UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

EMPLOYEES RETIREMENT SYSTEM OF THE CITY OF ST. LOUIS, et al., Plaintiffs, v. CHARLES E. JONES, et al., Defendants, and FIRSTENERGY CORP., Nominal Defendant.	Case No. 2:20-cv-04813 Chief Judge Algenon L. Marbley Magistrate Judge Kimberly A. Jolson JURY TRIAL DEMANDED

TRANSMITTAL DECLARATION OF JOHN C. CAMILLUS

I, John C. Camillus, hereby declare as follows:

1. I am a member in good standing of the bar of the State of Ohio and am admitted to practice before this Court.

2. Attached as Exhibits 2 through 40 to Plaintiff's Motion for Final Approval of Settlement, an Award of Attorneys' Fees and Expenses, and Plaintiff Service Awards are true and correct copies of the following documents:

EXHIBIT	DOCUMENT DESCRIPTION
2	Joint Declaration of Jeroen van Kwawegen and Thomas Curry
3	Stipulation and Agreement of Settlement w/ Exhibit A
4	Declaration of Professor Jeffrey N. Gordon
5	Declaration of Layn R. Phillips

EXHIBIT	DOCUMENT DESCRIPTION
6	Declaration of Jeroen van Kwawegen Filed on Behalf of Bernstein Litowitz Berger & Grossman LLP in Support of Plaintiffs' Motion for Final Approval of Settlement and Request for Attorneys' Fees and Expenses
7	Declaration of Thomas Curry Filed on Behalf of Saxena White P.A. in Support of Plaintiffs' Motion for Final Approval of Settlement and Request for Attorneys' Fees and Expenses
8	Declaration of Steven J. Toll Filed on Behalf of Cohen Milstein & Toll PLLC in Support of Plaintiffs' Motion for Final Approval of Settlement and Request for Attorneys' Fees and Expenses
9	Declaration of John C. Camillus Filed on Behalf of The Law Offices of John C. Camillus, LLC in Support of Plaintiffs' Motion for Final Approval of Settlement and Request for Attorneys' Fees and Expenses
10	Declaration of Michael J. Hynes Filed on Behalf of Hynes & Hernandez, LLC in Support of Plaintiffs' Motion for Final Approval of Settlement and Request for Attorneys' Fees and Expenses
11	Declaration of Seamus Kaskela Filed on Behalf of Kaskela Law LLC in Support of Plaintiffs' Motion for Final Approval of Settlement and Request for Attorneys' Fees and Expenses
12	Declaration of Matthew R. Wilson in Support of Plaintiffs' Motion for Final Approval of Settlement and Request for Attorneys' Fees and Expenses
13	Declaration of Marc H. Edelson Filed on Behalf of Edelson Lechtzin in Support of Plaintiffs' Motion for Final Approval of Settlement and Request for Attorneys' Fees and Expenses
14	Declaration of Paul J. Scarlato Filed on Behalf of Rosca Scarlato, LLC and Goldman Scarlato & Penny, P.C. in Support of Plaintiffs' Motion for Final Approval of Settlement and Request for Attorneys' Fees and Expenses
15	Declaration of Michael I. Fistel, Jr. Filed on Behalf of Johnson Fistel, LLP in Support of Plaintiffs' Motion for Final Approval of Settlement and Request for Attorneys' Fees and Expenses
16	Declaration of George W. Cochran Filed on Behalf of The Law Office of George W. Cochran in Support of Plaintiffs' Motion for Final Approval of Settlement and Request for Attorneys' Fees and Expenses

EXHIBIT	DOCUMENT DESCRIPTION
17	Declaration of Thomas J. Connick, Esq. Filed on Behalf of Connick Law, LLC in Support of Plaintiffs' Motion for Final Approval of Settlement and Request for Attorneys' Fees and Expenses
18	Declaration of Michael P. Donovan on behalf of Co-Lead Plaintiff Electrical Workers Pension Fund, Local 103, I.B.E.W.
19	Declaration of Denise M. Droege on Behalf of Co-Lead Plaintiff Employees Retirement System of the City of St. Louis
20	Declaration of Nathan Goldstein on Behalf of Plaintiff Massachusetts Laborers Pension Fund
21	Declaration of Jennifer L. Miller
22	Declaration of Robert Sloan in Support of Plaintiffs' Motion for Final Approval of Settlement and Request for Attorneys' Fees and Expenses and Plaintiff Service Awards
23	Declaration of John Gendrich in Support of Plaintiffs' Motion for Final Approval of Settlement and Request for Attorneys' Fees and Expenses and Plaintiff Service Awards
24	FirstEnergy Corp., Form 8-K (June 17, 2022)
25	Order After Hearing and Judgment on (1) Motion for Final Approval of Derivative Settlement and (2) Motion for Award of Attorneys' Fees and Expenses, *In re Alphabet Inc., Shareholder Derivative Litigation*, Lead Case No. 19CV341522 (Cal. Super. Ct., Santa Clara Cnty. Nov. 30, 2020)
26	Transcript of Settlement Proceedings, *In re Community Health System, Inc. Shareholder Derivative Litigation*, No. 3:11-cv-00489 (M.D. Tenn. Jan. 17, 2017) (Transcript)
27	Plaintiffs' Unopposed Motion for Preliminary Approval of Proposed Settlement, *In re Cardinal Health, Inc. Derivative Litigation*, No. 2:19-cv-2491 (S.D. Ohio, May 25, 2022), ECF No. 100
28	Settlement Hearing and Ruling of the Court, *In re Boeing Company Derivative Litigation*, C.A. No. 2019-0907-MTZ (Del. Ch. Feb. 23, 2022) (TRANSCRIPT)
29	Supplemental Brief in Support of Plaintiffs' Motion for Preliminary Approval of Settlement, *In re Wells Fargo & Company Shareholder Derivative Litigation*, No. 4:16-cv-05541-JST (N.D. Cal. Apr. 2, 2019), ECF No. 272

EXHIBIT	DOCUMENT DESCRIPTION
30	Memorandum of Law in Support of Class Counsel's Motion for an Award of Attorneys' Fees and Expenses and Award of Plaintiff Pursuant to 15 U.S.C. §78u-4(a)(4), *Grae v. Corr. Corp. of Am.*, No. 3:16-CV-02267, ECF No. 469
31	Order Approving Derivative Settlement and Order of Dismissal with Prejudice, *In re Community Health Sys., Inc. Shareholder Litigation*, No. 3:11-cv-00489 (M.D. Tenn. Jan. 17, 2017), ECF No. 274
32	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 10 U.S.C. §77z-1(a)(4), *Schuh v. HCA Holdings, Inc.*, No. 3:11-CV-01033 (M.D. Tenn. Mar. 7, 2016), ECF No. 540
33	Settlement Hearing and Rulings of the Court, *Cumming v. Edens, et al.*, C.A. No. 13007-VCS (Del. Ch. July 31, 2019) (TRANSCRIPT)
34	Hearing on Plaintiff's Motion to Approve Settlement and For Attorneys Fees and Expenses and the Court's Ruling, *City of Monroe Employees' Retirement System v. Murdoch, et al.*, C.A. No. 2017-0833-AGB (Del. Ch. Feb. 9, 2018) (TRANSCRIPT)
35	Final Judgment and Order Approving Derivative Action Settlement, *In re McKesson Corp. Derivative Litigation*, No. 4:17-cv-01850-CW (N.D. Cal. Mar. 17, 2020), ECF No. 231
36	Granted Stipulation and Order of Dismissal, *In re Facebook Inc. Class C Reclassification Litigation*, C.A. No. 12286-VCL (Del. Ch. Oct. 24, 2018)
37	Order Concerning Motion for Award of Attorneys' Fees and Expenses, *In re Alphabet Inc., Shareholder Deriv. Litigation*, Lead Case No. 19CV341522 (Cal. Super. Ct., Santa Clara Cnty. Feb. 5, 2021)
38	Settlement Hearing and Ruling of the Court Transcript, *In re Google Inc. Class C Shareholder Litigation*, Cons. C.A. No. 7469–CS (Del. Ch. Oct. 28, 2013)
39	Letter Opinion, *In re Yahoo! Shareholders Litigation*, C.A. 3561–CC (Del. Ch. Mar. 6, 2009)
40	[Proposed] Final Judgment Approving Settlement and Order of Dismissal

I declare, under penalty of perjury, that the foregoing is true and correct to the best of my knowledge.

Executed this 7th day of July, 2022

/s/ John C. Camillus
John C. Camillus (0077435)

EXHIBIT 2

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

EMPLOYEES RETIREMENT SYSTEM OF THE CITY OF ST. LOUIS, et al., Plaintiffs, v. CHARLES E. JONES, et al., Defendants, and FIRSTENERGY CORP., Nominal Defendant.	Case No. 2:20-cv-04813 Chief Judge Algenon L. Marbley Magistrate Judge Kimberly A. Jolson

JOINT DECLARATION OF
JEROEN VAN KWAWEGEN AND THOMAS CURRY

JEROEN VAN KWAWEGEN and THOMAS CURRY declare as follows:

1. We are attorneys at the law firms of Bernstein Litowitz Berger & Grossmann LLP ("Bernstein Litowitz") and Saxena White P.A. ("Saxena White"), Co-Lead Counsel for Co-Lead Plaintiffs Employees Retirement System of the City of St. Louis ("St. Louis") and Electrical Workers Pension Fund, Local 103, I.B.E.W ("Local 103," and together with St. Louis, "Co-Lead Plaintiffs"). We have personal knowledge of the matters set forth herein. One or both of us was directly involved in, and responsible for, every key aspect of prosecuting the above-captioned action (the "Action").

2. We submit this joint declaration in support of Plaintiffs' Motion for Final Approval of Settlement, an Award of Attorneys' Fees and Expenses, and Plaintiff Service Awards (the "Motion"), requesting final approval of the Settlement resolving all claims in this derivative action and the parallel related shareholder derivative actions pending in the Northern District of Ohio and the Summit County Court of Common Pleas (the "Derivative Actions"), all brought on behalf of

FirstEnergy Corp. (the "Company" or "FirstEnergy") against the Defendants.[1]

I. INTRODUCTION

3. As a result of our active and vigorous litigation, Co-Lead Plaintiffs have reached an extraordinary Settlement of this stockholder derivative action brought on behalf of FirstEnergy arising from the Company's scheme to bribe certain public officials.

4. The Settlement provides for: (i) a cash recovery in the amount of $180 million, less any Court-approved award of attorneys' fees and expenses; and (ii) governance reforms tailored to reconstitute the Company's Board of Directors (the "Board") and deter and prevent the recurrence of misconduct, as well as to help restore FirstEnergy's credibility with shareholders, regulators and the public.

5. The cash recovery is the largest derivative recovery in the history of the Sixth Circuit by a wide margin[2] and among the largest derivative recoveries ever achieved, in any forum, in the history of the United States.[3]

6. The cash recovery represents a substantial recovery for FirstEnergy—a full 78.26%

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[1] The Defendants in the Derivative Actions are Charles E. Jones ("Jones"), Michael J. Anderson ("Anderson"), Steven J. Demetriou ("Demetriou"), Julia L. Johnson ("Johnson"), Donald T. Misheff ("Misheff"), Thomas N. Mitchell ("Mitchell"), James F. O'Neil ("O'Neil"), III, Christopher D. Pappas ("Pappas"), Sandra Pianalto ("Pianalto"), Luis A. Reyes ("Reyes"), Leslie M. Turner ("Turner"), Samuel L. Belcher ("Belcher"), Bennett L. Gaines ("Gaines"), Christine L. Walker ("Walker"), Gary Benz ("Benz"), Jason L. Lisowski ("Lisowski"), Irene M. Prezelj ("Prezelj"), Paul T. Addison ("Addison"), Jerry Sue Thornton ("Thornton"), William T. Cottle ("Cottle"), George M. Smart ("Smart"), Dennis M. Chack ("Chack"), Michael J. Dowling ("Dowling"), James F. Pearson ("Pearson"), Robert Reffner ("Reffner"), Steven E. Strah ("Strah"), K. Jon Taylor ("Taylor"), Ebony Yeboah-Amankwah ("Yeboah-Amankwah"), Eileen Mikkelsen ("Mikkelsen"), and Justin Biltz ("Biltz").

[2] *See In re Community Health Sys., Inc. S'holder Deriv. Litig.*, No. 3:11-cv-00489 (M.D. Tenn. Jan. 17, 2017) (Transcript) (Ex. 26 to the Transmittal Declaration of John Camillus ("Camillus Decl.")) (approving settlement comprised of $60 million payment and reforms, described as "the biggest derivative settlement in the Sixth Circuit")

[3] *See* Kevin LaCroix, "*Largest Derivative Lawsuit Settlements*," THE D&O DIARY (updated June 13, 2022) (available at: https://www.dandodiary.com/2014/12/articles/shareholders-derivative-litigation/largest-derivative-lawsuit-settlements/).

of the $230 million criminal fine paid by FirstEnergy to the DOJ as a result of the bribery scheme, which constituted the principal source of out-of-pocket damages in the case.

7. The cash recovery also represents an unusually high percentage of the available Director & Officer insurance ("D&O Insurance"). The total D&O Insurance was $230 million, with approximately $220 million of the eroding policy still available at the time the term sheet for the Settlement was signed. Here, the cash recovery represents 78.26% of the total D&O Insurance tower and 81.81% percent of the D&O Insurance still available at the time of Settlement. This percentage recovery of D&O Insurance is much higher than in comparable derivative actions where insurance information has been disclosed.[4]

8. The Settlement also provides for state-of-the-art corporate governance reforms specifically designed to address the misconduct at issue in the bribery scheme. The corporate governance reforms were developed with the assistance of Professor Jeffrey N. Gordon of Columbia Law School, an expert in corporate governance. Professor Gordon's Declaration in support of final approval of the settlement is Exhibit 4 to the Camillus Declaration.[5]

9. The corporate governance reforms include: (i) six directors not standing for re-election, which Co-Lead Plaintiffs believe is the most significant board overhaul achieved in any derivative action; (ii) a requirement that the refreshed Board establish a Special Review Committee to perform a comprehensive review of FirstEnergy's current C-suite executives and their role, if any, in the bribery scheme; (iii) reforms requiring the Board to take responsibility for and oversee

[4] *See In re Wells Fargo & Company*, No. 4:16-cv-05551-JST, Supplemental Brief in Support of Plaintiffs' Motion for Preliminary Approval of Settlement, ECF No. 272 at 1 (N.D. Cal. Apr. 2, 2019) (48 percent of the D&O Insurance), Ex. 29; *In re the Boeing Company*, No. 2019-0907-MTZ, Co-Lead Plaintiffs' Reply Brief in Further Support of Settlement, Application for Award of Attorneys' Fees and Expenses, and Incentive Award, at 2–3 (Del. Ch. Jan. 25, 2022); available at: 2022 WL 500852 (43 percent of the D&O Insurance).

[5] Unless otherwise indicated, all references herein to "Ex. __" are to exhibits to the Camillus Decl.

FirstEnergy's political activities and lobbying efforts; (iv) reforms requiring greater transparency by mandating additional disclosure to shareholders of FirstEnergy's political spending and lobbying efforts; and (v) reforms requiring the Company's compensation practices and procedures align financial incentives for senior executives with legal and ethical obligations, including its claw-back policies.

10. The corporate governance reforms are meaningful improvements designed to prevent the recurrence of the misconduct and help restore FirstEnergy's credibility with its various stakeholders.

11. We have carefully weighed the potential risks and rewards of continued litigation against the benefits of this historic Settlement. Based on our detailed understanding of the strengths and weaknesses of this case, and our extensive experience in complex shareholder and derivative litigation, we believe that the Settlement is an excellent result for FirstEnergy and its stockholders as it provides immediate and long-term benefits to FirstEnergy. If the Settlement is approved, the Company will obtain a significant monetary payment now, avoid potentially years of unnecessary and distracting litigation coupled with the dissipation of wasting insurance policies, and move forward with a refreshed Board to restore confidence in the Company and its ability to lawfully conduct its business. Co-Lead Plaintiffs, who derivatively represent the Company's interests in this Action, were and are fully cognizant of the Company's interests and considered these factors in reaching the Settlement.

12. At the time that we agreed to the Settlement, we had a more than sufficient understanding of the strengths and weaknesses of the claims and defenses in this Action. Our understanding was based on our firms having, *inter alia*, prepared Co-Lead Plaintiffs' detailed complaints, litigated the motions to dismiss, litigated the motions to stay, and obtained and analyzed half a million pages of discovery from FirstEnergy, Defendants and numerous third-parties, as well

as other written discovery.

13. Though we had confidence in the strength of Co-Lead Plaintiffs' claims, we understood that there are serious risks in litigating and prevailing in a complex shareholder derivative action. As the Sixth Circuit has noted, derivative actions are "notoriously difficult and unpredictable."[6] This case was no exception.

14. In addition to all of the normal risks associated with the litigation of derivative actions, Co-Lead Plaintiffs faced additional risks here. *First*, Co-Lead Plaintiffs faced potential appellate issues with respect to Plaintiffs' theory of liability under Section 14(a) of the Exchange Act, as "the Sixth Circuit has yet to define 'transaction causation' for purposes of a Section 14(a) claim under circumstances analogous to those presented here."[7] *Second*, Co-Lead Plaintiffs faced risk created by the Special Litigation Committee of the Board of FirstEnergy (the "SLC"), which had not yet issued any findings or report, but under Ohio law could potentially move to take over and terminate the Action. Such a motion would have been subject to an SLC-friendly standard and would have threatened Co-Lead Plaintiffs' ability to further prosecute the Action. *Third*, Co-Lead Plaintiffs faced serious risks concerning recoverability if the litigation continued, as the D&O Insurance was being used to fund litigation defense costs for eighteen defendants represented by eight sets of counsel, and as such the amount available for settlement would decrease quickly as the litigation moved forward into costly depositions, expert discovery, and other pre-trial activities. Each of these risks was amplified by the dual track litigation of substantially the same case in two federal district courts after the U.S. District Court for the Northern District of Ohio refused to transfer the *Miller* action for consolidation with the pending derivative actions consolidated and pending in this Court.

15. The Settlement was achieved with the substantial assistance of a well-known and

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[6] *Granada*, 962 F.2d at 1205 (quoting *Maher v. Zapata Corp.*, 714 F.2d 436, 455 (5th Cir. 1983)).

[7] *See* May 11, 2021 order denying motion to dismiss ("MTD Opinion") (ECF No. 86) at 30.

highly respected mediator, retired United States District Judge Layn R. Phillips, through a hard fought and arms'-length mediation. Judge Phillips' Declaration concerning the mediation process is Exhibit 5 to the Camillus Declaration.

16. Accordingly, based on our evaluation of the merits of Co-Lead Plaintiffs' claims and consideration of relevant risks, and based on the historic monetary recovery and corporate governance reforms achieved through the Settlement, we believe that the Settlement is in the best interest of FirstEnergy, and that the Settlement should be approved. We also believe that the requested Fee and Expense Award is fully justified by the benefit achieved and the work performed by our firms and the other firms involved in prosecuting the Derivative Actions and securing this historic Settlement on FirstEnergy's behalf.

II. BACKGROUND OF THE ACTION

A. Summary of Plaintiffs' Claims

17. This Action arises out of what the United States Attorney for the Southern District of Ohio declared was "likely the largest bribery, money laundering scheme ever perpetrated against the people of the state of Ohio." In July 2020, the United Stated Department of Justice ("DOJ") filed an 80-page criminal complaint against former Ohio Speaker of the House Larry Householder and two FirstEnergy lobbyists, detailing a "sophisticated criminal conspiracy" in which FirstEnergy executives funneled more than $60 million in illicit payments to public officials, including Householder, in exchange for "legislative solutions" to address the Company's financial woes. On July 22, 2021, FirstEnergy entered into a deferred prosecution agreement (the "DPA") with the DOJ and agreed to pay a $230 million monetary penalty.

18. The DOJ's announcement of the criminal action against Householder and the FirstEnergy lobbyists sparked a flurry of lawsuits, including shareholder derivative actions, a securities fraud class action, and a consumer class action against FirstEnergy. In this shareholder

derivative action, Plaintiffs alleged that: (i) certain current and former executive officers (the "Officer Defendants") breached their fiduciary duties to FirstEnergy and committed other state law violations in connection with their perpetration of the bribery scheme; and (ii) certain current and former members of the Board (the "Director Defendants") breached their fiduciary duties to FirstEnergy by actively participating in the scheme when they allowed it to occur without intervention and by issuing false and misleading proxy statements concealing the scheme to secure their reelections in violation of Section 14(a) the Securities Exchange Act of 1934.

B. Relevant Procedural History

1. The Southern District of Ohio Action

19. On September 9, 2020, Co-Lead Plaintiff St. Louis filed a shareholder derivative action in the Southern District of Ohio, captioned *Employees Retirement System of the City of St. Louis v. Jones, et al*., Case No. 2:20-cv-04813-ALM-KAJ (S.D. Ohio). Co-Lead Plaintiff Local 103 commenced a shareholder derivative action on September 30, 2020, captioned as *Electrical Workers Pension Fund, Local 103, I.B.E.W. v. Anderson, et al*., Case No. 2:20-cv-05128-ALM-KAJ (S.D. Ohio). On October 5, 2020, Plaintiff Massachusetts Laborers Pension Fund ("MLPF") commenced a stockholder derivative action captioned as *Massachusetts Laborers Pension Fund v. Jones, et al*., Case No. 2:20-cv-05237-SDM-CMV (S.D. Ohio). Ultimately, by early November of 2020, nine such actions were filed and pending in this Court.

20. In an effort to consolidate this litigation and establish an efficient and effective leadership structure, on October 2, 2020, St. Louis and Local 103 jointly filed their Motion of the Institutional Investors to Consolidate Related Derivative Actions, Appoint Co-Lead Plaintiffs, and Appoint Co-Lead Counsel. ECF No. 24. Plaintiff MLPF filed a joinder in support of the motion (ECF No. 31). Because of our efforts to organize the related derivative actions pending in the different courts, including the state court, other plaintiffs also supported St. Louis and Local 103's

motion. The motion was opposed by City of Philadelphia Board of Pensions and Retirement. ECF No. 35. Following briefing and a hearing, on November 16, 2020, the Court issued an Opinion and Order appointing Plaintiffs St. Louis and Local 103 Co-Lead Plaintiffs, and appointing Saxena White and Bernstein Litowitz Co-Lead Counsel and the Law Offices of John C. Camillus LLC as Liaison Counsel (the "Southern District Action"). ECF No. 45. Pursuant to the Court's order, MLPF served as an additional Plaintiff throughout the litigation, represented by Cohen Milstein Sellers & Toll PLLC.

2. The Northern District of Ohio Action

21. A parallel shareholder derivative action asserting substantially identical claims was also filed in the Northern District of Ohio on August 7, 2020, captioned *Miller, et al., v. Anderson et al.*, Case No. 5:20-cv-01743-JRA (N.D. Ohio) (the "Northern District Action" or "NDA").

22. On October 5, 2020, Plaintiffs St. Louis and Local 103 moved to intervene in the Northern District Action, seeking to transfer it to the Southern District for consolidation in this Court, where all other federal derivative suits were filed. *See* NDA ECF No. 17. MLPF joined in the motions to intervene and transfer. While the plaintiff in the Northern District Action did not oppose the motion, Defendants did. Meanwhile, Defendants sought to stay the Southern District Action pending resolution of their motions to dismiss the Northern District Action. This Court denied that motion, finding that the threat of "duplicative litigation," the basis on which Defendants sought a stay, was of "Defendants own doing." ECF No. 59 at 8; reported at *Emps. Ret. Sys. of City of St. Louis v. Jones*, 2020 WL 7487839, at *3 (S.D. Ohio Dec. 21, 2020).

23. The Northern District Court ultimately granted St. Louis and Local 103's motion to intervene on May 13, 2021 but denied the motion to transfer that action to the Southern District of Ohio. NDA ECF No. 72; reported at *Miller v. Anderson*, Case No. 20CV1743, 2021 WL 2255516 (N.D. Ohio May 13, 2021).

3. The State Court Actions

24. Two additional shareholder derivative actions asserting similar claims were filed in the Court of Common Pleas for Summit County: *Gendrich v. Anderson, et al.*, No. CV-2020-07-2107 (Summit Cnty. Court of Common Pleas), filed on July 26, 2020, and *Sloan v. Anderson, et al*., No. CV-2020-08-2161 (Summit Cnty. Court of Common Pleas), filed July 31, 2020. These actions were consolidated under the caption *In re FirstEnergy Corp. Stockholder Derivative Litigation*, No. CV-2020-07-2107 (the "State Court Action," and together with the Southern District Action and the Northern District Action, the "Derivative Actions."). Defendants filed a motion to dismiss the State Court Action, which was fully briefed by April 8, 2021. The SLC filed a motion to stay the State Court Action, which was fully briefed by August 26, 2021. Both motions remained outstanding when the Term Sheet was executed on February 9, 2022.

4. The Consolidated Complaint and the Motions to Dismiss

25. In advance of Plaintiffs' filing of their initial complaints, Plaintiffs' counsel investigated the Government's allegations and the role of FirstEnergy's Board and senior executives in the alleged bribery scheme. In addition to the indictment and supporting documents, counsel reviewed numerous Company filings with the Securities and Exchange Commission (the "SEC"), transcripts of calls with financial analysts, shareholder proposals seeking more comprehensive disclosure of FirstEnergy's political and lobbying activities, and public news reports. Counsel continued their factual and legal investigation following the Court's appointment of a leadership structure, reviewing additional public materials.

26. In the Southern District Action, Plaintiffs filed their 117-page Consolidated Verified Shareholder Derivative Complaint (the "Complaint") on January 25, 2021. Prior to filing the Complaint, Plaintiffs conducted an extensive further investigation and review of relevant information, including a review and analysis of: (i) findings and allegations in the DOJ criminal

action and other actions pending against FirstEnergy and related parties; (ii) campaign finance disclosures filed with the Ohio Secretary of State; (iii) FirstEnergy's public filings with the U.S. Securities and Exchange Commission ("SEC"); (iv) news articles concerning Defendants' misconduct; (v) securities analysts' reports about FirstEnergy; (vi) press releases and other publications issued by FirstEnergy and related parties; (vii) shareholder communications, conference calls and postings on the Company's websites; and (viii) other publicly available information concerning FirstEnergy and Defendants.

27. After Plaintiffs filed the Complaint, Defendants moved to dismiss, and the parties engaged in extensive briefing thereon. ECF Nos. 75, 80, 86, 87. On May 11, 2021, the Court issued its comprehensive order sustaining all of Plaintiffs' claims against all Defendants in their entirety.[8]

28. Two days later, the Northern District of Ohio issued a decision on St. Louis and Local 103's long-pending transfer motion: that Court declined to transfer its action but allowed St. Louis and Local 103 to intervene and have their complaint deemed operative there. NDA ECF No. 72; reported at *Miller v. Anderson*, Case No. 20CV1743, 2021 WL 2255516 (N.D. Ohio May 13, 2021). St. Louis and Local 103 proceeded to file in the Northern District Action a complaint substantively identical to the Complaint in this Action.[9] NDA ECF No. 75. Defendants moved again to dismiss, but, following further briefing, the Northern District on September 16, 2021 adopted this Court's reasoning and likewise denied Defendants' motions to dismiss, noting that the two actions were "substantively identical." NDA ECF No. 117; reported at *Miller v. Anderson*, Case No. 20CV1743, 2021 WL 4220780 (N.D. Ohio Sept. 16, 2021).

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[8] Defendants subsequently moved to certify an interlocutory appeal of the Court's decision denying their motions to dismiss, but the Court, on November 12, 2021, likewise denied that motion in its entirety. ECF No. 151; reported at *Emps. Ret. Sys, of City of St. Louis v. Jones*, 20-cv-4813, 2021 WL 5275827 (S.D Ohio Nov. 12, 2021).

[9] Following the granting of intervention, Northern District Plaintiff Jennifer Miller and her counsel also continued to participate in the litigation of the Northern District Action.

5. The SLC is Formed and Moves to Stay the Litigation

29. In July 2021, the FirstEnergy Board announced the formation of the SLC. By then, the Derivative Actions had been pending for nearly a year, and this Court's MTD Opinion had already been issued. Nevertheless, the SLC moved on July 20, 2021 to stay all of the Derivative Actions (including the Northern District Action and the State Court Actions), arguing it needed six months to investigate FirstEnergy's claims. ECF No. 120. Plaintiffs' counsel have extensive experience in prosecuting shareholder derivative claims and have frequently encountered special litigation committees. Although ostensibly created to represent the interests of the company, in many cases such committees ultimately operate to thwart shareholder efforts to impose accountability on the committee members' fellow directors. Plaintiffs' counsel were concerned that the SLC would seek to undermine this litigation and prevent Plaintiffs from securing the greatest possible outcome for FirstEnergy and its public shareholders. Defendants' prior efforts to create a record favorable to them using a so-called "Independent Review Committee" further increased our concerns. Accordingly, Plaintiffs opposed the requested stay, arguing that the belated formation of the SLC and its requests for a stay were a mere artifice to achieve delay and avoid discovery. ECF No. 127.

30. Both this Court and the Northern District agreed. In a September 16, 2021 order denying the SLC's motion to stay, the Northern District observed that "[b]y all appearances, FirstEnergy was willing to go without an SLC up until it realized these matters would not be dismissed at the pleadings stage." NDA ECF No. 117 at 2; reported at *Miller*, 2021 WL 4220780, at *1. On October 20, 2021, this Court likewise denied the SLC's requested stay, finding "the SLC offer[ed] no genuine justification for the delay in its creation" and that "indications of delay" in the formation of the SLC warranted a rejection of the motion. ECF No. 142; reported at *Emps. Ret. Sys, of City of St. Louis v. Jones*, Case No. 20-cv-4813, 2021 WL 4894833, at *3 (S.D. Ohio Oct. 20, 2021).

31. The SLC initiated a flurry of appeals of this Court's and the Northern District's denials of the SLC's stay motions and petitioned to mandamus this Court and the Northern District in the Sixth Circuit Court of Appeals. In response, Plaintiffs moved to dismiss the appeals for lack of jurisdiction and opposed the mandamus petitions as improper. The Court of Appeals agreed with Plaintiffs, conclusively resolving that discovery in the federal derivative actions would proceed unimpeded. *Emps. Ret. Sys. of City of St. Louis v. Jones*, Nos. 21-3993/4041, 2021 WL 6067034 (6th Cir. Dec. 16, 2021).

32. When the parties entered into the initial settlement term sheet for the Settlement on February 9, 2022 (the "Term Sheet"), the SLC had still not concluded its investigation or issued a report.

C. Plaintiffs' Discovery Efforts

33. The parties filed a joint Rule 26(f) Report on December 31, 2020, wherein Defendants advocated for a stay of discovery and Plaintiffs argued that there was no automatic stay of discovery, and that the case remained active pending the Court's ruling on Defendants' anticipated motion to dismiss. ECF No. 66. Plaintiffs also proposed a schedule for discovery in the action while defendants maintained that discovery should not proceed until the Court had decided Defendants' anticipated motion to dismiss. ECF No. 66. The parties filed a Rule 26(f) Report Supplement on January 11, 2021. ECF No. 72.

34. On June 8, 2021, following the Court's decision sustaining Plaintiffs' claims in their entirety, the parties filed a Rule 26(f) Report reflecting the parties' agreement to make initial disclosures on June 30, 2021 and Defendants' agreement to file their answer to the Complaint by June 24, 2021. ECF No. 96. On June 14, 2021, this Court issued an order lifting the PSLRA stay and ordering that discovery should commence. ECF No. 98. On June 24, 2021, Defendants filed their Answers to the Consolidated Verified Shareholder Derivative Complaint. ECF Nos. 108-114.

The parties filed a revised Rule 26(f) Report on June 28, 2021. ECF No. 115. On June 30, 2021, FirstEnergy filed a status report announcing the formation of the SLC, effective July 1, 2021. ECF No.116. The parties made their initial disclosures pursuant to Rule 26(a)(1) on June 30, 2021.

35. On August 18, 2021, following protracted negotiations including coordination with the plaintiffs in the parallel securities litigation (captioned *In re FirstEnergy Corp. Securities Litigation*, No. 2:20-cv-3785 (S.D. Ohio)) for purposes of ensuring orderly and efficient progression of this litigation, the parties entered into a stipulated protective order to govern the production of confidential information. On October 5, 2021, after intense negotiations, the parties entered into a Joint Protocol for Production of Documents and Electronically Stored Information. ECF No. 137.

36. In October 2021, Plaintiffs successfully invoked this Court's supervision to ensure timely document productions. Specifically, Plaintiffs requested a series of status conferences with Magistrate Judge Kimberly A. Jolson seeking to compel FirstEnergy to produce documents that it had previously produced to the Government. After the SLC filed its motions to stay on July 20, 2021, FirstEnergy and all Defendants refused to engage in any discovery until the SLC's stay motions were resolved. Plaintiffs, however, continued to press for discovery. Because FirstEnergy had already made significant productions to the DOJ likely to encompass much of the record relevant to Plaintiffs' claims, Plaintiffs saw no basis for FirstEnergy to refuse to produce at least those documents immediately. When Defendants refused to provide even these materials, Plaintiffs sought relief from this Court. On October 7, 2021, a status conference was held before Magistrate Judge Jolson. After that hearing, Magistrate Judge Jolson entered an order staying discovery for 14 days to allow this Court to rule on the SLC's then-pending stay motion. ECF No. 139. Magistrate Judge Jolson indicated that unless this Court issued a decision staying discovery in the interim, Defendants should produce the requested documents when the stay expired.

37. Subsequently, on October 20, 2021, this Court issued an Opinion and Order denying

the SLC's motion to stay, and ordering that "[d]iscovery shall commence without further delay." ECF No. 142. When FirstEnergy still delayed in producing the documents previously produced to the Government, Plaintiffs again requested a status conference before Magistrate Judge Jolson. On October 27, another status conference was held before Magistrate Judge Jolson at Plaintiffs' request. During that conference, Magistrate Judge Jolson instructed Defendants to promptly produce those documents previously produced to the Government. This resulted in FirstEnergy producing what the Company represented to be the documentary record previously provided to the DOJ and SEC in connection with their investigations concerning the bribery scheme giving rise to this Action—288,164 pages in all, in three tranches between November 5 and 19, 2021.

38. In the meantime, on November 8, 2021, the Northern District held a case management conference and ordered a discovery schedule that contemplated the completion of all paper discovery by January 17, 2022, with depositions to commence in February 2022 and to be completed by May 1, 2022. NDA ECF No. 160. In November 2021, in an effort to avoid duplicative litigation, the parties in the Northern District Action submitted a discovery coordination stipulation (the "Stipulated Coordination Order"), ensuring all written discovery (including discovery served prior to the filing of the Stipulated Coordination Order), depositions, expert disclosures and reports, and documents produced would be coordinated between this Action and the Northern District Action. On December 3, 2021, the parties submitted a deposition schedule in the Northern District Action with the agreement and understanding that the depositions would be part of the record in this Court and in the Northern District, pursuant to the Stipulated Coordination Order. NDA ECF 177. That schedule contemplated at least 22 depositions occurring between February and April of 2022.

39. Over the ensuing months, the parties engaged in intensive document discovery. On May 28, 2021, shortly after this Court issued its MTD Opinion, Plaintiffs served document requests on FirstEnergy and all Defendants. Responses to Plaintiffs' first requests for production were served

on June 28, 2021. Plaintiffs engaged in extensive discovery negotiations with eighteen different Defendants and nominal Defendant FirstEnergy, represented by eight separate sets of counsel. FirstEnergy, the SLC, and Defendants in the Derivative Actions are represented by highly experienced and prestigious law firms, including Jones Day, Baker & Hostetler LLP, Skadden, Arps, Slate, Meagher & Flom, McDermott, Will & Emery, LLP, Ballard Spahr LLP, Morgan, Lewis & Bockius, Boies Schiller Flexner LLP, Walter Haverfield, and Tucker Ellis LLP, who vigorously represented their clients. Plaintiffs continued engaging in significant additional document and written discovery (including serving additional document requests, interrogatories, and requests for admission), seeking material beyond that previously produced to the DOJ and SEC to further bolster the record in support of Plaintiffs' claims.

40. All told, Plaintiffs served ten sets of discovery requests, including: (i) two sets of requests for production of documents on FirstEnergy (ii) three sets of requests for production of documents on the Individual Defendants; (iii) two sets of interrogatories, including one set on each of FirstEnergy and the Individual Defendants; and (iv) three sets of requests for admission, including one set of requests for admissions on each of FirstEnergy and Defendants Jones and Dowling. Plaintiffs reviewed thirty-two sets of responses and objections to Plaintiffs' various discovery requests from FirstEnergy and the Individual Defendants. Plaintiffs further subpoenaed eleven third parties, including (i) FirstEnergy's auditors, PricewaterhouseCoopers ("PwC") and Clearsulting LLC, (ii) FirstEnergy shareholders whose previous proposals for increased transparency in FirstEnergy's political contributions and lobbying activities had been rejected by the Board (the Nathan Cummings Foundation and Green Century), (iii) multiple non-defendant former members of the FirstEnergy's Board, and (iv) Defendant Jones' cellular service provider, Verizon.

41. For months Plaintiffs fought vigorously to achieve the widest possible breadth of discovery. For example, FirstEnergy and the Defendants initially refused to produce documents

dated before January 1, 2017 or after Householder's arrest in July 2020. Through persistent efforts, however, Plaintiffs ultimately obtained FirstEnergy's and all Defendants' agreement to include in their productions all relevant information dated or created over a span of more than five years, commencing January 1, 2016 and extending until at least mid-June 2021. Following contentious negotiations, Plaintiffs also successfully convinced FirstEnergy to produce all Board and Board committee meeting minutes and materials, without any culling for responsiveness, for that entire five-year period and through to the present. As to other categories of documents, Plaintiffs secured FirstEnergy's agreement to search its custodial electronically stored information ("ESI") using approximately 200 search terms and the Defendants' agreement to search their custodial ESI using approximately 260 search terms. Plaintiffs further aggressively fought for and secured the Company's and Defendants' agreement to review and produce relevant text messages exchanged between each Defendant and 30 counterparties, without the application of search terms. Additionally, Plaintiffs secured FirstEnergy's agreement to produce flight logs for the years 2016–2021, without the application of search terms or culling, as well as any phone logs for Defendants within FirstEnergy's possession, custody, or control. Through these efforts, Plaintiffs developed a comprehensive understanding of the events giving rise to this action and of the strengths and weaknesses of their litigation position.

42. From the outset of the litigation, and especially during discovery, Co-Lead Counsel took steps to ensure that this Action was managed in an orderly and efficient manner. Co-Lead Counsel, together with MLPF's counsel Cohen Milstein and Plaintiffs' liaison counsel John Camillus, maintained a small team of core attorneys from each firm who were principally responsible for the day-to-day prosecution of the Action. This team led the composition of all motions, briefs, and mediation statements and took the lead in drafting and negotiating ESI protocols, case stipulations, and discovery requests. On a few occasions, Co-Lead Counsel also delegated certain

discrete assignments to other Plaintiffs' counsel, as appropriate, such as discrete research assignments, writing assignments (*e.g.*, to prepare an initial draft of the confidentiality stipulation), or reviewing work product prepared by Co-Lead Counsel. Co-Lead Counsel maintained close control and supervision of the discrete work performed by other Plaintiffs' counsel and took steps to ensure that all work was done by attorneys with the appropriate levels of skill and experience. Co-Lead Counsel also took steps to avoid duplication of effort, and indeed, oversaw the contributions of all counsel such that duplication was avoided.[10]

43. Throughout the matter, Co-Lead Counsel held regular teleconferences—on a weekly basis during times of significant litigation activity—to ensure effective project management of the litigation tasks. These sessions were also used to discuss litigation strategy, and to assess the present and future needs of the case. These calls served to ensure timely execution of tasks, avoid duplication of effort, and ultimately yielded superior work product.

D. Plaintiffs Expended Substantial Time and Resources Responding To Defendants' Voluminous Discovery

44. Plaintiffs also responded to Defendants' voluminous discovery requests. Plaintiffs responded to 14 unique sets of discovery requests served upon them by Defendants in this litigation, including six sets of requests for production of documents directed to Plaintiffs by the Director and Officer Defendants,[11] Pearson, Chack, Yeboah-Amankwah, Reffner, and Dowling (including 77

[10] The plaintiff in the Northern District Action and her counsel independently litigated the Northern District Action until May 2021, when the Northern District granted Plaintiffs' motion to intervene in that action. Thereafter, counsel for the Northern District plaintiff worked cooperatively with, and largely under the direction of, Co-Lead Counsel to prosecute the Northern District Action. The plaintiffs in the State Court Action and their counsel independently litigated the State Court Action until the time of mediation, when all counsel joined forces under the direction of Co-Lead Counsel to negotiate and finalize the Settlement.

[11] The "Director and Officer Defendants" are Michael J. Anderson, Steven J. Demetriou, Julia L. Johnson, Donald T. Misheff, Thomas N. Mitchell, James F. O'Neil III, Christopher D. Pappas, Sandra Pianalto, Luis A. Reyes, Leslie M. Turner, Steven E. Strah, and K. Jon Taylor.

separate requests), six sets of interrogatories by the Director and Officer Defendants, Pearson, Chack, Yeboah-Amankwah, Reffner, and Dowling (including 104 separate interrogatories), and two sets of requests for admissions by Director and Officer Defendants and Reffner (totaling 44 separate requests). Co-Lead Plaintiffs, MLPF, and their respective counsel, further expended considerable time and effort, on an expedited basis, to collect documentary materials for review and production in response to the six sets of requests for production propounded by Defendants.

E. Plaintiffs' Review and Synthesis of Document Discovery

45. Through the efforts of a team of over 30 attorneys working on their behalf, Plaintiffs ultimately obtained and reviewed over 500,000 pages of documents produced by Defendants, FirstEnergy, and non-parties including: (i) over 7,000 text messages between and among Defendants and key relevant parties; (ii) over 32,000 emails between and among Defendants and/or key relevant third parties; (iii) full sets of FirstEnergy Board and Committee meeting minutes and materials; (iv) all of the documents referenced in the Company's July 20, 2021 DPA with the DOJ; and (v) all of the documents previously produced to the DOJ and SEC. Plaintiffs also received and reviewed documents produced by FirstEnergy's auditors, PwC and Clearsulting LLC; FirstEnergy shareholders, Nathan Cummings Foundation and Green Century; illicitly funded 501(c)(4) entities, Partners for Progress and Generation Now; multiple non-defendant former members of the Company's board of directors; and Defendant Jones' cellular service provider, Verizon. Plaintiffs further received six privilege logs from the Director and Officer Defendants and five Individual Defendants, including a two-volume privilege log from the Director and Officer Defendants totaling 1,217 entries, five privilege logs from Defendants Jones, Dowling, Pearson, Reffner and Yeboah-Amankwah totaling over 400 entries, as well as a four-volume metadata log from FirstEnergy with nearly 25,000 entries.

46. Starting in November 2021, Co-Lead Counsel and additional counsel at Cohen

Milstein assembled a team of attorneys to commence a first-level review of documents produced in this Action. This process required attorneys to carefully review each document, one-by-one, to assess its relevance to the core issues in the Action, and to input summary notes regarding documents of interest. This process also required attorneys to perform targeted searches to identify similarly relevant documents, and to share that information with the larger team. During this phase, and throughout the remainder of discovery, attorneys on the document review and analysis team held weekly teleconferences, during which attorneys discussed key documents and collaborated on best practices. The document review and analysis was overseen and conducted by attorneys at Bernstein Litowitz, Saxena White, and Cohen Milstein.

47. In performing initial review and analysis of documents, attorneys coded documents that were particularly relevant to the case. Important documents were further subjected to a second-level review by a team of experienced attorneys, who then synthesized the information and provided specific feedback to the review and analysis team. Senior attorneys would also review documents for quality-control purposes to ensure accuracy and to provide guidance on important nuances of the case.

48. Plaintiffs' team of lawyers reviewed and analyzed all of the documents produced by Defendants, FirstEnergy, and non-parties in this litigation, which were hosted on Bernstein Litowitz's in-house online document review program, Relativity. During the document review process, Co-Lead Counsel took steps to maximize the efficiency of its review and avoid duplication of work. Given the volume of documents, Co-Lead Counsel ran searches of key terms in order to prioritize the review of documents more likely to be responsive to Plaintiffs' requests. Co-Lead Counsel also prepared a comprehensive document review manual for use in training and guiding attorneys in their review and analysis. This manual contained, among other things, background information about the Action, an explanation of key issues and witnesses, and instructions for document coding. Co-Lead

Counsel also developed a set of quick-reference resources to aid attorneys in their review and analysis, including a "cast of characters" directory and a list of acronyms and terms. As document review and analysis continued, Co-Lead Counsel refined the manual to account for newly-produced information and to narrow the focus on particular issues in preparation for anticipated depositions.

49. Co-Lead Counsel developed and maintained a list of deponents, including deposition topics and areas of inquiry to focus on with each deponent. Co-Lead Counsel also maintained a list of relevant third parties, as well as relevant topics of inquiry for each third party. Co-Lead Counsel devoted significant efforts and resources to organize and synthesize the information produced by Defendants and to integrate the materials into Co-Lead Counsel's theory of the case and order of proof. Among other things, Co-Lead Counsel identified all Board and Committee minutes and created full, chronological sets of these core documents. Co-Lead Counsel further identified all documents cited in the DPA, and with the assistance of the documents produced by Defendants and the Defendants' responses to Plaintiffs' requests for admission, deciphered the identities of all parties referred to by pseudonyms in the DPA.

50. Co-Lead Counsel also began a comprehensive process of preparing for the depositions of at least 22 anticipated fact witnesses, including the named Defendants. This deposition preparation process required attorneys (who were assigned to teams) to, among other things: (i) conduct independent research on each of the anticipated witnesses; (ii) review and synthesize information contained in "hot" and highly relevant documents; (iii) identify key documents for use in depositions; (iv) compile full chronological sets of core documents, such as board and committee minutes and materials; and (v) draft outlines with respect to key deposition topics. Plaintiffs had expended significant effort actively preparing for depositions when the initial Term Sheet was executed on February 9, 2022.

III. SETTLEMENT DISCUSSIONS, MEDIATION, AND NEGOTIATION OF SETTLEMENT DOCUMENTS

A. Plaintiffs Were Prepared To Litigate This Case To Judgment

51. Plaintiffs were committed to prepare to take this case to trial from the day they filed their initial complaints. This mindset informed every strategic decision, including the decision to oppose the SLC's motion for a stay and the SLC's appeals and mandamus petitions to the Sixth Circuit. While the majority of Plaintiffs' counsels' litigation team focused on pursuing and reviewing discovery in preparation for imminent depositions and an ultimate trial, the parties determined that settlement discussions may be productive and engaged former United States District Court Judge Layn R. Phillips ("Judge Phillips") to facilitate the settlement negotiations.

52. We understood that insurance would provide the sole or primary source of any financial recovery on the scale of the damages alleged and was a "wasting asset" that would be eroded by further litigation and might be subject to competing claims in connection with different actions. Plaintiffs' counsel also believed that the end of document discovery and beginning of depositions constituted a natural time to explore a potential settlement—all parties would have an informed basis to understand the strengths and weaknesses of their respective positions and Plaintiffs would be able to maximize leverage provided by the documentary record to obtain historic governance reforms and meaningful compensation for FirstEnergy *before* the commencement of extensive deposition discovery began to dramatically erode the Defendants' available insurance.

53. From the outset, Plaintiffs demanded ***both*** historic governance reforms designed by their governance expert, Professor Gordon, ***and*** meaningful financial compensation for FirstEnergy, making clear that any other type of settlement would not be acceptable. Plaintiffs also ensured that all plaintiffs in the other pending Derivative Actions would participate in the mediation and settlement negotiations under the leadership of Co-Lead Counsel in this Action. This ensured there would be no hold outs to a settlement that would provide meaningful relief for FirstEnergy.

54. Prior to the mediation, Co-Lead Counsel worked diligently to coordinate all counsel for Plaintiffs in order to facilitate a potential negotiated resolution. To that end, Co-Lead Counsel coordinated with counsel for all Plaintiffs in all related Derivative Actions, including the Northern District Action and the State Court Action, to ensure that Plaintiffs presented a cohesive front. This necessitated significant logistical coordination among the various Plaintiffs and their counsel in the Derivative Actions, led and facilitated by Co-Lead Counsel. Co-Lead Counsel served as the point of contact with the SLC and Judge Phillips, as well as the representatives of the Plaintiffs in the mediation and throughout the settlement negotiations. Co-Lead Counsel's efforts in coordinating the various Plaintiffs in the Derivative Actions included: (i) written and oral communications with the Plaintiffs; (ii) sharing drafts of work product prepared by Co-Lead Counsel for Plaintiffs' and their counsel's review; (iii) providing up-dates to Plaintiffs' counsel; (iv) building consensus; (v) leading Plaintiffs' settlement negotiations; and (vi) serving as the liaison between Plaintiffs, on the one hand, and the Defendants, the SLC, and Judge Phillips on the other hand.

B. Mediation with Judge Phillips

55. The parties agreed to participate in a formal full day mediation session before Judge Phillips on February 1, 2022, with all parties in all of the Derivative Actions, the SLC, and the D&O insurers participating.

56. Between January 14, 2022 and January 24, 2022, the parties exchanged detailed mediation statements. FirstEnergy's insurance carriers also made a submission. On February 1, 2022, the parties and the carriers participated in a 13-hour mediation before Judge Phillips. In addition to meetings with Judge Phillips, Plaintiffs' counsel also spoke directly with the SLC's counsel and a member of the SLC to make clear Plaintiffs' determination, goals, and objectives.

57. At the end of the February 1 mediation, the parties had not reached a settlement. Plaintiffs' counsel believed, however, that the parties had made sufficient progress to merit the

continuation of settlement negotiations. Over the next several days (and nights), the parties continued intense and highly-contentious arm's-length negotiations facilitated by Judge Phillips and his team.

58. On February 9, 2022, the parties reached an agreement in principle as to the material terms for a resolution of all the Derivative Actions and executed a term sheet (the "Term Sheet"). Plaintiffs were actively preparing for 22 depositions scheduled to take place between February 10, 2022 and May 1, 2022 when the Term Sheet was signed. As part of the Term Sheet, the parties agreed to present the Settlement to this Court, where the vast majority of derivative actions arising from FirstEnergy's bribery scheme had been filed and where Co-Lead Plaintiffs and their counsel, who led the settlement negotiations, had filed their complaints and been appointed to leadership by the Court. On February 10, 2022, FirstEnergy issued a press release entitled "FirstEnergy Agrees on Terms to Resolve Shareholder Derivative Litigation," informing its shareholders of the principal terms of the Settlement, and stating in part:

> The settlement, which is subject to court approval, will fully resolve the derivative actions and stipulates a series of corporate governance enhancements, including:
>
> - Six members of the Board of Directors who have served on the Board for a minimum of five years will not stand for re-election at the company's 2022 annual shareholder meeting.
>
> - A special committee will be formed at the direction of the Board of at least three recently appointed independent directors to initiate a review process of the current executive team, to begin within 30 days of the 2022 annual shareholder meeting.
> - The Board will oversee the company's lobbying and political activities, including periodically reviewing and approving political and lobbying action plans prepared by management.
> - The Board will form a committee of recently appointed independent directors to oversee the implementation and third-party audits of the Board-approved action plans.
> - The company will implement enhanced disclosure to shareholders of political and lobbying activities.
> - The company will further align financial incentives of senior executives with proactive compliance with legal and ethical obligations.
>
> The settlement also includes a payment to FirstEnergy of $180 million, to be paid by insurance after court approval, less any court-ordered attorney's fees awarded to plaintiffs.

59. Contemporaneously, FirstEnergy also filed the press release on a Form 8-K with the SEC, ensuring that FirstEnergy's shareholders immediately received notice of the proposed Settlement. The parties used the Term Sheet as a basis to negotiate the terms of the final Settlement Stipulation, which was executed and submitted to the Court on March 11, 2022. ECF No. 170-3.

60. As Judge Phillips explains in his declaration in support of the Settlement: "The mediation process was an extremely hard-fought negotiation from beginning to end and was conducted by experienced and able counsel on both sides. Throughout the mediation process, the negotiations between the parties were vigorous and conducted at arm's-length and in good faith," and "the arguments and positions asserted by all involved were the product of substantial work, they were complex and highly adversarial, and they reflected a detailed and in-depth understanding of the strengths and weaknesses of the claims and defenses at issue in this case." Phillips Decl. (Ex. 5 to the Camillus Declaration) at ¶12.

IV. Preliminary Approval and Subsequent Events

61. After signing the Term Sheet, the parties engaged in a month of extensive negotiations regarding the material terms of the Stipulation and Agreement of Settlement (the "Stipulation") and various supporting documents, including those describing the Reforms, proposed notices to shareholders, and proposed orders for the Court.

62. On March 11, 2022, the parties executed the Stipulation. ECF No. 170-3. The same day, Plaintiffs submitted to the Court their papers in support of their Unopposed Motion for Preliminary Settlement Approval (ECF No. 170).

63. On May 9, 2022, the Court issued an Order of Preliminary Settlement Approval (the "Preliminary Approval Order") (ECF No. 176) and approved the parties' proposed notice of the Settlement. On May 16, 2022, FirstEnergy provided Court-approved formal notice of the Settlement to shareholders.

64. On May 17, 2022, FirstEnergy held its annual meeting of shareholders. Pursuant to the terms of the Settlement, six legacy directors who served on the Company's Board of Directors during the bribery scheme did not stand for reelection at FirstEnergy's annual meeting. As a result, FirstEnergy's twelve-member Board now includes a supermajority of eight directors who joined the Board after the bribery scheme and the Board's issuance of false proxies. On June 15, 2022, pursuant to the Settlement, the newly reconstituted Board formed a Special Review Committee to review the company's C-Suite executives. This review is ongoing.

65. All Plaintiffs in all related Derivative Actions, the SLC, and Defendants support the Settlement. To date, Plaintiffs' counsel have not heard from a single FirstEnergy shareholder objecting to the terms of the Settlement in response to the provided Notice.

V. Subsequent Developments In The Northern District Action

66. The parties agreed in their Term Sheet to present the Settlement to this Court, where the vast majority of the related derivative actions had been filed and where Co-Lead Plaintiffs and their counsel, who led the settlement negotiations, had filed their complaints and been appointed to leadership positions by the Court. Accordingly, on February 10, 2022, all parties to all three Derivative Actions filed joint motions to stay the Actions pending Settlement proceedings in this Court. This Court and the Court of Common Pleas granted the requested stay. The Northern District did not. Instead, on February 11, 2022, the Northern District issued an Order and Decision that denied the requested stay without prejudice, expressed the Northern District's view that Plaintiffs had taken insufficient discovery before entering into the Settlement, requested 11 categories of information concerning the Settlement, and set a hearing to be held on March 9, 2022. NDA ECF No. 274.

67. At the March 9, 2022 hearing, following the parties' submission of the requested information, the Northern District reiterated its previously-expressed view that the Derivative

Actions should not have settled and further expressed its view that the parties were engaged in a species of "forum shopping," by submitting their Settlement to this Court rather than to the Northern District. NDA ECF No. 280, March 9, 2022 Hr'g Tr. at 20:12–13, 19:6–10. During the hearing, the Northern District also observed the likely presence of the media and repeatedly pressed Plaintiffs' counsel under threat of possible sanctions to publicly answer numerous questions concerning the Settlement and the underlying confidential discovery record for the apparent purpose of achieving a form of public accountability for the Defendants. At the same hearing, the Northern District also actively (but, to-date, unsuccessfully) solicited third-parties to intervene in the litigation for purposes of upsetting the Settlement. *Id.* at 37:21-22, 34:21-25; 35:24-36:5; 30:24-31:10.

68. Following the March 9, 2022 hearing, the Northern District has issued a series of orders further reflecting its displeasure with the Settlement of this litigation and the parties' decision to submit the Settlement in this Court rather than in the Northern District. Among other things, the Northern District issued an order requiring Plaintiffs' counsel to publicly disclose the identities of the Defendants identified pseudonymously in FirstEnergy's DPA with the DOJ as having paid the bribes giving rise to this action, with which Plaintiffs' counsel complied. NDA ECF Nos. 290, 291. The Northern District has refused to stay the Northern District Action, has suggested that it is considering appointing new counsel in the Northern District Action, and has denied a joint motion of all parties to dismiss the Northern District Action without prejudice pending the outcome of the Settlement proceedings in this Court. NDA ECF Nos. 292, 316, 331.

69. Plaintiffs disagree with the Northern District's expressed view that this action should not have settled. As explained herein and in Plaintiffs' Motion, Plaintiffs believe that settling at the present juncture allowed for a greater result for FirstEnergy than could have been achieved by pressing further litigation—both because the immediate governance reforms achieved by the Settlement were only available through a negotiated resolution and because further litigation would

have risked substantial erosion of Defendants' insurance policies. Plaintiffs also disagree with the Northern District's view that this Court is an inappropriate venue for Settlement proceedings or that Plaintiffs have engaged in any species of forum shopping. All plaintiffs and all defendants in all related Derivative Actions, the Company, and the SLC agreed to present the Settlement for review and approval in this Court. This Court implemented a clear organizational leadership structure appointing St. Louis and Local 103 as Co-Lead Plaintiffs with their counsel as Co-Lead Counsel. By contrast, the Northern District declined to appoint lead plaintiffs and lead counsel. Furthermore, all parties were aware that nine of the ten related federal shareholder derivative actions were filed and consolidated in this Court. This Court also expended considerable time and resources overseeing this matter, including issuing a 21-page leadership opinion, issuing a 44-page motion to dismiss opinion, issuing a 9-page opinion denying the SLC's motion to stay, issuing an 8-page opinion denying Defendants' motion to certify interlocutory appeal, and holding hearings that led to the production of the documentary record that provided the factual basis for the Settlement. Thus, in our view, this Court is fully familiar with the facts underlying the derivative claims and eminently capable of assessing whether the Settlement is fair, reasonable, adequate, and in the best interest of FirstEnergy.

VI. THE TERMS OF THE SETTLEMENT

70. The Settlement provides for a $180 million cash payment and significant corporate governance reforms.

A. The $180 Million Payment

71. The $180 million monetary recovery would represent the largest ever achieved in a shareholder derivative action in the Sixth Circuit by a wide margin. Further, it is one of the largest such monetary recoveries ever achieved in a derivative action in the United States. As this Court recognized in its Preliminary Approval Order, "the monetary component [of the Settlement], at $180

million, measures favorably against other shareholder derivative settlements and would have a significant effect on the Company's financial position." Preliminary Approval Order at 4.

1. The Monetary Recovery Represents a Substantial Recovery for FirstEnergy and the Vast Majority of Defendants' Available Insurance

72. The cash recovery represents a substantial recovery for FirstEnergy—a full 78.26% of the $230 million criminal fine paid by FirstEnergy to the DOJ as a result of the bribery scheme, which constituted the principal source of out-of-pocket damages in the case.

73. At the time of the Settlement, it was not possible to determine the total damages incurred by FirstEnergy with precision, as much of those damages were somewhat amorphous (reputational harm) or remained speculative (potential damages in the related securities class action pending in this Court and certain pending regulatory matters).[12] Significantly, however, the $180 million monetary recovery captures the vast majority of the Defendants' relevant insurance policies. At the time the Term Sheet was executed, of the $230 million applicable D&O Insurance tower, approximately $220 million in insurance remained available to cover claims against the Company's officers and directors. The $180 million recovery represents 78.26% of the applicable D&O Insurance tower and 81.81% of the remaining D&O Insurance.

74. Plaintiffs' success in obtaining the vast majority of applicable insurance compares very favorably to settlements in other derivative actions in which relevant insurance figures have been disclosed. For instance, in the *Boeing* case, Plaintiffs recovered 43% of the total insurance.[13]

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[12] The sources of readily identifiable potential damages to FirstEnergy included principally the $230 million penalty imposed by the DPA, a $37.5 million pending settlement of a related consumer class action case, the approximately $60 million in corporate funds misappropriated for use in the bribery scheme, the more than $100 million in compensation FirstEnergy paid to the Individual Defendants while the scheme was ongoing, and the Company's defense costs incurred in connection with the various related actions and regulatory investigations.

[13] *In re the Boeing Company*, No. 2019-0907-MTZ, Co-Lead Plaintiffs' Reply Brief in Further Support of Settlement, Application for Award of Attorneys' Fees and Expenses, and Incentive Award, at 2–3 (Del. Ch. Jan. 25, 2022); available at: 2022 WL 500852.

Similarly, in the *Wells Fargo* case, Plaintiffs recovered 48% of the total insurance.[14] As this Court recognized, the insurance policies represented the "main source of recoverable assets" in this case. Preliminary Approval Order at 4.

75. Plaintiffs' success in securing the Settlement at the present juncture, before further intense litigation activity, also substantially benefited FirstEnergy, as the available D&O insurance was likely to decline significantly if the litigation continued. *See id.* (noting that "the Company's insurance policies… are being eroded by legal costs as this derivative action continues, meaning the ultimate recovery might be higher now than at the end of a case tried to verdict.").

76. By every measure, the Settlement's monetary recovery is outstanding.

B. The Corporate Governance Reforms

77. The Settlement features governance reforms which are specifically tailored to prevent a recurrence of misconduct and protect the Company and its shareholders going forward. Plaintiffs worked with Professor Gordon to ensure that we obtained the most meaningful achievable protections for FirstEnergy and its shareholders.

78. In his accompanying declaration, Professor Gordon explains his involvement in designing the reforms, their impact on changing the "tone at the top" at FirstEnergy, and their expected impact on the Company's reputation and relationships with key stakeholders moving forward. The wide-ranging governance reforms set forth in Exhibit A to the Stipulation of Settlement, include, among other things:

- *First*, as part of the Settlement, six defendant directors did not stand for reelection at FirstEnergy's 2022 annual meeting. We are not aware of any comparable derivative settlement resulting in such a substantial change in the composition of a company's board of directors.

- *Second*, the Settlement requires FirstEnergy's newly refreshed Board to promptly perform

[14] *See In re Wells Fargo & Company*, No. 4:16-cv-05551-JST (N.D. Cal. Apr. 2, 2019), ECF No. 272, Supplemental Brief in Support of Plaintiffs' Motion for Preliminary Approval of Settlement at 1 (Ex. 29).

a comprehensive review of FirstEnergy's current C-Suite executives to determine whether their tenures with the Company should continue. On June 15, 2022, the FirstEnergy Board established a Special Review Committee to review the Company's C-suite executives pursuant to the terms of the Settlement.

- *Third*, the Settlement requires FirstEnergy to adopt reforms mandating that the full Board take responsibility for actively overseeing all of the Company's lobbying, political contributions, and political activities by annually approving the Company's political and lobbying action plan, including retention of an independent third-party to audit implementation of the Board's political and lobbying action plan, and that a committee of the Board consisting of a majority of independent directors who joined the Board in 2019 or later to oversee the implementation of the plan by management.

- *Fourth*, the Settlement requires FirstEnergy to significantly enhance its disclosures to shareholders concerning the Company's political spending and lobbying activities, including a report from the third party that audits the implementation of the Board-approved political and lobbying action plan, in connection with the election of directors to the Board.

- *Fifth*, the Settlement requires FirstEnergy to further align the financial incentives of senior executives with proactively complying with legal and ethical obligations, including by requiring the compensation committee of the board (consisting of a majority of directors who joined the Board in 2019 or later) to ensure the Company's compensation system, including claw-back policies, align executives' financial incentives with legal compliance.

79. At the time Plaintiffs filed this Action, and throughout the litigation prior to the Settlement, the Company's Board was dominated by a majority of directors who served during the pendency of the bribery scheme, participated in the issuance of false and misleading annual proxy statements, and are Defendants in this action. Plaintiffs believed that this state of affairs was untenable and that a significant change in the composition of the Board and its culture was necessary as part of any Settlement. Pursuant to the terms of the Settlement, six members of FirstEnergy's Board did not stand for reelection at the 2022 annual meeting of FirstEnergy stockholders. Specifically, Defendants Anderson (member of the Board since 2007), Johnson (member of the Board since 2011), Misheff (member of the Board since 2012), Mitchell (member of the Board since 2016), Pappas (member of the Board since 2011), and Reyes (member of the Board since 2013) left the Board following the Company's annual shareholder meeting held on May 17, 2022. As a result

of the Settlement, the FirstEnergy Board now consists of a supermajority of independent directors who joined the Board in 2021 and 2022. All of the directors who served on the Board's Corporate Governance Committee at the time of the bribery scandal and who therefore had specific responsibility for overseeing FirstEnergy's political activities and who claimed to have "maintained an informed status with respect to the Company's practices relating to corporate political participation, and dues and/or contributions to industry groups and trade associations" are no longer on the Board. Plaintiffs believe that the departure of six directors at FirstEnergy, which fundamentally changed the Board, is unprecedented for a large public corporation in the context of a derivative settlement.

80. On June 15, 2022, the FirstEnergy Board formed a Special Review Committee to review the Company's C-Suite executives in accordance with the terms of the Settlement.[15] The newly refreshed Board's undertaking of a comprehensive review of FirstEnergy's senior-most executive officers will further ensure that all legacy executives who served at the time of the bribery scandal have been carefully scrutinized by an independent Board.

81. FirstEnergy stakeholder confidence will be further bolstered by the Board's public undertaking of active oversight of the Company's lobbying, political contributions, and political activities. The Board will do so by, *inter alia*: (i) approving the Company's newly-required political and lobbying action plan; (ii) retaining an independent third-party to audit implementation of the Board's political and lobbying action plan; (iii) assigning a committee of the Board consisting of independent directors who joined the Board in 2019 or later to oversee the implementation of the plan by management, with mandatory reporting obligations to the full Board; and (iv) requiring the compensation committee of the board (consisting of a majority of directors who joined the Board in 2019 or later) to review the Company's claw-back system for senior executive compensation to

[15] The Special Review Committee members all joined the Board in 2021 or 2022. *See* FirstEnergy Form 8-K, dated June 17, 2022 (available at: https://www.sec.gov/Archives/edgar/data/1031296/000103129622000043/0001031296-22-000043-index.htm).

properly align incentives and deter potential future executive misconduct.

