preferred method in common fund cases has been to award a reasonable percentage of the fund to Class Counsel as attorneys' fees"), *rev'd on other grounds*, 221 F.3d 870 (6th Cir. 2000).

[13] *See Swedish Hosp. Corp. v. Shalala*, 1 F.3d 1261 (D.C. Cir. 1993); *In re Thirteen Appeals Arising out of San Juan Dupont Plaza Hotel Fire Litig.*, 56 F.3d 295, 301 (1st Cir. 1995); *Wal-Mart Stores, Inc. v. Visa U.S.A. Inc.*, 396 F.3d 96, 121 (2d Cir. 2005); *In re AT&T Corp. Sec. Litig.*, 455 F.3d 160, 164 (3d Cir. 2006); *Florin v. Nationsbank, N.A.*, 34 F.3d 560, 566 (7th Cir. 1994); *Petrovic v. AMOCO Oil Co.*, 200 F.3d 1140, 1157 (8th Cir. 1999); *In re Wash. Pub. Power Supply Sys. Sec. Litig.*, 19 F.3d 1291, 1295 (9th Cir. 1994); *Gottlieb v. Barry*, 43 F.3d 474, 483 (10th Cir. 1994); *Camden I Condo. Ass'n v. Dunkle*, 946 F.2d 768, 771 (11th Cir. 1991).

Moreover, the percentage method directly aligns the interests of the class and its counsel and provides a powerful incentive for efficient prosecution, thereby benefiting both litigants and the judicial system.

C. The Requested Fee Award Is Well Within the Applicable Range of Percentage-of-Fund Awards

In selecting an appropriate percentage award, the Supreme Court recognizes that an appropriate fee is intended to approximate what counsel would receive if they were bargaining for their services in the marketplace. *Mo. v. Jenkins*, 491 U.S. 274, 285 (1989). If this were a non-representative action, the customary fee arrangement would be contingent, on a percentage basis, and in the range of 33% of the recovery. *Blum*, 465 U.S. at 903* ("In tort suits, an attorney might receive one-third of whatever amount the plaintiff recovers. In those cases, therefore, the fee is directly proportional to the recovery."); *see also* Harwell Decl., ¶2.

In cases of this size, with comparable effort by counsel, courts in this District and throughout the country have awarded fees in the 30% range, even absent a result as exceptional as that achieved here:

Case	Recovery	Percentage Awarded
In re Prison Realty Sec. Litig., No. 3:99-0458, 2001 U.S. Dist. LEXIS 21942 (M.D. Tenn. Feb. 9, 2001) (Campbell, J.)	$104 million	30%
In re Se. Milk Antitrust Litig., No. 2:07-CV-208, 2013 U.S. Dist. LEXIS 70167 (E.D. Tenn. May 17, 2013) (Greer, J.)	$158.6 million	33.33%
In re TFT-LCD (Flat Panel) Antitrust Litig., No. 3:07-MD-01827-SI, 2011 U.S. Dist. LEXIS 154287 (N.D. Cal. Dec. 27, 2011)	$405 million	30%
Silverman v. Motorola, Inc., No. 07 C 4507, 2012 U.S. Dist. LEXIS 63477 (N.D. Ill. May 7, 2012)	$200 million	27.5%
In re Checking Account Overdraft Litig., 830 F. Supp. 2d 1330 (S.D. Fla. 2011)	$410 million	30%
In re Tricor Direct Purchaser Antitrust Litig., No. 05-340-SLR, 2009 U.S. Dist. LEXIS 133251 (D. Del. Apr. 23, 2009)	$250 million	33.33%
In re Ikon Office Solutions, Inc., Sec. Litig., 194 F.R.D. 166 (E.D. Pa. 2000)	$111 million	30%

Case	Recovery	Percentage Awarded
In re Neurontin Mktg. & Sales Practices Litig., 58 F. Supp. 3d 167 (D. Mass. 2014)	$325 million	28%
In re Initial Pub. Offering Sec. Litig., 671 F. Supp. 2d 467 (S.D.N.Y. 2009)	$510 million	33.33%
Allapattah Servs. v. Exxon Corp., 454 F. Supp. 2d 1185 (S.D. Fla. 2006)	$1.075 billion	31.33%
In re Vitamins Antitrust Litig., MDL No. 1285, 2001 U.S. Dist. LEXIS 25067 (D.D.C. July 16, 2001)	$359.4 million	34%
Local 703 I.B. of T. Grocery & Food Emps. Welfare Fund v. Regions Fin. Corp., No. 2:10-cv-02847-KOB, 2015 U.S. Dist. LEXIS 130542 (N.D. Ala. Sept. 14, 2015)	$90 million	30%[14]

Courts in this District are in accord.[15] Lead Counsel's request is also well within the range of percentage awards made by other district courts in this Circuit. *See, e.g.*, *Skelaxin*, 2014 U.S. Dist. LEXIS 91661, at *5 ("The Court finds that the requested counsel fee of one third [of $73 million recovery] is fair and reasonable and fully justified. The Court finds it is within the range of fees ordinarily awarded."); *Se. Milk*, 2013 U.S. Dist. LEXIS 70167, at *15-*16 (Holding that "attorneys' fees requested represent one-third of the settlement fund. Although the total fee requested is a very large amount . . . the percentage requested is certainly within the range of fees often awarded in

[14] *See also In re Buspirone Antitrust Litig.*, No. MDL 1413 (JGK), 2003 U.S. Dist. LEXIS 26538 (S.D.N.Y. Apr. 11, 2003) (33% of $220 million); *In re Linerboard Antitrust Litig.*, No. MDL 1261, 2004 WL 1221350, at *1 (E.D. Pa. June 2, 2004) (30% of $202 million); *In re Relafen Antitrust Litig.*, No. 01-12239-WGY, slip op., at 8 (D. Mass. Apr. 9, 2004) (33% of $175 million); *In re Apollo Grp. Inc. Sec. Litig.*, No. CV 04-2147-PHX-JAT, 2012 WL 1378677, at *9 (D. Ariz. Apr. 20, 2012) (33% of $145 million); *In re Combustion, Inc.*, 968 F. Supp. 1116, 1142 (W.D. La. 1997) (36% of $127 million); *Kurzweil v. Philip Morris Cos. Inc.*, No. 94 Civ. 2373 (MGM), 1999 WL 1076105, at *1 (S.D.N.Y. Nov. 30, 1999) (30% of $123 million); *Ikon*, 194 F.R.D. at 197 (30% of $108 million); *City of Greenville v. Syngenta Crop Prot., Inc.*, 904 F. Supp. 2d 902, 908-09 (S.D. Ill. 2012) (33% of $105 million).

[15] *See Winslow v. Bancorpsouth, Inc.*, No. 3:10-cv-00463, slip op. (M.D. Tenn. Oct. 31, 2012) (awarding 30% of $29,250,000 settlement plus expenses) (Sharp, J.); *Beach v. Healthways Inc.*, No. 3:08-cv-00569, slip op. (M.D. Tenn. Sept. 27, 2010) (Campbell, J.) (awarding 30% plus expenses); *In re Direct Gen. Corp. Sec. Litig.*, No. 3:05-0077, slip op. (M.D. Tenn. July 20, 2007) (Campbell, J.) (awarding 30% plus expenses); *Morse v. McWhorter*, No. 3:97-0370, slip op. (M.D. Tenn. Mar. 12, 2004) (Higgins, J.) (awarding a 33-1/3% fee plus expenses); *Manners*, 1999 U.S. Dist. LEXIS 22880, at *88 ("[T]hroughout the Sixth Circuit, attorneys' fees in class actions have ranged from 20%-50%.").

common fund cases, both nationwide and in the Sixth Circuit."); *Thacker*, 695 F. Supp. 2d at 528 (awarding fees of thirty percent and explaining "[u]sing the percentage approach, courts in this jurisdiction and beyond have regularly determined that 30% fee awards are reasonable"); *Shane Grp., Inc. v. Blue Cross Blue Shield of Mich.*, No. 10-cv-14360, 2015 U.S. Dist. LEXIS 41968, at *48 (E.D. Mich. Mar. 31, 2015) (awarding class counsel one third of common fund as attorneys' fees, and finding that "[c]ourts have noted that the range of reasonableness in common fund cases is from 20 to 50 percent of the common fund"); *In re Nat'l Century Fin. Enters., Inc. Inv. Litig.*, No. 2:03-md-1565, 2009 U.S. Dist. LEXIS 45790, at *16 (S.D. Ohio May 27, 2009) (concluding 30% of the settlement amount was "within the percentage range that courts have awarded in securities class action settlements in the Sixth Circuit"); *Packaged Ice*, 2011 U.S. Dist. LEXIS 150427, at *76 (explaining "the requested award of close to 30% appears to be a fairly well-accepted ratio in cases of this type and generally in complex class actions"); *In re Prandin Direct Purchaser Antitrust Litig.*, No. 2:10-cv-12141-AC-DAS, 2015 U.S. Dist. LEXIS 5964 (E.D. Mich. Jan. 20, 2015) (awarding one third of common fund as attorneys' fees).

D. CONSIDERATION OF THE RELEVANT FACTORS

The touchstone of an appropriate fee award in common fund cases is whether the award is reasonable under the circumstances. *See Rawlings*, 9 F.3d at 517. In determining the reasonableness of attorneys' fees, the Sixth Circuit over the years has identified several relevant factors for consideration. These have included "the complexity of the legal questions involved, the results accomplished, the professional standing of [counsel], and the professional standing of [defendants'] lawyers," the effort expended, and the public policy aspect of the case. *Denney v. Phillips & Buttorf Corp.*, 331 F.2d 249, 251 (6th Cir. 1964); *Smillie v. Park Chem. Co.*, 710 F.2d 271, 275 (6th Cir. 1983). And, "the extent and nature of the services; the labor, time and trouble involved; the results achieved; the character and importance of the matter in hand; the value of the property or the amount

of money involved; the learning, skill and experience exercised; whether the fee is absolute or contingent; and the ability to pay." *Pergament v. Kaiser-Frazer Corp.*, 224 F.2d 80, 83 (6th Cir. 1955). The Sixth Circuit grants a district court "'considerable latitude of discretion on the subject, since it has far better means of knowing what is just and reasonable than an appellate court.'" *Ramey v. Cincinnati Enquirer, Inc.*, 508 F.2d 1188, 1196 (6th Cir. 1974) (citation omitted). Application of the factors articulated by the Sixth Circuit, here, fully supports the requested thirty percent fee award.

1. The Value of the Benefits Achieved

Lead Plaintiff's counsel have secured a settlement that provides for a substantial (and certain) cash payment of $215 million. Courts have consistently recognized that in making a fee award the "most critical factor is the degree of success obtained." *Hensley v. Eckerhart*, 461 U.S. 424, 436 (1983).[16] This outstanding Settlement was achieved as a direct result of the skill, effort, and tenacity of Lead Plaintiff's counsel in prosecuting this action up until the eve of trial. There is no question counsel overcame numerous obstacles and took significant risks in obtaining this highly favorable result for the Class.

While Lead Counsel believes that Lead Plaintiff's claims have substantial merit, if litigation were to proceed to trial, there is, nonetheless, a significant risk that the Class could recover less than the amount of the Settlement or even nothing at all. Throughout the Litigation, Defendants consistently maintained that Lead Plaintiff could not establish liability or damages and have challenged virtually every factual and legal issue in this Litigation in an effort to defeat Lead Plaintiff's claims. *See* Saham Decl., ¶¶138-152. For example, Defendants' motions for summary

[16] *See also Rawlings*, 9 F.3d at 516 (a percentage of the fund will compensate counsel for the result achieved); *Delphi*, 248 F.R.D. at 503; *Behrens v. Wometco Enters., Inc.*, 118 F.R.D. 534, 547-48 (S.D. Fla. 1988) ("The quality of work performed in a case that settles before trial is best measured by the benefit obtained."), *aff'd*, 899 F.2d 21 (11th Cir. 1990).

judgment seeking complete dismissal of this action were fully briefed and pending before the Court at the time the Settlement was reached. *Id.*, ¶139. In addition to these legal risks, Lead Plaintiff faced Defendants' four pending *Daubert* motions as well as additional evidentiary disputes that had yet to be resolved by the Court. *Id.* This created additional uncertainty as to what evidence would ultimately be permitted to be shown to the jury, and for what purposes. *Id.*

Despite the risks of continued litigation, Lead Counsel obtained a $215 million recovery, which is the largest securities class action recovery in Tennessee and far exceeds the median result in other court approved PSLRA settlements. *See* Cornerstone Report at 8; *see also* Phillips Decl., ¶12.[17]

2. Public Policy Considerations

The Supreme Court has emphasized that private securities actions such as this one provide "'a most effective weapon in the enforcement' of the securities laws and are 'a necessary supplement to [SEC] action.'" *Bateman*, 472 U.S. at 310 (citation omitted); *Tellabs*, 551 U.S. at 313. Adequate compensation to encourage attorneys to assume the risk of litigation serves the public interest. Harwell Decl., ¶5. "Indeed, without adequate compensation, it would be difficult to retain the caliber of lawyers necessary, willing, and able to properly prosecute to a favorable conclusion complex, risky, and expensive class actions such as this one." *Id.* Thus, an important factor is "society's stake in rewarding attorneys who produce such benefits in order to maintain an incentive to others." *Ramey*, 508 F.2d at 1196.

Without the willingness of Lead Counsel to assume that task, members of the Class would not have recovered anything, ***let alone been the beneficiaries of the largest securities class action recovery ever in Tennessee.*** As actionable securities law violations exist and society benefits from

[17] The Settlement Amount is also more than 70% of the amount that could be recovered under Defendants' expert's analysis if Lead Plaintiff prevailed on all claims. Dkt. No. 461-28 at 4.

strong advocacy on behalf of security holders, public policy favors the granting of the fee and expense application. *See also Se. Milk*, 2013 U.S. Dist. LEXIS 70167, at *23-*24 ("Awards of substantial attorneys' fees in cases like this are necessary to incentivize attorneys to shoulder the risk of nonpayment to expose violations of the law and to achieve compensation for injured parties."). Such awards are necessary to incentivize counsel who face the very real possibility of no recovery for their very substantial efforts all the way through and even after trial. *See Vivendi Universal*, 765 F. Supp. 2d 512 (where after trial the court declined to enter judgment on jury verdict and modified class definition after intervening change in Supreme Court precedent thereby eliminating the vast majority of class wide damages).

3. The Contingent Nature of the Fee

Lead Counsel undertook this Litigation on a contingent fee basis, assuming a significant risk that the Litigation would yield no recovery and leave counsel uncompensated. This risk encompasses not only the risk of zero payment, but also the risk of underpayment. *See In re Cont'l Ill. Sec. Litig.*, 962 F.2d 566, 569-70 (7th Cir. 1992). Unlike counsel for Defendants, who have been paid for their time and expenses on a regular basis, Lead Counsel has not been compensated for its more than 28,000 hours of time since this case began in October 2011. Courts have consistently recognized that the risk of receiving little or no recovery is a major factor in considering an award of attorneys' fees. *See Se. Milk*, 2013 U.S. Dist. LEXIS 70167, at *22 ("This Court finds that the fee awarded should fully reflect the risk taken by these lawyers and is a very substantial factor in this case which weighs in favor of the requested fee."); *In re Telectronics Pacing Sys.*, 137 F. Supp. 2d 1029, 1043 (S.D. Ohio 2001); Harwell Decl., ¶6; Holmes Decl., ¶¶6-7.

While securities cases have always been complex and difficult to prosecute, the PSLRA has only increased that difficulty. When settlement was reached, Lead Plaintiff still faced a substantial burden of proving to a jury that the Defendants were responsible for an omission or a misstatement,

that any such misstatement or omission was material and that the harm suffered by the Class was attributable to such omission or misstatement. *In re Comshare Inc. Sec. Litig.*, 183 F.3d 542, 548 (6th Cir. 1999).

As noted herein and in the Saham Declaration, Defendants steadfastly maintained that they did nothing wrong and have offered evidence, including the testimony of eight expert witnesses, to support their positions. In addition to two summary judgment and four *Daubert* motions, multiple motions relating to the discoverability and the ultimate admissibility of key documents and testimony evidencing HCA's internal investigation of unnecessary cardiac procedures were still under submission. Resolution of these motions in Defendants' favor would have severely limited Lead Counsel's ability to obtain a favorable jury verdict. Additionally, Defendants challenged the scope of the claims to be tried, disputing both Lead Plaintiff's omissions theory of liability and whether the alleged trend in cardiovascular procedures was material to HCA's overall operations. Assuming Lead Plaintiff was able to prove liability at trial, Lead Plaintiff's damages could have been significantly reduced if Defendants could show that a substantial portion of the drop in HCA's stock price was due to factors other than the alleged misrepresentations or omissions. Defendants had proffered expert testimony that the Budget Control Act of 2011, not revelations relating to the Registration Statement, caused the majority of the decline in HCA's stock price. In the inevitable "battle of experts," the jury could have sided with Defendants' experts and found no damages or only a fraction of the damages Lead Plaintiff claimed.

The risk of no recovery in complex cases of this type is very real. Lead Counsel is aware of numerous class actions in which plaintiff's counsel expended thousands of hours and yet received no remuneration whatsoever despite their diligence and expertise because of discovery of facts unknown when the case was commenced, changes in the law during the pendency of the case, or an adverse decision of a judge or jury. *See, e.g., In re Oracle Corp. Sec. Litig.*, No. C 01-00988 SI,

2009 U.S. Dist. LEXIS 50995 (N.D. Cal. June 16, 2009) (summary judgment granted in favor of defendants after eight years of litigation, and after plaintiff's counsel incurred over $6 million in expenses, and worked over 100,000 hours), *aff'd*, 627 F.3d 376 (9th Cir. 2010); *In re Alstom SA Sec. Litig.*, 741 F. Supp. 2d 469, 47-73 (S.D.N.Y. 2010) (after completion of extensive foreign discovery and investment of over $20 million in time and expenses, 95% of plaintiff's damages were eliminated by the Supreme Court's reversal of 40 years of unbroken circuit court precedents in *Morrison v. Nat'l Austl. Bank Ltd.*, 561 U.S. 247 (2010)).

Even plaintiffs who get past summary judgment and succeed at trial may find a judgment in their favor overturned on appeal or on a post-trial motion. For example, in *BankAtlantic*, the Eleventh Circuit upheld a trial court's decision overturning a jury verdict in favor of the lead plaintiff on the issue of loss causation. *See Hubbard*, 688 F.3d 713. This is ***not*** a remote risk or infrequent occurrence.[18] Accordingly, the contingent nature of Lead Counsel's representation strongly favors approval of the requested fee.

4. The Diligent Prosecution of the Litigation

The Sixth Circuit has long held that district courts "have considerable latitude" in assessing the fee request of counsel as a district court judge "has far better means of knowing what is just and reasonable than an appellate court." *Pergament*, 224 F.2d at 83. In determining the reasonableness of a requested fee, one factor the trial court should consider is "'[t]he extent and nature of the services; the labor, time and trouble involved.'" *Id*. (citation omitted). Here, a considerable effort on the part of Lead Plaintiff's counsel was required to obtain this outstanding settlement. As

[18] *See, e.g., JDS Uniphase*, 2007 WL 4788556 (jury returned defense verdict in PSLRA class action); *Robbins*, 116 F.3d at 1448-49 (jury verdict of $81 million for plaintiffs against an accounting firm reversed on appeal on loss causation grounds and judgment entered for defendant); *Anixter*, 77 F.3d at 1233 (Tenth Circuit overturned securities fraud class action jury verdict for plaintiffs in case filed over 20 years earlier); *Apple Computer*, 1991 U.S. Dist. LEXIS 15608, at *1-*2 (verdict against two individual defendants, but court vacated judgment against corporate issuer on motion for judgment notwithstanding the verdict).

discussed in more detail in the Saham Declaration, this Litigation was hard fought, involving disputes at all phases of the case. Defendants mounted vigorous challenges at the pleading, class certification, summary judgment, and pre-trial phases of this case. Saham Decl., ¶¶138-152. Defendants also disputed the discoverability of virtually all of the key evidence. This required multiple discovery motions before Magistrate Judge Griffin and Judge Sweet in the Southern District of New York.

As a result of Lead Counsel's efforts, the electronic equivalent of over 13 million pages of documents were produced, reviewed and analyzed, and 44 fact and expert depositions were conducted. The Settlement was reached at a very advanced stage of the case shortly before pre-trial *Daubert* evidentiary hearings and only after four years of litigation, including full briefing of summary judgment and *Daubert* motions. The significant resources devoted by Lead Plaintiff's counsel is reflected by the numerous hours of preparation in concert with Lead Plaintiff's experts, which enabled Lead Counsel to effectively examine senior HCA executives about their own business, as well as nationally renowned experts in cardiology, economics, finance and accounting about their areas of expertise. The substantial effort required to bring this difficult Litigation to a successful conclusion warrants the requested fee.

5. The Complexity of the Litigation

The complexity of the issues is a significant factor to be considered in making a fee award. Harwell Decl., ¶5. Courts have long recognized that securities class actions present inherently complex and novel issues. As Judge Finesilver noted decades ago in *Miller v. Woodmoor Corp.*, No. 74-F-988, 1978 U.S. Dist. LEXIS 15234 (D. Colo. Sept. 28, 1978):

> The benefit to the class must also be viewed in its relationship to the complexity, magnitude, and novelty of the case. . . .
>
> Despite years of litigation, the area of securities law has gained little predictability. There are few "routine" or "simple" securities actions. Courts are continually modifying and/or reversing prior decisions in an attempt to interpret the

> securities law in such a way as to follow the spirit of the law while adapting to new situations which arise. Indeed, many facets of securities law have taken drastically new directions during the pendency of this action. . . .
>
> The complexity of a case is compounded when it is certified as a class action. . . . Management of the case, in and of itself, is a monumental task for counsel and the Court.

Id. at *11-*12. Judge Finesilver's comments ring even more true today. While courts have always recognized that securities class actions carry significant complexities, the adoption of the PSLRA has made the successful prosecution of these cases even more complex and uncertain.

From the outset, this Litigation presented a number of sharply contested issues of both fact and law as well as formidable defenses to liability and damages. Defendants have adamantly denied liability and asserted that they had absolute defenses to Lead Plaintiff's claims. *See Churchill Vill., L.L.C. v. GE*, 361 F.3d 566, 576 (9th Cir. 2004) (concluding that the district court properly weighed risk when it concluded defendant's belief that it had a strong case on merits supported finding of risk).

The complexity of this case is underscored by the expert testimony. Both parties engaged highly trained interventional cardiologists who disputed the medical necessity of cardiac interventions performed at HCA facilities. The evidence reviewed by these experts was in the form of angiograms, stress tests and other cardiac diagnostic analysis, which needed to be interpreted by cardiologists. Additionally, both parties engaged accountants, economists and due diligence experts who performed extensive analyses of massive data sets maintained by HCA. Defendants challenged much of this testimony.

Even if Lead Plaintiff overcame the challenges to its experts, beat Defendants' summary judgment motions and obtained a significant judgment after trial, the inevitable appeals would follow. As noted above, in complex and substantial cases such as this, it must be recognized that even a victory at the trial stage does not guarantee ultimate success. Both trial and appellate review

are unpredictable and could seriously and adversely affect the scope of an ultimate recovery, if not the recovery itself. *See supra*, at p. 3. Despite the novelty and difficulty of the issues raised, and the efforts of Defendants throughout the course of the Litigation to deny the Class a recovery, counsel secured an excellent result for the Class. This factor strongly supports the requested award.

6. The Quality of the Representation

Lead Plaintiff's counsel are leaders in the fields of securities class actions and complex litigation. *See* Exs. F and D to the Declaration of Scott H. Saham Filed on Behalf of Robbins Geller Rudman & Dowd LLP ("Robbins Geller Decl.") and the Declaration of Jerry E. Martin Filed on Behalf of Barrett Johnston Martin & Garrison, LLC ("Barrett Johnston Decl."), respectively, submitted herewith. The quality of the representation is best demonstrated by the substantial benefit achieved for the Class. *Maley v. Del Global Techs. Corp.*, 186 F. Supp. 2d 358, 373 (S.D.N.Y. 2002); *In re Veeco Instruments Sec. Litig.*, No. 05 MDL 01695 (CM), 2007 U.S. Dist. LEXIS 85554, at *21 (S.D.N.Y. Nov. 7, 2007).

From the outset, Lead Plaintiff's counsel committed considerable human and financial resources to the research, investigation, and prosecution of this case. Much of the evidence which was ultimately presented to the Court in opposition to Defendants' motions for summary judgment, was obtained only after lengthy motion practice regarding the scope of discovery, the review of millions of pages of documents, detailed expert analysis and countless hours of preparation, which enabled Lead Counsel to effectively examine key witnesses. Without the extensive preparation and skill employed by Lead Counsel no such evidence would have been obtained.

Lead Plaintiff's counsel's significant efforts yielded a highly favorable result under difficult and challenging circumstances. Counsel's commitment and effort continued even after the $215 million settlement amount was achieved. *See supra*, at p. 15. The quality, efficiency, and

dedication of Lead Plaintiff's counsel strongly support the fee request. *See Se. Milk*, 2013 U.S. Dist. LEXIS 70167, at *21-*22.

The quality of opposing counsel is also important when the court evaluates the services rendered by plaintiff's counsel. *See, e.g., In re Global Crossing Sec. & ERISA Litig.*, 225 F.R.D. 436, 467 (S.D.N.Y. 2004) (Settlement achieved "in the face of vigorous opposition by defendants who were represented by some of the nation's leading law firms."). Defendants are represented in this case by very skilled and highly respected counsel from Latham & Watkins LLP; Davis Polk & Wardwell LLP; and Riley Warnock & Jacobson, PLC, firms with well-deserved reputations for vigorous advocacy in the defense of complex civil actions. The ability of Lead Plaintiff's counsel to obtain a favorable result for the Class in the face of such formidable opposition further evidences the quality of their work.[19]

Thus, there can be no dispute that all of the factors discussed above weigh in favor of the requested fee.

VI. LEAD PLAINTIFF'S COUNSEL'S EXPENSES ARE REASONABLE AND WERE NECESSARILY INCURRED TO ACHIEVE THE BENEFIT OBTAINED

Lead Counsel also requests payment of $2,016,508.52 in expenses and charges in connection with the prosecution of this Litigation. *Se. Milk*, 2013 U.S. Dist. LEXIS 70167, at *32 ("'Expense awards are customary when litigants have created a common settlement fund for the benefit of a class.'") (citations omitted). *See* accompanying Robbins Geller Decl., ¶5; Barrett Johnston Decl., ¶5. Litigation expenses and charges are compensable in a common fund case if they are of the type typically billed by attorneys to paying clients in the marketplace.[20] *Cardizem*, 218 F.R.D. at 535.

[19] *See Delphi*, 248 F.R.D. at 504 ("The ability of Co-Lead Counsel to negotiate a favorable settlement in the face of formidable legal opposition further evidences the reasonableness of the fee award requested.").

[20] *See also Harris v. Marhoefer*, 24 F.3d 16, 19 (9th Cir. 1994) ("Harris may recover as part of the award of attorney's fees those out-of-pocket expenses that 'would normally be charged to a fee

The expenses for which counsel seek payment here are the type of expenses routinely charged to hourly clients and should be paid out of the common fund.

The largest component of Lead Plaintiff's counsel's expenses are the costs of experts, consultants, and investigators ($1,159,395.07). As detailed in the Saham Declaration and the Robbins Geller Declaration, Lead Plaintiff retained experts in the fields of cardiology, finance, accounting, and damages and loss causation, each of whom worked a significant number of hours on the case analyzing the facts, producing an initial report, reviewing the reports of opposing experts and the documents relied on, producing a rebuttal report, preparing and sitting for depositions, and preparing to provide testimony at the pre-trial *Daubert* hearing and trial. Saham Decl., ¶¶104-117; Robbins Geller Decl., ¶6(f). Investigators helped Lead Counsel locate and interview former HCA employees and other individuals knowledgeable about the Company. Robbins Geller Decl., ¶6(f)(iv). Experts were retained to assist counsel in understanding and evaluating HCA's governance structure and practices.

In addition, the sheer number of documents produced in the Litigation (electronic equivalent of over 13 million pages) required the use of Relativity, a sophisticated database management program for the hosting of documents collected or produced in the litigation. Lead Plaintiff's counsel were also required to travel in connection with this Litigation and thus incurred the related costs of meals, lodging, and transportation.

In connection with the prosecution of this case over the past four years, the firms paid for travel expenses to, among other things, attend court hearings, meet with mediators and opposing counsel, prepare briefs and pleadings, take or defend more than 40 fact and expert depositions,

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paying client.'") (citation omitted); *Fruit of the Loom*, 234 F.R.D. at 635 ("In determining whether the requested expenses are compensable, the Court has considered 'whether the particular costs are the type routinely billed by attorneys to paying clients in similar cases.'") (citation omitted); *Se. Milk*, 2013 U.S. Dist. LEXIS 70167, at *32 (same).

attend and participate in meetings to discuss discovery and trial strategies, and prepare for trial. Lead Plaintiff's counsel also incurred the costs of computerized research. It is standard practice for attorneys to use these services to assist them in researching legal and factual issues. Because these were all necessary costs, they should be awarded. These expenses are described in detail in the accompanying declarations of Lead Plaintiff's counsel. Robbins Geller Decl., ¶6; Barrett Johnston Decl., ¶6.

Finally, Lead Plaintiff, the Pension Fund, requests payment for its time reasonably incurred in overseeing the Litigation and working with counsel to represent the Class pursuant to 15 U.S.C. §77z-1(a)(4). *Prison Realty*, 2001 U.S. Dist. LEXIS 21942 (awarding representative plaintiffs between $3,375 and $23,065); *In re Marsh & McLennan Cos., Inc. Sec. Litig.*, No. 04 Civ. 8144 (CM), 2009 U.S. Dist. LEXIS 120953, at *61 (S.D.N.Y. Dec. 23, 2009) (awarding $144,657 to the New Jersey plaintiffs and $70,000 to the Ohio plaintiffs, which was requested "to compensate them for their reasonable costs and expenses incurred in managing this litigation and representing the Class").

As this Court is aware, and as detailed in the Groden Declaration, the Pension Fund has had extensive involvement in this Litigation, and has zealously performed its role in pursuit of a substantial and favorable result in this case. Groden Decl., ¶¶4-8. The Court therefore should approve Lead Plaintiff's request for an award of $6,081.25 in connection with its oversight of this Litigation. *See id.*, ¶8.

VII. CONCLUSION

For the foregoing reasons, Lead Plaintiff and its counsel respectfully request that the Court approve the Settlement and the Plan of Allocation as fair, reasonable, and adequate, approve Lead

Counsel's request for an award of attorneys' fees and expenses, and approve the award of $6,081.25 sought by Lead Plaintiff, as allowed by the PSLRA.

DATED: March 7, 2016

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 7th day of March, 2016, I served the foregoing Memorandum of Law in Support of Lead Plaintiff's Motion for Final Approval of Class Action Settlement and the Plan of Allocation and Lead Counsel's Motion for an Award of Attorneys' Fees and Expenses and Award to the Lead Plaintiff Pursuant to 15 U.S.C. §77z-1(a)(4) via the Court's Electronic Filing System on the following:

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EXHIBIT A

CORNERSTONE RESEARCH

ECONOMIC AND FINANCIAL CONSULTING AND EXPERT TESTIMONY

Securities Class Action Settlements

2014 Review and Analysis



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HIGHLIGHTS

In 2014, total settlement dollars in securities class actions hit their lowest mark in 16 years. There was also a dramatic decrease in the average settlement amount, which reached its lowest level since 2000. At the same time, the number of settlements remained largely unchanged.

- Total settlement dollars in 2014 declined 78 percent compared to 2013 and were 84 percent below the average for the prior nine years. (page 3)
- There were 63 settlements in 2014, largely unchanged compared to the 66 settlements in 2013. (page 3)
- At $265 million, the largest settlement in 2014 was substantially smaller than in 2013 and 2012. (page 4)
- The average settlement size dropped to $17.0 million from $73.5 million in 2013, while the median settlement amount (representing the typical case) declined only slightly to $6.0 million from $6.6 million in 2013. (page 6)
- Average "estimated damages" declined 60 percent from 2013. Since "estimated damages," the simplified calculation analyzed for purposes of this research, are the most important factor in predicting settlement amounts, this decline contributed to the substantially lower average settlement amounts in 2014. (page 7)
- Historically, cases with third-party codefendants have settled for substantially higher amounts as a percentage of "estimated damages." In 2014, however, cases with and without third-party defendants settled for similar percentages of "estimated damages." (page 15)
- Average docket entry numbers fell substantially among 2014 settlements involving public pensions as lead plaintiffs. (page 19)

FIGURE 1: **SETTLEMENT STATISTICS**
(Dollars in Millions)

	1996–2013	2013	2014
Minimum	$0.1	$0.7	$0.3
Median	$8.3	$6.6	$6.0
Average	$57.2	$73.5	$17.0
Maximum	$8,493.6	$2,464.3	$265.0
Total Amount	$79,786.1	$4,847.9	$1,068.0

Settlement dollars adjusted for inflation; 2014 dollar equivalent figures used.

2014 FINDINGS: PERSPECTIVE AND DEVELOPING TRENDS

There was a dramatic decrease in average size among settlements approved in 2014, while the median settlement amount remained relatively constant. This decrease reflected a drop-off in particularly large settlements. The most important factor in explaining settlement amounts is the associated shareholder losses, referred to in this report as "estimated damages" (*see* page 7). Average "estimated damages" dropped sharply in 2014, while median "estimated damages" experienced an increase.

In 2014, there were fewer settlements involving "estimated damages" greater than $1 billion and similarly, a reduced number involving "estimated damages" greater than $5 billion, compared to prior years. Understanding the decrease in the number of large settlements requires consideration of the causes of the decline in large-damage cases.

The level of "estimated damages" depends on several factors, including the length of the associated class periods and the stock market volatility during the relevant time period. In 2014, on average, the class period length was not substantially different than prior years. However, the volatility of the stock market in recent years has been declining when compared to earlier years, which may have contributed to the smaller average "estimated damages" for cases settled in 2014.

Qualitative factors also contributed to the reduction in large settlements. A smaller proportion of large cases involved third-party defendants or public pension plans as lead plaintiffs. These factors are associated with higher settlements. Moreover, the average size of the defendant firms involved in securities class actions with large "estimated damages" (i.e., damages in excess of $500 million) was considerably smaller than the average in recent years.

The number of securities class action filings (i.e., new cases) involving Rule 10b-5, Section 11, and/or Section 12(a)(2) allegations increased in 2014 for the second year in a row.[1] If there is not a marked change in case dismissal rates, it is possible there will be an increase in the overall number of cases settled in upcoming years. However, a reduction in filings of cases with large market capitalization losses in 2014[2] may mean that the lower level of large settlements will persist in the future.

> "Lower 'estimated damages' may stem from the reduced stock price volatility during the years when many of these cases were filed."
>
> Dr. Laura Simmons
> Cornerstone Research
> Senior Advisor

This report analyzes a sample of securities class actions filed after passage of the Private Securities Litigation Reform Act of 1995 (Reform Act) and settled from 1996 through year-end 2014, and explores a variety of factors that influence settlement outcomes. This study focuses on cases alleging fraudulent inflation in the price of a corporation's common stock (i.e., excluding cases with alleged classes of only bondholders, preferred stockholders, etc., and excluding cases alleging fraudulent depression in price). *See* page 24 for a detailed description of the research sample.

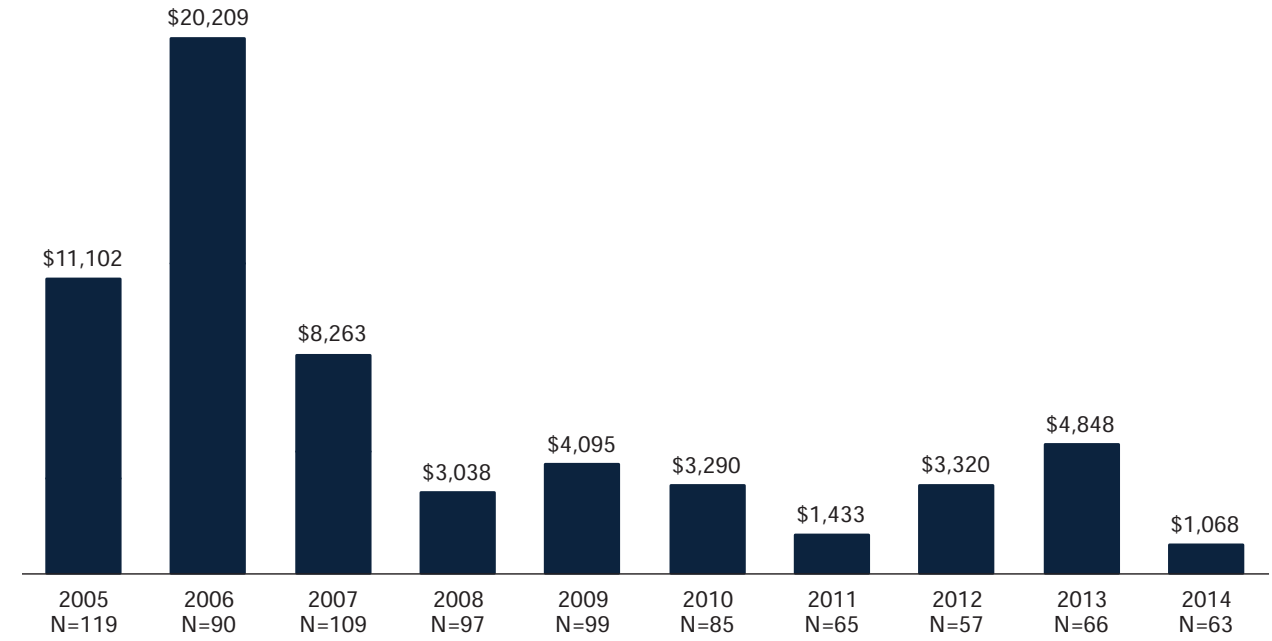
NUMBER AND SIZE OF SETTLEMENTS

TOTAL SETTLEMENT DOLLARS

- In 2014, there were 63 court-approved settlements, largely unchanged from 2013.
- While the year-over-year change was small, when comparing the total number of settled cases from 2010 to 2014 to the prior five-year period (2005 to 2009), the number of settled cases declined approximately 35 percent.
  - Since cases tend to take about two to four years from filing to settlement, the reduced number of settlements over the last five years can be traced to an earlier decrease in related filings.[3]
  - Below-average filing rates and increasing dismissal rates in recent years have likely impacted the total number of settled cases.[4]
- The total value of settlements approved by courts in 2014 was $1.1 billion, compared to an annual average of $6.6 billion for the prior nine years.
- The low level of total settlement dollars was primarily due to fewer very large settlements compared to the prior year, rather than a shift in the typical settlement size (*see* Mega Settlements on page 4).

Total settlement dollars in 2014 were the lowest in 16 years.

FIGURE 2: **TOTAL SETTLEMENT DOLLARS**
2005–2014
(Dollars in Millions)



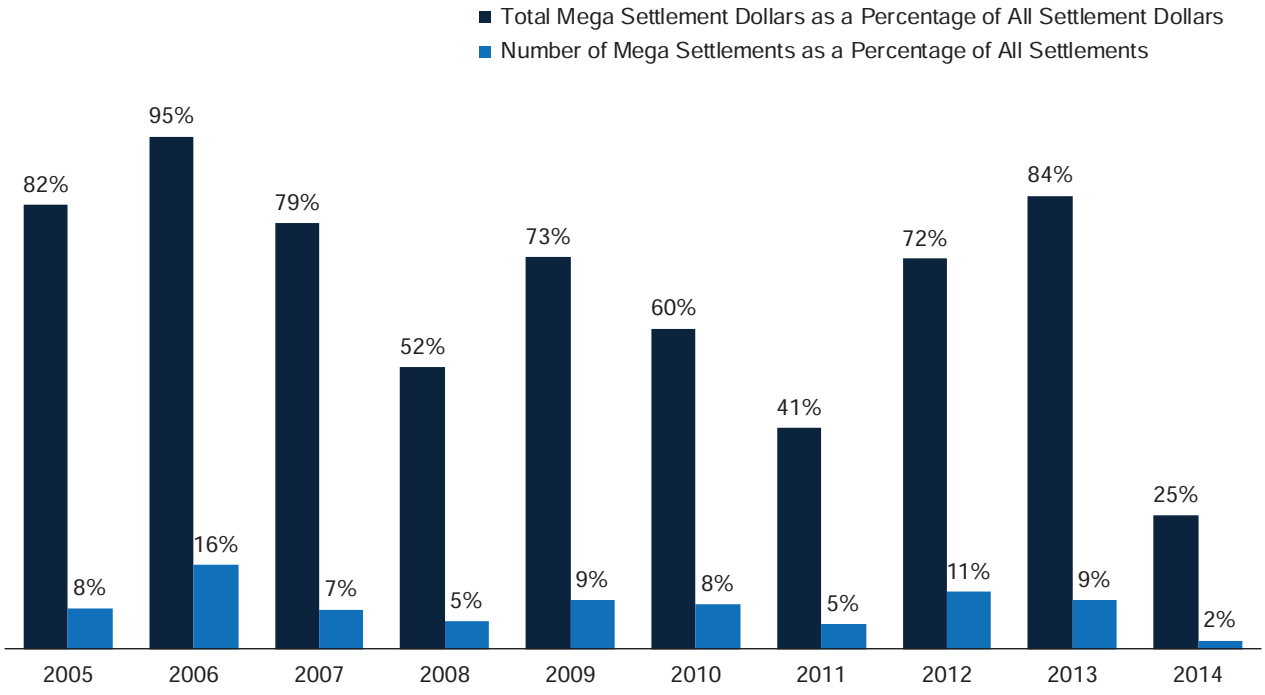
Settlement dollars adjusted for inflation; 2014 dollar equivalent figures used.

MEGA SETTLEMENTS

- In many years, a substantial proportion of total settlement dollars are attributable to mega settlements (settlements at or above $100 million). In contrast, there was only one mega settlement in 2014, accounting for 25 percent of total settlement dollars, compared with six mega settlements in 2013 accounting for 84 percent of total settlement dollars.
- In the last decade, 2014 is one of only three years in which there were no cases settling for amounts in excess of $500 million.

In 2014, the percentage of settlement dollars from mega settlements was the lowest in 16 years.

FIGURE 3: **MEGA SETTLEMENTS**
2005–2014

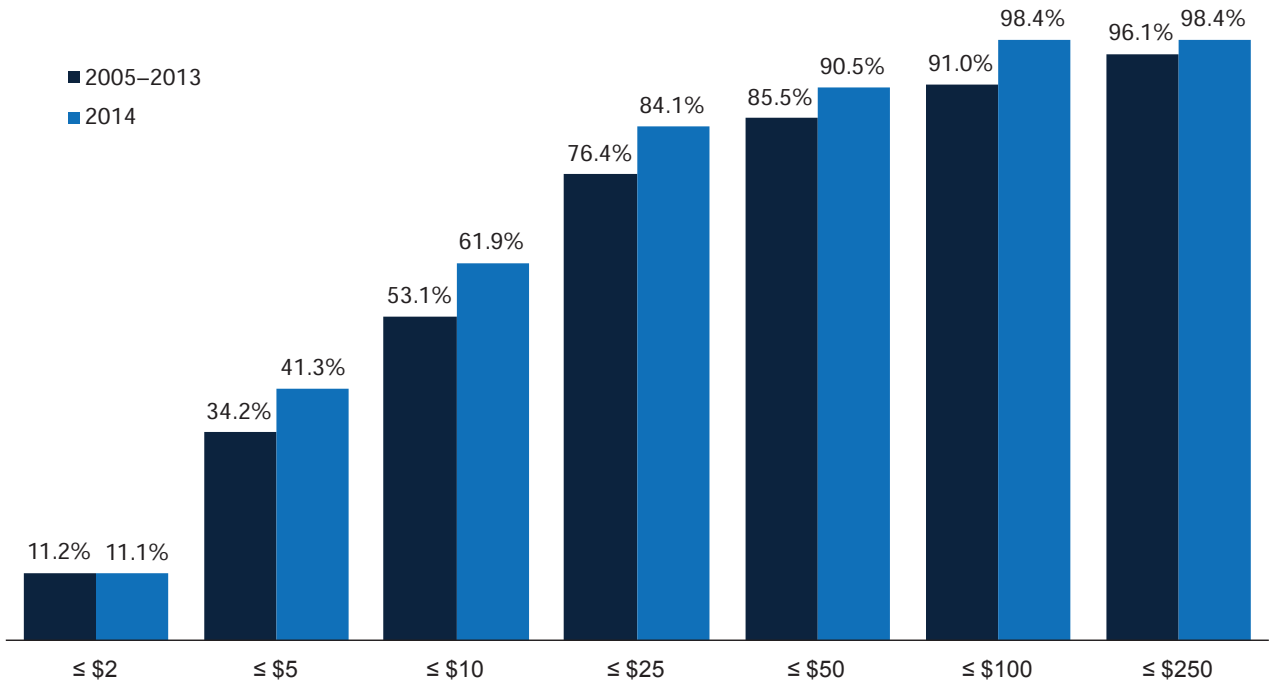


SETTLEMENT SIZE

- As highlighted in prior reports, the vast majority of securities class actions settle for less than $50 million.
- In 2014, all but one of the 63 cases (98 percent) settled for less than $100 million.
- The proportion of cases settling for $2 million or less (often referred to as "nuisance suits") in 2014 was 11 percent, similar to the prior nine-year period.

Over 90 percent of cases in 2014 settled for less than $50 million.

FIGURE 4: **CUMULATIVE SETTLEMENT DISTRIBUTION**
2005–2014
(Dollars in Millions)



Settlement dollars adjusted for inflation; 2014 dollar equivalent figures used.

SETTLEMENT SIZE *continued*

- At $17 million, the average settlement amount in 2014 was 64 percent lower than the average for all prior post–Reform Act years.
- In 2014, not only was there a sharp drop-off in the proportion of very large settlements, but there was also an increase in the proportion of settlements of $10 million or less.
  - Approximately 62 percent of settlements in 2014 were for $10 million or less, compared to 53 percent for 2005–2013.
  - This increase in small settlements occurred despite the fact that the proportion of settlements related to Chinese reverse merger cases dropped by half in 2014 (to 15 percent of settlements for amounts less than $10 million). Chinese reverse merger cases have tended to settle for relatively small amounts.[5]

The average settlement amount was 77 percent lower than in 2013.

FIGURE 5: **SETTLEMENT PERCENTILES**
2005–2014
(Dollars in Millions)

Year	Average	10th	25th	Median	75th	90th
2014	$17.0	$1.7	$2.9	$6.0	$13.2	$39.9
2013	$73.5	$1.9	$3.1	$6.6	$22.5	$83.8
2012	$58.2	$1.3	$2.8	$10.5	$36.1	$112.4
2011	$22.1	$1.9	$2.6	$6.1	$18.9	$44.0
2010	$38.7	$2.2	$4.6	$12.2	$27.1	$86.4
2009	$41.4	$2.6	$4.2	$8.8	$22.1	$73.3
2008	$31.3	$2.2	$4.1	$8.8	$20.9	$55.4
2007	$75.8	$1.7	$3.4	$10.3	$20.0	$91.1
2006	$131.6	$2.0	$3.7	$8.2	$27.3	$268.2
2005	$30.4	$1.8	$4.0	$9.0	$23.2	$91.0

Settlement dollars adjusted for inflation; 2014 dollar equivalent figures used.

DAMAGES ESTIMATES AND MARKET CAPITALIZATION LOSSES

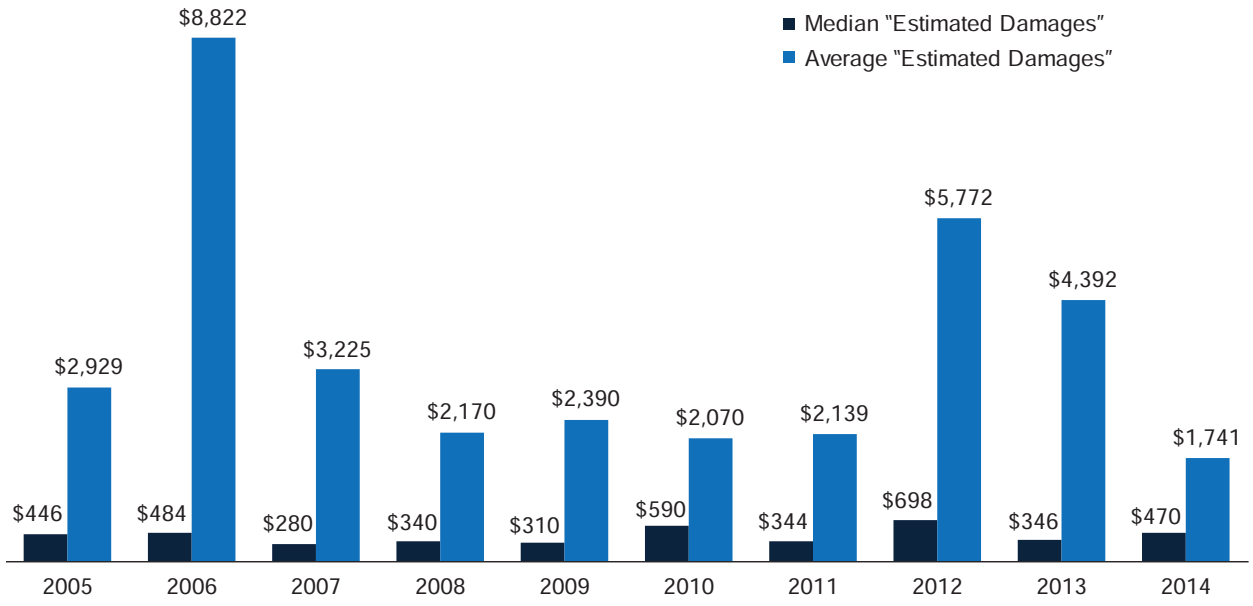
"ESTIMATED DAMAGES"

For purposes of this research, simplified calculations of potential shareholder losses are used, referred to here as "estimated damages." Application of this consistent method allows for the identification and analysis of possible trends. Notably, this measure of damages is the most important factor in predicting settlement amounts. "Estimated damages" are not necessarily linked to the allegations included in the associated court pleadings.[6] Accordingly, the damages estimates presented in this report are not intended to be indicative of alleged economic damages incurred by shareholders.

Average "estimated damages" for 2014 declined 60 percent from 2013.

- Average "estimated damages" in 2014 were the lowest in 12 years.
- In 2014, there were only five settlements with "estimated damages" greater than $5 billion, compared to an annual average of nine cases for 2005–2013.
- Even after lowering the "estimated damages" threshold to $1 billion, there was still a 24 percent decline in the number of cases in 2014 when compared to the prior nine years.
- Only three credit crisis cases settled in 2014, compared to seven in 2013 and 13 in 2012. Credit crisis cases have tended to be associated with larger "estimated damages," and the limited number of credit crisis settlements likely contributed to the lower "estimated damages" in 2014.

FIGURE 6: **MEDIAN AND AVERAGE "ESTIMATED DAMAGES"**
2005–2014
(Dollars in Millions)



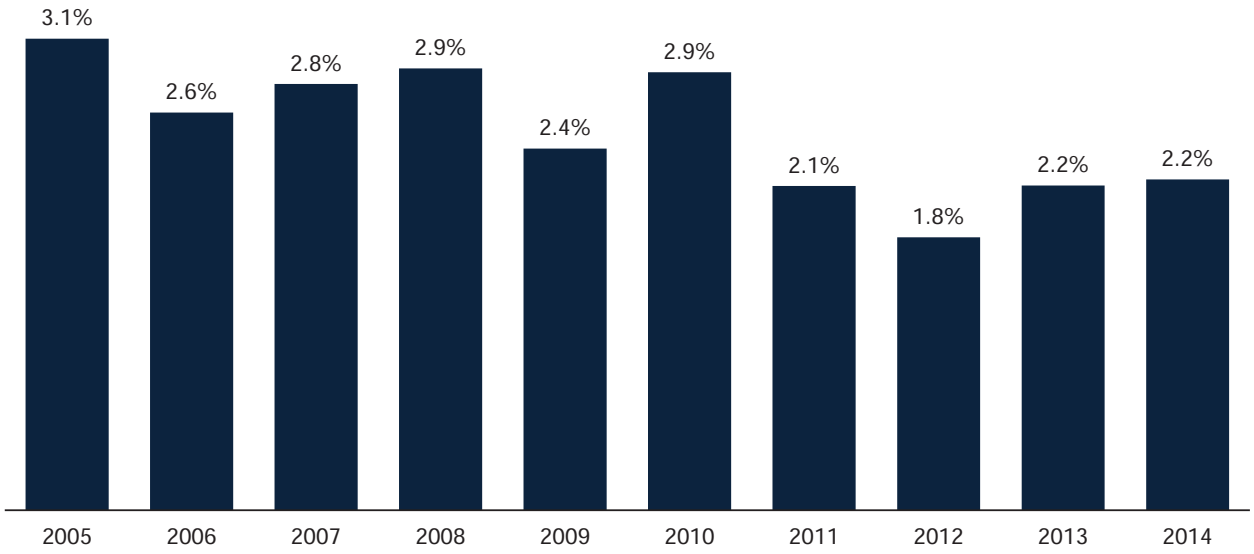
"Estimated damages" are adjusted for inflation based on class period end dates.

"ESTIMATED DAMAGES" *continued*

- Settlements as a percentage of "estimated damages" tend to be smaller when "estimated damages" are larger; thus, when overall "estimated damages" increase, settlements as a percentage of "estimated damages" typically decrease. In 2014, however, median "estimated damages" increased 36 percent while median settlements as a percentage of "estimated damages" were essentially flat compared to the prior year.
- These results suggest that other factors, including those discussed in the following pages, influenced median settlements as a percentage of "estimated damages" in 2014.

Median settlements as a percentage of "estimated damages" hit a historic low in 2012, but have risen over the past two years.