82. Finally, Plaintiffs achieved significantly enhanced public disclosure requirements to ensure that shareholders and the public can monitor the newly constituted Board's performance in overseeing the Company's political spending and lobbying activities. FirstEnergy will, for example, be required to disclose the report of the third-party auditor in connection with the implementation of the Board-approved political and lobbying action plan in the Company's proxy statements.

83. These reforms were *only* possible through a negotiated resolution and could not have been achieved through further litigation. Pursuant to the terms of the Settlement, these reforms will remain in effect for at least five full years.

84. The Settlement's corporate governance reforms provide substantial benefits to FirstEnergy and its stockholders.

VII. RISKS OF CONTINUED LITIGATION

85. While Plaintiffs were confident in the merits of our case and the discovery record, we were also cognizant of the risks of proceeding with further litigation. We carefully considered these risks before ultimately agreeing to the Settlement.

86. First, it is widely-recognized that fiduciary breach claims premised on oversight failures, even in jurisdictions such as Delaware with standards of proof lower than Ohio's "clear and convincing" evidence standard, are "possibly the most difficult theory in corporation law upon which a plaintiff might hope to win a judgment." *See In re Caremark Int'l Inc. Deriv. Litig.,* 698 A.2d 959, 967 (Del. Ch. 1996). Moreover, Ohio provides strong statutory protections for directors and officers of Ohio corporations. Notably, to recover damages for alleged breaches of fiduciary duty under Ohio law, Plaintiffs would have been required to prove by "clear and convincing evidence" that the directors or officers acted or failed to act with "deliberate intent to cause injury" to FirstEnergy or with "reckless disregard" for FirstEnergy's best interests. Ohio Rev. Code §§ 1701.59(E) and

1701.641(D). Satisfying this standard, particularly as to the Director Defendants, would have presented challenges.

87. The Defendants would also argue that they were statutorily entitled to rely on "information, opinions, reports, or statements" provided by others on whom they reasonably believed they could rely. Ohio Rev. Code §§ 1701.59(C) (as to a company's directors), 1701.641(B) (as to a company's officers). That includes other FirstEnergy directors, officers, and employees, public accountants, and all other persons as to matters reasonably believed to be within the person's professional or expert competence. The Defendants would argue that the reports that they received from these professionals contained no indication of misconduct relating to any of the Company's lobbying and political activities.

88. Quantifying damages also posed challenges. While certain fines and penalties such as the $230 million fine to the DOJ could be easily ascertained, other damages such as non-pecuniary reputational harm, are amorphous and difficult to quantify and would be subject to a "battle of the experts." Further, at the time of the Settlement, some of the potential damages had not yet been incurred and may never come to fruition, further complicating the calculation of damages.

89. The SLC posed yet another risk to Plaintiffs' claims. At the time that the parties entered into the Settlement, the SLC had not issued any findings or a report. However, the SLC could have reached an unfavorable conclusion concerning Plaintiffs' claims and could have recommended dismissal of some or all of Plaintiffs' claims, meaning the Company could have recovered nothing, or significantly less than the Settlement.

90. Plaintiffs also faced the risks and expenses inherent in any complex litigation, including, among other things, dozens of depositions, expert discovery, additional dispositive motion practice such as motions for summary judgment, other pretrial challenges, battles of the experts, a lengthy trial, and post-trial litigation and appeals. The risk of appeal was especially heightened here

with respect to Plaintiffs' theory of liability for the Director Defendants under Section 14(a) of the Exchange Act. As this Court recognized when denying Defendants' motions to dismiss, "the Sixth Circuit has yet to define 'transaction causation' for purposes of a Section 14(a) claim under circumstances analogous to those presented here." MTD Opinion at 30. The lack of clear controlling precedent by the Sixth Circuit created risk and could have resulted in a prolonged appellate process even after a successful trial.

91. Finally, FirstEnergy's rapidly eroding insurance policies, which were the most significant available source for a monetary recovery in this litigation, were at risk of further erosion by further litigation activity and other potential settlements. As this Court has recognized, "the Company's insurance policies, which are the main source of recoverable assets, are being eroded by legal costs as this derivative action continues, meaning the ultimate recovery might be higher now than at the end of a case tried to verdict." Preliminary Approval Order at 4.

92. In short, while Co-Lead Counsel believe that the claims asserted in the Action have substantial merit, FirstEnergy would bear the risk of not being able to obtain the meaningful relief provided by the Settlement if the litigation continued.

93. In short, while Co-Lead Counsel believe that the claims asserted in the Action have substantial merit, FirstEnergy would bear the risk of not being able to obtain the meaningful relief provided by the Settlement if the litigation continued.

VIII. CO-LEAD COUNSEL'S EXPERIENCE AND QUALIFICATIONS

94. Co-Lead Counsel are experienced in prosecuting complex litigation and derivative actions, and worked diligently and efficiently in prosecuting this Action. As demonstrated by the firm resumes of Bernstein Litowitz (attached to the Declaration of Jeroen van Kwawegen filed on behalf of Bernstein Litowitz in support of the Settlement, Ex. 6) and Saxena White (attached to the Declaration of Thomas Curry on behalf of Saxena White in support of the Settlement, Ex. 7), court-

appointed Co-Lead Counsel are among the most experienced and skilled law firms in the securities litigation field, with long and successful track records in prosecuting derivative actions and other securities litigation. Bernstein Litowitz and Saxena White have been involved in some of the largest derivative settlements in any jurisdiction, including *In re Wells Fargo & Co. S'holder Derivative Litig.*, No. 3:16-cv-05541 (N.D. Cal.), *In re McKesson Corporation Derivative Litig.*, C.A. No. 4:17-cv-1850-CW (N.D. Cal.), *Rudi v. Wexner*, C.A. No. 2:20-cv-3068 (S.D. Ohio) ("*L Brands*"), *City of Monroe Empl. Ret. Sys. v. Murdoch et. al.*, C.A. No. 2017-0833-AGB (Del. Ch.), *In re Pfizer Inc. S'holder Derivative Litig.*, C.A. No. 1:09-cv-07822-JSR (S.D.N.Y.), *In re Alphabet Inc. S'holder Derivative Litig.*, C.A. No. 19-CV-341522 (Cal.), and *Cumming v. Edens et al.*, No. 13007-VCS (Del. Ch.). Here, Plaintiffs' counsel have extensive experience in complex shareholder litigation, have completed significant discovery, and believe that the Settlement is fair, reasonable, and adequate.

IX. COUNSEL'S FEE AND EXPENSE APPLICATION

95. Plaintiffs' allegations involved a complex bribery scheme and challenging theories of law and fact, including oversight claims against FirstEnergy's board of directors, which have been recognized as "possibly the most difficult theory in corporation law upon which a plaintiff might hope to win a judgment." Co-Lead Counsel undertook this prosecution entirely on a contingency fee basis and assumed significant risks in bringing these claims. From the outset, Co-Lead Counsel understood that it was embarking on a complex and expensive litigation with no guarantee of being compensated for the enormous investment of time and money the case would require. Plaintiffs' counsel have submitted declarations detailing the bases for their fee and expense awards. See Exs. 6-17 to the Camillus Declaration. A summary chart reflecting Plaintiffs' counsel's substantial time-investment in this litigation on a contingent basis, as well as Plaintiffs' counsel's expenses, is included below for the Court's convenience. For the avoidance of doubt, Plaintiffs' counsel's request

for an award of attorneys' fees is inclusive of litigation expenses, as well as any service awards this court may deem reasonable and appropriate to grant. Court appointed Co-Lead Plaintiffs, as well additional plaintiffs, have submitted declarations in support of the Settlement wherein they detail the work performed by the Plaintiffs in support of potential service awards. *See* Exs. 18-23.

FIRM	HOURS	EXPENSES	LODESTAR
Southern District Action			
Bernstein Litowitz *Co-Lead Plaintiffs' Counsel*	6,330.25	$172,818.10	$3,429,368.75
Saxena White *Co-Lead Plaintiffs' Counsel*	10,132.50	$27,435.01	$5,449,517.50
Cohen Milstein *Additional Plaintiffs' Counsel*	3,079.75	$23,471.40	$2,326,770.00
Law Offices of John C. Camillus *Plaintiffs' Liaison Counsel*	261.9	$4,972.90	$154,935.00
Hynes & Hernandez *Counsel for Bloom Plaintiffs*	181.1	$899.67	$142,585.00
Kaskela Law *Counsel for Bloom Plaintiffs*	23.5	$62.00	$16,450.00
Meyer Wilson *Counsel for Bloom Plaintiffs*	19.8	$200.00	$10,637.50
Northern District Action			
Edelson Lechtzin *Counsel for Northern District Plaintiff*	801.9	$6,015.91	$659,842.50
Rosca Scarlato/Goldman Scarlato & Penny *Counsel for Northern District Plaintiff*	191.9	$963.39	$127,523.50
State Court Actions			
Johnson Fistel *Counsel for State Court Plaintiffs*	1,533.4	$37,277.24	$1,014,549.00
Law Office of George W. Cochran *Counsel for State Court Plaintiffs*	403.15	$253.72	$241,890.00
Connick Law *Counsel for State Court Plaintiffs*	258.4	$2,146.60	$148,580.00
TOTALS	23,217.55	$276,515.94	$13,722,648.75

X. CONCLUSION

96. In sum, we believe the Settlement constitutes an excellent result for FirstEnergy and its shareholders—likely superior to any result that could have been achieved through trial—and that Plaintiffs' Motion should be granted.

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

Executed this 7th day of July 2022.

Respectfully submitted,

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EXHIBIT 3

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

EMPLOYEES RETIREMENT SYSTEM OF THE CITY OF ST. LOUIS, *et al.*, Plaintiffs, v. CHARLES E. JONES, *et al.*, Defendants, and FIRSTENERGY CORP., Nominal Defendant.	Case No. 2:20-cv-04813 Chief Judge Algenon L. Marbley Magistrate Judge Kimberly A. Jolson

STIPULATION AND AGREEMENT OF SETTLEMENT

This Stipulation and Agreement of Settlement, dated as of March 11, 2022 (the "Stipulation") is entered into, by, and among:

(i) Plaintiffs in the above-captioned stockholder derivative action (*Employees Retirement System of the City of St. Louis, et al. v. Jones, et al.*, Case No. 2:20-cv-04813-ALM-KAJ) (the "Southern District Action") pending in the United States District Court for the Southern District of Ohio (the "Southern District of Ohio," the "Southern District Court," or the "Court"): Co-Lead Plaintiffs Employees Retirement System of the City of St. Louis and Electrical Workers Pension Fund, Local 103, I.B.E.W. and Additional Plaintiff Massachusetts Laborers Pension Fund (collectively, the "Southern District Plaintiffs");

(ii) Plaintiffs in the stockholder derivative action captioned *Miller, et al. v. Anderson, et al.*, Case No. 5:20-cv-1743-JRA (the "Northern District Action"), pending in the United States District Court for the Northern District of Ohio (the "Northern District of Ohio" or the "Northern

District Court"): Plaintiff-Intervenors Employees Retirement System of the City of St. Louis and Electrical Workers Pension Fund, Local 103, I.B.E.W. and Massachusetts Laborers Pension Fund, and individual Plaintiff Jennifer L. Miller (collectively, the "Northern District Plaintiffs," and together with the Southern District Plaintiffs, "Federal Plaintiffs");

(iii) Plaintiffs in the stockholder derivative action captioned *In re FirstEnergy Corp., Stockholder Derivative Litigation*, Case No. CV-2020-07-2107 (the "Ohio State Court Action," and together with the Southern District Action and the Northern District Action, the "Actions"), pending in the Summit County Court of Common Pleas (the "Ohio State Court"): John Gendrich and Robert Sloan (the "Ohio State Court Plaintiffs," and together with the Southern District Plaintiffs and the Northern District Plaintiffs, "Plaintiffs");

(iv) Defendants in the Actions: Charles E. Jones, Michael J. Anderson, Steven J. Demetriou, Julia L. Johnson, Donald T. Misheff, Thomas N. Mitchell, James F. O'Neil, III, Christopher D. Pappas, Sandra Pianalto, Luis A. Reyes, Leslie M. Turner, Samuel L. Belcher, Bennett L. Gaines, Christine L. Walker, Gary Benz, Jason L. Lisowski, Irene M. Prezelj, Paul T. Addison, Jerry Sue Thornton, William T. Cottle, George M. Smart, Dennis M. Chack, Michael J. Dowling, James F. Pearson, Robert Reffner, Steven E. Strah, K. Jon Taylor, Ebony Yeboah-Amankwah, Eileen Mikkelsen, and Justin Biltz (collectively, "Defendants" or the "Individual Defendants");

(v) Nominal Defendant FirstEnergy Corp. and all of its affiliates ("FirstEnergy" or the "Company"); and

(vi) the Special Litigation Committee of the Board of Directors of FirstEnergy (the "SLC," and together with Plaintiffs, Defendants, and the Company, the "Settling Parties").

Subject to the approval of the Court and the terms and conditions expressly provided herein, this Stipulation is intended to fully, finally, and forever compromise, settle, release, resolve, and dismiss with prejudice the Actions and all claims asserted therein.

WHEREAS:

On July 21, 2020, the Ohio Speaker of the House Larry Householder ("Householder") and four other individuals not parties to the Actions were arrested as part of an investigation of an alleged $60 million racketeering and bribery scheme.

On July 30, 2020, a federal grand jury indicted Householder, the four other individuals, and 501(c)(4) entity Generation Now in an alleged federal racketeering conspiracy involving approximately $60 million in bribes to pass and uphold a billion-dollar nuclear plant bailout.

On July 22, 2021, FirstEnergy entered into a deferred prosecution agreement ("DPA") with the United States Department of Justice ("DOJ") to resolve allegations that the Company participated in an alleged bribery scheme. In conjunction with the DPA, FirstEnergy agreed to pay a $230 million fine for its role in the alleged bribery scheme.

The Southern District Action:

On September 9, 2020, Plaintiff Employees Retirement System of the City of St. Louis ("ERS") commenced a stockholder derivative action captioned as *Employees Retirement System of the City of St. Louis v. Jones, et al.*, Case No. 2:20-cv-04813-ALM-KAJ (S.D. Ohio), on behalf of FirstEnergy as Nominal Defendant against Defendants Charles E. Jones, Michael J. Anderson, Steven J. Demetriou, Julia L. Johnson, Donald T. Misheff, Thomas N. Mitchell, James F. O'Neil, III, Christopher D. Pappas, Sandra Pianalto, Luis A. Reyes, Leslie M. Turner, Paul T. Addison, Jerry Sue Thornton, William T. Cottle, George M. Smart, Justin Biltz, Michael J. Dowling, James F. Pearson, Steven E. Strah, K. Jon Taylor, Robert Reffner, and Ebony Yeboah-Amankwah

asserting, among other things, claims for breaches of fiduciary duty and violation of Section 14(a) of the Securities Exchange Act.

On September 30, 2020, Plaintiff Electrical Workers Pension Fund, Local 103, I.B.E.W. ("Local 103") commenced a stockholder derivative action captioned as *Electrical Workers Pension Fund, Local 103, I.B.E.W. v. Anderson, et al.*, Case No. 2:20-cv-05128-ALM-KAJ (S.D. Ohio), on behalf of FirstEnergy as Nominal Defendant against Defendants Michael J. Anderson, Steven J. Demetriou, Julia L. Johnson, Charles E. Jones, Donald T. Misheff, Thomas N. Mitchell, James F. O'Neil, III, Christopher D. Pappas, Sandra Pianalto, Luis A. Reyes, Leslie M. Turner, James F. Pearson, Steven E. Strah, and K. Jon Taylor asserting, among other things, claims for breaches of fiduciary duty and violation of Section 14(a) of the Securities Exchange Act.

On October 5, 2020, Plaintiff Massachusetts Laborers Pension Fund ("MLPF") commenced a stockholder derivative action captioned as *Massachusetts Laborers Pension Fund v. Jones, et al.*, Case No. 2:20-cv-05237-SDM-CMV (S.D. Ohio), on behalf of FirstEnergy as Nominal Defendant against Defendants Charles E. Jones, Michael J. Anderson, Steven J. Demetriou, Julia L. Johnson, Donald T. Misheff, Thomas N. Mitchell, James F. O'Neil, III, Christopher D. Pappas, Sandra Pianalto, Luis A. Reyes, Leslie M. Turner, Paul T. Addison, Jerry Sue Thornton, William T. Cottle, George M. Smart, Justin Biltz, Michael J. Dowling, James F. Pearson, Steven E. Strah, K. Jon Taylor, Robert Reffner, Ebony Yeboah-Amankwah, and John Does 1-50 asserting, among other things, claims for breaches of fiduciary duty and violation of Section 14(a) of the Securities Exchange Act.

On October 2, 2020, Plaintiffs ERS and Local 103 filed a Motion of the Institutional Investors to Consolidate Related Derivative Actions, Appoint Co-Lead Plaintiffs, and Appoint Co-Lead Counsel.

On October 23, 2020, Interested Party City of Philadelphia Board of Pensions and Retirement ("City of Philadelphia") filed a cross-motion for Consolidation, Appointment of Lead Plaintiff, and Appointment of Lead Counsel, in opposition to the Motion of the Institutional Investors to Consolidate Related Derivative Actions, Appoint Co-Lead Plaintiffs, and Appoint Co-Lead Counsel.

On November 3, 2020, Plaintiffs ERS and Local 103 filed a Memorandum of Law in Further Support of the Motion of the Institutional Investors to Consolidate Related Derivative Actions, Appoint Co-Lead Plaintiffs, and Appoint Co-Lead Counsel, and in Opposition to the Competing Motion.

On November 6, 2020, Plaintiff MLPF filed a Motion for Joinder in Support of Motion of the Institutional Investors to Consolidate Related Derivative Actions, Appoint Co-Lead Plaintiffs, and Appoint Co-Lead Counsel.

On November 6, 2020, City of Philadelphia filed a Reply in Further Support of Its Motion for Consolidation, Appointment of Lead Plaintiff, and Appointment of Lead Counsel.

On November 16, 2020, the Southern District Court issued an Opinion and Order appointing Plaintiffs ERS and Local 103 Co-Lead Plaintiffs, and appointing Saxena White P.A. and Bernstein Litowitz Berger & Grossmann LLP Co-Lead Counsel. Further, Massachusetts Laborers Pension Fund served as Additional Plaintiff, represented by Cohen Milstein Sellers & Toll PLLC.

On November 19, 2020, Defendants filed a Motion to Stay the Southern District Action (the "November 19, 2020 Motion to Stay"). Southern District Plaintiffs filed a Brief in Opposition to Defendants' November 19, 2020 Motion to Stay on December 4, 2020. Defendants filed a Reply in Support of their November 19, 2020 Motion to Stay on December 11, 2020. The Southern

District Court issued an Opinion and Order denying Defendants' Motion to Stay on December 21, 2020.

On January 19, 2021, Defendants filed a Motion to Enforce Stay of Discovery pursuant to the Private Securities Litigation Reform Act of 1995 ("PSLRA"). Southern District Plaintiffs filed a Notice of Non-Opposition to Defendants' Motion to Enforce Stay of Discovery pursuant to the PSLRA on January 29, 2021, in light of the Motion to Dismiss briefing schedule. The Southern District Court granted Defendants' Motion to Enforce Stay of Discovery pursuant to the PSLRA on February 4, 2021.

On January 25, 2021, Southern District Plaintiffs filed the Consolidated Verified Shareholder Derivative Complaint on behalf of FirstEnergy as Nominal Defendant against Defendants Michael J. Anderson, Steven J. Demetriou, Julia L. Johnson, Charles E. Jones, Donald T. Misheff, Thomas N. Mitchell, James F. O'Neil, III, Christopher D. Pappas, Sandra Pianalto, Luis A. Reyes, Leslie M. Turner, Michael J. Dowling, James F. Pearson, Robert Reffner, Ebony Yeboah-Amankwah, Steven E. Strah, and K. Jon Taylor asserting, among other things, claims for breaches of fiduciary duty and violation of Section 14(a) of the Securities Exchange Act.

On February 24, 2021, Defendants filed their Motions to Dismiss the Consolidated Verified Shareholder Derivative Complaint. On March 24, 2021, Southern District Plaintiffs filed their Opposition to Defendants' Motions to Dismiss the Consolidated Verified Shareholder Derivative Complaint. Defendants filed Replies in Support of their Motions to Dismiss the Consolidated Verified Shareholder Derivative Complaint on April 14, 2021. The Southern District Court denied Defendants' Motions to Dismiss the Consolidated Verified Shareholder Derivative Complaint on May 11, 2021.

On May 28, 2021, Defendants filed a Motion to Certify the Southern District Court's Order denying Defendants' Motion to Dismiss for Interlocutory Appeal Pursuant to 28 U.S.C. § 1292(b). Southern District Plaintiffs filed their Opposition to Defendants' Motion to Certify the Southern District Court's Order denying Defendants' Motion to Dismiss for Interlocutory Appeal Pursuant to 28 U.S.C. § 1292(b) on June 21, 2021. Defendants filed a Reply in Support of their Motion to Certify the Southern District Court's Order denying Defendants' Motion to Dismiss for Interlocutory Appeal Pursuant to 28 U.S.C. § 1292(b) on July 6, 2021.

On June 14, 2021, the Southern District Court issued an order lifting the PSLRA stay and noted that discovery may commence.

On June 24, 2021, Defendants filed their Answers to the Consolidated Verified Shareholder Derivative Complaint.

On June 30, 2021, Nominal Defendant FirstEnergy Corp. announced the formation of the SLC, effective July 1, 2021.

On July 1, 2021, Magistrate Judge Kimberly A. Jolson issued a notation order directing the SLC to file any motion to stay by July 21, 2021.

On July 20, 2021, the SLC filed its Motion to Stay.

On August 9, 2021, the SLC withdrew the Motion to Certify the Southern District Court's Order denying Defendants' Motion to Dismiss for Interlocutory Appeal Pursuant to 28 U.S.C. § 1292(b) as to Nominal Defendant First Energy.

On August 10, 2021, Southern District Plaintiffs filed their Opposition to the SLC's Motion to Stay.

On August 24, 2021, the SLC filed its Reply in Support of its Motion to Stay.

On October 5, 2021, the parties entered into a Joint Protocol for Production of Documents and Electronically Stored Information.

On October 5, 2021, Southern District Plaintiffs contacted the Southern District Court to request a status conference to obtain documents previously produced to the DOJ.

On October 7, 2021, a status conference was held before Magistrate Judge Kimberly A. Jolson. Judge Jolson entered an order staying discovery for fourteen days to allow the Southern District Court to rule on the SLC's then-pending Motion to Stay.

On October 20, 2021, the Southern District Court issued an Opinion and Order denying the SLC's Motion to Stay, and noting that "[d]iscovery shall commence without further delay."

On October 22, 2021, the SLC filed a Notice of Appeal of the Southern District Court's Opinion and Order denying the SLC's Motion to Stay pursuant to 28 U.S.C. § 1291 under the collateral order doctrine.

On October 25, 2021, Southern District Plaintiffs again requested a status conference before Magistrate Judge Jolson concerning discovery issues.

On October 27, 2021, another status conference was held before Magistrate Judge Kimberly A. Jolson at the Southern District Plaintiffs' request. During that status conference, the Court noted that discovery is open and instructed Defendants to produce documents previously produced to the DOJ.

On October 29, 2021, the SLC filed a Motion to Stay Pending the Outcome of Appellate Proceedings.

On November 9, 2021, Southern District Plaintiffs filed their Opposition to the SLC's Motion to Stay Pending the Outcome of Appellate Proceedings.

On November 12, 2021, the SLC filed its Reply in Support of the SLC's Motion to Stay Pending the Outcome of Appellate Proceedings.

On November 12, 2021, the Southern District Court issued an Opinion and Order denying the Individual Defendants' Motion to Certify Order for Interlocutory Appeal pursuant to 28 U.S.C. §1292(b).

As described in greater detail below (under "Sixth Circuit Proceedings"), the SLC's Motion to Stay Pending the Outcome of Appellate Proceedings was mooted by the Sixth Circuit's December 16, 2021 order granting Southern District Plaintiffs' Motions to Dismiss the Northern District Appeal and the Southern District Appeal, and dismissing the mandamus petitions.

The Northern District Action:

On August 7, 2020 Jennifer Miller ("Miller") commenced a stockholder derivative action captioned as *Miller, et al., v. Anderson et al.*, Case No. 5:20-cv-01743-JRA (N.D. Ohio) on behalf of FirstEnergy as Nominal Defendant against Defendants Michael J. Anderson, Steven J. Demetriou, Julia L. Johnson, Charles E. Jones, Donald T. Misheff, Thomas N. Mitchell, James F. O'Neil, III, Christopher D. Pappas, Sandra Pianalto, Luis A. Reyes, Leslie M. Turner, Michael J. Dowling, James F. Pearson, Robert Reffner, Steven E. Strah, and Ebony Yeboah-Amankwah asserting, among other things, claims for breaches of fiduciary duty and violation of Section 14(a) of the Securities Exchange Act.

On October 5, 2020, Plaintiffs ERS and Local 103 ("Intervenor Plaintiffs") filed a Motion to Intervene and Transfer the Northern District Action to the United States District Court for the Southern District of Ohio. Defendants filed their Opposition to Plaintiffs ERS and Local 103's Motion to Intervene and Transfer on October 9, 2020. Plaintiffs ERS and Local 103 filed a Reply in Further Support of their Motion to Intervene and Transfer the Northern District Action to the Southern District Court on October 16, 2020. The Northern District Court granted the Intervenor

Plaintiffs' Motion as to intervention but denied the Motion as to transfer to the Southern District of Ohio on May 13, 2021.

Plaintiffs ERS and Local 103 and additional Plaintiff MLPF filed their Intervenors' Verified Shareholder Derivative Complaint on June 3, 2021. Defendants filed their Motions to Dismiss Intervenors' Verified Shareholder Derivative Complaint on June 17, 2021. Intervenor Plaintiffs filed their Opposition to Defendants' Motions to Dismiss Intervenors' Verified Shareholder Derivative Complaint on July 19, 2021.

On July 20, 2021, the SLC filed its Motion to Stay in the Northern District Action. Intervenor Plaintiffs filed their opposition to the SLC's Motion to Stay on August 10, 2021. The SLC filed its reply in further support of its Motion to Stay on August 24, 2021. On September 16, 2021, the Northern District Court issued an Order and Decision denying Defendants' Motions to Dismiss and the SLC's Motion to Stay. On September 30, 2021, the Northern District Court designated the Intervenor Plaintiffs' Verified Shareholder Derivative Complaint as the Operative Complaint, but held in abeyance Intervenor Plaintiffs' Motion for Appointment as Lead Plaintiffs and Appointment of their Counsel as Lead Counsel.

On October 25, 2021, Intervenor Plaintiffs served a Settlement Demand on Defendants pursuant to the Northern District Court's September 16, 2021, Case Management Conference Scheduling Order ("the Case Management Conference Scheduling Order"). On November 1, 2021, Defendants responded to Intervenor Plaintiffs' Settlement Demand pursuant to the Case Management Conference Scheduling Order. On December 15-17, 2021, the parties filed their Settlement Demands and Responses on the Northern District Docket, under seal.

On November 8, 2021, a Case Management Conference was held in Akron, Ohio. A Case Management Plan was entered on November 9, 2021.

On November 22, 2021, Federal Plaintiffs, Defendants, and the Nominal Defendant submitted a Joint Proposed Stipulated Discovery Order stipulating that all written discovery (including discovery served prior to the filing of the Stipulated Discovery Order), depositions, expert disclosures and reports, and documents produced would be coordinated between the Southern District Action and the Northern District Action to avoid duplication and waste of the resources of the parties, the courts, and third parties.

Pursuant to the Case Management Plan, Federal Plaintiffs, Defendants, and the Nominal Defendant filed a deposition schedule on December 3, 2021. Subsequently, two telephonic status conferences were held on January 10, 2022 and January 28, 2022.

The Sixth Circuit Proceedings:

On September 16, 2021, the SLC filed a Notice of Appeal of the Northern District Court's Order and Decision denying the SLC's Motion to Stay pursuant to 28 U.S.C. § 1291 under the collateral order doctrine (the "Northern District Appeal").

On September 23, 2021, Northern District Plaintiffs filed their Motion to Dismiss the Northern District Appeal for Lack of Jurisdiction.

On October 4, 2021, the SLC filed its Response to Plaintiffs-Appellants' Motion to Dismiss the Northern District Appeal.

On October 12, 2021, Northern District Plaintiffs filed their Reply in Support of their Motion to Dismiss the Northern District Appeal for Lack of Jurisdiction.

On October 22, 2021, the SLC filed a Notice of Appeal of the Southern District Court's Opinion and Order denying the SLC's Motion to Stay pursuant to 28 U.S.C. § 1291 under the collateral order doctrine (the "Southern District Appeal").

On November 2, 2021, Southern District Plaintiffs filed their Motion to Dismiss the Southern District Appeal for Lack of Jurisdiction.

On November 8, 2021, the SLC filed Writs of Mandamus against Chief Judge Algenon L. Marbley of the Southern District of Ohio and Judge John R. Adams of the Northern District of Ohio.

On November 12, 2021, the SLC filed its Response to Plaintiffs-Appellants' Motion to Dismiss the Southern District Appeal.

On November 16, 2021, the SLC filed a motion to consolidate the Southern District Appeal and the Northern District Appeal, to expedite the appellate briefing schedule, and to stay district court proceedings pending the outcome of the appeals.

On November 19, 2021, Southern District Plaintiffs filed their Reply in Support of their Motion to Dismiss the Southern District Appeal for Lack of Jurisdiction.

On November 26, 2021, Southern District Plaintiffs filed their Opposition to the SLC's motion to consolidate, expedite briefing schedule, and stay district court proceedings pending the outcome of the appeals.

On December 3, 2021, the SLC filed a Reply in Support of its Motion to Expedite, Consolidate, and Stay.

On December 16, 2021, the United States District Court of Appeals for the Sixth Circuit granted Federal Plaintiffs' Motions to Dismiss for lack of jurisdiction the Southern District and Northern District Appeals, and denied the SLC's petitions for a writ of mandamus.

The State Court Action:

On July 26, 2020 and July 31, 2020, Ohio State Court Plaintiffs separately initiated stockholder derivative actions on behalf of Nominal Defendant FirstEnergy in the Ohio State Court, captioned *Gendrich v. Anderson, et al.*, No. CV-2020-07-2107 (Summit Cnty. Court of

Common Pleas) ("*Gendrich* Action"), and *Sloan v. Anderson, et al.*, No. CV-2020-08-2161 (Summit Cnty. Court of Common Pleas) ("*Sloan* Action"), respectively.

On September 8, 2020, the Gendrich Action and the Sloan Action were consolidated by court Order under the caption *Gendrich v. Anderson, et al.*, No. CV-2020-07-2107, and thereafter, on September 23, 2020, Johnson Fistel, LLP and Connick Law, LLC, were appointed Co-Lead Counsel in the State Court Action.

On September 22, 2020, Ohio State Court Plaintiffs sent a stockholder inspection demand for books and records under Ohio Statute § 1701.37(C) to the board of directors of the Company. By letter dated October 14, 2020, that inspection demand was declined.

On September 22, 2020, Ohio State Court Plaintiffs issued a public records request to the Ohio Attorney General's Office and a request for records under the Freedom of Information Act to the U.S. Department of Justice. Thereafter, Ohio State Court Plaintiffs' counsel continued to engage in written correspondence in furtherance of the public records request with the Ohio Attorney General's Office.

On November 9, 2020, Ohio State Court Plaintiffs filed a consolidated complaint alleging derivative claims against Defendants for breach of fiduciary duties based on, *inter alia*, participation in the alleged criminal bribery scheme, unjust enrichment, and insider selling, as well as claims for civil conspiracy, contribution and indemnification, and civil liability for criminal acts.

On January 8, 2021, certain Defendants moved to dismiss the Ohio State Court Plaintiffs' consolidated complaint. On March 9, 2021, the Ohio State Court Plaintiffs filed their opposition to the motion to dismiss. On April 8, 2021, defendants filed their reply in further support of their motion to dismiss.

On June 21, 2021, Ohio State Court Plaintiffs served Plaintiffs' First Request for Production of Documents on Defendants, to which Defendants served their various responses and objections on July 19, 2021, with the exception of defendants Eileen Mikkelsen and Justin Biltz, whose responses and objections were served on August 2, 2021 and August, 9, 2021, respectively.

On July 20, 2021, the SLC filed a motion to stay the State Court Action.

On August 9, 2021, the SLC withdrew the previously filed motion to dismiss as to Nominal Defendant FirstEnergy while the SLC investigated and evaluated Ohio State Court Plaintiffs' claims. Ohio State Court Plaintiffs filed their opposition to the SLC's motion to stay on August 19, 2021, and the SLC filed its reply on August 26, 2021.

On November 12, 2021, Ohio State Court Plaintiffs served on Defendants a confidential settlement demand.

The Parties Litigate The Actions in Federal Court:

On May 28, 2021, Southern District Plaintiffs propounded their First Request for Production of Documents directed to the Individual Defendants and Nominal Defendant FirstEnergy.

On June 28, 2021, the Individual Defendants and Nominal Defendant FirstEnergy served their Responses and Objections to Plaintiffs' First Request for Production of Documents directed to the Individual Defendants and Nominal Defendant FirstEnergy, with the exception of Defendant Yeboah-Amankwah, who served her Responses and Objections to Plaintiffs' First Request for Production of Documents on July 1, 2021.

On September 29, 2021, Southern District Plaintiffs issued a subpoena to non-party PricewaterhouseCoopers ("PwC") in the Southern District Action (the "Southern District PwC Subpoena"). PwC served its Responses and Objections to the Southern District PwC Subpoena on October 20, 2021. On November 17, 2021, Federal Plaintiffs issued a subpoena to non-party

PwC in the Northern District Action (the "Northern District PwC Subpoena"). PwC served its Responses and Objections to the Northern District PwC Subpoena on December 1, 2021.

On December 2, 2021, Federal Plaintiffs propounded their First Request for Production of Documents to Defendant Chack. Chack served his Responses and Objections to Plaintiffs' First Request for Production of Documents on January 3, 2022.

Federal Plaintiffs propounded their Second Request for Production of Documents to FirstEnergy on December 10, 2021. FirstEnergy served its Objections and Responses to Plaintiffs' Second Request for Production of Documents on January 10, 2022.

Federal Plaintiffs propounded their Second Request for Production of Documents to the Individual Defendants on December 15, 2021. The Individual Defendants served their Responses and Objections to Plaintiffs' Second Request for Production of Documents on January 14, 2022.

Federal Plaintiffs propounded their First Set of Interrogatories Directed to FirstEnergy on December 15, 2021. FirstEnergy served its Responses and Objections to Plaintiffs' First Set of Interrogatories Directed to FirstEnergy on January 14, 2022.

Federal Plaintiffs propounded their First Set of Interrogatories Directed to the Individual Defendants on December 17, 2021. The Individual Defendants served their Responses and Objections to Plaintiffs' First Set of Interrogatories Directed to the Individual Defendants on January 18, 2022.

Federal Plaintiffs propounded their Third Request for Production of Documents to the Individual Defendants on December 17, 2021. The Individual Defendants served their Responses and Objections to Plaintiffs' Second Request for Production of Documents on January 18, 2022.

Federal Plaintiffs propounded their First Requests for Admission to FirstEnergy, Charles E. Jones, and Michael J. Dowling on December 17, 2021. FirstEnergy, Jones, and Dowling served their Responses and Objections to Plaintiffs' First Requests for Admission on January 18, 2022.

On December 6, 2021, Federal Plaintiffs issued a subpoena to non-party Clearsulting. Clearsulting served its Responses and Objections to Plaintiffs' subpoena on December 17, 2021.

On December 7, 2021, Federal Plaintiffs issued a subpoena to non-party Nathan Cummings Foundation. Nathan Cummings Foundation served its Responses and Objections to Plaintiffs' subpoena on December 23, 2021.

On December 17, 2021, Federal Plaintiffs issued a subpoena to non-party Green Century Capital Management.

On January 13, 2022, Federal Plaintiffs issued a subpoena to non-party Verizon.

On December 6, 9, and 23, 2021, Federal Plaintiffs subpoenaed certain former directors of FirstEnergy. The former directors of FirstEnergy responded to Plaintiffs' subpoenas on December 20 and 23, 2021 and January 6, 2022.

Federal Plaintiffs negotiated discovery protocols with eighteen different defendants, represented by eight different sets of counsel. FirstEnergy and the Individual Defendants initially objected to the production of documents dated before January 1, 2017 or after Householder's arrest in July 2020. Ultimately, Federal Plaintiffs obtained agreement of FirstEnergy and the Individual Defendants to produce relevant information dated or created on January 1, 2016 through at least mid-June 2021. Federal Plaintiffs also obtained FirstEnergy's agreement to search the Company's custodial ESI for nearly 200 search terms and the Individual Defendants' agreement to search their custodial ESI for 260 search terms pursuant to the operative search term protocols. Federal

Plaintiffs also obtained Defendants' agreement to review and produce relevant text messages between each Defendant and 30 counterparties, without the application of search terms.

Ultimately, Defendants and non-parties collectively produced, and Federal Plaintiffs reviewed, over 500,000 pages of documents, including all the documents produced to the DOJ in connection with its investigation.

In addition to serving offensive discovery, Federal Plaintiffs responded to discovery directed toward Plaintiffs. On December 10, 2021, the Director & Officer Defendants served their First Request for Production, First Set of Interrogatories, and First Request for Admission directed to Plaintiffs. On January 10, 2022, Federal Plaintiffs served their Responses and Objections to the Director & Officer Defendants First Request for Production. On January 18, 2022, Plaintiffs served their Responses and Objections to the Director & Officer Defendants' First Set of Interrogatories and First Request for Admission directed to Plaintiffs.

On December 14, 2021, Defendant Pearson served his First Request for Production of Documents and First Set of Interrogatories directed to Plaintiffs. On January 13, 2022, Federal Plaintiffs served their Responses and Objections to Pearson's First Request for Production of Documents directed to Plaintiffs. On January 18, 2022, Federal Plaintiffs served their Responses and Objections to Pearson's First Set of Interrogatories directed to Plaintiffs.

On December 17, 2021, Defendants Chack, Reffner, and Yeboah-Amankwah served their First Requests for Production of Documents and First Sets of Interrogatories directed to Plaintiffs, and Defendant Reffner served his First Requests for Admission directed to Plaintiffs. On January 18, 2022, Federal Plaintiffs served their Responses and Objections to Defendants Chack, Reffner and Yeboah-Amankwah's First Requests for Production of Documents and First Set of

Interrogatories directed to Plaintiffs. Also on January 18, 2022, Federal Plaintiffs served their Responses and Objections to Reffner's First Requests for Admission directed to Plaintiffs.

On December 23, 2021, Defendant Dowling served his First Request for Production of Documents and First Set of Interrogatories directed to Plaintiffs. On January 24, 2022, Federal Plaintiffs served their Responses and Objections to Dowling's First Request for Production of Documents and First Set of Interrogatories directed to Plaintiffs.

The Parties Conduct Arm's-Length Negotiations To Resolve The Actions:

Beginning on December 14, 2021, the Settling Parties engaged in numerous telephonic conversations, including conversations among the Settling Parties and conversations between certain of the Settling Parties and former United States District Court Judge Layn R. Phillips (the "Mediator").

On February 1, 2022, the Settling Parties participated in a full day mediation session before the Mediator. In advance of that session, the Settling Parties exchanged mediation statements, reply statements, and exhibits with the Mediator and among the Settling Parties, which addressed the issues of both liability and damages. In advance of the mediation, the Federal Plaintiffs and the SLC also discussed governance improvements as part of a potential settlement. The session ended without any agreement being reached.

Following the mediation, the Settling Parties engaged in additional negotiations under the supervision and guidance of the Mediator.

As a result of extensive, arm's-length negotiations, before, during, and after the mediation session, the Settling Parties reached an agreement in principle to settle the Actions that was memorialized in a Settlement Term Sheet executed on February 9, 2022 (the "Term Sheet").

The Term Sheet set forth, among other things, the Settling Parties' agreement to resolve the Actions in exchange for (i) a cash payment of $180,000,000.00 (United States Dollars), which,

together with any and all interest earned thereon, and less any Court-approved attorneys' fees and expenses awarded to Plaintiffs' Counsel, any service awards awarded to Plaintiffs, and any Taxes, will be paid to the Company and (ii) the corporate governance reforms set forth in Exhibit A thereto ("Reforms"), subject to certain terms and conditions and the execution of a customary "long form" stipulation and agreement of settlement and related papers. The Settlement does not release the Company's claims for recoupment of compensation from Defendants Jones, Dowling, or Chack, including such claims that the Company is pursuing or may pursue (which for avoidance of doubt Jones, Dowling, and Chack deny have any basis and reserve their right to oppose and defend against on any and all grounds available and to assert any related claims).

This Stipulation (together with the exhibits hereto) reflects the final and binding agreement among the Settling Parties and supersedes the Term Sheet.

In connection with settlement discussions and negotiations leading to the proposed Settlement set forth in this Stipulation, counsel for the Settling Parties did not discuss the amount of any application by Plaintiffs' Counsel for an award of attorneys' fees and expenses until the substantive terms of the Settlement were negotiated at arm's-length and agreed upon.

Plaintiffs brought their claims in good faith and continue to believe that their claims have merit, but based upon Plaintiffs' and Plaintiffs' Counsel's investigation, prosecution, and mediation of the Actions, Plaintiffs and Plaintiffs' Counsel have concluded that the terms and conditions of this Stipulation are fair, reasonable, and adequate to the Company and its stockholders. Based on Plaintiffs' direct oversight of the prosecution of this matter and with the advice of their counsel and outside experts, Plaintiffs have agreed to settle the claims asserted in the Actions pursuant to the terms and provisions of this Stipulation, after considering (a) the significant monetary payment to be made to the Company by insurance policies that were eroding;

(b) the corporate governance reforms provided under the proposed Settlement that could not have been obtained through a verdict; (c) the uncertain outcome, inherent delays, significant cost to the Company and its insurers, and significant risks of continued litigation; and (d) the desirability of permitting the Settlement to be consummated as provided by the terms of this Stipulation.

Defendants have denied, and continue to deny, that they committed, or aided and abetted in the commission of, any violation of law or duty or engaged in any wrongful acts whatsoever, including specifically those alleged in the Actions, and expressly maintain that they have complied with their statutory, fiduciary, and other legal duties, and are entering into this Stipulation and the Settlement to eliminate the burden, expense, and uncertainties inherent in further litigation.

Each of the Settling Parties recognizes and acknowledges that the Actions have been initiated, filed, and prosecuted by Plaintiffs in good faith and defended by Defendants in good faith, that the Actions are being voluntarily settled with the advice of counsel, and that the terms of the Settlement are fair, reasonable, and adequate.

NOW THEREFORE, it is hereby STIPULATED AND AGREED, by and among the Settlings Parties through their respective undersigned attorneys and subject to the approval of the Court, that, in consideration of the benefits flowing to the Settling Parties from the Settlement, all Released Plaintiffs' Claims as against the Released Defendants' Persons and all Released Defendants' Claims as against the Released Plaintiffs' Persons shall be settled and released, upon and subject to the terms and conditions set forth below.

CERTAIN DEFINITIONS

1. As used in this Stipulation and all exhibits attached hereto and made a part hereof, the following capitalized terms shall have the following meanings:

(a) "Actions" means the Southern District Action, the Northern District Action, and the Ohio State Court Action.

(b) "Complaints" means the Northern District Complaint, the Ohio State Court Complaint, and the Southern District Complaint.

(c) "Court" means the United States District Court for the Southern District of Ohio.

(d) "Defendants' Counsel" means: (i) Jones Day, counsel for Defendants Michael J. Anderson, Steven J. Demetriou, Julia L. Johnson, Donald T. Misheff, Thomas N. Mitchell, James F. O'Neil III, Christopher D. Pappas, Sandra Pianalto, Luis A. Reyes, Leslie M. Turner, Steven E. Strah, K. Jon Taylor, Samuel L. Belcher, Bennett L. Gaines, Christine L. Walker, Gary Benz, Jason J. Lisowski, Irene M. Prezelj, Paul T. Addison, Jerry Sue Thornton, William T. Cottle, and George M. Smart; (ii) Baker & Hostetler LLP and Gibson, Dunn & Crutcher LLP, counsel for Defendant Charles E. Jones; (iii) Tucker Ellis LLP, counsel for Defendant Michael J. Dowling; (iv) Skadden, Arps, Slate, Meagher & Flom, LLP, counsel for Defendant Ebony Yeboah-Amankwah; (v) McDermott, Will, & Emery, LLP and Brouse McDowell, counsel for Defendant Robert P. Reffner; (vi) Ballard Spahr LLP, counsel for Defendant James F. Pearson; (vii) Morgan, Lewis & Bockius LLP and Lape Mansfield Nakasian & Gibson LLC, counsel for Defendant Dennis M. Chack (viii) Boies Schiller Flexner LLP, counsel for Eileen Mikkelsen; and (ix) Walter Haverfield LLP, counsel for Justin Biltz.

(e) "Effective Date" with respect to the Settlement means the first date by which all of the events and conditions specified in paragraph 22 of this Stipulation have been met and have occurred or have been waived.

(f) "Escrow Account" means an account maintained at Citibank, N.A. wherein the Settlement Amount shall be deposited and held in escrow under the control of Co-Lead Counsel in the Southern District Action.

(g) "Escrow Agent" means Citibank, N.A.

(h) "Federal Plaintiffs" means Southern District Plaintiffs and Northern District Plaintiffs, collectively.

(i) "Final" with respect to the Judgment or any other court order means: (i) if no appeal is filed, the expiration date of the time for filing or noticing of any appeal of the Judgment or order; or (ii) if there is an appeal from the Judgment or order, (a) the date of final dismissal of all such appeals, or the final dismissal of any proceeding on certiorari or otherwise, or (b) the date the Judgment or order is finally affirmed on appeal, the expiration of the time to file a petition for a writ of certiorari or other form of review, or the denial of a writ of certiorari or other form of review, and, if certiorari or other form of review is granted, the date of final affirmance following review pursuant to that grant. However, any appeal or proceeding seeking subsequent judicial review pertaining solely to an order issued with respect to attorneys' fees or expenses shall not in any way delay or preclude the Judgment from becoming Final.

(j) "Judgment" means the final judgment, substantially in the form attached hereto as Exhibit F, to be entered by the Court approving the Settlement.

(k) "Notice" means the Notice of (I) Pendency and Proposed Settlement of Stockholder Derivative Actions; (II) Settlement Fairness Hearing; and (III) Motion for an Award of Attorneys' Fees and Litigation Expenses, substantially in the form attached hereto as Exhibit D.

(l) "Northern District Court" means the United States District Court for the Northern District of Ohio.

(m) "Northern District Action" means the stockholder derivative action captioned *Miller, et al. v. Anderson et al.*, Case No. 5:20-cv-1743-JRA, pending in the Northern District of Ohio.

(n) "Northern District Complaint" means the Intervenors' Verified Shareholder Derivative Complaint filed in the Northern District Action on June 3, 2021.

(o) "Northern District Plaintiffs" means plaintiff-intervenors Employees Retirement System of the City of St. Louis, Electrical Workers Pension Fund, Local 103, I.B.E.W., and Massachusetts Laborers Pension Fund, and individual plaintiff Jennifer L. Miller.

(p) "Ohio State Court" means the Summit County Court of Common Pleas.

(q) "Ohio State Court Action" means the stockholder derivative action captioned *In re FirstEnergy Corp., Stockholder Derivative Litigation*, Case No. CV-2020-07-2107, pending in the Ohio State Court.

(r) "Ohio State Court Complaint" means the Verified Consolidated Shareholder Derivative Complaint filed in the Ohio State Court Action on November 9, 2020.

(s) "Ohio State Court Plaintiffs" means plaintiffs John Gendrich and Robert Sloan.

(t) "Notice Costs" means all costs, fees, and expenses related to providing notice of the Settlement.

(u) "Plaintiffs" means the Federal Plaintiffs and the Ohio State Court Plaintiffs.

(v) "Plaintiffs' Counsel" means Bernstein Litowitz Berger & Grossmann LLP ("BLB&G") and Saxena White P.A., Co-Lead Counsel for the Southern District Plaintiffs and

counsel for Plaintiff-Intervenors in the Northern District Action; Cohen Milstein Sellers & Toll PLLC, counsel for Additional Plaintiff Massachusetts Laborers Pension Fund in the Southern District Action and in the Northern District Action; Law Offices of John C. Camillus, liaison counsel for Co-Lead Plaintiffs in the Southern District Action and counsel for Plaintiff-Intervenors in the Northern District Action; Edelson Lechtzin LLP and Rosca Scarlato, LLC, counsel for Plaintiff Jennifer L. Miller in the Northern District Action; Johnson Fistel, LLP, Connick Law, LLC, and Law Office of George W. Cochran, counsel for the Ohio State Court Plaintiffs; and all other firms listed in the Complaints.

(w) "Released Claims" means each and any of the Released Defendants' Claims and each and any of the Released Plaintiffs' Claims.

(x) "Released Defendants' Claims" means any and 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 in the Actions, except for claims relating to the enforcement of the Settlement. For avoidance of doubt, Released Defendants' Claims does not include any claims that Charles Jones, Michael Dowling, and Dennis Chack have or may assert against FirstEnergy, including but not limited to, claims for compensation, pensions, deferred compensation, incentive compensation, equity, and any and all benefits under any plan, program, arrangement, or other vehicle, in which any of them participated, accrued benefits, or any other claim for benefits or compensation that is otherwise related to their employment with the Company, and further including any claims for wrongful termination and/or any and all claims relating thereto.

(y) "Released Defendants' Persons" means Defendants, any other individual named as a defendant in any complaint filed in any of the Actions, the Company, the SLC, and any entity in which the Company has a controlling interest, as well as their respective current and former parents, affiliates, subsidiaries, officers, directors, agents, successors, predecessors, assigns, assignees, partnerships, partners, committees, joint ventures, trustees, trusts, employees, immediate family members, heirs, insurers and reinsurers (in their capacities as such), and consultants, experts, and attorneys (provided, however, that consultants, experts and attorneys are only "Released Defendants' Persons" insofar as they were engaged by Defendants and are not released under this Stipulation if and to the extent that they were engaged by the Company).

(z) "Released Plaintiffs' Claims" means any and all claims and causes of action of every nature and description, whether known claims or Unknown Claims, whether arising under federal, state, local, statutory, regulatory, common, foreign or other law or rule, that Plaintiffs, the Company, or the SLC (i) asserted in the Complaints or (ii) could have asserted on behalf of the Company that in any way are based on, arise from or relate to the allegations, transactions, facts, matters, disclosures or nondisclosures set forth in the Complaints, including but not limited to the conduct, actions, inactions, deliberations, votes, statements or representations of any Released Defendants' Person. For the avoidance of doubt, this release will not cover, include, or release (i) any direct claims of Plaintiffs or any other FirstEnergy stockholder, including without limitation any direct claims asserted under the federal securities laws, including without limitation claims asserted in *In re FirstEnergy Corp. Sec. Litig.*, Case No. 20-cv-03785-ALM-KAJ (S.D. Ohio) (and all consolidated cases), or direct claims of Plaintiffs or any other FirstEnergy stockholder asserted in any of the related actions or proceedings identified in Exhibit B hereto; (ii) any claims relating to the enforcement of the Settlement; or (iii) any claims of the Company to recoup compensation

from Charles Jones, Michael Dowling, and Dennis Chack (which for avoidance of doubt Jones, Dowling, and Chack deny have any basis and reserve their right to oppose and defend against on any and all grounds available and to assert any related claims including, but not limited to, claims for compensation, pensions, deferred compensation, incentive compensation, equity, and any and all benefits under any plan, program, arrangement, or other vehicle, in which any of them participated, accrued benefits, or any other claim for benefits or compensation that is otherwise related to their employment with the Company, and further including any claims for wrongful termination and/or any and all claims relating thereto).

(aa) "Released Plaintiffs' Persons" means Plaintiffs, Plaintiffs' Counsel, and any entity in which any Plaintiff has a controlling interest, as well as their respective current and former parents, affiliates, subsidiaries, officers, directors, agents, successors, predecessors, assigns, assignees, partnerships, partners, committees, joint ventures, trustees, trusts, employees, immediate family members, heirs, insurers and reinsurers (in their capacities as such), consultants, experts, and attorneys.

(bb) "Released Persons" means each and any of the Released Defendants' Persons and each and any of the Released Plaintiffs' Persons.

(cc) "Releases" means the releases set forth in paragraphs 8-9 of this Stipulation.

(dd) "Preliminary Approval Order" means the order, substantially in the form attached hereto as Exhibit C, to be entered by the Court preliminarily approving the Settlement and directing notice of the Settlement.

(ee) "Settlement" means the resolution of the Actions on the terms and conditions set forth in this Stipulation.

(ff) "Settlement Fairness Hearing" means the hearing set by the Court to, among other things, consider final approval of the Settlement.

(gg) "Settling Parties" means Plaintiffs, Defendants, the Company, and the SLC, on behalf of itself and the Company.

(hh) "SLC Counsel" means Debevoise & Plimpton, counsel for the SLC of Nominal Defendant FirstEnergy.

(ii) "Southern District Action" means the stockholder derivative action captioned *Employees Retirement System of the City of St. Louis, et al. v. Jones, et al.*, Case No. 2:20-cv-04813-ALM-KAJ, pending in the Southern District of Ohio.

(jj) "Southern District Court" means the United States District Court for the Southern District of Ohio.

(kk) "Southern District Complaint" means the Consolidated Verified Shareholder Derivative Complaint filed in the Southern District Action on January 25, 2021.

(ll) "Southern District Plaintiffs" means co-lead plaintiffs Employees Retirement System of the City of St. Louis and Electrical Workers Pension Fund, Local 103, I.B.E.W., and additional plaintiff Massachusetts Laborers Pension Fund.

(mm) "Summary Notice" means the Summary Notice of (I) Pendency and Proposed Settlement of Stockholder Derivative Actions; (II) Settlement Fairness Hearing; and (III) Motion for an Award of Attorneys' Fees and Litigation Expenses, substantially in the form attached hereto as Exhibit E.

(nn) "Taxes" means: (i) all federal, state and/or local taxes of any kind (including any interest or penalties thereon) on any income earned by the Settlement Fund; and (ii) the expenses and costs incurred by Co-Lead Counsel in connection with determining the amount of,

and paying, any taxes owed by the Settlement Fund (including, without limitation, expenses of tax attorneys and accountants).

(oo) "Term Sheet" means the Settlement Term Sheet executed by the Settling Parties on February 9, 2022.

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

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

Plaintiffs, Defendants, the Company, and the SLC, on behalf of itself and the Company, acknowledge, and each of the other FirstEnergy stockholders shall be deemed by operation of law to have acknowledged, that the foregoing waiver was separately bargained for and is a key element of the Settlement.

SETTLEMENT CONSIDERATION

2. In consideration for the full settlement and release of all Released Plaintiffs' Claims against the Released Defendants' Persons and the dismissal with prejudice of the Actions on the terms and conditions set forth in this Stipulation, Defendants, the Company, and the SLC, on behalf of itself and the Company, agree to the following:

(a) **Monetary Consideration:** No later than twenty (20) business days after the later of: (i) entry of an order preliminarily approving the Settlement or (ii) Defendants' Counsel's receipt of wiring instructions that include the bank name and ABA routing number, account name and number, and a signed W-9 for the Escrow Account, Defendants shall cause their insurers to pay $180,000,000.00 (United States Dollars) in cash (the "Settlement Amount") into the Escrow Account. The Settlement Amount plus any and all interest earned thereon (the "Settlement Fund"), less (i) any Court-awarded attorneys' fees and litigation expenses paid or payable to Plaintiffs' Counsel, including any service awards paid or payable to Plaintiffs, and/or any reserve to account for any potential future awards to Plaintiffs' Counsel or Plaintiffs; and (ii) any Taxes with respect to any interest earned on the Settlement Fund while on deposit in the Escrow Account (the "Net Settlement Fund"), shall be paid from the Escrow Account to the Company no later than ten (10) business days after the Effective Date.

(b) **Corporate Governance Reforms:** The Company, acting through its Board of Directors ("Board"), shall implement the corporate governance reforms set forth in Exhibit A hereto ("Reforms") not later than ten (10) business days following final approval of the Settlement by the Court, unless otherwise specified in Exhibit A hereto. Any agreement to acquire the Company reached within twelve (12) months of the approval of

the Settlement shall be conditioned on the acquirer's written agreement to maintain the Reforms set forth in the Exhibit A hereto, or functionally equivalent measures, for not less than twenty-four (24) months following the announcement of the acquisition. Unless otherwise specified, each of the provisions of Exhibit A shall remain binding on the Company for no less than five (5) years following the Effective Date.

3. All funds held by the Escrow Agent shall be deemed to be in the custody of the Court and shall remain subject to the jurisdiction of the Court until such time as the funds shall be distributed or returned pursuant to the terms of this Stipulation and/or further order of the Court. The Escrow Agent shall invest any funds in the Escrow Account exclusively in United States Treasury Bills (or a mutual fund invested solely in such instruments) and shall collect and reinvest all interest accrued thereon, except that any residual cash balances up to the amount that is insured by the FDIC may be deposited in any account that is fully insured by the FDIC. In the event that the yield on United States Treasury Bills is negative, in lieu of purchasing such Treasury Bills, all or any portion of the funds held by the Escrow Agent may be deposited in any account that is fully insured by the FDIC or backed by the full faith and credit of the United States. Additionally, if short-term placement of the funds is necessary, all or any portion of the funds held by the Escrow Agent may be deposited in any account that is fully insured by the FDIC or backed by the full faith and credit of the United States.

4. The Settling Parties agree that the Settlement Fund is intended to be a Qualified Settlement Fund within the meaning of Treasury Regulation § 1.468B-1 and that Co-Lead Counsel in the Southern District Action, as administrators of the Settlement Fund within the meaning of Treasury Regulation § 1.468B-2(k)(3), shall be solely responsible for filing or causing to be filed all informational and other tax returns as may be necessary or appropriate (including, without

limitation, the returns described in Treasury Regulation § 1.468B-2(k)) for the Settlement Fund. Co-Lead Counsel in the Southern District Action shall also be responsible for causing payment to be made from the Settlement Fund of any Taxes owed with respect to the Settlement Fund. The Released Defendants' Persons shall not have any liability or responsibility for any such Taxes. Upon written request, Defendants will provide to Co-Lead Counsel in the Southern District Action the statement described in Treasury Regulation § 1.468B-3(e). Co-Lead Counsel in the Southern District Action, as administrators of the Settlement Fund within the meaning of Treasury Regulation § 1.468B-2(k)(3), shall timely make such elections as are necessary or advisable to carry out this paragraph, including, as necessary, making a "relation back election," as described in Treasury Regulation § 1.468B-1(j), to cause the Qualified Settlement Fund to come into existence at the earliest allowable date, and shall take or cause to be taken all actions as may be necessary or appropriate in connection therewith.

5. All Taxes shall be paid out of the Settlement Fund, and shall be timely paid, or caused to be paid, by Co-Lead Counsel in the Southern District Action and without further order of the Court. Any tax returns prepared for the Settlement Fund (as well as the election set forth therein) shall be consistent with the previous paragraph and in all events shall reflect that all Taxes on the income earned by the Settlement Fund shall be paid out of the Settlement Fund as provided herein.

BOARD RESOLUTION

6. FirstEnergy hereby acknowledges that the Company's Board, including all of the non-defendant, independent directors, has approved a resolution reflecting their determination, in a good faith exercise of their business judgment that: (a) Plaintiffs' litigation and settlement efforts in the Actions are a primary factor in the Board's agreement to adopt, implement, and maintain

the Reforms; (b) the Reforms confer substantial corporate benefits under Ohio law on the Company and its stockholders; and (c) the Settlement is fair, adequate, reasonable, and in the best interests of the Company and its stockholders.

RELEASE OF CLAIMS

7. The obligations incurred pursuant to this Stipulation are in consideration of the full and final disposition of the Actions and the Releases provided for herein.

8. Pursuant to the Judgment, without further action by anyone, upon the Effective Date of the Settlement, Plaintiffs, the Company, and the SLC, on behalf of itself and the Company, and the Company's stockholders shall be deemed to have, and by operation of law and of the Judgment, shall have, fully, finally, and forever discharged, relinquished, settled, and released any and all of the Released Plaintiffs' Claims against each and all of the Released Defendants' Persons, and shall forever be barred and enjoined from commencing, instituting, or prosecuting any action or proceeding in any court, tribunal, or forum asserting any of the Released Plaintiffs' Claims against any of the Released Defendants' Persons. This Release shall have res judicata, collateral estoppel, and all other preclusive effects in all pending and future lawsuits, arbitrations, or other suits, actions, or proceedings involving any of the Released Defendants' Persons.

9. Pursuant to the Judgment, without further action by anyone, upon the Effective Date of the Settlement, Defendants, the Company, and the SLC, on behalf of itself and the Company, shall be deemed to have, and by operation of law and of the Judgment, shall have, fully, finally, and forever discharged, relinquished, settled, and released any and all of the Released Defendants' Claims against each and all of the Released Plaintiffs' Persons, and shall forever be barred and enjoined from commencing, instituting, or prosecuting any action or proceeding in any court, tribunal, or forum asserting any of the Released Defendants' Claims against any of the

Released Plaintiffs' Persons. This Release shall have res judicata, collateral estoppel, and all other preclusive effects in all pending and future lawsuits, arbitrations, or other suits, actions, or proceedings involving any of the Released Plaintiffs' Persons.

10. Notwithstanding Paragraphs 8-9 above, nothing in the Judgment shall bar any action by any of the Settling Parties to enforce or effectuate the terms of this Stipulation or the Judgment.

PRELIMINARY APPROVAL ORDER AND NOTICE

11. Within three (3) business days of execution of this Stipulation, the Southern District Plaintiffs will move the Southern District of Ohio for preliminary approval of the Settlement, authorization to provide notice of the Settlement, and the scheduling of a hearing for consideration of final approval of the Settlement, which motion shall be unopposed by Defendants, the Company, and the SLC, on behalf of itself and the Company. Concurrently with the motion for preliminary approval, the Southern District Plaintiffs will apply to the Southern District of Ohio for, and Defendants, the Company, and the SLC, on behalf of itself and the Company, will agree to, entry of the Preliminary Approval Order, substantially in the form attached hereto as Exhibit C.

12. In accordance with the terms of the Preliminary Approval Order to be entered by the Court, no later than five (5) business days after the date of entry of the Preliminary Approval Order, the Company (or its successor-in-interest) shall cause: (a) the filing with the SEC of a Current Report on Form 8-K, attaching the Notice, substantially in the form attached hereto as Exhibit D, and this Stipulation (including copies of Exhibits A and E hereto); (b) the publication of the Summary Notice, substantially in the form attached hereto as Exhibit E, once in the *Investor's Business Daily* or similar publication; and (c) the posting of the Notice, substantially in the form attached hereto as Exhibit D, and this Stipulation on the "Investor Relations" portion of

the Company's website, which documents shall remain posted thereto through the Effective Date of the Settlement. The Company shall pay or cause to be paid any and all Notice Costs regardless of the form or manner of notice ordered by the Court and regardless of whether the Court approves the Settlement or the Effective Date of the Settlement otherwise fails to occur, and in no event shall Defendants, Plaintiffs, or their respective attorneys be responsible for any such costs or expenses.

DISMISSAL OF THE ACTIONS

13. If the Settlement contemplated by this Stipulation is approved by the Court, the parties to the Southern District Action shall request that the Southern District Court enter the proposed Judgment, substantially in the form attached hereto as Exhibit F, which will, among other things, finally approve the proposed Settlement and dismiss the Southern District Action with prejudice. The proposed Judgment will also contain a statement to reflect compliance with Rule 11 of the Federal Rules of Civil Procedure by the parties to the Southern District Action.

14. Within five (5) business days of final approval of the Settlement by the Southern District of Ohio, the parties to the Northern District Action and the parties to the Ohio State Court Action will jointly move to dismiss the Northern District Action and Ohio State Court Action, respectively. The dismissal papers to be filed in the Northern District Action will contain a statement reflecting compliance with Rule 11 of the Federal Rules of Civil Procedure by the parties to the Northern District Action, and the dismissal papers to be filed in the Ohio State Court Action will contain a statement reflecting compliance with Ohio Civ.R. 11 by the parties to the Ohio State Court Action.

15. The Settling Parties agree to work collaboratively and in good faith in jointly seeking the dismissals, including in seeking appellate relief if a joint motion for dismissal is denied.

A denial of the joint dismissal motion by the Northern District of Ohio or the Ohio State Court does not impact the Effective Date.

ATTORNEYS' FEES AND LITIGATION EXPENSES

16. Defendants, the Company, and the SLC, on behalf of itself and the Company, acknowledge that Plaintiffs' Counsel are entitled to an award of reasonable attorneys' fees and expenses in connection with the Actions and the Settlement.

17. Plaintiffs' Counsel and the SLC, on behalf of itself and the Company, will attempt in good faith to negotiate an appropriate award of attorneys' fees and litigation expenses for all Plaintiffs' Counsel based upon the substantial benefits conferred upon the Company by the Settlement and the risks of undertaking the prosecution of the Actions on a contingent basis. If Plaintiffs' Counsel and the SLC are unable to reach agreement on an appropriate award of attorneys' fee and litigation expenses for Plaintiffs' Counsel, Co-Lead Counsel in the Southern District Action intend to apply, on behalf of all Plaintiffs' Counsel, for an award of attorneys' fees and litigation expenses in the Southern District of Ohio in an amount not to exceed 27% of the Settlement Fund based upon the substantial benefits conferred upon the Company by the Settlement and the risks of undertaking the prosecution of the Actions on a contingent basis. Additionally, Co-Lead Counsel in the Southern District Action intend to apply to the Court for service awards for each of the Plaintiffs ("Service Awards") in an amount not to exceed $10,000 for each Plaintiff, to be paid out of the Court-awarded attorneys' fees and litigation expenses.