FIGURE 7: **MEDIAN SETTLEMENTS AS A PERCENTAGE OF "ESTIMATED DAMAGES" 2005–2014**



"ESTIMATED DAMAGES" *continued*

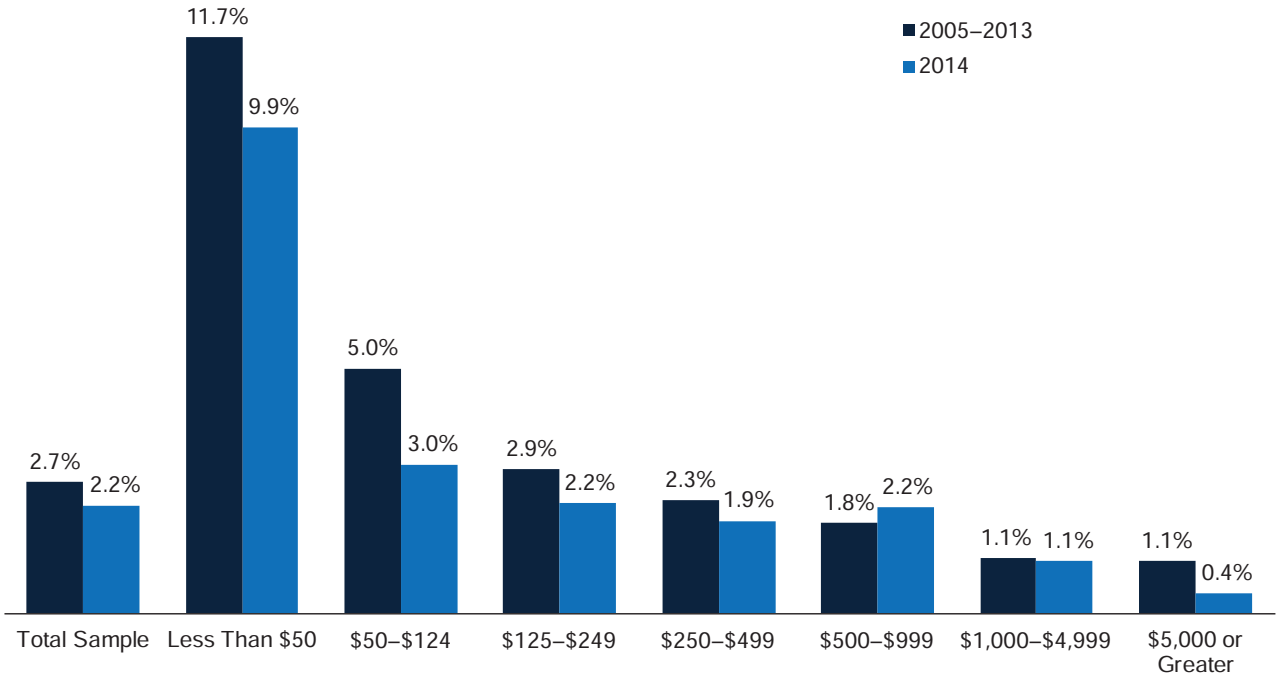
- In 2014, smaller cases continued to settle for substantially higher percentages of "estimated damages."
- Very small cases—those with "estimated damages" of less than $50 million—had a median settlement as a percentage of "estimated damages" of 9.9 percent, compared with 2.2 percent for all 2014 settlements.
- Among cases settled in the last 10 years, 57 percent have "estimated damages" below $500 million and 43 percent have "estimated damages" above $500 million.

Settlements as a percentage of "estimated damages" remained below the 2005–2013 median.

FIGURE 8: **MEDIAN SETTLEMENTS AS A PERCENTAGE OF "ESTIMATED DAMAGES" BY DAMAGES RANGES**

2005–2014

(Dollars in Millions)



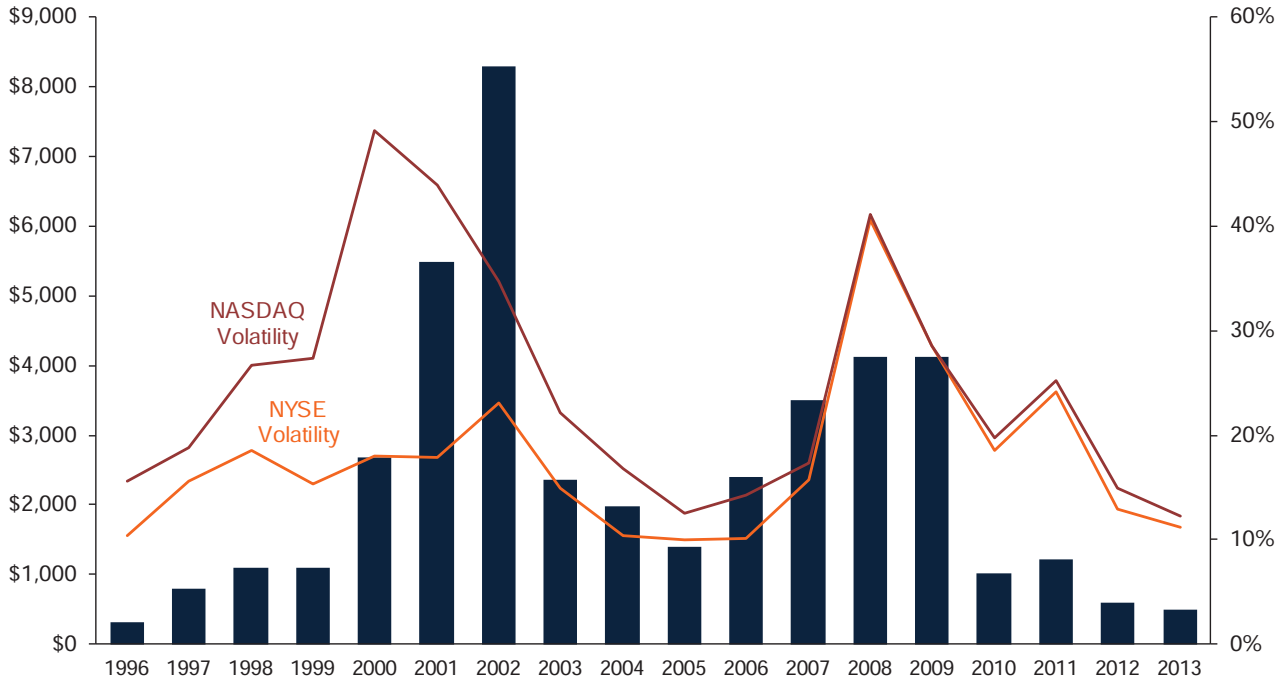
"ESTIMATED DAMAGES" *continued*

- New analysis included in this year's report shows that for settled cases, the amount of "estimated damages" is correlated with market volatility around the time of case filing, which tends to be two to four years prior to settlement.
- NYSE and NASDAQ volatility most recently peaked in 2008. Consistent with this, "estimated damages" for settled cases filed in 2008 and 2009 were the highest since 2002.
- In recent years, market volatility has generally been trending downward, which may have contributed to the reduction in average "estimated damages" and Disclosure Dollar Loss (DDL) for cases settled in 2014 (*see* page 11).

Continued low market volatility in 2014 suggests that lower "estimated damages" may persist.

FIGURE 9: **AVERAGE "ESTIMATED DAMAGES" FOR SETTLED CASES BY FILING YEAR 1996–2013**

(Dollars in Millions)



Note: "Estimated damages" adjusted for inflation; 2014 dollar equivalent figures used. Volatility is calculated as the annualized standard deviation of daily market returns. Chart shows filing years for settled cases through December 2014.

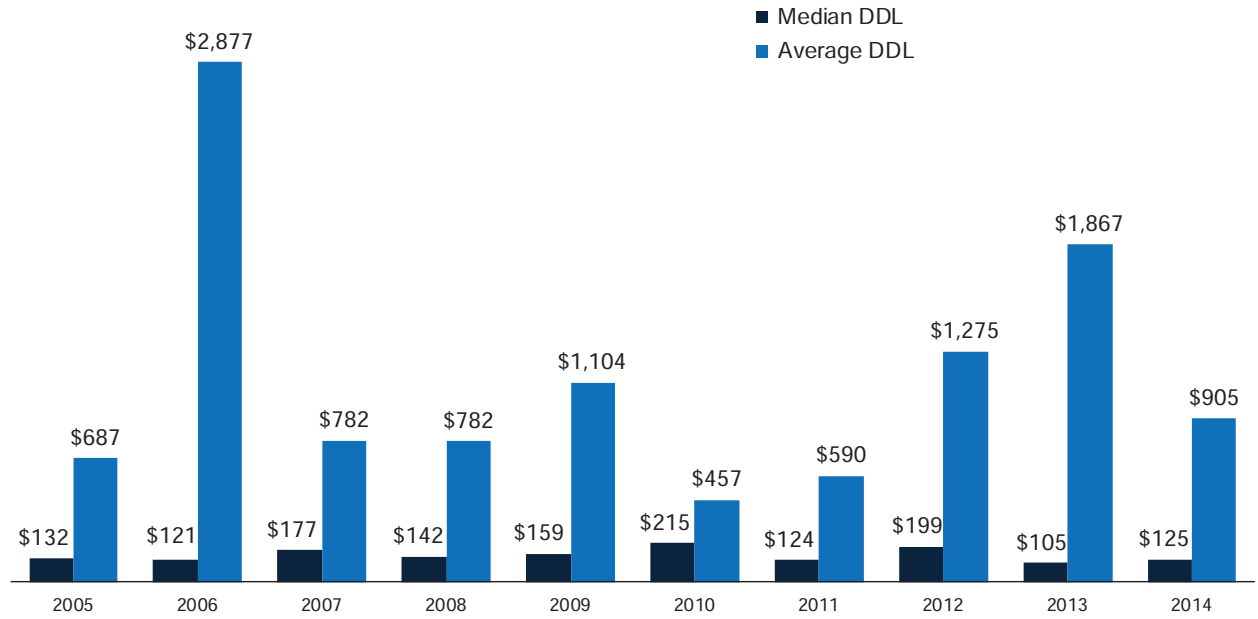
DISCLOSURE DOLLAR LOSS

Disclosure Dollar Loss (DDL) is another simplified measure of potential shareholder losses and an alternative measure to "estimated damages." DDL is calculated as the decline in the market capitalization of the defendant firm from the trading day immediately preceding the end of the class period to the trading day immediately following the end of the class period.[7]

- Similar to the pattern observed with "estimated damages," the average DDL declined substantially in 2014 while the median DDL increased slightly.
- In 2014, there were only three cases (5 percent) with DDL above $2.5 billion, compared to nine (14 percent) in 2013.
- Consistent with the lower shareholder losses, as another measure of case size, issuer firms of cases settled in 2014 also had lower average assets compared to firms involved in 2013 settlements.

The average DDL associated with settled cases in 2014 decreased 52 percent from 2013.

FIGURE 10: **MEDIAN AND AVERAGE DISCLOSURE DOLLAR LOSS**
2005–2014
(Dollars in Millions)



DDL is adjusted for inflation based on class period end dates.

TIERED ESTIMATED DAMAGES

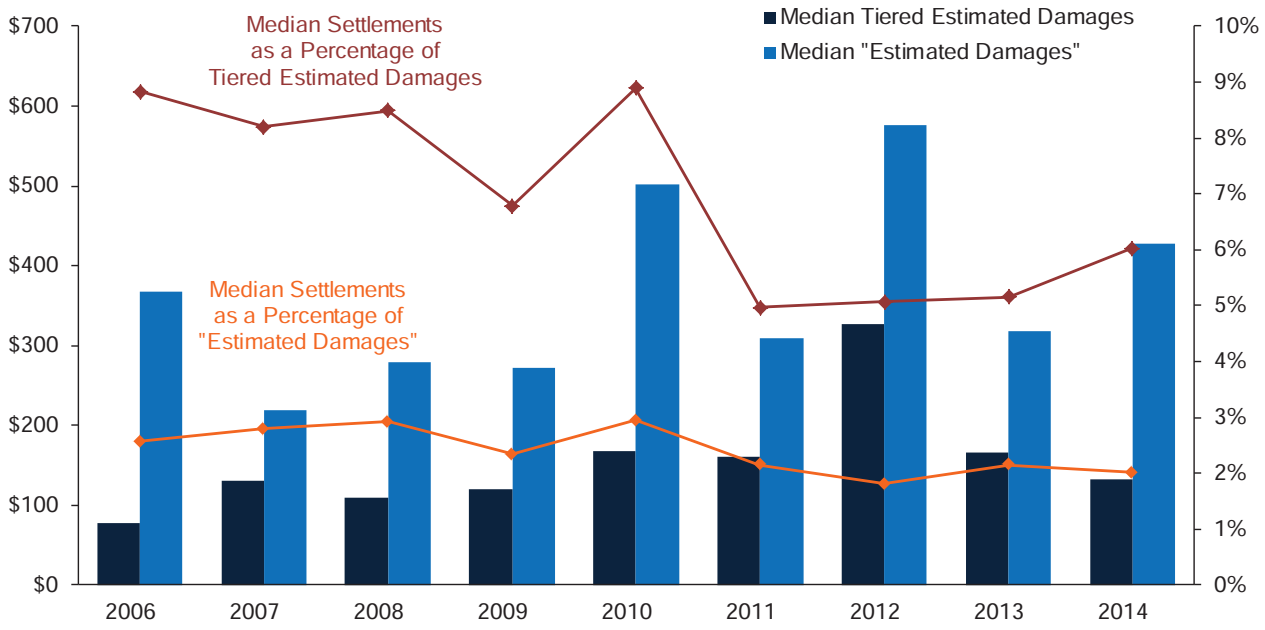
To account for the U.S. Supreme Court's 2005 landmark decision in *Dura*, this report considers an alternative measure of damages.[8] This measure reflects the fact that damages cannot be associated with shares sold before information regarding the alleged fraud reaches the market.[9] This alternative damages measure is referred to as tiered estimated damages and is based on the stock-price drops on alleged corrective disclosure dates as described in the settlement plan of allocation.[10]

As noted in past reports, this measure has not yet surpassed "estimated damages" in terms of its power as a predictor of settlement outcomes. However, it is highly correlated with settlement amounts and provides an alternative measure of investor losses for more recent securities class action settlements.

- Median settlements as a percentage of tiered estimated damages are higher than median settlements as a percentage of "estimated damages," as tiered estimated damages are typically smaller than "estimated damages."[11]
- Although the difference between the two damages measures can be substantial, their year-to-year directional trends are generally similar.

Median tiered estimated damages are substantially lower than "estimated damages."

FIGURE 11: **TIERED ESTIMATED DAMAGES**
2006–2014
(Dollars in Millions)



ANALYSIS OF SETTLEMENT CHARACTERISTICS

NATURE OF CLAIMS

- In 2014, there were only three cases involving Section 11 and/or Section 12(a)(2) claims that did not involve Rule 10b-5 allegations. There were seven cases in 2014 that involved Section 11 and/or Section 12(a)(2) claims, in addition to Rule 10b-5 claims.
- Intensified activity in the U.S. IPO market in recent years has occurred in tandem with the increase in filings involving Section 11 claims.[12] This suggests that settlements of cases involving these claims are likely to be more prevalent in future years.
- The median settlement as a percentage of "estimated damages" is higher for cases involving only Section 11 and/or Section 12(a)(2) claims compared with cases involving only Rule 10b-5 claims.

Settlements and "estimated damages" are typically smaller for cases involving only Section 11 and/or Section 12(a)(2) claims.

FIGURE 12: **SETTLEMENTS BY NATURE OF CLAIMS**
1996–2014
(Dollars in Millions)

	Number of Settlements	Median Settlements	Median "Estimated Damages"	Median Settlements as a Percentage of "Estimated Damages"
Section 11 and/or 12(a)(2) Only	83	$3.9	$60.4	7.3%
Both Rule 10b-5 and Section 11 and/or 12(a)(2)	253	$13.8	$529.9	3.4%
Rule 10b-5 Only	1,102	$8.0	$368.3	2.8%
All Post–Reform Act Settlements	1,438	$8.2	$336.6	3.1%

Settlement dollars and "estimated damages" adjusted for inflation; 2014 dollar equivalent figures used. "Estimated damages" are adjusted for inflation based on class period end dates.

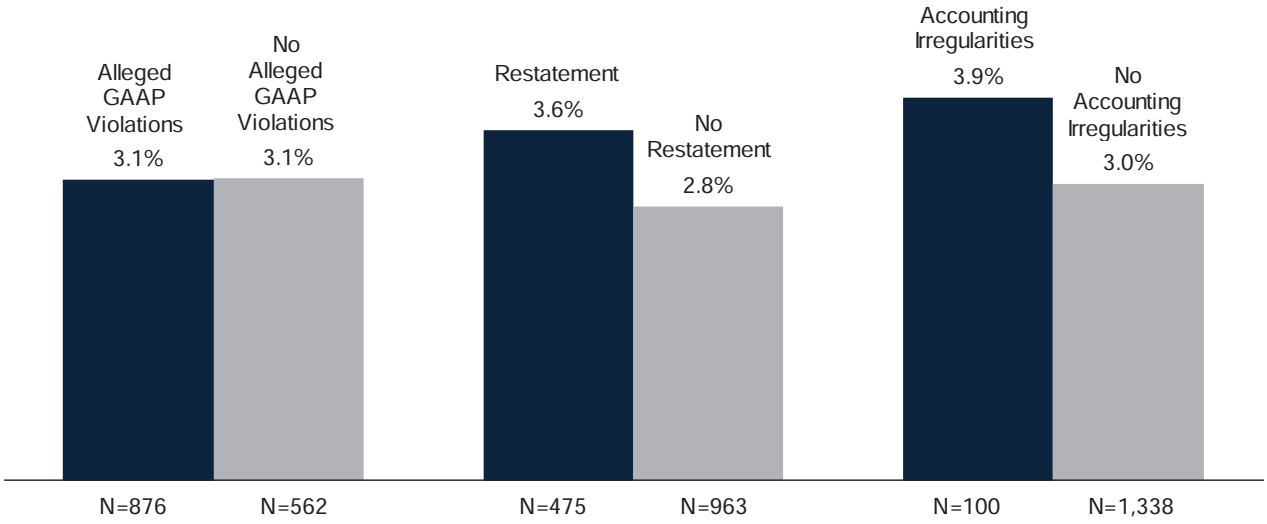
ACCOUNTING ALLEGATIONS

This research examines three types of accounting allegations among settled cases: (1) alleged GAAP violations, (2) restatements, and (3) reported accounting irregularities.[13]

- In 2014, 67 percent of settled cases alleged GAAP violations, representing a slight increase over the rate of 61 percent for all prior post–Reform Act years.
- The median class period length for cases with GAAP allegations is nearly twice as long as for cases without such allegations.
- Restatements were involved in 29 percent of cases settled in 2014 and were associated with higher settlements as a percentage of "estimated damages" compared to cases not involving restatements.
- Of the cases approved for settlement in 2014, 8 percent involved reported accounting irregularities, which is within the range of previous years. These cases continued to settle for the highest amounts in relation to "estimated damages."

Cases involving accounting allegations are generally associated with higher settlement amounts and higher settlements as a percentage of "estimated damages."

FIGURE 13: **MEDIAN SETTLEMENTS AS A PERCENTAGE OF "ESTIMATED DAMAGES" AND ACCOUNTING ALLEGATIONS**
1996–2014

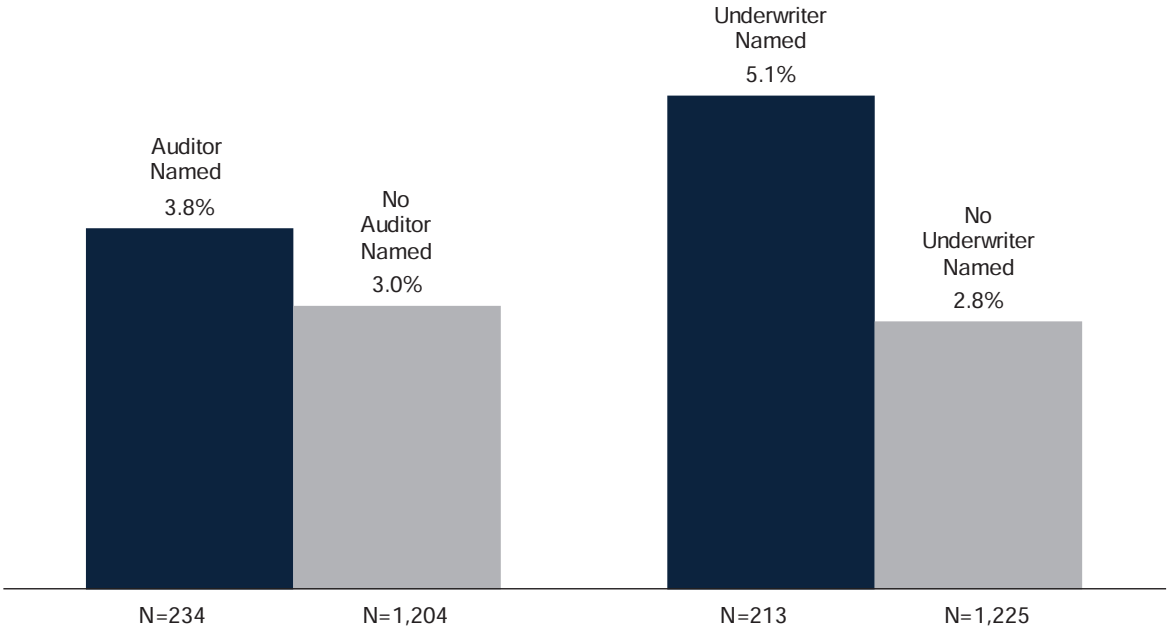


THIRD-PARTY CODEFENDANTS

- Third parties, such as an auditor or an underwriter, are often named as codefendants in larger, more complex cases and can provide an additional source of settlement funds.
- Historically, cases with third-party codefendants have settled for substantially higher amounts as a percentage of "estimated damages." In 2014, however, cases with and without third-party defendants settled for similar percentages of "estimated damages."
- In 2014, 21 percent of cases with alleged GAAP violations had a named auditor defendant, while 70 percent of cases with Section 11 claims had a named underwriter defendant.

Outside auditor defendants are typically associated with cases involving GAAP violations; underwriter defendants are highly correlated with Section 11 claims.

FIGURE 14: **MEDIAN SETTLEMENTS AS A PERCENTAGE OF "ESTIMATED DAMAGES" AND THIRD-PARTY CODEFENDANTS**
1996–2014

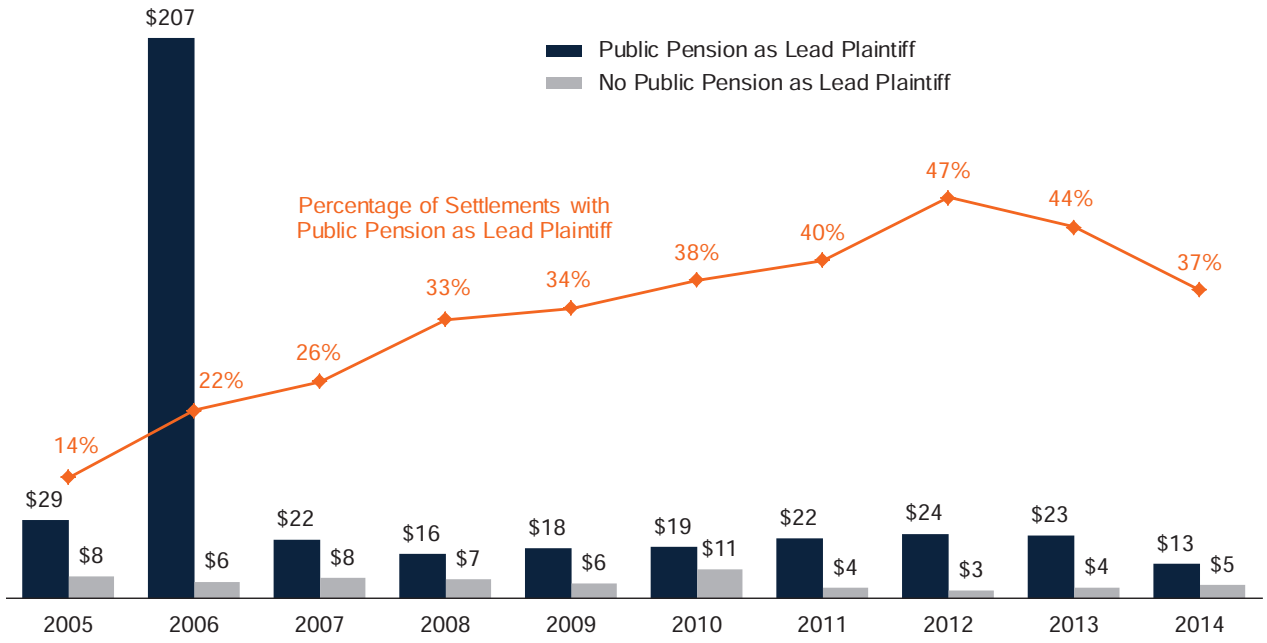


INSTITUTIONAL INVESTORS

- Since 2006, more than half of the settlements in any given year have involved institutional investors as lead plaintiffs. In 2014, 63 percent of cases approved for settlement had lead plaintiffs that were institutional investors.
- The median settlement in 2014 for cases with a public pension as a lead plaintiff was $13 million, compared with $5 million for cases without a public pension as a lead plaintiff.
- In 2014, 52 percent of settlements with "estimated damages" greater than $500 million involved a public pension plan as lead plaintiff, compared to 24 percent for cases with "estimated damages" of $500 million or less.

The increasing involvement of public pensions as lead plaintiffs reversed in 2013 and further declined in 2014.

FIGURE 15: **MEDIAN SETTLEMENT AMOUNTS AND PUBLIC PENSIONS**
2005–2014
(Dollars in Millions)



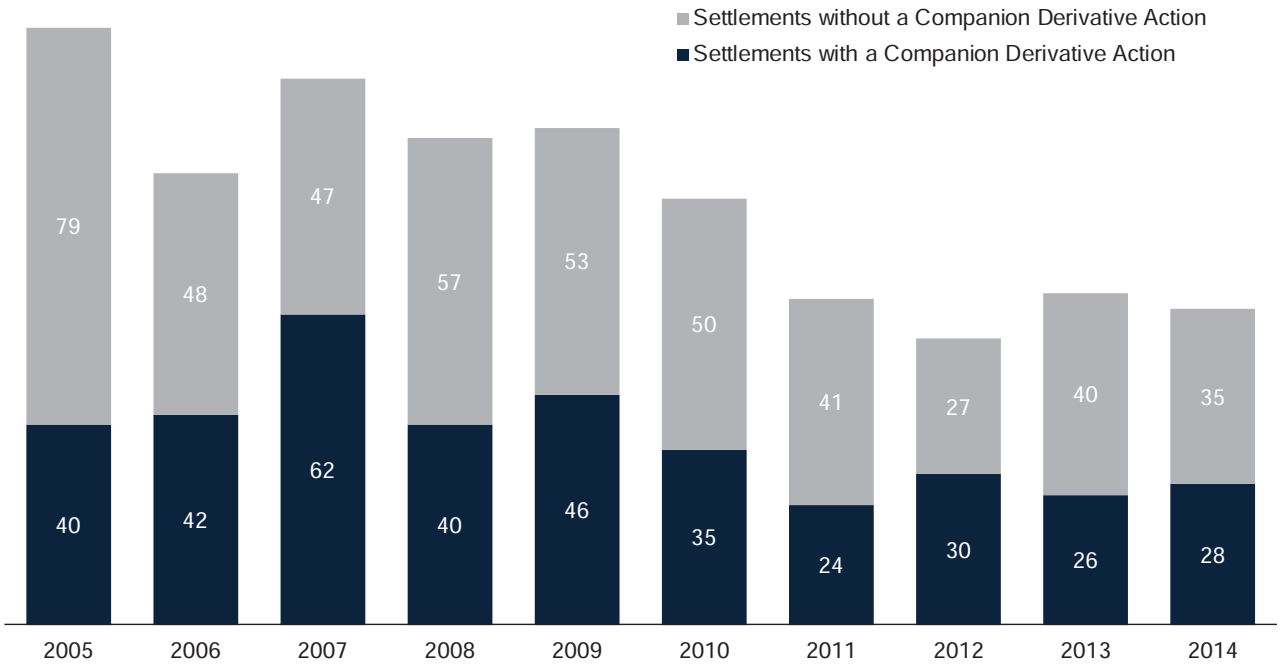
Settlement dollars adjusted for inflation; 2014 dollar equivalent figures used.

DERIVATIVE ACTIONS

- Historically, accompanying derivative actions have been associated with larger securities class actions compared to smaller cases.[14] In 2014, this gap narrowed—48 percent of cases with "estimated damages" of more than $500 million involved a companion derivative action, compared to 41 percent for cases with damages of $500 million or less.
- In 2014, the median settlement for cases with an accompanying derivative action was 31 percent higher than for cases without an accompanying derivative action. In 2013, this difference was 78 percent while in 2012, it was 387 percent.
- Overall, 44 percent of settled cases in 2014 were accompanied by derivative actions—similar to prior years.

Companion derivative actions continued to be associated with higher class action settlements.

FIGURE 16: **FREQUENCY OF DERIVATIVE ACTIONS**
2005–2014



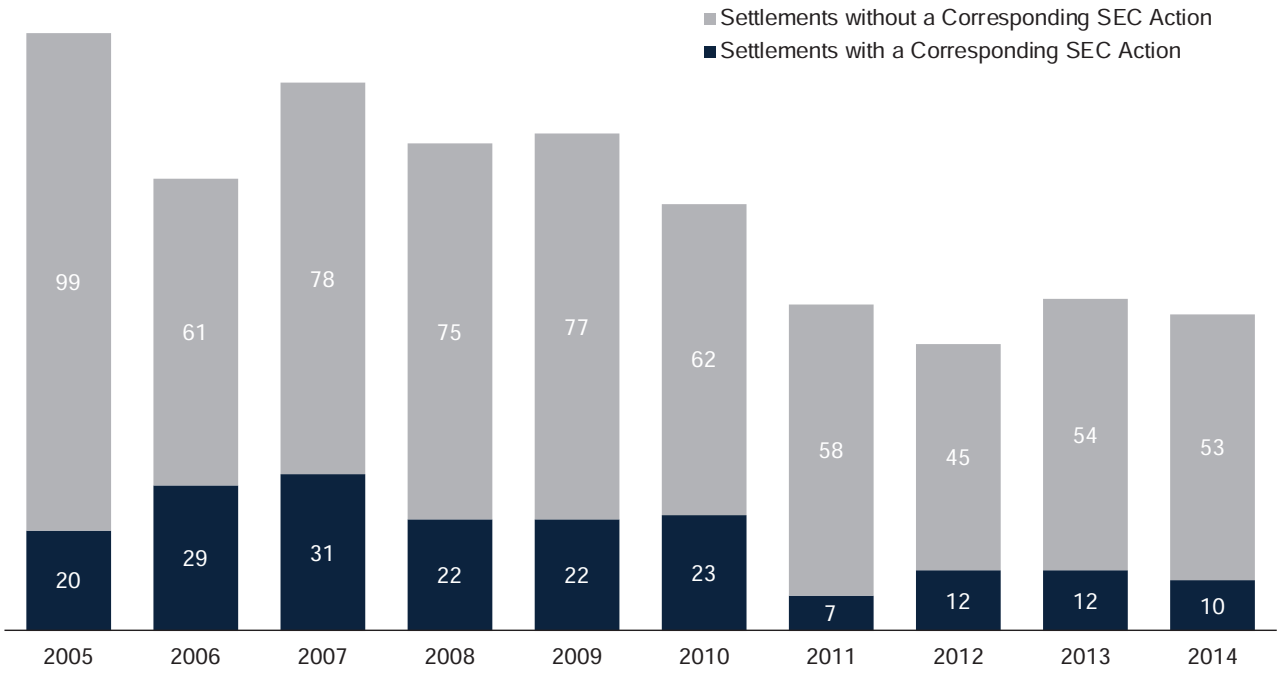
CORRESPONDING SEC ACTIONS

Cases that involve a corresponding SEC action (evidenced by the filing of a litigation release or administrative proceeding prior to settlement) are associated with significantly higher settlement amounts and have higher settlements as a percentage of "estimated damages."[15]

- In 2014, 16 percent of settled cases involved a corresponding SEC action, compared with 18 percent in 2013 and 21 percent in 2012.
- The median settlement for all post–Reform Act cases with an SEC action ($12.9 million) was more than twice the median settlement for cases without a corresponding SEC action.
  - In 2014, the median settlement for cases with an SEC action was $9.4 million, while cases without an associated SEC action had a median settlement of $5.5 million.
  - In 2014, institutional investors were involved as lead plaintiffs in seven of the 10 cases with a corresponding SEC action.
- The higher settlement amounts for cases involving corresponding SEC actions are, in part, due to the fact that among securities cases that have settled, SEC actions more frequently accompany larger cases, as measured by issuer asset-size and higher "estimated damages."

The number of settlements with corresponding SEC actions remained relatively low in 2014.

FIGURE 17: **FREQUENCY OF SEC ACTIONS**
2005–2014

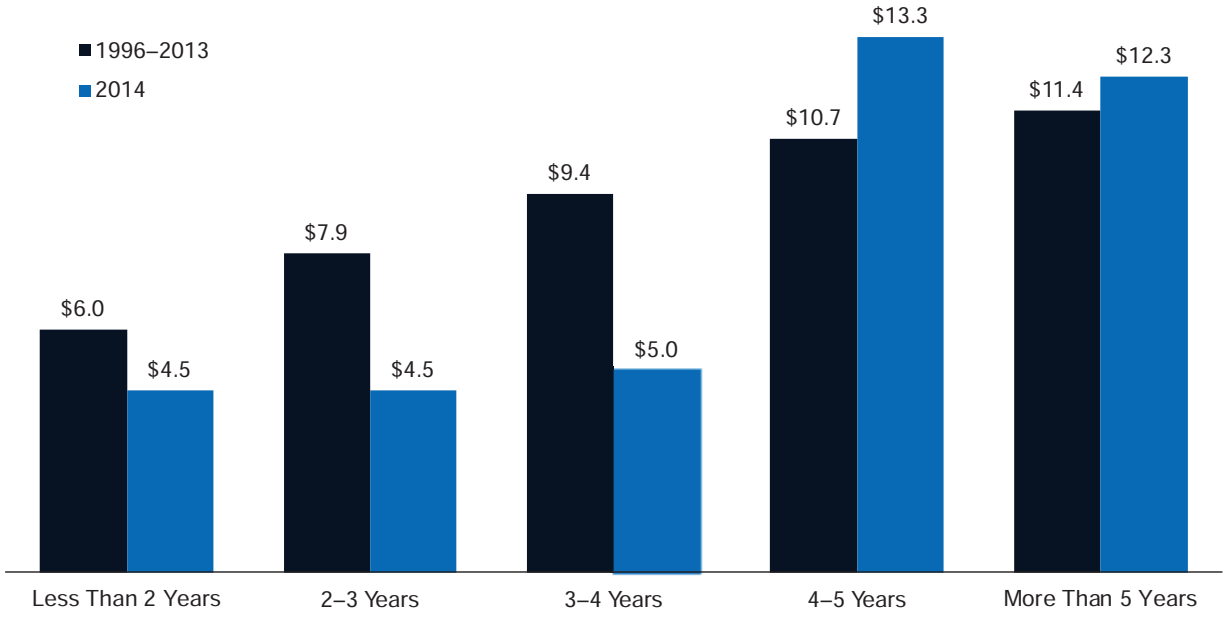


TIME TO SETTLEMENT AND CASE COMPLEXITY

- In 2014, the median and average time to settlement was three years.
- Larger cases (as measured by "estimated damages") and cases involving larger firms tend to take longer to reach settlement.
- The length of time from filing to settlement is correlated with the number of docket entries—a measure of the complexity of a case and the case's progression through the litigation process.
  - In 2014, the average number of docket entries (both in absolute figures and scaled by the time from filing to settlement) was among the lowest in 10 years. In other words, even controlling for the length of time that cases were outstanding prior to settlement, the number of docket entries dropped in 2014, indicating reduced activity for cases prior to settlement.
  - For cases involving a public pension as a lead plaintiff, average docket entries were down approximately 40 percent in 2014 when compared to the prior nine years.
  - Despite the observable decline in docket entries, fewer cases in 2014 settled in very early stages of the litigation process.

Approximately 70 percent of settlements in 2014 occurred two to four years after the filing date.

FIGURE 18: **MEDIAN SETTLEMENT BY DURATION FROM FILING DATE TO SETTLEMENT HEARING DATE**
1996–2014
(Dollars in Millions)



LITIGATION STAGES

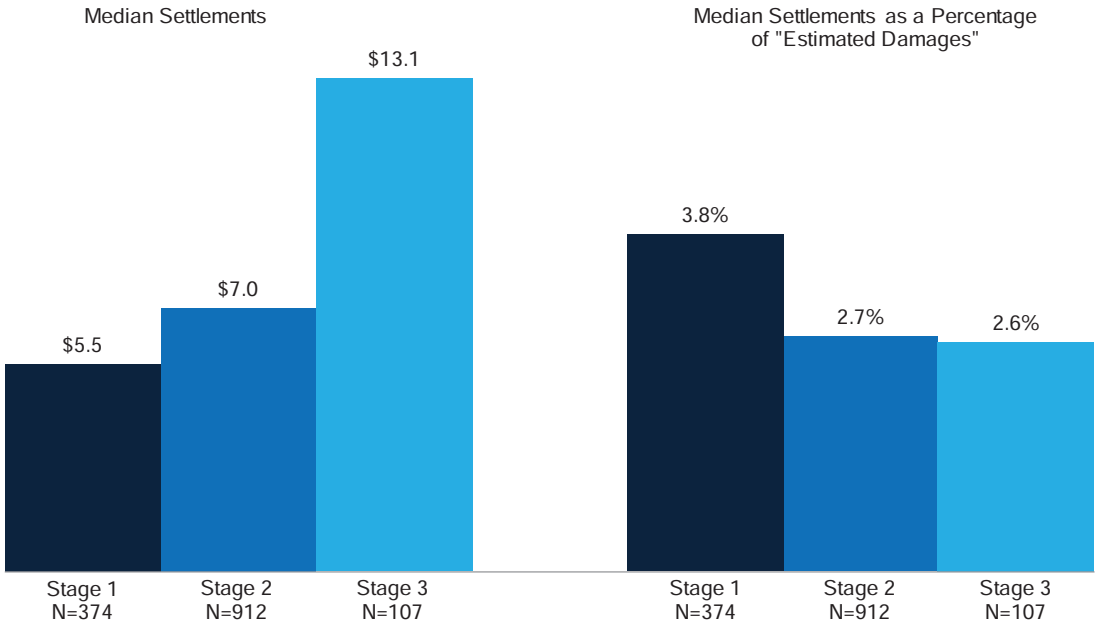
This report studies three stages in the litigation process that may be considered an indication of the merits of a case (e.g., surviving a motion to dismiss) and/or the time and effort invested by plaintiff counsel:

Stage 1: Settlement before the first ruling on a motion to dismiss
Stage 2: Settlement after a ruling on motion to dismiss, but before a ruling on motion for summary judgment
Stage 3: Settlement after a ruling on motion for summary judgment[16]

Settlement amounts tend to increase as litigation progresses.

- In 2014, only 19 percent of settlements occurred in Stage 1, compared to 27 percent for cases settled in 1996–2013.
- Although smaller in total settlement dollar amounts, cases settling in Stage 1 have settled for the highest percentage of "estimated damages."
- Larger cases tend to settle at more advanced stages of litigation and tend to take longer to reach settlement. Through 2014, cases reaching Stage 3 had median "estimated damages" that were 75 percent higher than the median "estimated damages" of cases settling in Stage 1.

FIGURE 19: **LITIGATION STAGE**
1996–2014
(Dollars in Millions)



INDUSTRY SECTORS

Resolution of credit crisis–related cases has constituted a large portion of settlement activity in the financial sector in recent years. However, filing of securities class actions involving credit crisis issues essentially ceased by 2012.[17] Accordingly, the majority of these cases have now progressed through the litigation process, resulting in a reduction in settlements involving financial firms in 2014.

- Only seven settled cases (11 percent) in 2014 involved financial firms compared to 15 (23 percent) in 2013 and 17 (30 percent) in 2012.
- Reflecting their larger "estimated damages," cases in the financial sector have settled for the highest amounts.
- The proportion of settled cases involving pharmaceutical firms declined to 9.5 percent in 2014 from a historic high of 18 percent in 2013.
- Industry sector is not a significant determinant of settlement amounts when controlling for other variables that influence settlement outcomes (such as "estimated damages," asset size, and other factors discussed on page 23).

The proportion of settled cases in 2014 involving financial firms is the lowest in seven years.

FIGURE 20: **SELECT INDUSTRY SECTORS**
1996–2014
(Dollars in Millions)

Industry	Number of Settlements	Median Settlements	Median "Estimated Damages"	Median Settlements as a Percentage of "Estimated Damages"
Technology	332	$7.7	$323.3	3.0%
Financial	176	$13.2	$742.0	3.0%
Telecommunications	143	$9.4	$494.9	2.4%
Retail	123	$6.8	$237.7	4.1%
Pharmaceuticals	100	$9.4	$591.4	2.2%
Healthcare	59	$7.9	$282.1	3.5%

Settlement dollars and "estimated damages" adjusted for inflation; 2014 dollar equivalent figures used. "Estimated damages" are adjusted for inflation based on class period end dates.

FEDERAL COURT CIRCUITS

- In 2014, the Second and Ninth Circuits continued to lead other circuits in the number of settlements.
- While activity levels have stayed relatively constant in the Second and Ninth Circuits over the last decade, other federal court circuits have experienced a decline of more than 50 percent in the number of securities class action settlements.
- Although it varies across court circuit, settlement approval hearings are generally held within four to eight months following the public announcement of a tentative settlement.

48 percent of settlements occurred in the Second or Ninth Circuits in 2014.

FIGURE 21: **SETTLEMENTS BY FEDERAL COURT CIRCUIT**
2005–2014
(Dollars in Millions)

Circuit	Number of Settlements	Median Number of Docket Entries	Median Duration from Tentative Settlement to Approval Hearing *(in months)*	Median Settlements	Median Settlements as a Percentage of "Estimated Damages"
First	38	131	6.4	$7.1	2.8%
Second	197	108	6.5	$11.9	2.6%
Third	77	123	6.1	$8.9	2.8%
Fourth	29	127	4.3	$8.6	2.0%
Fifth	62	112	5.3	$6.5	2.3%
Sixth	41	142	4.4	$18.2	2.7%
Seventh	42	151	5.2	$10.5	2.2%
Eighth	29	165	5.9	$14.6	3.6%
Ninth	217	162	6.3	$8.2	2.4%
Tenth	28	170	7.6	$8.2	2.0%
Eleventh	67	132	5.5	$5.7	2.6%
DC	4	190	6.5	$31.1	3.7%

Settlement dollars adjusted for inflation; 2014 dollar equivalent figures used.

CORNERSTONE RESEARCH'S SETTLEMENT PREDICTION ANALYSIS

Regression analysis was applied to examine which characteristics of securities cases were associated with settlement outcomes. Based on the research sample of post–Reform Act cases settled through December 2014, the factors that were important determinants of settlement amounts included the following:

- "Estimated damages"
- Disclosure Dollar Loss (DDL)
- Most recently reported total assets of the defendant firm
- Number of entries on the lead case docket
- The year in which the settlement occurred
- Whether the issuer reported intentional misstatements or omissions in financial statements
- Whether a restatement of financials related to the alleged class period was announced
- Whether there was a corresponding SEC action against the issuer, other defendants, or related parties
- Whether the plaintiffs named an auditor as codefendant
- Whether the plaintiffs named an underwriter as codefendant
- Whether a companion derivative action was filed
- Whether a public pension was a lead plaintiff
- Whether noncash components, such as common stock or warrants, made up a portion of the settlement fund
- Whether the plaintiffs alleged that securities other than common stock were damaged
- Whether criminal charges/indictments were brought with similar allegations to the underlying class action
- Whether the issuer traded on a nonmajor exchange

Settlements were higher when "estimated damages," DDL, defendant asset size, or the number of docket entries were larger. Settlements were also higher in cases involving intentional misstatements or omissions in financial statements reported by the issuer, a restatement of financials, a corresponding SEC action, an underwriter and/or auditor named as codefendant, an accompanying derivative action, a public pension involved as lead plaintiff, a noncash component to the settlement, filed criminal charges, or securities other than common stock alleged to be damaged. Settlements were lower if the settlement occurred in 2004 or later, and if the issuer traded on a nonmajor exchange.

While this regression analysis is designed to better understand and predict the total settlement amount given the characteristics of a particular securities case, the probabilities associated with reaching alternative settlement levels can also be estimated. These probability estimates can be useful in considering the different layers of insurance coverage available and likelihood of contributing to the settlement fund. Regression analysis can also be used to explore hypothetical scenarios, including, but not limited to, the effects on settlement amounts given the presence or absence of particular factors found to significantly affect settlement outcomes.

RESEARCH SAMPLE

- The database used in this report focuses on cases alleging fraudulent inflation in the price of a corporation's common stock (i.e., excluding cases with alleged classes of only bondholders, preferred stockholders, etc., and M&A cases).
- The sample is limited to cases alleging Rule 10b-5, Section 11, and/or Section 12(a)(2) claims brought by purchasers of a corporation's common stock. These criteria are imposed to ensure data availability and to provide a relatively homogeneous set of cases in terms of the nature of the allegations.
- The current sample includes 1,458 securities class actions filed after passage of the Reform Act (1995) and settled from 1996 through 2014. These settlements are identified based on a review of case activity collected by Securities Class Action Services LLC (SCAS).[18]
- The designated settlement year, for purposes of this report, corresponds to the year in which the hearing to approve the settlement was held.[19] Cases involving multiple settlements are reflected in the year of the most recent partial settlement, provided certain conditions are met.[20]

DATA SOURCES

In addition to SCAS, data sources include the Stanford Law School Securities Class Action Clearinghouse, Dow Jones Factiva, Bloomberg, Center for Research in Security Prices (CRSP) at University of Chicago Booth School of Business, Standard & Poor's Compustat, court filings and dockets, SEC registrant filings, SEC litigation releases and administrative proceedings, LexisNexis, and public press.

ENDNOTES

1 See *Securities Class Action Filings—2014 Year in Review*, Cornerstone Research, 2015.

2 *Ibid.*

3 "Related filings" refers to case types covered in the scope of this report as described on page 24.

4 See *Securities Class Action Filings—2014 Year in Review*, Cornerstone Research, 2015.

5 See *Investigations and Litigation Related to Chinese Reverse Merger Companies*, Cornerstone Research, 2011

6 The simplified "estimated damages" model is applied to common stock only. For all cases involving Rule 10b-5 claims, damages are calculated using a market-adjusted, backward-pegged value line. For cases involving only Section 11 and/or Section 12(a)(2) claims, damages are calculated using a model that caps the purchase price at the offering price. Volume reduction assumptions are based on the exchange on which the issuer's common stock traded. Finally, no adjustments for institutions, insiders, or short sellers are made to the underlying float.

7 DDL captures the price reaction—using closing prices—of the disclosure that resulted in the first filed complaint. This measure does not incorporate additional stock price declines during the alleged class period that may affect certain purchasers' potential damages claims. Thus, as this measure does not isolate movements in the defendant's stock price that are related to case allegations, it is not intended to represent an estimate of investor losses. The DDL calculation also does not apply a model of investors' share-trading behavior to estimate the number of shares damaged.

8 Tiered estimated damages are calculated for cases that settled after 2005.

9 Tiered estimated damages utilize a single value line when there is one alleged corrective disclosure date (at the end of the class period) or a tiered value line when there are multiple alleged corrective disclosure dates.

10 The dates used to identify the applicable inflation bands may be supplemented with information from the operative complaint at the time of settlement.

11 Tiered estimated damages apply inflation bands to specific date intervals during the alleged class period. As such, this measure does not capture all declines during the alleged class period as "estimated damages" does.

12 See *Securities Class Action Filings—2014 Year in Review*, Cornerstone Research, 2015.

13 The three categories of accounting allegations analyzed in this report are: (1) GAAP violations—cases with allegations involving Generally Accepted Accounting Principles (GAAP); (2) restatements—cases involving a restatement (or announcement of a restatement) of financial statements; and (3) accounting irregularities—cases in which the defendant has reported the occurrence of accounting irregularities (intentional misstatements or omissions) in its financial statements.

14 This is true whether or not the settlement of the derivative action coincides with the settlement of the underlying class action, or occurs at a different time.

15 It could be that the merits in such cases are stronger, or simply that the presence of an accompanying SEC action provides plaintiffs with increased leverage when negotiating a settlement.

16 Litigation stage data obtained from Stanford Law School's Securities Class Action Clearinghouse. Sample does not add to 100 percent as there is a small sample of cases with other litigation stage classifications.

17 See *Securities Class Action Filings—2014 Year in Review*, Cornerstone Research, 2015.

18 Available on a subscription basis.

19 Movements of partial settlements between years can cause differences in amounts reported for prior years from those presented in earlier reports.

20 This categorization is based on the timing of the settlement approval. If a new partial settlement equals or exceeds 50 percent of the then-current settlement fund amount, the entirety of the settlement amount is recategorized to reflect the settlement hearing date of the most recent partial settlement. If a subsequent partial settlement is less than 50 percent of the then-current total, the partial settlement is added to the total settlement amount and the settlement hearing date is left unchanged.

ABOUT THE AUTHORS

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Laarni Bulan is a senior manager in Cornerstone Research's Boston office, where she specializes in finance. She has consulted on cases related to financial institutions and the credit crisis, municipal bond mutual funds, merger valuations, insider trading, asset-backed commercial paper conduits, real estate markets, credit default swaps, and foreign exchange. Dr. Bulan has published several academic articles in peer-reviewed journals. Her research covers topics in dividend policy, capital structure, executive compensation, corporate governance, and real options. Prior to joining Cornerstone Research, Dr. Bulan had a joint appointment at Brandeis University as an assistant professor of finance in its International Business School and in the economics department.

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Ellen Ryan is a manager in Cornerstone Research's Boston office, where she works in the securities practice. Ms. Ryan has consulted on economic and financial issues in a variety of cases, including securities class actions, financial institution breach of contract matters, and antitrust litigation. She also has worked with testifying witnesses in corporate governance and breach of fiduciary duty matters. Prior to joining Cornerstone Research, Ms. Ryan worked for Salomon Brothers in New York and Tokyo. Currently she focuses on post–Reform Act settlement research as well as general practice area business and research.

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Laura Simmons is a senior advisor in Cornerstone Research's Washington, DC, office. She is a certified public accountant (CPA) and has more than 20 years of experience in accounting practice and economic and financial consulting. She has focused on damages and liability issues in litigation, as well as on accounting issues arising in a variety of complex commercial litigation matters. She has served as a testifying expert in cases involving accounting analyses, securities case damages, research on securities lawsuits, and other issues involving empirical analyses.

Dr. Simmons's research on pre– and post–Reform Act securities litigation settlements has been published in a number of reports and is frequently cited in the public press and legal journals. She has spoken at various conferences and appeared as a guest on CNBC addressing the topic of securities case settlements. She has also published in academic journals, with recent research focusing on the intersection of accounting and litigation. Dr. Simmons was previously an accounting faculty member at the Mason School of Business at the College of William & Mary. From 1986 to 1991, she was an accountant with Price Waterhouse.

The authors acknowledge the research efforts and significant contributions of their colleagues at Cornerstone Research. Please direct any questions and requests for additional information to the settlement database administrator at settlement.database@cornerstone.com.

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UNITED STATES DISTRICT COURT

MIDDLE DISTRICT OF TENNESSEE

NASHVILLE DIVISION

KARSTEN SCHUH, Individually and on Behalf of All Others Similarly Situated, Plaintiff, vs. HCA HOLDINGS, INC., et al., Defendants.	Civil Action No. 3:11-cv-01033 **(Consolidated)** Chief Judge Kevin H. Sharp Magistrate Judge Barbara D. Holmes CLASS ACTION 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

Kevin H. Sharp

THE HONORABLE KEVIN H. SHARP
CHIEF UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	:	Chapter 11
TRIANGLE USA PETROLEUM CORPORATION, *et al.*,	:	Case No. 16-11566 (MFW)
	:	Jointly Administered
Debtors.[1]	:	**Obj. Due: May 30, 2017 at 4:00 p.m. (Eastern)**

THIRD INTERIM AND FINAL FEE APPLICATION OF SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP FOR COMPENSATION FOR SERVICES RENDERED AND REIMBURSEMENT OF EXPENSES AS COUNSEL TO THE DEBTORS FOR THE PERIOD FROM JUNE 29, 2016 THROUGH AND INCLUDING MARCH 24, 2017

Name of Applicant:	Skadden, Arps, Slate, Meagher & Flom LLP
Authorized to Provide Professional Services to:	Triangle USA Petroleum Corporation and its affiliated debtors and debtors in possession
Date of Retention:	August 1, 2016 *nunc pro tunc* to June 29, 2016
Period for which compensation and reimbursement is sought:	Third Interim Period: January 1, 2017 through and including March 24, 2017 Entire Case: June 29, 2016 through and including March 24, 2017
Amount of Compensation sought as actual, reasonable and necessary:	Third Interim Period: $3,796,437.00 Entire Case: $8,687,993.75
Amount of Expense Reimbursement sought as actual, reasonable and necessary:	Third Interim Period: $101,106.31 Entire Case: $255,850.99

[1] The Debtors and the last four digits of their respective taxpayer identification numbers are: Triangle USA Petroleum Corporation (0717); Foxtrot Resources LLC (6690); Leaf Minerals, LLC (9522); Ranger Fabrication, LLC (6889); Ranger Fabrication Management, LLC (1015); and Ranger Fabrication Management Holdings, LLC (0750). The address of the Debtors' corporate headquarters is 1200 17th Street, Suite 2500, Denver, Colorado 80202.

This is a/an: __ monthly request _x_ interim application _x_ final application

Aggregate amounts paid to date for case period: $6,073,939.39.

During the case period, the total time expended for preparation of this fee application was approximately 3.4 hours and the corresponding compensation requested is approximately $2,749.00.

After March 24, 2017, Skadden professionals rendered additional services in preparing and filing this fee application which will be compensated upon submission of invoices to the reorganized Debtors.

If this is not the first application filed, disclose the following for each prior application:

		Requested		Approved	
Date Filed	Period Covered	Fees	Expenses	Fees	Expenses
8/31/2016 [Docket No. 273]	6/29/2016-7/31/2016*	$722,984.00 (80% of which is $578,387.20)	$28,140.13	$2,244,686.50	$77,092.69
10/6/2016 [Docket No. 334]	8/1/2016-8/31/2016*	$922,735.50 (80% of which is $738,188.40)	$32,162.84		
11/1/2016 [Docket No. 371]	9/1/2016-9/30/2016*	$599,137.00 (80% of which is $479,309.60)	$17,711.55		
12/1/2016 [Docket No. 461]	10/1/2016-10/31/2016**	$832,482.25 (80% of which is $665,985.80)	$29,077.54	$2,639,646.00	$76,937.01
1/31/2017 [Docket No. 673]	11/1/2016-11/30/2016**	$838,644.50 (80% of which is $670,915.60)	$21,922.67		
2/10/2017 [Docket No. 714]	12/1/2016-12/31/2016**	$975,743.50 (80% of which is $780,594.80)	$26,151.78		
3/13/2017 [Dkt. No. 830]	1/1/2017-1/31/2017	$1,252,077.25 (80% of which is $1,001,661.80)	$33,188.03	$1,001,661.80	$33,188.03
4/10/2017 [Dkt. No. 870]	2/1/2017-2/28/2017	$1,069,969.75 (80% of which is $855,975.80)	$25,628.25	$855,975.80	$25,628.25

* Skadden has filed an interim fee application pertaining to these periods [Docket No. 401], which has been approved [Docket No. 596], and Skadden has been paid the "holdback" amounts with respect thereto.