18. The full amount of any attorneys' fees and litigation expenses awarded by the Court to Plaintiffs' Counsel, including any Service Awards to Plaintiffs ("Fee and Expense Award") shall be paid to Co-Lead Counsel in the Southern District Action from the Escrow Account immediately upon award, notwithstanding the existence of any timely filed objections thereto, or

potential for appeal therefrom, or collateral attack on the Settlement or any part thereof, subject to Co-Lead Counsel in the Southern District Action's obligation to make appropriate refunds or repayments if the Settlement is terminated pursuant to the terms of this Stipulation or if, as a result of any appeal or further proceedings on remand, or successful collateral attack, the Fee and Expense Award is reduced or reversed and such order reducing or reversing the award has become Final. Plaintiffs' Counsel shall make the appropriate refund or repayment in full no later than thirty (30) days after: (a) receiving from Defendants' Counsel notice of the termination of the Settlement; or (b) any order reducing or reversing Fees and Expenses Award has become Final. In the event that the final determination of the amount of attorneys' fees and expenses payable to Plaintiffs' Counsel does not occur prior to the Effective Date, Co-Lead Counsel in the Southern District Action may withhold up to the full amount of the requested fee and expense award from the amount transferred from the Escrow Account to the Company under paragraph 2(a) above.

19. Plaintiffs' Counsel shall allocate the Fee and Expense Award among themselves. Plaintiffs' Counsel agree that any disputes regarding the allocation of the Fee and Expense Award among them shall be presented to and be mediated by the Mediator, and if mediation is unsuccessful, decided on a final, binding, non-appealable basis by the Mediator, on the terms and subject to the processes and procedures set forth by the Mediator in his sole discretion. The Mediator's fees and costs for any such mediation and/or arbitration shall be borne solely by Plaintiffs' Counsel and split evenly among Plaintiffs' Counsel. In no event shall such allocation matters affect or delay the enforceability of the Settlement, provide any Settling Party with the right to terminate the Settlement, impose any obligation on any Defendant or the Company, subject Defendants in any way to an increase in the amount paid by them or on their behalf in connection

with the Settlement, or affect or delay the binding effect or finality of the Settlement and the releases by any Settling Party against Released Defendants' Persons.

20. The Released Defendants' Persons shall have no responsibility for or liability whatsoever with respect to the allocation or award of the Fee and Expense Award amongst Plaintiffs' Counsel. Any dispute regarding any allocation of fees or expenses among Plaintiffs' Counsel shall have no effect on the Settlement.

21. An award of attorneys' fees and/or litigation expenses to Plaintiffs' Counsel is not a necessary term of this Stipulation and is not a condition of the Settlement embodied herein. The Court may consider and rule upon the fairness, reasonableness, and adequacy of the Settlement independently of the consideration of any award of attorneys' fees and litigation expenses, and the failure of the Court to approve any requested award of attorneys' fees and litigation expenses, in whole or in part, shall have no effect on the Settlement. Neither Plaintiffs nor Plaintiffs' Counsel may cancel or terminate the Settlement based on this Court's or any appellate court's ruling with respect to attorneys' fees and/or litigation expenses.

CONDITIONS OF SETTLEMENT AND EFFECT OF TERMINATION

22. The Effective Date of the Settlement shall be deemed to occur on the occurrence or waiver of all of the following events:

(a) the Southern District Court has entered the Preliminary Approval Order, substantially in the form set forth in Exhibit C attached hereto;

(b) Plaintiffs have not exercised their option to terminate the Settlement pursuant to paragraph 24 below;

(c) Defendants have not exercised their option to terminate the Settlement pursuant to paragraph 24 below;

(d) the Southern District Court has approved the Settlement as described herein, following notice to Company stockholders and a hearing, and entered the Judgment, substantially in the form set forth in Exhibit F attached hereto, and the Judgment has become Final; and

(e) the full Settlement Amount has been deposited into the Escrow Account in accordance with the provisions of paragraph 2(a) above.

23. The Settlement shall not be conditioned upon the obtaining of, or judicial approval of, any releases between or among any settling Defendants and/or any third parties. The Settlement shall also not be conditioned upon the settlement, or the approval of the settlement, of any other lawsuits or claims.

24. Plaintiffs (provided they unanimously agree amongst themselves) and Defendants (provided they unanimously agree amongst themselves) shall each have the right to terminate the Settlement and this Stipulation, by providing written notice of their election to do so ("Termination Notice") to the other Settling Parties within thirty (30) calendar days of: (a) the Court's final refusal to enter the Preliminary Approval Order in any material respect; (b) the Court's final refusal to approve the Settlement or any material part thereof; (c) the Court's final refusal to enter the Judgment in any material respect as to the Settlement; or (d) the date upon which an order vacating, modifying, revising, or reversing the Judgment becomes Final, and the provisions of paragraph 25 below shall apply. In addition, Plaintiffs (provided they unanimously agree amongst themselves) shall have the right to terminate the Settlement if the Settlement Amount is not deposited into the Escrow Account in accordance with the provisions of paragraph 2(a) above. However, any decision or proceeding, whether in this Court or any appellate court, solely with respect to an application for an award of attorneys' fees or litigation expenses shall not be considered material

to the Settlement, shall not affect the finality of the Judgment, and shall not be grounds for termination of the Settlement.

25. In the event the Settlement is terminated pursuant to paragraph 24 above, then: (a) the Settlement and the relevant portions of this Stipulation shall be canceled; (b) the Settling Parties shall each revert to their respective litigation positions in their respective Actions as of immediately prior to the execution of the Term Sheet on February 9, 2022; (c) the terms and provisions of the Term Sheet and this Stipulation, with the exception of this paragraph 25 and paragraphs 12, 18, 27, and 52 hereof, shall have no further force and effect with respect to the Settling Parties and shall not be used in the Action or in any other proceeding for any purpose, and the Settling Parties shall proceed in all respects as if the Term Settlement and this Stipulation had not been entered; (d) the Judgment and any other order entered by the Court in accordance with the terms of this Stipulation shall be treated as vacated, *nunc pro tunc*; and (e) all amounts in the Escrow Account, less any Taxes paid, due, or owing on any interest earned on the Settlement Amount while on deposit in the Escrow Account, shall be promptly returned to the insurers who funded the Escrow Account in proportion to their respective payments to the Escrow Account.

NO ADMISSION OF WRONGDOING

26. Defendants deny any and all allegations of fault, liability, wrongdoing, or damages whatsoever in the Actions.

27. Neither the Term Sheet, this Stipulation (whether or not consummated), including the exhibits hereto, the negotiations leading to the execution of the Term Sheet and this Stipulation, nor any proceedings taken pursuant to or in connection with the Term Sheet, this Stipulation, and/or approval of the Settlement (including any arguments proffered in connection therewith):

(a) shall be offered against any of the Released Defendants' Persons as evidence of, or construed as, or deemed to be evidence of any presumption, concession, or admission by any of the Released Defendants' Persons with respect to the truth of any fact alleged by Plaintiffs or the validity of any claim that was or could have been asserted or the deficiency of any defense that has been or could have been asserted in the Actions or in any other litigation, or of any liability, negligence, fault, or other wrongdoing of any kind of any of the Released Defendants' Persons or in any way referred to for any other reason as against any of the Released Defendants' Persons, in any arbitration proceeding or other civil, criminal, or administrative action or proceeding, other than such proceedings as may be necessary to effectuate the provisions of this Stipulation;

(b) shall be offered against any of the Released Plaintiffs' Persons, as evidence of, or construed as, or deemed to be evidence of any presumption, concession, or admission by any of the Released Plaintiffs' Persons that any of their claims are without merit, that any of the Released Defendants' Persons had meritorious defenses, or that damages recoverable under the Complaints would not have exceeded the Settlement Amount or with respect to any liability, negligence, fault, or wrongdoing of any kind, or in any way referred to for any other reason as against any of the Released Plaintiffs' Persons, in any arbitration proceeding or other civil, criminal, or administrative action or proceeding, other than such proceedings as may be necessary to effectuate the provisions of this Stipulation; or

(c) shall be construed against any of the Released Defendants' Persons or the Released Plaintiffs' Persons as an admission, concession, or presumption that the consideration to be given hereunder represents the consideration which could be or would have been recovered after trial; *provided, however*, that if this Stipulation is approved by the Court, the Settling Parties and the Released Defendants' Persons, the Released Plaintiffs' Persons, and their respective counsel

may refer to it to effectuate the protections from liability granted hereunder or otherwise to enforce the terms of the Settlement.

MISCELLANEOUS PROVISIONS

28. All of the exhibits attached hereto are hereby incorporated by reference as though fully set forth herein. Notwithstanding the foregoing, in the event that there exists a conflict or inconsistency between the terms of this Stipulation and the terms of any exhibit attached hereto, the terms of the Stipulation shall prevail.

29. Defendants warrant that, as to the payments made or to be made on behalf of them, at the time of entering into this Stipulation and at the time of such payment they, or to the best of their knowledge any persons or entities contributing to the payment of the Settlement Amount, were not insolvent, nor will the payment required to be made by or on behalf of them render them insolvent, within the meaning of and/or for the purposes of the United States Bankruptcy Code, including §§ 101 and 547 thereof. This representation is made by each of the Defendants and not by their counsel.

30. In the event any proceedings by or on behalf of Defendants or the Company, whether voluntary or involuntary, are initiated under any chapter of the United States Bankruptcy Code, including any act of receivership, asset seizure, or similar federal or state law action ("Bankruptcy Proceedings"), the Settling Parties agree to use their commercially reasonable best efforts to obtain all necessary orders, consents, releases, and approvals for effectuation of the Stipulation and Court approval of the Settlement in a timely and expeditious manner. By way of example only, the Settling Parties agree to cooperate in making applications and motions to the bankruptcy court, including, for relief from any stay, approval of the Settlement, authority to release funds, authority to release claims and indemnify officers and directors, and authority for

the Court to enter all necessary orders and judgments, and any other actions reasonably necessary to effectuate the terms of the Settlement.

31. If any Bankruptcy Proceedings by or on behalf of Defendants or the Company are initiated prior to the payment of the Settlement Amount, the Settling Parties agree to seek an order from the bankruptcy court presiding over such Bankruptcy Proceedings: (i) either lifting the automatic stay for the limited purpose of authorizing such payment(s), or finding that the payment of the Settlement Amount by Defendants and/or their insurance carriers does not violate the automatic stay; and (ii) finding that the payment of the Settlement Amount by Defendants and/or their insurance carriers does not constitute utilization of estate proceeds and/or a preference, voidable transfer, fraudulent transfer, or similar transaction. In addition, in the event of any Bankruptcy Proceedings by or on behalf of Defendants or the Company, the Settling Parties agree that all dates and deadlines in the Actions, if any, or any dates and deadlines associated with any appeals, will be extended for such periods of time as necessary to obtain necessary orders, consents, releases, and approvals from the bankruptcy court to carry out the terms and conditions of the Settlement.

32. In the event of the entry of a final order of a court of competent jurisdiction determining the transfer of money to the Settlement Fund or any portion thereof by or on behalf of Defendants to be a preference, voidable transfer, fraudulent transfer or similar transaction and any portion thereof is required to be returned, and such amount is not promptly deposited into the Settlement Fund by others, then, at the election of Plaintiffs, the parties to the Southern District Action shall jointly move the Court to vacate and set aside the Releases given and the Judgment entered in favor of Defendants and the Released Defendants' Persons or the Released Plaintiffs' Persons pursuant to this Stipulation, in which event the Releases and Judgment shall be null and

void, and the Parties shall be restored to their respective positions in the litigation as provided in paragraph 25 above and any cash amounts in the Escrow Account (less any Taxes paid, due, or owing with respect to any interest earned on the Settlement Amount while on deposit in the Escrow Account) shall be returned as provided in paragraph 25 above.

33. The Settling Parties intend this Stipulation and the Settlement to be a final and complete resolution of all disputes asserted or which could be asserted by Plaintiffs against the Released Defendants' Persons with respect to the Released Plaintiffs' Claims. Each of the Settling Parties agree that, throughout the course of the Actions, all parties and their counsel each complied fully with the strictures of Rule 11 of the Federal Rules of Civil Procedure, and all similar state law provisions, including without limitation Ohio Civ.R. 11, and no Settling Party shall assert any claims of any violation of Rule 11 of the Federal Rules of Civil Procedure, or any similar state law provisions, including without limitation Ohio Civ.R. 11, relating to the institution, prosecution, defense, or settlement of the Actions.

34. The Settling Parties agree that the Settlement consideration and the other terms of the Settlement were negotiated at arm's length and in good faith by the Settling Parties, including through a mediation process supervised and conducted by the Mediator, and reflect the Settlement that was reached voluntarily after extensive negotiations and consultation with experienced legal counsel, who were fully competent to assess the strengths and weaknesses of their respective clients' claims or defenses.

35. Defendants, the Company, the SLC, and their respective counsel, shall not make any public statement (whether or not for attribution) that the Actions were commenced or prosecuted in bad faith, nor will they deny that the Actions were commenced and prosecuted in good faith and are being settled voluntarily after consultation with competent legal counsel.

Plaintiffs, Defendants, the Company, and the SLC and their respective counsel shall not suggest that the Settlement constitutes an admission of any claim or defense alleged.

36. The Settling Parties and their respective counsel shall not issue any press release regarding the proposed Settlement until agreed to by all Settling Parties. Any description of the proposed Settlement by any Party or their counsel on any public website shall be consistent with the Stipulation and Exhibit A.

37. Nothing in this Agreement shall be construed to limit the Company's ability to make such disclosures regarding the Settlement as it believes are required or advisable under the securities laws and disclosure requirements applicable to the Company.

38. The terms of the Settlement, as reflected in this Stipulation, may not be modified or amended, nor may any of its provisions be waived except by a writing signed on behalf of each of the Settling Parties (or their successors-in-interest).

39. The headings herein are used for the purpose of convenience only and are not meant to have legal effect.

40. The administration and consummation of the Settlement as embodied in this Stipulation shall be under the authority of the Court, and the Court shall retain jurisdiction for the purpose of: (a) entering orders providing for awards of attorneys' fees and litigation expenses to Plaintiffs' Counsel and (b) enforcing the terms of this Stipulation.

41. The waiver by one Settling Party of any breach of this Stipulation by any other Settling Party shall not be deemed a waiver of any other prior or subsequent breach of this Stipulation.

42. This Stipulation and its exhibits constitute the entire agreement among the Settling Parties concerning the Settlement and this Stipulation and its exhibits. All Settling Parties

acknowledge that no other agreements, representations, warranties, or inducements have been made by any Settling Party concerning this Stipulation and its exhibits other than those contained and memorialized in such documents.

43. This Stipulation may be executed in one or more counterparts, including by signature transmitted via facsimile, or by a .pdf/.tif image of the signature transmitted via email. All executed counterparts and each of them shall be deemed to be one and the same instrument.

44. This Stipulation shall be binding upon and inure to the benefit of the successors and assigns of the Settling Parties, including any and all Released Persons and any corporation, partnership, or other entity into or with which any Settling Party may merge, consolidate, or reorganize.

45. The construction, interpretation, operation, effect and validity of this Stipulation, and all documents necessary to effectuate it shall be governed by the internal laws of the State of Ohio without regard to conflicts of laws, except to the extent that federal law requires that federal law govern.

46. Any action arising under or to enforce this Stipulation or any portion thereof, shall be commenced and maintained only in the Court.

47. This Stipulation shall not be construed more strictly against one Settling Party than another merely by virtue of the fact that it, or any part of it, may have been prepared by counsel for one of the Settling Parties, it being recognized that it is the result of arm's-length negotiations between the Settling Parties and all Settling Parties have contributed substantially and materially to the preparation of this Stipulation.

48. All counsel and any other person executing this Stipulation and any of the exhibits hereto, or any related Settlement documents, warrant and represent that they have the full authority

to do so and that they have the authority to take appropriate action required or permitted to be taken pursuant to the Stipulation to effectuate its terms.

49. The Settling Parties agree to cooperate fully with one another in seeking Court approval of the Preliminary Approval Order and the Settlement, as embodied in this Stipulation, and to use best efforts to promptly agree upon and execute all such other documentation as may be reasonably required to obtain final approval by the Court of the Settlement. The Settling Parties further agree that, pending final approval of the Settlement, they shall not prosecute any of the Actions and agree to oppose any such prosecution by any non-Settling Party. The Settling Parties agree to work collaboratively and in good faith if any joint motion for a stay is denied while any other deadline is approaching or coming due, including but not limited to an agreement to continue or reschedule depositions unless expressly prohibited by judicial order and to seek appellate relief as needed.

50. If any Settling Party is required to give notice to another Settling Party under this Stipulation, such notice shall be in writing and shall be deemed to have been duly given upon receipt of hand delivery or facsimile or email transmission, with confirmation of receipt. Notice shall be provided as follows:

If to Plaintiffs or Plaintiffs' Counsel: Bernstein Litowitz Berger & Grossmann LLP
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Facsimile: (212) 554-1444
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Saxena White P.A.
Attn: Thomas Curry
1000 N. West Street, Suite 1200
Wilmington, DE 19801
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Cohen Milstein Sellers
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Attn: Steven J. Toll
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Johnson Fistel, LLP
Attn: Michael I. Fistel, Jr., Esq.
40 Powder Springs Street
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Facsimile: (770) 200-3101
Email: MichaelF@johnsonfistel.com

Connick Law, LLC
Attn: Thomas J. Connick, Esq.
25550 Chagrin Blvd., Suite 101
Beachwood, OH 364-0512
Telephone: (216) 364-0512
Facsimile: (216) 609-3446
Email: tconnick@connicklawllc.com

If to the SLC or the Company:

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If to Defendants Michael J. Anderson, Steven J. Demetriou, Julia L. Johnson, Donald T. Misheff, Thomas N. Mitchell, James F. O'Neil III, Christopher D. Pappas, Sandra Pianalto, Luis A.

JONES DAY
Attn: Geoffrey J. Ritts
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If to Defendant Charles E. Jones	BAKER & HOSTETLER LLP Attn: Daniel R. Warren Key Tower 127 Public Square, Suite 2000 Cleveland, OH 44114-1214 Telephone: (216) 621-0200 Facsimile: (216) 696-0740 Email: dwarren@bakerlaw.com GIBSON, DUNN & CRUTCHER LLP Attn: William S. Scherman 1050 Connecticut Avenue, N.W. Washington, D.C. 20036-5306 Telephone: (202) 955-8500 Facsimile: (202) 467-0539 Email: wscherman@gibsondunn.com
If to Defendant Michael J. Dowling	TUCKER ELLIS LLP Attn: John F. McCaffrey John A. Favret 950 Main Avenue, Suite 1100 Cleveland, OH 44113 Telephone: (216) 592-5000 Facsimile: (216) 592-5009 Email: john.mccaffrey@tuckerellis.com
If to Defendant Ebony Yeboah-Amankwah	SKADDEN, ARPS, SLATE, MEAGHER, FLOM, LLP Attn: Marcella L. Lape 155 N. Upper Wacker Drive Chicago, IL 60606-1720 Telephone: (312) 407-0700 Facsimile: (312) 407-0411

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If to Defendant Robert P. Reffner

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If to Defendant James F. Pearson

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If to Defendant Dennis M. Chack

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If to Defendant Eileen Mikkelsen

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If to Defendant Justin Biltz

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51. Except as otherwise provided herein, each Settling Party shall bear its own costs.

52. Whether or not the Stipulation is approved by the Court and whether or not the Stipulation is consummated, or the Effective Date occurs, the Settling Parties and their counsel shall use their best efforts to keep all negotiations, discussions, acts performed, agreements, drafts, documents signed, and proceedings in connection with the Stipulation confidential.

53. Subject to applicable Court rules, all agreements made and orders entered during the course of the Actions relating to the confidentiality of information shall survive this Settlement.

IN WITNESS WHEREOF, the Settling Parties have caused this Stipulation to be executed, by their duly authorized attorneys, as of March 11, 2022.

[Signatures on Next Page]

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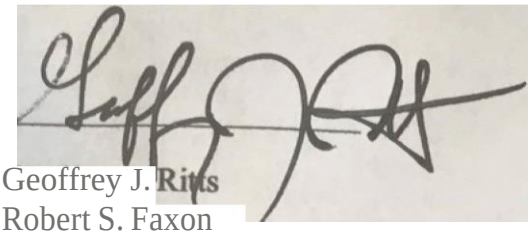
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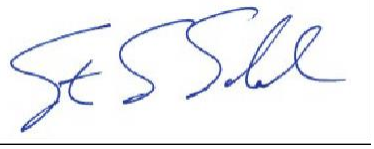
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EXHIBIT A

Exhibit A: Corporate Governance Reforms

1. Six directors who have been on the Board a minimum of five years will not stand for re-election in 2022. On February 11, 2022, the Company issued a Form 8-K announcing the Board changes.

2. The Board shall implement a process to review the current c-suite executives. This process shall be commenced within 30 days after the next annual meeting by the newly constituted Board. The review must be completed no more than 90 days after the commencement date. The review shall be conducted by a special committee consisting of independent directors who joined the Board on or after 2019 and will include at least three members. The special committee will have the power to retain, at the Company's expense, outside advisors if the special committee deems outside advisors necessary. After conducting its review, the special committee will make a recommendation to the full Board, which retains the authority to make the final determinations in executive session, outside the presence of any Company officers.

3. The full Board shall take responsibility for actively overseeing FirstEnergy's lobbying, political contributions, and political activities as a critical aspect of FirstEnergy's business.

- On an annual basis, management shall prepare a political and lobbying action plan, covering all such activities on behalf of FirstEnergy on a state and federal level ("Political and Lobbying Action Plan").

- The Company shall, consistent with the process set forth in Ohio Revised Code Section 1701.11, make the following amendments to FirstEnergy's Code of Regulations:

    - The "Directors" section of FirstEnergy's Code of Regulations shall be amended to add the following language: "<u>All directors and the full Board have responsibility to actively oversee FirstEnergy's lobbying, political contributions, and political activities.</u>"

    - The "Directors" section of the FirstEnergy's Code of Regulations shall be amended to add the following language, "<u>The full Board shall review and approve a political and lobbying action plan prepared annually by management, covering all such activities on behalf of FirstEnergy on a state and federal level ("Political and Lobbying Action Plan").</u>"

- Within 10 business days after the May 2022 annual meeting the Corporate Governance and Corporate Responsibility Committee of the Board shall be reconstituted to consist of a majority of independent directors who joined the Board in 2019 or later. The

reconstituted Corporate Governance and Corporate Responsibility Committee shall oversee management's implementation of the Political and Lobbying Action Plan.

- The reconstituted Corporate Governance and Corporate Responsibility Committee agrees to change its name to include "Political Oversight."

- The Corporate Governance and Corporate Responsibility Committee shall amend its charter to add the following language:

    - The "Purpose" section of the Corporate Governance and Corporate Responsibility Committee's charter shall be amended to add the underlined language: The purpose of the Corporate Governance and Corporate Responsibility Committee (the "Committee") of the Board of Directors (the "Board") of FirstEnergy Corp. (the "Company") is to carry out the responsibilities delegated by the Board relating to the Company's director nominations process, the Company's corporate governance policies and oversight of the Company's policies and practices relating to corporate responsibility, including a particularized focus on enhancing oversight of lobbying, political contributions, and political activities, among other issues. <u>While certain aspects of oversight have been delegated to the Committee (including oversight over management's implementation of</u> the Political and Lobbying Action Plan<u>), the full Board has responsibility to actively oversee FirstEnergy's lobbying, political contributions, and political activities.</u>

- The Charter of the Corporate Governance and Corporate Responsibility Committee shall be further amended to include the following:

    - The Chief Legal Officer and Chief Ethics & Compliance Officer shall have direct access to the Corporate Governance and Corporate Responsibility Committee.

    - The Chief Legal Officer and Chief Ethics & Compliance Officer, together with senior executives directly responsible for implementing the Political and Lobbying Action Plan, shall report to the Corporate Governance and Corporate Responsibility Committee on a quarterly basis.

    - The Corporate Governance and Corporate Responsibility Committee shall report its findings to the full Board on a quarterly basis.

    - The Corporate Governance and Corporate Responsibility Committee shall retain (and the Company shall pay for) an independent third party to audit the implementation of the Board-approved Political and Lobbying Action Plan.

The independent third party shall continue to conduct annual audits of management's implementation of the Board-approved Political and Lobbying Action Plan to ensure compliance. Violation or instances of non-compliance with the Board-approved Political and Lobbying Action Plan will immediately be reported to the full Board for immediate investigation/remediation overseen by the Political Oversight Committee. The independent third party engaged to perform this audit shall not simultaneously be serving as the Company's financial auditor or as a consultant to the Compensation Committee.

4. The Board shall provide enhanced disclosure to shareholders of FirstEnergy's lobbying, political contributions, and political activities. These enhanced disclosures shall include:

- The proxy statement for each year of the duration of this Settlement shall include a section titled "Transparency in Corporate Contributions" that shall list all payments, if any, made in the previous year to entities incorporated under 26 U.S.C. § 501(c)(4) ("501(c)(4)" entities) and (2) all payments, if any, made in the previous year to entities known by FirstEnergy to be operating for the benefit of a public official, either directly or indirectly. The list shall include the following information: the entity's name and address, date of contribution, amount of contribution, and purpose of contribution.

- The annual proxy statement shall also include a report from the third-party auditor of the Board-approved Political and Lobbying Action Plan disclosing the number of violations and issues of non-compliance with the law or the Board-approved Political and Lobbying Action Plan, if any, and the date(s) each issue was reported to the full Board.

5. The Board shall further align financial incentives of senior executives with proactively complying with legal and ethical obligations.

- A majority of the Compensation Committee shall consist of directors who joined the Board in 2019 or later. The Company agrees to reconstitute the Compensation Committee to meet these requirements within 10 business days of the May 2022 annual meeting .

- The Compensation Committee shall review its clawback policy for senior executive compensation and implement any enhancements necessary to ensure the below requirements are met. The clawback policy, and any enhancements, will be described in the Company's proxy.

    - The Compensation Committee shall be authorized to review alleged misconduct and determine whether a clawback of compensation is

appropriate.

- The clawback policy shall be incorporated into all agreements with senior executives concerning the senior executives' compensation.

- The clawback system shall apply to stock-based compensation and bonuses, and shall not apply to an employee's base salary.

- The clawback system shall include an arbitration provision in case of a dispute.

6. Unless otherwise specified, each of the provisions of this exhibit shall remain binding on the Company for no less than five (5) years following the Settlement's Effective Date. If the Company is acquired during the five-year period, then all terms will remain in effect for at least twenty-four (24) months after the Company's acquisition.

EXHIBIT 4

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

EMPLOYEES RETIREMENT SYSTEM OF THE CITY OF ST. LOUIS, *et al.*, Plaintiffs, v. CHARLES E. JONES, *et al.*, Defendants, and FIRSTENERGY CORP., Nominal Defendant.	Case No. 2:20-cv-04813-ALM-KAJ Chief Judge Algenon L. Marbley Magistrate Judge Kimberly A. Jolson

DECLARATION OF PROFESSOR JEFFREY N. GORDON

INTRODUCTION

1. This declaration sets forth my analysis of the Corporate Governance Reforms (the "Reforms") in connection with a prospective settlement of the above-captioned litigation (the "Settlement").[1] My opinion is that the Reforms, which principally strengthen the Board's responsibility and accountability for political engagement by FirstEnergy, will significantly reduce the likelihood of a recurrence of the corrupt conduct identified in the criminal proceedings that preceded this litigation. That conduct severely damaged FirstEnergy, its shareholders, and the

[1] This declaration supplements my Declaration dated March 8, 2022, submitted in connection with Plaintiffs Unopposed Motion for Preliminary Settlement Approval (Dkt. No. 170).

public. Thus, the Reforms, which directly address the areas of misconduct and lack of Board oversight underlying the allegations of the Complaint in this case, provide significant value for the Company and its shareholders as well as the public.

2. I was retained by Plaintiffs early in the litigation to evaluate FirstEnergy's corporate governance structure and recommended specific areas for remediation. This declaration presents my assessment of the Reforms in connection with the Court's review of the Settlement.

QUALIFICATIONS

3. I am the Richard Paul Richman Professor of Law at Columbia University Law School, Co-Director of the Millstein Center for Global Markets and Corporate Ownership, Co-Director of the Richman Center for Business, Law, and Public Policy, and Co-Director of the Columbia Center for Law and Economic Studies. I am also a Fellow of the European Corporate Governance Institute. I have been a law professor for forty years, starting at NYU Law School in 1982 and moving to Columbia in 1988. In the fall of 2002, I was the Bruce W. Nichols Visiting Professor of Law at Harvard Law School. Most of my teaching and scholarship have been in the corporate and securities areas, broadly defined. I have become a specialist in corporate law (including the fiduciary duties of boards and directors), corporate governance, corporate finance, and mergers and acquisitions. I have taught Corporations or Advanced Corporate Law: Mergers and Acquisitions on a yearly basis throughout my career. Recently, I have regularly taught courses that focus on various aspects of corporate governance. I also regularly participate in continuing legal education panels on corporate law and governance and mergers and acquisitions topics. Further professional background is provided by my c.v., attached as Exhibit 1 hereto.

4. Of particular relevance to the opinions I express in this declaration, I have written extensively on the board's role in corporate governance. My article on the role of boards and

independent directors in corporate governance, *The Rise of Independent Directors in the United States: 1950-2005*, 59 Stan. L. Rev. 1465 (2007), was selected by a vote of business law academics as one of the ten (10) best articles on business law published in the United States during 2007 and was awarded the European Corporate Governance Institute's Egon Zehnder International Prize for the best working paper in 2007 on company boards and their role in corporate governance. Another much-discussed article directly addressed the responsibility of the Enron board in that company's collapse, *Governance Failures of the Enron Board and the New Information Order of Sarbanes-Oxley*, 35 U. Conn. L. Rev. 1125 (2003) (symposium issue). A more recent article, *Board 3.0: An Introduction*, 74 The Business Lawyer 351 (2019) (with Ronald Gilson), was selected as one the best articles published in The Business Lawyer (the flagship journal of the ABA's Business Law Section) over its first 75 years.

5. My article calling for board responsibility in reviewing and approving disclosures relating to executive compensation was cited by the Securities and Exchange Commission ("SEC") in connection with its own similar rule, *Executive Compensation: If There is a Problem, What's the Remedy? The Case for "Compensation Discussion and Analysis,"* 30 J. Corp. Law 675 (2005). An article on the governance role of controlling shareholders, *Controlling Controlling Shareholders*, 152 U. Penn. L. Rev. 785 (2003) (with Ronald J. Gilson), also selected as a "top ten" article, has been cited and relied upon several times by the Delaware Chancery Court. Other articles addressing other corporate law issues have also been cited by the Delaware Chancery Court. I am the co-editor of the OXFORD HANDBOOK OF CORPORATE LAW AND GOVERNANCE (2018) (with Georg Ringe) that provides an overview of the entire field. I am also a co-author of THE LAW AND FINANCE OF CORPORATE ACQUISITIONS, 3d edition (in preparation) (with Ronald J. Gilson, Bernard S. Black, and Charles Whitehead), a leading casebook in the mergers and

acquisitions field, which extensively describes the standards of board behavior in business decision-making.

6. More recently I have addressed more specifically the role of the board in assuring compliance by a company with its legal obligation, including the possible role of a "compliance committee" of the board, in two articles, *Taking Compliance Seriously*, 37 Yale J. Regulation 1 (2020) (with John Armour and Geeyoung Min), and *Board Compliance*, 104 Minn. L. Rev 1191 (2020) (with John Armour, Brandon Garrett, and Geeyoung Min).

7. On a number of occasions I have been retained by agencies of the United States government (namely, the office of the U.S. Attorney for the Southern District of New York, the office of the U.S. Attorney for the Eastern District of New York, the SEC, the Board of Governors of the Federal Reserve System and the Internal Revenue Service) to serve as an expert witness in pending criminal and civil litigation, involving various matters of corporate and securities law, including but not limited to various questions of corporate governance, board behavior, controlling shareholder responsibilities, corporate structure, and finance. In all cases where I was called upon to testify or submit an affidavit, and where the court permitted expert testimony, I have been accepted as an expert.

8. I have also submitted affidavits as a corporate governance expert in recent settlements of shareholder derivative suits in connection with stock option backdating, disclosure issues, and alleged fiduciary duty issues.

UNDERLYING LITIGATION

9. This derivative litigation follows a federal criminal prosecution of FirstEnergy for bribery and political corruption in connection with FirstEnergy funds directed by FirstEnergy officers to conduit political organizations run by an Ohio legislator and as a direct bribe to the

chairman of the Ohio Public Utilities Commission. The conduct led to a federal criminal investigation and indictment, a Deferred Prosecution Agreement with the U.S. Department of Justice, and the payment of a $230 million fine. The case herein represents the consolidation of several shareholder derivative actions pending in the Southern and Northern Districts of Ohio alleging breach of fiduciary duties and violations of the federal securities laws by current and former officers and directors of FirstEnergy.[2] Defendants filed motions to dismiss that were denied in their entirety by both courts, after which the parties engaged in discovery until the case settled as a result of mediation. Also pending is a separate class action litigation on behalf of purchasers of FirstEnergy securities, alleging violation of the antifraud protections of the federal securities law as well as a class action alleging violations of federal and state anti-racketeering laws. Those direct actions are not covered by this settlement of derivative claims.

10. In connection with preparing this Declaration and my analysis of the Reforms, I reviewed the Consolidated Complaint in the matter herein, the Deferred Prosecution Agreement in *U.S. v. FirstEnergy Corp* (filed July 22, 2021) ("the DPA"), and various public filings by FirstEnergy. The Complaint and the Information attached to the DPA provide detailed allegations of (i) participation by FirstEnergy's senior management in bribery and political corruption and (ii) failure to intervene by a Board that was either complicit in the misconduct or blind to its oversight duties with respect to the legal limits on the Company's political activities. For purposes of assessing the impact of the Reforms, I have assumed that these allegations are generally true.

[2] Also included in this settlement is a pending derivative action filed in Ohio state court captioned, *In re FirstEnergy Corp., Stockholder Derivative Litigation*, Case No. CV-2020-07-2107 (Ohio Ct. of Common Pleas, Summit County).

TARGETING THE FIRSTENERGY BOARD FOR GOVERNANCE REFORMS

11. One distinctive feature in the FirstEnergy case is the extent to which governance failures at the Board level played a role in the ability of senior managers to carry out their scheme of bribery and political corruption (the "Violations"). The close relationship between FirstEnergy and Ohio House Speaker Larry Householder was a matter of public record and concern, featured in newspaper reporting. The Board also surely knew of the Company's failing nuclear power plant, the efforts of the Company's officers to obtain a legislative bailout of the failed project, and also the Company's efforts to obtain rate relief from the Ohio Public Utilities Commission. Particularly in light of the outside auditor's expression of "substantial doubt of [the Company's] ability to continue as a going concern" in its review of the Company's 2016 financials, the progress of the proposed legislation and the potential regulatory rate relief would have commanded Board attention.

12. It was therefore "mission critical" for the Board to oversee the Company's legislative and regulatory engagements to safeguard compliance with the legal rules pertaining to corporate political contributions and lobbying activities and to protect the Company's reputation with the public, the legislature, and regulators. This oversight duty in respect of compliance with law -- which derives from the directors' bedrock duties of loyalty and care -- was particularly acknowledged in FirstEnergy's Code of Business Conduct and the charters of various Board committees.

13. In addition to internal sources of information about the Company's increased political spending and other political activity, the Board was repeatedly warned by shareholder groups of the legal and reputational risks associated with political spending and other political activity. The Company rejected shareholder initiatives requesting additional disclosure and

increased accountability for FirstEnergy's political and lobbying activities over a number of years. Notably, in the Company's 2017 proxy statement the Board represented that "[a]fter careful consideration" the Company "complies with all federal and state lobbying registration and disclosure requirements." Similarly, in 2018 the Board asserted that the Corporate Governance Committee "maintain[ed] an informed status with respect to the Company's practices relating to corporate political participation." Subsequent events clearly disprove these statements.

14. Over an extended period, the Board's response to (i) heightened financial stress that increased temptation, (ii) external evidence of increased political engagement and question-raising associations, and (iii) an increasing drumbeat of shareholder concern was to say, in effect, "all good; nothing to see here." Thus, it is important to shareholders that, in addition to substantial monetary relief, this settlement also produces significant governance reforms suitable for a public utility, which both has ongoing special relationships with government authorities and is constantly in the public eye.

15. Plaintiffs' counsel sought my advice at an early stage in the litigation to help them fashion corporate governance reforms that would be an integral part of any demand for governance improvements at FirstEnergy. The Reforms, embodied in Exhibit A to the Settlement Agreement, reflect quite meaningful changes to the corporate governance structure and compliance culture at FirstEnergy. They are a significant addition to the compliance measures set forth in the DPA. As I shall explain below, the Reforms work in several different ways to reduce significantly the risk of a recurrence of unlawful political contributions and an ensuing bribery scandal at First Energy and thus will produce significant improvement in shareholder welfare and protection for the Company and, consequently, improved shareholder wealth and enterprise value. I think they also

provide a model for how boards generally can assert a responsible oversight and monitoring role for political activity by corporations and management.

THE CORPORATE GOVERNANCE REFORMS

16. The parties reached a Settlement of all derivative litigation on March 11, 2022. The Settlement included the Reforms which consisted of five elements as follows[3]:

i. Board turnover and refreshment. The Reforms (¶ 1) call for replacement of those directors who were board members during the period of the Violations. This Reform was accomplished at the Company's annual meeting, held May 17, 2022, with the election of six new directors. The twelve-member Board now includes ten independent directors, eight of whom joined after the federal indictment and none of whom are named as defendants herein. This sweeping level of Board refreshment, which includes six directors replaced at the 2022 shareholders meeting, gives FirstEnergy a new and independent Board untethered to prior management and the events surrounding the Violations. In my experience it is unusual, even extraordinary, to see such wholesale board turnover in the settlement of derivative litigation, even where a DPA is involved. It is a very significant consequence of this litigation.

ii. Review of senior executives. The Reforms (¶ 2) call for a review of "C-suite" executives, including carryover executives from the period of the Violations. This review, to be conducted by a special committee of at least three independent directors added to the board after the Violations came to light and aided as necessary by outside advisors, will be charged with reporting to the full board within three months of the Settlement. (The Company filed an 8-K on June 15, 2022, announcing the formation of such a "Special Review Committee," consisting of six directors and expecting to report by mid-September 2022.) A prompt review of the C-suite

[3] Stipulation of Settlement dated March 11, 2022, Exhibit A.

executives by new and independent Board members is critical to determining whether any remaining senior executives were responsible for or involved in the misconduct. If the Company is to re-establish confidence with the public, regulators, and stockholders, it is important for the Board to demonstrate that it has the capacity to clean house of any remaining potentially culpable officers.

iii. The Board's taking on responsibility for "actively overseeing FirstEnergy's lobbying, political contributions, and political activities as a critical aspect of FirstEnergy's business". The Reforms (¶ 3) call for direct and active oversight by the board of all the Company's political engagements and would amend the Company's "regulations" (its by-laws) to this effect. The Reforms are not limited to aspirational language. Management is required to prepare a "Political and Lobbying Action Plan," which will be reviewed by a reconstituted "Corporate Governance and Corporate Responsibility Committee"; this Committee also has responsibility for specific oversight of the implementation of the Action Plan. But the Reforms also make clear (1) that "the full Board" has responsibility "to actively oversee FirstEnergy's lobbying, political contributions, and political activities" and 2) that such engagement is a "critical aspect" of the business.

To ensure that the Committee and the Board have adequate information about the Company's political engagements, the Reforms provide for direct access and reporting relationships by the Chief Legal Officer and Chief Ethics and Compliance Officer to the Committee, and an annual independent third-party audit of implementation of the Action Plan. The imposition of a third-party audit of this function provides an outside check on management's reporting and responsibilities in this area. The charter of the Company's "Corporate Governance, Corporate Responsibility and Political Oversight Committee" has already been amended to reflect these new responsibilities and practices.

iv. Enhanced public disclosure of "FirstEnergy's lobbying, political contributions, and political activities". The Reforms (¶ 4) call specifically for (1) disclosure of payments to §501(c)(4) entities (non-profits that frequently serve as opaque conduits for political contributions) and to all entities known by the Company to be operating for the benefit of a public official, and (2) disclosure of the auditor's report of violations and non-compliance with the Company's Political and Lobbying Action Plan. The DPA included a requirement that the Company publicly disclose the role that §501(c)(4) entities played in facilitating the Violations (See DPA ¶ 5.E.) and so greater transparency about future payments to such entities is certainly fitting.

v. Enhanced use of compensation structures to promote compliance by senior management with legal and ethical obligations. The Reforms (¶ 5) charge a newly reconstituted Compensation Committee with fashioning clawback provisions in senior executive employment contracts that would give this Committee power to determine whether a "clawback" of incentive pay (stock-based compensation or bonuses) is warranted in light of the officer's legal or ethical misconduct. Under the Reforms, these new contractual provisions should include an arbitration provision to resolve disputes.

vi. The Reforms will remain in effect for at least five years (or at least 2 years after an acquisition of the Company should one occur during that time frame). (¶ 6) This duration ensures that the reforms will stay in place for a significant length of time and neither the Board nor management will be able to revise these Reforms after the Settlement is approved. Such an extended period increases the chance that these measures become an enduring part of the Company's corporate governance culture. In particular, the Board's assumption of responsibility under the Reforms for direct oversight of the Company's political activity will become hard-wired into the Board's annual duties and a part of directors' expectations of board service at FirstEnergy.

ANALYSIS OF THE CORPORATE GOVERNANCE REFORMS

17. The corporate governance terms of the Settlement are designed to remedy four deficiencies in FirstEnergy's governance as alleged by Plaintiffs in this action and thus significantly reduce the recurrence risk of serious compliance failures:

i) *First*, forcing refreshment of a Board that seen even in a favorable light was excessively passive in the face of increasingly apparent legal and reputational risks;

(ii) *Second*, establishing Board responsibility and accountability for approving and monitoring the Company's overall political activities;

(iii) *Third*, establishing new and improved processes for overseeing the Company's compliance with political spending and lobbying laws and regulations; and

iv) *Fourth*, improving disclosure and transparency on the Company's future political contributions and lobbying activities.

The Corporation of course acts through its officers; these measures give the Board both specific responsibility and extra tools to hold management to account in the domain of the Company's political activities. Importantly, some of the Reforms negotiated in the Settlement have already been implemented or undertaken (prior to final approval of the Settlement), reflecting both the significance and urgency of the changes to the Company's governance.

18. In my view the focus on the Board's responsibility and accountability is quite significant. Commonly, boards want to avoid direct knowledge of and engagement with the corporation's political activity. These Reforms go in a different direction: First, the directors who served throughout the period of the Violations are made not to stand for reelection. Second, the Reforms specify and shape oversight duties, decisional responsibilities, and information flows that

will heighten responsibility and accountability for the directors. The potential exposure for directors includes both monetary liability and reputational risk, which is not insurable or indemnifiable.

Here is a more specific analysis of the Reforms.

19. *First*, the Reforms call for both a major refreshment of the FirstEnergy Board and a review of the current senior executive team. As specified in the Reforms (¶ 1), six directors who served during the period of the Violations did not stand for re-election at the May 2022 annual meeting, including directors who were "independent" under the applicable New York Stock Exchange Rules. As noted above, it is quite unusual, even extraordinary, to see such a wholesale turnover of the Board as part of the settlement of derivative litigation.[4] On rare occasion, a *regulator* insists on the departure of independent directors; the intervention of the Federal Reserve Board in the case of Wells Fargo comes to mind.[5] But board refreshment was not a condition for the DPA settlement with the Justice Department in this case. Rather, the board turnover here directly followed from the derivative ligation. The Reforms thus starkly demonstrate that directors can be

[4] The stickiness of independent director turnover is well-documented in the literature. See Stephen Ferris et al, *Derivative Lawsuits as a Corporate Governance Mechanism*, 42(1) J. FINANCIAL & QUANTITATIVE ANALYSIS 143, 159, 160 (2007) (low percentage of independent director turnover in response to meritorious derivative suit filing; on average, one director in the subsequent three year period); Eliezer M. Fich & Anil Shivdasani, *Financial Fraud, Director Reputation, and Shareholder Wealth*, 86 J. FINANCIAL ECONOMICS 306 (2007) (low turnover of outside directors even after financial fraud); Frederick Bereskin & Clifford Smith, *Mechanisms of Board Turnover: Evidence from Backdating*, 16(2) J. APPLIED CORPORATE FINANCE 65 (2014) (after discovery of stock option backdating only the chair of the compensation committee faced high turnover risk). See also Steven M. Davidoff, Andrew C.W. Lund & Robert Schonlau, *Do Outside Directors Face Labor Market Consequences? A Natural Experiment from the Financial Crisis*, 4 HARV. BUS. L. REV. 53 (2014) (own firm performance during financial crisis only trivially increases likelihood of director turnover, with less effect than a director's turning age 70, despite anecdotal and scholarly discussion of poor board performance).

[5] See Board of Governors Federal Reserve System, Press Release, "Responding to widespread consumer abuses and compliance breakdowns by Wells Fargo, Federal Reserve restricts Wells' growth until firm improves governance and controls. Concurrent with Fed action, Wells to replace three directors by April, one by year end" (Feb. 2, 2018).

held accountable for compliance oversight failures and sets such a precedent for FirstEnergy. This will be a powerful specific deterrent against a recurrence. This of course creates significant value for the shareholders.

20. The Company's Proxy Statement indicated (following the Reforms ¶ 2) that one of the first tasks of the newly reconstituted Board will be a review of the performance, prior knowledge, and possible involvement of the Company's current C-suite executives with respect to the Violations and be completed within 90 days. *See* Paragraph 15(ii). Per the Reforms, this inquiry may be supported by outside advisors if deemed necessary and will be funded by the Company. These immediate and possible future changes in personnel will distance the Company from the corporate culture that produced the Violations, serve as a deterrent to potential backsliding, and deliver a potent public signal of the Company's determination to restore its reputation with its shareholders and its regulators.

21. *Second*, the Reforms (¶ 3) call for the FirstEnergy Board to take ownership of the Company's political and lobbying activities rather than to leave this to management. This consists of three different measures. First, the Board is to receive a plan from management for the Company's political and lobbying activity on state and federal levels annually, a "Political and Lobbying Action Plan." The Board is responsible for review and approval of the Plan. Second, a Board committee is tasked with responsibility for oversight of management's implementation of the Plan. To facilitate that oversight and create a direct line of communication that cannot be obstructed by other executives or directors, the Chief Legal Officer and the Chief Ethics and Compliance Officer will have a protected channel to the designated Board committee and will report quarterly on implementation of the Plan. This committee will provide a report of its findings to the full Board on a quarterly basis. Third, an independent outside auditor (not the Company's

financial auditor nor the Compensation Committee consultant) will conduct an annual audit of implementation of the Plan, funded by the Company, and report directly to the Board to check for appropriate compliance.

22. *Third*, the Reforms (¶ 4) also call for "enhanced disclosure" to the shareholders of the Company's political and lobbying activities. Specifically, FirstEnergy's annual proxy statement will provide itemized disclosures of FirstEnergy's payments to (i) so-called §501(c)(4) public welfare organizations, which can serve as conduits to political activities; and (ii) all entities "known by FirstEnergy to be operating for the benefit of a public official, either directly or indirectly." The Company is also required to disclose in the annual proxy statement a report from the outside auditor on implementation of the Political and Lobbying Action Plan, including violations and issues of non-compliance and the date that each issue was reported to the Board.

23. Disclosure of the Company's political activity (Reforms ¶ 4) interacts with the Board's explicit undertaking (Reforms ¶ 3) to approve and oversee implementation of the Company's Political and Lobbying Action Plan. Shareholders gain new knowledge of the Company's political activities, and the proxy machinery brings a new level of Board accountability to shareholders for these activities.

24. *Fourth*, the Reforms seek to build and reinforce a compliance culture through compensation arrangements with senior executives, in two distinct ways. (¶ 5) First, the Board is charged with devising pay and performance metrics that align with and provide incentives for the Company's legal and ethical obligations. Second, the Compensation Committee is charged with reviewing and as appropriate enhancing the clawback system for senior executives so that the Committee can "review alleged misconduct and determine" whether a clawback of incentive-based

compensation is appropriate. This is a double-barreled approach: incentives at the front end; potential penalties for wrongful behavior at the backend.[6]

25. Investor-owned public utilities will inevitably be entangled with the legislative and regulatory process. It seems inherent in the business model. But pursuing these relationships in a lawful and ethical way is of first order importance. More than most enterprises, a public utility depends upon its "social license" for continuous and profitable operation. It's easy for a Board to leave sometimes ticklish matters to management and adopt a "don't ask; don't tell" attitude. The Reforms break from this approach. They require the Board to say, "It's on us to approve the Company's Political and Lobbying Action Plan and then to monitor its implementation and adherence to the Plan." Moreover, the Reforms require third-party vetting and significant new disclosure all in the Company's proxy statement. The shareholders and other parties can respond on the basis of the disclosure.

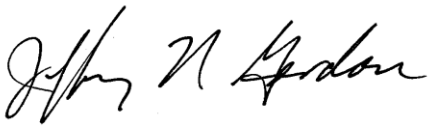
26. The combination is both responsibility-taking by the Board and accountability-enabling.

27. In short, the Reforms entail not only a makeover of the Board and further review of C-suite executives, but many innovations in the Board's role in shaping and overseeing the Company's political and lobbying activities beneficial to the Company and shareholders. Accordingly, the Reforms should deliver significant assurance to FirstEnergy shareholders and regulators against a recurrence of the conduct that led to a criminal investigation, a Deferred Prosecution Agreement, the payment of a $230 million fine, liability in numerous civil suits and class actions, and the significant and material loss in shareholder value when the federal indictment

[6] See John Armour, Jeffrey Gordon, Geeyoung Min, *Taking Compliance Seriously*, 37 YALE J. REGULATION 1 (2020) (discussing design of compensation incentives).

was announced. In that way the Reforms will significantly improve shareholder welfare at FirstEnergy, enhance enterprise value, and also help to establish an improved template for Board responsibility-taking and accountability-enabling in the challenging area of the Company's political activity.

28. I declare under penalty of perjury that the foregoing is a true and correct statement of my opinion and the facts as I know them and that this declaration was executed this 7th day of July 2022.



Dated: July 7, 2022

Jeffrey N. Gordon

EXHIBIT 5

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

EMPLOYEES RETIREMENT SYSTEM OF THE CITY OF ST. LOUIS and ELECTRICAL WORKERS PENSION FUND, LOCAL 103, I.B.E.W., et al., Plaintiffs, v. CHARLES E. JONES, et al., Defendants, and FIRSTENERGY CORP., Nominal Defendant.	Case No. 2:20-cv-04813 Chief Judge Algenon L. Marbley Magistrate Judge Kimberly A. Jolson JURY TRIAL DEMANDED

DECLARATION OF LAYN R. PHILLIPS

I, LAYN R. PHILLIPS, declare:

1. I submit this declaration in my capacity as the independent mediator in the above-captioned shareholder derivative ("Action") and in connection with the proposed settlement of claims asserted in the Action (the "Settlement"), as well as the related shareholder derivative actions pending in the Northern District of Ohio ("Northern District Action") and Summit County Court of Common Pleas (the "State Court Action"). I make this declaration based on personal knowledge and am competent to so testify.

2. While the mediation process is confidential, the parties to the Settlement (the "Parties") have authorized me to inform the Court of the matters set forth. The confidentiality of the mediation process is critical, as it encourages full candor in disclosures to the mediator, including in written submissions. My statements and those of the Parties during the mediation

process are subject to a confidentiality agreement and Federal Rule of Evidence 408, and there is no intention on either my part or the Parties' part to waive the agreement or the protections of Rule 408.

I. BACKGROUND AND QUALIFICATIONS

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

4. I earned my Bachelor of Science in Economics as well as my J.D. from the University of Tulsa. I also completed two years of L.L.M. work at Georgetown University Law Center in the area of economic regulation of industry. After serving as an antitrust prosecutor and an Assistant United States Attorney in Los Angeles, California, I was nominated by President Reagan to serve as a United States Attorney in Oklahoma, where I served for approximately four years. Thereafter, I was nominated by President Reagan to serve as a United States District Judge for the Western District of Oklahoma. While on the bench, I presided over more than 140 federal trials and sat by designation in the United States Court of Appeals for the Tenth Circuit. I also presided over cases in Texas, New Mexico, and Colorado.

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

6. Over the past 26 years, I have served as a mediator and arbitrator in connection with numerous large, complex cases, including securities cases such as this one.

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

7. On February 1, 2021, counsel for Plaintiffs, Defendants, and other interested parties participated in a full-day mediation session before me using the Zoom videoconferencing platform. The participants included: (i) attorneys from Bernstein Litowitz Berger & Grossmann LLP; Saxena White P.A.; Cohen Milstein Sellers & Toll PLLC; Edelson Lechtzin LLP; Rosca Scarlato LLC; Johnson Fistel, LLP; Connick Law, LLC; and Law office of George W. Cochran (ii) attorneys from Debevoise & Plimpton LLP, counsel for the Special Litigation Committee and Nominal Defendant FirstEnergy; (iii) the members of the Special Litigation Committee ("SLC") of the board of directors of FirstEnergy; (iv) attorneys from Jones Day, Baker & Hostetler LLP, Tucker Ellis LLP, Skadden, Arps, Slate, Meagher & Flom, McDermott, Will & Emery, LLP, Ballard Spahr LLP, Morgan, Lewis & Bockius, Boies Schiller Flexner LLP, and Walter Haverfield, counsel for the Individual Defendants; and (v) representatives of Defendants' insurance carriers.

8. In advance of this mediation session, the Parties exchanged and submitted detailed submissions, including thorough opening and reply mediation statements. Prior to the mediation, I engaged in telephonic discussions with Plaintiffs, Defendants, and the Company's insurers. It is my understanding that the Parties also engaged in discussions among themselves, including negotiations between the Plaintiffs and the SLC. The Parties further responded to detailed, hard-hitting questions from my team. The work that went into the mediation submissions and the discussions preceding the mediation was substantial.

9. During the mediation session, I engaged in extensive discussions with counsel on

both sides in an effort to find common ground between the Parties' respective positions. During these discussions, I challenged each side separately to address the weaknesses in each of their positions and arguments. In addition to vigorously arguing their respective positions, the Parties exchanged multiple rounds of settlement demands and offers.

10. During the mediation session, the Parties were not able to reach any agreement despite multiple rounds of settlement demands and offers having been exchanged, and extensive negotiations concerning the corporate governance reforms, including negotiations directly between a representative of the SLC and counsel for Plaintiffs.

11. Several days of intense negotiations followed. These negotiations concerned both the monetary component of the settlement, as well as the corporate governance reforms. The Parties subsequently reached an agreement in principle on the monetary and governance reforms terms of the settlement, and the Parties documented their agreement in a term sheet that was executed on February 9, 2022 (the "Term Sheet"). This Term Sheet was subsequently filed publicly as an attachment to FirstEnergy's Form 8-K dated February 10, 2022.

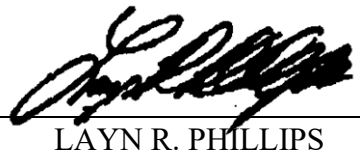
12. The mediation process was an extremely hard-fought negotiation from beginning to end and was conducted by experienced and able counsel on both sides. Throughout the mediation process, the negotiations between the Parties were vigorous and conducted at arm's-length and in good faith. Because the Parties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

III. CONCLUSION

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

14. Lastly, the advocacy on both sides of the case was excellent. All counsel displayed the highest level of professionalism in zealously and capably representing their respective clients.

15. I declare under penalty of perjury that the foregoing facts are true and correct and that this declaration was executed this 8th day of March, 2022.



LAYN R. PHILLIPS
Former U.S. District Judge

EXHIBIT 6

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

EMPLOYEES RETIREMENT SYSTEM OF THE CITY OF ST. LOUIS, *et al.*, Plaintiffs, v. CHARLES E. JONES, *et al.*, Defendants, and FIRSTENERGY CORP., Nominal Defendant.	Case No. 2:20-cv-04813 Chief Judge Algenon L. Marbley Magistrate Judge Kimberly A. Jolson

DECLARATION OF JEROEN VAN KWAWEGEN FILED ON BEHALF OF BERNSTEIN LITOWITZ BERGER AND GROSSMANN LLP IN SUPPORT OF PLAINTIFFS' MOTION FOR FINAL APPROVAL OF SETTLEMENT, AN AWARD OF ATTORNEYS' FEES AND EXPENSES, AND PLAINTIFF SERVICE AWARDS

I, Jeroen van Kwawegen, declare as follows:

1. I am a Partner at Bernstein Litowitz Berger and Grossmann LLP ("Bernstein Litowitz"), Court-appointed Co-Lead Counsel in the above-captioned shareholder derivative action (the "Action"). I submit this Declaration in support of Plaintiffs' Motion for Final Approval of Settlement, an Award of Attorneys' Fees and Expenses, and Plaintiff Service Awards. I have knowledge of the matters set forth herein based on personal knowledge, my review of the firm's records, and consultation with other firm personnel.

2. My firm, as Co-Lead Counsel for Lead Plaintiffs in the Action and counsel of record for Co-Lead Plaintiff Electrical Workers Pension Fund, Local 103, I.B.E.W. ("Local 103"),

was involved in all aspects of the prosecution and resolution of the Action,[1] as set forth in the Joint Declaration of Jeroen van Kwawegen and Thomas Curry in Support of Plaintiffs' Motion for Final Approval of Settlement, an Award of Attorneys' Fees and Expenses, and Plaintiff Service Awards.

3. The information in this Declaration regarding the firm's time, including in the schedule attached hereto as Exhibit 1, was prepared from daily time records regularly prepared and maintained by my firm in the ordinary course of business. I am the Partner who oversaw my firm's activities in the litigation, and I, together with attorneys working under my direction, reviewed my firm's daily time records to confirm their accuracy. The purpose of this review was to confirm both the accuracy of the entries in the time records as well as the necessity for, and reasonableness of, the time and expenses committed to the Action. As a result of this review, reductions were made to both time and expenses in the exercise of counsel's judgment. Based on this review and the adjustments made, I believe that the time reflected in the firm's lodestar calculation and the litigation expenses for which payment is sought are reasonable and were necessary for the effective and efficient prosecution and resolution of the Action.

4. The total number of hours expended on this Action by my firm's attorneys and professional support staff employees from its inception through March 11, 2022 was 6,330.25. The total resulting lodestar for my firm is $3,429,368.75. The schedule attached hereto as Exhibit

[1] The total number of hours expended by Bernstein Litowitz in this litigation also includes time the firm spent litigating *Miller v. Anderson et al.*, Case No. 5:20-cv-01743 (N.D. Ohio) (the "Northern District Action"). Bernstein Litowitz and its co-counsel intervened in the Northern District Action, which involved "substantively identical" claims as those in the Action, to protect the claims of the Company and its shareholders. *Miller v. Anderson*, Case No. 5:20-cv-01743, 2021 WL 4220780 (N.D. Ohio Sept. 16, 2021). The Court in the Northern District of Ohio granted intervention and denied Defendants' motion to dismiss, and this Action and the Northern District Action then proceeded on parallel discovery tracks. Litigating the Northern District Action was necessary to achieve the final resolution of this litigation (and the Settlement here includes the Northern District Action), and thus the firm's time spent on that matter is included here.

1 is a detailed summary reflecting the amount of time spent by each attorney and professional support staff employee of my firm who was involved in the Action, and the lodestar calculation based on my firm's current hourly rates. Different timekeepers within the same employment category (*e.g.*, partners, associates, paralegals, etc.) may have different rates based on a variety of factors, including years of practice, years at the firm, years in the current position (*e.g.*, years as a partner), relevant experience, relative expertise, and the rates of similarly experienced peers at our firm or other firms. For personnel who are no longer employed by my firm, the lodestar calculation is based upon the rate for that person in his or her final year of employment with my firm.

5. Set forth in Exhibit 2 attached hereto is a description of the services rendered by each professional for whom fees are requested and who committed at least ten hours of work to the prosecution of the Action.

6. The qualifications and backgrounds of the attorneys identified in the previous paragraph may be found in my firms' resume, which is attached hereto as Exhibit 4.

7. The hourly rates by Bernstein Litowitz are reasonable for several reasons. *First*, the rates by Bernstein Litowitz are its customary hourly rates.

8. *Second*, the hourly rates by Bernstein Litowitz are reasonable in light of the firm's highly specialized skill and experience when it comes to litigating and settling shareholder derivative litigation. Bernstein Litowitz has extensive experience litigating shareholder derivative actions. Several examples include the following: *In re McKesson Corp. Deriv. Litig.*, C.A. No. 4:17-cv-1850-CW, ECF No. 231-1 (N.D. Cal.) (derivative litigation recovered $175 million and created substantial corporate-governance reforms to prevent a recurrence of company's inadequate legal compliance efforts concerning America's opioid crisis); *In re News Corp. S'holder Deriv. Litig.*, C.A. No. 6285-VCN (Del. Ch.) (derivative litigation recovered $139 million and enacted

significant corporate governance reforms to combat self-dealing by the company's board of directors); *City of Monroe Empl. Ret. Sys. v. Murdoch et. al.*, C.A. No. 2017-0833-AGB (Del. Ch.) ("Twenty-First Century Fox") (derivative litigation recovered $90 million and established historic, independent board-level council to ensure company employees are protected from workplace harassment); *In re Pfizer Inc. S'holder Derivative Litig.*, C.A. No. 1:09-cv-07822-JSR (S.D.N.Y.) (derivative litigation in which defendants agreed to create a new Regulatory and Compliance Committee of the company's board of directors to be supported by a dedicated $75 million fund).

9. *Third*, the hourly rates by Bernstein Litowitz are consistent with the rates for similar services by lawyers of reasonably comparable skill, experience, and national reputation. *See, e.g.*, *In re Snap Inc. Sec. Litig*., No. 2:17-cv-03679-SVW-AGR, 2021 WL 667590, at *4 (C.D. Cal. Feb. 18, 2021), *In re Snap Inc. Sec. Litig.*, No. 2:17-cv-03679-SVW-AGR, ECF No. 386-9, at PAGEID #:18483-18485 (approving fee award in securities fraud class action with hourly rates ranging from $780-$920 for partners, $390-$690 for associates, and $385 for staff attorneys); *In re BHP Billiton Ltd. Sec. Litig*., No. 1:16-cv-01445, 2019 WL 1577313, at *1 (S.D.N.Y. Apr. 10, 2019), *In re BHP Billiton Ltd. Sec. Litig*., No. 1:16-cv-01445, ECF No. 122-1 at 2 (approving fee award in securities fraud class action with hourly ranging from $790-$1030 for partners, $400-$550 for associates, and $375 for staff attorneys).

10. *Fourth*, the hourly rates for the Bernstein Litowitz attorneys and professional support staff employees included in Exhibit 1 are the same as, or comparable to, the rates submitted by my firm and accepted by courts across the country in other shareholder derivative cases or for the purpose of lodestar cross-checks in securities class action litigation. *See City of Miami Gen. Employees' & Sanitation Employees' Ret. Trust v. Foley*, C.A. No. 2020-0650-KSJM (Decl. Ch. June 21, 2022) ("*Fidelity Nat'l Fin., Inc.*"); *In re Frontier Commc'ns. S'holder Litig.*, No. 3:17-

cv-01617-VAB (D. Conn. May 20, 2022), ECF No. 214; *In re Merit Med. Sys., Inc. Sec. Litig.*, (C.D. Cal. Apr. 15, 2022), ECF No. 118. Numerous other courts have also approved Bernstein Litowitz's fees in prior years based on its then-current hourly rates. *See, e.g.*, *In re McKesson Corp. Deriv. Litig.*, No. 4:17-cv-1850-CW, ECF No. 231-1 (N.D. Cal. Apr. 22, 2020) (granting requested fee award based on Bernstein Litowitz's standard hourly rates); *City of Monroe Empl. Ret. Sys. v. Murdoch, et. al.*, C.A. No. 2017-0833-AGB (Del. Ch. Feb. 9, 2018) ("*Twenty-First Century Fox*") (granting requested fee award based on Bernstein Litowitz's standard hourly rates); *In re Pfizer Inc. S'holder Deriv. Litig.*, No. 1:09-cv-07822-JSR, (S.D.N.Y. May 2, 2011), ECF No. 127 (granting requested fee award based on Bernstein Litowitz's standard hourly rates).

11. *Fifth*, Bernstein Litowitz's implied hourly rate of $541.74, based on the firm's lodestar and total hours spent on this litigation, falls well within the range of those approved by courts in the Southern District of Ohio in shareholder derivative cases. *See Rudi v. Wexner*, No. 2:20-cv-3068, 2022 WL 1682297, at *5 (S.D. Ohio May 16, 2022) ("*L Brands*") (granting fee award with hourly rates of up to $1,685 for partners and $1,245 for associates), *L Brands*, 2:20-cv-03068, ECF No. 26-9 at PAGEID #: 1080; *In re Big Lots, Inc. S'holder Litig.*, No. 2:12-cv-00445, 2018 WL 11356561, at *5 (S.D. Ohio Aug. 28, 2018), *Big Lots*, No. 2:12-cv-00445, ECF No. 122-3 at PAGEID #: 2760 (approving hourly rates of up to $925 for partners and $650 for associates).

12. Based on records maintained by my firm, Bernstein Litowitz incurred a total of $172,818.10 in unreimbursed litigation expenses in connection with the prosecution and settlement of the Action. (Plaintiffs' Counsel are not seeking separate reimbursement for their unreimbursed litigation expenses in this matter, but instead are seeking an "all in" attorneys' fee as a percentage

of the total monetary recovery.) The firm's expenses are fully categorized in Exhibit 3 attached hereto.

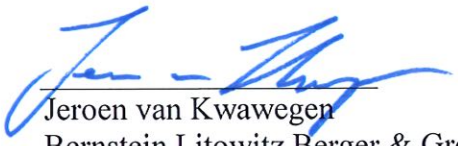
13. The litigation expenses incurred in this Action are reflected in the books and records of Bernstein Litowitz, which are regularly prepared and maintained in the ordinary course of business. These records are prepared from expense vouchers, check records, and other source materials and are an accurate record of the expenses incurred. These expenses were reasonably necessary in the prosecution of the Action. Courts have typically found that these kinds of expenses are payable to counsel who create a benefit for shareholders.

14. My firm undertook this litigation on an entirely contingent basis and has not been paid for any of our work, nor have any of our costs or expenses been reimbursed. My firm undertook the litigation of the Action with the expectation that we would have to devote many hours of hard work to the prosecution of a case involving complex factual and legal issues without any guarantee of successful resolution or of compensation for their efforts. The prosecution of this Action involved the expenditure of significant resources, including the time spent by attorneys and professional staff, as well as the substantial expenses that were incurred during the litigation, while my firm received no compensation during the course of the litigation.

15. This Declaration provides the Court with time only through March 11, 2022 (the date that the Stipulation and Agreement of Settlement was signed). Accordingly, this Declaration does not encompass time incurred from March 12, 2022 through the present. Also, this Declaration does not include time spent preparing Plaintiffs' Motion for Final Approval of Settlement, an Award of Attorneys' Fees and Expenses, and Plaintiff Service Awards.

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

Executed this 7th day of July 2022, at New York, New York.



Jeroen van Kwawegen
Bernstein Litowitz Berger & Grossmann LLP

EXHIBIT 1

Employees Retirement System of the City of St. Louis, et al., v. Charles E. Jones, et al.
Case No. 2:20-cv-04813

BERNSTEIN LITOWITZ TIME REPORT

Inception through March 11, 2022

NAME	NUMBER OF HOURS	RATE	LODESTAR
PARTNER			
Jeroen van Kwawegen	393.25	$1,100	$432,575.00
Gerald Silk	93.00	$1,200	$111,600
Mark Lebovitch	16.50	$1,100	$18,150.00
Greg Varallo	24.25	$1,100	$26,675.00
Avi Josefson	37.25	$1,100	$40,975.00
Scott Foglietta	88.00	$850	$74,800.00
SENIOR COUNSEL			
John Mills	77.25	$800	$61,800.00
ASSOCIATE			
Alla Zayenchik	1,420.75	$600	$852,450.00
Margaret Sanborn-Lowing	503.50	$450	$226,575.00
Matthew Traylor	276.50	$500	$138,250.00
Rebecca Kim	185.00	$500	$92,500.00
STAFF ATTORNEYS			
Stavros Katsetos	181.75	$450	$81,787.50
Sheela Aiyappasamy	266.25	$425	$113,156.25
Brian King	486.00	$425	$206,550.00
Erick Ladson	335.00	$425	$142,375.00
Lewis Smith	186.25	$425	$79,156.25
Sara Wigmore	440.50	$425	$187,212.50
Alex Shrage	296.00	$400	$118,400.00
Anuj Vaidya	305.50	$400	$122,200.00
INVESTIGATORS			
Amy Bitkower	56.00	$600	$33,600.00
Joelle Sfeir	18.25	$450	$8,212.50
Robin Barnier	36.25	$425	$15,406.25
Jenna Goldin	16.00	$425	$6,800.00

NAME	NUMBER OF HOURS	RATE	LODESTAR
Jacob Foster	37.00	$325	$12,025.00
DIRECTOR OF INSTITUTIONAL INVESTOR SERVICES			
Adam Weinschel	41.00	$575	$23,575.00
DIRECTOR OF FINANCIAL ANALYSIS			
Nick DeFilippis	21.00	$650	$13,650.00
FINANCIAL ANALYSTS			
Tanjila Sultana	42.00	$450	$18,900.00
Milana Babic	44.00	$425	$18,700.00
CASE MANAGERS			
Kenneth Cardwell	119.25	$375	$44,718.75
Matthew Mahady	32.50	$375	$12,187.50
PARALEGAL			
Khristine De Leon	65.50	$325	$21,287.50
LITIGATION SUPPORT			
Paul Charlotin	99.25	$375	$37,218.75
MANAGING CLERK			
Mahiri Buffong	89.75	$400	$35,900.00
TOTAL HOURS & LODESTAR	**6,330.25**		**$3,429,368.75**

EXHIBIT 2

Employees Retirement System of the City of St. Louis, et al., v. Charles E. Jones, et al.
Case No. 2:20-cv-04813

SUMMARY DESCRIPTIONS OF WORK PERFORMED

PARTNERS

JEROEN VAN KWAWEGEN (393.25 hours): Mr. Van Kwawegen, a senior partner at Bernstein Litowitz and Co-Head of the Department of Governance, led the litigation team's case strategy and oversaw all aspects of case management and prosecution of the Action. He presented argument to the Court on behalf of Plaintiffs in the Lead Plaintiff hearings, and represented Plaintiffs in all court appearances in the Northern District Action. Mr. Van Kwawegen was involved in drafting all major case filings, including the initial and amended complaints, the lead plaintiff briefing, the opposition to Defendants' motions to dismiss, and the briefing on Defendants' motions to stay, both at the District Court and Sixth Circuit levels. Mr. Van Kwawegen led Plaintiffs' mediation efforts, including by engaging in negotiations directly with a member of FirstEnergy's Special Litigation Committee during the mediation session, developing negotiation strategies in advance of the mediation, reviewing and editing Plaintiffs' mediation statements, and serving as the primary point of contact in negotiations with opposing counsel.

GERALD SILK (93.00 hours): Mr. Silk, a senior partner at Bernstein Litowitz and a member of the firm's Executive Committee, was principally involved in major strategic and tactical decisions. As the leader of the firm's New Matters department, Mr. Silk was particularly involved at the initiation of the litigation and during the contested lead plaintiff briefing.

MARK LEBOVITCH (16.50 hours): Mr. Lebovitch, a senior partner at Bernstein Litowitz and Co-Head of the Department of Governance, participated in high-level decision making on case development, strategy, and management of the Action.

GREG VARALLO (24.25 hours): Mr. Varallo, a senior partner at Bernstein Litowitz and head of Bernstein Litowitz's Delaware office, participated in high-level decision making on case development and strategy, particularly with respect to the Company's formation of a Special Litigation Committee and the strategies for litigating against the Special Litigation Committee.

AVI JOSEFSON (37.25 hours): Mr. Josefson, a senior partner at Bernstein Litowitz, was principally involved in major strategic and tactical decisions. As a member of the firm's New Matters department, Mr. Josefson was particularly involved at the initiation of the litigation and during the contested lead plaintiff briefing.

SCOTT FOGLIETTA (88.00 hours): Mr. Foglietta, a partner in Bernstein Litowitz's New Matters department, was principally involved in drafting and editing the initial complaint, the motion for consolidation of related actions, the lead plaintiff briefing, and the motion to transfer the Northern District Action to the Southern District.

SENIOR COUNSEL

JOHN MILLS (77.25 hours): Mr. Mills, a senior counsel in Bernstein Litowitz's Settlement Department, was primarily responsible for drafting, editing, and coordinating the settlement documentation and assisting with the negotiation of the release.

ASSOCIATES

ALLA ZAYENCHIK (1420.75 hours): Ms. Zayenchik, a senior associate in Bernstein Litowitz's Department of Governance, became involved in the action shortly after its inception, and was responsible for drafting and editing all major case filings, including researching and drafting the consolidated complaints, the lead plaintiff briefing, the opposition to the motions to dismiss, and briefing on the motions to stay, both at the District Court and Sixth Circuit levels. Ms. Zayenchik was also responsible for coordinating plaintiffs' counsel's efforts with Co-Lead Counsel at Saxena White P.C. ("Saxena") and additional counsel at Cohen Milstein Sellers & Toll PLLC ("Cohen Milstein"), and directing and overseeing the discovery process for the Action. Ms. Zayenchik also presented argument to Magistrate Judge Jolson at two status conferences requested by plaintiffs, and in coordination with Saxena and Cohen Milstein, negotiated the scope of discovery with Defendants and third parties, led meet-and-confers on behalf of Plaintiffs, drafted discovery correspondence and deficiency letters, and drafted and edited discovery requests, search proposals, and subpoenas. Ms. Zayenchik prepared court filings, including initial disclosures, status reports, and notices to the Court, and negotiated discovery stipulations, including the protective order, the ESI protocol, and the discovery coordination stipulation. Ms. Zayenchik further managed the document review team for Bernstein Litowitz during the deposition preparation process, including by conducting weekly meetings, allocating assignments, responding to questions and monitoring the progress of the review. Ms. Zayenchik further helped lead weekly attorney team meetings concerning case management and litigation strategy, helped locate key documents, and began preparing for the depositions of multiple deponents. Ms. Zayenchik drafted and edited Plaintiffs' mediation submissions, participated in the mediation session, and drafted key settlement documents, including the term sheet and the stipulation of settlement. Finally, Ms. Zayenchik assisted in drafting Plaintiffs' briefing and supporting documents in connection with their motion for preliminary approval of the settlement.

MARGARET SANBORN-LOWING (503.50 hours): Ms. Sanborn-Lowing, an associate at Bernstein Litowitz, assisted with researching, drafting, and editing multiple rounds of briefing, including the oppositions to Defendants' motions to dismiss and FirstEnergy's motion to stay. Ms. Sanborn-Lowing was also involved in discovery efforts, including assisting with drafting discovery requests, participating on meet and confers with opposing counsel and counsel for third parties, participating in weekly meetings with the staff attorneys to discuss key documents, and finalizing and serving responses to discovery served on Plaintiffs by Defendants. Ms. Sanborn-Lowing also participated on weekly attorney team meetings concerning case management and litigation strategy, and assisted with drafting and serving third party subpoenas.

MATTHEW TRAYLOR (276.50 hours): Mr. Traylor, a former associate at Bernstein Litowitz, assisted in research and drafting the relevant pleadings, and was involved in research and drafting

in connection with the opposition to Defendants' motions to dismiss. Mr. Traylor was also involved in discovery efforts, including participating in weekly meetings with the staff attorneys to discuss key documents, drafting and editing responses to discovery served on Plaintiffs, and participating on weekly attorney team meetings concerning case management and litigation strategy.

REBECCA KIM (185.00 hours): Ms. Kim, a former associate at Bernstein Litowitz, was involved in researching and drafting the initial complaint, the motion for consolidation of related actions, the lead plaintiff briefing, and the motion to transfer the Northern District Action to the Southern District.

STAFF ATTORNEYS

STAVROS KATSETOS (181.75 hours): Mr. Katsetos, a senior staff attorney at Bernstein Litowitz, participated in the review of Defendants' productions for relevance and escalation, including during weekly Hot Document Meetings. In addition to reviewing Defendants' productions for relevance, Mr. Katsetos researched and analyzed Board committee and sub-committee minutes and materials. Mr. Katsetos was also a Team Lead who managed and spearheaded deposition preparation for multiple deponents.

SHEELA AIYAPPASAMY (266.25 hours): Ms. Aiyappasamy, a staff attorney at Bernstein Litowitz, was principally responsible for reviewing the Defendants' productions for relevance and presenting documents to the team during the weekly Hot Document Meetings, Ms. Aiyappasamy conducted discrete searches for documents requested by the attorneys leading the case strategy, including searches of Board Minutes and Materials and Corporate Governance Committee Minutes and Materials. Ms. Aiyappasamy further reviewed and analyzed specific custodial documents in preparation for depositions.

BRIAN KING (486.00 hours): Mr. King, a staff attorney at Bernstein Litowitz, participated in the review of Defendants' productions for relevance and escalation, including during weekly Hot Document Meetings. In addition to reviewing the Defendants' productions for relevance and presenting documents to the team during the weekly Hot Document Meetings, Mr. King reviewed and analyzed specific custodial documents in preparation for depositions.

ERICK LADSON (335.00 hours): Mr. Ladson, a staff attorney at Bernstein Litowitz, participated in the review of Defendants' productions for relevance and escalation, including during weekly Hot Document Meetings. In addition to reviewing the Defendants' productions for relevance and presenting documents to the team during the weekly Hot Document Meetings, Mr. Ladson was a member of a team that reviewed and analyzed FirstEnergy text and short report documents for key source information. Mr. Ladson also reviewed and analyzed specific custodial documents in preparation for depositions and reviewed Audit Committee minutes and materials.

LEWIS SMITH (186.25 hours): Mr. Smith, a staff attorney at Bernstein Litowitz, participated in the review of Defendants' productions for relevance and escalation, including during weekly Hot Document Meetings. Mr. Smith was a member of a team drafting and reviewing Plaintiffs' opening

mediation statement. In addition, Mr. Smith was a member of the team that reviewed Defendants' privilege log assertions for potential challenges thereto and in preparation for witness depositions.

SARA WIGMORE (440.50 hours): Ms. Wigmore, a staff attorney at Bernstein Litowitz, participated in the review of Defendants' productions for relevance and escalation, including during weekly Hot Document Meetings. In addition to reviewing the Defendants' productions for relevance and presenting documents to the team during the weekly Hot Document Meetings, Ms. Wigmore conducted searches of Board Minutes and Materials and Corporate Governance Committee Minutes and Materials. Mr. Wigmore further reviewed and analyzed specific custodial documents in preparation for depositions.

ALEX SHRAGE (296.00 hours): Mr. Shrage, a staff attorney at Bernstein Litowitz, reviewed Defendants' productions and presented documents to the team during the weekly Hot Document Meetings, Mr. Shrage also reviewed and analyzed specific custodial documents in preparation for depositions.

ANUJ VAIDYA (305.50 hours): Mr. Vaidya, a staff attorney at Bernstein Litowitz, reviewed the Defendants' productions for relevance and presented documents to the team during the weekly Hot Document Meetings. Mr. Vaidya also analyzed Board Minutes and Materials and Corporate Governance Committee Minutes and Materials, and compiled information from SEC filings, Executive Compensation Committee Minutes and Materials, and internal emails related to executive compensation, including salary, equity compensation, deferred compensation, and other compensation and benefits such as retirement benefits. Mr. Vaidya further reviewed and analyzed specific custodial batches in preparation for depositions.

INVESTIGATORS

AMY BITKOWER (56.00 hours): Ms. Bitkower, the Director of Bernstein Litowitz's Investigations Department, supervised the Department's analysis and research regarding connections among the Special Litigation Committee, the Individual Defendants, FirstEnergy's Board of Directors, and relevant non-parties using multiple public records databases. Ms. Bitkower oversaw the compilation of a report summarizing the Investigations Department's findings for review by the litigation team. Ms. Bitkower also oversaw the Department's research and location of contact information for Defendants.

JOELLE SFEIR (18.25 hours): Ms. Sfeir, the Associate Director of the firm's Investigations Department, assisted the Investigations Department in conducting analysis and research regarding connections among the Special Litigation Committee, the Individual Defendants, FirstEnergy's Board of Directors, and relevant non-parties using multiple public records databases. Ms. Sfeir then compiled a report summarizing the Department's findings for review by the litigation team. Ms. Sfeir also researched and located contact information for Defendants.

ROBIN BARNIER (36.25 hours), **JENNA GOLDIN** (16.00 hours), and **JACOB FOSTER** (37.00 hours): Ms. Barnier, Mr. Foster, and Ms. Goldin are investigators in Bernstein Litowitz's Investigations Department. Together, the team conducted analysis and research regarding connections among the Special Litigation Committee, the Individual Defendants, FirstEnergy's

Board of Directors, and relevant non-parties using multiple public records databases. The Department then assisted with the compilation of a report on the connections for review by the litigation team. Ms. Barnier also researched and located contact information for defendants.

DIRECTOR OF INVESTOR SERVICES

ADAM WEINSCHEL (41.00 hours): Mr. Weinschel, Director of Institutional Investor Services at Bernstein Litowitz, conducted extensive research into and analysis of Plaintiff Local 103's FirstEnergy common stock transactions and continuous holdings throughout the litigation period. Mr. Weinschel further oversaw the research and analysis conducted by his team. The team's findings and analyses were incorporated into Plaintiffs' supporting exhibits in various correspondence with Defendants and in subsequent document productions.

DIRECTOR OF FINANCIAL ANALYSIS

NICK DEFILIPPIS (21.00 hours): Mr. DeFilippis is the Director of Financial Analysis and a member of the firm's New Matters department. Mr. DeFilippis was principally involved in conducting an initial merits analysis of this matter. Mr. DeFilippis performed an in-depth investigation into and analysis of various financial issues in the case, gathered all the preliminary financial research, and provided support throughout the litigation.

FINANCIAL ANALYSTS

TANJILA SULTANA (42.00 hours) and **MILANA BABIC** (44.00 hours): Ms. Sultana and Ms. Babic are Financial Analysts at Bernstein Litowitz. The team of Financial Analysts helped research and produce various ownership and bank records to support relevant client transactional activity throughout the litigation. Ms. Sultana and Ms. Babic also investigated potential stock-related misconduct such as insider trading by the Defendants.

SUPPORT STAFF – Case Managers, Paralegals, Electronic Discovery Professionals, and Filing Support

KENNETH CARDWELL (119.25 hours), **MATTHEW MAHADY** (32.50 hours), and **KHRISTINE DE LEON** (65.50 hours): Mr. Cardwell, Mr. Mahady, and Ms. De Leon are all members of the firm's Paralegal Department. Mr. Cardwell and Mr. Mahady are Case Managers, and Ms. De Leon is a Paralegal. The team assisted the litigation team with many aspects of the case, including finalizing various documents for submission to the Court, ensuring that case filings conformed with local rules and procedure, monitoring case dockets for relevant filings, circulating relevant filings to the litigation team, finalizing subpoenas, and maintaining physical and electronic case materials.

PAUL CHARLOTIN (99.25 hours): Mr. Charlotin is a member of Bernstein Litowitz's Litigation Support Department. In that capacity, Mr. Charlotin assisted in the logistics involved in the discovery in the Action, including by processing and loading for review the document productions made by Defendants and third parties, which were hosted on the Bernstein Litowitz's discovery platform, Relativity, and running various reports, as needed, reflecting the progress of document review.

MAHIRI BUFFONG (89.75 hours): Mr. Buffong is BLB&G's Managing Clerk. In that capacity, Mr. Buffong was principally responsible for ensuring the conformity of case filings with local rules, procedures, and electronic requirements. Mr. Buffong further monitored related case dockets for relevant filings and circulated relevant filings to the litigation team.

EXHIBIT 3

Employees Retirement System of the City of St. Louis, et al., v. Charles E. Jones, et al.
Case No. 2:20-cv-04813

BERNSTEIN LITOWITZ EXPENSE REPORT

CATEGORY	AMOUNT($)
Court Fees	238.00
Service of Process	407.60
On-Line Factual Research	9,029.43
Document Management/Litigation Support	3,930.44
On-Line Legal Research	33,087.32
Telephone	685.01
Postage & Express Mail	311.67
Local Transportation	35.65
Internal Copying/Printing	29.20
Out of Town travel	3,634.48
Working Meals	876.80
Experts	71,510.00
Mediation Fees	49,042.50
TOTAL EXPENSES:	**172,818.10**

EXHIBIT 4

Employees Retirement System of the City of St. Louis, et al., v. Charles E. Jones, et al.
Case No. 2:20-cv-04813

FIRM RESUME

BLB&G Bernstein Litowitz Berger & Grossmann LLP

Bernstein Litowitz Berger & Grossmann LLP
Attorneys at Law

Firm Resume

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

Firm Overview

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

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

More Top Securities Recoveries

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

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

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

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

Giving Shareholders a Voice and Changing Business Practices for the Better

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

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

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

Practice Areas

Securities Fraud Litigation

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

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

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

Corporate Governance and Shareholder Rights

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

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

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

Distressed Debt and Bankruptcy

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

Commercial Litigation

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

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

Alternative Dispute Resolution

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

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

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

Feedback from The Courts

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

In re WorldCom, Inc. Securities Litigation

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

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

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

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

* * *

In re Clarent Corporation Securities Litigation

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

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

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

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

* * *

Landry's Restaurants, Inc. Shareholder Litigation

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

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

* * *

McCall V. Scott (Columbia/HCA Derivative Litigation)

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

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

Significant Recoveries

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

Securities Class Actions

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

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

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

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

Case: *In re Cendant Corporation Securities Litigation*

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

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

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

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

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

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

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

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

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

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

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

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

Court: United States District Court, District of New Jersey

Highlights: $1.06 billion recovery for the class.

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

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

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

Highlights: $1.05 billion recovery for the class.

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

Case: *HealthSouth Corporation Bondholder Litigation*

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

Highlights: $804.5 million in total recoveries.

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

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

Court: United States District Court for the District of Arizona

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

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

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

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

Highlights: $735 million in total recoveries.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Case: *Bear Stearns Mortgage Pass-Through Litigation*

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

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

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

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

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

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

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

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

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

Highlights: $410 million settlement.

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

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

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

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

Highlights: Over $407 million in total recoveries.

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

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

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

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

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

Corporate Governance and Shareholders' Rights

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

Court: Delaware Court of Chancery

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

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

Case: *In re McKesson Corporation Derivative Litigation*

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

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

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

Case: *UnitedHealth Group, Inc. Shareholder Derivative Litigation*

Court: United States District Court for the District of Minnesota

Highlights: Litigation recovered over $920 million in ill-gotten compensation directly from former officers for their roles in illegally backdating stock options, while the company agreed to far-reaching reforms aimed at curbing future executive compensation abuses.

Summary: This shareholder derivative action filed against certain current and former executive officers and members of the Board of Directors of UnitedHealth Group, Inc. alleged that the Defendants obtained, approved and/or acquiesced in the issuance of stock options to senior executives that were unlawfully backdated to provide the recipients with windfall compensation at the direct expense of UnitedHealth and its shareholders. The firm recovered over $920 million in ill-gotten compensation directly from the former officer Defendants—the largest derivative recovery in history. As feature coverage in *The New York Times* indicated, "investors everywhere should applaud [the UnitedHealth settlement]….[T]he recovery sets a standard of behavior for other companies and boards when performance pay is later shown to have been based on ephemeral earnings." The Plaintiffs in this action were the St. Paul Teachers' Retirement Fund Association, the Public Employees' Retirement System of Mississippi, the Jacksonville Police & Fire Pension Fund, the Louisiana Sheriffs' Pension & Relief Fund, the Louisiana Municipal Police Employees' Retirement System and Fire & Police Pension Association of Colorado.

Case: *Caremark Merger Litigation*

Court: Delaware Court of Chancery – New Castle County

Highlights: Landmark Court ruling ordered Caremark's board to disclose previously withheld information, enjoined a shareholder vote on the CVS merger offer, and granted statutory appraisal rights to Caremark shareholders. The litigation ultimately forced CVS to raise its offer by $7.50 per share, equal to more than $3.3 billion in additional consideration to Caremark shareholders.

Summary: Commenced on behalf of the Louisiana Municipal Police Employees' Retirement System and other shareholders of Caremark RX, Inc., this shareholder class action accused the company's directors of violating their fiduciary duties by approving and endorsing a proposed merger with CVS Corporation, all the while refusing to fairly consider an alternative transaction proposed by another bidder. In a landmark decision, the Court ordered the Defendants to disclose material information that had previously been withheld, enjoined the shareholder vote on the CVS transaction until the additional disclosures occurred, and granted statutory appraisal rights to Caremark's shareholders—forcing CVS to increase the consideration offered to shareholders by $7.50 per share in cash (over $3 billion in total).

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

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

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

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

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

Court: Delaware Court of Chancery

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

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

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

Court: Delaware Court of Chancery – Kent County

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

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

Clients and Fees

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

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

In The Public Interest

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

Bernstein Litowitz Berger & Grossmann Public Interest Law Fellows

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

Firm Sponsorship of Her Justice

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

Firm Sponsorship of City Year New York

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

Max W. Berger Pre-Law Program

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

Our Attorneys

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

BLB&G

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LOUISIANA
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EXHIBIT 7

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

EMPLOYEES RETIREMENT SYSTEM OF THE CITY OF ST. LOUIS, *et al.*, Plaintiffs, v. CHARLES E. JONES, *et al.*, Defendants, and FIRSTENERGY CORP., Nominal Defendant.	Case No. 2:20-cv-04813 Chief Judge Algenon L. Marbley Magistrate Judge Kimberly A. Jolson

DECLARATION OF THOMAS CURRY FILED ON BEHALF OF SAXENA WHITE P.A. IN SUPPORT OF PLAINTIFFS' MOTION FOR FINAL APPROVAL OF SETTLEMENT, AN AWARD OF ATTORNEYS' FEES AND EXPENSES, AND PLAINTIFF SERVICE AWARDS

I, Thomas Curry, declare as follows:

1. I am a Director of Saxena White P.A. ("Saxena White"), Court-appointed Co-Lead Counsel in the above-captioned shareholder derivative action (the "Action"). I submit this Declaration in support of Plaintiffs' Motion for Final Approval of Settlement, an Award of Attorneys' Fees and Expenses, and Plaintiff Service Awards. I have knowledge of the matters set forth herein based on personal knowledge, my review of the firm's records, and consultation with other firm personnel.

2. My firm, as Co-Lead Counsel for Co-Lead Plaintiffs in the Action and counsel of record for Co-Lead Plaintiff Employees Retirement System of the City of St. Louis ("St. Louis"),

was involved in all aspects of the prosecution and resolution of the Action,[1] as set forth in the Joint Declaration of Jeroen van Kwawegen and Thomas Curry in Support of Plaintiffs' Motion for Final Approval of Settlement, an Award of Attorneys' Fees and Expenses, and Plaintiff Service Awards.

3. The information in this Declaration regarding the firm's time, including in the schedule attached hereto as Exhibit 1, was prepared from daily time records regularly prepared and maintained by my firm in the ordinary course of business. I am the Director who oversaw my firm's activities in the litigation, and I, together with attorneys working under my direction, reviewed my firm's daily time records to confirm their accuracy. The purpose of this review was to confirm both the accuracy of the entries in the time records as well as the necessity for, and reasonableness of, the time and expenses committed to the Action. As a result of this review, reductions were made to both time and expenses in the exercise of billing judgment. Based on this review and appropriate adjustments made, I believe that the time reflected in the firm's lodestar calculation and the litigation expenses for which payment is sought are reasonable and were necessary for the effective and efficient prosecution and resolution of the Action.

4. The total number of hours expended on this Action by my firm's attorneys and professional support staff employees from its inception through March 11, 2022 was 10,132.5. The total resulting lodestar for my firm is **$5,449,517.50**. The schedule attached hereto as Exhibit

[1] The total number of hours expended by Saxena White in this litigation also includes time the firm spent litigating *Miller v. Anderson et al.*, Case No. 5:20-cv-01743 (N.D. Ohio) (the "Northern District Action"). Saxena White and its co-counsel intervened in the Northern District Action, which involved "substantively identical" claims as those in the Action, to protect the claims of the Company and its shareholders asserted in this Action. *Miller v. Anderson*, Case No. 5:20-cv-01743, 2021 WL 4220780 (N.D. Ohio Sept. 16, 2021). The Court in the Northern District of Ohio granted intervention and denied Defendants' motion to dismiss, and this Action and the Northern District Action then proceeded on parallel discovery tracks. Litigating the Northern District Action was necessary to achieve the final resolution of this litigation (and the Settlement here includes the Northern District Action), and thus the firm's time and expenses spent on that matter are included herein.

1 is a detailed summary reflecting the amount of time spent by each attorney and professional support staff employee of my firm who was involved in the Action, and the lodestar calculation based on my firm's current hourly rates. Different timekeepers within the same employment category (*e.g.*, shareholders, directors, attorneys, paralegals, etc.) may have different rates based on a variety of factors, including years of practice, years at the firm, years in the current position (*e.g.*, years as a director), relevant experience, relative expertise, and the rates of similarly experienced peers at our firm or other firms. For personnel who are no longer employed by my firm, the lodestar calculation is based upon the rate for that person in his or her final year of employment with my firm.

5. Set forth in Exhibit 2 attached hereto is a description of the services rendered by each professional for whom fees are requested and who committed at least ten hours of work to the prosecution of the Action.

6. The qualifications and backgrounds of the attorneys identified in the previous paragraph may be found in my firms' resume, which is attached hereto as Exhibit 4.

7. The hourly rates by Saxena White are reasonable for several reasons. *First*, the identified rates are Saxena White's customary hourly rates.

8. *Second*, the hourly rates by Saxena White are reasonable in light of the firm's highly specialized skill and experience when it comes to litigating and settling shareholder derivative litigation. Saxena White has extensive experience litigating complex securities actions, including shareholder derivative actions. Several examples include the following: *In re Wells Fargo & Co. S'holder Derivative Litig.,* No. 4:16-cv-05541-JST (N.D. Cal.) (derivative action involving director oversight claims related to fake account scandal; settled for $240 million and corporate governance reforms); *Cumming v. Edens*, C.A. No. 13007-VCS (Del. Ch. 2019) (derivative action

arising from self-dealing transactions by controllers, resulting in a settlement of $53 million and corporate governance reforms); *Peace Officers' Annuity & Benefit Fund of Georgia v. DaVita Inc*., No. 17-CV-0304-WJM-NRN, 2021 WL 1387110, at *4 (D. Colo. Apr. 13, 2021) ($135 million recovery was the second largest all-cash securities fraud class action recovery in the history of the Colorado District Court); *Int'l Union of Operating Engineers of Eastern Pennsylvania and Delaware, et al. v. Ressler, et al*., C.A. No. 2020-0819-JTL (Del. Ch. 2022) (derivative action arising from related party transaction between company and its chairman; settlement relieved company of obligations to pay $72 million in additional management fees and capital contributions that would otherwise have been owed under the conflicted agreement).

9. *Third*, the hourly rates by Saxena White are consistent with the rates for similar services by lawyers of reasonably comparable skill, experience, and national reputation. *See, e.g. In re Snap Inc. Sec. Litig*., No. 2:17-cv-03679-SVW-AGR, 2021 WL 667590, at *4 (C.D. Cal. Feb. 18, 2021), *In re Snap Inc. Sec. Litig.,* No. 2:17-cv-03679-SVW-AGR, ECF No. 386-9, at PAGEID #:18483-18485 (approving fee award in securities fraud class action with hourly rates ranging from $780-$920 for partners, $390-$690 for associates, and $385 for staff attorneys); *In re BHP Billiton Ltd. Sec. Litig*., No. 16-cv-01445, 2019 WL 1577313, at *1 (S.D.N.Y. Apr. 10, 2019), *In re BHP Billiton Ltd. Sec. Litig*., No. 16-cv-01445, ECF No. 122-1 at 2 (approving fee award in securities fraud class action with hourly ranging from $790-$1030 for partners, $400-$550 for associates, and $375 for staff attorneys).

10. *Fourth*, Saxena White has special expertise when it comes to litigating complex shareholder suits, including derivative cases, and courts across the country have approved Saxena White's fees at its standard hourly rates. *See, e.g. DaVita Inc*., 2021 WL 2981970, at *3 (D. Colo. July 15, 2021) (granting fee award for Saxena White based on hours billed at firm's regular hourly

rates, ranging from $365 to $895 for attorneys and $250 to $275 for support staff); *Plymouth County Ret. Sys. v. Patterson Cos., Inc., et al.*, No. 18-cv-00871-MJD-HB, ECF No. 267 (D. Minn. June 10, 2022) (order approving settlement), *Patterson*, No. 18-cv-00871-MJD-HB, ECF No. 255-7 at 9 (D. Minn. May 5, 2022) (granting fee award for plaintiffs' counsel, including Saxena White, based on hours billed at firm's regular hourly rates, ranging from $365 to $985 for attorneys and $250 to $325 for support staff); *Teamsters Local 456 Pension Fund, et al., v. Universal Health Services, Inc. et al.*, No. 2:17-cv-02817-JHS, ECF No. 89 (E.D. Pa. July 16, 2021) (order approving fees), *Universal Health Services*, No. 2:17-cv-02817-JHS, ECF No. 83-5 at 7 (E.D. Pa. June 10, 2021) (granting fee award for Saxena White based on hours billed at firm's regular hourly rates, ranging from $420 to $895 for attorneys and $250 to $295 for support staff).

11. *Fifth*, Saxena White's implied hourly rate of $537, based on the firm's lodestar and total hours billed, falls well within the range of those approved by courts in the Southern District of Ohio in shareholder derivative cases. *See Rudi v. Wexner*, No. 2:20-CV-3068, 2022 WL 1682297, at *5 (S.D. Ohio May 16, 2022) ("*L Brands*") (granting fee award with hourly rates of up to $1,685 for partners and $1,245 for associates), *L Brands*, 2:20-cv-03068, ECF No. 26-9 at PAGEID #: 1080; *In re Big Lots, Inc. S'holder Litig.*, No. 2:12-CV-445, 2018 WL 11356561, at *5 (S.D. Ohio Aug. 28, 2018), *Big Lots*, No. 2:12–cv–445, ECF No. 122-3 at PAGEID #: 2760 (approving hourly rates of up to $925 for partners and $650 for associates).

12. Based on records maintained by my firm, Saxena White incurred a total of $27,435.01 in unreimbursed litigation expenses in connection with the prosecution and settlement of the Action. (Plaintiffs' Counsel are not seeking separate reimbursement for their unreimbursed litigation expenses in this matter, but instead are seeking an "all in" attorneys' fee as a percentage

of the total monetary recovery.) The firm's expenses are fully categorized in Exhibit 3 attached hereto.

13. The litigation expenses incurred in this Action are reflected in the books and records of Saxena White, which are regularly prepared and maintained in the ordinary course of business. These records are prepared from expense vouchers, check records and other source materials and are an accurate record of the expenses incurred. These expenses were reasonably necessary in the prosecution of the Action. Courts have typically found that these kinds of expenses are payable to counsel who create a benefit for shareholders.

14. My firm undertook this litigation on an entirely contingent basis and has not been paid for any of our work, nor have any of our costs or expenses been reimbursed. My firm undertook the litigation of the Action with the expectation that we would have to devote many hours of hard work to the prosecution of a case involving complex factual and legal issues without any guarantee of successful resolution or of compensation for our efforts. The prosecution of this Action involved the expenditure of significant resources, including the time spent by attorneys and professional staff, as well as the expenses that were incurred during the litigation, while my firm received no compensation during the course of the litigation.

15. This Declaration provides the Court with time only through March 11, 2022 (the date that the Stipulation and Agreement of Settlement was signed). Accordingly, this Declaration does not encompass time incurred from March 12, 2022 through the present. Also, this Declaration does not include time spent preparing Plaintiffs' Motion for Final Approval of Settlement, an Award of Attorneys' Fees and Expenses, and Plaintiff Service Awards.

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

Executed this 7th day of July 2022, at Wilmington, Delaware.

Thomas Curry
SAXENA WHITE P.A.
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EXHIBIT 1

Employees Retirement System of the City of St. Louis, et al., v. Charles E. Jones, et al.
Case No. 2:20-cv-04813

SAXENA WHITE TIME REPORT

Inception through March 11, 2022

NAME	HOURS	HOURLY RATE	LODESTAR
Shareholders			
Joseph White	35.75	$985	$35,213.75
Maya Saxena	42.75	$985	$42,108.75
Directors			
Brandon Grzandziel	114.75	$740	$84,915.00
Lester Hooker	62.75	$880	$55,220.00
Steven Singer	96.5	$985	$95,052.50
Thomas Curry	859.75	$850	$730,787.50
Attorneys			
Adam Warden	269.75	$660	$178,035.00
Dianne Pitre	516.75	$600	$310,050.00
Donald Grunewald	14.25	$575	$8,193.75
Jill Miller	264.25	$575	$151,943.75
Jonathan Lamet	383.50	$660	$253,110.00
Mario Alvite	189.00	$495	$93,555.00
Sara DiLeo	822.00	$680	$558,960.00
Scott Guarcello	231.75	$680	$157,590.00
Scott Koren	287.00	$440	$126,280.00
Tayler Bolton	554.50	$575	$318,837.50
Staff Attorneys			
Christine Sciarrino	991.00	$460	$455,860.00
Christopher Donnelly	39.75	$400	$15,900.00
Courtney Weisholtz	452.75	$400	$181,100.00
Harriet Atsegbua	191.25	$400	$76,500.00
Karen Thompson	437.50	$400	$175,000.00
Leslie Martey	22.00	$400	$8,800.00
Mauri Lynn Levy	280.00	$400	$112,000.00
Michele Fassberg	241.25	$400	$96,500.00
Nicholas Atkinson	142.25	$460	$65,435.00
Nina Hakoun	534.25	$400	$213,700.00
Paul Burns	235.00	$400	$94,000.00
Rebecca Nilsen	455.25	$460	$209,415.00
Ryan Joseph	22.00	$400	$8,800.00
Tara Heydt	246.75	$460	$113,505.00
Valerie Kanner Bonk	471.00	$400	$188,400.00
Zerin Taher	484.50	$400	$193,800.00

NAME	HOURS	HOURLY RATE	LODESTAR
Financial Analyst			
Samuel Jones	26.00	$325	$8,450.00
Support Staff			
Brandon Smith	46.75	$300	$14,025.00
Fabricia Resende	34.00	$250	$8,500.00
Ross Barna	12.00	$275	$3,300.00
Stefanie Grzandziel	22.25	$300	$6,675.00
TOTAL LODESTAR	**10,132.50**		**$5,449,517.50**

EXHIBIT 2

Employees Retirement System of the City of St. Louis, et al., v. Charles E. Jones, et al.
Case No. 2:20-cv-04813

SUMMARY DESCRIPTIONS OF WORK PERFORMED

SHAREHOLDERS

MAYA SAXENA (42.75 hours): Ms. Saxena, one of the firm's founding shareholders, was principally involved in major strategic and tactical decisions, especially at the initiation of the litigation and during the contested lead plaintiff briefing. She was one of the primary attorneys who communicated with Co-Lead Plaintiff Employees Retirement System of the City of St. Louis ("St. Louis" or the "client") and was intricately involved with client participation in the early stages of the litigation and in advising the client in connection with settlement proceedings.

JOE WHITE (35.75): Mr. White, one of the firm's founding shareholders, was actively involved in litigation strategy and participated in high-level decision making on case development, direction, and management of the Action since its inception. Mr. White was heavily involved in the mediation and in communication with the client before and after the mediation session.

DIRECTORS

STEVEN B. SINGER (96.5): Mr. Singer, Director of Litigation at Saxena White, was primarily responsible throughout the case for supervising the strategy and prosecution of the Action. Mr. Singer was significantly involved in reviewing and editing major case filings, including the pleadings, the lead plaintiff briefing, the opposition to the motions to dismiss, and briefing on the motions to stay, both at the District Court and Sixth Circuit levels. He developed negotiation strategies in advance of the mediation, reviewed and edited Plaintiffs' mediation submissions, and actively participated in the mediation.

THOMAS CURRY (859.75): Mr. Curry, a Director at Saxena White, led the firm's day-to-day prosecution of the Action at all times following the filing of the initial complaint, from the stage of lead plaintiff briefing through to the present. Mr. Curry played a central role in every aspect of the prosecution of the Action, including the development of strategy, communications with the client, the drafting of essentially every significant filing in the action, oversight of all discovery efforts, and active participation in the mediation and subsequent settlement negotiations.

LESTER HOOKER (62.75 hours): Mr. Hooker, a Director at Saxena White, played a significant role in the drafting and editing of the initial complaint filed by St. Louis. He also provided assistance in connection with the drafting of the opposition to the motion to dismiss and in the opposition to the SLC's motion to stay.

BRANDON GRZANDZIEL (114.75): Mr. Grzandziel, a former Director at Saxena White, played a major role in researching, drafting, and revising the initial complaint filed in the Action.

ATTORNEYS

SARA DILEO (822 hours): Ms. DiLeo, a senior attorney at Saxena White, was primarily responsible for directing and overseeing the discovery process for the Action, including negotiating the scope of discovery with Defendants and third parties, drafting discovery requests, search proposals and subpoenas, participating in meet-and-confers, drafting correspondence, managing the document review team, and supervising the review and analysis of documents produced by Defendants and third parties. She also conducted weekly meetings with the team of staff attorneys to discuss the contents of relevant documents and to provide feedback to better guide the quality of the document review. She prepared Plaintiffs' deponent list, managed the document review team during the deposition preparation process, reviewed multiple deposition preparation memoranda and began preparing to take the depositions of multiple Defendants. Ms. DiLeo also helped lead weekly attorney team meetings concerning case management and litigation strategy, prepared Plaintiffs' status reports and other court filings, including researching and drafting Plaintiffs' motions to stay discovery pending settlement. She also helped locate key documents and draft Plaintiffs' mediation submissions. Finally, Ms. DiLeo assisted in drafting Plaintiffs' briefing and supporting documents in connection with their motion for preliminary approval of the settlement.

TAYLER BOLTON (554.5 hours): Ms. Bolton, an attorney at Saxena White, was actively involved in the research and drafting of numerous significant filings, including Plaintiffs' oppositions to Defendants' motions to dismiss and Plaintiffs' oppositions to the SLC's motions to stay the proceedings. She also conducted research on numerous legal issues that arose throughout the litigation. Ms. Bolton was primarily responsible for managing the staff attorney document review team and supervising the review and analysis of documents produced by Defendants and third parties, including by conducting weekly meetings with the team of staff attorneys to enhance the quality of the document review. She also participated in weekly attorney team meetings concerning case management and litigation strategy.

JONATHAN LAMET (383.5 hours): Mr. Lamet, a senior attorney at Saxena White, was significantly involved in the researching, drafting and revising of the opposition to the motion to dismiss. Mr. Lamet was also actively involved in the day-to-day activities relating to discovery in the case, including drafting and editing discovery requests, search proposals and subpoenas, participating in meet-and-confers, and drafting correspondence. Mr. Lamet was primarily responsible for tracking and coordinating the numerous outstanding discovery requests to FirstEnergy, the Defendants, and third parties, as well as drafting responses to all discovery requests propounded on Plaintiffs. He also participated in weekly attorney team meetings concerning case management and litigation strategy and reviewed important documents located by the review team throughout the discovery process. Mr. Lamet also helped locate key documents and draft Plaintiffs' mediation submissions and other materials for use at mediation.

DIANNE PITRE (516.75 hours): Ms. Pitre, a senior attorney at Saxena White, was involved in the investigation, research, and drafting of the initial and amended complaints, the opposition to the SLC's motion to stay, and the opposition to the motion to dismiss. Ms. Pitre was also involved in the commencement of Plaintiffs' discovery efforts, including drafting Plaintiffs' initial disclosures and reviewing discovery correspondence.

ADAM WARDEN (269.75 hours): Mr. Warden, a senior attorney at Saxena White, was involved in the investigation, research, and drafting of the initial complaint. He also was involved in the research and drafting of Plaintiffs' motion to consolidate and appoint lead plaintiffs and lead counsel, and the research and drafting of Plaintiffs' opposition to the SLC's motion to stay and Defendants' motion to dismiss. Mr. Warden was also involved in the research and preparation of the motion for preliminary approval of the settlement and all supporting documents.

SCOTT GUARCELLO (231.75 hours): Mr. Guarcello, a senior attorney at Saxena White, evaluated and advised on e-discovery related topics, including deduplication processes concerning document productions, technical considerations of the collection and production of text messages, and sources and topics to be addressed related to the scope of Defendants' document collections. He was primarily responsible for collecting and producing all of St. Louis's data in connection with Defendants' discovery requests, including client transaction records required to establish standing. Mr. Guarcello also drafted discovery documents, including ESI protocols, protective orders, correspondence with defendants, and responses and objections to requests for document productions and interrogatories. He collaborated with co-counsel to provide oversight and database administration concerning e-discovery processes for the Action, including workflow design and implementation, key data searches, metrics reports, and creation and maintenance of a multi-firm, secured shared site.

MARIO ALVITE (189 hours): Mr. Alvite, a senior attorney at Saxena White, was significantly involved in the investigation, research, and drafting of the initial and amended complaints and supporting documents. He also was involved in the research and drafting of Plaintiffs' motion to consolidate and appoint lead plaintiffs and lead counsel, and the research and drafting of Plaintiffs' opposition to the Defendants' motion to stay and Defendants' motion to dismiss.

JILL MILLER (264.25 hours): Ms. Miller, a senior attorney at Saxena White, managed and oversaw the document review process and was primarily responsible throughout the case for managing the work of the firm's staff attorneys, supervising the preparation of discovery review materials, developing and coordinating discovery management, formulating document review strategy and procedures, developing quality control processes, and coordinating assignments for the document review team. In addition, Ms. Miller supervised and assisted the staff attorneys in the preparation of the document review protocol, deposition preparation, the cite-checking of the complaints, the opposition to the motions to dismiss, and other filings. Ms. Miller also supervised research on various issues arising during the litigation.

SCOTT KOREN (287 hours): Scott Koren, an attorney at Saxena White, was involved in the investigation, research, and drafting of the initial complaint and related documents at the inception of the case. In addition, Mr. Koren assisted the lead attorneys with the weekly meetings with the staff attorney document review team, conducted a second level review of Defendants' and third parties' productions, and attended weekly attorney team meetings concerning case management and litigation strategy. He also assisted with mediation-related projects, including locating and gathering key documents in support of Plaintiffs' mediation submissions. Mr. Koren also performed legal and factual research on various issues and topics arising during all phases of the litigation.

DONALD GRUNEWALD (14.25 hours): Mr. Grunewald, an attorney at Saxena White, was involved in researching and drafting sections of Plaintiffs' opposition to Defendants' motion to dismiss.

STAFF ATTORNEYS

CHRIS DONNELLY (39.75 hours): In addition to reviewing the Defendants' and third parties' productions, Mr. Donnelly assisted in the creation of two source indexes for the Complaint.

CHRISTINE SCIARRINO (991 hours): In addition to reviewing the Defendants' and third parties' productions and participating in weekly team meetings, Ms. Sciarrino performed legal research and drafted memoranda on various legal issues arising during the litigation, including demand futility, supplemental jurisdiction, Section 14(a) claims, and other issues. She assisted in drafting the document review protocol and with ongoing research of recent case developments and parallel proceedings. She also assisted in leading various document review projects, including maintaining and updating a "hot" documents spreadsheet in preparation for depositions, quality control of documents coded by the document review team, the review of Board minutes and committee documents to check for gaps in the parties' productions, and assisting with Plaintiffs' responses to Defendants' requests for production. She also assisted with firm's initial deposition preparation materials for various fact witnesses.

COURTNEY WEISHOLTZ (452.75 hours): Ms. Weisholtz conducted legal research to support the opposition to the SLC's motion to stay, drafted a case timeline, and summarized Defendants' answers to the complaint and Defendants' responses and objections to Plaintiffs' requests for production.

HARRIET ATSEGBUA (191.25 hours): In addition to reviewing the Defendants' and third parties' productions and participating in weekly team meetings, Ms. Atsegbua assisted in the creation of a source index for the Complaint.

KAREN THOMPSON (437.50 hours): Ms. Thompson assisted with cite checking the amended complaint, collecting complaint sources, and preparing biographies for witnesses and other major players and organizational charts. She also searched for other actions regarding FirstEnergy, Larry Householder and HB6.

LESLIE MARTEY (22 hours): Ms. Martey assisted in the creation of a source index for the Complaint.

MAURI LYNN LEVY (280 hours): Ms. Levy performed research and drafted a memorandum on various issues in connection with the opposition to Defendants' motion to dismiss. She also assisted with cite checking the opposition to the motion to dismiss.

MICHELE FASSBERG (241.25 hours): In addition to reviewing the Defendants' and third parties' productions and participating in weekly team meetings, Ms. Fassberg assisted with cite checking the complaint and the opposition to the motion to dismiss.

NICHOLAS ATKINSON (142.25 hours): Mr. Atkinson created an acronym list and glossary and researched and prepared biographies for witnesses and other major players in connection with the document review.

NINA HAKOUN (534.25 hours): In addition to reviewing the Defendants' and third parties' productions and participating in weekly team meetings, Ms. Hakoun assisted in preparing the document review coding manual, analyzed board of directors and committee minutes and materials, and researched and summarized recent case developments.

PAUL BURNS (235 hours): In addition to reviewing the Defendants' and third parties' productions and participating in weekly team meetings, Mr. Burns assisted in the creation of a source index for the Complaint and assisted in preparing the document review coding manual.

REBECCA NILSEN (455.25 hours): In addition to reviewing the Defendants' and third parties' productions and participating in weekly team meetings, Ms. Nilsen assisted with cite checking the initial and amended complaints. She also identified financial documents missing from defendants' production.

RYAN JOSEPH (22 hours): Mr. Joseph reviewed and edited the initial and amended complaints.

TARA HEYDT (246.75 hours): Ms. Heydt assisted in cite checking the initial and amended complaints and the opposition to the motion to dismiss, prepared a timeline and reviewed and organized case documents in preparation for document review, compiled biographies of the members of the SLC, and researched recent case developments. She also performed legal research regarding the SLC's motion to stay, the creation of SLCs, and other issues.

VALERIE KANNER BONK (471 hours): In addition to reviewing the Defendants' and third parties' productions and participating in weekly team meetings, Ms. Bonk monitored recent case developments and analyzed board of directors and committee minutes and materials.

ZERIN TAHER (484.50 hours) In addition to reviewing the Defendants' and third parties' productions and participating in weekly team meetings, Ms. Taher organized case documents in preparation for document review.

FINANCIAL ANALYST

SAMUEL JONES (26.00 hours): Mr. Jones performed in-depth investigations into and analysis of various financial issues in the case, including executive and director compensation and stock trading. In connection with discovery served on St. Louis, he helped coordinate the collection of the clients' trading data and analyzed the trading data.

CLIENT SERVICES

STEFANIE GRZANDZIEL (22.25 hours): Mrs. Grzandziel is Saxena White's Manager of Client Services. In this role, she corresponded extensively with St. Louis regarding the initial and amended complaints, declarations, and various other case-related updates.

PARALEGALS

BRANDON SMITH (46.75 hours): Mr. Smith is a litigation paralegal at Saxena White. In this role, he assisted the lead attorneys with many aspects of the case, including preparing subpoenas, proofreading and finalizing discovery requests and responses, and conducting legal and factual research on various issues.

FABRICIA RESENDE (34 hours): Ms. Resende was a litigation paralegal at Saxena White. In that role, she prepared various documents for submission to the Court and maintained physical and electronic case materials.

ROSS BARNA (12 hours): Mr. Barna was a litigation paralegal at Saxena White. In that role, he prepared and finalized various documents for submission to the Court and monitored case dockets for relevant filings.

EXHIBIT 3

Employees Retirement System of the City of St. Louis, et al., v. Charles E. Jones, et al.
Case No. 2:20-cv-04813

SAXENA WHITE EXPENSE REPORT

CATEGORY	AMOUNT($)
Discovery Costs	$3,605.05
Filing Fees and Service of Process	$504.81
Online Legal and Factual Research	$18,416.22
Transportation, Hotels and Meals	$2,288.70
Postage and Delivery	$28.53
Printing and Photocopy	$2,480.75
Court Reporting and Transcripts	$79.75
Telephone, Conference Call	$31.20
TOTAL EXPENSES:	**$27,435.01**

EXHIBIT 4

Employees Retirement System of the City of St. Louis, et al., v. Charles E. Jones, et al.
Case No. 2:20-cv-04813

FIRM RESUME



SAXENA WHITE

"A highly experienced
group of lawyers
with national reputations in large securities class actions..."

- Hon. Alan Gold, U.S. District Court, Southern District of Florida

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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 exceed 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 billions of dollars 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 a nationally certified woman- and minority-owned securities litigation firm specializing in representing institutional investors.*
- *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.*

NOTABLE RECOVERIES

In re Wells Fargo & Company Shareholder Derivative Litigation

Saxena White served as Co-Lead Counsel in this landmark case alleging that the Board and executive management of Wells Fargo knew or consciously disregarded that Wells Fargo employees were illicitly creating millions of deposit and credit card accounts for their customers, without those customers' consent, in an attempt to drive up "cross selling," i.e., selling complementary Wells Fargo banking products to prospective or existing customers.

Over significant competition from the top law firms in our industry, the court selected Saxena White as one of the two firms most qualified in the nation to lead this high-profile case, noting the superior quality of the work performed. Through this shareholder derivative action, Saxena White held Defendants accountable for a scandal that has significantly damaged one of America's largest financial institutions.

On April 7, 2020, the court approved a $320 million settlement on behalf of nominal Defendant Wells Fargo & Company with the Company's officers, directors, and senior management. The Settlement includes a $240 million cash payment from Defendants' insurers—representing the largest insurance-funded monetary component of any shareholder derivative settlement by over $100 million.

Saxena White zealously advocated for the interests of the Company and obtained excellent results. After a thorough investigation of the relevant claims; the filing of a detailed complaint; successfully defeating two motions to dismiss; active intervention in, stays of, and dismissals of multiple state court actions; consolidation and coordination with related federal actions; extensive review of over 3.5 million pages of documents from Defendants, Wells Fargo, and numerous third parties; consultation with experts, the $320 million settlement was reached in this derivative action.

In approving this historic settlement, the court remarked that "this represents an excellent result for the shareholders" of Wells Fargo. The court noted "the risk" that Saxena White "took in litigation on a contingency basis – a risk they have borne for more than three years."

Peace Officers' Annuity and Benefit Fund of Georgia, et al. v. DaVita Inc., et al.

After four years of hard-fought litigation, Saxena White secured an outstanding recovery of $135 million on behalf of the settlement class. The settlement with DaVita and its senior executives resulted in the second largest all-cash securities class action recovery ever obtained in the District of Colorado, ranking among the Tenth Circuit's top five securities fraud class action recoveries in history. Moreover, the settlement amount is not only comprised of the proceeds from Defendants' insurance tower, but also includes a substantial monetary contribution from DaVita—a rare occurrence in securities class actions that underscores the exceptional nature of the recovery and the tenacity of Saxena White in achieving it.

Before agreeing to settle the case against DaVita, Saxena White undertook extensive efforts to advance the class' claims and to ensure that Plaintiffs were in a position to maximize their recovery. Saxena White's extensive litigation efforts included, an exhaustive investigation that uncovered critical internal documents and confidential witnesses, and culminated in the filing of a highly detailed, 111-page amended complaint; successfully opposing a motion to dismiss that challenged every major element of Plaintiffs' claims; and intensive fact, expert and class-certification discovery. Lead Counsel also engaged in extensive settlement negotiations, including six mediation sessions before one of the most respected mediators in the country.

Significantly, Saxena White not only initiated this action by filing the initial complaint, but the firm also filed the only leadership application at the lead plaintiff stage—a rare occurrence in these types of cases, where the PSLRA specifically requires that notice of the lead plaintiff deadline be disseminated to shareholders, and multiple applications are routinely filed. Thus, absent the efforts of Saxena White, it is almost certain that settlement class members would have recovered nothing for their claims.

In re Wilmington Trust Securities Litigation

Saxena White served as Co-Lead Counsel in a class action against Wilmington Trust, its senior executives, board of directors, outside auditor, and the underwriters of one of its secondary offerings. Co-Lead Plaintiffs conducted a comprehensive and wide-ranging investigation, culminating in an amended complaint that detailed how Defendants violated the Securities Exchange Act of 1934 by concealing the drastic deterioration of Wilmington Trust's loan portfolio and improperly accounting for the value of its loans under Generally Accepted Accounting Principles. In particular, Defendants understated Wilmington Trust's provision for loan losses as its loan portfolio declined in quality, improperly delayed recognition of losses on the portfolio, and inflated its financial results by misstating the fair value of its loan portfolio. Defendants' misconduct artificially inflated the price of Wilmington Trust securities during the Class Period. Lead Plaintiffs further alleged that Defendants violated the Securities Act of 1933 by issuing untrue statements in connection with the Company's February 23, 2010 public equity offering, by understating Wilmington Trust's provision for loan losses.

After prevailing over thousands of pages of briefing on Defendants' multiple motions to dismiss, Lead Plaintiffs sought to be appointed as class representatives and certify a class of damaged investors. Following extensive briefing and discovery, the court certified a class on September 3, 2015. In certifying the class, Saxena White also secured important new precedent for aggrieved shareholders nationwide who have fallen victim to securities fraud. The court's opinion rejected Defendants' argument that the Supreme Court's opinion in *Comcast Corp. v. Behrend,* 569 U.S. 27 (2013) requires plaintiffs to submit a damages methodology and model at the class certification stage. Having defeated an argument that securities fraud defendants are increasingly relying upon to avoid responsibility for their illegal actions, Saxena White's efforts have again provided investors with a powerful weapon with which to combat corporate wrongdoing at the class certification stage. Indeed, in addition to certifying the class, the court applauded Saxena White's "excellent lawyers" and noted that Ms. Saxena's "argument was very well argued."

Having certified a class, Saxena White and Lead Plaintiffs embarked on a monumental discovery effort to marshal the highly complex and technical evidence required to establish Defendants' fraud. As part of this massive undertaking, we closely reviewed and analyzed nearly 13 million pages of documents. Our efforts required us to not only take on a veritable who's who of highly skilled defense counsel, but also multiple branches of the U.S. Government. After two years of hard-fought motion practice, we successfully compelled the Federal Reserve and the Office of the Comptroller of the Currency to waive the bank examination privilege for over 35,000 documents that those regulators had withheld. Compelling the production of such documents is a rare feat and was the culmination of a multi-year effort to relentlessly fight for the information and facts that were relevant to the prosecution of the case. We also prevailed over the U.S. Attorney's Office, successfully moving to lift the discovery stay imposed at its request. As a result, we were able to depose key fact witnesses. In all, we deposed 39 witnesses in seven states, which generated nearly 11,000 pages of testimony and almost 900 exhibits.

After nearly eight years of hard-fought litigation, we negotiated an outstanding $210 million recovery on behalf of the Class. This remarkable settlement represents a recovery of nearly 40% of the Class's maximum

likely recoverable damages, which is eight times greater than the 5% median recovery in the Third Circuit. The recovery also ranks among the top ten securities fraud settlements in the Third Circuit, and is in the top 5% of all securities fraud settlements since the PSLRA was enacted in 1995. On November 19, 2018, the court approved the settlement in its entirety. Notably, the court twice observed that Saxena White achieved the recovery independently of the Government's criminal investigation. The court was also complimentary of the "legal prowess" exhibited by Saxena White's "highly experienced attorneys."

In re HD Supply Securities Litigation

Saxena White served as Lead Counsel in a class action against HD Supply Holdings, Inc., a commercial distributor of home improvement supplies. In 2016, the Company disclosed it had experienced significant failures that imperiled its supply chain and financially harmed the business. The complaint alleged that the Company and its senior executives misled investors about the extent to which its supply chain had recovered. At the start of the class period, Defendants assured investors that the recovery was "on track" and the Company was "perfectly poised" to deliver strong results in 2017. HD Supply's stock price skyrocketed in response. What Defendants then knew but failed to disclose, however, was that the supply chain was not in "as good condition as it's ever been," but in reality suffered from systemic problems and required a multi-million-dollar overhaul. The complaint further alleged that, while in possession of that material non-public information, HD Supply's then-CEO whom had not sold a single share over the last year, liquidated an astonishing 80% of his holdings in HD Supply, for proceeds of $54 million, shortly after making those representations. When the truth about the catastrophic state of the Company's supply chain and the need for heavy spending to remedy its deficiencies was subsequently revealed to the market, the Company's stock price declined significantly, causing investors substantial losses.

Saxena White engaged in extensive litigation efforts against HD Supply, including defeating Defendants' motion to dismiss, engaging in extensive fact discovery and deposition preparations, and moving for class certification. Moreover, as a result of the filing of the complaint, the SEC subsequently commenced an investigation into HD Supply's then-CEO's alleged insider trading. Ultimately, the parties participated in settlement negotiations through which Plaintiffs obtained a $50 million cash settlement on behalf of the Class - one of the largest securities class action settlements ever achieved in the U.S. District Court for the Northern District of Georgia.

Milbeck v. TrueCar, et al.

Saxena White served as Lead Counsel in a class action against TrueCar, Inc. that alleged that the Company and its senior executives misled investors about TrueCar's relationship with its most significant business partner, United States Automobile Association (USAA). TrueCar's SEC filings disclosed that USAA's marketing of TrueCar's services on USAA's website alone generated approximately one third of TrueCar's annual revenue and warned that if USAA made even a minor change to its marketing of TrueCar on USAA's website, TrueCar's business could be harmed. The complaint alleged that, prior to the start of the Class Period, USAA informed TrueCar that it intended to substantially modify its website, including by reducing the prominence of its marketing of TrueCar's services. Thus, Defendants knew that the risk TrueCar had warned investors about had, in fact, materialized, but failed to disclose this material information. The complaint also alleged that TrueCar's CFO and other insiders engaged in insider trading while in possession of material non-public information regarding the impending USAA website changes. When the truth that TrueCar's earnings were severely negatively impacted as a result of USAA's website redesign was finally revealed, the Company's stock price declined significantly, causing investors substantial losses.

Saxena White engaged in extensive litigation efforts on an exceptionally expedited case schedule, including defeating Defendants' motion to dismiss, reviewing over 200,000 documents produced by Defendants and obtaining class certification. Thereafter, the parties participated in negotiations through which Plaintiff ultimately obtained a $28.25 million cash settlement on behalf of the Class.

John Cumming v. Wesley R. Edens, et al. (New Senior Investment Group)

Described as a "landmark" settlement by *Law360*, in 2019 the Delaware Court of Chancery approved a $53 million settlement in a shareholder derivative action against real estate investment trust New Senior Investment Group. The suit targeted New Senior's $640 million acquisition of a portfolio of senior living properties owned by an affiliate of its investment manager, which, according to Plaintiff's experts, damaged New Senior by over $100 million. The settlement is the largest derivative action settlement as a percentage of market capitalization to date in Delaware and is one of the top ten derivative action settlements in the history of the Court of Chancery.

The Plaintiff's extensive discovery efforts in the case included the review of more than 800,000 pages of documents, 16 depositions, and the filing of six motions to compel. Following fact discovery, the parties exchanged ten expert reports related to the damages from the real estate portfolio purchase and from a related secondary stock offering. After a mediation and extensive follow-up negotiations, the parties agreed to settle the litigation in exchange for the payment of $53 million in cash to New Senior. The settlement also included valuable corporate governance reforms, including the board's agreement to approve and submit to New Senior's stockholders for adoption at the annual meeting amendments to New Senior's bylaws and certificate of incorporation which would (a) provide that directors be elected by a majority of the votes cast in any uncontested election of directors, and (b) eliminate New Senior's staggered board, so that all directors are elected on an annual basis.

In his remarks at the final settlement hearing, Vice-Chancellor Joseph R. Slights called the settlement "impressive" and further described counsel's efforts as "hard fought, but fought in the right way to reach a productive result."

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 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, 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 a case in the United States District Court for the Southern District of New York against Brixmor and certain of its senior executives for securities fraud. Following the appointment of 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, the Honorable Analisa Torres issued an order granting the final approval of the settlement as fair, adequate, and reasonable.

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 Defendants' motion to dismiss and motion for summary judgment, 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 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 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 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 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 Lead Counsel in this case, which was litigated in the Northern District of Illinois. 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. The Company engaged in wildly speculative currency hedging while telling investors that its hedges were conservative and used to protect against sudden changes in currency fluctuation. 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 reached a $27 million cash settlement with 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. 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

Saxena White filed a derivative action on behalf of nominal Defendant Clear Channel Outdoor Holdings against certain of the Company's current and former directors, its majority stockholder, Clear Channel Communications, Inc., 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

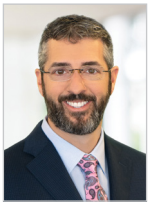
Maya Saxena, co-founder of Saxena White P.A., has been practicing exclusively in the securities litigation field for over 20 years, representing institutional investors in shareholder actions involving breaches of fiduciary duty and violations of the federal securities laws. Prior to forming Saxena White, 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. Recently, Ms. Saxena played a key role in obtaining a $320 million settlement against Wells Fargo & Company. The settlement includes a $240 million cash payment from Defendants' insurers-representing the largest insurance-funded monetary component of any shareholder derivative settlement by over $100 million. Ms. Saxena also led the litigation team that settled against Wilmington Trust for $210 million, one of the largest settlements in 2018. Other prominent settlements include: 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).

Ms. Saxena 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. She is an active member of the National Association of Public Pension Attorneys ("NAPPA") and co-chairs its Securities Litigation Committee. As part of her professional endeavors, Ms. Saxena writes numerous articles on protecting shareholder rights, and works closely with other NAPPA members to author, update, and publish a white paper on post-*Morrison* International Securities Litigation.

Maya Saxena was named a *Law360* 2021 Securities MVP, one of only five attorneys chosen in the area. Ms. Saxena was also named a "500 Leading Plaintiff Financial Lawyer" by *Lawdragon* in 2020 and 2021. She was 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 for the last twelve consecutive years. Ms. Saxena was also selected by her peers for inclusion in *The Best Lawyers in America*® four years in a row, as well as one of Florida's "Legal Elite" by *Florida Trend* magazine.

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 and Middle Districts of Florida, as well as the Eleventh Circuit Court of Appeals, and the Supreme Court of the United States.



JOSEPH E. WHITE, III

Joseph E. White, III, co-founder of Saxena White P.A., has represented shareholders as lead counsel in major securities fraud class actions and derivative actions for nearly 20 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), Brixmor Property Group ($28 million), SIRVA, Inc. ($53.3 million), and one of the largest settlements in 2018, Wilmington Trust ($210 million). Mr. White has also developed an expertise in litigating precedent-setting cases against foreign publicly traded companies, and settled two cases involving Brazilian corporations: Sadia, Inc. ($27 million) and Aracruz Celulose ($37.5 million).