** Skadden has also filed an interim fee application pertaining to these periods [Docket No. 731], which has been approved [Docket No. 826], and Skadden has been paid the "holdback" amounts with respect thereto.

Note: To conserve resources, Skadden has not filed a separate interim fee application for the period from January 1, 2017 through and including March 24, 2017. Accordingly, the fees and expenses for this period have not yet been approved by this Court. This fee application constitutes in part a request for the payment of these fees and expenses. Skadden intends to file a monthly fee application for the period from March 1, 2017 through and including March 24, 2017 in advance of the hearing on this final fee application to seek expense reimbursement and payment for compensation for this period, in accordance with the interim compensation procedures approved by this Court.

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SUMMARY OF THIRD INTERIM FEE APPLICATION
COMPENSATION BY PROFESSIONAL PERSON
SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP
JANUARY 1, 2017 THROUGH AND INCLUDING MARCH 24, 2017

NAME	YEAR OF ADMISSION	RATE	HOURS	AMOUNT
PARTNER				
K. Kristine Dunn	1998	$1,335.00	167.30	$ 223,345.50
Michelle Gasaway	1998	1,250.00	53.20	66,500.00
Albert L. Hogan III	1997	667.50	27.50	18,356.25
		1,335.00	198.80	265,398.00
Leif King	1996	667.50	20.00	13,350.00
		1,335.00	145.90	194,776.50
Brian Krause	2006	1,050.00	36.90	38,745.00
Evan R. Levy	1995	1,335.00	1.00	1,335.00
Ron E. Meisler	1999	667.50	14.10	9,411.75
		1,335.00	111.40	148,719.00
George N. Panagakis	1990	667.50	13.00	8,677.50
		1,335.00	80.10	106,933.50
Yossi Vebman	1997	1,335.00	5.60	7,476.00
	TOTAL PARTNER		**874.80**	**$ 1,103,024.00**
COUNSEL				
Thomas M. Asmar	2008	$1,090.00	4.20	$ 4,578.00
Rita Sinkfield Belin	1996	1,090.00	6.20	6,758.00
Michael R. Bergmann	1994	1,090.00	8.70	9,483.00
Berit R. Freeman	1991	1,090.00	165.50	180,395.00
Matthew J. Hofheimer	2008	970.00	95.80	92,926.00
Jeffrey A. Lieberman	1985	1,090.00	4.20	4,578.00
Peter Luneau	2004	1,090.00	6.80	7,412.00
Joy E. Maddox	1988	1,090.00	9.80	10,682.00
Elizabeth A. Malone	2002	1,090.00	0.40	436.00
Sarah E. Pierce	2005	1,090.00	32.80	35,752.00
	TOTAL COUNSEL		**334.40**	**$ 353,000.00**
ASSOCIATE				

Tabitha Atkin	2015	$595.00	76.00	$ 45,220.00
Sara S. Brazao Ferreira	2013	815.00	4.80	3,912.00
Joseph P. Catapano	2016	495.00	64.10	31,729.50
Barry J. Chang	2014	815.00	119.30	97,229.50
Eunjoo (EJ) Chung	2010	860.00	39.60	34,056.00
Erica N. Cushing	2017	495.00	20.50	10,147.50
Christopher M. Dressel	2010	462.50	80.40	37,185.00
		925.00	602.20	557,035.00
Andrea L. Evans	2016	495.00	44.80	22,176.00
Robert E. Fitzgerald	2016	495.00	182.30	90,238.50
Prashina J. Gagoomal	2010	965.00	29.20	28,178.00
Robert C. Goldstein	2009	895.00	135.90	121,630.50
Benjamin C. Hershman	2015	595.00	186.00	110,670.00
Allie M. Keefe	2015	595.00	186.30	110,848.50
Theodore M. Kneller	2009	965.00	0.40	386.00
Shannon Kung	2009	965.00	229.70	221,660.50
Elizabeth A. Mastrogiacomo	2012	860.00	1.80	1,548.00
Luke W. Meyers	2016	595.00	2.40	1,428.00
Jay E. Mitchell	2015	595.00	67.90	40,400.50
Daniel B. O'Connell	2016	495.00	2.40	1,188.00
Sanaz Oskouy	2016	495.00	282.80	139,986.00
Leila B. Sayegh	2004	965.00	10.10	9,746.50
Renu Shah	2010	462.50	19.10	8,833.75
		925.00	328.00	303,400.00
Yan Shurin	2012	895.00	40.30	36,068.50
Lindsey Sieling	2013	407.50	9.30	3,789.75
		815.00	106.80	87,042.00
Melissa M. Tiarks	2009	965.00	10.30	9,939.50
Michael J. Wiesner	2012	895.00	64.30	57,548.50
Monika Zhou	2015	595.00	22.10	13,149.50
	TOTAL ASSOCIATE		**2,969.10**	**$ 2,236,371.00**

PARAPROFESSIONALS				
Christopher M. Heaney	N/A	$385.00	213.10	$ 82,043.50
Mary E. Keogh	N/A	385.00	11.40	4,389.00
Wendy K. LaManna	N/A	385.00	10.00	3,850.00
Catherine D. Ledyard	N/A	450.00	18.00	8,100.00
Mary Kate Moran	N/A	385.00	14.70	5,659.50
	TOTAL PARAPROFESSIONALS		**267.20**	**$ 104,042.00**
		TOTAL	**4,445.50**	**$3,796,437.00**

SUMMARY OF THIRD INTERIM FEE APPLICATION
COMPENSATION BY PROJECT CATEGORY
SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP
JANUARY 1, 2017 THROUGH AND INCLUDING MARCH 24, 2017

Project Category	Total Hours	Total Fees
Automatic Stay (Relief Actions)	1.70	$1,209.50
Business Operations / Strategic Planning	0.20	$152.00
General Corporate Advice	940.90	$761,510.00
Case Administration	151.50	$95,231.00
Claims Admin. (General)	316.50	$223,034.50
Disclosure Statement / Voting Issues	172.80	$166,790.00
Employee Matters (General)	372.80	$390,318.00
Environmental Matters	1.10	$1,165.50
Executory Contracts (Personalty)	117.20	$103,469.00
Financing (DIP and Emergence)	953.30	$850,428.00
Insurance	7.80	$8,624.00
Intellectual Property	1.40	$1,869.00
Leases (Real Property)	2.30	$2,168.50
Litigation (General)	134.30	$113,869.00
Nonworking Travel Time	183.40	$99,604.00
Reorganization Plan / Plan Sponsors	814.50	$746,569.50
Reports and Schedules	0.70	$269.50
Retention / Fee Matters (SASM&F)	55.70	$34,848.00
Retention / Fee Matters / Objections (Others)	36.30	$18,266.50
Tax Matters	179.50	$175,891.50
U.S. Trustee Matters	1.00	$595.00
Utilities	0.60	$555.00
TOTAL	**4,445.50**	**$3,796,437.00**

SUMMARY OF THIRD INTERIM FEE APPLICATION
EXPENSE SUMMARY
SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP
JANUARY 1, 2017 THROUGH AND INCLUDING MARCH 24, 2017

Expense Category	Total Expenses
Computer Legal Research	$34,984.92
Long Distance Telephone	$2,623.16
In-House Reproduction (@ $.10 per page)	$2,375.80
Reproduction-color (@ $.50 per page)	$3,876.00
Outside Reproduction	$676.20
Outside Research	$4,694.10
Filing/Court Fees	$10,491.50
Court Reporting	$2,848.05
Local Travel	$2,202.23
Out-Of-Town Travel	$30,401.94
Business Meals	$2,316.11
Courier & Express Carriers (e.g., Federal Express)	$343.71
Professional Fees	$992.40
Electronic Document Management	$2,139.44
Other	$140.75
TOTAL	**$101,106.31**

SUMMARY OF ENTIRE CASE
COMPENSATION BY PROFESSIONAL PERSON
SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP
JUNE 29, 2016 THROUGH AND INCLUDING MARCH 24, 2017

NAME	YEAR OF ADMISSION	RATE	HOURS	AMOUNT
PARTNER				
Karen L. Corman	1988	$1,275.00	1.80	$ 2,295.00
K. Kristine Dunn	1998	1,275.00	14.10	17,977.50
		1,335.00	167.30	223,345.50
Michelle Gasaway	1998	1,200.00	122.70	147,240.00
		1,250.00	53.20	66,500.00
Edward E. Gonzalez	1980	1,425.00	1.00	1,425.00
Albert L. Hogan III	1997	637.50	7.50	4,781.25
		667.50	27.50	18,356.25
		1,275.00	440.20	561,255.00
		1,335.00	198.80	265,398.00
Leif King	1996	637.50	8.00	5,100.00
		667.50	20.00	13,350.00
		1,275.00	31.50	40,162.50
		1,335.00	145.90	194,776.50
Brian Krause	2006	990.00	35.80	35,442.00
		1,050.00	36.90	38,745.00
Evan R. Levy	1995	1,335.00	1.00	1,335.00
Ron E. Meisler	1999	637.50	61.90	39,461.25
		667.50	14.10	9,411.75
		1,275.00	357.10	455,302.50
		1,335.00	111.40	148,719.00
Eric C. Otness	2002	550.00	8.40	4,620.00
		1,100.00	53.00	58,300.00
George N. Panagakis	1990	637.50	15.30	9,753.75
		667.50	13.00	8,677.50
		1,275.00	161.20	205,530.00
		1,335.00	80.10	106,933.50
Yossi Vebman	1997	1,335.00	5.60	7,476.00
	TOTAL PARTNER		**2,194.30**	**$ 2,691,669.75**
COUNSEL				

Thomas M. Asmar	2008	$1,090.00	4.20	$ 4,578.00
Rita Sinkfield Belin	1996	1,090.00	6.20	6,758.00
Michael R. Bergmann	1994	1,090.00	8.70	9,483.00
Berit R. Freeman	1991	1,040.00	74.10	77,064.00
		1,090.00	165.50	180,395.00
Matthew J. Hofheimer	2008	925.00	8.90	8,232.50
		970.00	95.80	92,926.00
Jason M. Liberi	2003	970.00	7.20	6,984.00
Jeffrey A. Lieberman	1985	1,090.00	4.20	4,578.00
Peter Luneau	2004	1,090.00	6.80	7,412.00
Joy E. Maddox	1988	1,090.00	9.80	10,682.00
Elizabeth A. Malone	2002	1,090.00	0.40	436.00
Sarah E. Pierce	2005	1,000.00	51.90	51,900.00
		1,040.00	63.20	65,728.00
		1,090.00	32.80	35,752.00
	TOTAL COUNSEL		**539.70**	**$ 562,908.50**
ASSOCIATE				
Tabitha Atkin	2015	$470.00	130.10	$ 61,147.00
		565.00	68.50	38,702.50
		595.00	76.00	45,220.00
Sara S. Brazao Ferreira	2013	815.00	4.80	3,912.00
Amanda L. Brown	2013	675.00	18.30	12,352.50
		780.00	106.00	82,680.00
Joseph P. Catapano	2016	495.00	64.10	31,729.50
Barry J. Chang	2014	675.00	0.80	540.00
		780.00	8.00	6,240.00
		815.00	119.30	97,229.50
Eunjoo (EJ) Chung	2010	820.00	32.90	26,978.00
		860.00	39.60	34,056.00
Erica N. Cushing	2017	495.00	20.50	10,147.50
Marc-Anthony Delgado	2016	390.00	19.50	7,605.00
Christopher M. Dressel	2010	425.00	41.30	17,552.50
		442.50	91.60	40,533.00
		462.50	80.40	37,185.00
		850.00	497.80	423,130.00
		885.00	752.00	665,520.00
		925.00	602.20	557,035.00
Andrea L. Evans	2016	390.00	74.90	29,211.00
		470.00	17.50	8,225.00

		495.00	44.80	22,176.00
Robert E. Fitzgerald	2016	390.00	144.10	56,199.00
		470.00	77.40	36,378.00
		495.00	182.30	90,238.50
Prashina J. Gagoomal	2010	965.00	29.20	28,178.00
Robert C. Goldstein	2009	820.00	19.30	15,826.00
		850.00	49.70	42,245.00
		895.00	135.90	121,630.50
Benjamin C. Hershman	2015	565.00	10.40	5,876.00
		595.00	186.00	110,670.00
Alexander J. Kasparie	2016	390.00	19.00	7,410.00
Allie M. Keefe	2015	470.00	54.30	25,521.00
		565.00	180.90	102,208.50
		595.00	186.30	110,848.50
Alexander P. Kingsley	2009	920.00	4.00	3,680.00
Theodore M. Kneller	2009	965.00	0.40	386.00
Shannon Kung	2009	965.00	229.70	221,660.50
Elizabeth A. Mastrogiacomo	2012	860.00	1.80	1,548.00
Luke W. Meyers	2016	595.00	2.40	1,428.00
Jay E. Mitchell	2015	470.00	94.40	44,368.00
		565.00	407.40	230,181.00
		595.00	67.90	40,400.50
Jan C. Nishizawa	2008	920.00	12.70	11,684.00
Daniel B. O'Connell	2016	495.00	2.40	1,188.00
Sanaz Oskouy	2016	495.00	282.80	139,986.00
David J. Passarelli	2008	885.00	24.10	21,328.50
Ryne C. Posey	2014	675.00	4.60	3,105.00
Rebekah D. Reneau	2013	780.00	30.70	23,946.00
Leila B. Sayegh	2004	965.00	10.10	9,746.50
Renu Shah	2010	425.00	29.20	12,410.00
		442.50	32.90	14,558.25
		462.50	19.10	8,833.75
		850.00	185.80	157,930.00
		885.00	409.30	362,230.50
		925.00	328.00	303,400.00
Yan Shurin	2012	895.00	40.30	36,068.50
Lindsey Sieling	2013	337.50	11.30	3,813.75
		407.50	9.30	3,789.75
		675.00	203.20	137,160.00
		780.00	153.60	119,808.00
		815.00	106.80	87,042.00
Jennifer W. Stone	2016	470.00	26.90	12,643.00

Melissa M. Tiarks	2009	965.00	10.30	9,939.50
Michael J. Wiesner	2012	850.00	14.60	12,410.00
		895.00	64.30	57,548.50
Monika Zhou	2015	595.00	22.10	13,149.50
	TOTAL ASSOCIATE		**7,028.10**	**$ 5,119,707.00**
ASSOCIATE - OUTSIDE				
Christine Feil	N/A	$170.00	123.50	$ 20,995.00
Loree Kolpas	N/A	170.00	66.20	11,254.00
Michael McCormick	N/A	170.00	104.30	17,731.00
Colin Nguyen	N/A	170.00	70.00	11,900.00
	TOTAL ASSOCIATE – OUTSIDE		**364.00**	**$ 61,880.00**
CLIENT SPECIALISTS				
William C. Terry	N/A	$430.00	4.00	$ 1,720.00
	TOTAL CLIENT SPECIALISTS		**4.00**	**$ 1,720.00**

PARAPROFESSIONALS				
Mark D. Campana	N/A	$365.00	0.40	$ 146.00
Christopher M. Heaney	N/A	365.00	343.80	125,487.00
		385.00	213.10	82,043.50
Mary E. Keogh	N/A	365.00	0.20	73.00
		385.00	11.40	4,389.00
Wendy K. LaManna	N/A	365.00	35.70	13,030.50
		385.00	10.00	3,850.00
Catherine D. Ledyard	N/A	450.00	18.00	8,100.00
Mary Kate Moran	N/A	385.00	14.70	5,659.50
Julia Raden	N/A	365.00	14.30	5,219.50
Dante J. Wadley	N/A	315.00	6.70	2,110.50
	TOTAL PARAPROFESSIONALS		**668.30**	**$ 250,108.50**
		TOTAL	**10,798.40**	**$ 8,687,993.75**

SUMMARY OF ENTIRE CASE
COMPENSATION BY PROJECT CATEGORY
SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP
JUNE 29, 2016 THROUGH AND INCLUDING MARCH 24, 2017

Project Category	Total Hours	Total Fees
Asset Dispositions (General)	266.30	$229,486.00
Automatic Stay (Relief Actions)	95.90	$86,380.50
Business Operations / Strategic Planning	55.90	$53,626.50
Case Administration	523.30	$334,535.50
Claims Admin. (General)	706.70	$547,185.00
Creditors Meetings / Statutory Committees	17.60	$11,183.00
Disclosure Statement / Voting Issues	484.00	$386,143.00
Employee Matters (General)	537.40	$545,261.50
Environmental Matters	1.10	$1,165.50
Executory Contracts (Personalty)	2,005.60	$1,449,111.50
Financing (DIP and Emergence)	1,847.00	$1,731,857.00
General Corporate Advice	1,031.10	$862,751.50
Insurance	10.50	$10,261.00
Intellectual Property	1.40	$1,869.00
Leases (Real Property)	7.80	$6,048.00
Litigation (General)	727.40	$487,479.50
Nonworking Travel Time	490.80	$252,187.75
Regulatory and SEC Matters	1.60	$752.00
Reorganization Plan / Plan Sponsors	1,338.30	$1,219,928.00
Reports and Schedules	42.60	$22,042.50
Retention / Fee Matters (SASM&F)	179.20	$100,038.00
Retention / Fee Matters / Objections (Others)	123.20	$73,390.00
Secured Claims	0.30	$255.00
Tax Matters	223.50	$218,125.00

Project Category	Total Hours	Total Fees
U.S. Trustee Matters	23.20	$19,418.00
Utilities	50.40	$32,301.50
Vendor Matters	6.30	$5,212.00
TOTAL	**10,798.40**	**$8,687,993.75**

SUMMARY OF ENTIRE CASE
EXPENSE SUMMARY
SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP
JUNE 29, 2016 THROUGH AND INCLUDING MARCH 24, 2017

Expense Category	Total Expenses
Computer Legal Research	$108,660.25
Long Distance Telephone	$5,535.61
In-House Reproduction (@ $.10 per page)	$6,561.70
Reproduction-color (@ $.50 per page)	$7,530.80
Outside Reproduction	$5,589.34
Outside Research	$10,714.80
Filing/Court Fees	$11,972.50
Court Reporting	$4,546.44
Local Travel	$8,186.22
Out-Of-Town Travel	$75,323.21
Business Meals	$3,631.49
Courier & Express Carriers (e.g., Federal Express)	$1,831.11
Postage	$9.63
Professional Fees	$1,566.40
Electronic Document Management	$4,050.64
Other	$140.85
TOTAL	**$255,850.99**

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	:	Chapter 11
TRIANGLE USA PETROLEUM CORPORATION, *et al.*,	:	Case No. 16-11566 (MFW)
	:	Jointly Administered
Debtors.[1]	:	**Obj. Due: May 30, 2017 at 4:00 p.m. (Eastern)**

THIRD INTERIM AND FINAL FEE APPLICATION OF SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP FOR COMPENSATION FOR SERVICES RENDERED AND REIMBURSEMENT OF EXPENSES AS COUNSEL TO THE DEBTORS FOR THE PERIOD FROM JUNE 29, 2016 THROUGH AND INCLUDING MARCH 24, 2017

Skadden, Arps, Slate, Meagher & Flom LLP and affiliates (collectively, "**Skadden**" or the "**Firm**"), counsel to the above-captioned debtors and debtors in possession (collectively, the "**Debtors**" or the "**Company**"), submit this application (this "**Application**"), seeking compensation for services rendered and reimbursement of expenses incurred as counsel to the Debtors[2] (i) on an interim basis, for the period from January 1, 2017 through and including March 24, 2017 (the "**Third Interim Period**") and (ii) on a final basis, for the period from June 29, 2016 through and including March 24, 2017 (the "**Application Period**"), under sections 330 and 331 of title 11 of the United States Code (the "**Bankruptcy Code**"), Rule 2016 of the

[1] The Debtors and the last four digits of their respective taxpayer identification numbers are: Triangle USA Petroleum Corporation (0717); Foxtrot Resources LLC (6690); Leaf Minerals, LLC (9522); Ranger Fabrication, LLC (6889); Ranger Fabrication Management, LLC (1015); and Ranger Fabrication Management Holdings, LLC (0750). The address of the Debtors' corporate headquarters is 1200 17th Street, Suite 2500, Denver, Colorado 80202.

[2] This Final Fee Application requests payment exclusively on account of compensation and necessary expenses incurred in Skadden's service as counsel to Triangle USA Petroleum Corporation, Foxtrot Resources LLC, and Leaf Minerals, LLC (the "**TUSA Debtors**"). Skadden reserves all rights to request further compensation and necessary expenses incurred in connection with Skadden's service as counsel to Ranger Fabrication, LLC, Ranger Fabrication Management, LLC, and Ranger Fabrication Management Holdings, LLC (the "**Ranger Debtors**"), who remain debtors in possession under the Bankruptcy Code.

Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**"), Rule 2016-2 of the Local Bankruptcy Rules for the United States Bankruptcy Court for the District of Delaware (the "**Local Bankruptcy Rules**"), the *Order Under Bankruptcy Code Sections 105(a) And 331, Bankruptcy Rule 2016(a), And Local Bankruptcy Rule 2016-2, Establishing Interim Compensation Procedures*, dated August 1, 2016 [Docket No. 183] and the exhibit attached thereto (the "**Interim Compensation Procedures**"),[3] and the *Findings of Fact, Conclusions of Law, and Order Confirming Third Amended Joint Chapter 11 Plan of Reorganization of Triangle USA Petroleum Corporation and its Subsidiary Debtors* [Docket No. 825] (the "**Confirmation Order**"). Skadden represents as follows:

JURISDICTION

1. This Court has jurisdiction to consider this Application under 28 U.S.C. §§ 157 and 1334. This is a core proceeding under 28 U.S.C. § 157(b). Venue of these cases and this Application in this District is proper under 28 U.S.C. §§ 1408 and 1409.

2. The statutory predicates for the relief requested herein are Bankruptcy Code sections 330 and 331, Bankruptcy Rule 2016, and Local Bankruptcy Rule 2016-2.

3. Under Local Bankruptcy Rule 9013-1(f), the Debtors consent to the entry of a final judgment or order with respect to this Application if it is determined that this Court would lack Article III jurisdiction to enter such final order or judgment absent the consent of the parties.

BACKGROUND

4. On June 29, 2016 (the "**Petition Date**"), the Debtors each commenced a case by filing a petition for relief under chapter 11 of the Bankruptcy Code (collectively, the "**Chapter 11 Cases**"). The Chapter 11 Cases are jointly administered.

[3] Capitalized terms not otherwise defined herein shall have the meanings assigned to them in the Interim Compensation Procedures.

5. The Debtors continue to operate their business and manage their properties as debtors and debtors in possession under Bankruptcy Code sections 1107(a) and 1108.

6. No creditors' committee has been appointed in the Chapter 11 Cases by the United States Trustee for the District of Delaware (the "**U.S. Trustee**") [Docket No. 108]. No trustee or examiner has been appointed in the Chapter 11 Cases.

7. On March 8, 2017, the Debtors filed the *Third Amended Joint Chapter 11 Plan of Reorganization of Triangle USA Petroleum Corporation and its Subsidiary Debtors* [Docket No. 795] (the "**Plan**").

8. On March 10, 2017, the Court held a hearing to consider confirmation of the Plan (the "**Confirmation Hearing**"), and that same day, the Count entered the Confirmation Order.

9. On March 24, 2017, the Debtors consummated the Plan and filed with the Court a notice that the Effective Date of the Plan had occurred [Docket No. 849] (the "**Notice of Effective Date**").

10. The Debtors' business operations, corporate and capital structure, and restructuring efforts are described in greater detail in the *Declaration of John R. Castellano in Support of Chapter 11 Petitions and First Day Papers* [Docket No. 13].

RETENTION OF SKADDEN

11. On July 11, 2016, the Debtors submitted an application (the "**Retention Application**") to this Court (the "**Court**" or the "**Bankruptcy Court**") for an order authorizing them to retain Skadden, pursuant to an engagement agreement dated June 15, 2016 (the "**Engagement Agreement**"), as their counsel, effective *nunc pro tunc* to the Petition Date. On August 1, 2016, the Court entered the *Order Under Bankruptcy Code Section 327(a) and 329, Bankruptcy Rule 2014 and 2016, and Local Bankruptcy Rules 2014-1 and 2016-1 Authorizing Employment and Retention of Skadden, Arps, Slate, Meagher & Flom LLP And Affiliates As*

Bankruptcy Counsel, Nunc Pro Tunc to the Petition Date [Docket No. 186] (the "**Retention Order**") authorizing the Debtors to employ and retain Skadden as their counsel, effective as of the Petition Date, in accordance with the provisions of the Retention Order and the Engagement Agreement.

INTERIM COMPENSATION PROCEDURES

12. On August 1, 2016, this Court approved the Interim Compensation Procedures, which sets forth the procedures for interim compensation and reimbursement of expenses for all professionals retained in the Chapter 11 Cases (each, a "**Professional**," and together, the "**Professionals**," and the Professionals from Skadden the "**Skadden Professionals**").

13. In particular, the Interim Compensation Procedures provide that a Professional may serve a monthly fee request (the "**Monthly Fee Request**") on the Notice Parties (as defined in the Interim Compensation Procedures). Provided that there are no objections to the Monthly Fee Request filed within 15 days after service of a Monthly Fee Request, the Professional may file a certificate of no objection or a certificate of partial objection, whichever is applicable, with this Court, after which the Debtors are authorized to pay such Professional 80% of the fees and 100% of the expenses not subject to an objection.

14. The Interim Compensation Procedures provide that beginning with the three-month period ending September 30, 2016, and at three-month intervals thereafter (the "**Interim Fee Period**"), each Professional shall file with this Court and serve on the Notice Parties an interim fee application ("**Interim Fee Application**") for compensation and reimbursement of expenses sought during such Interim Fee Period. Any Professional that fails to file an Interim Fee Application within 45 days after the end of the applicable Interim Fee Period will be ineligible to receive further interim payments of fees or expenses with respect to any subsequent

Interim Fee Period until such time as an Interim Fee Application is filed and served by the Professional.

15. The Interim Compensation Procedures further provide that, at the close of the Chapter 11 Cases, at a date and time to be established by the Court, each Professional shall file with the Court and serve on the Notice Parties a request for final Court approval and allowance of compensation of all fees and reimbursement of all expenses sought in the Monthly Fee Requests and the Interim Fee Applications, including all amounts previously withheld (the "**Final Fee Application**").

FEE PROCEDURES PURSUANT TO THE PLAN AND CONFIRMATION ORDER

16. On March 10, 2017, the Court entered the Confirmation Order. Pursuant to section 2.02 of the Plan, Final Fee Applications must be filed by May 8, 2017, which date is 45 days after the Effective Date. Per the Interim Compensation Procedures, parties have 21 days from the date of filing and service to object to such Final Fee Applications. Section 2.02(d) of the Plan provides that from and after the Effective Date, any requirement that Professionals comply with Bankruptcy Code section 327 through 331 in seeking retention or compensation for services rendered after the Effective Date shall terminate.