Mr. White has also helped achieve meaningful corporate governance and monetary recoveries for shareholders in merger related and derivative lawsuits. Recently, Mr. White played an instrumental role in obtaining a $320 million settlement in *In re Wells Fargo & Company Shareholder Litigation*. The settlement includes a $240 million cash payment from Defendants' insurers-representing the largest insurance-funded monetary component of any shareholder derivative settlement by over $100 million. 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 was named a "500 Leading Plaintiff Financial Lawyer" by *Lawdragon* in 2020 and 2021. He was named a Florida's "Legal Elite" by *Florida Trend* magazine, and has been recognized as a "Top Lawyer" by Palm Beach Illustrated. He is also a *Lawyers of Distinction* Certified Member.

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. He is also admitted to the United States District Courts for the Southern, Northern, and Middle Districts of Florida, the Southern District of New York, the District of Massachusetts, the District of Colorado, the Western District of Michigan, and the Northern District of Illinois. Mr. White is also admitted to the United States Circuit Courts of Appeals for the First and Eleventh Circuits, and the Supreme Court of the United States.



STEVEN B. SINGER

Steven B. Singer is a Director at Saxena White P.A., and oversees the Firm's securities litigation practice. Prior to joining the Firm, Mr. Singer was employed for more than 20 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 ($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 ($6 billion settlement) after a four-week jury trial.

Recently, Mr. Singer led the litigation team that successfully recovered $320 million against Wells Fargo & Company. The settlement includes a $240 million cash payment from Defendants' insurers-representing the largest insurance-funded monetary component of any shareholder derivative settlement by over $100 million. 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, representing the second largest recovery in a case brought on behalf of bond purchasers), Lucent Technologies ($675 million), Mills Corp. ($203 million), WellCare Health Plans ($200 million), Satyam Computer Services ($150 million), Biovail Corp. ($138 million), Bank of New York Mellon ($180 million), JP Morgan Chase ($150 million), and one of the largest settlements in 2018, Wilmington Trust ($210 million).

Mr. Singer has been consistently recognized by industry observers for his legal excellence and achievements. He has been selected as one of the "500 Leading Lawyers in America" by *Lawdragon*, a "Litigation Star" by *Benchmark Litigation*, and as one of the "Leading Lawyers" in securities litigation by the *Legal 500 US Guide* — 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 a member of the New York State Bar, as well as the United States District Courts for the Southern and Eastern Districts of New York, the Northern District of Illinois, and the District of Colorado.



DAVID KAPLAN

David Kaplan is a Director at Saxena White and manages the Firm's California office. Mr. Kaplan has nearly twenty 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, including in class actions, direct "opt out" actions, and shareholder derivative litigation.

Prior to joining Saxena White, Mr. Kaplan was a partner at Bernstein Litowitz Berger & Grossman LLP, where he co-chaired its direct-action practice, represented lead plaintiffs in securities class actions, and counseled institutional investor clients on potential legal claims as a member of the firm's new matters department. Before that, Mr. Kaplan was a senior associate at Irell & Manella LLP, where he handled a variety of high-stakes business disputes and complex litigation matters.

A large part of Mr. Kaplan's day-to-day practice involves advising mutual funds, hedge funds, pension funds, sovereign wealth funds, insurance companies, and other institutional asset managers on whether to remain passive participants in securities class actions or opt out to protect and maximize their securities fraud recoveries. Mr. Kaplan has represented prominent institutional investor opt out groups in federal courts nationwide.

Mr. Kaplan also has extensive experience advising institutional clients on pursuing securities fraud recoveries in international jurisdictions. His work in this area includes virtually all countries in which shareholder collective actions are authorized by law, including Canada, Australia, England, the Netherlands, Germany, Italy, France, Japan, Israel, and Brazil.

Mr. Kaplan 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, The D&O Diary,* and *The NAPPA Report*, among other publications. He is an editor of the *American Bar Association's* Class Actions and Derivative Suits Committee's Newsletter.

Mr. Kaplan was named a "500 Leading Plaintiff Financial Lawyer" by *Lawdragon* in 2020 and 2021, and has repeatedly been selected as a "Rising Star" by *Super Lawyers*.

Mr. Kaplan graduated with a Bachelor of Arts, *cum laude*, from Washington and Lee University, and earned his Juris Doctor, High Honors, from Duke University School of Law, where he was an editor of *Duke Law Review*. He is admitted to practice in California, United States District Courts for the Central, Northern, and Southern Districts of California, and the Eastern District of Wisconsin. He is also admitted to the United States Court of Appeals for the Ninth Circuit, and the United States Bankruptcy Court for the Central District of California.



LESTER R. HOOKER

Lester R. Hooker, Director, is involved in all of Saxena White's practice areas, including securities class action litigation and shareholder derivative actions. 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 played a key role on the litigation teams that have successfully prosecuted securities fraud class and derivative actions, including *In re Wells Fargo & Company Shareholder Litigation* ($320 million settlement, which includes a $240 million cash payment from Defendants' insurers - representing the largest insurance - funded monetary component of any shareholder derivative settlement by over $100 million), *In re HD Supply Holdings, Inc. Securities Litigation* ($50 million settlement-one of the largest securities class action settlements ever achieved in the U.S. District Court for the Northern District of Georgia), *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), *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 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 was named a "500 Leading Plaintiff Financial Lawyer" by *Lawdragon* in 2020 and 2021. He was also named a "Rising Star" by *Super Lawyers*, an "Up and Comer" by *South Florida Legal Guide's*, and a "Top Lawyer" by *Palm Beach Illustrated*.

Mr. Hooker is a member of the State Bars of California, Florida, New York, 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, the Western District of Michigan, the District of Colorado, and the Northern District of Illinois. Mr. Hooker is also admitted to practice law in the United States Court of Appeals for the Ninth Circuit.



THOMAS CURRY

Thomas Curry is a Director at Saxena White and manages the Firm's Delaware office. He represents investors in corporate governance matters, with a particular focus on M&A litigation in the Delaware Court of Chancery.

Prior to joining Saxena White, Mr. Curry was an associate at Labaton Sucharow LLP, where he represented investors in many of the most significant and highest profile corporate governance matters to arise in recent years. Mr. Curry has particular expertise in representing public investors shortchanged by corporate sales and other M&A activity influenced by insider conflicts of interest. He has successfully represented investors in a wide variety of derivative, class, and appraisal matters challenging conflicted M&A transactions in the Delaware Court of Chancery and other jurisdictions around the United States. Mr. Curry also has significant experience advising United States-based investors seeking to protect their interests in connection with M&A activity subject to the law of foreign jurisdictions.

Mr. Curry successfully represented the lead petitioners in appraisal actions arising from Coach's acquisition of Kate Spade and General Electric's combination of its oil and gas business with Baker Hughes. He was a key member of teams that secured a $35.5 million derivative recovery in litigation arising from AGNC Investment Corp.'s internalization of its investment manager and corporate reforms valued at approximately $25 million in litigation arising from a related-party loan extended by Clear Channel Outdoor Holdings to its controlling stockholder, iHeart Communications.

Mr. Curry has been named a "Rising Star" in the field of M&A litigation by *The Legal 500* in both 2019 and 2020.

Mr. Curry began his legal career at the prominent Wilmington defense firm Morris, Nichols, Arsht & Tunnell LLP. He earned a Juris Doctor from Cornell Law School and a Bachelor of Arts from Temple University.

Mr. Curry is admitted to practice in Delaware, and the United States District Court for the District of Delaware.

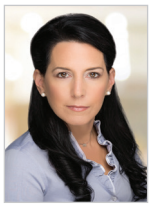


KYLA GRANT

Kyla Grant, Director, 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. Ms. Grant has been a member of the litigation teams that have successfully recovered hundreds of millions of dollars on behalf of injured shareholders, including the recent $320 million derivative settlement against Wells Fargo & Company. She was also a member of the litigation team that obtained a $28 million settlement against Brixmor Property Group, Inc.

Ms. Grant graduated from the University of Hawai'i at Mānoa 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.



LISA RIVERA

Lisa Rivera, Director, serves as the Firm's Chief Financial and Operating Officer and brings over thirty years of experience in both the public and private sectors, having served in key positions with direct responsibility for fiscal management, policy and strategic planning, operations and compliance. Ms. Rivera has represented commercial litigation clients in the area of forensic accounting, as well as having served public accounting clients with their tax and business advisory needs.

Ms. Rivera graduated from New York University's Stern School of Business in 1994, where she received a Bachelor of Science degree, majoring in Accounting. She received her Juris Doctor degree from Rutgers University School of Law in 2003. Ms. Rivera is admitted to practice law in the State of New Jersey. Additionally, she is a Certified Public Accountant and Chartered Global Management Accountant.



MARISA N. DEMATO

Marisa DeMato, Director, has more than 16 years of experience advising leading pension funds and other institutional investors on issues related to corporate fraud in U.S. securities markets, and provides representation in complex civil actions. Her work focuses on monitoring the well-being of institutional investments and counseling clients on best practices in corporate governance of publicly traded companies.

Prior to joining Saxena White, Ms. DeMato was a partner with a nationally recognized securities litigation firm where she represented institutional investors in shareholder litigation and achieved significant settlements on behalf of clients. She represented Seattle City Employees' Retirement System in a $90 million derivative settlement that achieved historic corporate governance reforms from Twenty-First Century Fox, Inc., following allegations of workplace harassment incidents at Fox News. Ms. DeMato also successfully represented investors in high-profile cases against LifeLock, Camping World, Rent-A-Center, and Castlight Health. In addition, Ms. DeMato was an integral member of legal teams that secured multimillion dollar securities and consumer fraud settlements, including *In re Managed Care Litigation* ($135 million recovery); *Cornwell v. Credit Suisse Group* ($70 million recovery); *Michael v. SFBC International, Inc.* ($28.5 million recovery); *Ross v. Career Education Corporation* ($27.5 million recovery); and *Village of Dolton v. Taser International Inc.* ($20 million recovery).

An accomplished speaker, Ms. DeMato has lectured on topics pertaining to securities fraud litigation, fiduciary responsibility, and corporate governance issues throughout the U.S and Europe. Notably, Ms. DeMato has testified before the Texas House of Representatives Pensions Committee on the changing legal landscape for public pensions following the Supreme Court's *Morrison* decision and best practices for non-U.S. investment recovery.

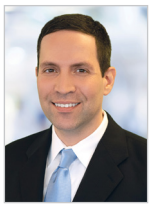
Ms. DeMato is one of the industry's leading advocates for institutional investing in women and minority-owned firms. She chairs Saxena White's Women's Alliance, which is designed to foster women-centered development and leadership in the pension, investment and legal communities. Ms. DeMato previously served as co-chair of an annual Women's Initiative Forum, which has been recognized by *Euromoney and Chambers USA* as one of the best gender diversity initiatives.

Recently, Ms. DeMato was recognized by *The National Law Journal* as a "Plaintiffs' Trailblazer" and was named a "Northeast Trailblazer" by *The American Lawyer*. Ms. DeMato was also named one of the "500 Leading Plaintiff Financial Lawyers in America" by *Lawdragon* in 2020 and 2021.

Ms. DeMato is an active member of the National Association of Securities Professionals (NASP), the American Association for Justice (AAJ), and the National Association of Public Pension Attorneys (NAPPA), where she serves on the NAPPA Securities Litigation Committee. As a member of the SACRS Education Committee, she is responsible for developing and planning educational programming for the State Association of County Retirement Systems (SACRS) in California.

Ms. DeMato earned her Juris Doctor from the University of Baltimore School of Law. She received her Bachelor of Arts from Florida Atlantic University. Ms. DeMato is a member of the Florida Bar and District of Columbia Bar. She is admitted to the United States District Courts for the Southern and Northern Districts of Florida.

ATTORNEYS



MARIO ALVITE

Mario Alvite performs analysis of potential securities and shareholder rights actions. His efforts are focused on new case origination and evaluation, as well as advising clients on settlement matters. Mr. Alvite is also experienced in e-discovery and project management in the corporate litigation, transactional, and regulatory areas. He has served on teams representing investors in securities class actions against Wilmington Trust and Rayonier Inc., as well as shareholder derivative actions including *In re Wells Fargo & Company Shareholder Litigation.*

Mr. Alvite was recognized as a "Top Lawyer" by *Palm Beach Illustrated* in 2020. He is also a member of Saxena White's Diversity and Social Responsibility Committee.

Mr. Alvite received his Bachelor of Business Administration from Florida International University. He later earned his Juris Doctor from Nova Southeastern University.



RACHEL A. AVAN

Rachel Avan has more than a decade of experience in securities litigation. She focuses on investigating and developing U.S. and non-U.S. securities fraud class, group, and individual actions, as well as advising institutional investors regarding alternatives for recovery for fraud-related investment losses.

Ms. Avan's analysis of new and potential matters is informed by her extensive experience as a securities litigator. Prior to joining Saxena White, Ms. Avan was of counsel at a nationally recognized securities litigation firm, where she assisted in prosecuting numerous high-profile securities class actions and corporate governance matters. She also served as a key member of the firm's case evaluation team and managed the firm's non-U.S. securities litigation practice for several years.

Ms. Avan has significant expertise analyzing the merits, risks, and benefits of potential claims outside the United States—in virtually all countries in which it is possible for injured shareholders to seek a recovery. She has played an essential role in ensuring that institutional investors receive substantial recoveries through non-U.S. securities litigation.

Ms. Avan brings valuable insight into corporate matters, having served as an associate at a corporate law firm, where she counseled domestic and international public companies regarding compliance with federal and state securities laws. Her analysis of corporate securities filings is also informed by her previous work assisting with the preparation of responses to inquiries by the U.S. Securities and Exchange Commission and the Financial Industry Regulatory Authority.

Ms. Avan has authored multiple articles relating to U.S. and non-U.S. securities litigation, which have been published in *The New York Law Journal, Financial Executive, Law360,* and *The NAPPA Report*, among other publications. For her achievements, Ms. Avan consistently has been selected as a "Rising Star" by *Super Lawyers*, a Thomson Reuters publication.

Ms. Avan earned her Juris Doctor from Benjamin N. Cardozo School of Law in 2006. She received her master's degree in English and American Literature from Boston University in 2002 and her bachelor's

degree, *cum laude*, in Philosophy and English from Brandeis University in 2000. Ms. Avan is a member of the New York Bar and Connecticut Bar. She is admitted to the United States District Court for the Southern District of New York.



TAYLER BOLTON

Tayler Bolton has extensive litigation experience with a particular focus on litigation in the courts of Delaware. Ms. Bolton's practice focuses on corporate governance and fiduciary duty litigation. She also has significant experience in corporate bankruptcy and commercial litigation.

Ms. Bolton earned a Bachelor of Music (Voice) and a Bachelor of Arts (Communication) from the University of Oklahoma. She received her Juris Doctor from Emory University School of Law where she served as an editor of the Emory Corporate Governance and Accountability Review, served as the elected Conduct Court Justice of the Student Bar Association, received the Emory Woman of Excellence Award, and was inducted into the Order of Barristers.

Following graduation from law school, Ms. Bolton served as a foreign law clerk to the Honorable Hanan Melcer in the Supreme Court of the State of Israel and served as a law clerk to the Honorable Diane Clarke-Streett in the Superior Court of Delaware.

Ms. Bolton is currently active in the Delaware Barristers Association, the Richard S. Rodney Inn of Court, and the Multicultural Judges and Lawyers Section where she received the Haile L. Alford Excellence Award.

Ms. Bolton is a member of the Delaware, New York, and Texas State Bars, and is admitted to practice law in the United States District Court for the District of Delaware.



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 to the

United States District Court for the Southern and Eastern Districts of New York, and is a current member of the National Association of Public Pension Attorneys.



ALEC T. COQUIN

Alec T. Coquin is an Attorney at Saxena White P.A. Mr. Coquin focuses on prosecuting complex securities fraud cases on behalf of institutional investors.

Prior to joining Saxena White, Mr. Coquin was an Associate with a nationally recognized securities litigation firm. Mr. Coquin supported the Firm team that helped recover a $140 million settlement against Barrick Gold Corporation, one of the world's largest gold mining companies, in *In re Barrick Gold Securities Litigation*. Alec was also an integral part of the Firm teams that helped recover $15.75 million in a securities class action against Prothena Corporation, $39 million in a securities class action against World Wrestling Entertainment, $39.5 million in a securities class action against Intuitive Surgical, and $29.5 million in a securities class action against Advanced Micro Devices.

Mr. Coquin earned his Juris Doctor from St. John's University School of Law, where he was the Associate Managing Editor of the *St. John's Law Review*, and his Bachelor of Arts from Wesleyan University.

Mr. Coquin is a member of the New York Bar. He is admitted to the United States District Court for the District of Maryland, the Northern District of California, the Eastern District of Michigan and the Eastern and Southern Districts of New York. He is also admitted to the United States Court of Appeals for the Second and Ninth Circuits.



OMAR D. DAVIS

Omar D. Davis has an extensive background as a retirement plan legal advisor and manager that has provided him with a deep understanding of the issues and challenges facing institutional investors. Mr. Davis has served in various capacities for several large retirement plans. Most recently, Mr. Davis was the Director of Employer Services at the Public School and Education Employee Retirement Systems of Missouri (PSRS/PEERS), a $50+ billion pension plan serving retired educators and school employees across the State of Missouri. His public retirement plan background extends to earlier roles at the Missouri Department of Transportation & Missouri State Highway Patrol Employees' Retirement System (MPERS), where he was General Counsel, and the Missouri State Employees' Retirement System (MOSERS), where he served as Investment Legal & Compliance Counsel.

Prior to his retirement system background, Mr. Davis worked for more than a decade in Missouri state government as an agency leader, including as the Director of the Department of Revenue and the Director of the Department of Labor & Industrial Relations. He has been recognized for his leadership and service numerous times throughout his career.

Prior to joining Saxena White, Mr. Davis offered client organizations a wealth of public sector experience as an executive search consultant, focusing on the public retirement, public agency, asset owner and manager sectors.



SARA DILEO

Sara DiLeo has extensive experience in federal securities class action lawsuits, derivative litigation, and complex commercial litigation in both federal and state courts. Recently, Ms. DiLeo was a member of the litigation team that successfully recovered a $320 million derivative settlement for shareholders of Wells Fargo & Company. She was also part of the litigation teams that obtained a $28.25 million settlement for shareholders of TrueCar, Inc., and a $50 million settlement for shareholders of HD Supply Holdings, Inc.-one of the largest securities class action settlements ever achieved in the U.S. District Court for the Northern District of Georgia. 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.



HANI FARAH

Hani Farah is an Attorney at Saxena White's California office. Prior to joining Saxena White, Mr. Farah practiced at a leading securities litigation law firm where he analyzed potential new cases, primarily U.S. securities class action and individual opt-outs suits, as well as international securities litigation.

Prior to joining traditional practice, Mr. Farah was the primary legal counsel for a U.S. presidential candidate. In this role, Mr. Farah researched and provided counsel on myriad issues relevant during the 2016 campaign.

Mr. Farah graduated *cum laude* from the University of California San Diego in 2011. He later graduated *cum laude* from the University of San Diego School of Law in 2015. He is a member of the California Bar, and is admitted to practice in the United States District Court for the Central District of California.



WILLIAM 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 *Charlotte Business Journal's* Corporate Counsel Award for his success in corporate law.

Prior to joining TIAA, Mr. Forgione was associated with Fried, Frank, Harris, Shriver & Jacobson LLP, and Csaplar & Bok, where he practiced in the areas of mergers and acquisitions and corporate finance. He is a member of the New York State Bar.



DONALD GRUNEWALD

Donald Grunewald focuses on performing research for securities and derivatives litigation. He has served on the litigation teams that successfully prosecuted securities fraud class actions and shareholder derivative actions, including *Peace Officers' Annuity and Benefit Fund of Georgia, et al. v. DaVita Inc., et al.* ($135 million settlement, the second largest all-cash securities class action settlement in D. Colo. history), *Plymouth County Ret. Sys. v. GTT Communications, Inc.* ($25 million settlement), and *Milbeck v. TrueCar, Inc., et al.* ($28.25 million settlement). Before joining Saxena White, Mr. Grunewald taught Legal Research and other legal courses at a college in New York for six years. He has prepared economic and legal research for litigation, businesses, and academics.

Mr. Grunewald earned his Bachelor of Arts in Economics, *magna cum laude*, from Haverford College in 2004. He later earned a Bachelor of Arts in Jurisprudence from Oxford University and a Master of Laws from the University of Pennsylvania Law School.

Mr. Grunewald has been a member of the New York State Bar since 2008.



SCOTT GUARCELLO

Scott Guarcello's practice focuses on the discovery stage of litigation. With over ten years of significant complex e-discovery experience, he brings to Saxena White an expertise honed by the numerous e-discovery services and training programs that he created, led and supported while serving as a Senior Managing Attorney for a global e-discovery consulting and services provider.

Combining both discovery and technical expertise, Mr. Guarcello advises on best practices concerning information governance principles, ESI protocols, collections, processing, large-scale document reviews, production management, and related infrastructure applications. Recently, Mr. Guarcello was a member of the litigation team that successfully obtained a $320 million derivative settlement against Wells Fargo & Company. He was also part of the litigation teams that recovered a $28.25 million settlement against TrueCar, Inc., and secured a $50 million settlement against HD Supply Holdings, Inc.-one of the largest securities class action settlements ever achieved in the U.S. District Court for the Northern District of Georgia.

Mr. Guarcello earned a Bachelor of Science from Stetson University and received a Juris Doctor from Florida International University where he graduated *cum laude* with a concentration in securities law. He was a regular recipient of the Dean's List Award and received the CALI Book Awards for the Complex Litigation and Corporate Tax courses. Mr. Guarcello has also received the Legal Elite Award for 2017 and 2018 and holds extensive industry certifications that span review tools, feature-specific technical applications, project management and analytics. As an active member in the e-discovery community, Mr. Guarcello has been a guest speaker for both intimate and large audiences.

Mr. Guarcello is a member of the Florida Bar.



SCOTT KOREN

Scott Koren is an Attorney at Saxena White. Mr. Koren concentrates on new case development by performing research on potential securities class actions and new derivative and corporate governance actions. Mr. Koren's efforts are focused on beginning stages of litigation including case origination and pre-trial discovery. Additionally, Mr. Koren has served on teams representing investors against HD Supply Holdings Inc. and DaVita, Inc.

Mr. Koren received his undergraduate degree in Business Management and Entrepreneurship from the University of Arizona and received his Juris Doctor degree from Pace University School of Law.

Mr. Koren is a member of the New York Bar.



JONATHAN D. LAMET

Jonathan Lamet has extensive experience in litigating direct securities actions and derivative actions involving publicly traded companies.

Before joining Saxena White, Mr. Lamet practiced commercial and civil litigation, including directors and officers liability, securities and fraud litigation, bankruptcy adversary proceedings, and class action defense for seven years at an Am-Law 100 firm, Akerman LLP.

Mr. Lamet graduated from Yeshiva University, Sy Syms School of Business in 2010, where he received his Bachelor of Science in Business Management. He received his Juris Doctor degree from University of Miami School of Law in 2013. Mr. Lamet was a member of the University of Miami Law Review. While attending law school, Mr. Lamet interned for the United States Attorney's Office, Economic Crimes Division, for the Southern District of Florida, and for the Hon. William Turnoff in the United States District Court for the Southern District of Florida.

Mr. Lamet 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 Eleventh Circuit.



CRAIG C. MAIDER

Craig C. Maider is an Attorney at Saxena White P.A. Mr. Maider focuses his practice on litigating large scale class actions in federal court on behalf of institutional investors.

Mr. Maider has represented investors in commodity futures manipulation cases, including as lead counsel in a certified class action against Kraft Foods Group and Mondelez Global for manipulation of the wheat futures market (*Ploss v. Kraft Foods Group, Inc. et al.*, Case No. 15-cv-2937 (N.D. Ill.) (Kness, J.)) and against Lansing Trade Group, LLC in a separate manipulation of the wheat futures market. *Budicak Inc. et al. v. Lansing Trade Group, LLC et al.*, Case No. 19-cv-2449 (D. Kan.) (Robinson, J.). Mr. Maider has also represented a putative end-user class of indirect purchasers alleging that the nation's largest chemical manufacturers conspired to inflate the price of caustic soda, a chemical commodity used in myriad industrial processes (*In re Caustic Soda Antitrust Litigation*, Lead Case Docket No. 1:19-CV-00385 (W.D.N.Y.) (Wolford, J.)).

Mr. Maider received his J.D. from the Benjamin N. Cardozo School of Law in 2016, where he graduated with honors. While at Cardozo, he also participated in the Securities Arbitration Clinic, recovering damages on behalf of investors. He received a B.S. in Finance from Rutgers University, with honors, in 2011 and previously held Series 7 and 63 licenses.

Mr. Maider is a member of the New Jersey Bar and the New York Bar. He is admitted to the United States District Court for the Southern District of New York.



JILL MILLER

Jill Miller focuses her practice on e-discovery, including project management and litigation support services for securities fraud class and derivative actions. As Managing Discovery Attorney, she oversees the staff attorneys at the firm and manages the document review process. Ms. Miller was a member of the litigation teams that secured one of the largest settlements in 2018, *In re Wilmington Trust Corporation Securities Litigation* ($210 million). She was also part of the litigation teams that successfully prosecuted Wells Fargo ($320 Million settlement), and DaVita ($135 million settlement, the second largest all-cash securities class action settlement in D. Colo. history).

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 11 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 10 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 graduated from the University of Maryland, College Park with a Bachelor of Arts in Political Science. She received her law degree from Hofstra University 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 law school.



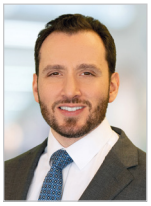
DIANNE PITRE

Dianne Pitre prosecutes securities fraud, corporate governance and shareholder rights litigation on behalf of injured shareholders. Ms. Pitre has served on the litigation teams that successfully prosecuted securities fraud class actions and shareholder derivative actions, including *In re Wells Fargo & Company Shareholder Litigation* ($320 million settlement), *Peace Officers' Annuity and Benefit Fund of Georgia, et al. v. DaVita Inc., et al.* ($135 million settlement, the second largest all-cash securities class action settlement in D. Colo. history), *In re Rayonier Inc. Securities Litigation* ($73 million settlement), *Milbeck v. TrueCar, Inc., et al*. ($28.25 million settlement), and *Plymouth County Ret. Sys. v. GTT Communications, Inc.* ($25 million settlement).

Before joining Saxena White, Ms. Pitre 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. Pitre 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. Pitre 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. Pitre 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. Pitre is an alumnus of Phi Delta Phi, the international legal honor society and oldest legal organization in continuous existence in the United States. Ms. Pitre has recently been recognized as a *Super Lawyer* "Rising Star" for the last three years in a row.

Ms. Pitre 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.



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. Recently, Mr. Saltzman was a member of the litigation team that obtained a $53 million derivative settlement on behalf of New Senior Investment Group, which was the largest settlement of all time in a derivative lawsuit when measured as a percentage of the company's total market capitalization. He was also a member of the litigation team that obtained a $50 million settlement on behalf of HD Supply Holdings, Inc. – one of the largest securities class action settlements ever achieved in the U.S. District Court for the Northern District of Georgia.

Additionally, Mr. Saltzman has been a member of litigation teams that have obtained numerous other substantial recoveries on behalf of investors, including cases involving American International Group ($40 million settlement on behalf of AIG employees who invested in AIG's company stock fund, representing one of the largest ERISA stock drop recoveries of all time), Cornerstone Therapeutics ($17.9 million for

minority stockholders of Cornerstone Therapeutics whose shares were purchased in a controller buyout), and Petrobras (high percentage recovery on behalf of state pension system in opt-out securities action).

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 Honorable 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.



DAVID L. WALES

David L. Wales is Senior Counsel at Saxena White P.A., focusing on corporate governance litigation. Mr. Wales is an experienced securities litigator and trial attorney, and a former Assistant United States Attorney for the Southern District of New York.

Prior to joining Saxena White, Mr. Wales was a partner for 12 years at a nationally recognized securities litigation firm, where he served as one of the leaders of the corporate governance litigation practice.

During his career, Mr. Wales has led numerous significant corporate governance actions including the derivative action against the board of directors of Pfizer Inc., arising out of the off-label marketing of pharmaceuticals, resulting in a $75 million recovery and the first case requiring the establishment of a board-level regulatory compliance committee. Mr. Wales has been a leader in the fight against corporate abuse in the sale of opioids including a derivative action on behalf of McKesson Corporation achieving a $175 million recovery and substantial corporate governance reforms, and successfully tried a books and records action against Walmart Inc. He was a leader in the action against the board and senior management of Twenty-First Century Fox, Inc., arising out of workplace harassment, obtaining a $90 million recovery and ground-breaking corporate governance reforms. Mr. Wales has successfully litigated numerous actions arising out of mergers and acquisitions, as well as conflicted transactions, including *In re New Senior Investment Group, Inc. Derivative Litigation*, a $53 million recovery arising out of a conflicted transaction and *In re Jefferies Group, Inc. Shareholders Litigation*, a $70 million settlement on behalf of shareholders in the sale of the company.

Mr. Wales has extensive experience successfully prosecuting class actions under the federal securities laws, including *In Re Merck & Co., Inc. Securities Litigation*, achieving a $1.06 billion settlement weeks before trial; *Public Employees' Retirement System of Mississippi v. Merrill Lynch & Co. Inc.*, obtaining a $315 million settlement after arguing the first successful class certification motion in an RMBS action; and *In re Sepracor Corp. Securities Litigation*, a $52.5 million recovery in a certified securities fraud class action.

Mr. Wales has been consistently recognized for his legal excellence. He is AV rated, the highest rating from *Martindale-Hubbell*®. He has also been named a top practitioner by Legal 500, a "New York Super Lawyer" in securities litigation by Thomson Reuters, and as one of the "500 Leading Plaintiff Financial Lawyers" by *Lawdragon*. Mr. Wales is a frequent speaker on corporate governance including ESG and securities fraud matters.

Mr. Wales graduated *magna cum laude* from the State University of New York at Albany and *cum laude* from the Georgetown University Law Center.

Mr. Wales is a member of the New York Bar and the District of Columbia Bar. He is admitted to the United States District Court for the Northern, Southern, Eastern and Western Districts of New York, the District of Columbia, the Eastern District of Michigan, and the Northern District of Illinois and the Trial Bar. He is also admitted to the United States Court of Appeals for the Second, Third and Fourth Circuits.



ADAM WARDEN

Adam Warden is involved in all of Saxena White's practice areas, including shareholder derivative actions, securities fraud litigation, and merger and acquisition litigation. During his tenure at Saxena White, Mr. Warden has been a member of the teams securing significant recoveries, including *Cumming v. Edens* (derivative settlement of $53 million for claims challenging acquisition by senior living operator New Senior Investment Group, Inc., representing more than 10% of the company's market capitalization), *In re Wells Fargo & Company Shareholder Litigation* (derivative settlement valued at $320 million, including $240 million in cash and corporate governance reforms), *In re Jefferies Group, Inc. Shareholders Litigation* (class action settlement of $70 million, one of the largest settlements in the history of the Delaware Court of Chancery), and *In re Parametric Sound Corporation Shareholders' Litigation* ($9.65 million settlement, the second largest post-merger class action settlement in Nevada state history).

Mr. Warden has been recognized as a *Super Lawyer* "Rising Star" in 2018, a *South Florida Legal Guide's* "Up and Comer" from 2018-2020, and a *Palm Beach Illustrated* "Top Lawyer" in 2020. Mr. Warden is also a member of 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*.

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.



WOLFRAM T. WORMS

Wolfram T. Worms is an Attorney in Saxena White's California office. Mr. Worms has twenty years of experience in securities litigation and has assisted shareholders in recovering over a billion dollars.

Mr. Worms began his career practicing law at Gibson Dunn and Crutcher LLP, a national defense firm, and Bernstein Litowitz Berger and Grossmann LLP, a plaintiffs securities litigation firm. Prior to joining Saxena White, Mr. Worms owned and operated a private investigation business specializing in securities fraud and related forms of corporate misconduct. In this capacity, Mr. Worms was engaged by court-appointed lead counsel, or prospective lead counsel, on hundreds of securities fraud cases. Representative examples of Mr. Worms' successful engagements as a private investigator include the securities class actions against Regions Financial Corporation ($90 million settlement), Hospira, Inc. ($60 million settlement), Sirva, Inc. ($53 million settlement), and Baxter International ($42.5 million settlement). Mr. Worms has also coordinated with the U.S. Securities Exchange Commission and the U.S. Department of Justice on major securities fraud investigations and advised the U.S. Senate Financial Crisis Inquiry Commission regarding the role of rating agencies in the mortgage crisis.

At Saxena White, Mr. Worms is a member of the Firm's case starting group, where he leverages his extensive experience in the field of securities litigation in identifying, investigating, and advising the Firm's institutional clients on potential new matters.

Mr. Worms received his Bachelor of Arts degree with a major in History from Western Oregon University. He earned his Juris Doctor from the UCLA School of Law.

Mr. Worms is a member of the California Bar.

PROFESSIONALS



SHERRIL CHEEVERS

Client Services Specialist

Ms. Cheevers is a Client Services Specialist at Saxena White. She is responsible for client outreach and business development among institutional investors. Ms. Cheevers attends industry conferences and organizes events and opportunities to give back to the community.

Prior to joining Saxena White, Ms. Cheevers worked as a sales and community liaison in multiple markets. Ms. Cheevers earned her Bachelor of Science from the University of Tampa.



MICHAEL A. D'ALONZO

Senior Investigator

Michael A. D'Alonzo is a Senior Investigator at Saxena White. Prior to joining Saxena White, Mr. D'Alonzo served over 21 years with the FBI, most recently as the Assistant Special Agent in Charge of the FBI Miami Office. In this role, he was responsible for the oversight of the Miami Divisions Resident Agencies and Miami's Special Operations Groups. As head of the Resident Agencies, he was responsible for both the counterterrorism and criminal investigations in the Fort Pierce, West Palm Beach, Homestead and Key West Resident Agencies.

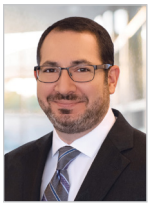
During his service with the FBI, Mr. D'Alonzo served as a Supervisory Special Agent for over 9 years. While in the FBI Newark Division in New Jersey, he was responsible for Newark's Special Operations Group which provided support to covert and undercover operations, and Newark's Humint Squad, responsible for identifying and addressing FBI intelligence gaps. In the Newark Division, he developed educational platforms for state and local law enforcement entities regarding the Newark Division Intelligence Program, while maintaining effective liaison with New Jersey colleges and universities, increasing domain awareness, and increasing intelligence production efforts.

Prior to his service with the FBI Newark Division, Mr. D'Alonzo served in the FBI New York Office as both a criminal and counterterrorism Supervisory Special Agent. In his criminal role, he was responsible for New York's Civil Rights and Crimes Against Children programs. This role involved oversight of investigations related to human trafficking as well as overseeing kidnapping investigations.

As a counterterrorism Supervisory Special Agent, Mr. D'Alonzo was responsible for a Joint Terrorism Task Force. He was responsible for ensuring the coordination between other field offices, legal attaché offices, local law enforcement, state police, the Central Intelligence Agency, National Security Agency, Department of Homeland Security, and Department of Defense. Mr. D'Alonzo was also engaged with international terrorism cases that were worked hand in hand with foreign law enforcement organizations such as the Canadian Security Intelligence Service, Royal Canadian Mounted Police, New Scotland Yard and British Security Services. He had oversight over high profile investigations including Operation High Rise, Operation Silent Digit, Aafia Siddiqui, and Syed Hashmi, all of whom were found guilty of terrorism related charges.

Mr. D'Alonzo was elevated to Supervisory Special Agent at FBI Headquarters in the Counterterrorism Division's International Terrorism Operations Section I. In this role, he served as a program manager for numerous FBI field offices and was responsible for the coordination and support for FBI forward operations

in the field. As a Special Agent assigned to the FBI New York Office, Mr. D'Alonzo was part of the FBI's Special Operations Group and the Criminal Division, working South American, Columbian drugs. Prior to his FBI employment, Mr. D'Alonzo served as a Police Officer in the State of New Jersey for 9 years following his graduation from Villanova University, PA.



MARC GROBLER

Manager 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, Mr. Grobler analyzes information that helps support the theories behind our litigation efforts. He 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.

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 15 years.

Mr. Grobler graduated *cum laude* from Tulane University's A.B. Freeman School of Business in 1997, with a concentration in Accounting. With over 20 years of overall professional financial experience, he started his career in New York at PricewaterhouseCoopers performing audits within the Financial Services Group–audit clients included Prudential Financial and Wasserstein Perella. Prior to entering the securities litigation industry, he 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. Mr. Grobler 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

Senior Client Services Specialist

Chuck Jeroloman, Senior Client Services Specialist, has been with the Firm since 2010. Mr. Jeroloman focuses on public pension clients to provide relevant educational materials, and personalized communication and service. Mr. Jeroloman is a frequent participant and speaker at state and national investor conferences, including the Georgia Public Pension Trustee Association, the Florida Public Pension Trustee Association, the National Conference on Public Employee Retirement Systems, and many more. He currently serves on the Florida Public Pension Trustees Association's Advisory Board.

Prior to joining Saxena White, Mr. Jeroloman worked in law enforcement for 28 years. He was at the Delray Beach Police Department for 23 years, and served as 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 was a Delray Beach Police and Fire Pension Board Trustee for 14 years, five of which he served as Chairman, and was also a member of the Delray Beach Fire and Police VEBA Board. Mr. Jeroloman also spent five years as a Deputy Sheriff with the Rockland County Sheriff's Department in New York. During that time, he was a member of the Joint Terrorists Task Force with the FBI, NYPD, Rockland County Sheriff's Department. During his tenure in law enforcement, Mr. Jeroloman served for 23 years as Union Representative for the Police Benevolent Association (PBA) and Fraternal Order of Police (FOP) as Union Treasurer for PBA in N.Y from 1982-87,

then for Delray Beach FOP 1988-94, and last with Delray Beach PBA from 1994-2006 with 2001-2006 as President.

Mr. Jeroloman earned his Associate Degree in Criminal Justice from Pasco-Hernando Community College. After college, Mr. Jeroloman was very active in the baseball community. 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, and was Founding Chairman to Wellington High Baseball Booster Association and Palm Beach Central Baseball Booster Association.



SAM JONES

Financial Analyst

Sam Jones is a Financial Analyst with Saxena White's California office. Prior to joining Saxena White, Mr. Jones worked for over ten years as a financial analyst at a leading securities litigation law firm where he specialized in developing techniques for data modeling and visualization. He worked on numerous landmark securities cases including *In re Bank of America Securities Litigation* ($2.425 billion recovery); *In re Lehman Brothers Equity/Debt Securities Litigation* ($735 million recovery); *In re Wachovia Corp. Securities Litigation (*$627 million recovery); and *Merrill Lynch Mortgage Pass-Through Litigation* ($315 million recovery).

In the fallout of the housing and credit crisis, Sam pioneered techniques in data management and analysis for the firm's then-developing RMBS and structured finance practice. He has worked on numerous individual and class action RMBS cases against most of the major Wall Street banks.

Sam graduated from Vassar College, where he studied anthropology with a focus on economics. After graduation he worked extensively as a field archaeologist throughout the U.S. and in Israel before transitioning to a career in securities litigation and financial analysis.



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.



JEROME PONTRELLI

Chief of Investigations

With over two decades of law enforcement experience, including 12 years with the Federal Bureau of Investigation, Jerome Pontrelli serves as Saxena White's Chief of Investigations. He oversees all of the Firm's efforts to detect, investigate, and prosecute securities cases. Prior to joining Saxena White, Mr. Pontrelli was Director of Investigations at Labaton Sucharow LLP, where his cases resulted in monetary relief for harmed investors in excess of $4 billion. He was also part of the firm's initial SEC Whistleblower Program.

Over the years, in the FBI and in private practice, Mr. Pontrelli has led over one hundred investigations of possible securities violations. Throughout his award-winning career, he has developed extensive experience in securities-related matters. Mr. Pontrelli began his career with the FBI in Covert Special Operations, and was later assigned to the FBI/NYPD Joint Bank Robbery Task Force. Following the September 11th attacks, Mr. Pontrelli was assigned to the Joint Terrorism Task Force. He later transferred to the White Collar Crime Heath Care Fraud Unit. Mr. Pontrelli has an extensive network of high-level relationships throughout the state and federal law enforcement communities.

Mr. Pontrelli received a Bachelor of Arts degree from St. Thomas Aquinas College and a Master of Arts degree from Seton Hall University. He graduated from the FBI Academy in 1996.



SAM WANKEL

Senior Data Analyst

Sam Wankel, Senior Data Analyst, has over 25 years of experience providing research relating to business valuation and complex securities litigation. Specifically, Mr. Wankel has expertise in calculating damage estimates to preparation of settlement allocations to class members. Prior to joining Saxena White, Mr. Wankel worked at a leading securities class action law firm as well as a private economic consulting firm specializing in business valuation and complex shareholder disputes.

In his early career, Mr. Wankel researched and prepared statistical information presented to the United States Congress and the Senate Banking and Finance Committee regarding public offerings, stock trading, securities class actions and the Private Securities Litigation Reform Act.

Mr. Wankel received a Bachelor of Arts degree from Colorado State University and is a two-time Ironman USA Triathlon finisher.



RIAN WROBLEWSKI

Head of Investigative Intelligence

With over eighteen years of intelligence gathering experience, Rian Wroblewski serves as Saxena White's Head of Investigative Intelligence. He oversees all of the Firm's efforts to generate proprietary sources of intelligence using advanced technological tools, systems, and methods. Prior to joining Saxena White, Mr. Wroblewski was Senior Manager of Investigative Intelligence at Labaton Sucharow LLP, where his cases resulted in monetary relief for harmed investors in excess of $4 billion. He was also part of the firm's initial SEC Whistleblower Program.

Over the years, Mr. Wroblewski has provided expert commentary to The Washington Post, Investor's Business Daily, Canadian Broadcasting Corporation, and other news outlets. Mr. Wroblewski has provided consulting to database providers, eDiscovery vendors, corporate boards, and government entities throughout the world. He has extensive pro bono experience assisting political asylum seekers and targets of honor killings, working alongside the FBI and Department of State. Mr. Wroblewski is an active member of the FBI's InfraGard Program. He has an extensive network of high-level relationships within the global intelligence community.

Mr. Wroblewski received a Bachelor of Science degree from John Jay College of Criminal Justice.

STAFF ATTORNEYS



DENISE BRYAN

With over 20 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 has over 13 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, and 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 project attorney for class action securities fraud litigation. 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. 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, where she received a Bachelor of Arts degree with a major in History. She received her Juris Doctor from the St. Thomas University School of Law. Ms. Sciarrino also earned a Master of Fine Arts in Creative Writing at Florida Atlantic University in 2004. Ms. Sciarrino is a member of the Florida Bar.

HARRIET ATSEGBUA

Ms. Atsegbua received her Juris Doctor from the Southern Methodist University Dedman School of Law, Master of Arts from the University of Denver, Josef Korbel School of International Studies, and her Bachelor of Science from Emory University. Ms. Atsegbua is a member of the New York and Texas Bars.

VALERIE KANNER BONK

Ms. Bonk received her Juris Doctor from Catholic University of America Columbus School of Law and her Bachelor of Arts from University of Maryland. Ms. Bonk is a member of the Maryland Bar.

PAUL BURNS

Mr. Burns received his Juris Doctor from St. Thomas University School of Law and his Bachelor of Science from University of Central Florida. Mr. Burns is member of the Florida Bar.

CHRISTOPHER DONNELLY

Mr. Donnelly received his Juris Doctor from University of Pennsylvania Law School, his LL.M from New York University and his Bachelor of Arts from Rutgers University. Mr. Donnelly is a member of the Florida, California, New Jersey, and New York Bars, and he is admitted to practice before the United States District Court for the Southern District of Florida.

MICHELE FASSBERG

Ms. Fassberg received her Juris Doctor from St. Thomas University School of Law and her Bachelor of Arts from Florida International University. Ms. Fassberg is a member of the Florida Bar.

TARA HEYDT

Ms. Heydt received her Juris Doctor from UCLA School of Law and her Bachelor of Arts from the University of Pennsylvania. Ms. Heydt is a member of the Florida Bar.

RYAN JOSEPH

Mr. Joseph received his Juris Doctor from New York Law School and his Bachelor of Science from Boston University. Mr. Joseph is a member of the Florida Bar.

MAURI LEVY

Ms. Levy received her Juris Doctor Degree from Villanova University School of Law and her Bachelor of General Arts and Sciences from Pennsylvania State University. Ms. Levy is a member of the Pennsylvania Bar and is admitted to practice before the United States District Court for the Eastern District of Pennsylvania.

LESLIE MARTEY

Ms. Martey received her Juris Doctor from Fordham University School of Law and her Bachelor of Arts from C.W. Post College. Ms. Martey is a member of the New York Bar.

ZERIN TAHER

Ms. Taher received her Juris Doctor from Western Michigan University, and her Masters of Business Administration and Bachelor of Science from Nova Southeastern University. Ms. Taher is a member of the Florida Bar.

KAREN THOMPSON

Karen Thompson received her Juris Doctor from St. Thomas University School of Law and her Bachelor of Arts from the University of Bridgeport. Ms. Thompson is a member of the Florida Bar.

COURTNEY WEISHOLTZ

Ms. Weisholtz received her Juris Doctor from Nova Southeastern University and her Bachelor of Arts from Northern Illinois University. She is a member of the Florida Bar, and is admitted to practice before the United States District Court for the Southern District of Florida.

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EXHIBIT 8

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

EMPLOYEES RETIREMENT SYSTEM OF THE CITY OF ST. LOUIS, *et al.*, Plaintiffs, v. CHARLES E. JONES, *et al.*, Defendants, and FIRSTENERGY CORP., Nominal Defendant.	Case No. 2:20-cv-04813 Chief Judge Algenon L. Marbley Magistrate Judge Kimberly A. Jolson

DECLARATION OF STEVEN J. TOLL FILED ON BEHALF OF COHEN MILSTEIN SELLERS & TOLL PLLC IN SUPPORT OF PLAINTIFFS' MOTION FOR FINAL APPROVAL OF SETTLEMENT AND REQUEST FOR ATTORNEYS' FEES AND EXPENSES

I, Steven J. Toll, declare as follows:

1. I am the Managing Partner of Cohen Milstein Sellers & Toll PLLC ("Cohen Milstein"), one of the Plaintiffs' Counsel in the above-captioned shareholder derivative action (the "Action"). I submit this Declaration in support of Plaintiffs' Motion for Final Approval of Settlement and Request for Attorneys' Fees and Expenses in connection with the Settlement.[1] I have knowledge of the matters set forth herein based on personal knowledge, my review of the firm's records, and consultation with other firm personnel.

[1] As defined in the Stipulation and Agreement of Settlement dated March 11, 2022 (ECF No. 170-3).

2. My firm, as one of the counsel for plaintiffs in the Action and counsel of record for Plaintiff Massachusetts Laborers Pension Fund ("MLPF") was involved in all aspects of the prosecution and resolution of the Action and worked under the direction of Co-Lead Counsel[2], as set forth herein and in the Joint Declaration of Jeroen van Kwawegen and Thomas Curry in Support of Plaintiffs' Motion for Final Approval of Settlement and Request for Attorneys' Fees and Expenses.

3. The information in this Declaration regarding the firm's time, including in the schedule attached hereto as Exhibit 1, was prepared from daily time records regularly prepared and maintained by my firm in the ordinary course of business. I am the Partner, who oversaw my firm's activities in the litigation, and I, together with attorneys working under my direction, reviewed my firm's daily time records to confirm their accuracy. The purpose of this review was to confirm both the accuracy of the entries in the time records as well as the necessity for, and reasonableness of, the time and expenses committed to the Action. Based on this review, I believe that the time reflected in the firm's lodestar calculation and the litigation expenses for which payment is sought are reasonable, and were necessary for the effective and efficient prosecution and resolution of the Action.

[2] The total number of hours expended by Cohen Milstein in this litigation also includes time the firm spent litigating *Miller v. Anderson et al.*, Case No. 5:20-cv-01743 (N.D. Ohio) (the "Northern District Action"). Cohen Milstein along with co-lead counsel intervened in the Northern District Action, which involved "substantively identical" claims as those in the Action, to protect the claims of the Company and its shareholders after overcoming a motion to dismiss in this Action. *Miller v. Anderson*, Case No. 5:20-cv-01743, 2021 WL 4220780 (N.D. Ohio Sept. 16, 2021). The Court in the Northern District of Ohio granted intervention and denied Defendants' motion to dismiss, and this Action and the Northern District Action then proceeded on parallel discovery tracks. Litigating the Northern District Action was necessary to achieve the final resolution of this litigation (and the Settlement here includes the Northern District Action), and thus the firm's time spent on that matter is included here.

4. The total number of hours expended on this Action by my firm's attorneys and professional support staff employees from its inception through March 11, 2022, was 3,109.25. The total resulting lodestar for my firm is $2,356,712.50. The schedule attached hereto as Exhibit 1 is a detailed summary reflecting the amount of time spent by each attorney and professional support staff employee of my firm who was involved in the Action, and the lodestar calculation based on my firm's current hourly rates. Different timekeepers within the same employment category (*e.g.*, partners, of counsel, associates, paralegals, etc.) may have different rates based on a variety of factors, including years of practice, years at the firm, year in the current position (*e.g.*, years as a partner), relevant experience, relative expertise, and the rates of similarly experienced peers at our firm or other firms. For personnel who are no longer employed by my firm, the lodestar calculation is based upon the rate for that person in his or her final year of employment with my firm.

5. All of the work performed by Cohen Milstein was reasonably necessary in the prosecution of this Action. Set forth below is a description of the services rendered by each attorney for whom fees are requested and who committed at least ten hours of work to the prosecution of the Action:

i. **Steven J. Toll** (Partner, 131.75 hours): Mr. Toll provided strategic guidance throughout the course of the litigation, including the drafting of the complaint, mediation efforts, settlement negotiations, and settlement terms. Mr. Toll was a principal participant in the mediation efforts on behalf of MLPF.

ii. **Christopher Lometti** (Of Counsel, 303.50 hours): Mr. Lometti was the principal liaison with our client, MLPF and oversaw the litigation efforts on behalf of MLPF, including reviewing pleadings, discovery matters, mediation, and settlement. Mr. Lometti participated in numerous telephone calls and conferences during the course of the litigation.

iii. **Richard A. Speirs** (Of Counsel, 586.25 hours) Mr. Speirs was our principal attorney responsible for supervising both the day-to-day management and

overall strategy of the litigation from inception through settlement, and overseeing all aspects of case management in conjunction with co-lead counsel. He was actively involved in the factual and legal research relating to claims asserted in the Action, and in the preparation and review of the complaints and all pleadings, including multiple briefs filed in connection with motions filed by Defendants and the Company in both in the District Courts and in the Sixth Circuit. Mr. Speirs was directly involved in all aspects of mediation and settlement related matters. Mr. Speirs attended all court conferences and participated in numerous calls and meetings throughout the course of the litigation.

iv. **Amy Miller** (Of Counsel, 564.00 hrs.) Ms. Miller was one of our primary attorneys working on this case and had significant responsibilities in many of the day-to-day activities related to the prosecution of the Action for tasks undertaken by Cohen Milstein, including, investigating and researching the complaint, researching and drafting the motion to dismiss and other motions, preparing and reviewing pleadings, coordinating and overseeing Cohen Milstein's responsibilities in discovery, including document production and review, and discovery conferences with opposing counsel. Ms. Miller participated in numerous calls and meetings throughout the course of the litigation with both co-counsel and Defendants' counsel.

v. **Molly Bowen** (Associate, 461.50 hrs.) Ms. Bowen was principally involved in all aspects of discovery, overseeing Cohen Milstein's document review work, coordinating discovery with co-lead counsel, deposition preparation, researching and drafting multiple appellate briefs filed with the Sixth Circuit, and drafting and reviewing multiple pleadings. Ms. Bowen participated in numerous calls and meetings throughout the course of the litigation.

vi. **Catherine Torrell** (Of Counsel, 75.25 hrs.) Ms. Torrell was principally involved in the research and investigation into FirstEnergy, the governmental charges, and potential claims in the matter.

vii. **Robert Dumas** (Staff Attorney, 276.75 hrs.); **Wallace Showman** (Contract Attorney, 259.75 hrs.); and **Richard Corcoran** (Contract Attorney, 280.25 hrs.) Messrs. Dumas, Showman, and Corcoran worked on the document review team reviewing document productions, analyzing documents, deposition preparation and participating in meetings and conferences with counsel overseeing discovery.

viii. **Victoria Kehs** (Paralegal, 24.75); **Jihoon Lee** (Paralegal, 72.75 hrs.); **Cameron Leska-Kent** (Former Paralegal, 53.75 hrs.) performed paralegal

work in this case, including conducting factual research, monitoring news and related dockets, maintaining case files and materials, maintaining discovery materials and preparing documents for submission to the court.

6. The qualifications and backgrounds of the attorneys identified in the previous paragraph may be found in my firms' resume, which is attached hereto as Exhibit 3.

7. The hourly rates by Cohen Milstein are reasonable for several reasons. *First*, the rates by Cohen Milstein are its customary hourly rates.

8. *Second*, the hourly rates by Cohen Milstein are reasonable in light of the firm's highly specialized skill and experience when it comes to litigating and settling shareholder derivative litigation. Cohen Milstein has extensive experience litigating shareholder derivative actions. For example, Cohen Milstein was counsel to the Oregon Department of Justice, as chief legal advisor to the Oregon State Treasurer, on behalf of the Oregon Public Employee Retirement Fund in *Rudi v. Wexner, et al.,* Case No. 2:20-cv-3068 (S.D. Ohio 2022) (derivative action arising out of allegations of sexual misconduct at Victoria's Secret); *Wynn Resorts, Ltd. Derivative Litigation,* Case No. A-18-770013-B (D.Nev.) (the only derivative case to survive demand futility in a derivative action involving allegations of sexual misconduct). Cohen Milstein was also co-lead counsel in *In re Alphabet Shareholder Litigation,* Lead Case NO.19-CV-341522 (Cal. Super. Ct., Santa Clara Cty.), where the firm obtained a settlement structure including robust corporate governance and workplace reforms, and a funding commitment by the company; and lead counsel in *Public School Teachers' Pension and Retirement Fund of Chicago v. Gary Guthart, et.al. (Intuitive Surgical Inc.,* nominal party), Case No. CIV-526930 (Sup. Ct. Cal. 2014) where the firm obtained a $15 million recovery in cash and stock options from individual defendants for insider trading claims and created corporate governance reforms.

9. *Third*, the hourly rates by Cohen Milstein are consistent with the rates for similar services by lawyers of reasonably comparable skill, experience, and national reputation.

10. *Fourth*, Cohen Milstein has special expertise when it comes to litigating shareholder derivative cases, and courts across the country have approved Cohen Milstein's fees at its standard hourly rates. *See, e.g., Rudi v. Wexner*, No. 2:20-CV-3068, 2022 WL 1682297, at *5 (S.D. Ohio May 16, 2022) ("*L Brands*") (granting fee award with hourly rates of up to $1,685 for partners and $1,245 for associates), *L Brands*, 2:20-cv-03068, ECF No. 26-9 at PAGEID #: 1080; *In re Alphabet Shareholder Derivative Litigation,* Lead Case NO.19-CV-341522, order Concerning motion for Award of Attorneys' Fees and Expenses (Cal. Super. Ct., Santa Clara Cty. Feb. 5, 2021) granting combined fee and cost award for plaintiffs' counsel, including Cohen Milstein, based on hours "billed at each firm's regular hourly rates, which range between $375-795 for associates and $720-1,135 for partners"); *Wynn Resorts, Ltd. Derivative Litigation,* Case No. A-18-770013-B, Notice of Entry of Final Judgment and Order of Dismissal (D. Nev. Mar. 10, 2020), granting fee award based on Cohen Milstein's standard hourly billing rates, ranging from $460 to $570 for associates and $690 to $1045 for partners

11. *Fifth*, Cohen Milstein's implied hourly rate of $758, based on the firm's lodestar and total hours billed, falls well within the range of those approved by courts in the Southern District of Ohio in shareholder derivative cases. *See L Brands*, 2022 WL 1682297, at *5 (granting fee award with hourly rates of up to $1,685 for partners and $1,245 for associates), *L Brands*, 2:20-cv-03068, ECF No. 26-9 at PAGEID #: 1080; *In re Big Lots, Inc. S'holder Litig.*, No. 2:12-CV-445, 2018 WL 11356561, at *5 (S.D. Ohio Aug. 28, 2018), *Big Lots*, No. 2:12–cv–445, ECF No. 122-3 at PAGEID #: 2760 (approving hourly rates of up to $925 for partners and $650 for associates).

12. Based on records maintained by my firm, Cohen Milstein incurred a total of $23,471.40 in unreimbursed litigation expenses in connection with the prosecution and settlement of the Action. (Plaintiff's Counsel are not seeking separate reimbursement for their unreimbursed litigation expenses in this matter, but instead are seeking an "all in" attorney's fee as a percentage of the total monetary recovery.) The firm's expenses are fully categorized in Exhibit 2 attached hereto.

13. The litigation expenses incurred in this Action are reflected in the books and records of Cohen Milstein, which are regularly prepared and maintained in the ordinary course of business. These records are prepared from expense vouchers, check records and other source materials and are an accurate record of the expenses incurred. These expenses were reasonably necessary in the prosecution of the Action. Courts have typically found that these kinds of expenses are payable to counsel who create a benefit for shareholders.

14. My firm undertook this litigation on an entirely contingent basis and has not been paid for any of its work, nor has any of its costs or expenses been reimbursed. My firm undertook the litigation of the Action with the expectation that it would have to devote many hours of hard work to the prosecution of a case involving complex factual and legal issues without any guarantee of successful resolution or of compensation for their efforts. The prosecution of this Action involved the expenditure of significant resources, including the time spent by attorneys and professional staff, as well as the substantial expenses that were incurred during the litigation, while my firm received no compensation during the course of the litigation.

15. This Declaration provides the Court with time only through March 11, 2022 (the date that the Stipulation and Agreement of Settlement was signed). Accordingly, this Declaration does not encompass time incurred from March 12, 2022, through the present or for any future

proceedings. Also, this Declaration does not include time spent preparing Plaintiffs' Motion for Final Approval of Settlement and Request for Attorneys' Fees and Expenses.

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

Executed this 6th day of July 2022, at Washington, D.C.

Steven J. Toll
Cohen Milstein Sellers & Toll PLLC

EXHIBIT 1

Employees Retirement System of the City of St. Louis, et al., v. Charles E. Jones, et al.
Case No. 2:20-cv-04813

COHEN MILSTEIN TIME REPORT

Inception through March 11, 2022

NAME	HOURS	HOURLY RATE	LODESTAR
Partners			
Steven J. Toll	131.75	1,150.00	151,512.50
Daniel S. Sommers	9.50	1,050.00	9,975.00
Of Counsel			
Christopher Lometti	303.50	1,040.00	315,640.00
Richard A. Speirs	556.75	1,015.00	565,101.25
Amy Miller	564.00	820.00	462,480.00
Catherine A. Torell	75.25	850.00	64,962.50
Associates			
Molly Bowen	461.50	640.00	295,360.00
Staff Attorneys			
Robert Dumas	276.75	585.00	161,898.75
Contract Attorneys			
Richard Corcoran	280.25	420.00	117,705.00
Wallace Showman	259.75	495.00	128,576.25
Paralegals and Investigators			
Suzanne Clarke	0.75	540.00	405.00
Victoria Kehs	24.75	335.00	8,291.25
Joshua Kluger	0.75	335.00	251.25
Jihoon Lee	72.75	350.00	25,462.50
Cameron Leska-Kent	53.75	325.00	17,468.75
Eric Trachtenberg	8.00	335.00	2,680.00
TOTAL LODESTAR	3,079.75		2,326,770.00

EXHIBIT 2

Employees Retirement System of the City of St. Louis, et al., v. Charles E. Jones, et al.
Case No. 2:20-cv-04813

COHEN MILSTEINEXPENSE REPORT

CATEGORY	AMOUNT($)
Filing Fees; Process Server Fees	693.00
Online Legal and Factual Research	5,270.60
Transportation, Hotels and Meals	3,181.29
Postage and Courier Delivery	470.46
Printing and Photocopy	336.20
MLPF Fund Counsel Fees	13,500.00
Telephone, Conference Call	19.85
TOTAL EXPENSES:	**23,471.40**

EXHIBIT 3

Employees Retirement System of the City of St. Louis, et al., v. Charles E. Jones, et al.
Case No. 2:20-cv-04813

FIRM RESUME

COHENMILSTEIN

COHEN MILSTEIN SELLERS & TOLL PLLC

For decades, Cohen Milstein Sellers & Toll PLLC has represented individuals, small businesses, institutional investors, and employees in many of the major class action cases litigated in the United States for violations of the antitrust, securities, consumer protection, civil rights/discrimination, ERISA, employment, and human rights laws. Cohen Milstein is also at the forefront of numerous innovative legal actions that are expanding the quality and availability of legal recourse for aggrieved individuals and businesses both domestic and international. Over its history, Cohen Milstein has obtained many landmark judgments and settlements for individuals and businesses in the United States and abroad. The firm's most significant successes include:

- L Brands, Inc. Derivative Litigation No. 2:20-cv-03068-MHW-EPD (S.D. Ohio): Cohen Milstein, in partnership with the State of Oregon, the Oregon Public Employees Retirement Fund, and other shareholders, helped resolve allegations that officers and directors of L Brands, Inc., previous owners of Victoria's Secret, breached their fiduciary duties by maintaining ties with alleged sex offender and pedophile Jeffrey Epstein and fostering a culture of discrimination and misogyny at the company. Following a Delaware General Corporate Law Section 220 books and records demand and an extensive, proprietary investigation, L Brands and the now-standalone company, Victoria's Secret, agreed to stop enforcing non-disclosure agreements that prohibit the discussion of a sexual harassment claim's underlying facts; stop using forced arbitration agreements; implement sweeping reforms to their codes of conduct, policies and procedures related to sexual misconduct and retaliation; and to invest $45 million each, for a total of $90 million, in diversity, equity and inclusion initiatives and DEI Advisory Councils. On May 16, 2022, the Court granted final approval of this watershed settlement.

- FirstEnergy Shareholder Derivative Litigation (S.D. Ohio, N.D. Ohio): On May 9, 2022, the Court granted preliminary approval of a $180 million global settlement of all shareholder derivative cases, including Employees Retirement System of the City of St. Louis and Electrical Workers Pension Fund, Local 103, IBEW v. Charles E. Jones, FirstEnergy Corp., et al., (S.D. Ohio) that of Miller v. Anderson (N.D. Ohio) and In re FirstEnergy Corp., Stockholder Derivative Litigation, (Crt. of Common Pleas, Summit County). Under the proposed settlement terms, FirstEnergy will obtain a $180 million recovery funded by the Company's insurers – which Plaintiffs represent as "among the largest derivative recoveries ever achieved" in the United States and "three times greater than any prior derivative recovery in the history of the Sixth Circuit." Moreover, FirstEnergy will commit to a series of internal governance reforms, including the departure of six Directors, active Board oversight of FirstEnergy's political spending and lobbying activities, specific disclosures in the annual proxy statement issued to shareholders.

- In re Ranbaxy Generic Drug Application Antitrust Litigation No. 1:19-md-02878-NMG (MDL No. 2878) (D. Mass.): Cohen Milstein represents the Direct Purchaser Class in this antitrust, federal RICO, and state consumer protection MDL, alleging Ranbaxy manipulated the U.S. Food and Drug Administration's generic drug approval process to block competitors from coming to market and forcing purchasers to pay supracompetitive prices for its valganciclovir hydrochloride and valsartan products. On the April 28, 2022, the eve of trial, Ranbaxy settled with the Direct Purchaser Class for $340 million.

- In re Broiler Chicken Antitrust Litigation No. 1:16-cv-08637 TMD (N.D. Ill.): On December 20, 2021, the Court granted final approval to settlements worth $181 million with six chicken processors, Tyson Foods, Fieldale Farms, Peco Foods, George's Inc., Pilgrim's Price Corp. and Mar-Jac, to resolve consumer claims that they conspired to inflate broiler chicken prices since 2009 and that Agri Stats, Inc., a third-party vendor, facilitated their unlawful scheme. Litigation against the dozen remaining defendants continues. Cohen Milstein was Co-Lead Settlement Class Counsel.

- In re Flint Water Cases No. 16-cv-10444 (E.D. Mich.): On November 10, 2021, the Court granted final approval of a landmark $626.25 million settlement between Flint residents and businesses and multiple governmental

defendants, including the State of Michigan, Michigan Department of Environmental Quality (DEQ), and individual defendants, including former Governor Rick Snyder, in this environmental toxic tort class action, affecting over 90,000 Flint residents and businesses. Litigation continues against other defendants, including two private engineering firms, Veolia North America and Lockwood, Andrews & Newnam (LAN), both charged with professional negligence, and separate litigation against the U.S. Environmental Protection Agency will also continue. Cohen Milstein's is Interim Co-Lead Class Counsel in this litigation.

- Dignity Health Church Plan Litigation No. 3:13-cv-01450 (N.D. Cal.): Cohen Milstein is co-counsel to a class of defined benefit participants, which alleges that Dignity Health is improperly claiming that its pension plans are exempt from ERISA's protections because they are "church plans," and as a result has underfunded its plans by over $1.2 billion. In June 2017, the Supreme Court reversed previous rulings on consolidated church plan cases and ordered plaintiffs, in this case, to file an amended complaint. On October 19, 2021, the Court granted preliminary approval of a $100 million settlement.