MONTHLY FEE REQUESTS

17. In accordance with the Interim Compensation Procedures, Skadden filed Monthly Fee Requests on:

(a) August 31, 2016 [Docket No. 273], covering the period between June 29, 2016 and July 31, 2016 (the "**First Monthly Fee Request**");

(b) October 6, 2016 [Docket No. 334], covering the period between August 1, 2016 and August 31, 2016 (the "**Second Monthly Fee Request**");

(c) November 1, 2016 [Docket No. 371], covering the period between September 1, 2016 and September 30, 2016 (the "**Third Monthly Fee Request**");

(d) December 1, 2016 [Docket No. 461], covering the period between October 1, 2016 and October 31, 2016 (the "**Fourth Monthly Fee Request**");

(e) January 31, 2017 [Docket No. 673], covering the period between November 1, 2016 and November 30, 2016 (the "**Fifth Monthly Fee Request**");

(f) February 10, 2017 [Docket No. 714], covering the period between December 1, 2016 and December 31, 2016 (the "**Sixth Monthly Fee Request**");

(g) March 13, 2017 [Docket No. 830], covering the period between January 1, 2017 and January 31, 2017 (the "**Seventh Monthly Fee Request**"); and

(h) April 10, 2017 [Docket No. 870], covering the period between February 1, 2017 and February 28, 2017 (the "**Eighth Monthly Fee Request**").

18. In addition, on November 14, 2016, Skadden Professionals filed the *First Interim Fee Application of Skadden, Arps, Slate, Meagher & Flom LLP for Compensation for Services Rendered and Reimbursement of Expenses as Counsel to the Debtors for the Period From June 29, 2016 Through and Including September 30, 2016* [Docket No. 401] (the "**First Interim Fee Application**"). The First Interim Fee Application sought authorization for the Debtors to pay the amounts requested in the First Monthly Fee Request, Second Monthly Fee Request, and Third Monthly Fee Request in full, including the 20% of the fees held back under each such Monthly Fee Request.

19. Skadden received informal comments to the First Interim Fee Application from the U.S. Trustee. To resolve the U.S. Trustee's concerns, Skadden agreed to a voluntary reduction of $500 relating to certain expenses requested in the Second Monthly Fee Request. On January 13, 2017, this Court entered an order authorizing the Debtors to pay Skadden 100% of the fees and expenses requested in the First Interim Fee Application, as voluntarily reduced [Docket No. 596] (the "**First Interim Fee Order**"). Skadden has received payment for all amounts approved under the First Interim Fee Order.

20. On February 14, 2017, Skadden Professionals filed the *Second Interim Fee Application of Skadden, Arps, Slate, Meagher & Flom LLP for Compensation for Services*

Rendered and Reimbursement of Expenses as Counsel to the Debtors for the Period From October 1, 2016 Through and Including December 31, 2016 [Docket No. 731] (the "**Second Interim Fee Application**"). The Second Interim Fee Application sought authorization for the Debtors to pay the amounts requested in the Fourth Monthly Fee Request, Fifth Monthly Fee Request, and Sixth Monthly Fee Request in full, including the 20% of the fees held back under each such Monthly Fee Request.

21. Skadden received informal comments to the Second Interim Fee Application from the U.S. Trustee. To resolve the U.S. Trustee's concerns, Skadden agreed to a voluntary reduction of $7,224.25 in fees and $214.98 in expenses relating to Second Interim Fee Application. On March 10, 2017, following a hearing on the Second Interim Fee Application, this Court entered an order authorizing the Debtors to pay Skadden 100% of the fees and expenses requested in the Second Interim Fee Application, as voluntarily reduced [Docket No. 826] (the "**Second Interim Fee Order**"). Skadden has received payment for all amounts approved under the Second Interim Fee Order.

22. To preserve the assets of the estates and spare the Debtors additional costs, Skadden has not filed a separate third interim fee application for the period from January 1, 2017 through and including March 24, 2017. Skadden has, to date, received payment for compensation and expenses requested under the Seventh and Eighth Monthly Fee Requests for January and February 2017, respectively, subject in each case to the holdback. By this Application, Skadden seeks approval of those fees and expenses. Skadden has not received payment for fees and expenses incurred between March 1, 2017 and March 24, 2017, and intends to file a Monthly Fee Request covering this period in advance of the hearing on this Application.

RELIEF REQUESTED

23. By this Application, Skadden requests (a) allowance and approval, on an interim basis, of compensation for professional services rendered to the Debtors, in the amount of $3,796,437.00, and reimbursement of actual and necessary expenses incurred in connection with such services, in the amount of $101,106.31, for the period from January 1, 2017 through and including March 24, 2017;[4] and (b) allowance and approval, on a final basis, of compensation for professional services rendered to the Debtors, in the amount of $8,687,993.75, and reimbursement of actual and necessary expenses incurred in connection with such services, in the amount of $255,850.99 for the period from June 29, 2016 through and including March 24, 2017.

24. A narrative statement of the services rendered during the period covered by this Final Fee Application is set forth herein. Fees for services have been determined based solely on Professionals' billing rates and hours billed.

25. The fees and expenses sought in this Application reflect total client accommodations for the Third Interim Period of $266,763.23, a reduction of 6.41%, and for the Application Period of $666,017.48, a reduction of 6.93%. In the event that any objections to this Application are filed, Skadden reserves the right to seek payment for all or any part of these client accommodations.

26. Skadden has received no promise of payment for professional services rendered or to be rendered in the Chapter 11 Cases other than in accordance with the provisions of the Bankruptcy Code.

[4] A summary of charges for the period from March 1, 2017 through and including March 24, 2017 is attached hereto as **Exhibit A-1**, time detail for the period is attached hereto as **Exhibit B-1**, and expense detail for the period is attached hereto as **Exhibit C-1**.

BASIS FOR INTERIM RELIEF

27. Skadden has submitted a monthly fee statement for the period from January 1, 2017 through January 31, 2017, and for the period from February 1, 2017 through February 28, 2017, and intends to file a monthly fee statement for the period from March 1, 2017 through and including March 24, 2017 in advance of the hearing on this Application. In accordance with the Interim Compensation Order, Skadden submits that the legal services and advice that it rendered to the Debtors during the Third Interim Period were necessary and beneficial to the Debtors, their creditors, and their estates. During the Third Interim Period, Skadden attorneys and paraprofessionals devoted a total of 4,445.5 hours to representation of the Debtors in the Chapter 11 Cases, for which compensation in the amount of $3,796,437.00 is being sought.

28. Skadden also incurred actual and necessary out-of-pocket expenses in the amount of $101,106.31 in connection with the rendition of required professional services on behalf of the Debtors during the Third Interim Period for which reimbursement is being sought. Schedules showing the name and position of each partner, counsel, associate, and paraprofessional who billed to the Debtors during the Third Interim Period, together with that person's year of admission to the bar (if applicable), hours worked during the Third Interim Period, and hourly billing rate, as well as Skadden's blended hourly rate, are included at the front of this Application pursuant to Local Bankruptcy Rule 2016-2.

29. Monthly summaries of charges for the Third Interim Period are attached as **Exhibits A-1** to **A-3**, monthly time details are attached as **Exhibits B-1** to **B-3**, and monthly expense details are attached as **Exhibits C-1** to **C-3**.

BASIS FOR FINAL RELIEF

30. Skadden submits that the legal services and advice that it rendered to the Debtors during the Application Period, including the Third Interim Period, were necessary and beneficial

to the Debtors, their creditors, and their estates. Throughout the Chapter 11 Cases, Skadden Professionals provided a high level of service to the Debtors. Skadden Professionals devoted substantial time to researching, drafting, analyzing, negotiating, and resolving numerous issues. Indeed, Skadden's efforts on behalf of the Debtors assisted the Debtors in consummating a prompt and successful reorganization, maximizing value for their estates and creditors.

31. During the Application Period, including the Third Interim Period, Skadden attorneys and paraprofessionals devoted a total of 10,798.4 hours to representation of the Debtors in the Chapter 11 Cases, for which Skadden seeks compensation in the net amount of $8,687,993.75. Of the aggregate time expended, 2,194.3 hours were spent by partners, 539.7 hours were spent by counsels, 7,392.1 hours were spent by associates, and 672.3 hours were spent by paraprofessionals. Schedules showing the name and position of each such partner, counsel, associate, and paraprofessional, together with that person's year of admission to the bar (if applicable), hours worked during the Application Period, and hourly billing rate, as well as Skadden's blended hourly rate, are included at the front of this Application pursuant to Local Bankruptcy Rule 2016-2.

32. Skadden also incurred actual and necessary out-of-pocket expenses in the amount of $255,850.99 in connection with the rendition of required professional services on behalf of the Debtors during the Application Period for which reimbursement is sought. Schedules showing total expenses for which reimbursement is sought during the Application Period are included at the front of this Application pursuant to Local Bankruptcy Rule 2016-2.

SUMMARY OF SERVICES RENDERED

33. During the Application Period, Skadden worked closely with the Debtors and the Debtors' other Professionals to satisfy the Debtors' objectives, including (a) the preservation of the Debtors' business; (b) the restructuring and recapitalization of the Debtors; and (c)

maximization of value. The services described herein have been directed towards those tasks necessary to fulfill the Debtors' fiduciary and statutory duties and to achieve the Debtors' objectives. To meet the Debtors' needs, Skadden has provided multi-disciplinary services on a daily basis as necessary to resolve numerous issues in these Chapter 11 Cases. Throughout this process, certain of the principal Skadden attorneys working on the Chapter 11 Cases were required to devote a substantial portion of their time to this engagement. Skadden's efforts on behalf of the Debtors have assisted the Debtors in confirming the Plan and successfully reorganizing.

34. At the commencement of the Chapter 11 Cases, Skadden created 41 different matter numbers or subject-matter categories to which its Professionals billed their time.[5] Skadden kept a contemporaneous record of the time spent rendering services and separated tasks in billing increments of one-tenth of an hour. All of the services performed by Skadden have been legal in nature and necessary and appropriate for the effective administration of the Chapter 11 Cases.

35. Attorneys, legal assistants, and other Skadden Professionals have expended a total of 10,798.4 hours in connection with these cases during the Application Period.[6]

36. Skadden devoted approximately 68.96% of its time to the following matters, fees for each of which were greater than $500,000: (a) Financing (DIP and Emergence); (b) Executory Contracts (Personalty); (c) Reorganization Plan/Plan Sponsors; (d) General Corporate Advice; (e) Claims Administration (General); and (f) Employee Matters (General).

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[5] These matters to which Skadden Professionals billed their time during the Application Period are listed in the Compensation by Project Category table above.

[6] Except as expressly noted in this Application, all figures listed are adjusted for client accommodations.

37. Skadden devoted approximately 26.80% of its time to the following matters, fees for each of which were between $100,000 and $500,000: (a) Litigation (General); (b) Disclosure Statement / Voting Issues; (c) Case Administration; (d) Nonworking Travel Time; (e) Asset Dispositions (General); (f) Tax Matters; and (g) Retention / Fee Matters / Objections (SASM&F).

38. Skadden devoted approximately 3.88% of its time to the following matters, fees for each of which were between $10,000 and $100,000: (a) Automatic Stay (Relief Actions); (b) Retention / Fee Matters (Others); (c) Business Operations/Strategic Planning; (d) Utilities; (e) Reports and Schedules; (f) U.S. Trustee Matters; (g) Creditor Meetings/Statutory Committees; and (h) Insurance.

39. Skadden devoted the remaining approximately .02% of its time to the following matters, fees for each of which were less than $10,000: (a) Leases (Real Property); (b) Vendor Matters; (c) Intellectual Property; (d) Environmental Matters; (e) Regulatory and SEC Matters; and (f) Secured Claims.

MATTERS OVER $500,000

40. During the Application Period, Skadden Professionals devoted significant time to various key matters, each of which had a time value of more than $500,000. These matters were as follows:

A. Financing (DIP and Emergence)
Amount Sought: $1,731,857.00

(i) Cash Collateral

41. This category relates to work completed by Skadden Professionals in relation to efforts to assist the Debtors in obtaining authorization to use cash collateral on a consensual basis (the "**Cash Collateral Order**"). The Debtors' Professionals engaged in extensive and

challenging negotiations with the agent for the pre-petition reserve based lending credit facility (the "**RBL Agent**") and a group of holders of the Debtors' notes (the "**Ad Hoc Noteholder Group**") to reach a consensual agreement on the Cash Collateral Order. During the Application Period, Skadden Professionals devoted substantial time to this category, including, but not limited to, the following:

(a) participating in numerous telephone conferences with the Debtors, the Debtors' Professionals, the lenders' professionals, and the Ad Hoc Noteholder Group's professionals regarding the Cash Collateral Order;

(b) revising and filing a motion authorizing use of cash collateral [Docket No. 12] and later preparing an order amending the interim order [Docket No. 209] and a final order [Docket No. 295];

(c) responding to comments from certain key constituencies on drafts of the Cash Collateral Order;

(d) reviewing, analyzing, responding, and negotiating resolutions to the formal and informal objections to the Cash Collateral Order, including the limited objection filed by the Ad Hoc Noteholder Group [Docket No. 123];

(e) preparing for and participating in hearings on June 30, 2016 and August 1, 2016 with respect to interim relief regarding the Cash Collateral Order; and

(f) preparing for and conducting a final hearing on the Cash Collateral Order on September 12, 2016, after which the Cash Collateral Order was entered [Docket No. 295].

42. During the Application Period, Skadden Professionals also devoted substantial time to contingency planning, in the event that the Debtors, the RBL Agent, and the Ad Hoc Noteholder Group were unable to come to an agreement on the consensual use of cash collateral. To this end, Skadden Professionals researched, drafted, reviewed, and revised a non-consensual cash collateral motion, order, and accompanying exhibits.

(ii) The Rights Offering

43. This category relates to work completed by Skadden Professionals to assist the Debtors in matters related to the new-money rights offering (the "**Rights Offering**") contemplated by the Plan for the purchase of up to approximately $177 million in convertible preferred stock of the reorganized Debtors, which was an essential component of the Debtors' efforts to recapitalize their balance sheet. During the Application Period, Skadden Professionals spent substantial time meeting with the Debtors and their Professionals, often by teleconference, regarding the terms and mechanics of the Rights Offering. Skadden Professionals also participated in numerous telephone conferences with professionals for the Ad Hoc Noteholders' Group and other constituents regarding the terms and mechanics of the Rights Offering.

44. In connection with the Rights Offering, the Skadden Professionals spent substantial time negotiating a backstop commitment agreement (the "**Backstop Commitment Agreement**") with certain members of the Ad Hoc Noteholder Group, who collectively agreed to backstop $150 million of the Rights Offering. To this end, Skadden Professionals participated in numerous teleconferences with the Debtors and their other Professionals, along with the Ad Hoc Noteholder Group and its professionals.

45. Skadden Professionals devoted substantial time researching, drafting, reviewing, and editing several drafts of the Backstop Commitment Agreement. Terms and mechanics of the Backstop Commitment Agreement were also reviewed and discussed at length with other parties in interest in numerous teleconferences.

46. During the Application Period, Skadden Professionals spent substantial time researching, drafting, reviewing, and editing the *Motion of Debtors for Entry of an Order Authorizing and Approving (I)(A) Entry into Backstop Commitment Agreement and (B) Payment of Certain Fees and Expenses and (II) Rights Offering Procedures and Related Forms* [Docket

No. 532] for which the Debtors provided supplemental exhibits on January 12, 2017 [Docket No. 587] (collectively, the "**Backstop Motion**").

47. Skadden Professionals also devoted substantial time to researching, drafting, reviewing, and editing the procedures and materials for the Rights Offering, which were included as exhibits to the Backstop Motion. Given the complex nature of the Rights Offering, this drafting required coordination with the Debtors, their Professionals, and Skadden Professionals with expertise in securities, corporate finance, tax, and other specialties.

(iii) The Exit Facility

48. Also included in this matter is the substantial amount of time Skadden Professionals devoted to assisting the Debtors in the structuring, formulation, acquisition, and documentation of a $250 million post-emergence reserve based lending ("**RBL**") credit facility (the "**Exit Facility**"), which funded distributions under the Plan and provided the reorganized Debtors with a line of credit to fund post-effective date working capital needs.

49. Skadden Professionals assisted the Debtors and their other Professionals in soliciting proposals from several large commercial lenders to arrange an Exit Facility. After the Debtors selected the proposed lead arranger and administrative agent for the Exit Facility (the "**Exit Facility Agent**"), Skadden Professionals assisted the Debtors in negotiating and drafting an engagement letter with the Exit Facility Agent and a term sheet for the Exit Facility. Skadden also engaged with advisors for other stakeholders, including the Ad Hoc Noteholder Group and the agent for the pre-petition RBL (the "**RBL Agent**"), concerning the status of the Debtors' exit financing efforts and the terms of the proposed Exit Facility. After conducting a hearing, this Court approved entry into and performance under the engagement letter with the Exit Facility Agent on January 23, 2017 [Docket No. 632].

50. Following the entry into the engagement letter with the Exit Facility Agent, Skadden Professionals worked with the Debtors and their other Professionals, along with the RBL Agent and its professionals to structure and document the Exit Facility, including drafting and negotiating the credit agreement, its various schedules and exhibits, and security documents, performing pre-closing due diligence, and obtaining other required documentation necessary for closing. Skadden Professionals also drafted and negotiated the various derivatives agreements entered into with members of the Exit Facility syndicate.

51. In connection with this matter, Skadden Professionals devoted a total of 1,847 hours, for which compensation is sought in the amount of $1,731,857.00.

B. Executory Contracts (Personalty)
Amount Sought: $1,449,111.50

52. Skadden devoted substantial attention during the Application Period to matters relating to executory contracts. An important objective of the Chapter 11 Cases was to successfully restructure the Debtors' midstream agreements with Caliber Midstream Partners, L.P., and its affiliates (collectively, "**Caliber**"). Throughout these cases, the Debtors, with the assistance of Skadden and their other advisors, sought to consensually restructure the Caliber midstream agreements while also pursuing litigation in this Court and elsewhere in order to reject the Caliber contracts if a commercial settlement could not be reached.

53. Prior to the Petition Date, Caliber filed an action against TUSA in the District Court, Northwest Judicial District in the County of McKenzie for the State of North Dakota (the "**North Dakota State Court**"), Case No. 27-2016-CV-00218 (the "**North Dakota Action**") seeking a declaration that dedications of certain TUSA oil and gas interests in McKenzie County, North Dakota contained in certain of the Caliber midstream agreements are valid and enforceable covenants running with the land under North Dakota law. After the Petition Date, TUSA removed the North Dakota Action to the District Court for the District of North Dakota Court

(the "**North Dakota Federal Court**"), Case No. 16-00261 and concurrently moved to transfer venue of the North Dakota Action to this Court [North Dakota Federal Court Docket Nos. 2, 3]. The Debtors further moved the North Dakota Federal Court to dismiss the North Dakota Action. [North Dakota Federal Court Docket Nos. 5, 6]. Caliber opposed the Debtors' motion to transfer and dismiss and moved the North Dakota Federal Court for abstention and remand to the North Dakota State Court [North Dakota Federal Court Docket Nos. 15, 16, 17], which the Debtors opposed. Skadden Professionals expended significant time researching and drafting pleadings seeking to remove the North Dakota Action to the North Dakota Federal Court, transfer venue to this Court, and dismiss the North Dakota Action and opposing Caliber's motion for abstention and remand.

54. While the Debtors were litigating the North Dakota Action, they were also engaged in litigation with Caliber in this Court. On July 5, 2016, the Debtors, with the assistance of Skadden Professionals, commenced an adversary proceeding in this Court (the "**Caliber Adversary Proceeding**") against Caliber by filing a complaint seeking, among other things, a declaration that certain Caliber contracts do not contain covenants or equitable servitudes that "run with the land" [Caliber Adv. Docket No. 3].[7] In connection with the Caliber Adversary Proceeding, on July 5, 2016, Skadden attorneys assisted the Debtors in filing a motion for authorization to reject certain of the Caliber contracts [Docket No. 67]. Skadden Professionals expended substantial efforts in drafting and preparing the complaint and the motion to reject. On August 19, 2016, Caliber filed a motion to dismiss the Caliber Adversary Proceeding [Caliber Adv. Docket No. 8]. Skadden Professionals spent a substantial amount of time researching, drafting, and filing an objection to such motion [Caliber Adv. Docket No. 10]. On October 21,

[7] *See Triangle USA Petroleum Corp. v. Caliber Measurement Servs. LLC, Caliber Midstream Fresh Water Partners LLC, and Caliber N.D. LLC*, Adv. Proc. No. 16-51023 (MFW).

2016, Caliber filed a motion to modify the automatic stay and allow for the North Dakota Action to go forward [Docket No. 353]. Skadden Professionals devoted a substantial amount of time researching, drafting, and filing an objection to such motion [Docket No. 388]. Skadden Professionals devoted substantial time to conferencing, strategizing, exploring various theories and arguments relating to the case, planning for potential discovery, drafting motions and pleadings, and preparing for litigation. The Caliber litigation also required Skadden Professionals to devote substantial time preparing for depositions and hearings and addressing and responding to discovery requests.

55. In addition to pursuing litigation against Caliber, the Debtors were engaged in pursuing a negotiated commercial solution with Caliber. To that end, the Debtors and Caliber were engaged in intensive negotiations. Skadden Professionals spent a substantial amount of time reviewing and analyzing potential proposals, advising the Debtors on legal considerations bearing on such proposals, and discussing the same with numerous stakeholders and their professionals.

56. In connection with this matter, Skadden Professionals devoted a total of 2,005.6 hours, for which compensation is sought in the amount of $1,449,111.50.

C. Reorganization Plan / Plan Sponsors
Amount Sought: $1,219,928.00

57. During the Application Period, Skadden Professionals devoted substantial time to assisting the Debtors in the development, negotiation, formulation, drafting, revising, and filing of a plan of reorganization. The Debtors, with the assistance of Skadden, worked with representatives of various parties in interest in addressing plan components and structure. Skadden, working with the Debtors and other advisors, worked intensively to accommodate the milestones set forth in the Cash Collateral Order, which required the Debtors to file a plan and disclosure statement by November 15, 2016.

58. Skadden Professionals devoted substantial time to researching and reviewing precedent plans and to developing, drafting, reviewing, editing, and filing the *Joint Chapter 11 Plan of Reorganization of Triangle USA Petroleum Corporation and Its Affiliated Debtors* [Docket No. 407] (the "**Initial Plan**") and corresponding disclosure statement (the "**Initial Disclosure Statement**") [Docket No. 408]. On December 9, 2016, the Debtors filed the *Motion of Debtors to for Order Under Bankruptcy Code Sections 105, 1125, 1125, 1126, and 1128, Bankruptcy Rules 2002, 3017, 3018, and 9006, and Local Bankruptcy Rules 2002-1 and 3017-1 (I) Approving Adequacy of Debtors' Disclosure Statement, (II) Approving Solicitation and Notice Procedures with Respect to Confirmation to Confirmation of Debtors' Proposed Plan of Reorganization, (III) Approving Form of Various Ballots and Notices in Connection Therewith, and (IV) Scheduling Certain Dates with Respect Thereto* [Docket No. 498] (the "**Solicitation Procedures Motion**").

59. Various issues raised by parties in interests, as well as other developments in the Chapter 11 Cases, required revisions to the Initial Plan. To this end, Skadden Professionals spent substantial time researching, drafting, revising, and filing the first amended plan [Docket No. 533] (the "**First Amended Plan**") and corresponding disclosure statement [Docket No. 534]. Skadden Professionals undertook the process of addressing issues with the First Amended Plan raised by stakeholders, and consulted with parties in interests and their advisors, often by teleconference, to work towards resolutions. During the Application Period, the Debtors, with the assistance of Skadden Professionals, made substantial progress towards generating a consensual and confirmable Plan. Skadden filed the second amended plan (the "**Second Amended Plan**") on January 12, 2017 [Docket No. 585] and corresponding disclosure statement (the "**Second Amended Disclosure Statement**" and, together with the Initial Disclosure Statement and the First Amended Disclosure Statement, the "**Disclosure Statement**") [Docket No. 586]. In

anticipation of the Confirmation Hearing, the Debtors, with the assistance of Skadden Professionals, further amended and filed the Plan[8] on March 8, 2017 [Docket No. 795].

60. On January 13, 2017, the Court entered orders approving the Solicitation Procedures Motion, including approval of the adequacy of the Second Amended Disclosure Statement, the proposed solicitation and notice procedures, and the form of ballots and related notices [Docket No. 597].

61. On March 8, 2017, the Debtors filed their *Memorandum of Law in Support of Confirmation of the Third Amended Joint Chapter 11 Plan of Reorganization of the Debtors Triangle USA Petroleum Corporation and Its Subsidiary Debtors* [Docket No. 806] (the "**Confirmation Brief**") and the *Omnibus Reply to Objections to the Third Amended Joint Plan of Reorganization of Triangle USA Petroleum Corporation and Its Subsidiary Debtors* [Docket No. 807], both of which were drafted by Skadden Professionals. In addition to the Confirmation Brief, Skadden Professionals also prepared and filed declarations from the Debtors' Chief Restructuring Officer and Debtors' other Professionals and experts in support of confirmation of the Plan [Docket Nos. 808, 809, 810, 811], and a proposed confirmation order [Docket No. 796].

62. Skadden Professionals devoted time to reviewing and addressing multiple formal and informal objections to the Plan, including a substantial amount of time dedicated to addressing objections filed by Slawson Exploration Company, Inc. ("**Slawson**") [Docket No. 717] and by plaintiffs in the Mineral Interest Litigation (as defined herein) [Docket No. 716]. Skadden also devoted considerable efforts to addressing one of the principal objections to Plan confirmation raised by Caliber [Docket No. 776], including substantial research and preparation

[8] On February 3, 2017, February 8, 2017, March 2, 2017, March 6, 2017, March 8, 2017, and March 9, 2017, the Debtors filed supplements to the Plan containing certain exhibits and documents relevant to the implementation of the Plan (as may be amended, the "**Plan Supplement**").

in advance of the Confirmation Hearing. Skadden Professionals ultimately settled or responded to the formal and informal objections to the Plan.

63. On March 10, 2017, this Court held the Confirmation Hearing pursuant to section 1129 of the Bankruptcy Code to consider confirmation of the Plan, and thereafter, the Court entered the Confirmation Order. Skadden Professionals worked with the Debtors' other Professionals to demonstrate the feasibility of the Plan at and prior to the Confirmation Hearing to secure entry of the Confirmation Order.

64. In addition, in connection with the Plan, the Debtors were required to negotiate and prepare numerous documents, including corporate governance documents, a new credit agreement, and other effectuating documents, term sheets for or forms of which were filed as part of the Plan Supplement. Skadden Professionals assisted the Debtors in, among other things, the filing of the documents constituting the Plan Supplement.

65. On March 24, 2017, the Debtors consummated the Plan and filed the notice of Effective Date.

66. In connection with this matter, Skadden Professionals devoted a total of 1,338.3 hours, for which compensation is sought in the amount of $1,219,928.00.

D. General Corporate Advice
Amount Sought: $862,751.50

67. During the Application Period, Skadden Professionals assisted and advised the Debtors on various corporate-governance matters, including matters related to meetings with the TUSA board of directors and assistance with the preparation of board discussion materials, board minutes, and board governance. In addition, Skadden Professionals frequently participated in-person and telephonic board meetings to provide substantive legal advice as well as guidance on governance and procedure.

68. Skadden Professionals devoted substantial time to designing the Debtors' post-effective date corporate structure under the Plan and advising the board regarding this structure. Skadden Professionals also assisted the Debtors in planning for the corporate and financial transactions that would be consummated in order for the Plan to go effective, including the Rights Offering and a series of complex corporate transactions, pursuant to the terms of the Plan. In particular, Skadden Professionals strategized with the Debtors regarding the necessary corporate transactions, including a reverse merger and reincorporation of certain entities. Skadden Professionals drafted, revised, and filed (where applicable) the appropriate documentation in order to effectuate such transactions, including necessary consents and certificates, by-laws, a management services agreement, and required forms for entity conversions. The pre-effective date transactions required extensive coordination among the Debtors, their Professionals, including the Skadden Professionals, along with the Ad Hoc Noteholder Group and its professionals.

69. In connection with this matter, Skadden Professionals devoted a total of 1,031.0 hours, for which compensation is sought in the amount of $862,751.50.

E. Claims Admin. (General)
Amount Sought: $547,185.00

70. The establishment of a bar date was a necessary component of the Debtors' preparations to solicit votes with respect to the Plan as well as to provide reasonable estimates of allowed claims and potential recoveries in a disclosure statement. Accordingly, during the Application Period, Skadden Professionals worked with the Debtors' other Professionals to establish a bar date by which certain proofs of claim against the Debtors had to be filed.

71. Further, Skadden Professionals assisted the Debtors in preparing and filing a motion to set such bar date, establish procedures for filing proofs of claim, and approve the form and manner of notice thereof [Docket No. 222] (the "**Bar Date Motion**"), including drafting the

requisite notices of the applicable bar date. Once this Court entered an order granting the Bar Date Motion [Docket No. 270], Skadden Professionals coordinated with Prime Clerk to serve a notice of the bar date and publish such notice in various local and national newspapers. During the Application Period, the date by which entities and individuals were required to file proofs of claim passed, and the Debtors and their advisors, including Skadden Professionals, began evaluating and reconciling the filed proofs of claim.

72. Skadden Professionals spent substantial time working with the Debtors and their Professionals to identify bases upon which objections to proofs of claim could be filed. As part of this process, Skadden Professionals reviewed claims, researched objections, reviewed applicable Bankruptcy statutes and rules, and conferenced with the Debtors and their Professionals to determine the appropriate bases for objections to proofs of claim.

73. During the Application Period, Skadden attorneys, drafted, edited, and filed nine omnibus objections to claims (the "**Omnibus Objections**") [Docket Nos. 399, 400, 457–459, 540, 588–89, and 601] and a notice of satisfaction of claims [Docket No. 541]. These objections were based on various substantive and non-substantive grounds and have significantly reduced the number of claims against the estate, preserving value for other parties in interest. Skadden also worked to revise certain of the Omnibus Objections to address concerns raised by this Court at hearings held on January 13, 2017 and February 14, 2017. Skadden attorneys also responded to multiple calls and inquiries from creditors who had received notice of the bar date and notices of the Omnibus Objections. Skadden Professionals worked to consensually resolve many issues related to proofs and claim and the Omnibus Objections.

74. During the Application Period, Skadden Professionals also devoted substantial time to researching, drafting, and revising a motion to estimate the maximum amount of Caliber's contingent and unliquidated claims [Docket No. 397] (the "**Caliber Estimation**

Motion") and to addressing other issues relating to Caliber's putative claims on account of the potential rejection of certain of its contracts.

75. In connection with this matter, Skadden Professionals devoted a total of 706.7 hours, for which compensation is sought in the amount of $547,185.00.

F. Employee Matters
Amount Sought: $542,261.50

76. This matter relates to the time spent by Skadden Professionals assisting the Debtors with internal and external employment issues. It includes time spent reviewing and drafting employment agreements between the Debtors and members of their management team, as well as preparing several important employee-related documents in the case.

77. During the Application Period, the Debtors decided to develop a Key Employee Retention Plan (the "**KERP**") for non-insider employees. To this end, Skadden Professionals spent significant time working with the Debtors to formulate and draft the KERP. Skadden Professionals then assisted the Debtors in researching, drafting, editing, and filing the *Motion of Debtors for Order Under Bankruptcy Code Sections 363(b) and 503(c) and Bankruptcy Rule 6004 Approving the Implementation of Key Employee Retention Plan for Non-Insider Employees* [Docket No. 438], which was granted by this Court [Docket No. 506].

78. During the Application Period, Skadden Professionals also worked closely with the Debtors and other parties in interest to negotiate, formulate, and draft the terms of a management incentive plan and other post-emergence employment and compensation matters. Skadden Professionals drafted and revised a motion seeking authority to provide severance payments to certain departing management personnel [Docket No. 682], which was granted by this Court [Docket No. 758].

79. In connection with this matter, Skadden Professionals devoted a total of 537.4 hours, for which compensation is sought in the amount of $545,261.50.

MATTERS BETWEEN $100,000 AND $500,000

80. During the Application Period, Skadden Professionals devoted significant time to various key matters, each of which had a time value of between $100,000 and $500,000. These matters were as follows:

G. Litigation (General)
Amount Sought: $487,479.50

81. During the Application Period, Skadden represented the Debtors in several adversary proceedings and other litigation matters in connection with the Chapter 11 Cases, including (a) litigation arising out of an ownership dispute related to certain oil and gas wells operated by the Debtors (the "**Mineral Interest Litigation**"), (b) the Debtors' dispute with Slawson, and (c) litigation with Caliber.

(i) The Mineral Interest Litigation

82. The Debtors are engaged in a dispute with certain parties (the "**Mineral Interest Plaintiffs**") who are asserting overriding royalty interests and/or working interests in several of the Debtors' operated oil and gas wells. The Debtors' dispute the Mineral Interest Plaintiffs' purported interests. The Mineral Interest Plaintiffs initiated this dispute by filing an action in North Dakota state court, and, following the commencement of the Chapter 11 Cases, asserted similar claims in adversary proceedings pending in this Court.

83. The filing of the Mineral Interest Plaintiffs' North Dakota action in turn prompted two of the Debtors' crude oil marketing counterparties to file adversary proceedings against the Debtors on the premise that the Debtors' dispute with the Mineral Interest Plaintiffs could expose them to double liability. The first of these (the "**Tidal Adversary Proceeding**") was filed by Tidal Energy Marketing (U.S.) L.L.C ("**Tidal**"), the other (the "**Flint Hills Adversary Proceeding**") by Flint Hills Resources LP ("**Flint Hills**"). The Tidal Adversary Proceeding and Flint Hills Adversary Proceeding name the Debtors and the Mineral Interest Plaintiffs as co-

defendants in a suit to determine the proper payee of certain funds related to Tidal's and Flint Hills' purchase of oil from the Debtors. The Mineral Interest Plaintiffs filed cross-claims against the Debtors in the Tidal and Flint Hills Adversary Proceedings. During the Application Period, the Mineral Interest Plaintiffs also filed a standalone adversary proceeding (the "**Mineral Interest Plaintiffs' Adversary Proceeding**") against the Debtors, asserting direct claims substantially identical to the cross-claims in the Tidal Adversary Proceeding and the Flint Hills Adversary Proceeding.

84. Skadden Professionals devoted significant time to addressing multiple legal issues pertaining to the Mineral Interest Adversary Proceeding, Tidal Adversary Proceeding, and the Flint Hills Adversary Proceeding. These proceedings involved complex issues of federal and state procedural and substantive law, and required substantial legal research and analysis. Skadden assisted the Debtors in filings motions to dismiss the Mineral Interest Plaintiffs' crossclaims in the Flint Hills and Tidal Adversary Proceedings along with accompanying memoranda of law and replies where necessary. Skadden Professionals also assisted the Debtors in researching, drafting, editing, and filing various procedural motions.

85. Skadden Professionals also represented the Debtors in settlement negotiations with Tidal, Flint Hills, and the Mineral Interest Plaintiffs. With Skadden's assistance, the Debtors successfully negotiated a settlement with Tidal, and Skadden assisted the Debtors in drafting an appropriate settlement agreement and related approval motion under Bankruptcy Rule 9019 [Tidal Adv. Docket No. 32], which was granted by this Court [Tidal Adv. Docket No. 48].

(ii) The Slawson Dispute

86. Separately, the Skadden assisted the Debtors in addressing a dispute with Slawson concerning "promote" obligations arising out of an agreement between Slawson and the Debtors' former parent company, Triangle Petroleum Corporation ("**TPC**"), for the exploration and development of certain oil and gas properties. In particular, on May 26, 2016, Slawson initiated arbitration proceedings (the "**Slawson Arbitration**") against the Debtors and TPC seeking to recover allegedly unpaid promote payments. During the Application Period, Skadden Professionals devoted time to researching various legal issues related to the Slawson Arbitration and conferring, both internally, with the Debtors' management team and local counsel, to develop a strategy for resolving issues arising from the Slawson Arbitration.

(iii) The Caliber Litigation

87. The Debtors' dispute with Caliber has comprised numerous contested matters and other litigation proceedings, as set forth above. These include: (a) the Caliber Adversary Proceeding; (b) the North Dakota Action; (c) the Caliber Lift Stay Motion; and (d) the Caliber Estimation Motion.

88. In connection with this matter, Skadden Professionals devoted a total of 727.4 hours, for which compensation is sought in the amount of $487,479.50.

H. Disclosure Statement / Voting Issues
Amount Sought: $386,143.00

89. During the Application Period, Skadden Professionals worked diligently to draft a Disclosure Statement that would provide the information necessary for creditors to vote on the Debtors' Plan. Skadden Professionals spent substantial time supplementing, redrafting, and editing the Initial Disclosure Statement, to ensure that developments in the Chapter 11 Cases and changes to the corresponding plans were adequately reflected in each disclosure statement. As

set forth above, the Debtors, with the assistance of Skadden Professionals, filed amended disclosure statements on December 23, 2016 and on January 12, 2017 [Docket Nos. 534, 598].

90. Concurrently with the preparation of the Disclosure Statement, Skadden Professionals researched and developed solicitation and notice procedures with respect to the proposed Plan. In conjunction therewith, Skadden Professionals worked with the Debtors' other Professionals, including Prime Clerk, the Debtors' solicitation agent, and AP Services, LLC ("**AP Services**") to formulate solicitation procedures, and drafted the Solicitation Procedures Motion and related materials, including the proposed order, proposed forms of notice, and proposed plan ballots. Drafting and filing the Solicitation Procedures Motion required substantial coordination with the Debtors and the Debtors' other Professionals to ensure that adequate voting procedures were adopted and appropriately described to the Court.

91. On January 13, 2017, this Court entered an order approving the *Debtors' Second Amended Disclosure Statement and Solicitation Procedures Motion* (the "**Disclosure Statement Order**") [Docket No. 597]. The Debtors subsequently mailed solicitation materials and began soliciting votes on the Second Amended Plan. At the same time, the Debtors mailed to certain eligible holders the Rights Offering Procedures and related materials.

92. As with the Plan, Skadden Professionals assisted the Debtors in addressing issues raised by stakeholders regarding both the Initial Disclosure Statement and the amended Disclosure Statements.

93. In connection with this matter, Skadden Professionals devoted a total of 484.0 hours, for which compensation is sought in the amount of $386,143.00.

I. Case Administration
Amount Sought: $334,535.50

94. During the Application Period, Skadden Professionals devoted resources to case administration matters and worked with the Debtors' management and professionals to ensure

that the Debtors conducted their affairs in accordance with the Bankruptcy Code and applicable non-bankruptcy law. Moreover, Skadden Professionals held regularly scheduled status teleconferences with the Debtors' other Professionals in order to stay coordinated and reduce expenses by ensuring that efforts were not duplicated.

95. Therefore, this matter reflects time spent by Skadden Professionals on a variety of tasks that were necessary to facilitate the efficient administration of the Chapter 11 Cases' day-to-day activities, including: (a) preparing case calendars and task lists, (b) conferring with the Debtors to track the status of pending case matters and address case developments, and (c) general communications with creditors and parties in interest with respect to case matters.

96. Further, Skadden Professionals prepared for, participated in, and represented the Debtors at numerous hearings involving multiple complex issues.

97. In connection with this matter, Skadden Professionals devoted a total of 523.3 hours, for which compensation is sought in the amount of $334,535.50.

J. Nonworking Travel Time
Amount Sought: $289,639.25

98. The Debtors retained an engagement team of Skadden attorneys from several Skadden offices, with most located in California, Delaware, Illinois, New York, and Texas. During the Application Period, Skadden Professionals traveled as necessary to attend Court hearings and to meet with the Debtors and other of the Debtors' professionals at the Debtors' offices in Denver, Colorado. Skadden Professionals who spend time traveling, but not otherwise working, allocate their time to this billing category. As reflected in the tables above, nonworking travel time is billed at 50% of the biller's regular rate.

99. In connection with this matter, Skadden Professionals devoted a total of 490.8 hours, for which compensation is sought in the amount of $289,639.25.

K. Asset Disposition
Amount Sought: $229,486.00

100. As a condition to the consensual use of cash collateral, the Debtors agreed to conduct contingency planning for a potential sale process that could be launched in the event that the Debtors failed to satisfy the plan milestones set forth in the Cash Collateral Order. During the Application Period, the Debtors and their professionals prepared sale-related papers, as required by the Cash Collateral Order. In particular, Skadden Professionals devoted significant time to formulating, researching, drafting, and reviewing various drafts of an asset purchase agreement, bidding and sale procedures, and a motion to approve the sale procedures and accompanying order (collectively, the "**Sale Papers**").

101. Successful and timely completion of the Sale Papers required substantial coordination among Skadden, the Debtors, and the Debtors' other advisors. Skadden specialists in the mergers and acquisitions, energy, tax, and other practices helped to research, draft, and revise the Sale Papers. Skadden Professionals participated in teleconferences and meetings with the Debtors' management team, advisors, and parties in interest to discuss the parameters, structure, and content of the Sale Papers. The Sale Papers were timely submitted to the RBL Agent as required by the Cash Collateral Order.

102. In connection with this matter, Skadden Professionals devoted a total of 266.3 hours, for which compensation is sought in the amount of $229,486.00.

L. Tax Matters
Amount Sought: $218,125.00

103. During the Application Period, Skadden Professionals devoted time to considering various tax-related issues raised by the Plan, Disclosure Statement, and Rights Offering, including the objection to the Disclosure Statement regarding implications of the tax injunction contained in section 9.09 of the Plan, which seeks to limit certain tax elections that

TUSA's former parent might have taken with respect to its equity interest in TUSA, and thereby preserve certain of the Debtors' tax attributes. Skadden assisted the Debtors in assessing the tax consequences of their deconsolidation from their former parent company; responding to objections raised by the Debtors' former parent to the initial formulation of the tax injunction; and negotiating and drafting amendments to Section 9.09 that consensually resolved those objections.

104. Skadden tax specialists reviewed and provided feedback on many of the relevant documents in the Chapter 11 Cases.

105. Skadden Professionals also drafted the tax-related disclosures to be included in the Disclosure Statement. Skadden Professionals coordinated with the Debtors' and their external tax advisors, PricewaterhouseCoopers, to ensure proper disclosure of tax related issues. In connection with this matter, Skadden Professionals devoted a total of 223.5 hours, for which compensation is sought in the amount of $218,125.00.

M. Retention / Fee Matters / Objections (SASM&F)
Amount Sought: $100,038.00

106. In order to comply with the Interim Compensation Procedures, during the Application Period, Skadden prepared eight Monthly Fee Requests[9] and materials related thereto [Docket Nos. 273, 334, 371, 461, 714, 830, 870], and two Interim Fee Applications and a supplement thereto [Docket Nos. 401, 731, 799], including time entries detailing services rendered, descriptions of expenses, and narratives explaining the matters to which the most time was billed in a given period. Further, while the majority of the time spent preparing this Final Fee Application has occurred after the Effective Date and is thus not included in the Application

[9] As set forth above, Skadden intends to file a Monthly Fee Request for the period from March 1, 2017 to March 24, 2017, in compliance with the Interim Compensation Procedures and in advance of the hearing on this Application.

Period, this Application does include the limited amount of time Skadden Professionals spent preparing this Application prior to the Effective Date.

107. In connection with this matter, Skadden Professionals devoted a total of 179.2 hours, for which compensation is sought in the amount of $100,038.00.

MATTERS BETWEEN $10,000 AND $100,000

108. During the Application Period, Skadden Professionals devoted significant time to various additional key matters, each of which had a time value of between $10,000 and $100,000. These matters were as follows:

N. Automatic Stay (Relief Action)
Amount Sought: $86,380.50

109. During the Application Period, Skadden Professionals spent time addressing issues related to the automatic stay, including the Caliber Lift Stay Motion. Skadden Professionals reviewed this motion, and developed a strategy for addressing the issues raised therein, including filing an objection [Docket No. 388]. Skadden attorneys also spent substantial time, strategizing, researching, drafting, editing, and filing the motion to extend the automatic stay to the Slawson Arbitration [Docket No. 352] (the "**Motion to Extend**").

110. Both the Motion to Extend and the Caliber Lift Stay Motion and accompanying reply involved complex issues of state and federal law, both procedural and substantive. As such, these filings required substantial research and analysis, and necessitated multiple drafts.

111. In connection with this matter, Skadden Professionals devoted a total of 95.9 hours, for which compensation is sought in the amount of $86,380.50.

O. Retention / Fee Matters (Others)
Amount Sought: $73,390.00

112. During the Application Period, Skadden Professionals assisted the Debtors in their retention of various professionals, including assisting with the retention of Prime Clerk (a)

to serve as claims and noticing agent [Docket No. 38] and (b) to provide administrative services in connection with the Chapter 11 Cases [Docket No. 180]. Skadden assisted the Debtors by obtaining the Court's approval to retain AP Services [Docket No. 185], which provided the Debtors with their designated Chief Restructuring Officer, John R. Castellano, and restructuring support services. With Skadden's assistance, the Debtors also obtained the Court's approval to retain PJT Partners LP ("**PJT**") to provide investment banking services [Docket No. 187]. Skadden has further assisted the Debtors in retaining certain other Professionals, including KPMG LLP as their accounting and internal audit advisors [Docket No. 350]. Each proposed retention required significant time, including dialogue with the involved professionals, drafting and revision of the applications and accompanying declarations, and, in certain cases, addressing comments from the U.S. Trustee and other parties.

113. Skadden Professionals also assisted the Debtors with reviewing certain fee applications and ordinary course professional statements for other Professional advisors. In particular, Skadden Professionals worked with the Debtors and the Debtors' other retained Professionals to prepare and file monthly fee statements, certificates of no objection, and interim fee applications for such Professionals. In addition, Skadden assisted the Debtors with the filing of a motion to approve procedures for retention and payment of ordinary course professionals and, in certain cases, assisted ordinary course professionals with the filing of their required notices and declarations pertaining to retention, pursuant to such procedures.

114. In connection with this matter, Skadden Professionals devoted a total of 123.2 hours, for which compensation is sought in the amount of $73,390.00.

P. Business Operations / Strategic Planning
Amount Sought: $53,626.50

115. During the Application Period, Skadden Professionals spent significant time on many matters related to the Debtors' business operations as well as strategic planning relating to

the Chapter 11 Cases. Specifically, Skadden Professionals collaborated with the Debtors' management team, secured lenders, and noteholders, to develop strategies required with respect to a variety of potential restructuring scenarios.

116. In connection with this matter, Skadden Professionals devoted a total of 55.9 hours, for which compensation is sought in the amount of $53,626.50.

Q. Utilities
Amount Sought: $32,301.50

117. Skadden Professionals worked during the Application Period to maintain for the Debtors the continuity of utility service sought since the first day of the cases, and as required by the Debtors' complex logistical operations.

118. Skadden Professionals reviewed, researched, and responded to an objection from one of the Debtors' utility companies [Docket No. 118] to the Debtors' first-day motion to establish adequate-assurance procedures for utility services [Docket No. 9].
Skadden Professionals engaged in negotiations with counsel for the utility company to achieve a consensual resolution of the objection. In the meantime, Skadden attorneys also drafted a reply to the objection [Docket No. 143] and prepared for a hearing regarding the motion and objection in the event the negotiations proved unfruitful. Skadden Professionals ultimately filed a revised final utilities order [Docket No. 224] to incorporate comments from the objecting utility company, which was entered by this Court on August 16, 2016 [Docket No. 226].

119. Skadden attorneys also coordinated with multiple parties to negotiate terms of utility service, including adequate assurance payments. Skadden Professionals spent time drafting side letters to incorporate the terms of these negotiations.

120. In connection with this matter, Skadden Professionals devoted a total of 50.4 hours, for which compensation is sought in the amount of $32,301.50.

R. Reports and Schedules
Amount Sought: $22,042.50

121. Skadden, together with AP Services, assisted the Debtors with the preparation and filing of various reports and schedules required by the Bankruptcy Code and the Bankruptcy Rules, including schedules of assets and liabilities and statements of financial affairs for each of the Debtors and amendments thereto (the "**Schedules and Statements**").[10] In particular, among other things, Skadden Professionals drafted and/or reviewed and revised the global notes that accompany the Schedules and Statements in preparation for the filing of the Schedules and Statements on August 26, 2016 [Docket Nos. 248–259], reviewed the Schedules and Statements themselves, and advised AP Services and the Debtors with respect to various questions in connection with the preparation of the Schedules and Statements.

122. In addition, Skadden Professionals spent time assisting the Debtors with the preparation and filing of their initial and subsequent monthly operating reports. In particular, Skadden provided input on the Initial Operating Report filed on July 14, 2016 [Docket No. 100].

123. In connection with this matter, Skadden Professionals devoted a total of 42.6 hours, for which compensation is sought in the amount of $22,042.50.

S. U.S. Trustee Matters
Amount Sought: $19,418.00

124. In an effort to conduct a smooth reorganization of the Debtors' business, Skadden Professionals have assisted the Debtors in responding to issues raised by the U.S. Trustee. This includes discussing and editing multiple "first day" and "second day" orders to address the U.S. Trustee's concerns.

[10] To assist the Debtors in obtaining sufficient time to properly prepare such required schedules and reports, Skadden Professionals prepared a motion to extend the time for filing the Schedules and Statements [Docket No. 76].

125. Skadden Professionals also devoted time to responding to issues, comments, and objections raised by the U.S. Trustee to, among others, the Debtors' retention applications, Monthly Fee Requests, Interim Fee Applications, and the Bar Date Motion.

126. In connection with this matter, Skadden Professionals devoted a total of 23.20 hours, for which compensation is sought in the amount of $19,418.00.

T. Creditor Meetings / Statutory Committees
Amount Sought: $11,183.00

127. Skadden Professionals, along with the Debtors' other Professionals, have held numerous telephonic meetings with creditors' professionals to provide them with information about the Debtors, their capital structure, and the Chapter 11 Cases. Skadden Professionals reviewed creditors' comments to drafts of documents, negotiated provisions of proposed orders, and otherwise worked with the creditors to negotiate and reach consensual resolution on many of the issues in the Chapter 11 Cases.

128. In connection with this matter, Skadden Professionals devoted a total of 17.6 hours, for which compensation is sought in the amount of $11,183.00.

U. Insurance
Amount Sought: $10,261.00

129. Skadden Professionals worked to evaluate insurance issues affecting the Debtors and other parties in interest. In particular, Skadden Professionals worked with the Debtors and other Professionals to evaluate (i) issues regarding needs for insurance relief requested through the "first day" and "second day" filings, and (ii) coverage issues applying to the directors and officers of the Debtors.

130. In connection with this matter, Skadden Professionals devoted a total of 10.5 hours, for which compensation is sought in the amount of $10,261.00.

MATTERS UNDER $10,000

131. During the Application Period, Skadden Professionals also devoted time to other matters, each of which had a time value of less than $10,000. These matters were as follows: (a) Leases (Real Property); (b) Vendor Matters; (c) Intellectual Property; (d) Environmental Matters; (e) Regulatory and SEC Matters; and (f) Secured Claims.

132. In connection with these matters, Skadden Professionals devoted a total of 18.5 hours, for which compensation is sought in the amount of $15,301.00.

REASONABLENESS OF FEES AND DISBURSEMENTS

133. Bankruptcy Code section 330 authorizes the Court to award "reasonable compensation for actual, necessary services rendered by the . . . professional person." 11 U.S.C. § 330. In order to evaluate a request for allowance of fees by a professional person, a court must determine whether the services rendered were actual and necessary and the fees requested reasonable. Skadden respectfully submits that its request for a final award of compensation for the Application Period satisfies that standard.

134. In accordance with the factors enumerated in Bankruptcy Code section 330, the amount requested herein by Skadden is fair and reasonable in light of (a) the nature and complexity of the Chapter 11 Cases; (b) the time and labor required to effectively represent the Debtors; (c) the nature and extent of the services rendered; (d) Skadden's experience, reputation, and ability; (e) the value of Skadden's services; and (f) the cost of comparable services other than in a case under the Bankruptcy Code.

A. Nature and Complexity of the Chapter 11 Cases, Time and Labor Involved, and Extent of Services Rendered

135. As should be evident from the summary of Skadden's services above, the Chapter 11 Cases are complex. The Debtors had hundreds of millions of dollars of indebtedness to be restructured, and their reorganization involved a number of complex issues related to the

Debtors' capital structure and the divergent interests of certain of their stakeholders. The characteristics of these cases have required Skadden to develop case management and staffing solutions to enhance efficiency and to employ a streamlined case management structure that generally consists of small, core teams and assigns discrete tasks to other attorneys, all with the goal of avoiding duplicative and unnecessary work.

136. Given the size of the Chapter 11 Cases, the expedited timetable involved, the variety of issues that have arisen in the Chapter 11 Cases, and the multiple pending adversary proceedings, many of which have needed to be addressed simultaneously, there have been circumstances where a number of Skadden attorneys have had to be present at, and to participate in, discussions, negotiations, team meetings, and Court hearings. Skadden believes that it has, through the narratives herein and the time entries attached hereto, articulated satisfactory reasons for attendance and participation by multiple attorneys under those circumstances.

B. Experience of Skadden

137. Skadden's experience has also benefited the Debtors' estates. Skadden is among the largest law firms in the world and has one of the most experienced restructuring groups in the country. As more fully set forth in the Retention Application, Skadden's restructuring and other attorneys have extensive experience with similarly large and complex bankruptcy cases. Accordingly, Skadden's depth of experience ensured that pressing issues were addressed promptly.

C. Comparable Services

138. An award of compensation must be based on the cost of comparable services other than in a bankruptcy case. Skadden's rate structure for the Chapter 11 Cases is consistent with its rate structure charged to other clients in non-bankruptcy matters. Disclosures related to

Skadden's rate structure are attached hereto as **Exhibit D**. Additionally, Skadden's rate structure was disclosed clearly in the Retention Application, which the Court approved.

139. As disclosed in the Declaration of Ron E. Meisler Regarding Annual Rate Increase of Skadden, Arps, Slate, Meagher & Flom LLP [Docket No. 751], effective January 1, 2017, Skadden implemented a firm-wide rate increase as part of the firm's ordinary business practices. Pursuant to the Retention Order, Skadden provided ten business days' notice to the Debtors and the U.S. Trustee prior to requesting any fees reflecting such rate increase. Apart from this ordinary course increase, Skadden has not increased its rates, outside of its customary rate increases related to the seniority and bar passage of its timekeepers, as disclosed in the Retention Application.

140. Finally, the amounts sought by Skadden are consistent with the fees, charges, and disbursements incurred in other chapter 11 cases of similar size, complexity, and expected duration. Accordingly, the similar cost of comparable service supports this Application and the services performed during the Application Period more than warrant the allowance of compensation.

BUDGET AND STAFFING PLAN

141. Attached hereto as **Exhibit D** is a summary of blended hourly rates for Firm timekeepers who billed to (a) non-bankruptcy matters and (b) the Debtors during the Third Interim Period and the Application Period.

142. Attached hereto as **Exhibit E** is Skadden's staffing plan for the Third Interim Period.

143. Attached hereto as **Exhibit F** is a budget for Skadden for the Third Interim Period, including matter-by-matter comparisons of hours and fees budgeted against hours billed and fees sought.

ALLOWANCE OF COMPENSATION

144. Because of the benefits realized by the Debtors, the nature of the Chapter 11 Cases, the standing at the bar of the attorneys who have rendered services, the amount of work done, the time consumed, the skill required, and the contingent nature of the compensation, Skadden requests that it be allowed at this time compensation for the value of the professional services rendered during the Third Interim Period in the amount of $3,796,437.00 and the Application Period in the amount of $8,687,993.75.