- Sutter Health Antitrust Litigation No. CSG 14-538451 (Sup. Crt., San Fran. Cnty., Cal.): On August 27, 2021, the Court granted final approval of a $575 million eve-of-trial settlement, which includes significant injunctive relief, in this closely-watched antitrust class action against Sutter Health, one of the largest healthcare providers in California, for restraining hospital competition through anticompetitive contracting practices with insurance companies. Cohen Milstein was one of five firms that litigated this case since 2014 on behalf of a certified class of self-insured employers and union trust funds against Sutter Health. California's Attorney General joined the suit in March 2018.

- Breen v. U.S. Department of Transportation and Federal Aviation Administration No. 1:05-cv-00654 (D.D.C.): In April 2021, the U.S. Department of Transportation and Federal Aviation Administration agreed to a record-breaking $43.8 million settlement – the largest age discrimination settlement ever involving the federal government, ending a 16-year-old age discrimination lawsuit involving 670 former Flight Service Specialists, who were laid off in 2005 when the FAA conducted a reduction in force. More than 90% of these workers were over 40 years old and many lost their federal pension benefits.

- In re Alphabet Shareholder Derivative Litigation No. 19CV341522 (Sup. Crt. Cal., Santa Clara Cnty.): Cohen Milstein, as Co-Lead Counsel, represented Northern California Pipe Trades Pension Plan and Teamsters Local 272 Labor Management Pension Fund in this shareholder derivative action seeking to hold Alphabet's leadership accountable for a "culture of concealment," which involved covering up pervasive gender discrimination and sexual harassment and approving secretive, multi-million dollar payouts to high-level executives credibly accused of serious sexual misconduct against junior employees. In November 2020, the Court granted final approval of a historic settlement, which includes a $310 million funding commitment and sweeping reforms to eliminate practices that silence victims and implement new measures to improve workplace equity and board oversight.

- Department of Homeland Security, et al. v. Regents of the University of California, et al. No. 18-587 (U.S. Supreme Court): In June 2020, the Supreme Court blocked the Trump Administration's plan to rescind the Deferred Action for Childhood Arrivals (DACA) program, preserving immigration protections for approximately 650,000 current DACA recipients aka "Dreamers." The Court's 5-4 ruling upheld the partial summary judgment in Cohen Milstein's NAACP case (D.D.C.) – one of three cases consolidated before the Supreme Court. The Opinion stated that the Court's affirmance of the NAACP order vacating the rescission made it unnecessary to examine the propriety of the nationwide preliminary injunctions that were issued in the consolidated cases. Cohen Milstein's case: NAACP, et al. v. Donald J. Trump, as President of the United States, et al., No. 1:17-cv-01907 (D.D.C.) was consolidated with and re-named: Trustees of Princeton University, et al. v. U.S. et al., No. 1:17-cv-02325 (D.D.C.).

- Wynn Resorts, Ltd. Derivative Litigation No. A-18-770013-B (Eighth Jud. Dist. Crt., Clark Cnty., Nev.): Cohen Milstein represented New York State Common Retirement Fund and the New York City Pension Funds as Lead

Counsel in a derivative shareholder lawsuit against certain officers and directors of Wynn Resorts, Ltd., arising out of their failure to hold Steve Wynn, the former CEO and Chairman of the Board, accountable for his longstanding pattern of sexual abuse and harassment of female employees. In March 2020, the Court granted final approval of a $90 million settlement in the form of cash payments and landmark corporate governance reforms, placing it among the largest, most comprehensive derivative settlements in history.

- National Association of the Deaf v. Harvard & MIT (D. Mass.): In February 2020 and June 2020, Cohen Milstein and co-counsel successfully settled the second of two groundbreaking class actions on behalf and deaf and hearing-impaired individuals. The landmark settlements are historic because they require two of the most lauded academic research institutions in the world to include closed captioning on all content, including videos and podcasts, available to the public online, establishing a precedent for academia and business worldwide.

- In Re Equifax, Inc., Customer Data Security Breach Litigation No. 1:17-md-2800-TWT (N.D. Ga.): On December 19, 2019 the court granted final approval a landmark $1.5 billion settlement concluding this data breach class action affecting more than 147 million people in the U.S. The settlement consists of a record-breaking $425 million in monetary and injunctive benefits and requires Equifax to spend $1 billion to upgrade its security and technology. Cohen Milstein was on the Plaintiffs' Steering Committee.

- New Jersey Carpenters Health Fund v. Royal Bank of Scotland Group PLC et al. No. 1:08-cv-05310-DAB-HBP (S.D.N.Y.): On March 8, 2019, the Honorable Deborah A. Batts granted final approval to a $165 million all-cash settlement, bringing this lawsuit, the last of 11 MBS class actions Cohen Milstein successfully handled, to conclusion. Cohen Milstein was lead counsel in this certified MBS class action.

- In re Lidoderm Antitrust Litigation No. 3:14-md-02521 (N.D. Cal.): Plaintiffs allege that Endo and Teikoku, manufacturers of the Lidoderm patch, paid Watson Pharmaceuticals to delay its generic launch. The case settled on the eve of trial and on September 20, 2018, plaintiffs obtained final approval of a $104.75 million settlement – more than 40% of plaintiffs' best-case damages estimate. This case was ranked by Law360 as "The Biggest Competition Cases Of 2017 So Far" (July 7, 2017).

- In re Domestic Drywall Antitrust Litigation No. 2:13-md-02437 (E.D. Pa.): Cohen Milstein served as co-lead counsel for a class of direct purchasers of drywall against drywall manufacturers for price-fixing. The court approved settlements that total more than $190 million. The court commented that it had sided with plaintiffs because of counsel's "outstanding work," and that plaintiffs' counsel had a "sophisticated and highly professional approach." It complemented the attorneys as "highly skilled" and noted that their performance on class action issues was "imaginative." It also stated, "Few cases with no government action, or investigation, result in class settlements as large as this one."

- In re Anthem Data Breach Litigation No. 15-MD-02617-LHK (N.D. Cal.): On August 16, 2018, the Honorable Lucy H. Koh in the U.S. District Court for the Northern District of California granted final approval to a $115 million settlement – the largest data breach settlement in U.S. history – ending claims that Anthem Inc., one of the nation's largest for-profit managed health care companies, put 78.8 million customers' personal information, including social security numbers and health date, at risk in a 2015 data breach. Cohen Milstein was co-lead counsel.

- Relvas v. The Islamic Republic of Iran, et al. No. 1:14-cv-01752-RCL (D.D.C.): On February 28, 2018 U.S. District Court Judge Royce C. Lamberth, for the District of Columbia, ordered the Republic of Iran to pay $920 million to 80 families of soldiers and other military service members who were killed or injured in the 1983 bombing of the U.S. Marine barracks in Beirut, Lebanon. The Beirut Marine Barracks bombing, which killed 241 American servicemembers and injured numerous others, was the deadliest state-sponsored terrorist attack against United States citizens before September 11, 2001.

- Moody's Litigation: Represented the co-lead state Mississippi and represented New Jersey in the $864 million consumer fraud settlement achieved in January 2017 by 22 states and the U.S. Department of Justice with Moody's Corporation, Moody's Investors Service, Inc., and Moody's Analytics, Inc. Together with the S&P settlement, these cases against the nation's two largest credit rating agencies produced key industry reforms that provide greater transparency for consumers and that divested the credit rating agencies of more than $2.2 billion for their conduct contributing to the national housing crisis and the Great Recession.

- S&P Litigation: Represented co-lead state Mississippi in the $1.375 billion-dollar consumer fraud settlement achieved in 2015 by 20 states and the U.S. Department of Justice with Standard & Poor's. Together with the Moody's settlement, these cases against the nation's two largest credit rating agencies produced key industry reforms that provide greater transparency for consumers and that divested the credit rating agencies of more than $2.2 billion for their conduct contributing to the national housing crisis and the Great Recession.

- In re BP Securities Litigation No. 4:10-MD-02185 (S.D. Tex.): Cohen Milstein represented the New York State Common Retirement Fund as co-lead plaintiff in a securities class action filed in 2010, alleging that BP injured investors by intentionally downplaying the severity of the Deepwater Horizon oil spill and preventing investors from learning the magnitude of the disaster. After successfully arguing for class certification to the district court, Cohen Milstein presented plaintiffs' defense of that court's decision to the U.S. Court of Appeals for the Fifth Circuit, which affirmed the class. The case settled for $175 million a few weeks before trial was set to begin.

- Providence Health Services Church Plan Litigation No. 2:14-cv-01720-JCC (W.D. Wash.): Cohen Milstein served as co-lead counsel to a class of defined benefit participants of Providence's health & Service Case Balance Retirement Plan who alleged that fiduciaries underfunded the pension plan because they improperly operated it under the ERISA "church plan" exemption. In March 2017, the court granted final approval of a $315.9 million settlement, one of the largest settlements of its kind, and requires Providence to continue making minimum plan contributions that aim to fully fund the plan by 2029.

- Bon Secours Health System Church Litigation No. 1:16-cv-01079-RDB (D. Md.): Cohen Milstein served as lead counsel to a class of defined benefit participants of seven Bon Secours Health System Inc. pension plans which improperly operated under the "church plan" exemption of ERISA. In May 2017, the court granted final approval of a settlement of over $102 million, one of the largest settlements of its kind.

- In re Animation Workers Litigation No. 5:14-cv-04062 (N.D. Cal.): Cohen Milstein served as co-lead counsel representing a class of animation and visual effects workers who alleged that Pixar, Lucasfilm, DreamWorks, Disney and other studios conspired to suppress their pay primarily through no poach agreements. The court granted final approval of $168.95 million in settlements. To our knowledge, this is the most successful no-poach class action, achieving an average recovery per class member of nearly $17,000.

- Mincey v. Honda Motor Company, et al. No. 22787197 (Circ. Crt. Duval Cty, Fla.): On July 15, 2016, Cohen Milstein resolved a closely watched lawsuit against the Japanese company and airbag maker, Takata, involving the injury and eventual death of a woman whose car was involved in a minor accident in 2014.The confidential resolution was announced moments before a critical hearing in which a judge in Jacksonville, Fla., could have considered allowing punitive damages and for the company's chief executive, Shigehisa Takada, to submit a civil deposition.

- HEMT MBS Litigation No. 1:08-cv-05653 (S.D.N.Y.): On May 10, 2016, U.S. District Judge Paul A. Crotty finally approved a $110 million settlement in the mortgage-backed securities class action brought by investors against Credit Suisse AG and its affiliates. This settlement ends claims brought by the New Jersey Carpenters Health Fund and other investors who claimed that the offering documents for the mortgage-backed securities at issue violated

the Securities Act as they contained false and misleading misstatements concerning compliance with underwriting standards.

- In re Urethane Antitrust Litigation (Polyether Polyol Cases) MDL No: 1616 (D. Kan.): Cohen Milstein served as co-lead counsel on behalf of a class of direct purchasers of chemicals used to make many everyday products, from mattress foam to carpet cushion, who were overcharged as a result of a nationwide price-fixing conspiracy. On February 25, 2016, Cohen Milstein reached an agreement with The Dow Chemical Company to settle the case against Dow for $835 million. Combined with earlier settlements obtained from Bayer, Huntsman, and BASF, the Dow settlement pushed the total settlements in the case to $974 million. The settlement was approved on July 29, 2016.

- United States of America et al., ex rel. Lauren Kieff, v. Wyeth No. 03-12366 (D. Mass.): Cohen Milstein was co-lead counsel in this False Claims Act whistleblower case against pharmaceutical giant Wyeth (subsequently acquired by Pfizer), in which the whistleblowers alleged that Wyeth defrauded Medicaid, the joint federal/state healthcare program for the poor, when it reported falsely inflated prices for its acid suppression drug Protonix from 2001 through 2006 for Medicaid rebate purposes. Weeks before trial, in February 2016, in one of the largest qui tam settlements in U.S. history, Wyeth agreed to pay $784.6 million to the U.S. government and the over 35 intervening states.

- RALI MBS Litigation No. 08-8781 (S.D.N.Y.): On July 31, 2015, Judge Katherine Failla gave final approval to a $235 million settlement with underwriters Citigroup Global Markets Inc., Goldman Sachs & Co., and UBS Securities LLC. She also approved a plan for distribution to investors of those funds as well as the previously approved $100 million settlement with RALI, its affiliates, and the individual Defendants that was reached in in 2013. This global settlement marks an end to a long and complicated class action over MBS offerings that RALI and certain of its affiliates issued and sold to the New Jersey Carpenters Health Fund and other investors from 2006 through 2007. The case took seven years of intense litigation to resolve.

- In re: Bear Stearns Mortgage Pass-Through Certificates Litigation No. 08-08093 (S.D.N.Y.): On May 27, 2015, U.S. District Judge Laura Taylor Swain finally approved a class action settlement with JPMorgan Chase & Co., which agreed to pay $500 million and up to an additional $5 million in litigation-related expenses to resolve claims arising from the sale of $27.2 billion of mortgage-backed securities issued by Bear Stearns & Co. during 2006 and 2007 in 22 separate public offerings.

- Harborview MBS Litigation No. 08-5093 (S.D.N.Y.): In February 2014, Cohen Milstein reached a settlement with the Royal Bank of Scotland (RBS) in the Harborview MBS Litigation, resolving claims that RBS duped investors into buying securities backed by shoddy home loans. The $275 million settlement is the fifth largest class action settlement in a federal MBS case. This case is one of eight significant MBS actions that Cohen Milstein has been named lead or co-lead counsel by courts and one of three that were nearly thrown out by the court, only to be revived in 2012.

- In Re Electronic Books Antitrust Litigation No. 11-md-02293 (S.D.N.Y.): In August 2014, a New York federal judge approved a $400 million antitrust settlement in the hotly contested ebooks price-fixing suit against Apple Inc. Combined with $166 million in previous settlements with five defendant publishing companies, the final settlement totaled more than $560 million. The settlement resolves damages claims brought by a class of ebook purchasers and attorneys general from 33 U.S. states and territories.

- Countrywide MBS Litigation No. 2:10-cv-00302 (C.D. Cal.): In April 2013, plaintiffs in the landmark mortgage-backed securities (MBS) class action litigation against Countrywide Financial Corporation and others, led by Lead Plaintiff, the Iowa Public Employees' Retirement System (IPERS), agreed to a $500 million settlement. It is the nation's largest MBS-federal securities class action settlement. The settlement was approved in December 2013

and brings to a close the consolidated class action lawsuit brought in 2010 by multiple retirement funds against Countrywide and other defendants for securities violations involving the packaging and sale of MBS. The settlement is also one of the largest (top 20) class action securities settlements of all time.

- In re Beacon Associates Litigation No. 09-cv-0777 (S.D.N.Y): Class action settlement of $219 million for trustees and participants in ERISA-covered employee benefit plans whose assets were lost through investments made on their behalf by Beacon Associates LLC I & II in the investment schemes of Bernard Madoff.

- In re Plasma-Derivative Protein Therapies Antitrust Litigation No. 09 C 7666 (N.D Ill.): After four years of litigation, in October of 2013, CSL Limited, CSL Behring LLC, CSL Plasma, Inc. (collectively, "CSL"), and the Plasma Protein Therapeutics Association ("PPTA") agreed to pay $64 million dollars to settle a lawsuit brought by the University of Utah Hospital and other health care providers alleging that CSL, the PPTA, and Baxter agreed between 2003-2009 to restrict the supply of immunoglobulin and albumin and thereby increase the prices of those therapies. Two months later, Baxter International Inc. and Baxter Healthcare Corp. (collectively "Baxter") agreed to pay an additional $64 million to settle these claims – bringing the total recovery to the class to $128 million.

- Keepseagle v. Vilsack Civil Action No. 1:99CV03119 (D.D.C.): A class of Native American farmers and ranchers allege that they have been systematically denied the same opportunities to obtain farm loans and loan servicing that have been routinely afforded white farmers by the USDA. A class was certified in 2001 by Judge Emmet Sullivan, District Judge for the U.S. District Court for the District of Columbia, and the D.C. Circuit declined USDA's request to review that decision. On October 19, 2010, the case reached a historic settlement, with the USDA agreeing to pay $680 million in damages to thousands of Native American farmers and ranchers and forgive up to $80 million worth of outstanding farm loan debt.

- In re Parmalat Securities Litigation No. 1:04-md-1653 (S.D.N.Y.): Cohen Milstein, as co-lead counsel, successfully negotiated several settlements totaling approximately $90 million, including two settlements with Parmalat's outside auditors. Judge Lewis A. Kaplan remarked that plaintiffs' counsel "did a wonderful job here for the class and were in all respects totally professional and totally prepared. I wish I had counsel this good in front of me in every case." Parmalat's bankruptcy filing was the biggest corporate bankruptcy in Europe, and in December 2003, the U.S. Securities and Exchange Commission filed a suit charging Parmalat with "one of the largest and most brazen corporate financial frauds in history." During the litigation, the company subsequently emerged from bankruptcy, as a result we added "New Parmalat" as a defendant because of the egregious fraud committed by the now-bankrupt old Parmalat. New Parmalat strenuously objected and Judge Kaplan of the Southern District of New York ruled in the class plaintiffs' favor, a ruling which was affirmed on appeal. This innovative approach of adding New Parmalat enabled the class to obtain an important additional source of compensation, as we subsequently settled with New Parmalat for shares worth approximately $26 million.

- Dukes v. Wal-Mart Stores, Inc. No. C-01-2252 (N.D. Cal.): Cohen Milstein is co-lead counsel in this sex discrimination case. In 2004, the U.S. District Court certified a nationwide class action lawsuit for all female employees of Wal-Mart who worked in U.S. stores anytime after December 26, 1998. This was the largest civil rights class action ever certified against a private employer, including approximately 1.5 million current and former female employees. That ruling was appealed, and while affirmed by the Ninth Circuit, was reversed by the Supreme Court in June 2011. Cohen Milstein argued the case for the plaintiffs-respondents in the Supreme Court. Since then, the *Dukes* action has been amended to address only the Wal-Mart regions that include stores in California, and other regional class cases have been or are soon to be filed. This litigation to resolve the merits of the claims – whether Wal-Mart discriminates against its female retail employees in pay and promotions – continues.

- Rubin v. MF Global, Ltd. No. 08-CV-02233 (S.D.N.Y.): Acting as co-lead counsel in this class action, the Firm represented the Central States, Southeast and Southwest Areas Pension Fund which was one of the co- lead

plaintiffs in the case. In September 2010, as a result of Plaintiffs' decision to appeal, the U.S. Second Circuit Court of Appeals vacated in part the lower court's dismissal of the case and remanded the case for further proceedings. In overturning the District Court decision, the Second Circuit issued a decision which differentiated between a forecast or a forward-looking statement accompanied by cautionary language -- which the Appellate Court said would be insulated from liability under the bespeaks caution doctrine -- from a factual statement, or non-forward-looking statement, for which liability may exist. Importantly, the Second Circuit accepted Plaintiffs' position that where a statement is mixed, the court can sever the forward-looking aspect of the statement from the non-forward-looking aspect. The Court further stated that statements or omissions as to existing operations (and present intentions as to future operations) are not protected by the bespeaks caution doctrine. Mediation followed this decision and resulted in a settlement comprised of $90 million in cash.

- Hughes v. Huron Consulting Group No. 09-CV-04734 (N.D. Ill.): Cohen Milstein represented lead plaintiffs the Public School Teachers' Pension & Retirement Fund of Chicago and the Arkansas Public Employees Retirement System ("APERS") in this case against Huron Consulting Group, founded by former Arthur Anderson personnel following its collapse in the wake of the Enron scandal. In August 2010, the District Court for the Northern District of Illinois denied defendants' motions to dismiss in their entirety and upheld plaintiffs' allegations that defendants intentionally improperly accounted for acquisition- related payments, which allowed plaintiffs to move forward with discovery. The case was settled for $40 million, comprised of $27 million in cash and 474,547 shares in Huron common stock, with an aggregate value at the time of final approval in 2011 of approximately $13 million.

- In re Lucent Technologies Securities Litigation No. 00-621 (D.N.J.): A settlement in this massive securities fraud class action was reached in late March 2003. The class portion of the settlement amounts to over $500 million in cash, stock and warrants and ranks as the second largest securities class action settlement ever completed. Cohen Milstein represented one of the co-lead plaintiffs in this action, a private mutual fund.

- Nate Pease, et al. v. Jasper Wyman & Son, Inc., et al. No. 00-015 (Knox County Superior Court, Me.): In 2004, a state court jury from Maine found three blueberry processing companies liable for participating in a four-year price-fixing and non-solicitation conspiracy that artificially lowered the prices defendants paid to approximately 800 growers for wild blueberries. The jury ordered defendants Cherryfield Foods, Inc., Jasper Wyman & Son, Inc., and Allen's Blueberry Freezer, Inc. to pay $18.68 million in damages, the amount which the growers would have been paid absent the defendants' conspiracy. After a mandatory trebling of this damage figure under Maine antitrust law, the total amount of the verdict for the plaintiffs is just over $56 million. The firm served as co-lead counsel.

- In re StarLink Corn Products, Liability Litigation MDL No. 1403 (N.D. Ill.): Cohen Milstein successfully represented U.S. corn farmers in a national class action against Aventis CropScience USA Holding and Garst Seed Company, the manufacturer and primary distributor of StarLink corn seeds. StarLink is a genetically modified corn variety that the United States government permitted for sale as animal feed and for industrial purposes, but never approved for human consumption. However, StarLink was found in corn products sold in grocery stores across the country and was traced to widespread contamination of the U.S. commodity corn supply. The Firm, as co-lead counsel, achieved a final settlement providing more than $110 million for U.S. corn farmers, which was approved by a federal district court in April 2003. This settlement was the first successful resolution of tort claims brought by farmers against the manufacturers of genetically modified seeds.

- Snyder v. Nationwide Mutual Insurance Company No. 97/0633 (Sup. Ct. N.Y. Onondaga Cnty.): Cohen Milstein served as one of plaintiffs' principal counsel in this case on behalf of persons who held life insurance policies issued by Nationwide through its captive agency force. The action alleged consumer fraud and misrepresentations. Plaintiffs obtained a settlement valued at more than $85 million. The judge praised the efforts of Cohen Milstein and its co-counsel for having done "a very, very good job for all the people." He complimented "not only the manner" in which the result was arrived at, but also the "time … in which it was done."

- Oncology & Radiation Associates, P.A. v. Bristol Myers Squibb Co., et al. No. 1:01CV02313 (D.D.C.): Cohen Milstein has been co-lead counsel in this case since its inception in 2001. Plaintiffs alleged that Bristol-Myers Squibb unlawfully monopolized the United States market for paclitaxel, a cancer drug discovered and developed by the United States government, which Bristol sells under the brand name Taxol. Bristol's scheme included a conspiracy with American BioScience, Inc., a generic manufacturer, to block generic competition. Cohen Milstein's investigation and prosecution of this litigation on behalf of direct purchasers of Taxol led to a settlement of $65,815,000 that was finally approved by U.S. District Judge Emmet G. Sullivan on August 14, 2003 and preceded numerous Taxol-related litigations brought by the Federal Trade Commission and State Attorneys General offices.

- Kruman v. Christie's International PLC, et al. No. 01-7309 (S.D.N.Y.): A $40 million settlement on behalf of all persons who bought or sold items through Christie's or Sotheby's auction houses in non-internet actions was approved in this action. Cohen Milstein served as one of three leading counsel on behalf of foreign plaintiffs. The Court noted that approval of the settlement was particularly appropriate, given the significant obstacles that faced plaintiffs and plaintiffs' counsel in the litigation. The settlement marked the first time that claims on behalf of foreign plaintiffs under U.S. antitrust laws have been resolved in a U.S. court, a milestone in U.S. antitrust jurisprudence.

- Roberts v. Texaco, Inc. 94-Civ. 2015 (S.D.N.Y.): Cohen Milstein represented a class of African-American employees in this landmark litigation that resulted in the then-largest race discrimination settlement in history ($176 million in cash, salary increases and equitable relief). The Court hailed the work of class counsel for, *inter alia,* "framing an imaginative settlement, that may well have important ameliorative impact not only at Texaco but in the corporate context as a whole …".

- Trotter v. Perdue Farms, Inc. No. 99-893 (D. Del.): This suit on behalf of hourly workers at Perdue's chicken processing facilities – which employ approximately 15,000 people – forced Perdue to pay employees for time spent "donning and doffing," that is, obtaining, putting on, sanitizing and removing protective equipment that they must use both for their own safety and to comply with USDA regulations for the safety of the food supply. The suit alleged that Perdue's practice of not counting donning and doffing time as hours worked violated the Fair Labor Standards Act and state law. In a separate settlement with the Department of Labor, Perdue agreed to change its pay practices. In addition, Perdue is required to issue retroactive credit under one of its retirement plans for "donning and doffing" work if the credit would improve employees' or former employees' eligibility for pension benefits. Cohen Milstein was co-lead counsel.

Awards & Recognition

2022

- In 2022, *Chambers USA* named Michelle Yau a 2022 **"Top Ranked" lawyer in ERISA Litigation: Plaintiff – Nationwide.**
- In 2022, *Chambers USA* named Mary Bortscheller a 2022 **"Top Ranked" lawyer in ERISA Litigation: Plaintiff – Nationwide.**
- In 2022, *Chambers USA* named Daniel R. Sutter a 2022 **"Associate to Watch" in ERISA Litigation: Plaintiff – Nationwide.**
- In 2022, *Chambers USA* ranked Cohen Milstein a **2022 "Top Ranked" firm in four categories – Antitrust: Plaintiff, ERISA Litigation: Plaintiff, Product Liability & Mass Torts: Plaintiff, and Securities Litigation: Mainly Plaintiff**
- In 2022, *Chambers USA* named Sharon K. Robertson a **2022 "Top Ranked" lawyer for Antitrust: Plaintiff – Nationwide and for Antitrust: Mainly Plaintiffs – New York**.
- In 2022, *Chambers USA* named Kit A. Pierson a **2022 "Ranked" lawyer in Antitrust: Plaintiff – Nationwide.**
- In 2022, *Law360* named Daniel H. Silverman and Molly J. Bowen **Law360 2022 "Rising Stars"** in Antitrust and Securities, respectively.
- In 2022, the *National Law Journal* named Cohen Milstein a **2022 "Elite Trial Lawyer Award"** finalist in eight practice areas, including Antitrust, Civil Rights, Consumer Protection, Discrimination, Employment Rights, Environmental Protection, Shareholder Rights, Class Action.
- In 2022, the *National Law Journal* named Jan E. Messerschmidt and Daniel H. Silverman **2022 "Rising Stars of the Plaintiffs Bar"** in the areas of Securities and Antitrust, respectively.
- In 2022, the *National Law Journal* named Christine E. Webber a **2022 "Elite Women of the Plaintiffs Bar"** award winner.
- In 2022, the *National Law Journal* named Cohen Milstein a finalist for its **2022 "Diversity Initiative Award."**
- In 2022, the *American Lawyer* named Carol Gilden was a **2022 American Lawyer "Trailblazer – Midwest."**
- In 2022, *Variety* named Cohen Milstein's Kalpana Kotagal to **Variety's "Legal Impact Report 2022: Top Attorneys Winning Cases and Making Deals in Hollywood."**
- In 2022, Lawdragon named eight Cohen Milstein attorneys to the "**Lawdragon 500 Leading Plaintiff Consumer Lawyers 2022"** list.
- In 2022, *Law360* appointed Cohen Milstein's Betsy A. Miller to ***Law360's* 2022 Consumer Protection Editorial Advisory Board.**
- In 2022, *Law360* appointed Cohen Milstein's Christine E. Webber to ***Law360's* 2022 Discrimination Editorial Advisory Board.**
- In 2022, *Law360* appointed Cohen Milstein's Douglas J. McNamara to ***Law360's* 2022 Cybersecurity & Privacy Editorial Board.**
  In 2022, *Law360* appointed Cohen Milstein's Michelle C. Yau to ***Law360's* 2022 Benefits Editorial Advisory Board.**
- In 2022, *Global Competition Review* named six Cohen Milstein attorneys to **GCR "Who's Who Legal: Competition 2022."**
- In 2022, Lawdragon recognized 12 Cohen Milstein lawyers in the **"Lawdragon 500 Leading Lawyers in America"** list.
- In 2022, *Law360* recognized Cohen Milstein's Employee Benefits/ERISA practice as one of five law firms in the nation for its **"*Law360* 2021 Practice Group of the Year – Benefits"** award for the firm's ERISA-related litigation accomplishments in 2021.
- In 2022, *Law360* recognized Cohen Milstein as one of five law firms in the nation for its **"*Law360* 2021 Practice Group of the Year – Class Actions"** for the firm's class action accomplishments in 2021.

- In 2022, *Law360* recognized Cohen Milstein's Civil Rights & Employment practice for its **"*Law360* 2021 Practice Group of the Year – Employment"** for the firm's employment litigation accomplishments in 2021.

2021

- In 2021, the 2022 Edition of U.S. News – Best Lawyers "Best Law Firms" recognized Cohen Milstein among the **"Top Firms Nationally."**
- In 2021, *The American Lawyer* named Cohen Milstein a **"National Boutique / Specialty Litigation Department of the Year"** finalist.
- In 2021, Cohen Milstein's Leslie M. Kroeger received the 2021 **"B.J. and Tom Masterson Award for Professionalism"** from the Florida Justice Association.
- In 2021, *Lawdragon* selected eight Cohen Milstein attorneys for its **"Leading Plaintiff Employment and Civil Rights Lawyers"** guide.
- In 2021, *Palm Beach Illustrated* named seven Cohen Milstein attorneys to its **"Top Lawyers"** list.
- In 2021, *Law360* named Cohen Milstein's Michelle Yau **"Benefits – MVP"** for her representation of participants and beneficiaries of the Triad Manufacturing Inc. Employee Stock Ownership Plan in an ERISA suit claiming the company overcharged workers for company stock.
- In 2021, *Law360* named Cohen Milstein's Joseph M. Sellers **"Employment – MVP"** for his role in obtaining a settlement on behalf of some 700 fight service specialists alleging age discrimination by the Federal Aviation Administration.
- In 2021, *Law360* named Cohen Milstein's Theodore J. Leopold **"Environmental – MVP"** for his work in securing a settlement for victims of the Flint, MI water crisis.
- In 2021, *Law360* named Cohen Milstein's Sharon K. Robertson **"Life Sciences – MVP"** for her "pay for delay" antitrust class actions in the Life Sciences industry.
- In 2021, *The Best Lawyers in America* named three Cohen Milstein attorneys to its 2021 **"Ones to Watch"** list.
- In 2021, *The Best Lawyers in America* named 13 Cohen Milstein attorneys to its 2021 **"Best Lawyers in America"** list.
- In 2021, *The Best Lawyers in America* named Christine E. Webber **"Lawyer of the Year"** in the Employment Law – Washington, DC category.
- In 2021, Lawdragon named 24 Cohen Milstein attorneys to its **"500 Leading Plaintiff Employment Lawyers"** list.
- In 2021, Cohen Milstein's Betsy A. Miller named *The National Law Journal*/Law.com's 2021 Elite Trial Lawyers **"Keith Givens Visionary Award."**
- In 2021, Cohen Milstein's named *The National Law Journal*/Law.com's 2021 Elite Trial Lawyers **"Environmental Protection Practice of the Year Award."**
- In 2021, Cohen Milstein's Laura H. Posner and Emmy L. Levens named *The National Law Journal*/Law.com's 2021 Elite Trial Lawyers **"Elite Women of the Plaintiffs Bar Award."**
- In 2021, Cohen Milstein's Sharon K. Robertson named to Benchmark Litigation's 2021 **"40 & Under Hot List."**
- In 2021, three Cohen Milstein Attorneys named to Florida Trend's 2021 **"Florida Legal Elite."**
- In 2021, Cohen Milstein's Emmy L. Levens named to Bloomberg Law's inaugural **"They've Got Next: The 40 Under 40."**
- In 2021, Cohen Milstein's Richard A. Koffman recognized as GCR's **"Who's Who Legal: Thought Leaders – Competition 2022."**
- In 2021, seven Cohen Milstein Antitrust attorneys named to GCR's **"Who's Who Legal: Competition 2021."**
- In 2021, seven Cohen Milstein attorneys recognized in **"Florida Super Lawyers."**
- In 2021, twelve Cohen Milstein Attorneys Recognized as 2021 **"Washington, DC Super Lawyers"**; six recognized as 2021 **"Washington, DC Rising Stars."**
- In 2021, *Legal 500* named Cohen Milstein a **"Leading Firm"** in Antitrust Litigation: Plaintiff; Labor and Employment Disputes: Plaintiff; Products Liability, Mass Torts & Class Action: Plaintiff; and Securities Litigation: Plaintiff.

- In 2021, *Legal 500* named four Cohen Milstein attorneys **"Next Generation Partners."**
- In 2021, *Legal 500* named eight Cohen Milstein partners **"Leading Lawyers."**
- In 2021, Cohen Milstein's Kit A. Pierson **"Ranked"** by Chambers USA for Antitrust: Plaintiff.
- In 2021, Cohen Milstein's Sharon K. Robertson **"Top Ranked"** by Chambers USA for Antitrust: Plaintiff.
- In 2021, eight Cohen Milstein lawyers named among the **"Lawdragon 500 Leading Plaintiff Consumer Lawyers."**
- In 2021, Cohen Milstein's Kalpana Kotagal receives Reel Works **"Change Maker Award."**
- In 2021, Cohen Milstein was recognized as a **"Leading Firm"** by Chambers USA in Three Categories – Antitrust: Plaintiff; Product Liability: Plaintiff; and Securities Litigation: Plaintiff.
- In 2021, Cohen Milstein named an **"Elite Trial Lawyer" f**inalist in eight practice areas by *The National Law Journal.*
- In 2021, *Daily Business Review* recognized Theodore J. Leopold Recognized as a **"2021 Distinguished Leader."**
- In 2021, *Law360* recognized Julie Goldsmith Reiser as a **"Titan of the Plaintiffs Bar."**
- In 2021, *The National Law Journal* and *The Trial Lawyer* named Betsy A. Miller and Steven J. Toll among **"America's 50 Most Influential Trial Lawyers."**
- In 2021, Lawdragon named Agnieszka Fryszman Named to the **"Lawdragon Global Litigation 500."**
- In 2021, Lawdragon recognized 12 Cohen Milstein lawyers among the **"500 Leading Lawyers in America."**
- In 2021, Lawdragon inducted Steven J. Toll into the **"Lawdragon 500 Hall of Fame."**

2020

- In 2020, *Crain's New York Business* recognized Laura H. Posner among New York's **"Notable Women in Law."**
- In 2020, *Law360* recognized Cohen Milstein as a **"Class Action Group of the Year."**
- In 2020, *Law360* recognized Cohen Milstein as a **"Environmental Group of the Year."**
- In 2020, *Law360* recognized Cohen Milstein as a **"Life Sciences Group of the Year."**
- In 2020, *Law360* recognized Cohen Milstein as a **"Securities Group of the Year."**
- In 2020, Cumberland School of Law named Theodore J. Leopold its **"2020 Distinguished Alumnus of the Year."**
- In 2020, *U.S. News & World Report* and *Best Lawyers* named Cohen Milstein among their **2021 "Best Law Firms"** nationally in ERISA Litigation, Employee Benefits Law, and Labor & Employment Litigation; for Washington, DC in Civil Rights Law, Employee Benefits (ERISA) Law, Employment Law – Individuals, Labor Law – Union, Litigation – ERISA, and Litigation – Labor & Employment; and for West Palm Beach, FL in Mass Tort Litigation / Class Actions – Plaintiffs Medical Malpractice Law – Plaintiffs, Personal Injury Litigation – Plaintiffs, and Product Liability Litigation – Plaintiffs for West Palm Beach, FL.
- In 2020, *Super Lawyers* recognized five Cohen Milstein attorneys as **"2020 New York – Metro Super Lawyers."**
- In 2020, Benchmark Litigation recognized Cohen Milstein as a 2021 **"Top Plaintiffs Firm."**
- In 2020, *Law360*'s Glass Ceiling Report named Cohen Milstein among **"The Best Law Firms for Female Attorneys."**
- In 2020, Lawdragon named seven Cohen Milstein attorneys to its **"500 Leading Plaintiff Employment Lawyers"** list.
- In 2020, the Human Trafficking Legal Center named Agnieszka M. Fryszman **"Human Trafficking Advocate of the Year."**
- In 2020, *Crain's Chicago Business* named Carol V. Gilden one of its **"Notable Women in Law."**
- In 2020, *Palm Beach Illustrated* named six Cohen Milstein attorneys to its **"Top Lawyers"** list.
- In 2020, *The National Law Journal* named Shaylyn Cochran a **"Washington D.C. Trailblazer."**
- In 2020, Lawdragon named 15 Cohen Milstein attorneys to its **"500 Leading Plaintiff Financial Lawyers"** list.
- In 2020, *The Best Lawyers in America* named 15 Cohen Milstein attorneys to its 2021 **"Best Lawyers in America"** list.
- In 2020, American Lawyer Media and The National Trial Lawyers named Cohen Milstein **"Antitrust Law Firm of the Year."**
- In 2020, *Florida Trend* named Poorad Razavi a **"Legal Elite"** in the Civil Trial section.

- In 2020, *Law360* named Emmy L. Levens a **"Rising Star – Class Actions."**
- In 2020, *Law360* named Shaylyn Cochran a **"Rising Star – Employment."**
- In 2020, *The Legal 500* named Cohen Milstein a **"Top-Tier"** firm in Labor and Employment: Labor and Employment Disputes (including Collective Actions): Plaintiff.
- In 2020, *The Legal 500* named Cohen Milstein a **"Leading Practice"** in Antitrust, Products Liability, and Securities Litigation.
- In 2020, *Florida Super Lawyers* recognized Nicholas C. Johnson, Leslie M. Kroeger, Theodore J. Leopold as **"Super Lawyers"** in the area of Personal Injury Law (Plaintiff).
- In 2020, *Law360* named Cohen Milstein's Daniel A. Small a **"Law360 Titan of the Plaintiffs Bar"** for his decades of successful work in antitrust litigation.
- In 2020*, The National Law Journal* named Cohen Milstein's John Sheehan a **"2020 Plaintiffs' Trailblazer"** in Environmental Law.
- In 2020, *Daily Business Review* named Cohen Milstein's Leslie M. Kroeger a **"2020 DBR Distinguished Leader."**
- In 2020, *Super Lawyers* recognized 17 Cohen Milstein attorneys as **"2020 Washington, DC Super Lawyers"** and seven Cohen Milstein attorneys as **"2020 Washington, DC Rising Stars."**
- In 2020, *Chambers USA* recognized Cohen Milstein as a leading firm in the **"Antitrust: Plaintiffs – Nationwide"** category.
- In 2020, Lawdragon recognized eight Cohen Milstein lawyers in the **"2020 Lawdragon 500 Leading Plaintiff Consumer Lawyers"** list.
- In 2020, Lawdragon recognized 12 Cohen Milstein lawyers in the **"2020 Lawdragon 500 Leading Lawyers in America"** list.
- In 2020, American Lawyer Media and The National Trial Lawyers named Cohen Milstein **"Antitrust Law Firm of the Year."**
- In 2020, *Law360* named Cohen Milstein **"Practice Group of the Year – Benefits"** for the firm's work in 2019.
- In 2020, *Law360* named Cohen Milstein **"Practice Group of the Year – Consumer Protection"** for the firm's work in 2019.

2019

- In 2019, *Law360* named Cohen Milstein's Sharon K. Robertson **"Life Sciences – MVP"** for her cutting-edge "pay for delay" antitrust class actions in the Life Sciences industry.
- In 2019, Lawdragon named Cohen Milstein's Agnieszka Fryszman and Steve Toll to **"Lawdragon Legends,"** a list recognizing 30 of the "nation's elite lawyers" who have been named to the Lawdragon 500 for at least ten years.
- In 2019, ALM and *The National Trial Lawyers* named seven of Cohen Milstein's practice areas to its **"Elite Trial Lawyer – Finalist"** list.
- In 2019, the Seven Hills School awarded Cohen Milstein's Kalpana Kotagal with the **"Norma Martin Goodall Distinguished Alumni Award."**
- In 2019, the *Chicago Business Journal* named Cohen Milstein's Carol V. Gilden a 2019 **"Woman of Influence."**
- In 2019, Lawdragon named 15 Cohen Milstein lawyers to is 2019 **"500 Leading Plaintiff Financial Lawyers"** list.
- In 2019, *Law360* named Cohen Milstein's Mary Bortscheller a **"Rising Star."**
- In 2019, *The Best Lawyers in America* named 12 Cohen Milstein attorneys to its 2020 **"Best Lawyers in America"** list.
- In 2019, Public Justice Foundation named Cohen Milstein one of five finalists for the **"Trial Lawyer of the Year Award."**
- In 2019, Cohen Milstein's Environmental Toxic Tort practice was named a winner of *The National Law Journal's* **"Elite Trial Lawyers" Award,** and Cohen Milstein's Agnieszka Fryszman and Sharon Robertson were named winners of *The National Law Journal's* **"Elite Women of the Plaintiffs Bar" Award.**

- In 2019, six of Cohen Milstein lawyers were named among the **"Lawdragon 500 Leading Plaintiff Consumer Lawyers."**
- In 2019, Cohen Milstein's Carol V. Gilden received Lawyer Monthly Magazine's **"Women in Law Award."**
- In 2019, four of Cohen Milstein partners were named to Benchmark Litigation's **"40 & Under Hot List."**
- In 2019, Cohen Milstein's Christine E. Webber received the Washington Lawyers' Committee for Civil Rights and Urban Affairs' **"Roderic V.O. Boggs Award."**
- In 2019, Cohen Milstein's Nicholas C. Johnson and Poorad Razavi were named to Florida Trend's **"Legal Elite."**
- In 2019, Cohen Milstein's Nicholas C. Johnson was appointed to serve on the **AAJ Board of Governors.**
- In 2019, *The National Law Journal* named Cohen Milstein an **"Elite Trial Lawyer"** finalist in five practice areas and named Agnieszka Fryszman and Sharon Robertson **"Elite Women of the Plaintiffs Bar."**
- In 2019, *Law360's* 2019 Glass Ceiling Report named Cohen Milstein among **"The Best Law Firms for Female Attorneys."**
- In 2019, *The Legal 500* recognized Cohen Milstein's Antitrust, Civil Rights & Employment, Products Liability, and Securities Litigation practices as **"Leading Practices,"** and named seven Cohen Milstein attorneys among their **"Leading Lawyers," "Next Generation Lawyers,"** and **"Rising Stars."**
- In 2019, Cohen Milstein was named to ***The National Law Journal's*** **"Pro Bono Hot List."**
- In 2019, 21 Cohen Milstein attorneys were recognized as **"Super Lawyers,"** and nine Cohen Milstein attorneys were recognized as **"Rising Stars."**
- In 2019, Cohen Milstein's Takisha D. Richardson was named a **Florida Bar Association's Wm. Reece Smith, Jr. Leadership Academy Fellow.**
- In 2019, six of Cohen Milstein's Civil Rights & Employment Litigation lawyers were named among the **"Lawdragon 500 Leading Plaintiff Employment Lawyers 2019."**
- In 2019, the *Daily Business Review* honored Cohen Milstein with three Professional Excellence Awards, including Theodore J. Leopold, **DBR's 2019 "Distinguished Leaders" award,** Nicolas C. Johnson, **DBR's 2019 "On the Rise" award,** and the firm's Sexual Abuse, Sex Trafficking, and Domestic Violence Litigation team, **DBR's 2019 "Innovative Practice Areas" award.**
- In 2019, four Cohen Milstein lawyers received **"The Burton Awards' Law360 Distinguished Legal Writing Award - Law Firm."**
- In 2019, nine Cohen Milstein lawyers were named among the **"Lawdragon 500 Leading Lawyers in America."**

2018

- In 2018, *The National Law Journal* and *Trial Lawyer Magazine,* named Steven J. Toll and Betsy A. Miller among **"America's 50 Most Influential Trial Lawyers."**
- In 2018, *Law360* named Cohen Milstein **"Practice Group of the Year"** in two categories: Consumer Protection and Environmental.
- In 2018, *Law360* named three partners MVP in the respective practices, including: Theodore J. Leopold as ***Law360's*** **Environmental MVP,** Andrew N. Friedman as ***Law360's*** **Cybersecurity and Privacy MVP**, and Kalpana Kotagal as ***Law360's*** **Employment MVP.**
- In 2018, The *National Law Journal* named Cohen Milstein winner of **"Elite Trial Lawyer of the Year"** in four categories, including Consumer Protection, Counterterrorism, Immigration, and Financial Products, and finalist in five other categories, including Antitrust, Civil Rights, Disability Rights, Employment Rights, and Racial Discrimination.
- In 2018, *The National Law Journal* named Kalpana Kotagal, Betsy A. Miller, and G. Julie Reiser – **"Elite Women of the Plaintiffs Bar."**

- In 2018, A Better Balance presented Kalpana Kotagal with **"A Better Balance: The Work & Family Legal Center's Distinguished Public Service Award."**
- In 2018, the American Antitrust Institute honored Sharon K. Robertson with its **"Outstanding Antitrust Litigation Achievement Award."**
- In 2018, the NAACP honored Cohen Milstein with its **"Foot Soldier in the Sand Award,"** in recognition of the firm's outstanding commitment to providing pro bono legal services.
- In 2018, *The Best Lawyers in America* recognized eleven Cohen Milstein attorneys as among the **Best Lawyers in America (2019),** in their respective areas of law.
- In 2018, *The Best Lawyers in America* singled out and named Joseph M. Sellers **"The Best Lawyers in America 2019, Labor Law Lawyer of the Year – Washington, D.C."**
- In 2018, *The Best Lawyers in America* singled out and named Milstein's Leslie M. Kroeger **"The Best Lawyers in America 2019, Mass Tort Litigation / Class Actions "Lawyer of the Year – West Palm Beach, FL."**
- In 2018, *Palm Beach Illustrated* named seven Cohen Milstein attorneys to its ""**Top Lawyers" List."**
- In 2018, *Benchmark Litigation* named four Cohen Milstein attorneys to its **"40 & Under Hot List."**
- In 2018, *Florida Trend* named five Cohen Milstein attorneys to its list of **"Florida's Legal Elite."**
- In 2018, Lawdragon 500 named five Cohen Milstein attorneys to **"Leading Plaintiff Employment Lawyers."**
- In 2018, *Crain's* named Carol V. Gilden one of Chicago's **"Notable Women Lawyers."**
- In 2018, Harvard Law School named Kalpana Kotagal a **"Wasserstein Fellow."**
- In 2018, *Chambers USA Women in Law* honored Kalpana Kotagal with its **"Outstanding Contribution to the Community in Advancing Diversity Award."**
- In 2018, the *New York Law Journal* named Sharon K. Robertson to its list of **"New York Rising Stars."**
- In 2018, *The Legal 500: Guide to the US Legal Profession* listed Cohen Milstein's **Antitrust**, **Employment Disputes**, and **Securities Litigation** practices among its **"Leading Practices."**
- In 2018, the *Daily Business Review* named Leslie M. Kroeger a **"Distinguished Leader."**
- In 2018, *Law360* named Steven J. Toll a 2018 **"Titan of the Plaintiffs Bar."**
- In 2018, Leslie M. Kroeger was sworn-in as President-Elect to the Florida Justice Association.
- In 2018, Lawdragon named seven Cohen Milstein attorneys to the 2018 **"Lawdragon 500,"** an annual list of the **500 Leading Lawyers in America**.
- In 2018, Theodore J. Leopold was recognized as an **"Energy and Environmental Trailblazer"** by *The National Law Journal.*
- In 2018, *Super Lawyers* recognized 20 Cohen Milstein attorneys as **"2018 Super Lawyers"** and 12 Cohen Milstein attorneys as **"Super Lawyer Rising Stars."**

2017

- In 2017, *Law360* named Cohen Milstein a **"Practice Group of the Year: Privacy."**
- In 2017, Steven J. Toll was named a ***Law360*** **"MVP – Class Action."**
- In 2017, the *Daily Business Review* named Theodore J. Leopold a **"Most Effective Lawyer of 2017: Class Action**."
- In 2017, Christopher Lometti, Betsy Miller, and Victoria Nugent were named ***The National Law Journal's*** **"Plaintiffs' Lawyers Trailblazers**."
- In 2017, *The Best Lawyers in America* recognized seven Cohen Milstein partners as among the "**Best Lawyers in America"** for their respective practices of law.
- In 2017, *Law360* named Cohen Milstein partners, S. Douglas Bunch and Kalpana Kotagal as **"Rising Stars."**

- In 2017, *The Legal 500* named Cohen Milstein a **Leading Firm** in "Antitrust: Civil Litigation / Class Actions" and "Dispute Resolution: Securities Litigation – Plaintiff."
- In 2017, *The Legal 500* named Richard A. Koffman to its **"Legal 500 Hall of Fame."**
- In 2017, *Legal 500* named Sharon K. Robertson and Brent W. Johnson as **"Legal 500 Next Generation Lawyer"** in the area of Antitrust: Civil Litigation/Class Actions.
- In 2017, *Super Lawyers* named Brent W. Johnson as a **"Rising Star"** and a **"Top Rated Antitrust Litigation Attorney in Washington, DC."**
- In 2017, *Super Lawyers* named Leslie M. Kroeger and Theodore J. Leopold **"Florida Super Lawyers"** and Nicholas C. Johnson **"Florida Rising Stars."**
- In 2017, the Coalition for Independent Living Options Inc. presented Michael Dolce a Special Acknowledgment Award for his **"Commitment to Ending Sex Crimes against People with Disabilities."**
- In 2017, *Florida Trend* named Manuel J. Dominguez a **"Legal Elite."**
- In 2017, Nicholas C. Johnson was elected President of the F. Malcolm Cunningham, Sr. Bar Association.
- In 2017, Leslie M. Kroeger was elected Treasurer to the Florida Justice Association.
- In 2017, *South Florida Legal Guide* named Theodore J. Leopold as a **"Top Lawyer"** and Diana L. Martin a **"Top Up and Comer."**

2016

- In 2016, *Law360* selected Cohen Milstein as a **"Competition Practice Group of the Year"** and a **"Class Action Practice Group of the Year."**
- In 2016, Women in Wealth Awards selects Carol V. Gilden Selected as **"Best in Securities Litigation Law - Illinois & Excellence Award for Investor Protection Law."**
- In 2016, Richard A. Koffman was named a ***Law360*** **"MVP – Competition Law."**
- In 2016, Martha Geer was selected as a "**North Carolina Leaders in the Law Honoree."**
- In 2016, the Washington Lawyers' Committee for Civil Rights and Urban Affairs named Cohen Milstein a recipient of its **"Outstanding Achievement Award."**
- In 2016, for the eighth consecutive year, Cohen Milstein was recognized by *The Legal 500* as one of the leading plaintiff class action antitrust firms in the United States.
- In 2016, Agnieszka Fryszman, Chris Lometti, Kit Pierson, Joe Sellers and Steve Toll were named to the **2016 Lawdragon 500 Leading Lawyers in America.**
- In 2016, *Law360* named Julie Goldsmith Reiser one of the **"25 Most Influential Women in Securities Law."**
- In 2016, Cohen Milstein is named to ***The National Law Journal's*** **"Plaintiffs Hot List"** for the fifth time in six years.
- In 2016, *Law360* named Cohen Milstein as one of the top firms for female attorneys.

2015

- In 2015, *Law360* named Cohen Milstein as the sole plaintiffs firm to be selected in two **"Practice Groups of the Year"** categories and one of only five class action firms recognized.
- In 2015, Cohen Milstein was named an **"Elite Trial Lawyer Firm"** by *The National Law Journal* for the second year in a row.
- In 2015, Steven J. Toll named a ***Law360*** **"MVP – Securities Law."**
- In 2015, Cohen Milstein was selected as a **"Most Feared Plaintiffs Firm"** by *Law360* for the third year in a row.

- In 2015, Richard Koffman was named, for the fifth consecutive year, in *The Legal 500* **"Leading Lawyers" in "Litigation - Mass Tort and Class Action: Plaintiff Representation – Antitrust."**
- In 2015, Theodore J. Leopold and Leslie M. Kroeger were selected as **"Florida Super Lawyers."**
- In 2015, Andrew Friedman, Agnieszka Fryszman, Kit A. Pierson, Julie Reiser, Joseph M. Sellers, Daniel A. Small, Daniel S. Sommers, Steven J. Toll and Christine E. Webber were selected as **"Washington DC Super Lawyers."**
- In 2015, Monya Bunch, S. Douglas Bunch, Johanna Hickman, Kalpana Kotagal, and Emmy Levens were selected as "**Washington DC Rising Stars"** by *Super Lawyers.*
- In 2015, for the fourth time in five years, Cohen Milstein was selected to *The National Law Journal* **"Plaintiffs' Hot List."**
- In 2015, Carol V. Gilden was selected as **"Pension Funds Litigation Attorney of the Year in Illinois"** for the second year in a row by the Corporate INTL Legal Awards.

2014

- In 2014, Cohen Milstein's Antitrust Practice was selected as a "**Practice Group of the Year"** by *Law360.*
- In 2014, Cohen Milstein Partner Kit Pierson was selected as an **"Antitrust MVP"** by *Law360.*
- In 2014, Cohen Milstein was named a "**Most Feared Plaintiffs Firm**" by *Law360* for the second year in a row. In 2014, Cohen Milstein was selected as an **Elite Trial Lawyer** firm by *The National Law Journal.*
- Cohen Milstein Partners Steven J. Toll, Joseph M. Sellers, Kit A. Pierson, and Agnieszka M. Fryszman Selected to the **2014 Lawdragon 500**.
- Released in 2015, Joseph M. Sellers, Theodore J. Leopold, and Leslie M. Kroeger listed in "**Best Lawyers in America."**
- Released in 2014, the 2013 SCAS 50 Report on Total Securities Class Action Settlements ranked Cohen Milstein as a top firm.
- In 2014, Cohen Milstein's Theodore J. Leopold was named among the "**Top 100" Florida Super Lawyers**, Leslie M. Kroeger was named to the **"Florida Super Lawyers,"** and Diana L. Martin was named a "**Florida Rising Star."**
- In 2014, Cohen Milstein's Leslie M. Kroeger was recognized in **Florida Trend's "Florida Legal Elite**."
- In 2014, Cohen Milstein was selected to the selected to the **National Law Journal's Midsize Hot List**.
- In 2014, Cohen Milstein was recognized as a "**Highly Recommended Washington, DC Litigation Firm**" by
- Benchmark Plaintiff: The Definitive Guide to America's Leading Plaintiff Firms and Attorneys.
- In 2014, Cohen Milstein was ranked as a **Leading Plaintiff Class Action Antitrust Firm in the United States by the Legal 500** for the sixth year in a row.
- In 2014, Partner Richard Koffman was named, for the fourth consecutive year, in the Legal 500 United States "**Leading Lawyers**" list under the category of "Litigation - Mass Tort and Class Action: Plaintiff Representation - Antitrust".
- In 2014, Cohen Milstein attorneys Agnieszka Fryszman, Julie Goldsmith Reiser, Joseph Sellers, Daniel Sommers, and Steven Toll were recognized **as Local Litigation Stars** by Benchmark Plaintiff: The Definitive Guide to America's Leading Plaintiff Firms and Attorneys.
- In 2014, Cohen Milstein attorneys R. Joseph Barton, Andrew Friedman, Agnieszka Fryszman, Kit A. Pierson, Julie Reiser, Joseph M. Sellers, Daniel A. Small, Daniel S. Sommers, Steven J. Toll and Christine E. Webber were selected as **Washington DC Super Lawyers**.
- In 2014, Cohen Milstein attorneys Monya Bunch, S. Douglas Bunch, Jeffrey Dubner, Johanna Hickman, Joshua Kolsky, Kalpana Kotagal, Emmy Levens, and Michelle Yau were selected as **Washington DC Rising Stars** by Super Lawyers.
- In 2014, Cohen Milstein Partner Carol V. Gilden was selected as the Illinois Pension Fund Attorney of the Year.
- In 2014, Best Lawyers named Cohen Milstein Partner Joseph Sellers D.C. Litigation - Labor & Employment Lawyer of the Year.

2013

- In 2013, for the third-year in a row, Cohen Milstein was selected to the *National Law Journal* **Plaintiffs' Hot List**.
- In 2013, Cohen Milstein was named a "**Most Feared Plaintiffs Firm**" by Law360.
- In 2013, Cohen Milstein was ranked as a Leading Plaintiff Class Action Antitrust Firm in the United States by the Legal 500 for the fifth year in a row.
- In 2013, Cohen Milstein attorneys Joseph Barton, Andrew Friedman, Agnieszka Fryszman, Kit A. Pierson, Julie G. Reiser, Joseph M. Sellers, Daniel A. Small, Daniel S. Sommers, Steven J. Toll, and Christine E. Webber were selected as **Washington DC Super Lawyers**.
- In 2013, Cohen Milstein attorney Michelle Yau was selected as **Washington DC Rising Stars** by Super Lawyers. In 2013, Cohen Milstein Partner Carol V. Gilden was selected as a **2013 Illinois Super Lawyer**. She has been selected every year since 2005.

2012

- In 2012, for the second-year in a row, Cohen Milstein was selected to the *National Law Journal* **Plaintiffs' Hot List**.
- In 2012, Cohen Milstein was the recipient of the Judith M. Conti Pro Bono Law Firm of the Year Award from the Employment Justice Center.
- In 2012, Cohen Milstein was recognized as a "Highly Recommended Washington, DC Litigation Firm" by
- Benchmark Plaintiff: The Definitive Guide to America's Leading Plaintiff Firms and Attorneys.
- In 2012, Cohen Milstein was ranked as a top firm by the 2011 SCAS Report on Total Securities Class Action Settlements.
- In 2012, Cohen Milstein was ranked as a Leading Plaintiff Class Action Antitrust Firm in the United States by the Legal 500 for the fourth year in a row.
- In 2012, Partner Joseph M. Sellers was selected as a **Washington DC Super Lawyer**. Mr. Sellers was also selected for this prestigious award in 2007, 2008, 2009, 2010, and 2011.
- In 2012, Partner Steven J. Toll was selected as a **Washington DC Super Lawyer**. Mr. Toll was also selected for this prestigious award in 2007, 2009, 2010, and 2011.
- In 2012, Partner Daniel S. Sommers was selected as a **Washington DC Super Lawyer**. Mr. Sommers was also selected for this prestigious award in 2011.
- In 2012, Partner Christine E. Webber was selected as a **Washington DC Super Lawyer**. Ms. Webber was also selected for this prestigious award in 2007.
- In 2012, Partner Agnieszka M. Fryszman was selected as a **Washington DC Super Lawyer**. In 2012, Partner Kit A. Pierson was selected as a **Washington DC Super Lawyer**.
- In 2012, Partner Carol V. Gilden was selected as an **Illinois Super Lawyer**. Ms. Gilden was also selected for this prestigious award in 2005, 2006, 2007, 2008, 2009, 2010, and 2011.

2011

- In 2011, Cohen Milstein was selected to the *National Law Journal* **Plaintiffs' Hot List**.
- In 2011, Partner Joseph M. Sellers was selected as a **"Visionary"** by The *National Law Journal.*
- In 2011, Of Counsel Christopher Lometti were selected as **New York - Metro Super Lawyers**.
- In 2011, Partner Joseph M. Sellers and the *Keepseagle v. Vilsack* team were selected as a finalist for the **2011**
- **Trial Lawyer of the Year Award** from the Public Justice Foundation.
- In 2011, **Cohen Milstein was ranked as a Leading Plaintiff Class Action Antitrust Firm in the United States** by the Legal 500 for the third year in a row.
- In 2011, Partners Steven Toll, Joseph Sellers, and Daniel Sommers were selected as **Washington DC Super Lawyers**. Of Counsel Christopher Lometti were selected as **New York - Metro Super Lawyers**. Partner Carol Gilden was selected as an **Illinois Super Lawyer**.
- In 2011, Cohen Milstein was a recipient of The *National Law Journal's* **Pro Bono Award**. The Firm was named one of the "six firms that best reflect the pro bono tradition."

2010

- In 2010, Partner Joseph M. Sellers was selected as one of "**The Decade's Most Influential Lawyers**" by *The National Law Journal*.
- In 2010, Partner Steven J. Toll was named one of Law360's "**Most Admired Attorneys**". In 2010, Partner Andrew N. Friedman was selected as a **Washington DC Super Lawyer**.
- In 2010, Partner Agnieszka M. Fryszman was selected as a finalist for the **Trial Lawyer of the Year Award** from the Public Justice Foundation.
- In 2010, Partners Joseph M. Sellers and Agnieszka M. Fryszman were both selected as one of the **Lawdragon 500 Leading Lawyers in America**.
- In 2010, Cohen Milstein was once again ranked as a **Leading Plaintiff Class Action Antitrust Firm in the United States** by the Legal 500.

Attorney Profiles – Executive Committee

Steven J. Toll

Steven J. Toll is Managing Partner at Cohen Milstein, a member of the Executive Committee, and Co-Chair of the firm's Securities Litigation & Investor Protection practice group. In this role, Mr. Toll guides the firm's mediation efforts and strategy, and has been lead or principal counsel on some of the most high-profile stock fraud lawsuits in the past 30 years, arguing important matters before the highest courts in the land.

Mr. Toll has built a distinguished career and reputation as a fierce advocate of the rights of shareholders and has guided mediation efforts on the firm's largest and most important matters (both securities fraud and other consumer type cases), a role in which he has earned the trust of mediators, as well as the respect of defense counsel. Mr. Toll has been involved in settling some of the most important mortgage-backed securities (MBS) class-action lawsuits in the aftermath of the financial crisis, including: Countrywide Financial Corp., which settled for $500 million in 2013; Residential Accredited Loans Inc. (RALI), which settled for $335 million in 2014; Harborview MBS, which settled for $275 million, also in 2014; and Novastar MBS, which settled for $165 million in 2019. He also negotiated a $90 million settlement of a suit against MF Global.

Among Mr. Toll's important cases is the Harman class action suit, where Mr. Toll argued and won an important ruling from the U.S. Court of Appeals for the District of Columbia Circuit. The Circuit Court reinstated the suit against electronics maker Harman International Industries; the ruling is significant in that it places limits on the protection allowed by the safe harbor rule for forward-looking statements. A $28.25 million settlement was achieved in this action in 2017.

Mr. Toll was also co-lead counsel in the BP Securities class action securities fraud lawsuit that arose from the devastating Deepwater oil spill in the Gulf of Mexico. The Fifth Circuit Court of Appeals affirmed the certification of the class of investors alleged to have been injured by BP's misrepresenting the amount of oil spilling into the Gulf of Mexico, and thus minimizing the extent of the cost and financial impact to BP of the clean-up and resulting damages. In February 2017, the court granted final approval to a $175 million settlement reached between BP and lead plaintiffs for the "post-explosion" class.

Mr. Toll was co-lead counsel in the consumer class action suit against Lumber Liquidators, a lawsuit that alleges the nationwide retailer sold Chinese-made laminate flooring containing hazardous levels of the carcinogen formaldehyde while falsely labeling their products as meeting or exceeding California emissions standards, a story that was profiled twice on 60 Minutes in 2015. In October 2018, the court granted final approval to a settlement of $36 million between Lumber Liquidators and plaintiffs.

Over the course of his career, Mr. Toll has received numerous industry recognitions for his work. Most recently, in 2019, The National Law Journal and The Trial Lawyer named him one of "America's 50 Most Influential Trial Lawyers." In 2018 and 2019, Mr. Toll was named a Legal 500 "Leading Lawyer – Securities Litigation." In 2018, he was named Law360's "Titan of the Plaintiffs Bar." In 2017, he was named Law360's "MVP – Class Actions," in 2015, he was named Law360's "MVP – Securities," and since 2014, he has been perennially named to the Lawdragon 500, which recognizes the 500 leading lawyers in America. He is also annually recognized as a Super Lawyer in Securities Litigation and Class Action/Mass Torts.

Mr. Toll writes and speaks extensively on securities litigation and investor protection issues. His articles have appeared in Harvard Law School Forum on Corporate Governance and Financial Regulation and Cohen Milstein's Shareholder Advocate.

Mr. Toll has provided a great deal of pro bono legal work during a career at Cohen Milstein that spans more than three decades. In addition, he has been an active supporter of Children's Hospital National Medical Center for decades, setting up an endowment in his daughter's name to help the Hospital's leukemia patients and their families (his daughter passed

away from leukemia in 1987), plus more recently establishing regular programs for music and laughter for the children during their hospital stays.

Mr. Toll is a graduate of the Wharton School of the University of Pennsylvania, earning a B.S., cum laude, and received his J.D. from Georgetown University Law Center, where he was Special Project Editor of The Tax Lawyer.

Benjamin D. Brown

Benjamin D. Brown is a Partner at Cohen Milstein, and Co-Chair of the firm's Antitrust practice group. Mr. Brown is also a member of the firm's Executive Committee.

Mr. Brown, who previously served in the Antitrust Division of the United States Department of Justice, brings to his role extensive experience leading complex litigation, particularly antitrust class actions.

Mr. Brown has been appointed by federal courts to serve as co-lead counsel for plaintiffs in numerous important matters, such as In re Plasma-Derivative Protein Therapies Antitrust Litigation (N.D. Ill.); Carlin, et al. v. DairyAmerica, Inc. (E.D. Cal.); and Mixed Martial Arts (MMA) Antitrust Litigation (D. Nev.). He has led cases through trial and argued appeals and stands ready to take cases through to the finish line.

Mr. Brown is also an adjunct professor at Georgetown Law School, where he teaches Complex Litigation, a course that explores the policy and procedures implicated by aggregated, high stakes, multi-party litigation, especially class actions.

Mr. Brown is also a leader in the area of takings cases, claims that are brought under the Fifth Amendment of the U.S. Constitution for the unconstitutional taking of property without compensation. He also represents individuals or groups in litigations and confidential arbitrations involving complex commercial disputes, particularly those involving regulated markets.

Currently, Mr. Brown is litigating a number of large, complex antitrust and price manipulation lawsuits, where he plays a prominent role and leads all aspects of the litigation, from deciding on the claims to be brought, the strategy to be pursued and charting the course of the case. Notable matters include:

- Mixed Martial Arts (MMA) Antitrust Litigation (D. Nev.): Cohen Milstein is co-lead counsel in a class action on behalf of MMA fighters alleging that Zuffa LLC – commonly known as the Ultimate Fighting Championship or "UFC" – has unlawfully monopolized the markets for promoting live professional MMA bouts and for purchasing the services of professional MMA fighters. The district court denied the defendant's motion to dismiss the case in September 2015 and discovery is ongoing. Mr. Brown is co-lead in this class action.

- Allen, et al. v. Dairy Farmers of America, Inc. (D. Vt.): Cohen Milstein served co-lead counsel in a class action lawsuit on behalf of Northeast dairy farmers against Dairy Farmers of America (DFA) and Dean Foods Company charging a conspiracy to reduce competition for raw milk and that DFA monopolized the milk market in the Northeast, forcing dairy farmers to market their milk through DFA or its affiliate Dairy Marketing Services (DMS). Final, approved settlements total $80 million.
- DairyAmerica Litigation (E.D. Cal.): Cohen Milstein served as court-appointed lead counsel to a putative class of dairy farmers who alleged that defendants fraudulently misreported nonfat dry milk prices to the National Agricultural Statistics Service, resulting in artificially depressed raw milk prices and unfairly depriving American dairy farmers of tens-of-millions-of-dollars. In May 2019, the Court granted final approval of a $40 million settlement – 90% of the USDA Inspector General's independent analysis estimated damages. Mr. Brown directed all aspect of this class action.

Mr. Brown is also currently litigating a number of takings lawsuits, including the following notable matters:

- Ideker Farms, et al. v. United States of America (Fed. Cl.): Cohen Milstein represents Ideker Farms and more than 400 other plaintiffs located in six states along the Missouri River in a landmark mass action lawsuit in the U.S. Court of Federal Claims alleging that the federal government took land and flooding easements over lands owned by farmers without any compensation in violation of the takings clause of the Fifth Amendment. Mr. Brown has helped lead the litigation team, including during a months-long liability trial in 2017, during which he directed and cross-examined numerous witnesses, including six experts. In March 2018, the Court ruled largely in favor of plaintiffs on liability and cause of flooding claims. Bellwether trials continue. The Court will next determine the extent of the losses due to the taking.

- Big Oak Farms, Inc., et al. v. United States of America (Fed. Cl.): Cohen Milstein represents over 100 farmers along the Mississippi River in a Fifth Amendment takings case alleging that the U.S. Army Corps of Engineers intentionally flooded plaintiffs' land without providing just compensation. Mr. Brown has been directing and leading all aspects of the litigation.

Mr. Brown joined Cohen Milstein in 2005, following four years as a trial attorney with the Antitrust Division of the United States Department of Justice. At the Department of Justice, Mr. Brown led and assisted in numerous investigations, litigations and trials involving antitrust activity and mergers. Mr. Brown also served as a Special Assistant United States Attorney in the Eastern District of Virginia, where he prosecuted criminal cases. Prior to serving in the U.S. Department of Justice, Mr. Brown was in private practice with one of Washington's most prestigious defense firms, where he counseled defendants in antitrust litigation matters. This experience has provided him with insights into defense strategies and has earned him the respect of defendants' counsel.

The Legal 500 has recognized Mr. Brown as one of the nation's leading class action antitrust attorneys. Mr. Brown is also annually recognized in Global Competition Review's Who's Who Legal: Thought Leaders – Competition, and he has been listed as one of Washington D.C.'s "Leading Star" Plaintiffs' Litigators by Benchmark Litigation, recognizing his writing, his depositions and his arguments in court. He is a frequent panelist at legal industry gatherings and is a recognized expert on antitrust litigation whose opinions on the newest developments and trends in antitrust litigation are often quoted in the media. Mr. Brown is a contributing author of the ABA's Antitrust Class Actions Handbook and served as a state editor for the ABA's Survey of State Class Action Law. He authored several chapters on private antitrust recovery actions for the Global Competition Review's Antitrust Review of the Americas, and co-authored with fellow partner Douglas Richards, "Predominance of Common Questions – Common Mistakes in Applying the Class Action Standard," Rutgers Law Journal (Vol. 41).

Mr. Brown is currently serving on the Advisory Board of the Institute for Consumer Antitrust Studies at Loyola University Chicago's School of Law.

Mr. Brown attended the University of Wisconsin – Madison, where he graduated Phi Beta Kappa, majoring in Philosophy, and earned his J.D., from Harvard Law School, graduating cum laude. He served as Law Clerk to the Hon. Chief Judge Juan R. Torruella, U.S. Court of Appeals for the First Circuit. The United States District Court for the District of Columbia has honored Mr. Brown for his outstanding commitment to pro bono litigation.

Theodore J. Leopold

Theodore J. Leopold is a Partner at Cohen Milstein and Co-Chair of the firm's Complex Tort Litigation and Consumer Protection practice groups. Mr. Leopold is also a member of the firm's Executive Committee.

Mr. Leopold's practice is devoted solely to trial work, with a focus on complex product liability, environmental toxic torts, managed care abuse, consumer class actions, and catastrophic injury and wrongful death litigation. Mr. Leopold has tried cases throughout the country and has recovered multi-million-dollar verdicts, including jury verdicts in the eight-figure and nine-figure amounts.

In his role, Mr. Leopold litigates high-stakes, complex lawsuits on behalf of consumer safety issues, particularly as it relates to product defects, automobile safety and managed care matters. In 2010, he obtained a $131 million jury verdict against the Ford Motor Company, the ninth-largest verdict against an automobile company in U.S. history.

Mr. Leopold also has had the honor of being court-appointed Interim Co-Lead Class Counsel in two high-profile putative environmental toxic tort class actions, including In re Flint Water Cases, which resulted in a $626 million partial settlement (granted final approval on November 10, 2021) and the Cape Fear River Contaminated Water Class Action Litigation. Mr. Leopold also serves as lead counsel in the LensCrafters and General Motors Litigation class actions.

Currently, Mr. Leopold is litigating the following notable matters:

- Cape Fear River Contaminated Water Litigation (E.D.N.C.): On January 4, 2018, Mr. Leopold was court-appointed Interim Co-Lead Class Counsel to consolidate and oversee a series of five putative environmental toxic tort class actions filed against E.I. DuPont de Nemours Company and The Chemours Company for knowingly discharging PFAS, such as GenX, and other "forever chemicals" into the Cape Fear River, one of North Carolina's principal drinking water sources.
- Underwood v. Meta Platforms, Inc. (Facebook) (Sup. Crt. Cal., Alameda Cnty.): On January 26, 2022, Mr. Leopold filed a wrongful death lawsuit on behalf of Angela Underwood Jacobs, the sister of Dave Patrick Underwood, against Meta Platforms, Inc., formerly Facebook, Inc., alleging that by connecting users to extremist groups and promoting inflammatory, divisive, and untrue content, the company bears responsibility for the tragic murder of Mr. Underwood.
- General Motors Litigation (E.D. Mich.): On September 26, 2019, Mr. Leopold was court-appointed Lead Counsel and Chair of the Plaintiffs' Steering Committee to consolidate and oversee consumer class actions filed on behalf of thousands of GM vehicle owners across 30 states against GM related to defective eight-speed automatic transmissions in vehicles manufactured between 2015 and 2019.
- Edwards v. Tesla (Sup. Crt. Cal., Alameda Cnty.): On June 25, 2020, Mr. Leopold filed a product liability lawsuit against Tesla, Inc. on behalf of Kristian and Jason Edwards. Ms. Edwards sustained catastrophic injuries as a result of the failure of the airbags to deploy in her Tesla Model 3 during an accident.
- Edenville and Sanford Dam Failure Litigation (Mich. Crt. of Claims; Cir. Crt., Cnty. Saginaw, Mich.): On June 24, 2020, Mr. Leopold filed two separate property damage lawsuits against Michigan State Government agencies, including the Michigan Department of Environment, Great Lakes & Energy and Michigan Department of Natural Resources for blatantly mismanaging and failing to properly maintain the Edenville and Sandford dams, which catastrophically failed on May 19, 2020. Cohen Milstein is representing more than 300 residents and businesses in Midland County and Saginaw County, Michigan and the surrounding areas, including, Arenac, Gladwin, and Iosco counties.
- Reed, et al. v. USA (E.D. Tenn.): Mr. Leopold is representing plaintiffs in a wrongful death and property damage mass action against the U.S. Department of Interior and National Park Service for the negligence of its employees to perform their duties during The Chimney Tops 2 Fire in Tennessee, which originated in the Great Smoky Mountains National Park and ultimately damaged or destroyed 2,500 homes, buildings and other structures, and killed more than 12 people.
- Bernardo, et al. v. Pfizer, Inc., et al. (S.D. Fla.): On February 20, 2020, Mr. Leopold filed a false advertising, medical monitoring, and personal injury class action against Pfizer, Inc., Boehringer Ingelheim, Sanofi, and other pharmaceutical companies on behalf of multiple plaintiffs and putative class members across the United States who, as a result of taking Zantac (ranitidine), may have been afflicted with cancer or may now be subjected to an increased risk of developing cancer.

- Johannessohn, et al. v. Polaris Industries (D. Minn.): On July 31, 2017, Mr. Leopold, lead counsel, filed a class action suit against Polaris Industries, the manufacturer of the Sportsman all-terrain vehicles (ATVs), alleging the ATVs have a design defect that makes them dangerous to drive.
- Ariza v. Luxottica Retail North America (LensCrafters) (E.D.N.Y.): Mr. Leopold, as lead counsel, is representing a putative class of purchasers of LensCrafters' Accufit Digital Measurement System (Accufit) services, who allege that LensCrafters used false, misleading advertising and deceptive sales practices about Accufit being "five times more accurate" in measuring pupillary distance than traditional methods, to induce customers to purchase LensCrafter's higher-priced prescription lens products. On December 13, 2021, the United States Eastern District of New York granted class certification to purchasers of LensCrafters' Accufit Digital Measurement System (Accufit) services.
- Doe v. Chiquita Brands International (S.D. Fla.): Mr. Leopold is representing families of banana workers and others killed or tortured by the Autodefensas Unidas de Colombia, a foreign terrorist organization designated by the United States, which was allegedly receiving financial support and firearms and ammunition from Chiquita, a U.S. corporation with operations throughout Colombia.

Examples of some of Mr. Leopold's litigation successes are:

- In re Flint Water Cases (E.D. Mich.): Mr. Leopold was court-appointed Interim Co-Lead Class Counsel to oversee a group of toxic tort class actions filed on behalf of Flint, Michigan residents and businesses harmed by exposure to toxic levels of lead and other contaminants in the city's drinking water. On November 10, 2021, the United States District Court for the Eastern District of Michigan granted final approval of a landmark $626.25 million settlement against the State of Michigan. On August 11, 2021, Judge Levy granted class certification on liability claims in the ongoing litigation against the other defendants.
- HCA Litigation (M.D. Fla.): Mr. Leopold was lead counsel in a class action lawsuit alleging that HCA hospitals billed inflated fees for emergency room radiology services provided to people involved in automobile accidents and who received care that was covered by their Florida Personal Injury Protection (PIP) insurance. In December 2018, Cohen Milstein secured final approval of a $220 million injunctive relief settlement on behalf of the class.
- Quinteros, et al v. DynCorp, et al (D.D.C.): Mr. Leopold represented over 2,000 Ecuadorian farmers and their families who suffered physical and mental injuries and property damage as a result of aerial spraying of toxic herbicides on or near their land by DynCorp, a U.S. government contractor. The bellwether trial on behalf of the first six Ecuadorian clients came to a conclusion in April 2017, when the ten-person jury unanimously determined that DynCorp was responsible for the conduct of the pilots with whom it had subcontracted to conduct the chemical spraying after April 2003. In July 2017, Mr. Leopold successfully settled the case.
- Mincey v. Takata (Cir. Crt., Duval Cnty., Fla.): Mr. Leopold was the lead attorney in a lawsuit brought on behalf of Patricia Mincey, a Florida woman who was paralyzed when the driver's side airbag in her car deployed too aggressively during a vehicle collision. The injuries Ms. Mincey sustained in the accident ultimately led to her death. In groundbreaking litigation at the forefront of what would become a Department of Justice investigation and the largest defective product recall in automobile history, Ms. Mincey alleged that the airbag system in her car, manufactured by Takata Corporation, was defective and that Takata knowingly hid the defect from consumers. On July 15, 2016, immediately before a hearing was to be held on Plaintiff's motions to depose the CEO of Takata and to amend the complaint to plead a claim for punitive damages, Mr. Leopold successfully resolved the case.
- Lindsay X-LITE Guardrail Litigation (State Crts.: Tenn., S.C.): Mr. Leopold successfully represented more than five the families of decedents and victims of catastrophic injuries in a series of individual products liability, wrongful death and catastrophic injury lawsuits in Tennessee and South Carolina state courts against the Lindsay Corporation and several related entities for designing, manufacturing, selling, and installing defective X-Lite on state roadways.

- Caterpillar Product Liability Litigation (D.N.J.): Mr. Leopold was co-lead counsel in a class action lawsuit alleging Caterpillar sold diesel engines with defective exhaust emissions system that resulted in power losses and shutdowns. Mr. Leopold developed the case and led all aspects of the litigation, which he successfully resolved in September 2016 for $60 million.
- Cole v. Ford (Cir. Crt., Jasper Cnty., Miss.): Mr. Leopold was co-trial attorney for the family of former New York Mets infielder Brian Cole who was killed when the Ford Explorer he was driving rolled over, ejecting him from the vehicle. The lawsuit charged that the seat belt in the Explorer was defective in that it failed to keep Mr. Cole in his seat. Following two hung juries, eleven of the 12 jury members, in the third trial, agreed on the verdict and found for the Cole family in the amount of $131 million.
- Quinlan v. Toyota (S.D. Fla.): Mr. Leopold was lead counsel in a product liability case against Toyota Motor Company after Bret Quinlan was paralyzed when his Toyota Camry suddenly and without warning began accelerating and failed to respond to the brakes. Mr. Leopold successfully resolved the case prior to trial.
- Chipps v. Humana (Cir. Crt., Palm Beach Cnty., Fla.): Mr. Leopold tried one of the first managed care abuse cases in the country after Humana wrongfully denied physical and occupational therapy for a 6-year-old child with cerebral palsy. The jury returned the largest punitive damage award on behalf of an individual in Florida history, and this seminal case was featured in the movie Damaged Care.
- Carrier v. Trinity (Cit. Crt., Sullivan Cnty., Tenn): Mr. Leopold represented the Carrier family in this wrongful death matter. The death occurred as a result of the guardrail safety device failing. Instead of protecting the driver, the guardrail intruded into the passenger compartment of the vehicle and impaled the driver, causing her death. Mr. Leopold successfully resolved the case in October 2016.

Mr. Leopold is the past president of Public Justice Foundation, one of the nation's preeminent litigation and advocacy organizations that fights for consumer justice through precedent-setting and socially significant individual and class action litigation.

Mr. Leopold is also frequently recognized by peers as being among the best in his area of practice. He was named a Law360 Titan of the Plaintiffs Bar (2022), as well as to Lawdragon's "500 Leading Lawyers in America" (2020, 2021) and Lawdragon's "500 Leading Plaintiff Consumer Lawyers" (2019 – 2022) lists. In 2019 and 2021, he was named Daily Business Review's "Distinguished Leader" and in 2019 Best Lawyers in America named Mr. Leopold "Lawyer of the Year – West Palm Beach, Florida" for Mass Tort Litigation / Class Actions – Plaintiffs. In 2018, Mr. Leopold was named a "Law360 MVP: Environmental," recognizing the top five practitioners in the United States from both the Defense and Plaintiffs' Bar in this area of law. Other recent recognitions include: The National Law Journal: "2018 Energy and Environmental Trailblazer"; Daily Business Review's "Most Effective Lawyer of 2017: Class Action"; In addition, he was nominated for "Trial Lawyer of the Year" by the Public Justice Foundation for his ground-breaking litigation involving the managed care industry, and his work has been featured in the National Law Journal's "Top Verdicts of the Year." Annually, Best Lawyers in America recognizes Mr. Leopold for his work in: Mass Tort Litigation / Class Actions; Personal Injury Litigation; Product Liability Litigation; Qui Tam Law. He is also consistently recognized by Best Lawyers in America in the fields of Product Liability Litigation – Plaintiffs, as well as by Florida Super Lawyers and Palm Beach Illustrated.

Mr. Leopold lectures frequently at professional gatherings on such issues as personal injury, product liability, class action litigation, trial tactics and consumer justice. He is also author and co-author of several legal publications, including Florida Insurance Law and Practice (Thomson/West). Additionally, he has earned the Florida Bar Civil Trial Certification, the highest level of recognition by the Florida Bar for competency and experience within civil trial law.

Mr. Leopold is a graduate of the University of Miami, where he received a B.A. He earned his J.D. from Cumberland School of Law, Samford University.

Victoria S. Nugent

Victoria S. Nugent is a Partner at Cohen Milstein and Co-Chair of the Consumer Protection practice group and immediate past Co-Chair of the Public Client practice group. Ms. Nugent is also a member of the firm's Executive Committee.

Ms. Nugent is a highly regarded consumer protection litigator, having overseen significant consumer fraud investigations and litigation on behalf of the state Attorneys General of Nevada, New Mexico, Pennsylvania, New Jersey, Indiana, and Vermont – as well as class actions brought on behalf of consumers under the laws of numerous states. Ms. Nugent is named among Lawdragon's "500 Leading Lawyers in America" (2019 – 2021), as well as Lawdragon's "500 Leading Plaintiff Consumer Lawyers" (2020), and The National Law Journal's "Plaintiffs' Lawyers Trailblazers" (2017).

Most recently, Ms. Nugent has been representing restaurant owners, retailers, and other small businesses across the United States in litigation against their insurance companies for failing to honor their business interruption claims due to the COVID-19 pandemic. These cases are being litigated in state and federal courts as class actions and individual cases.

While working in the Public Client Practice Group, Ms. Nugent represented state Attorneys General in civil law enforcement investigations and litigation involving consumer protection, Medicaid fraud, and other areas of enforcement that protect government interests and vulnerable communities. These included:

- Deceptive and Unfair Opioid Marketing and Distribution: Representing the states of Indiana, New Jersey, and Vermont in consumer protection, Medicaid fraud, and nuisance claims against opioid manufacturers and distributors.
- Deceptive and Irresponsible Lending: Representing the state of Nevada in investigations into the conduct of Deutsche Bank and the Royal Bank of Scotland, two of the investment banks that encouraged and enabled the predatory lending practices of retail lenders. Ms. Nugent helped develop the State's legal theories and claims and handled numerous aspects of these investigations.
- Improper Foreclosures: Representing the states of Arizona and Nevada in litigation against Bank of America for deceptive conduct in connection with servicing approximately 500,000 mortgages, resulting in financial payments to consumers and the states, commitments to mortgage modifications and other equitable relief valued at nearly $1 billion.

During her earlier years in the Consumer Practice Group, Ms. Nugent was involved in precedent-setting matters:

- In re StarLink Corn Product Liability Litigation (N.D. Ill.): Ms. Nugent represented farmers suing Aventis CropScience after an unapproved variety of genetically modified corn was detected in the U.S. corn supply and drove down prices for all U.S. corn exports. More than $100 million was recovered for the class in a landmark settlement.
- Negative Option Marketing Litigation: In 2009 and 2010, Ms. Nugent filed suit on behalf of consumers challenging the post-transaction marketing practices (also sometimes called "negative option marketing") and in two significant rulings persuaded federal courts in California and Washington that these practices ran afoul of state consumer protection laws.

In addition to trial court work, Ms. Nugent has argued cases before the high courts of Georgia, Nebraska, and the District of Columbia, as well as the federal D.C. Circuit Court of Appeals and the Commonwealth Court of Pennsylvania.

Prior to joining Cohen Milstein in 2000, Ms. Nugent worked for seven years at Public Citizen, a national consumer advocacy organization. There, she worked on many legislative and regulatory campaigns addressing issues that ranged from automobile safety to international trade policy. After graduating from law school in 1998, Ms. Nugent received a two-year fellowship sponsored by the National Association for Public Interest Law (NAPIL/Equal Justice Works). As a NAPIL

Fellow, she worked at Trial Lawyers for Public Justice, where she helped develop and prosecute impact litigation in the areas of arbitration, banking, credit, and insurance.

Since 2018, Ms. Nugent has been a member of Public Justice Foundation's Board of Directors. Public Justice Foundation is the nation's foremost consumer litigation and advocacy organization. Ms. Nugent served on the D.C. Bar Committee on the Rules of Professional Conduct from 2012 to 2019. Since 2019, she has been a member of the Bar's Legal Ethics Committee.

Ms. Nugent received her B.A. from Wesleyan University and her J.D. from Georgetown University Law Center.

Sharon K. Robertson

Sharon Robertson is a Partner at Cohen Milstein and a member of the Antitrust practice group. Ms. Robertson is also a member of the firm's Executive Committee.

Ms. Robertson is a nationally recognized leader in complex, multi-district antitrust litigation, particularly in pharmaceutical antitrust class actions. Since 2020, Chambers USA has named Ms. Robertson a "Top Ranked" lawyer in "Antitrust: Plaintiff – New York and USA – Nationwide," while Lawdragon has included her on its "500 Leading Lawyers in America" list annually since 2019. In 2019, The National Law Journal named her as one of nine "Elite Women of the Plaintiffs Bar," an award that recognizes female lawyers who "have consistently excelled in high-stakes matters on behalf of plaintiffs over the course of their careers." In the same year, Law360 named Ms. Robertson a "Life Sciences-MVP" for her "hard-earned successes" and "record-breaking deals." In 2018, the American Antitrust Institute honored her with its prestigious "Outstanding Antitrust Litigation Achievement by a Young Lawyer" award for her role in securing one of the largest recoveries on behalf of end-payors in a federal generic suppression case in over a decade. Similarly, for five consecutive years, The Legal 500 has selected her as a "Next Generation Lawyer" (2017-2021), an honor bestowed upon only 10 lawyers under 40 years old across the country, who are positioned to become leaders in their respective fields. Likewise, The New York Law Journal recognized her as a Rising Star (2018) – one of only twenty individuals selected to receive this honor. In addition, Benchmark Litigation selected Ms. Robertson for inclusion on its "40 & Under Hot List" for four consecutive years (2018-2021) and Law360 named her as one of five "Rising Stars" (2018) in the field of competition law whose "professional accomplishments belie their age," as did Super Lawyers (2014-2016). Ms. Robertson has also been recognized by Law360 as one of a few female litigators to secure leadership roles in high-profile MDLs, such as In re Lidoderm Antitrust Litigation (March 16, 2017).

Ms. Robertson is spearheading Cohen Milstein's efforts in pay-for-delay pharmaceutical antitrust lawsuits, a cutting-edge and industry-defining area of law, which allege that the defendant brand manufacturer entered into non-competition agreements with generic manufacturers in order to delay entry of lower-priced generic products. Ms. Robertson also heads up the firm's generic price-fixing cases, which allege that certain generic drug manufacturers conspired to inflate the prices of generic drug products.

These cases come on the heels of a government investigation led by the U.S. Department of Justice alleging similar conduct, which, while ongoing, has already resulted in indictments and guilty pleas.

In addition to leading complex MDLs, Ms. Robertson is an accomplished trial lawyer. She served as a trial team member in two of the largest antitrust cases tried to verdict, including In re Urethanes Antitrust Litigation, where the jury returned a $400 million verdict, which was trebled by the Court, as required by antitrust law, resulting in the largest price-fixing verdict in U.S. history, as well as In re Nexium Antitrust Litigation, the first pharmaceutical antitrust case to go to trial following the Supreme Court's landmark decision in FTC v. Actavis, 570 U.S. 756 (2013).

Ms. Robertson represents End-Payor Plaintiffs in the following pharmaceutical antitrust cases in which the firm serves as Co-Lead Counsel:

- In re Lipitor Antitrust Litigation (D.N.J.): Plaintiffs allege that Pfizer, the manufacturer of the cholesterol drug Lipitor, the best-selling drug in pharmaceutical history, conspired with Ranbaxy, the generic manufacturer, to delay its introduction of a generic Lipitor product. On August 21, 2017, the Third Circuit handed a sweeping victory to Plaintiffs, reviving their antitrust claims. This case was ranked by Law360 as "The Biggest Competition Cases Of 2017 So Far" (July 7, 2017).
- In re Tracleer Antitrust Litigation (D. Md.): Plaintiffs allege that Defendant Actelion engaged in an anticompetitive scheme to withhold samples of its life-saving pulmonary arterial hypertension medication from would-be rivals, under the guise of the REMs program, which conduct ultimately delayed generic competition.
- In re Bystolic Antitrust Litigation (S.D.N.Y.): Plaintiffs allege that Forest Laboratories Inc., now a part of AbbVie, engaged in an illegal scheme with pharmaceutical generic manufacturers not to make generic versions of Bystolic®, a hypertension prescription medication containing the active pharmaceutical ingredient nebivolol hydrochloride.
- In re Seroquel Antitrust Litigation (D. Del.): Plaintiffs allege that Defendant AstraZeneca Pharmaceuticals LP struck deals with generic drug manufacturers Handa Pharmaceuticals LLC, Par Pharmaceutical Inc. and Accord Pharmaceuticals Inc., inducing the generics to delay launching generic versions of Seroquel XR, AstraZeneca's prescription drug treatment for schizophrenia, bipolar disorder and depression, for five years in exchange for AstraZeneca committing to delay the launch of its own authorized generic.

In addition, Ms. Robertson co-chairs the executive committee in In re Humira Antitrust Litigation (N.D. Ill.) and serves as a member of the executive committee in similar cases in which Cohen Milstein plays a significant role, including: In re Niaspan Antitrust Litigation (E.D. Pa.), In re Suboxone Antitrust Litigation (E.D. Pa.) and In re ACTOS Antitrust Litigation (S.D.N.Y.).

Ms. Robertson represents direct purchaser plaintiffs in a number of cases as well, including In re Zetia Antitrust Litigation (E.D. Va.), In re Generic Pharmaceuticals Pricing Antitrust Litigation (E.D. Pa.), In re Sensipar (Cinacalcet Hydrochloride Tablets) Antitrust Litigation (D. Del.), and In re Intuniv Antitrust Litigation (D. Mass.).

Ms. Robertson has successfully litigated the following notable matters:

- Urethanes (Polyether Polyols) Antitrust Litigation (D. Kan.): We served as Co-Lead Counsel in an antitrust class action alleging a nationwide conspiracy to fix the prices of polyether polyols. Ms. Robertson played a leading role in helping obtain settlements with several defendants for $139 million and was a member of the trial team that obtained a $400 million jury verdict (trebled to more than $1 billion), which was affirmed on appeal by the Tenth Circuit. The case against Dow ultimately settled for $835 million while Dow's petition for certiorari was pending before the Supreme Court, bringing the total recovery to $974 million – nearly 250% of the damages found by the jury.
- In re Lidoderm Antitrust Litigation (N.D. Cal.): We served as Co-Lead Counsel for the End-Payor Class in a suit alleging that Endo and Teikoku, manufacturers of the Lidoderm patch, paid Watson Pharmaceuticals to delay its generic launch. The case settled on the eve of trial and on September 20, 2018, Plaintiffs obtained final approval of a $104.75 million settlement – more than 40% of Plaintiffs' best-case damages estimate. This case was ranked by Law360 as "The Biggest Competition Cases Of 2017 So Far" (July 7, 2017).
- In re Loestrin Antitrust Litigation (D.R.I.): We served as Co-Lead Counsel for the End-Payor Plaintiffs in a case alleging that Warner Chilcott PLC entered into agreements to delay the introduction of a generic version of the contraceptive drug Loestrin and thereafter engaged in a "product hop" to further impede generic entry. The case settled on the last business day before trial for $63.5 million – representing one of the largest settlements in a federal generic suppression case in over a decade. On September 1, 2020, the settlements received final approval.

- In re Ranbaxy Fraud Antitrust Litigation (D. Mass.): We represent the Direct Purchaser Class in this antitrust, federal RICO, and state consumer protection MDL, alleging Ranbaxy manipulated the U.S. Food and Drug Administration's generic drug approval process to block competitors from coming to market and forcing purchasers to pay supracompetitive prices for its valganciclovir hydrochloride and valsartan products. On the eve of trial, Ranbaxy settled with the Direct Purchaser Class for $340 million.
- In re Aggrenox Antitrust Litigation (D. Conn.): We served as an executive committee member on behalf of the End-Payor Plaintiffs and alleged that Defendants Boehringer Ingelheim and Teva Pharmaceutical engaged in anticompetitive conduct that delayed the availability of a less-expensive generic versions of Aggrenox. The case settled for $54 million.
- In re Solodyn Antitrust Litigation (D. Mass.): We served as a member of the executive committee and Ms. Robertson played a significant role in coordinating discovery on behalf of the End-Payor Plaintiffs. The case, which settled mid-trial, resulted in a $43 million recovery for the Class.
- In re Blood Reagents Antitrust Litigation (E.D. Pa.): Plaintiffs alleged that the two leading producers of blood reagents, Ortho–Clinical Diagnostics, Inc. and Immucor, Inc., conspired to raise prices on traditional blood reagents. In September 2012, Immucor reached a settlement with Plaintiffs. On July 19, 2017, the Court denied in part Ortho's Motion for Summary Judgement. Ms. Robertson was slated to serve as one of four lead trial counsel in the case, which was set for trial in June of 2018 but ultimately settled for a total recovery of $41.5 million.
- In re Wellbutrin SR Antitrust Litigation (E.D. Pa.): We represented the Direct Purchaser Plaintiffs in this case alleging that Defendant GSK filed and then continued "sham" patent infringement lawsuits against two manufacturers of generic drugs, Eon and Impax, to delay competition to GSK's blockbuster antidepressant, Wellbutrin SR. The case settled before trial for $49 million.
- Albany and Detroit Nurses Litigation (N.D.N.Y.; E.D. Mich.): We represented registered nurses employed by hospitals in Albany and Detroit in class actions alleging a wage-fixing conspiracy. Ms. Robertson obtained settlements with five Albany Defendants totaling over $14 million. In the Detroit case, Ms. Robertson helped obtain $98 million in settlements with eight Defendants.
- Indonesian Villagers Litigation (D.D.C.): Ms. Robertson represented Indonesian villagers in a lawsuit against Exxon Mobil over torture and extrajudicial killings allegedly committed by the Defendant's security forces (a unit of the Indonesian military).

Ms. Robertson is a member of the Professional Development and Mentoring Committee, which she co-chaired for almost a decade, and serves on the firm's Diversity Committee. She is also an active member of the Executive Committee for the Antitrust Section of the New York State Bar Association.

While attending law school, Ms. Robertson was an intern in the Litigation Bureau of the Office of the New York State Attorney General and the United States Court of Appeals for the Second Circuit. Additionally, while in law school, Ms. Robertson was selected as an Alexander Fellow and spent a semester serving as a full-time Judicial Intern to the Hon. Shira A. Scheindlin, U.S. District Court for the Southern District of New York.

Ms. Robertson graduated from State University of New York at Binghamton, magna cum laude with a B.A. in Philosophy, Politics and Law. She earned her J.D. from the Benjamin N. Cardozo School of Law, where she served as Notes Editor of the Cardozo Public Law, Policy and Ethics Journal.

Prior to attending law school, Ms. Robertson worked on the campaign committee of Councilman John Liu, the first Asian American to be elected to New York City's City Council.

Attorney Profiles – Partners

Gary L. Azorsky

Gary L. Azorsky is a Partner at Cohen Milstein, and Co-chair of the Firm's Whistleblower/False Claims Act Practice. Mr. Azorsky joined Cohen Milstein in 2012, establishing the practice. In his role, Mr. Azorsky pursues whistleblower cases under the federal and state false claims act statutes in the health care, pharmaceutical, banking and defense contractor industries and other industries that conduct business with the government. Mr. Azorsky specializes in the complex, highly detailed process for filing and pursuing these cases. In his practice, he has helped right wrongs and to recover nearly $2.5 billion in defrauded funds for federal and state governments, including hundreds of millions of dollars for whistleblower clients.

Most recently, Mr. Azorsky served as co-lead counsel in the qui tam action against the pharmaceutical company Wyeth pending in the District of Massachusetts, in which more states joined to intervene along with the government of the United States than had ever before intervened in a qui tam action. (United States of America et al., ex rel. Lauren Kieff, v. Wyeth, No.1:03-CV-12366-DPW [D.Mass.].) The $784.6 million settlement was the seventh-largest False Claims Act recovery on record and the second-largest recovery in history involving a single class of drugs. Mr. Azorsky worked alongside Department of Justice attorneys and states Attorneys General throughout the 12-year pendency of the case.

Mr. Azorsky was actively involved in precedent-setting cases, such as the series of Ven-A-Care cases, which were among the first large FCA multi-state cases and laid the groundwork for much of the false claims act litigation that goes on today. He has also represented whistleblowers in False Claims Act cases involving defense contractors, off-label marketing and misbranding by pharmaceutical companies and fraud in connection with the banking industry, for-profit colleges and student loan programs. In addition, Mr. Azorsky represents whistleblowers in tax fraud claims against large and small corporations through the IRS Whistleblower Office, as well as whistleblowers alleging violations of the Foreign Corrupt Practices Act and violations of the federal securities laws filed with the SEC Whistleblower Office.

Mr. Azorsky served as co-counsel for the whistleblower on the following representative matters:

- United States of America ex rel. Ven-A-Care of the Florida Keys Inc. v. Dey Laboratories, et al., Civil Action No. 05-11084 (D. Mass) ($280 Million settlement in December 2010)
- United States of America ex rel. Ven-A-Care of the Florida Keys Inc. v. Boehringer Ingelheim Corp, et al., Civil Action No. 07-10248 (D. Mass.) ($280 Million settlement in December, 2010)
- Florida ex rel. Ven-A-Care of the Florida Keys Inc. v. Boehringer Ingelheim Corp, et al., Civil Action No. 98-3-32A (Leon Cty., Fla.) ($6.5 Million settlement with Dey Laboratories, Inc. in March 2010)
- Florida ex rel. Ven-A-Care of the Florida Keys Inc. v. Boehringer Ingelheim Corp, et al., Civil Action No. 98-3-32A (Leon Cty., Fla.) ($9.57 Million settlement with Schering-Plough in December 2009)
- Florida ex rel. Ven-A-Care of the Florida Keys Inc. v. Boehringer Ingelheim Corp, et al., Civil Action No. 98-3-32A (Leon Cty., Fla.) ($8.5 Million settlement with Boehringer Ingelheim in December 2009)
- Texas ex rel. Ven-A-Care of the Florida Keys Inc. v. Roxane Laboratories, Inc., Boehringer Ingelheim Pharmaceuticals, Inc., Ben Venue Laboratories, Inc. and Boehringer Ingelheim Corporation, Civil Action No. GV3-03079 (Travis Cty., Tex.) ($10 Million settlement with Boehringer Ingelheim in November 2005)
- Texas ex rel. Ven-A-Care of the Florida Keys Inc. v. Warrick Pharmaceuticals Corporation, Schering Plough Corporation, Schering Corporation, Civil Action No. GV002327 (Travis Cty., Tex.) ($27 Million settlement with Schering-Plough in May 2004)
- Texas ex rel. Ven-A-Care of the Florida Keys Inc. v. Dey, Inc., Dey, L.P., Civil Action No. GV002327 (Travis Cty., Tex.) ($18.5 Million settlement with Dey Laboratories, Inc. in June 2003)

Mr. Azorsky is recognized for his expertise. He has served as an expert witness in a legal malpractice case concerning qui tam practice. He has provided expert guidance on the False Claims Act in congressional hearings, as well as before the

Vermont Senate Judiciary Committee in support of the passage of a False Claims Act for the state. In addition, he regularly speaks before professional audiences regarding the federal and state False Claims Acts.

Mr. Azorsky is a member of Taxpayers Against Fraud, a nonprofit, public interest organization dedicated to combating fraud against the Federal Government through the promotion and use of the Federal False Claims Act and its qui tam provisions. Prior to joining Cohen Milstein, in addition to his Whistleblower/False Claims Act practice, he was actively involved in groundbreaking civil rights, commercial and intellectual property litigation, including Internet and software industry-related litigation.

Mr. Azorsky is a graduate of the University of Pennsylvania, with a B.A. in English, and received his law degree from Cornell University Law School.

Mary J. Bortscheller

Mary J. Bortscheller is a Partner at Cohen Milstein and a member of the firm's Employee Benefits Practice Group. In this role, Ms. Bortscheller represents the interests of employees, retirees, and plan participants and beneficiaries in ERISA cases in the district court and on appeal.

Ms. Bortscheller is a hands-on, strategic litigator, thoroughly versed in the complexities of ERISA law. In 2019, she was named a Law360 "Rising Star," recognizing lawyers under the age of 40 whose professional accomplishments transcend their age.

Ms. Bortscheller is involved in a series of groundbreaking cases involving employer-sponsored defined benefit plans known as "church plans," where non-profit health care systems in the United States claim their benefit plans are exempt from ERISA regulation under the church plan exemption. Ms. Bortscheller also represents employees in litigation involving 401(k) plans and Employee Stock Ownership Plans (ESOPs) in complex breach of fiduciary duty litigation under ERISA.

Ms. Bortscheller is currently litigating the following matters:

- AT&T Pension Benefit Plan Litigation (N.D. Cal.): Cohen Milstein represents plaintiffs and a putative class of participants and beneficiaries in the AT&T Pension Benefit Plan in a case alleging AT&T improperly calculated the pension benefits of certain retirees who retired early and/or took a joint and survivor annuity. As a result of the improper calculation, plaintiffs received a lower pension benefit than they were entitled to under ERISA.
- Triad Manufacturing, Inc. ESOP Litigation (N.D. Ill.): Cohen Milstein is representing participants and beneficiaries in the Triad Manufacturing, Inc. Employee Stock Ownership Plan in this case alleging the defendant selling shareholders and ESOP trustee breached their fiduciary duties and engaged in prohibited transactions in connection with the sale of Triad Manufacturing, Inc. to the ESOP. On August 21, 2020, U.S. District Judge Ronald A. Guzmán denied defendants' Motion to Compel Arbitration. On September 10, 2021, the Seventh Circuit upheld Judge Guzmán's decision, citing an exception to the Federal Arbitration Act that permits a court to overrule an arbitration agreement if it blocks a party from being able to bring claims under federal law.
- Western Milling ESOP Litigation (E.D. Cal.): Cohen Milstein is representing plaintiff in a suit brought on behalf of participants and beneficiaries of the Western Milling Employee Stock Ownership Plan. Plaintiff, a participant in the ESOP, alleges that the ESOP's fiduciaries breached their fiduciary duties and engaged in prohibited transactions under ERISA by causing the ESOP to purchase 100% of Kruse-Western, Inc. company stock at an inflated stock price which did not take into account significant liabilities of the company. The value of the company stock subsequently dropped by 90% shortly after the purchase and has not significantly recovered.

Ms. Bortscheller was also significantly involved in the following high-profile successes:

- BlackRock 401(k) Plan Litigation (N.D. Cal.): Cohen Milstein represented participants in the BlackRock 401(k) Plan, who allege that the Plan fiduciaries violated their duties under ERISA by investing employees' 401(k) savings almost exclusively in BlackRock proprietary funds and by using BlackRock subsidiaries to broker securities lending deals using the Plan's assets. In November 2021, the court granted final approval of a $9.65 million settlement.
- Bon Secours Health System Church Litigation (D. Md.): Cohen Milstein served as lead counsel to a class of defined benefit participants of seven Bon Secours Health System Inc. pension plans which plaintiffs alleged improperly operated under the "church plan" exemption of ERISA. In May 2017, the court granted final approval of a settlement of over $102 million, one of the largest settlements of its kind.
- Bon Secours Health System Church Litigation (D. Md.): Cohen Milstein served as lead counsel to a class of defined benefit participants of seven Bon Secours Health System Inc. pension plans which plaintiffs alleged improperly operated under the "church plan" exemption of ERISA. In May 2017, the court granted final approval of a settlement of over $102 million, one of the largest settlements of its kind.
- Trinity Health Corporation Church Plan Litigation (D. Md.): Cohen Milstein served as co-lead counsel to a class of defined benefit participants of Trinity Health Corp. pensions plans which plaintiffs alleged improperly operated under the "church plan" exemption of ERISA. In May 2017, the court granted final approval of a $75 million settlement.
- Advocate Health Care Church Plan Litigation (N.D. Ill.): Cohen Milstein served as co-lead counsel to a class of defined benefit participants, who alleged that the hospital's plan was not a church plan and thus the class was entitled to ERISA's protections. After the Supreme Court redirected this case back to the district court, in June 2018, the court granted final approval of a settlement, which provides a guarantee of accrued benefits for ten years and significant non-monetary equitable consideration.
- SSM Health Care Church Plan Litigation (E.D. Mo.): Cohen Milstein served as lead counsel to a class of defined benefit participants who alleged that SSM Health improperly operated its defined benefit pension plans under the ERISA church plan exemption, thereby underfunding the plans as required by ERISA to the detriment of plan benefits. In June 2019, the court granted final approval of a $60 million settlement.

In addition to her ERISA case work, Ms. Bortscheller has represented, pro bono, unaccompanied minor clients in immigration proceedings. Prior to joining Cohen Milstein in 2013, Ms. Bortscheller practiced at a boutique commercial litigation firm based in Chicago, where she represented plaintiffs in antitrust and qui tam matters, as well as defendants in general commercial litigation.

Ms. Bortscheller graduated from Gustavus Adolphus College with a B.A., cum laude, in Political Science, and received her J.D., cum laude, from American University, Washington College of Law. During law school, she served as Features Editor and Senior Editor of Sustainable Development Law & Policy and was a staff member of the American University International Law Review. Ms. Bortscheller served as a judicial intern with the United States District Court for the District of Minnesota.

Before attending law school, Ms. Bortscheller served in the United States Peace Corps teaching English as a foreign language in Sichuan Province, China. Following law school, she was a volunteer for the Chicago Legal Clinic, Inc.'s Foreclosure Defense Project.

Brian E. Bowcut

Brian E. Bowcut is a Partner at Cohen Milstein and a member of the firm's Public Client practice group. Mr. Bowcut represents state Attorneys General and other public-sector clients as outside counsel in investigations and lawsuits involving fraudulent and deceptive trade practices. Mr. Bowcut, who joined the firm in 2015, brings with him deep experience representing the federal government in complex litigation and in enforcement investigations. In his role as a senior lawyer in the Public Client practice group, he brings this experience to bear in false claims and consumer fraud enforcement at the state and local levels.

Mr. Bowcut's recent representations include:

- Grubhub and DoorDash Litigation: Representing the City of Chicago in its investigations and litigation against Grubhub and DoorDash for pervasively deceptive and unfair business practices that take advantage of restaurants, consumers, and drivers. Click here to view the lawsuit filed against DoorDash; click here to view the lawsuit filed against Grubhub.
- Opioid Painkillers: Representing the states of Indiana, New Jersey and Vermont in investigations and litigation against entities responsible for the deceptive marketing and sale of opioids. Click here to view the lawsuit filed by New Jersey; click here to view the lawsuit filed by Vermont.
- Nursing Homes: Representing the State of New Mexico in litigation related to Medicaid fraud and deceptive marketing by skilled nursing facilities that promised, but failed to provide, basic care to their elderly residents. Mr. Bowcut briefed and successfully argued the defendants' motion to dismiss the case.
- Energy Drinks: Representing a state government in litigation against Living Essentials, Inc., the creator of 5-Hour ENERGY, for misrepresenting the benefits of its so-called "liquid energy shot." Mr. Bowcut is preparing this case for trial.

Mr. Bowcut formerly was a Trial Attorney and Senior Trial Counsel in the Civil Division of the U.S. Department of Justice for nine years. Most recently, as a member of the Fraud Section, he investigated and litigated fraud across an array of government programs, from Medicare fraud by nursing facilities, hospices and medical device makers to schemes involving federal mortgage, foreign aid, and TARP funds. Before that, as a member of the Environmental Torts Section, he defended the United States as lead counsel in large-scale tort litigation. Prior to joining DOJ, Mr. Bowcut practiced at a preeminent national law firm, where he specialized in pharmaceutical product liability, and commercial litigation. He has argued cases in numerous federal district courts, the U.S. Court of Appeals for the Fourth Circuit, and the District of Columbia Court of Appeals.

Mr. Bowcut attended Utah State University, graduating summa cum laude with a B.A. in Journalism and Political Science. He earned his J.D. from Duke Law School, graduating cum laude and Order of the Coif, and also earned an M.A. in Public Policy from Duke. During law school, Mr. Bowcut was an Articles Editor for the Duke Law Journal. After law school, he clerked for the Honorable Stanley S. Brotman of the United States District Court for the District of New Jersey.

Robert A. Braun

Robert A. Braun, a Partner at Cohen Milstein and a member of the firm's Antitrust Practice Group, focuses on cutting-edge, industry-changing antitrust and class action litigation on behalf of individuals and small businesses harmed by price-fixing and other illegal corporate behavior.

Mr. Braun recently helped obtain more than $50 million in settlements in In re Resistors Antitrust Litigation (N.D. Cal.), and has also played significant roles in suits involving anticompetitive behavior in the real estate services industry, LIBOR manipulation ($180 million in preliminary settlements), price-fixing by manufacturers of metal pipes and fittings ($47 million in settlements across two cases), and "pay-for-delay" and other practices by pharmaceutical companies to limit access to less expensive generic drugs.

Mr. Braun is also experienced in international claims litigation, including representing victims of state-sponsored terrorism in suits amounting to nearly $1 billion in judgments.

Currently, Mr. Braun is litigating the following notable matters:

- Moehrl v. National Association of Realtors (N.D. Ill.): Cohen Milstein represents a proposed class of home sellers in litigation against the four largest national real estate services conglomerates, and their trade association. The class alleges that the defendants violated federal antitrust law by conspiring to require sellers to pay the broker representing their homes' buyer (and to do so at an inflated level). Mr. Braun assists in managing all aspects of the case.
- In re: Iran Beirut Bombing Litigation (D.D.C.): Cohen Milstein represents victims and family members of victims in the 1983 Beirut Marine Barracks bombing—the deadliest act of terrorism against Americans prior to September 11, 2001. Mr. Braun manages this litigation, which has resulted in judgments amounting to more than $942 million against the government of Iran.

Mr. Braun also maintains an active pro bono practice. He is currently a member of the legal teams in Citizens for Responsibility & Ethics in Washington v. Trump (S.D.N.Y.) and District of Columbia v. Trump (D. Md.), which seek to enjoin President Trump's unconstitutional receipt of emoluments on behalf of restaurant and hotel plaintiffs and the Attorneys General of Maryland and the District of Columbia.

Prior to joining Cohen Milstein, Mr. Braun served as a law clerk for Hon. Carolyn Dineen King (5th Cir.), and Hon. Lee H. Rosenthal (S.D. Tex.). He was also an Arthur Liman Fellow at Southeast Louisiana Legal Services, where he worked on public interest housing litigation.

Mr. Braun earned his J.D. at Yale Law School and attended Princeton University, graduating summa cum laude. During law school, Mr. Braun was an editor of the Yale Journal of International Law and a member of the mock trial team.

S. Douglas Bunch

S. Douglas Bunch is a Partner at Cohen Milstein, a member of the Securities Litigation & Investor Protection practice group, and Co-Chair of the firm's Pro Bono Committee.

Mr. Bunch represents individual and institutional investors in securities and shareholder class actions. His work and path-breaking legal arguments in precedent-setting cases, such as In re Harman International Industries, Inc. Securities Litigation, have earned him numerous accolades, including being named to Benchmark Litigation's 2019 "40 & Under Hot List" and as one of Law360's "Rising Stars – Securities" (2017), honoring lawyers under the age of 40 whose professional accomplishments transcend their age.

Mr. Bunch played a leading role in the following securities class actions:

- In re Harman International Industries, Inc. Securities Litigation (D.D.C.): Cohen Milstein obtained a precedent-setting ruling by the U.S. Court of Appeals for the D.C. Circuit, reversing the dismissal of the case by the lower court, protecting investors by limiting the scope of protection afforded by the so-called "safe-harbor" for forward-looking statements in the Private Securities Litigation Reform Act of 1995.
- Schwartz v. Opus Bank (C.D. Cal.): Cohen Milstein was Lead Counsel in this putative securities class action, alleging that certain directors and officers of this commercial bank misled investors by portraying an image of a disciplined and conservative approach to credit, underwriting, and credit controls. In November 2018, the Court granted final approval of a $17 million settlement.
- In re ITT Educational Services, Inc. Securities Litigation (S.D.N.Y.): Cohen Milstein achieved a $16.96 million settlement against ITT and two of its officers. The case was hotly contested and involved unraveling complex accounting treatments governing ITT's transactions with third-party lenders, whereby the third parties agreed to assume liability for student loan defaults up to a particular threshold. The case settled during discovery after the parties had reviewed and analyzed over two million pages of documents, after depositions had been taken, while class certification briefing was ongoing.

- Plumbers & Pipefitters National Pension Fund v. Orthofix International N.V. (S.D.N.Y.): Cohen Milstein reached an $11 million settlement against this medical device company headquartered in Curacao, Netherlands
- Antilles, despite significant logistical obstacles during investigation and discovery. Much of the information relevant to the case—including internal Company documents and witness testimony—were in six foreign languages, and located in nine different countries on four different continents.
- Rubin v. MF Global, Ltd. (S.D.N.Y.): Cohen Milstein achieved a significant $90 million settlement in this precedent-setting case, in which the U.S. Court of Appeals for the Second Circuit sided with the Plaintiffs and held that companies cannot make false or misleading statements in their offering documents, and then hide behind associated risk disclosures in an attempt to escape liability. The National Law Journal named Cohen Milstein to its Plaintiffs' Hot List for its achievement.
- MBS Litigation (S.D.N.Y): Cohen Milstein is a legal pioneer in mortgage-backed securities (MBS) litigation, having negotiated some of the largest and most significant MBS settlements in history and achieved more than $2.5 billion in investor recoveries. Mr. Bunch played a key role in these cases, particularly those against Residential Accredit Loans, Inc. (RALI) ($335 million settlement), Harborview Mortgage Loan Trusts ($275 million settlement), and Bear Stearns & Co. Inc. ($500 million settlement).

Mr. Bunch is currently involved the following notable cases:

- Cape Fear River Contaminated Water Litigation (E.D.N.C.): Cohen Milstein is Interim Co-Lead Class Counsel in this environmental toxic tort class action filed against E.I. du Pont de Nemours & Company and The Chemours Company. Plaintiffs allege that for more than four decades, DuPont and Chemours polluted the Cape Fear River near Wilmington, North Carolina, with a chemical called GenX; contaminated the water supply in five North Carolina counties; and misrepresented the Company's conduct to state and federal regulators, all while knowing that GenX was carcinogenic. Plaintiffs allege extensive property damage and personal injury as a result of Defendants' actions.
- Plumbers & Pipefitters National Pension Fund v. Davis (S.D.N.Y.): Cohen Milstein is Lead Counsel in this high-profile, putative securities class action involving Performance Sports Group's failure to disclose that its purported financial success was not based on sustainable, "organic" growth as represented, but was driven by the Company's manipulative and coercive sale practices, which included pulling orders forward to earlier quarters and pressuring customers to increase their orders without regard for market demand. The SEC and Canadian authorities subsequently initiated investigations, and PSG filed for bankruptcy. On April 14, 2020, the Court largely denied Defendants' motion to dismiss, moving the case to active discovery.
- In re GreenSky Securities Litigation (S.D.N.Y): Cohen Milstein is Co-Lead Counsel, representing Northeast Carpenters Annuity Fund and the El Paso Firemen & Policemen's Pension Fund, in this securities class action involving fintech company GreenSky's failure to disclose in its Initial Public Offering documents significant facts about the Company's decision to pivot away from its most profitable line of business. In the months following the IPO, Defendants explained these facts to the market, and GreenSky's stock plummeted, causing significant harm to investors. In June 2020, the Court certified the class of investors.
- In re EQT Corporation Securities Litigation (W.D. Pa.): Cohen Milstein is Co-Lead Counsel in this securities class action, in which Plaintiffs allege that EQT misrepresented the "substantial synergies" that were expected to arise from a planned merger with rival natural gas producer Rice Energy due to "the contiguous and complementary nature of Rice's asset base with EQT's."

For his legal achievements, Mr. Bunch has received numerous industry recognitions, including being named to Benchmark Litigation's 2019 "40 & Under Hot List," and Law360's "Rising Stars – Securities" (2017), recognizing outstanding lawyers under the age of 40. Mr. Bunch has also been annually recognized by Super Lawyers for Securities Litigation (2014-2020).

Mr. Bunch is Co-Founder and Chairman of Global Playground, Inc., a nonprofit that builds schools and other educational infrastructure in the developing world, and serves or has served on the boards of the Northeast Conference on the

Teaching of Foreign Languages, Ascanius: The Youth Classics Institute, and Virginia21. Mr. Bunch has twice been appointed, in 2016 and again in 2020, by Governors of Virginia to the Board of Visitors of the College of William & Mary.

A member of Phi Beta Kappa, Mr. Bunch graduated with a B.A., summa cum laude, from the College of William & Mary, earned an Ed. M. from Harvard University, and received his J.D. from William & Mary Law School, where he was a recipient of the Benjamin Rush Medal in 2006. In 2011, he was awarded William & Mary's inaugural W. Taylor Reveley III award, recognizing alumni who have demonstrated a sustained commitment to public service.

Robert W. Cobbs

Robert W. Cobbs is a Partner at Cohen Milstein and a member of the firm's Antitrust practice group.

Currently, Mr. Cobbs is litigating the following notable matters:

- Interest Rate Swaps Antitrust Litigation (S.D.N.Y.): Cohen Milstein serves as co-lead counsel in a groundbreaking antitrust class action representing the Public School Teachers' Pension and Retirement Fund of Chicago and a proposed buy-side investor class against numerous Wall Street investment banks. The class alleges that the defendants conspired to prevent class members from trading IRS on modern electronic trading platforms and from trading with each other, all to protect the banks' trading profits from inflated bid/ask spreads.
- Stock Lending Antitrust Litigation (S.D.N.Y.): Cohen Milstein serves as co-counsel in a groundbreaking antitrust class action alleging that major investment banks conspired to prevent the stock lending market from evolving by boycotting and interfering with various platforms and services designed to increase transparency and reduce costs in the stock lending market.
- ExxonMobil - Aceh, Indonesia (D.D.C.): Cohen Milstein is representing eleven Indonesian citizens in a cross-border human rights lawsuit involving allegations of physical abuse, sexual assault, other forms of torture, and murder committed by Indonesian soldiers who were hired by ExxonMobil Corporation.

Mr. Cobbs' recent successes include:

- Google Wi-Fi Litigation (N.D. Cal.): Cohen Milstein was co-lead counsel in a nationwide class action alleging that Google violated the Wiretap Act when its Street View vehicles secretly collected payload data from unencrypted Wi-Fi networks. Plaintiffs defeated a motion to dismiss raising novel Wiretap Act issues, and the ruling was affirmed on interlocutory appeal to the Ninth Circuit. The court approved a $13 million settlement in March 2020.
- Anadarko Basin Oil and Gas Lease Antitrust Litigation (W.D. Okla.): Cohen Milstein was co-lead counsel for plaintiffs in a class action alleging that Chesapeake Energy, SandRidge Energy and a former executive of both companies conspired to rig bids for leases of land held by private landowners in parts of Oklahoma and Kansas. This litigation followed the U.S. Department of Justice's early 2016 indictment of a co-founder and former CEO of Chesapeake Energy for allegedly participating in this bid-rigging conspiracy. Plaintiffs alleged that Defendants illegally conspired to stabilize and depress the price of royalty and bonus payments paid to landowners in the Anadarko Basin oil and gas province — a massive geological formation holding natural gas and oil deposits that includes large parts of Oklahoma and Kansas. Pursuant to this conspiracy, Plaintiffs alleged that Defendants communicated about and agreed on prices, allocated particular geographic areas between themselves, and rigged bids for leases of land, lowering acquisition prices across the region and thereby harming the proposed class of landowners. In April 2019, the court granted final approval of a $6.95 million settlement.

Prior to joining Cohen Milstein, Mr. Cobbs clerked for the Hon. Pierre N. Leval, United States Court of Appeals for the Second Circuit; and for the Hon. J. Rodney Gilstrap, United States District Court for the Eastern District of Texas.

Mr. Cobbs graduated from Amherst College with a B.A. in English and Russian, magna cum laude with distinction, and received his J.D. from Yale Law School. During law school, he served as a Notes Editor of the Yale Law Journal and as a Submissions Editor of the Yale Journal on Regulation.

Michael Dolce

Michael Dolce is a Partner at Cohen Milstein, a member of the firm's Complex Tort Litigation practice, and the leader of the firm's Sexual Abuse, Sex Trafficking, and Domestic Abuse team.

A highly regarded trial lawyer and political activist, Mr. Dolce's practice is dedicated to representing survivors of sexual crimes, including child and adult victims, and adult survivors of child sexual abuse. His team represents clients from initial disclosure to law enforcement, to police investigations, criminal prosecutions, injunction proceedings and civil lawsuits against individual criminals and any institution that gave them safe harbor to commit their crimes. Mr. Dolce brings to his work the insight and commitment of a survivor, having himself been the victim of sexual abuse as a young boy at the hands of a sadistic predator.

In litigation, he has achieved multiple multi-million-dollar trial verdicts for his clients, as well as numerous substantial settlements. Among many awards that he has received for his work is his selection by his peers to be included in The Best Lawyers in America.

Named to Lawdragon's list of "500 Leading Lawyers in America" (2020, 2021), Mr. Dolce has also been named to Lawdragon's list of "500 Leading Plaintiff Consumer Lawyers" (2019-2022). Mr. Dolce received Daily Business Review's 2019 "Innovative Practice Areas" award, as well.

His expertise and accomplishments in sex crime victim rights is nationally recognized. CNN relied on him as an expert for an investigative report into mishandling of sex crime investigations. He has been quoted and has published editorials in the nation's top news outlets and law journals, including: NBC Think, The Associated Press, Newsweek, USA Today, The Guardian, The Hill, The New York Times, New York Daily News, The Washington Post, The Christian Science Monitor, Law360, The Daily Business Review, The Epoch Times, The Herald (Sharon), The Palm Beach Post, PENN Live, Politico, Salon.com, SunSentinel (Ft. Lauderdale), Tampa Bay Times, among others. He also appears as an expert in the award-winning documentary film, Pursuit of Truth: Adult Survivors of Child Sexual Abuse Seeking Justice.

In 2004, he broke his decades-long public silence about his status as a child sex abuse survivor in order to help other survivors. That year, he testified about his past before the Florida Senate Criminal Justice Committee, starting what became a six-year crusade to repeal all statutes of limitation for civil and criminal prosecution of child sexual battery. Supported by a grassroots organization of some 200 survivors that he led as the chair of the political committee, Protect Our Kids First, Inc., his precedent-setting strategy worked to compel the Florida Legislature to ensure that never again would a child in Florida be turned away from any court due to the passage of time.

Mr. Dolce has achieved significant victories for his clients in civil and criminal courts. He has assisted prosecutors in securing convictions against multiple sex criminals. He has represented clients in "impact litigation" against institutions, from schools to group homes, which have changed their policies and practices as a result to improve child safety. He has also recovered millions of dollars in damages for clients, including a $19.2 million jury verdict in 2009, which was ranked by The National Law Journal's "Verdict Search" as one of the top 100 verdicts nationwide for the year.

Currently, Mr. Dolce is litigating the following notable matters:

- Doe, et al. v. Washington Hebrew Congregation, et al. (D.D.C.): On April 15, 2019, Cohen Milstein, on behalf of the families of 11 children between the ages of three and four, filed a lawsuit against Washington Hebrew Congregation Edlavitch Tyser Early Childhood Center and its Director for failing to protect their children from sexual abuse by a preschool teacher over a two-year period.

- Doe v. Scores, et al. (Cir. Crt., Hillsborough Cnty., Fla.): On January 29, 2020, Cohen Milstein filed a lawsuit on behalf of a developmentally disabled minor against Scores Holding Company, Inc. and its affiliates for illegally having her perform at one of their Florida strip clubs, subjecting her to be sexual abuse and human trafficking.
- Jane Doe v. Gerard Abate, M.D. (Cir. Crt., Flagler Cnty.): On June 16, 2021, Cohen Milstein filed a civil sexual assault lawsuit Against Dr. Abate for allegedly committing rape and sexual assault by deception or fraud, sexual battery, battery, aggravated battery, poisoning, and exposed the plaintiff to a sexually transmissible disease without notice and consent.

Mr. Dolce's recent successes include:

- Doe v. Unnamed Institution: In November 2017, Mr. Dolce successfully settled a matter, prior to filing a lawsuit in court, on behalf of a client who survived a sexual assault in a medical setting. The $800,000 settlement and outcome for his client was life-altering and life-sustaining, as she had profoundly struggled with suicidal behaviors and needed expensive residential treatment due to her trauma.
- Jane Doe v. Seagate Hotel and Spa (Cir. Crt., Palm Beach Cnty., Fla.): Mr. Dolce successfully represented an adult against a resort hotel for negligence, asserting that she was sexually assaulted by a massage therapist, who had been discharged just two months earlier by his prior employer for sexually assaulting a guest.
- Doe v. Doe (Cir. Crt., Norfolk Cnty., Va.): In October 2017, Mr. Dolce successfully settled a survivor of child sexual abuse lawsuit in Virginia for $880,000 – more than 40 years after the abuse occurred –on behalf of a 49-year-old south Florida resident, whose repressed memories of traumatic sexual abuse began to surface two years earlier, causing him to relive the painful experiences.
- Jane Doe v. Florida Sheriffs Youth Ranches (Cir. Crt., Polk Cnty., Fla): Mr. Dolce represented a teenaged sex abuse victim who was abused in a residential childcare facility by an adult resident of the facility. This civil suit against the facility follows a successful criminal prosecution of the abuser, asserting that the facility failed to maintain proper child safety procedures and policies.
- Rose, Fitzsimons and Davis v. The Devereux Foundation, Inc. (Cir. Crt., Leon Cnty., Fla.): Mr. Dolce represented adult survivors in three related lawsuits, asserting child physical and sexual abuse at a licensed therapeutic group home perpetrated by several staff members.
- Hollins v. Watchtower Bible and Tract Society of New York, Inc. (Cir. Crt., Leon Cnty., Fla.): Mr. Dolce represented an adult survivor of child sexual abuse against his former church (Jehovah's Witnesses), resulting in a confidential settlement.
- A.S.W. v. Happy House, Inc. (Cir. Crt, Duval Cnty., Fla.): Mr. Dolce represented a pre-school child against a day care center in a child-on-child sex abuse case, resulting in a confidential settlement.
- Jane Doe v. James Byrne and Linda Byrne (Cir. Crt., St. Lucie Cnty., Fla): Mr. Dolce represented a mentally disabled child in an action against a neighbor who sexually abused her over a two-year period and against the abuser's wife, on a theory that she failed to protect the child after finding evidence of ongoing abuse. The jury awarded damages of $3.5 million, ordering both defendants to pay.

Mr. Dolce is a Fellow of the Litigation Counsel of America, an invitation-only trial lawyer honorary society comprised of less than one-half of one percent of American lawyers, and his work has been cited across the nation by law professors and state Supreme Court judges, garnering him national recognition and awards from both attorneys and crime victim advocates, including the National Center for Victims of Crime, the Florida Council Against Sexual Violence, the Florida Justice Association, The Best Lawyers in America for Personal Injury Litigation, and Palm Beach Illustrated.

He recently served on the board of directors of the Florida Council Against Sexual Violence.

Mr. Dolce graduated with a Bachelor of Arts, summa cum laude, from Lynn University and received his J.D. from Stetson University, which awarded him at graduation the Walter Mann Award for leadership in the legal profession and the Victor O. Wehle Award for outstanding trial advocacy.

Manuel J. Dominguez

Manuel J. ("John") Dominguez is a Partner at Cohen Milstein and a member of the Antitrust practice group. Mr. Dominguez specializes in complex, multi-district antitrust litigation, representing individuals and businesses harmed by anticompetitive business practices. Mr. Dominguez also plays a significant role in identifying and investigating potential antitrust violations for the practice group.
Mr. Dominguez has been litigating complex antitrust, securities, and consumer cases for more than 20 years, and has served as lead counsel and handled numerous high-profile, high-stakes cases during that time. His efforts have enabled aggrieved businesses and consumers to recover hundreds of millions of dollars.

A hands-on litigator, Mr. Dominguez currently represents plaintiffs in litigation alleging price-fixing and monopolistic practices in the medical products, finance and other industries. These cases include:

- Automotive Parts Antitrust Litigation: Cohen Milstein represents direct purchasers of Bearings, Mini-Bearings, IG coils, Power Window Motors, Valve Timing Control Devices and other automotive parts in a series of antitrust class action lawsuits accusing manufacturers and suppliers of price-fixing and bid-rigging conspiracies. These cases, being litigated in the Eastern District of Michigan in Detroit, stem from the largest antitrust investigation in the history of the U.S. Department of Justice, with over $1 billion in fines and multiple criminal indictments. Bearings is the first matter currently being considered for certification by the court. Mr. Dominguez has significant responsibilities in these cases, including leading discovery efforts against defendants, briefing and assisting experts. Settlements in several of these cases have recovered more than $500 million for direct purchaser plaintiffs.
- Liquid Aluminum Sulfate Antitrust Litigation: In this action it was alleged that the manufacturers of Aluminum Sulfate, a product used by municipalities for water treatment, conspired to allocate customers, rig bids and fix prices. Mr. Dominguez was appointed by the court to serve on the Plaintiffs' Steering Committee. As part of his responsibilities, he has been responsible for selecting class representatives and working on the consolidated amended complaint. Thus far, this case has resulted in the preliminary approval of settlements for direct purchaser plaintiffs of more than $10.7 million in cash and up to $13.5 million from the sale of defendant's assets resulting from the company's dissolution or acquisition.