145. Other than among Skadden and its affiliated law practices and their members, no agreements or understandings exist between Skadden and any other person or persons for the sharing of compensation received, or to be received, for professional services rendered in, or in connection with, the Chapter 11 Cases, nor will any such agreements or understandings be made except as permitted under Bankruptcy Code section 504(b)(1).

REIMBURSEMENT OF EXPENSES

146. Consistent with the Firm's policy with respect to its other clients, Skadden is seeking reimbursement for charges and disbursements incurred as out-of-pocket expenses in the rendition of necessary services to the Debtors and their estates. These charges and disbursements include, among other things, costs for telephone charges, photocopying, travel, business meals, computerized research, messengers, couriers, postage, government filing fees, and fees related to hearings.

147. As stated above, a complete description of each expense incurred during the Third Interim Period is attached hereto as **Exhibits C-1** to **C-3**.[11] Additionally, a table summarizing the expenses for the Third Interim Period and the Application Period are included at the front of this

[11] Complete descriptions of each expense incurred from June 29, 2016 through December 31, 2016 are attached as exhibits to the First Interim Fee Application and the Second Interim Fee Application, as applicable.

Application. Skadden's policies require all attorneys to retain and submit for review receipts and invoices for all disbursements incurred through outside vendors. Skadden maintains all receipts and invoices related to each client's disbursement account in a central storage facility, and these records can be produced upon request. In the exercise of its business judgment, Skadden has written off $16,906.46 in expenses. In the event that any objections to this Application are filed, Skadden reserves the right to seek payment for all or any part of the written-off expenses. Skadden has disbursed, and requests reimbursement of $101,106.31 on an interim basis and $255,580.99 on a final basis, each of which represents actual and necessary expenses incurred in the rendition of professional services in the Chapter 11 Cases.

NOTICE

148. Skadden has provided notice of this Application to: (a) Triangle USA Petroleum Corporation, 1200 17th Street, Suite 2500, Denver, Colorado 80202, Attn: Ashley Garber; (b) counsel to the RBL Agent, Bracewell LLP, 711 Louisiana Street, Suite 2300, Houston, Texas 77002, Attn: William A. (Trey) Wood III, and 1251 Avenue of the Americas, New York, New York 10020, Attn: Jennifer Feldsher; (c) counsel to the Ad Hoc Noteholder Group, Gibson, Dunn & Crutcher LLP, 200 Park Avenue, New York, New York 10166, Attn: Matthew J. Williams; (d) counsel to Triangle Petroleum Corporation, DLA Piper LLP (US), 203 North LaSalle Street, Suite 1900, Chicago, Illinois 60601, Attn: John K. Lyons; and (e) Office of the United States Trustee for the District of Delaware, J. Caleb Boggs Building, 844 King Street, Suite 2207, Lockbox 35, Wilmington, Delaware 19801, Attn: Jane Leamy. In light of the nature of the relief requested, Skadden submits that no further notice is required or needed under the circumstances.

RESERVATION OF RIGHTS

149. Skadden does not waive, and expressly reserves, its right to respond to any objections regarding this Application and the amounts sought hereunder.

NO PRIOR REQUEST

150. No previous Application for the relief sought herein has been made to this Court or any other court.

CERTIFICATE OF COMPLIANCE AND WAIVER

151. The undersigned representative of Skadden certifies that she has reviewed the requirements of Local Bankruptcy Rule 2016-2 and that this Application substantially complies with that Local Bankruptcy Rule. To the extent that this Application does not comply in all respects with the requirements of Local Bankruptcy Rule 2016-2, Skadden believes that such deviations are not material and respectfully requests that any such requirement be waived.

152. In addition, the undersigned representative of Skadden also certifies Skadden has made reasonable efforts to comply with the Appendix B Guidelines for Reviewing Applications for Compensation and Reimbursement of Expenses Filed Under 11 U.S.C. § 330 by Attorneys in Larger Chapter 11 Cases Effective as of November 1, 2013 (the "**U.S. Trustee Guidelines**"). With respect to Section C.5 of the U.S. Trustee Guidelines, the undersigned representative of Skadden certifies the following with respect to the Third Interim Period:

Question: A. Did you agree to any variations from, or alternatives to, your standard or customary billing rates, fees or terms for services pertaining to this engagement that were provided during the application period? If so, please explain.

Response: No. During the Third Interim Period, Skadden did not agree to any variations from, or alternatives to, its standard or customary billing rates, fees, or terms pertaining to its engagement by the Debtors.

Question: B. If the fees sought in this fee application as compared to the fees budgeted for the time period covered by this fee application are higher by 10% or more, did you discuss the reasons for the variation with the client?

Response: *See* Exhibit F of this Application.

Question: C. Have any of the professionals included in this fee application varied their hourly rate based on the geographic location of the bankruptcy case?

Response: No. The professionals included in the Third Interim Period did not vary their hourly rate based on the geographic location of the bankruptcy case.

Question: D. Does the fee application include time or fees related to reviewing or revising time records or preparing, reviewing, or revising invoices? (This is limited to work involved in preparing and editing billing records that would not be compensable outside of bankruptcy and does not include reasonable fees for preparing a fee application.). If so, please quantify by hours and fees.

Response: No. The fees with respect to the Third Interim Period do not include time or fees related to reviewing or revising time records or preparing, reviewing, or revising invoices.

Question: E. Does this fee application include time or fees for reviewing time records to redact any privileged or other confidential information? If so, please quantify by hours and fees.

Response: No. The time and fees respect to the Third Interim Period do not include time or fees for reviewing time records to redact any privileged or other confidential information.

Question: F. If the fee application includes any rate increases since retention:

i. Did your client review and approve those rate increases in advance?

ii. Did your client agree when retaining the law firm to accept all future rate increases? If not, did you inform your client that they need not agree to modified rates or terms in order to have you continue the representation, consistent with ABA Formal Ethics Opinion 11–458?

Response: *See* paragraph 139 of this Application.

[*Remainder of Page Intentionally Left Blank*]

CONCLUSION

WHEREFORE, Skadden respectfully requests that this Court enter an order granting (i) interim approval of interim compensation of $3,796,437.00 for fees incurred for professional services rendered as counsel for the Debtors during the Third Interim Period, plus reimbursement of actual and necessary charges and disbursements incurred in the amount of $101,106.31; and (ii) final approval of compensation of $8,687,993.75 to Skadden for professional services rendered as counsel for the Debtors during the Application Period, plus reimbursement of actual and necessary charges and disbursements incurred in the amount of $255,580.99; and (iii) such other and further relief as may be just and proper.

Dated: Wilmington, Delaware
May 8, 2017

SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP

/s/ Sarah E. Pierce

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Counsel for Debtors and Debtors in Possession

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In re INDYMAC MORTGAGE-BACKED SECURITIES LITIGATION	Master Docket No. 09-Civ. 04583 (LAK) ECF CASE
This Document Relates To: ALL ACTIONS	

DECLARATION OF NICOLE LAVALLEE IN SUPPORT OF LEAD COUNSEL'S SUPPLEMENTAL APPLICATION FOR REIMBURSEMENT OF CERTAIN PREVIOUSLY SUBMITTED EXPERT AND CONSULTANT EXPENSES AND APPLICATION FOR REIMBURSEMENT OF CERTAIN LITIGATION EXPENSES INCURRED BETWEEN NOVEBMER 1, 2012 AND JANUARY 31, 2013

I, NICOLE LAVALLEE, hereby declare the following under penalty of perjury:

1. I am a partner in the law firm of Berman DeValerio, Court-appointed Lead Counsel in this action and counsel to Lead Plaintiffs Wyoming State Treasurer and Wyoming Retirement System ("Lead Plaintiffs"). I submit this Declaration in support of Lead Counsel's Supplemental Application for Reimbursement of Certain Previously Submitted Consultant and Expert Expenses and Application for Reimbursement of Litigation Expenses Incurred between November 1, 2012 and January 31, 2013 (the "Application"). I have personal knowledge of the matters set forth herein and, if called upon to do so, I could and would testify competently thereto.

2. By its Order dated December 18, 2012, the Court granted Lead Counsel's Motion for Reimbursement of Expenses and Establishment of Litigation Fund (the "Order"). *See* ECF No. 408 (the "Order). By that Order, the Court reimbursed Lead Counsel in the amount of $450,561.01 for expenses incurred in connection with my firm's prosecution of the above-

captioned litigation (the "Litigation"). *Id.* at ¶ 5. This award represented a portion of the total expenses for which Lead Counsel had originally sought reimbursement. *See* ECF Nos. 385-87 (Lead Counsel's Motion for Reimbursement of Expenses and Establishment of a Litigation Fund (the "Reimbursement Motion")). The Order did not reimburse the $511,972.11 Lead Counsel requested for payment of expert and consultant fees. *See id.*

3. At the Final Approval Hearing on December 18, 2012, as a prerequisite to approving reimbursement, the Court requested additional detail on the experts and consultants retained and the nature of the work they performed. Ex. A, hereto, at 10:6-11, 11:9-13.[1] Recognizing the fact that the Litigation is ongoing as to the non-settling defendants and, given the fact that the parties have not yet disclosed testifying experts, the Court provided that Lead Counsel could either seek reimbursement of expert or consultant expenses now or later. *Id.* at 11:19-24. Thus, the Order was made "without prejudice to a renewed application with respect to expert or consulting fees." Order at ¶ 5. The Court also granted Lead Counsel's request to establish a Litigation Fund in the amount of $1 million and provided that Lead Counsel had the right to withdraw funds from the Litigation Fund to pay further litigation expenses, upon prior authorization by the Court. *Id.* at ¶ 7. The Application represents Lead Counsel's first request to draw down on the Litigation Fund.

4. This Declaration is intended to provide the Court with the requested detail on certain of Lead Counsel's expert and consultant expenses. The names of six experts and consultants my firm retained in the Litigation appear below, along with a description of the work performed and the amounts of the fees paid to each expert or consultant as of October 31, 2012.

[1] True and correct copies of selected pages from the Transcript of Proceedings before the Honorable Lewis A. Kaplan on December 18, 2012 are attached hereto as Exhibit A

5. The current request does not represent all of the expert or consultant expenses incurred prior to October 31, 2012. Lead Counsel has elected not to disclose the identity of any other experts or consultants at this time. However, Lead Counsel reserves the right to seek reimbursement of any fees incurred at any time during this Litigation in connection with the retention of such experts or consultants at a later date.

6. This Declaration also provides detail in support of Lead Counsel's Application for Reimbursement of Certain Litigation Expenses Incurred between November 1, 2012 and January 31, 2013 in the amount of $324,818.22 from the Litigation Fund. In accordance with the Order, Lead Counsel may seek reimbursement of necessary and reasonable litigation expenses from the Litigation Fund with prior authorization from the Court. Order at ¶ 7(b).

7. As noted in the Declaration of Patrick T. Egan In Support of (A) Lead Plaintiffs' Motion For Final Approval of Partial Class Action Settlement With The Individual Defendants and Final Certification of The Settlement Class; and (B) Lead Counsel's Motion For Reimbursement of Expenses and Establishment of a Litigation Fund (ECF No. 387), as Lead Counsel, my firm was, and remains, intimately involved in all aspects of the Litigation. *Id.* at ¶¶ 4-91.

SUPPLEMENTAL APPLICATION FOR REIMBURSEMENT OF CERTAIN PREVIOUSLY SUBMITTED CONSULTANT AND EXPERT EXPENSES

8. A summary of the expert and consultant expenses for which Lead Counsel previously sought reimbursement in the Reimbursement Motion and for which Lead Counsel now again seeks reimbursement, is set forth in the following table:

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Expert Name	Area of Expertise	Expenses Incurred from Inception of the Litigation, through October 31, 2012
AlixPartners	Damages, causation, and statistical sampling.	$195,379.32
Crowninshield Financial Research, Inc.	Class certification.	$129,337.00
Five Bridges Advisors, LLC	Mortgage loan underwriting.	$22,662.50
Forensic Economics, Inc.	Economics, damages.	$11,058.76
Kaye Scholer, LLP	Bankruptcy law.	$8,033.85
Wilden Lane Holding, LLC	Mortgage loan underwriting.	$99,026.00
TOTAL:		**$465,497.43**

9. For each of the experts and consultants listed above, a description of the work performed, the hourly rates charged and the hours worked follows:

A. AlixPartners - Damages

AlixPartners provides the economic and financial expertise necessary to quantify economic losses in litigation. Specifically, Lead Counsel retained AlixPartners to establish an economic model to calculate class members' damages at trial and for use in settlement negotiations. AlixPartners has also consulted with Lead Counsel regarding the statistical sampling of mortgage loans underlying each of the offerings at issue in the Litigation.

Under the terms of the retainer agreement negotiated by Lead Counsel, AlixPartners receives $725 per hour for services rendered by its managing director/testifying expert; $665 per hour for services rendered by directors; and $455 per hour for vice presidents. Between inception and October 31, 2012,

AlixPartners spent 458.65 hours consulting with Lead Counsel on damages and statistical sampling questions. Based on the actual fees billed, AlixPartners charged Lead Counsel a blended rate of $425.99 per hour.[2] AlixPartners also sought reimbursement of expenses in the amount of $4,101.07 for that time period.

Between the inception of the Litigation and October 31, 2012, the Class incurred total fees and expenses of $195,379.32 for work performed by AlixPartners.

B. Crowninshield - Class Certification

Crowninshield Financial Research, Inc. ("Crowninshield") is a consulting firm that provides research, consulting and expert witness testimony on questions of economics, finance, and accounting.

Lead Counsel retained Crowninshield to prepare an expert report in support of Lead Plaintiffs' Motion for Class Certification. ECF Nos. 275-79. In that report, which comprised twenty-one pages plus four exhibits, Crowninshield's President and Senior Expert, Professor Steven P. Feinstein ("Prof. Feinstein") articulated opinions essential to Lead Plaintiffs' legal arguments about the materiality of the alleged false statements at issue in the Litigation, the numerosity of the proposed class, and the calculation of damages on a classwide basis.

In preparing their opposition to the motion for class certification, Defendants took a full-day deposition of Prof. Feinstein. Prof. Feinstein also

[2] The blended rate is calculated as the total amount of fees actually billed divided by the total number of hours actually billed.

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Under the terms of the retainer agreement negotiated by Lead Counsel, Five Bridges receives $825 per hour for services rendered by its principals and $650-$695 per hour for services rendered by its managing directors. Between the inception of the Litigation and October 31, 2012, Five Bridges spent 33.25 hours consulting with Lead Counsel and working with Wilden Lane to develop the loan analysis approach for this case, review the findings of that analysis and to draw and articulate conclusions, accordingly. Five Bridge's fees for that time period came to $22,662.50, for an actual blended rate of $681.57 per hour.

D. Forensic Economics, Inc. - Economics/Damages

Forensic Economics, Inc. ("Forensic Economics") is a consulting firm specializing in applying financial and economic principals to issues in complex litigation. Lead Counsel retained Forensic Economics to provide advice on the preparation of its case, including preliminary assessment of potential damages.

Under the terms of the retainer agreement negotiated by Lead Counsel, Forensic Economics receives $275 per hour for services rendered by its principals and $200-$225 per hour for services rendered by other analysts. Forensic

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Between the inception of the Litigation and October 31, 2012, the Class incurred total fees and expenses of $11,058.76 for work performed by Forensic Economics. The actual, blended rate for the work performed was $263.30 per hour.

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Kaye Scholer LLP ("Kaye Scholer") is a law firm specializing in bankruptcy law. Lead Counsel retained Kaye Scholer to provide legal advice on the impact of IndyMac Bancorp's bankruptcy on the Litigation and, in particular, its impact on recoverable damages and on directors and officers insurance policies covering the actions of the individual defendants.

Under the terms of the retainer agreement negotiated by Lead Counsel, Kaye Scholer receives $640-845 per hour for services rendered by its partners and $300 per hour for services rendered by associates. Kaye Scholer spent 24.42 hours consulting with Lead Counsel.

Between the inception of the Litigation and October 31, 2012, the Class incurred total fees and expenses of $8,033.85 for work performed by Kay Scholer, for an actual blended rate of $328.98 per hour.

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Wilden Lane Holding, LLC ("Wilden Lane") is a consulting firm with specialized knowledge in the areas of mortgage loan underwriting and mortgage-backed securities. Wilden Lane works closely with Five Bridges (see above). In

doing so, Wilden Lane assisted in developing the plan for sampling and re-underwriting mortgage loans underlying the securities at issue. Wilden Lane performed (and continues to perform) re-underwriting analysis of mortgage loan files and has articulated its findings for Lead Counsel.

Under the terms of the retainer agreement negotiated by Lead Counsel, Wilden Lane receives $300-$350 per hour for services rendered by its principals and $120-$225 per hour for services rendered by its other staff.

Between the inception of the Litigation and October 31, 2012, Wilden Lane spent 495.75 hours consulting with Lead Counsel and working with Five Bridges to develop and implement a loan analysis approach, review the findings of that analysis and to draw and articulate conclusions, accordingly. Wilden Lane's fees for that time period came to $99,026.00, for an actual blended rate of $199.74 per hour.

10. Before retaining each of the experts discussed above, Lead Counsel considered competing proposals, interviewed several candidates, consulted with Lead Plaintiffs, negotiated at arm's length, and considered the prevailing market rates and competitive bids. Lead Counsel is confident that the rates agreed to and the fees and expenses incurred so far have been fair and reasonable.

11. The information set forth above is intended to respond fully to the Court's request for additional information at the December 18, 2012 hearing and does not constitute a waiver of any work product or attorney-client privilege. If the Court requires additional information, Plaintiffs will provide it upon request.

APPLICATION FOR REIMBURSEMENT OF CERTAIN LITIGATION EXPENSES INCURRED BETWEEN NOVEMBER 1, 2012 AND JANUARY 31, 2013

12. Lead Counsel also applies for reimbursement from the Litigation Fund for certain of its litigation expenses incurred between November 1, 2012 and January 31, 2013, i.e. expenses incurred but not included in the Reimbursement Motion.

13. Between November 1, 2012 and January 31, 2013, my firm incurred the following necessary and reasonable litigation expenses in connection with its prosecution of the Litigation:

Expense Description	Amount Incurred between November 1, 2012 and January 31, 2013
Court Reporters/Transcripts	$86.16
Electronic Document Discovery Services – Merrill	$7,011.02
Electronic Document Discovery Services – Relativity (*see* ¶14, below)	$25,000.00
Expert – Five Bridges (*see* ¶15, below)	$45,693.75
Expert – Wilden Lane (*see* ¶15, below)	$230,515.25
Filing Fees	$664.60
Legal Research Services – Lexis, Westlaw, etc.	$6,827.31
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Photocopying (In-house)	$1,450.16
Telephone	$254.30
Travel, Meals, Lodging	$6,821.88
TOTAL:	**$324,818.22**

14. The expenses incurred for "Electronic Document Discovery Services – Relativity" represents a Data Hosting Fee charged by the Federal Deposit Insurance Corporation (FDIC) for its provision of an electronic database of mortgage loan files during the period

November 30, 2011 through September 30, 2012. These expenses are ongoing as Lead Counsel and its experts continue to access mortgage loan files hosted in the Relativity database.

15. The expenses incurred for both experts listed (Five Bridges and Wilden Lane) represent expert fees associated with the ongoing project to review and re-underwrite mortgage loan files.

16. Certain experts and consultants have not yet invoiced Lead Counsel for work performed in January 2013. Those charges are therefore not included in this submission. Lead Counsel incurred no other consultant or expert expenses between November 1, 2012 and January 31, 2013 for which reimbursement is sought at this time.

17. The foregoing list of expenses does not reflect any expenses incurred by any undisclosed experts/consultants and also does not reflect any expenses incurred by counsel for the Intervenor Plaintiffs in the Litigation between November 1, 2012 and January 31, 2013. Lead Counsel reserves the right to seek reimbursement of these expenses at a later date.

18. If the Court requires additional detail on any of the other expenses listed above, Lead Counsel will provide it upon request.

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

Executed this 6th day of March, 2013 in San Francisco, California.

Nicole Lavallee

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In re INDYMAC MORTGAGE-BACKED SECURITIES LITIGATION	Master Docket No. 09-Civ. 04583 (LAK) ECF CASE
This Document Relates To: ALL ACTIONS	

DECLARATION OF NICOLE LAVALLEE IN SUPPORT OF LEAD COUNSEL'S SUPPLEMENTAL APPLICATION FOR REIMBURSEMENT OF CERTAIN PREVIOUSLY SUBMITTED EXPERT AND CONSULTANT EXPENSES AND APPLICATION FOR REIMBURSEMENT OF CERTAIN LITIGATION EXPENSES INCURRED BETWEEN NOVEBMER 1, 2012 AND JANUARY 31, 2013

I, NICOLE LAVALLEE, hereby declare the following under penalty of perjury:

1. I am a partner in the law firm of Berman DeValerio, Court-appointed Lead Counsel in this action and counsel to Lead Plaintiffs Wyoming State Treasurer and Wyoming Retirement System ("Lead Plaintiffs"). I submit this Declaration in support of Lead Counsel's Supplemental Application for Reimbursement of Certain Previously Submitted Consultant and Expert Expenses and Application for Reimbursement of Litigation Expenses Incurred between November 1, 2012 and January 31, 2013 (the "Application"). I have personal knowledge of the matters set forth herein and, if called upon to do so, I could and would testify competently thereto.

2. By its Order dated December 18, 2012, the Court granted Lead Counsel's Motion for Reimbursement of Expenses and Establishment of Litigation Fund (the "Order"). *See* ECF No. 408 (the "Order). By that Order, the Court reimbursed Lead Counsel in the amount of $450,561.01 for expenses incurred in connection with my firm's prosecution of the above-

captioned litigation (the "Litigation"). *Id.* at ¶ 5. This award represented a portion of the total expenses for which Lead Counsel had originally sought reimbursement. *See* ECF Nos. 385-87 (Lead Counsel's Motion for Reimbursement of Expenses and Establishment of a Litigation Fund (the "Reimbursement Motion")). The Order did not reimburse the $511,972.11 Lead Counsel requested for payment of expert and consultant fees. *See id.*

3. At the Final Approval Hearing on December 18, 2012, as a prerequisite to approving reimbursement, the Court requested additional detail on the experts and consultants retained and the nature of the work they performed. Ex. A, hereto, at 10:6-11, 11:9-13.[1] Recognizing the fact that the Litigation is ongoing as to the non-settling defendants and, given the fact that the parties have not yet disclosed testifying experts, the Court provided that Lead Counsel could either seek reimbursement of expert or consultant expenses now or later. *Id.* at 11:19-24. Thus, the Order was made "without prejudice to a renewed application with respect to expert or consulting fees." Order at ¶ 5. The Court also granted Lead Counsel's request to establish a Litigation Fund in the amount of $1 million and provided that Lead Counsel had the right to withdraw funds from the Litigation Fund to pay further litigation expenses, upon prior authorization by the Court. *Id.* at ¶ 7. The Application represents Lead Counsel's first request to draw down on the Litigation Fund.

4. This Declaration is intended to provide the Court with the requested detail on certain of Lead Counsel's expert and consultant expenses. The names of six experts and consultants my firm retained in the Litigation appear below, along with a description of the work performed and the amounts of the fees paid to each expert or consultant as of October 31, 2012.

[1] True and correct copies of selected pages from the Transcript of Proceedings before the Honorable Lewis A. Kaplan on December 18, 2012 are attached hereto as Exhibit A

5. The current request does not represent all of the expert or consultant expenses incurred prior to October 31, 2012. Lead Counsel has elected not to disclose the identity of any other experts or consultants at this time. However, Lead Counsel reserves the right to seek reimbursement of any fees incurred at any time during this Litigation in connection with the retention of such experts or consultants at a later date.

6. This Declaration also provides detail in support of Lead Counsel's Application for Reimbursement of Certain Litigation Expenses Incurred between November 1, 2012 and January 31, 2013 in the amount of $324,818.22 from the Litigation Fund. In accordance with the Order, Lead Counsel may seek reimbursement of necessary and reasonable litigation expenses from the Litigation Fund with prior authorization from the Court. Order at ¶ 7(b).

7. As noted in the Declaration of Patrick T. Egan In Support of (A) Lead Plaintiffs' Motion For Final Approval of Partial Class Action Settlement With The Individual Defendants and Final Certification of The Settlement Class; and (B) Lead Counsel's Motion For Reimbursement of Expenses and Establishment of a Litigation Fund (ECF No. 387), as Lead Counsel, my firm was, and remains, intimately involved in all aspects of the Litigation. *Id.* at ¶¶ 4-91.

SUPPLEMENTAL APPLICATION FOR REIMBURSEMENT OF CERTAIN PREVIOUSLY SUBMITTED CONSULTANT AND EXPERT EXPENSES

8. A summary of the expert and consultant expenses for which Lead Counsel previously sought reimbursement in the Reimbursement Motion and for which Lead Counsel now again seeks reimbursement, is set forth in the following table:

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Expert Name	Area of Expertise	Expenses Incurred from Inception of the Litigation, through October 31, 2012
AlixPartners	Damages, causation, and statistical sampling.	$195,379.32
Crowninshield Financial Research, Inc.	Class certification.	$129,337.00
Five Bridges Advisors, LLC	Mortgage loan underwriting.	$22,662.50
Forensic Economics, Inc.	Economics, damages.	$11,058.76
Kaye Scholer, LLP	Bankruptcy law.	$8,033.85
Wilden Lane Holding, LLC	Mortgage loan underwriting.	$99,026.00
TOTAL:		**$465,497.43**

9. For each of the experts and consultants listed above, a description of the work performed, the hourly rates charged and the hours worked follows:

A. AlixPartners - Damages

AlixPartners provides the economic and financial expertise necessary to quantify economic losses in litigation. Specifically, Lead Counsel retained AlixPartners to establish an economic model to calculate class members' damages at trial and for use in settlement negotiations. AlixPartners has also consulted with Lead Counsel regarding the statistical sampling of mortgage loans underlying each of the offerings at issue in the Litigation.

Under the terms of the retainer agreement negotiated by Lead Counsel, AlixPartners receives $725 per hour for services rendered by its managing director/testifying expert; $665 per hour for services rendered by directors; and $455 per hour for vice presidents. Between inception and October 31, 2012,

AlixPartners spent 458.65 hours consulting with Lead Counsel on damages and statistical sampling questions. Based on the actual fees billed, AlixPartners charged Lead Counsel a blended rate of $425.99 per hour.[2] AlixPartners also sought reimbursement of expenses in the amount of $4,101.07 for that time period.

Between the inception of the Litigation and October 31, 2012, the Class incurred total fees and expenses of $195,379.32 for work performed by AlixPartners.

B. Crowninshield - Class Certification

Crowninshield Financial Research, Inc. ("Crowninshield") is a consulting firm that provides research, consulting and expert witness testimony on questions of economics, finance, and accounting.

Lead Counsel retained Crowninshield to prepare an expert report in support of Lead Plaintiffs' Motion for Class Certification. ECF Nos. 275-79. In that report, which comprised twenty-one pages plus four exhibits, Crowninshield's President and Senior Expert, Professor Steven P. Feinstein ("Prof. Feinstein") articulated opinions essential to Lead Plaintiffs' legal arguments about the materiality of the alleged false statements at issue in the Litigation, the numerosity of the proposed class, and the calculation of damages on a classwide basis.

In preparing their opposition to the motion for class certification, Defendants took a full-day deposition of Prof. Feinstein. Prof. Feinstein also

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

Executed this 6th day of March, 2013 in San Francisco, California.

Nicole Lavallee