In addition to antitrust class action litigation, Mr. Dominguez continues to be involved in significant non-class and non-antitrust class actions, including winning a significant motion to dismiss in a non-class action antitrust action brought on behalf of doctors and practice groups against a major insurance company and hospital in Florida in Omni Healthcare, Inc. v. Health First, Inc. The case presented and argued issues of first impression for the middle district of Florida. Mr. Dominguez was also involved in cutting-edge data privacy breach litigation against AOL for allegedly unlawfully collecting internet search data of millions of users and making their private information available for public downloading. In addition, Mr. Dominguez litigated a highly significant securities matter that settled for hundreds of millions of dollars involving Symbol Technologies Inc., a barcode technology maker that intentionally overstated its revenues through premature revenue recognition, improper consignments arrangements and channel stuffing.

Mr. Dominguez began his career as an Assistant Attorney General in the Attorney General of the State of Florida's Department of Economic Crimes. In that role, he represented the State of Florida in prosecuting corporations and business entities for alleged violations of Florida's RICO, antitrust and Unfair and Deceptive Trade Practices Act statutes. Following his service as an Assistant Attorney General, Mr. Dominguez entered private practice, litigating and trying numerous cases involving unfair trade practices and other alleged violations of state and federal consumer protection statutes. In 2000,

he joined a premier class action firm focused on antitrust and securities litigation; there, he rose to be one the heads of the firm's antitrust practice group.

Mr. Dominguez also has been at the forefront of exploring ways to develop and apply e-discovery to the law—authoring white papers and presenting on e-discovery amendments to the Federal Rules of Civil Procedure. He also participated in The Sedona Conference® Working Group 1, the legal industry's vanguard e-discovery standards organization.
Mr. Dominguez formerly served as the Chair of the Antitrust, Franchise & Trade Regulation Committee of the Florida Bar's Business Law Section. He previously served as the Vice Chair of that committee and was a member of the Executive Council of Florida Bar's Business Law Section. He is also co-author of an article that appeared in the Florida Bar Journal, "The Plausibility Standard as a Double Edge Sword: The application of Twombly and Iqbal to Affirmative Defenses" (Vol. 84, No. 6).

Mr. Dominguez is recognized by the Global Competition Review Who's Who Legal: Competition (since 2021), Lawdragon 500 Leading Plaintiff Financial Lawyers List (2021), "Super Lawyers" as a top-rated lawyer In Florida (since 2021), "Legal Elite" by Florida Trend (2017-2018), and he has been named a Palm Beach Illustrated "Top Lawyers" (2018).

Mr. Dominguez received a B.A. from Florida International University, and earned his J.D. from the Florida State University Law School, graduating with honors. In law school, he was a member of the Transnational Journal of Law and Policy.
MORELESS

Michael B. Eisenkraft

Michael B. Eisenkraft is a Partner at Cohen Milstein where he takes a leading role in prosecuting innovative cases relating to the protection of financial and commodity markets for the firm and currently represents investors in the Interest Rate Swaps, Treasuries, Stock Lending, KOSPI 200, XIV ETN, and Overstock.com markets. He has also helped investors recover hundreds of millions of dollars in the firm's mortgage-backed securities cases and represents businesses in commercial contingency litigation. Mr. Eisenkraft serves as the Administrative Partner for Cohen Milstein's New York office and chairs the firm's New Business Development Committee.

Mr. Eisenkraft was honored by Law360 in 2018 as one of six attorneys under the age of forty in the field of securities whose "professional accomplishments belie their age," by Benchmark Litigation (40 & Under Hot List) for the last two years, and by Legal 500 as a "Next Generation Lawyer." He has been recognized repeatedly by New York Super Lawyers (Rising Star 2013-2019) and is rated "AV Preeminent" by Martindale-Hubbell (2017-2020). Mr. Eisenkraft currently serves as Co-Chair of the Committee on Federal Courts for the New York County Lawyers' Association and was appointed by Law360 to serve on its 2020 Securities Editorial Advisory Board.

His notable successes at Cohen Milstein include:

- NovaStar MBS Litigation (S.D.N.Y.): $165 million settlement on behalf of investors in a Securities Act litigation involving billions of dollars of mortgage-backed securities underwritten by the Royal Bank of Scotland, Wachovia and Deutsche Bank.
- HEMT MBS Litigation (S.D.N.Y.): $110 million settlement on behalf of investors in mortgage-backed securities issued and underwritten by Credit Suisse after more than seven years of litigation, which included the first written decision certifying a Securities Act class of mortgage-backed securities in the country.
- RALI MBS Litigation (S.D.N.Y.): $335 million in settlements on behalf of investors in mortgage-backed securities issued by Residential Capital and underwritten by various investment banks after seven years of litigation.
- Harborview MBS Litigation (S.D.N.Y.): $275 million settlement on behalf of investors in mortgage-backed securities issued and underwritten by the Royal Bank of Scotland and its subsidiaries after more than six years of litigation.

- Dynex Litigation (S.D.N.Y.): $7.5 million settlement on eve of trial on behalf of investors in asset-backed securities. The decision certifying the class in the case was the first decision within the Second Circuit certifying a class of asset-backed bond purchasers under the 1934 Act.
- China MediaExpress Litigation (S.D.N.Y.): $12 million settlement with auditor defendant in case involving alleged fraud at Chinese reverse merger company China MediaExpress. One of the largest settlements with an auditor defendant in a case involving a Chinese reverse merger company.
- LIBOR (Exchange Traded Class) (S.D.N.Y.): $187 million in settlements with defendants, the largest class action settlement of manipulation claims in the history of the Commodity Exchange Act, 7 U.S.C. § 1 et seq.

Mr. Eisenkraft's current cases include:

- In Re: Interest Rate Swaps Antitrust Litigation (S.D.N.Y.): Court-appointed co-lead counsel in antitrust class action alleging that major investment banks conspired to prevent an all to all market for interest rate swaps from developing.
- In Re: Treasuries Securities Auction Antitrust Litigation (S.D.N.Y.): Court-appointed co-lead counsel in antitrust and Commodity Exchange Act class action alleging manipulation of the multi-trillion dollar market for U.S. Treasuries and related instruments.
- Stock Lending Antitrust Litigation (S.D.N.Y.): Leading antitrust class action alleging that major investment banks conspired to prevent the stock lending market from evolving by boycotting and interfering with various platforms and services designed to increase transparency and reduce costs in the stock lending market.
- Tower Research Capital (S.D.N.Y.): Leading Commodity Exchange Act class action against a high frequency trading firm alleging manipulation of the market for KOSPI 200 futures contracts (the representative stock market index of South Korea and one of the most widely traded futures in the world) using spoofing or faked trades.
- Chahal v. Credit Suisse Grp. AG, et al. (S.D.N.Y.): Court-appointed co-lead counsel in securities class action alleging fraud and market manipulation of XIV Exchange Traded Note market.
- In re: Overstock Securities Litigation: (D. Utah): Court-appointed sole Lead Counsel in class action alleging materially false and misleading statements and omissions and engineering a market manipulation scheme during the Class Period of Overstock.com securities.

Mr. Eisenkraft served as a law clerk to the Honorable Judge Barrington D. Parker of the United States Court of Appeals for the Second Circuit. He is the author or co-author of numerous articles on legal issues in the securities and antitrust fields among other subjects.

Mr. Eisenkraft attended Brown University, where he received a B.A., magna cum laude and Phi Beta Kappa, and graduated cum laude from Harvard Law School.

Andrew N. Friedman

Andrew N. Friedman is a Partner at Cohen Milstein and the immediate past Co-Chair of the firm's Consumer Protection practice group.

Practicing in the class action field since 1985, Mr. Friedman is a nationally recognized leader in the area of complex, multi-state class action lawsuits against manufacturers and consumer service providers, such as banks, insurers, credit card companies, and others, who is ready to take litigation all the way through trial.

In 2018, Mr. Friedman was named Law360's "MVP – Data Privacy and Security," an award recognizing only five lawyers in the United States in this emergent area of law. In addition, under his leadership, Cohen Milstein's Consumer Protection practice has received numerous industry awards, including Law360's "Practice Group of the Year – Consumer Protection" (2018, 2019) and The National Law Journal's "Elite Trial Lawyers – Consumer" award (2018), as well as Law360's "Practice Group of the Year – Privacy" (2017).

Over the years, Mr. Friedman has been court-appointed Lead or Co-Lead Counsel in numerous high-profile and often precedent-setting class actions, bringing relief to millions of consumers and recovering hundreds of millions of dollars in class actions, including:

- In re Anthem Data Breach Litigation (N.D. Cal.): Mr. Friedman was Co-Lead Counsel in a data breach class action involving the theft of personal identification and health information of more than 78 million customers of Anthem, the second largest health insurance company in the nation. The lawsuit involved novel claims and cutting-edge damage theories, resulting in a $115 million settlement – at the time, the largest data breach settlement in history.
- In re Equifax, Inc., Customer Data Security Breach Litigation (N.D. Ga.): Mr. Friedman was a member of the Plaintiffs' Steering Committee and was Co-Chair of the Expert Committee in this data privacy breach class action against Equifax, a leading credit-reporting company that safeguards some of the most sensitive financial and personal information of over 147 million individuals across the United States, for its failure to inform the public of a massive data breach and theft of client data. On December 19, 2019 the court granted final approval of a landmark $1.5 billion settlement, consisting of a record-breaking $425 million in monetary and injunctive benefits and requiring Equifax to spend $1 billion to upgrade its security and technology.
- Symantec, Corp. and Digital River, Inc. (D. Minn.): Mr. Friedman also litigated a lawsuit against a four-year long nationwide class action battle related to the marketing of a re-download service in conjunction with the sale of Norton software. The case settled in a $60 million all-cash deal one month before the case was about to go to trial – one of the most significant consumer settlements in years.
- Nationwide (N.D.N.Y.) and Country Life (Cook Cty. Ill. Cir. Ct.): Mr. Friedman was one of the principal counsel in cases against two of the largest insurance companies in which plaintiffs asserted sales marketing abuses in the marketing of so-called "vanishing premium policies," where insurance agents sold insurance policies to unsuspecting consumers promising that after a relatively short time the dividends generated from the policy would be so high as to be able to fully pay the premiums. In fact, the calculations of the policies were based on unrealistic interest rate projections and, therefore, the premiums never "vanished." Nationwide resulted in a settlement valued at between $85 million and $103 million, while a settlement with Country Life made $44 million in benefits available to policyholders.
- Keithly v. Intelius, Inc. (W.D. Wash.): Mr. Friedman was Co-Lead Counsel, where he negotiated two nationwide settlements with Intelius, Inc., relating to negative option programs and improper post-transaction marketing. The combined settlements made $12 million in cash available to the Class.
- Home Depot Data Breach Litigation (N.D. Ga.): Mr. Friedman was a member of the Plaintiffs' Steering Committee, representing financial institutions and headed the expert committee. This class action lawsuit arose out of the Home Depot data breach, a cyber-attack that affected hundreds of financial institutions and more than 40 million consumers who used their debit and credit cards to patronize Home Depot. On September 22, 2017, the court granted final approval of a $25 million settlement.
- HCA Litigation (M.D. Fla.): Mr. Friedman was one of the principal counsel in the a state-wide consumer class action in Florida federal court. Plaintiffs alleged that post-car accident emergency room patients were billed inflated fees for emergency radiology services, in excess of the amount allowed by law, covered in part by their mandatory Florida Personal Injury Protection (PIP) insurance. In December 2018, the court granted final approval of an injunctive relief settlement of $220 million.

Mr. Friedman has also litigated important consumer product lawsuits, including one against Thomson Consumer Electronics, which resulted in a settlement that made up to $100 million available for persons who paid for unreimbursed repairs to defective televisions. In addition, Mr. Friedman was one of the principal counsel in the Dex-Cool Litigation, a nationwide lawsuit alleging that General Motors sold millions of cars with defective coolant that gummed up and caused corrosion to engines. GM settled ahead of trial, offering relief of cash payments of up to $800 per repair.

Prior to his Co-Chairing the Consumer Protection group, Mr. Friedman was a member of Cohen Milstein's Securities Litigation & Investor Protection practice, litigating many important matters, including Globalstar Securities Litigation in

which he served as one of the lead trial counsel. The case settled for $20 million during the second week of the trial. In addition, Mr. Friedman served as Co-Lead or principal counsel in Norman Frank et al. v. David L. Paul (a recovery of over $18 million); In re Jiffy Lube Securities Litigation (D. Md.) (a recovery of over $12 million); and In re Immunex Securities Litigation (W.D. Wash.) (a recovery of $14 million).

Currently, Mr. Friedman is litigating such notable matters as:

- In re: Marriott International Inc. Customer Data Security Breach Litigation (D. Md.): On April 29, 2019, the court appointed Mr. Friedman Consumer Plaintiffs' Co-Lead Counsel to oversee a putative nationwide class action related to the data breach of personal information of nearly 400 million customers of Starwood-branded hotels, subsequently acquired by Marriott in 2016, making it one of the largest data breaches in U.S. history.
- Facebook 2018 Data Breach Litigation (N.D. Cal.): On February 14, 2019, the court appointed Mr. Friedman Co-Interim Class Counsel in a putative nationwide class action against Facebook for breach of personal data. According to Facebook, the data breach was the result of a software vulnerability that existed for over a year (July 2017 – September 2018). On November 15, 2020, the court preliminarily approved an injunctive relief settlement, which will require Facebook to adopt, implement, and/or maintain a detailed set of security commitments for the next five years.
- COVID-19 Business Interruption Insurance Litigation: Cohen Milstein represents restaurants, retailers, and other small businesses across the United States in litigation against their property and casualty insurance providers for failing to cover their COVID-19-related business interruption losses.

Mr. Friedman is a noted speaker who has appeared on numerous panels for legal education seminars and institutional investor conferences on the issues of consumer and securities class actions. In 2011, Lawdragon named him one of the Leading Plaintiffs' Lawyers. His work has been cited in the media and he was profiled in the April 14, 2000, Washington Business Journal.

Prior to joining Cohen Milstein, Mr. Friedman served as an attorney with the U.S. Patent and Trademark Office.

Mr. Friedman attended Tufts University, graduating magna cum laude and was elected Phi Beta Kappa, with a B.A. in Psychology. He earned his J.D. from the National Law Center, George Washington University.

Agnieszka Fryszman

Agnieszka Fryszman is a Partner at Cohen Milstein and Chair of the firm's Human Rights practice.

Ms. Fryszman has been recognized as leading one of the best private international human rights practices in the world.

Ms. Fryszman represents individuals who have been victims of torture, human trafficking, forced and slave labor and other violations of international law. A recognized expert and leader in the field of human rights law, Ms. Fryszman regularly litigates cases against corporate giants.

She was a member of the legal team that successfully represented survivors of Nazi-era forced and slave labor against the German and Austrian companies that allegedly profited from their labor. These cases were resolved by international negotiations that resulted in multi-billion-dollar settlements.

Ms. Fryszman earned the National Law Journal Pro Bono Award for efforts on behalf of Nepali laborers injured or killed at U.S. military bases in Iraq and Afghanistan. Her team obtained several judgments and significant settlements on behalf of the families. She currently represents victims of a human trafficking ring that allegedly lured men from Nepal with the promise of employment at luxury hotels, but instead took them against their will to work for a U.S. military contractor in Iraq.

Ms. Fryszman also filed and settled the first successfully resolved case of fishing boat slavery in the world. She represented two Indonesian men who escaped from a fishing boat when it docked in California. The settlement included provisions intended to protect future seamen, including a code of conduct for ship captains and a hand-out for seamen informing them of their rights and who to call for help.

Ms. Fryszman has also represented men and women who were trafficked by diplomats, in the seafood industry, and to work cleaning houses in Northern Virginia. In one recent case, after Ms. Fryszman obtained a full recovery for her client in a civil suit, the Department of Justice brought criminal charges, resulting in guilty pleas by the perpetrators.

Her work on behalf of the former "comfort women," women and girls trafficked into sexual slavery by the government of Japan during World War II, was recognized with the "Fierce Sister" award from the National Asian Pacific American Women's Forum. Ms. Fryszman is also leading a high-profile litigation against the Republic of Turkey for its role in the brutal May 16, 2017 attack of peaceful protestors, outside the Turkish Chief of Mission Residence in Washington D.C.

Ms. Fryszman has received some of the legal profession's highest honors, including being named a "Lawdragon Legend" in 2019, which recognizes 30 of the "nation's elite lawyers," who have been annually recognized among the Lawdragon 500 for at least ten years. Also in 2019, The National Law Journal named Ms. Fryszman an "Elite Women of the Plaintiffs Bar," recognizing women attorneys who "have consistently excelled in high-stakes matters on behalf of plaintiffs over the course of their careers." Benchmark Plaintiff has named her a Leading Star Plaintiffs' Litigator and one of the Top 150 Women in Litigation. For her pro bono work, she has been awarded the Beacon of Justice Award by the National Legal Aid and Defender and the Frederick Douglass Human Rights Award from the Southern Center for Human Rights. She was also a finalist for the Public Justice Foundation's Trial Lawyer of the Year Award for her work on Wiwa v. Royal Dutch Shell. Ms. Fryszman joined the legal team in that case to prepare it for trial, resulting in a multi-million-dollar settlement on the morning of jury selection.

Ms. Fryszman represented, pro bono, victims of the September 11 attack on the Pentagon and obtained one of the highest awards for an injured survivor from the Victim's Compensation Fund.

Ms. Fryszman also represented, pro bono, two individuals detained by the United States at Guantanamo Bay who were ultimately cleared without charge.

Prior to joining Cohen Milstein in 1998, Ms. Fryszman served as counsel to the United States House of Representatives Committee on the Judiciary, Subcommittee on Commercial and Administrative Law, and as counsel to Representative Henry Waxman, Ranking Member on the House Government Reform and Oversight Committee. Earlier in her career, she was legislative director to U.S. Representative, now Senator, Jack Reed.

Ms. Fryszman graduated from Brown University with an A.B. in International Relations, and earned her law degree from Georgetown University, graduating magna cum laude, Order of the Coif. At law school, she was a Public Interest Law Scholar.

Carol V. Gilden

Carol V. Gilden serves as the Resident Partner of Cohen Milstein's Chicago Office and is a partner in Cohen Milstein's Securities Litigation & Investor Protection Practice Group. She represents public pension funds, Taft-Hartley pension and health and welfare funds, and other institutional investors in securities class actions, transaction and derivative litigation, individual actions, and foreign securities litigation. She also litigates different types of complex litigation and class actions nationwide in state and federal courts.

Ms. Gilden is an industry leader, spearheading some of the most novel securities disputes in the financial markets, resulting in aggregate recoveries of over several billion dollars for investors. Her guiding principle – those who commit fraud on the financial markets should be held accountable.

In numerous high-profile securities cases, Ms. Gilden has led the litigation as Lead or Co-Lead Counsel or Executive Committee counsel. These cases include MF Global, where the U.S. Court of Appeals for the Second Circuit held that companies that make false or misleading statements cannot hide behind risk disclosures to escape liability, and in which Ms. Gilden, as Co-Lead Counsel, was named in the National Law Journal's selection of Cohen Milstein as a Hot Plaintiff Firm. These cases also include IntraLinks, where Ms. Gilden was Lead Counsel in one of the first securities class actions certified after the Supreme Court's Halliburton II decision, providing a roadmap for obtaining class certification in other cases. She is currently serving on the Co-Lead Counsel team in two groundbreaking antitrust lawsuits involving two of the world's largest financial markets and as Lead Counsel in a securities class action against Bayer AG, stemming from its acquisition of Monsanto, with its flagship product, the herbicide Roundup, and as Lead Counsel in a derivative case against The Boeing Company's directors and officers.

Ms. Gilden began her career at the Securities and Exchange Commission in the Enforcement Division, spending five years investigating and litigating securities fraud cases. Before joining Cohen Milstein in 2007, Ms. Gilden served as the head of the securities class action practice at a prominent mid-sized Chicago law firm and the vice-chair of its class action department.

Representative Matters:

- Interest Rate Swaps Market Manipulation Litigation (S.D.N.Y.): Ms. Gilden represents the Public School Teachers' Pension and Retirement Fund of Chicago and other institutions in a groundbreaking putative class action, charging 12 Wall Street banks with conspiring to engineer and maintain a collusive and anti-competitive stranglehold over the interest rate swaps market – one of the world's biggest financial markets. Cohen Milstein is Co-Lead Counsel in this case,
- Treasuries Market Manipulation Litigation (S.D.N.Y.): Ms. Gilden represents the Cleveland Bakers and Teamsters Pension and Health and Welfare Funds and other institutions in a groundbreaking putative antitrust securities class action, alleging that two dozen financial institutions with an inside role at the auction for U.S. Treasuries conspired to manipulate yields and prices to their benefit. Cohen Milstein is Co-Lead Counsel.
- Bayer AG Securities Litigation (N.D. Cal.). Ms. Gilden represents the International Brotherhood of Teamsters Local No. 710 Pension Plan and the Sheet Metal Workers National Pension Fund in this securities class action, which alleges that in connection with its $63 billion acquisition of Monsanto, Bayer misrepresented the rigor of its due diligence and the nature of the legal risk presented by Monsanto's flagship product, the herbicide Roundup. Bayer investors incurred significant losses after bellwether jury trials in toxic tort cases repeatedly found in favor of the plaintiffs against Monsanto, including finding that Roundup was a "substantial factor" in causing the plaintiffs' non-Hodgkin's lymphoma, and leading to jury awards totaling hundreds of millions of dollars. Cohen Milstein is Lead Counsel.
- Boeing Derivative Litigation (N.D. Ill.): Ms. Gilden represents the Seafarers Pension Plan in this derivative case arising out of Boeing's fatal 737 MAX crashes and which asserts claims against the Board of Directors for allegedly issuing misleading proxy statements used to solicit stockholders' votes to re-elect certain Board members, among other claims asserted on behalf of the Seafarers Pension Plan. Ms. Gilden is leading the litigation and successfully argued before the U.S. Court of Appeals for the Seventh Circuit, obtaining a 2-1 decision, reversing the district court's dismissal of the case based on enforcement of the Company's forum bylaw.
- Intuitive Surgical Inc. Derivative Litigation (Sup. Crt. Cal.): Ms. Gilden represented the Public School Teachers' Pension and Retirement Fund of Chicago in this derivative action against Intuitive's directors and officers, alleging they covered up safety defects in the da Vinci robotic surgery system. She achieved a settlement one day before trial for cash and options worth $20.2 million at final approval, to be paid by the Individual Defendants back to Intuitive. The settlement also required Intuitive Surgical to adopt extensive corporate governance, insider trading,

product safety, and FDA compliance measures designed to present the reoccurrence of the alleged wrongdoing. In the plaintiff's expert's opinion, the reduction in the risk of recurrence of the events similar to the ones experienced (which resulted in a 30% drop in stock value and the establishment of a $100 million product liability reserve) translated into a benefit of $117 million to Intuitive and its shareholders. Cohen Milstein served as Co-Lead Counsel.

- Huron Securities Litigation (N.D. Ill.): Ms. Gilden represented the Public School Teachers' Pension & Retirement Fund of Chicago and the Arkansas Public Employees Retirement Fund in this securities fraud class action against Huron and its officers, alleging accounting fraud allegations. The case settled for $40 million, consisting of $27 million in cash plus 474,547 shares of common stock, valued at $13,292,061. Cohen Milstein served as Co-Lead Counsel.
- City of Chicago v. Hotels.com, et al. (Circ. Crt. Cook Cty., Ill.): Ms. Gilden represented the City of Chicago in a high-profile lawsuit in Cook County Circuit Court, alleging that Expedia, Hotels.com, Orbitz, Priceline, and Travelocity failed to properly remit hotel taxes to the City of Chicago for hotel bookings. Expedia, the last remaining defendant, appealed a $29 million judgment and settled on appeal after briefing concluded. The City of Chicago recouped $23.6 million in back taxes and penalties, and these defendants now collect and remit to the City of Chicago taxes on the markup of the room bookings. Ms. Gilden was the lead attorney in this litigation.
- Pluralsight, Inc. Securities Litigation (D. Utah): Ms. Gilden represents the Indiana Public Retirement System, the Public School Teachers' Pension and Retirement Fund of Chicago in this securities class action against Pluralsight, Inc, a provider of cloud-based and video training courses. The case alleges that Pluralsight and its senior officers misrepresented and omitted material information from investors concerning the Company's sales force, which impacted its billings growth, before a $37 million stock cash-out by Pluralsight insiders on the open market and in an over $450 secondary public offering orchestrated by those insiders. Cohen Milstein is Lead Counsel.
- Ong v. Sears Roebuck & Co. (N.D. Ill): Ms. Gilden represented the State Universities Retirement System of Illinois and Mr. Ong and achieved a $15.5 million settlement in this securities class action against Sears Roebuck, Sears Roebuck Acceptance Corp. and its underwriters. The case alleged that the defendants made misrepresentations and omissions regarding Sears' credit card operations to make those operations appear more stable and profitable than they were. Cohen Milstein was Co-Lead Counsel.
- Credit Suisse Group AG Securities Litigation (S.D.N.Y.): Ms. Gilden represented the International Brotherhood of Teamsters Local No. 710 Pension Plan and achieved a $15.5 million settlement in this securities class action against Credit Suisse Group AG, alleging misrepresentations of the Company's trading and risk limits leading to the accumulation of billions of dollars in risky, highly illiquid investments. Cohen Milstein was Co-Lead Counsel.
- Plumbers & Pipefitters National Pension Fund v. Davis, et al. (S.D.N.Y.): Ms. Gilden represents Plumbers & Pipefitters National Pension Fund in this securities class action alleging that PSG and its officers failed to disclose that its growth was not based on sustainable "organic growth" as represented but was driven by the company's manipulative and coercive sale practices, which included pulling orders forward and forcing customers to increase their orders without regard for market demand. PSG subsequently filed for bankruptcy protection. Cohen Milstein is sole Lead Counsel, which after extensive discovery, has achieved $14.15 million for the benefit of the class in settlements (court approval pending).
- In re Alphabet Shareholder Derivative Litigation (Sup. Crt. Cal., Santa Clara Cnty.): Ms. Gilden represented the Northern California Pipe Trades Pension Plan and other institutions in this shareholder derivative lawsuit against the Board of Directors of Alphabet, Inc. The case alleged that the tech giant's Board violated its fiduciary duty by enabling a double standard at Alphabet that allowed powerful executives to sexually harass and discriminate against women without consequence. On November 30, 2020, the court granted final approval of a historic settlement, including a $310 million commitment to fund diversity, equity, and inclusion initiatives at Alphabet-owned companies, and workplace and corporate governance reforms including limiting non-disclosure agreements and ending mandatory arbitration in sexual harassment, gender discrimination, and retaliation-related disputes. Ms. Gilden was an active member of the Litigation Team. Cohen Milstein was Co-Lead Counsel.

Other Recent Leadership Roles:

In addition to the cases listed above, Ms. Gilden has served as Lead and Co-Lead counsel in other notable matters, including:

- MF Global Securities Litigation (S.D.N.Y.): Ms. Gilden represented the Central States, Southeast and Southwest Areas Pension Fund and achieved a $90 million settlement in this precedent–setting securities class action in which the U.S. Court of Appeals for the Second Circuit sided with the plaintiffs and held that companies cannot make false or misleading statements in their offering documents and then hide behind risk disclosures related to those facts to escape liability. The National Law Journal singled out Ms. Gilden's work on the case in connection with its selection of Cohen Milstein as a Hot Plaintiffs' Firm for that year. Cohen Milstein was Co-Lead Counsel.
- ITT Educational Services, Inc. Securities Litigation (S.D.N.Y.): Ms. Gilden represented the Plumbers and Pipefitters National Pension Fund and Metropolitan Water Reclamation District Retirement Fund in this securities class action and achieved a $16.96 million settlement against ITT and two of its officers. The case was hotly contested and involved unraveling complex accounting treatments governing ITT's transactions with the third-party lenders, set against the Department of Education and Higher Education Act default guidelines. The case settled during discovery after reviewing and analyzing over two million pages of documents, after depositions had been taken and in the middle of class certification briefing. Co-Milstein was Lead Counsel.
- IntraLinks Securities Litigation (S.D.N.Y.): Ms. Gilden represented the Plumbers and Pipefitters National Pension Fund in one of the first securities class actions to be certified following the Supreme Court's decision in Halliburton II. The case alleged that IntraLinks Holdings Inc., a virtual data room – or cloud computing – company, and other defendants made misleading statements and omissions regarding the strength of the Company's business and failed to disclose to investors the loss of IntraLinks' largest client. The case settled for $14 million after the class was certified and extensive fact discovery was completed. Cohen Milstein served as Lead Counsel.
- Orthofix International NV Securities Litigation (S.D.N.Y.): Ms. Gilden represented the Plumbers and Pipefitters National Pension Fund and reached an $11 million settlement against this medical device company headquartered in Curacao, Netherlands Antilles, despite significant logistical obstacles during investigation and discovery. Much of the information relevant to the case—internal company documents, witnesses, and news reports—were in six foreign languages and located in nine different countries on four different continents.
- Navistar Securities Litigation (N.D. Ill.): Ms. Gilden represented the Central States, Southeast and Southwest Areas Pension Fund in this securities class against Navistar International Corporation and its former officers, alleging material misrepresentations and omissions concerning the development and marketability of Navistar's exhaust gas recirculation technology. The case settled for $9.1 million. Cohen Milstein served as sole Lead Counsel.
- In re RehabCare Group, Inc. Shareholders Litigation (Del. Ch.): Ms. Gilden was co-lead counsel and settled the case for a cash payment to shareholders and significant deal reforms in this shareholder litigation challenging the acquisition of healthcare provider RehabCare Group, Inc. by Kindred Healthcare, Inc.

Ms. Gilden's Executive Committee roles include other high-profile cases, Global Crossing Securities Litigation (settlements of $448 million) and the Merrill Lynch Analyst cases ($125 million settlement), as well as an active litigation team of the Waste Management Litigation (ND Il) ($220 million settlement). Under her leadership, her former firm was an active member of the litigation teams in the AOL Time Warner Securities litigation ($2.5 billion settlement), CMS Securities Litigation ($200 million settlement) and the Salomon Analyst Litigation/In re AT&T ($75 million settlement). Further, Ms. Gilden was lead counsel in an opt-out securities litigation action on behalf of a large group of individual plaintiffs in connection with the McKesson/HBOC merger, Pacha, et al. v. McKesson Corporation, et al., which settled for a substantial, confidential sum.

Ms. Gilden has earned the trust of her clients, who know she will go to the mat for them, tenaciously advocating for them from start to finish in their cases. She draws respect from colleagues, as well as from adversaries who consistently place her in the highest ranks of the profession. In 2022, Ms. Gilden was named one of The American Lawyer's Trailblazers – Midwest. In 2021, she was recognized on the "Recommended" List by The Legal 500 United States 2021 Editorial Board. In 2020, Ms. Gilden was named among "Notable Women in Law" by Crain's Chicago Business. In 2019, she was named a "Women of Influence" by the Chicago Business Journal and also was recognized with a "Women in Law Award" by Lawyer

Monthly Magazine. She has been listed repeatedly by Lawdragon as among the "500 Leading Plaintiff Financial Lawyers" (2019, 2020 and 2021). In 2018, she was named one of "Chicago's Notable Women Lawyers" by Crain's Chicago Business and the "Securities Litigation Attorney of the Year – Illinois" by Lawyer International's Global Awards. Ms. Gilden is rated AV Preeminent by Martindale-Hubbell (the highest possible rating for professional excellence) and is consistently listed as an "Illinois Super Lawyer" by the Thomson Reuters publication, Super Lawyers Magazine.

Ms. Gilden served as the first woman President of the National Association of Shareholder and Consumer Attorneys, the preeminent trade association for securities class action attorneys, as well as the organization's first woman Treasurer. As President of NASCAT, Ms. Gilden made repeated visits to Capitol Hill advocating for strong investor protection. She also engaged in outreach to the institutional investor community on needed reforms to reverse the erosion of investor rights. Under Ms. Gilden's leadership, NASCAT also filed amicus briefs in connection with major securities cases before the Supreme Court and other courts. Prior to becoming President, she served as the President-Elect. She continues to serve on NASCAT's Executive Committee.

Ms. Gilden was selected to serve on the inaugural Corporate Governance Council and Markets Advisory Council to the Board of Directors for the Council for Institutional Investors (CII) during 2013-2015. CII is a nonprofit association of pension and other employee benefits funds, endowments and foundations and a voice for effective corporate governance and strong shareholder rights.

Ms. Gilden is a Vice President of the Institute for Law and Economic Policy, a public policy research and educational foundation whose mission is to preserve, study and enhance investor and consumer access to the civil justice system. She is also a member of the National Association of Public Pension Attorneys (NAPPA).

Ms. Gilden regularly lectures at legal conferences around the country on securities litigation and class action law and is a frequent speaker at institutional investor conferences and symposiums regarding securities law developments, shareholder rights and regulatory reform. She has authored and co-authored numerous scholarly articles and course materials on securities fraud cases, class actions, derivative litigation and related topics.

Ms. Gilden attended the University of Illinois, earning a B.S. in Business Administration, and received her J.D. from Chicago-Kent College of Law, where she graduated with honors and was a member of the Chicago-Kent Law Review.

Geoffrey Graber

Geoffrey Graber is a Partner at Cohen Milstein and a member of the firm's Consumer Protection practice, where he specializes in representing consumers in complex class action litigation involving issues of false advertising, fraud, data privacy theft and other forms of unfair business practices at the hands of banks, insurance, health care companies, and other consumer providers.

Mr. Graber also represents whistleblowers in qui tam litigation under the False Claims Act and whistleblower programs under the U.S. Securities Exchange (SEC), U.S. Department of Transportation (DOT), and U.S. Department of Defense (DOD). Often these lawsuits involve Foreign Corrupt Practices Act allegations.

Prior to joining Cohen Milstein in 2015, Mr. Graber had a distinguished career at the U.S. Department of Justice (DOJ), serving as Deputy Associate Attorney General and Director of the Residential Mortgage-Backed Securities (RMBS) Working Group at the DOJ, where he oversaw the DOJ's nationwide investigation into the packaging and sale of mortgage-backed securities (MBS), leading up to the financial crisis. He supervised more than 100 DOJ prosecutors, lawyers, investigators and analysts and worked closely with senior officials from the SEC, Department of Housing and Urban Development (HUD), Inspector General's Office for the Federal Finance Agency and more than 10 state attorneys general offices.

The DOJ investigations overseen by Mr. Graber ultimately recovered more than $36 billion. These recoveries include the record-breaking $16.65 billion settlement reached in August 2014 with Bank of America – the largest settlement with a single entity in U.S. history – as well as settlements with Citigroup ($7 billion) and JP Morgan ($13 billion).

Earlier in his tenure at the DOJ, Mr. Graber served as Counsel in the Civil Division, where he proposed and then led the three-year investigation (2004 – 2007) of Standard & Poor's (S&P) and its ratings of structured finance products. Mr. Graber oversaw the investigation and supervised a team of more than 50 prosecutors, DOJ lawyers, investigators and analysts. The investigation, which made groundbreaking use of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (FIRREA), resulted in the largest enforcement action filed by the United States concerning the financial crisis (United States v. Standard & Poor's). As a result of his successful work on S&P, Mr. Graber earned the Attorney General's Distinguished Service Award in 2015.

In 2014, while at the DOJ, Mr. Graber also received the Attorney General's Distinguished Service Award for his work relating to the $13 billion settlement with JP Morgan – including, at the time, the largest FIRREA penalty recovered by the DOJ.

Mr. Graber's distinguished background and experience has proven invaluable to clients. He is currently litigating the following high-profile matters:

- Singer, et al. v. Facebook (N.D. Cal.): Mr. Graber serves as lead counsel representing a putative class of advertisers who claim that Facebook's key advertising metrics (Potential Reach and Estimated Daily Reach) are false and misleading due to systemic inflation of Facebook's user base.
- Ariza v. Luxottica Retail North America (LensCrafters) (E.D.N.Y.): Mr. Graber represents a putative class of purchasers of LensCrafters' Accufit Digital Measurement System (Accufit) services, who allege that LensCrafters used false, misleading advertising and deceptive sales practices about Accufit being "five times more accurate" in measuring pupillary distance than traditional methods, to induce customers to purchase LensCrafters higher-priced prescription lens products.
- LLE One, LLC v. Facebook (N.D. Cal.): Mr. Graber serves on the co-lead counsel team representing a class of advertising purchasers who claim Facebook breached its implied duty to perform with reasonable care and violated California's Unfair Competition Law by intentionally miscalculating and inflating metrics related to its video advertisement and monitoring services. If not for these miscalculations, plaintiffs claim, they would not have purchased more video advertisements and at a higher price than they otherwise would have paid. On June 12, 2019, the parties announced that they had reached a class-wide settlement, which is set for preliminary approval in November 2019.

Mr. Graber's recent successes include:

- In re Anthem, Inc. Data Breach Litigation (N.D. Cal.): Cohen Milstein was co-lead counsel in a certified class action involving the 2015 cyberattack and massive data breach of Anthem, Inc., one of the nation's largest for-profit managed health care companies, which resulted in the theft of personal identification and health information of 78.8 million insureds. On August 16, 2018 the Court granted final approval to a $115 million settlement in this class action – the largest data breach settlement in U.S. history. Mr. Graber was involved in all aspects of the litigation.

Before joining the DOJ, Mr. Graber was an associate at a top-tier defense law firm, where he defended Fortune 500 companies and their officers and directors in securities and derivative suits, consumer class actions and government investigations. Mr. Graber also devoted substantial time to pro bono representation of indigent individuals and families in civil rights actions against local law enforcement.

Mr. Graber received his undergraduate degree in Philosophy from Vassar College, and earned his law degree from the University of Southern California Law School, where he served as the Managing Articles Editor on Southern California Law Review.

Brent W. Johnson

Brent W. Johnson is a Partner at Cohen Milstein and Co-Chair of the firm's Antitrust practice group. Mr. Johnson also co-leads the group's new case investigations. He has initiated and developed cases that have compensated class members hundreds of millions of dollars and helped break new ground in antitrust law, including challenging no-poach agreements in labor markets.

Mr. Johnson was recognized by The Legal 500 in 2017, 2018 and 2019 as a "Next Generation Lawyer" and in 2020 and 2021 as a "Next Generation Partner," an honor bestowed upon less than a dozen lawyers positioned to become leaders in the field of antitrust civil litigation and class actions. He also was named by Super Lawyers a "Rising Star" in Antitrust Litigation in 2016, 2017, and 2018 and a Super Lawyer for Antitrust Litigation in 2020 and 2021. He was named a "Future Star" by Benchmark Litigation in 2018. Lawdragon named him to its list of "500 Leading Plaintiff Financial Lawyers" in 2019, 2020 and 2021. Global Competition Review (GCR) named him to its "Who's Who Legal: Competition" list for Plaintiffs in 2021 and 2022.

Mr. Johnson has considerable expertise and strategic perspective in large, complex antitrust litigation and class actions, having represented businesses and individuals as plaintiffs and defendants. His practice encompasses a broad range of antitrust claims, including Sherman Act Section 1 restraints of trade and Section 2 monopoly and monopsony claims. He has argued before federal district courts and state trial and appellate courts and brought cases to trial.

Mr. Johnson's experience and success in antitrust class actions involving labor markets include:

- In re Animation Workers Antitrust Litigation (N.D. Cal.): Mr. Johnson developed this case with two other attorneys in the firm, and Cohen Milstein filed the first complaint. Cohen Milstein served as co-lead counsel representing a class of animation and visual effects workers in a lawsuit alleging that the defendants, who include Pixar, Lucasfilm Ltd. and DreamWorks Animation, secretly agreed not to solicit class members and to coordinate on compensation. The Court approved settlements with all of the defendants for a total of $168.5 million.
- Jien v. Perdue Farms, Inc. (D. Md.): Mr. Johnson leads the Cohen Milstein co-lead counsel team, representing a proposed class of poultry plant workers, in a suit alleging that the nation's largest chicken and turkey producers conspired to suppress their compensation. The Court so far has preliminarily approved settlements with four defendants for $37.8 million and the case is in discovery with the remaining dozen defendants.

Mr. Johnson's other recent successes include the following notable antitrust class actions:

- In re Broiler Chicken Antitrust Litigation (N.D. Ill.): Mr. Johnson leads the Cohen Milstein co-lead counsel team, representing a class of end-user consumers of broiler chicken in a litigation alleging that the defendants, who include Perdue Farms and Tyson Foods, agreed to restrict the supply of broilers, among other things, thereby raising their price to consumers. The Court has finally approved settlements with six of the defendants for a total of $181 million and the case is in merits expert discovery against the remaining defendants. Law360 recently cited plaintiffs' success in Broilers in naming Cohen Milstein one of its six Class Action Groups of the Year for 2021.
- In re Domestic Drywall Antitrust Litigation (E.D. Pa.): Mr. Johnson initiated the investigation and filed the first complaint in this case, in which Cohen Milstein served as co-lead counsel for a class of direct purchasers of drywall against drywall manufacturers for price-fixing. The Court ultimately approved settlements that totaled more than $190 million. The Court commented that it had sided with Plaintiffs because of counsel's "outstanding work," and that Plaintiffs' counsel had a "sophisticated and highly professional approach." It complemented the attorneys as

"highly skilled" and noted that their performance on class action issues was "imaginative." It also stated that "Few cases with no government action, or investigation, result in class settlements as large as this one."

- Grand Strand v. Oltrin (D. S.C.): Mr. Johnson was personally appointed co-lead Class Counsel and led the CMST team in representing a class of direct purchasers of bulk bleach, including municipal water authorities and others, against that product's manufacturers who engaged in an illegal market allocation agreement. The Court approved a settlement worth nearly all of the class's single damages and remarked that the case had been "skillfully handled."
- In re Urethane Antitrust Litigation (D. Kan.): Cohen Milstein served as co-lead counsel on behalf of a certified class of direct purchasers of several types of chemicals who were overcharged as a result of a nationwide price-fixing and market allocation conspiracy. In the litigation, multiple defendants collectively settled for over $130 million, and a jury verdict of $1.1 billion was secured against Dow Chemical, the final defendant, in 2013. Dow ultimately settled for $835 million while the case was on appeal before the Supreme Court, bringing the total recovery to $974 million – nearly 250% of the damages found by the jury.
- The Shane Group, Inc. v. Blue Cross Blue Shield of Michigan (E.D. Mich.): Cohen Milstein serves as co-lead counsel, representing a class of purchasers of hospital services against Blue Cross Blue Shield of Michigan for agreeing to MFN provisions in its contracts with hospitals throughout Michigan that required those hospitals to charge other insurers as much or considerably more for services provided to class members. The Court approved a settlement with BCBSM for nearly $30 million.

Currently, in addition to those above, Mr. Johnson is litigating the following antitrust class action:

- In re Interest Rate Swaps Antitrust Litigation (S.D.N.Y.): Cohen Milstein serves as co-lead counsel, representing the Public School Teachers' Pension and Retirement Fund of Chicago and a proposed buy-side investor class against numerous Wall Street investment banks. The class alleges that the defendants conspired to prevent class members from trading IRS on modern electronic trading platforms and from trading with each other, all to protect the banks' trading profits from inflated bid/ask spreads.

Prior to joining Cohen Milstein, Mr. Johnson practiced at a premier global law firm, where he focused on antitrust litigation for plaintiffs and defendants. Some of Mr. Johnson's matters included:

- Feesers, Inc. v. Michael Foods, Inc. and Sodexho, Inc. (M.D. Pa.): Mr. Johnson was a member of the successful trial team that represented Michael Foods, a manufacturer of processed egg products and refrigerated potato products, in a three-week trial of a Robinson-Patman Act action brought by a broad-line distributor of food products.
- Dahl, et al. v. Bain Capital, et al. (D. Mass.): Mr. Johnson represented The Carlyle Group in a class action where plaintiffs alleged collusion among certain private equity firms and investment banks in specific going-private transactions in violation of Section 1 of the Sherman Act.
- In re Aftermarket Filters Antitrust Litigation (N.D. Ill.): Mr. Johnson represented Champion Laboratories, a manufacturer of aftermarket automotive filters, in a class action where plaintiffs alleged a conspiracy among manufacturers to fix prices in violation of Section 1 of the Sherman Act.
- National Laser Technology, Inc. v. Biolase Technology, Inc. (S.D. Ind.): Mr. Johnson represented Biolase, the country's largest manufacturer of lasers for dental applications, against Sherman Act claims brought by a competitor aftermarket dental laser support company. The matter resulted in a favorable settlement for the client.

Mr. Johnson has significant experience in other complex civil litigation, including mass torts and government contracts.

Mr. Johnson is a commentator on antitrust and class action issues. In the fall of 2016, he provided testimony concerning Rule 23 to the Advisory Committee on Civil Rules on behalf of the Committee to Support the Antitrust Laws. Along with Emmy Levens, he has published two articles in the ABA's Antitrust magazine – one on ascertainability in the Spring 2016

issue and another on circuit splits affecting antitrust class actions in the Fall 2019 issue. He is a member of the ABA Section of Antitrust Law, and in July of 2019, he gave an ABA presentation on the legal standard to apply in cases regarding no-poach agreements. In his pro bono work, he has represented Covenant House Washington, D.C., Habitat for Humanity International Inc. and the Cystic Fibrosis Foundation.

Mr. Johnson graduated magna cum laude from Duke University, with a B.A. in Political Science and Spanish, and attended Stanford Law School, where he earned his law degree.

Richard A. Koffman

Richard A. Koffman is a Partner at Cohen Milstein and former Co-Chair of the Antitrust practice group. He litigates antitrust cases on behalf of the victims of corporations engaged in price-fixing, market monopolization, and other unlawful conduct.

Mr. Koffman has repeatedly been recognized as one of the world's top plaintiffs' antitrust lawyers. Mr. Koffman is named in Global Competition Review's "Who's Who Legal: Thought Leaders – Competition 2022" – one of only 40 plaintiffs' antitrust attorneys in the United States to earn this distinction. Since 2010, The Legal 500 has annually named Mr. Koffman as one of the top plaintiffs' class action antitrust litigators in the United States, describing him as a "strong brief writer and an excellent oral advocate," and inducted him into The Legal 500 Hall of Fame in 2017. Mr. Koffman was named Law360's Competition Law MVP (2016), recognizing him as one of the top five most influential antitrust lawyers in the United States. Annually, Mr. Koffman also is named to Global Competition Review's "Who's Who Legal: Competition" (since 2016), Lawdragon's 500 Leading Plaintiff Financial Lawyers (since 2019), and Washington, D.C. Super Lawyers (since 2020).

Mr. Koffman has had the honor of serving as court-appointed lead or co-lead counsel in many landmark antitrust class actions, including the Urethanes Antitrust Litigation, which resulted in the largest price-fixing verdict in U.S. history and the largest jury verdict of 2013.

A former Senior Trial Attorney in the U.S. Department of Justice's Antitrust and Civil Rights Divisions, Mr. Koffman views his role in litigating antitrust lawsuits as an extension of the public interest work he pursued at the DOJ in promoting competition and fighting discrimination.

Recent case successes include:

- In re: Urethanes (Polyether Polyols) Antitrust Litigation (D. Kan.): Co-Lead Counsel for plaintiffs in an antitrust class action alleging a conspiracy to fix the prices of chemicals used to make polyurethane foam. Four defendants settled pre-trial for a total of $139 million. After a four-week trial, the jury returned a $400 million verdict for plaintiffs against the final defendant, The Dow Chemical Co., which the district court trebled to more than $1 billion. Dow ultimately settled for $835 million while the case was on appeal, bringing the total recovery to $974 million – nearly 250% of the damages found by the jury.
- In re: Plasma-Derivative Protein Therapies Antitrust Litigation (N.D. Ill.): Co-Lead Counsel for plaintiffs alleging a conspiracy to reduce the supply and increase prices of IVIG and Albumin – life-saving therapies derived from blood plasma. Mr. Koffman and his team obtained settlements totaling $128 million to compensate customers who were overcharged for these vital therapies.
- In re: Dental Supplies Antitrust Litigation (E.D.N.Y): Co-lead counsel for a proposed class of dental practices and dental laboratories. The case alleges that Defendants Henry Schein, Inc., Patterson Companies, Inc., and Benco Dental Supply Company – the three largest dental supply and dental equipment distributors in the United States – fixed price margins on dental equipment, jointly pressured manufacturers to squeeze out competitors, and agreed not to "poach" each other's employees, in violation of federal antitrust law. The court granted final approval to an $80 million settlement on June 24, 2019. In approving the settlement, the Honorable Brian M. Cogan of the U.S. District Court for the Eastern District of New York stated, "This is a substantial recovery that has

the deterrent effect that class actions are supposed to have, and I think it was done because we had really good Plaintiffs' Lawyers in this case who were running it."

- In re: Polyester Staple Antitrust Litigation (W.D.N.C.): Co-Lead Counsel for plaintiffs alleging a conspiracy to fix prices for polyester staple fiber; the case settled for $46 million.

Current cases include:

- Mixed Martial Arts (MMA) Antitrust Litigation (D. Nev.): Co-Lead Counsel in a class action on behalf of MMA fighters alleging that Zuffa LLC – commonly known as the Ultimate Fighting Championship – has unlawfully monopolized the markets for promoting live professional MMA bouts and for purchasing the services of professional MMA fighters. The district court denied defendant's motion to dismiss the case in September 2015.
- In re: Treasuries Securities Antitrust Litigation (S.D.N.Y.): Co-Lead Counsel in a ground-breaking antitrust and Commodity Exchange Act class action alleging many of the nation's biggest banks manipulated the multi-trillion-dollar market for U.S. Treasuries and related instruments.

Mr. Koffman served as a law clerk to two Federal Judges: James B. McMillan of the U.S. District Court for the Western District of North Carolina, and Anthony J. Scirica of the U.S. Court of Appeals for the Third Circuit.

Mr. Koffman attended Wesleyan University, where he received a B.A. in English, with honors, and is a member of Phi Beta Kappa. Mr. Koffman is a graduate of Yale Law School, where he was Senior Editor of the Yale Law Journal.

Kalpana Kotagal

Kalpana Kotagal is a Partner at Cohen Milstein, a member of the firm's Civil Rights & Employment practice group, and Co-Chair of the firm's Hiring and Diversity Committee. Ms. Kotagal plays an active role in the investigation and development of new matters for the Civil Rights & Employment practice group.

Ms. Kotagal is co-author of the "Inclusion Rider," referenced by Oscar-winning actress Frances McDormand in her 2018 Best Actress acceptance speech. The Inclusion Rider has since been adopted by leaders across industries, including the Recording Academy, which announced the use of the Inclusion Rider in the production of the 2022 GRAMMY Awards, as well as JAMS, which included an Inclusion Rider option in its JAMS Domestic and International Clause Workbooks.

A highly-acclaimed employment and civil rights plaintiffs' litigator, Ms. Kotagal represents women and other disenfranchised people in employment and civil rights class actions, involving often cutting-edge issues related to the Title VII, Equal Pay Act, the Americans with Disabilities Act, Family Medical Leave Act, as well as wage and hour issues.

Ms. Kotagal leads or plays a leading role in the following high-profile matters:

- Jock, et al. v. Sterling Jewelers Inc. (A.A.A.; S.D.N.Y.): Cohen Milstein represents a putative class of more than 69,000 female employees of Sterling Jewelers, one of the nation's largest jewelry chains, in a nationwide Title VII gender discrimination and Equal Pay Act case. Plaintiffs claim they were subjected to a pattern of pay and promotions discrimination.
- Allen, et al. v. AT&T Mobility Services LLC (N.D. Ga.): Cohen Milstein and the ACLU Women's Rights Project represent former AT&T Mobility sales representatives in a novel pregnancy discrimination class action alleging that AT&T Mobility's "point" system for tardiness or absenteeism violates the Pregnancy Discrimination Act, Americans with Disabilities Act, and Family and Medical Leave Act, among others.
- Center for Reproductive Rights v. Department of Health and Human Services (D.D.C.): Cohen Milstein represents the CRR in FOIA litigation against the HHS, in which CRR seeks budget and staffing documents of the Conscience

and Religious Freedom Division of the HHS's Office for Civil Rights and information related to HHS's use of HIPAA enforcement funds under the Trump Administration.

Ms. Kotagal's past successes include:

- The Inclusion Rider: A contractual addendum made famous by Frances McDormand in her 2018 Best Actress Oscar Awards speech that enables famous actors, directors, and other A-Listers to stipulate in their employment contracts that studios ensure representation of minorities in the auditions for film or television projects and track such initiatives to ensure the film reflects the world in which we actually live, while protecting creative sovereignty. In August 2021, the Recording Academy announced that it would use the Inclusion Rider in the production of the 2022 GRAMMY Awards.
- Gender-Affirming Surgery Coverage by Aetna: With the Transgender Legal Defense & Education Fund, Ms. Kotagal led a pivotal access-to-healthcare class action on behalf of four transgender women. On January 26, 2021, Aetna, one of the largest health insurance companies in the United States, agreed to expand its coverage to include gender-affirming surgery, including, in this matter, breast augmentation. As a part of the pre-litigation agreement, TLDEF and Ms. Kotagal worked with Aetna to update its clinical policy bulletin to cover such medically necessary surgery for transfeminine members.
- Sutton v. McCoy (N.D. Ga.): Cohen Milstein and the ACLU successfully represented a plaintiff in a race-based Fair Housing Act discrimination lawsuit, where the plaintiff claimed she was unjustly evicted for inviting an African-American family to her home. On February 13, 2020, in exchange for dismissing the case, the landlords admitted to their discriminatory actions and making racist statements in violation of the Civil Rights Act and Fair Housing Act, apologized for the harm they caused, and paid restitution.
- Hill, et. al v. Donohue, United States Postal Service (E.D.N.Y.): Ms. Kotagal represented a class of disabled veteran job applicants, who alleged the U.S. Postal Service illegally required pre-offer medical inquiries during their application process. The case, which settled for $9.58 million, resulted in USPS's agreeing to implement changes in its practices to prevent similar violations in the future.
- Aaron v. Pilgrim's Pride Corp. (W.D. Ark.): Ms. Kotagal represented 8,000 workers in 11 states in a wage and hour lawsuit, in which the workers sought redress for unpaid overtime. The $10 million settlement allowed class members to recover about 85% of the back pay owed them.
- Nurse Wages Matters: Cohen Milstein represented nurses in several antitrust cases, contending that hospitals conspired to suppress and fix wages of nurses.

Ms. Kotagal played an instrumental role in representing Wal-Mart employees in Dukes v. Walmart (N.D. Cal.), nationwide class action consisting of approximately 1.5 million women who worked or had worked in Walmart's 3,400 stores nationwide. The landmark case, which was eventually heard by the Supreme Court, addressed standards for class certification in employment discrimination matters.

For her work on the Inclusion Rider and her other efforts in championing equity, diversity, and inclusion through her practice of law, Ms. Kotagal has received numerous industry recognitions, including being listed in Lawdragon's "500 Leading Lawyers in America" (2019-- 2021), named Law360's "Employment – MVP" (2018), recognizing the top five most influential employment lawyers in the United States, named one of The National Law Journal's "Elite Women of the Plaintiffs Bar"(2018), and receiving Chambers Women in Law: USA 2018, "Outstanding Contribution to the Community in Advancing Diversity" Award, as well as "The Work & Family Legal Center's Distinguished Public Service Award" from A Better Balance. In 2017, Ms. Kotagal was also recognized by Law360 as a "Rising Star," an annual list recognizing lawyers under the age of 40 whose professional accomplishments transcend their age.

A noted public speaker, Ms. Kotagal is a leading voice in the national conversation on diversity, equity, and inclusion, as well as issues related to class actions and mandatory arbitration. She speaks to a wide range of audiences, including the American Constitution Society, the Democratic Attorneys General Association, the Impact Fund, the National

Employment Lawyers Association, TEDxLinz, among many others. Ms. Kotagal has also had the honor of delivering the commencement address to the graduating classes of University of Pennsylvania Law School (2019) and the University of California, Irvine School of Law (2018). A Harvard Law School Wasserstein Public Interest Fellow, Ms. Kotagal frequently speaks to law students and new lawyers about public interest law.

Ms. Kotagal is a prolific writer. Her recent Op-Eds include: "We Created Hollywood's New Inclusion Rider — Here's Why It's Just the Beginning," Refinery 29 (May 24, 2021); "Inclusion Rider Work Must Continue in Hollywood and Beyond," Law360, February 21, 2019; "Push for Diversity in Hollywood Paves Path for Rest of America," The Hill, March 28, 2018; "The 'Inclusion Rider' Should Be a Hollywood Standard," The Washington Post, March 9, 2018; "Your Thoughts: Can Trump Ban Transgender from the US Military?" Lawyer Monthly, August 08, 2017, and "The Need for Female Equality and Diversity in Hollywood," Variety, February 23, 2017 (Co-Authored with Cohen Milstein's Anita Hill).

Alongside, Ms. Hill, Ms. Kotagal was a featured legal commentator, "This Changes Everything: An Examination of Sexism in Hollywood," a documentary addressing gender discrimination in Hollywood, co-produced with Geena Davis Institute on Gender in Media (January 17, 2019).

Ms. Kotagal is also actively involved in several national organizations, including serving as Co-Chair of the Alumni Advisory Board on Inclusion and Engagement for the University of Pennsylvania Law School and a member of the board of directors of Public Justice and A Better Balance. She is on the Advisory Board of the People's Parity Project and is a member of American Constitution Society Task Force on #MeToo in the Legal Profession and co-chairs the Alumni Advisory Board for Equity and Inclusion at Penn Law. She has also served as a member of the Center for Worklife Law's Working Group on Pregnancy Accommodation and the National Employment Lawyers Association (NELA).

Ms. Kotagal brings to her litigation practice her experience as an organizer, having previously served as field organizer with Green Corps, a field director with the U.S. Public Interest Research Group, and as an advisor to a Congressional candidate. Ms. Kotagal also served as an honorary chair of the National Finance Committee of Young Lawyers for Obama in 2008. She is the immediate past chair of the governance committee of the Board of Directors of CISV USA, an international youth-empowerment and peace education organization with more than 20 chapters in the United States.

Prior to joining Cohen Milstein, she served as a law clerk to the Honorable Betty Binns Fletcher of United States Court of Appeals for the Ninth Circuit.

Ms. Kotagal attended Stanford University, where she was a Morris K. Udall Scholar and graduated with honors. She earned her J.D., cum laude, from the University of Pennsylvania Law School, where she was a James Wilson Fellow. Ms. Kotagal was Articles Editor of the University of Pennsylvania Law Review.

Leslie M. Kroeger

Leslie M. Kroeger is a Partner at Cohen Milstein and Co-Chair of the firm's Complex Tort Litigation practice group. She focuses on complex, high-profile product liability, wrongful death, and managed care abuse litigation.

Ms. Kroeger is a highly accomplished trial attorney who began her legal career in the courtroom as an Assistant Public Defender for the 18th Judicial Circuit of Florida and later became an Assistant State Attorney in Miami-Dade County, Florida. She then moved into private practice where she continues to handle a variety of complex civil litigation before state and federal courts in Florida and nationwide.

Ms. Kroeger currently serves as the President of the Council of Presidents for the American Association for Justice (AAJ), and is honored to represent the Council on the AAJ Executive Committee. She is also a Past-President of the Florida Justice Association (FJA), one of the nation's premier plaintiffs trial associations. She was the second female President in the history of the association.

Currently, Ms. Kroeger is litigating the following notable matters:

- In re Flint Water Cases (E.D. Mich.): Cohen Milstein was court-appointed Interim Co-Lead Class Counsel to oversee a group of toxic tort class actions filed on behalf of Flint, Michigan residents and businesses harmed by exposure to toxic levels of lead and other contaminants in the city's drinking water. On November 10, 2021, the United States District Court for the Eastern District of Michigan granted final approval of a landmark $626.25 million settlement against the State of Michigan. Litigation against two private engineering firms, Veolia North America (VNA) and Lockwood, Andrews & Newnam (LAN), both charged with professional negligence, and separate litigation against the U.S. Environmental Protection Agency, continues before the United States District Court for the Eastern District of Michigan. On August 11, 2021, Judge Levy granted class certification on liability claims in the ongoing litigation against LAN and VNA.
- Underwood v. Meta Platforms, Inc. (Facebook) (Sup. Crt. Cal., Alameda Cnty): On January 6, 2022, Cohen Milstein filed a wrongful death lawsuit on behalf of Angela Underwood Jacobs, the sister of Dave Patrick Underwood, against Meta Platforms, Inc., formerly Facebook, Inc., alleging that by connecting users to extremist groups and promoting inflammatory, divisive, and untrue content, the company bears responsibility for the tragic murder of Mr. Underwood.
- Reed, et al. v. USA (E.D. Tenn.): Cohen Milstein is representing plaintiffs in a wrongful death and property damage mass action against the U.S. Department of Interior and National Park Service for the negligence of its employees to perform their duties during The Chimney Tops 2 Fire in Tennessee, which originated in the Great Smoky Mountains National Park and ultimately damaged or destroyed 2,500 homes, buildings and other structures, and killed more than 12 people.
- Edwards v. Tesla (Sup. Crt. Cal., Alameda Cnty.): On June 25, 2020, Cohen Milstein filed a product liability lawsuit against Tesla, Inc. on behalf of Kristian and Jason Edwards. Ms. Edwards sustained catastrophic injuries as a result of the failure of the airbags to deploy in her Tesla Model 3 during an accident.
- Edenville and Sanford Dam Failure Litigation (Mich. Crt. of Claims; Cir. Crt., Cty. Saginaw, Mich.): On June 24, 2020, Cohen Milstein filed two separate property damage lawsuits against Michigan State Government agencies, including the Michigan Department of Environment, Great Lakes & Energy and Michigan Department of Natural Resources for blatantly mismanaging and failing to properly maintain the Edenville and Sandford dams, which catastrophically failed on May 19, 2020. Cohen Milstein is representing more than 300 residents and businesses in Midland County and Saginaw County, Michigan and the surrounding areas, including, Arenac, Gladwin, and Iosco counties.
- Bernardo, et al. v. Pfizer, Inc., et al. (S.D. Fla.): On February 20, 2020, Cohen Milstein filed a false advertising, medical monitoring, and personal injury class action against Pfizer, Inc., Boehringer Ingelheim, Sanofi, and other pharmaceutical companies on behalf of multiple plaintiffs and putative class members across the United States who, as a result of taking Zantac (ranitidine), may have been afflicted with cancer or may now be subjected to an increased risk of developing cancer.
- United States ex rel. Long v. Janssen Biotech, Inc. (D. Mass.): Cohen Milstein represents the plaintiff-relator in a whistleblower/qui tam lawsuit against Janssen Biotech (a subsidiary of Johnson & Johnson), alleging that the manufacturer of the rheumatoid arthritis drugs Remicade and Simponi ARIA violated federal law by engaging in a scheme through which it provided physicians free practice management and infusion business consulting services over an extended period to induce the physicians to purchase Remicade and Simponi ARIA and administer these drugs to patients, including Medicare beneficiaries, via infusions performed in their offices.

Ms. Kroeger has successfully litigated the following lawsuits:

- Lindsay X-LITE Guardrail Litigation (State Crts: Tenn., S.C.): Cohen Milstein represented more than five families of decedents and victims of catastrophic injuries in a series of individual products liability, wrongful death and catastrophic injury lawsuits in Tennessee and South Carolina state courts against the Lindsay Corporation and

several related entities for designing, manufacturing, selling, and installing defective, X-Lite guardrails on state roadways.

- Ratha, et al. v. Phatthana Seafood Co. (C.D. Cal.): Cohen Milstein represented seven Cambodian plaintiffs in a cross-border human rights lawsuit, involving human trafficking, forced labor, involuntary servitude, and peonage by factories in Thailand that produce shrimp and seafood for export to the United States.
- Quinteros, et al. v. DynCorp, et al. (D.D.C.): Cohen Milstein represented over 2,000 Ecuadorian farmers and their families who suffered physical injuries and property damage as a result of aerial spraying of toxic herbicides on or near their land by DynCorp, a U.S. government contractor. A bellwether trial on behalf of the first six Ecuadorian clients came to a conclusion in April 2017, when the ten-person jury unanimously determined that DynCorp was responsible for the conduct of the pilots with whom it had subcontracted to conduct the chemical spraying after April 2003. This resolution allowed for a successful case settlement.
- Mincey v. Takata (Cir. Crt., Duval Cty., Fla.): Cohen Milstein was lead counsel in a lawsuit brought on behalf of Patricia Mincey and her family. Patricia Mincey sustained catastrophic injuries that rendered her a quadriplegic in 2014 when the driver's side airbag in her Honda Civic deployed too aggressively during a collision due to a product defect. She passed away in early 2016 due to complications from her quadriplegia caused by the problematic airbag. The suit charged that Takata, the manufacturer of the airbag system, knew of the airbag defect and hid the problem from consumers. Evidence uncovered by the firm showed that Takata concealed the defective nature of the airbag system for more than a decade. The case was resolved in July 2016.
- Quinlan v. Toyota Motor Corporation (S.D. Fla.): Cohen Milstein was lead counsel in a product liability case filed against Toyota, alleging that manufacturing defects in the defendant's car caused the car being driven by the plaintiff to suddenly accelerate and go out of control, resulting in catastrophic injuries that left Quinlan a quadriplegic. The defendant entered into a confidential settlement. Ms. Kroeger was engaged in all aspects of the litigation.
- In re: Caterpillar, Inc. Engine Products Liability Litigation (D.N.J.): Cohen Milstein was co-lead counsel in a nationwide product liability class action lawsuit, alleging Caterpillar sold diesel engines with defective exhaust emissions system that resulted in power losses and shutdowns. Ms. Kroeger was involved all aspects of the litigation.
- John Doe v. Sunz Insurance Company and CorVel Corporation (State Crt., Fla.): Cohen Milstein successfully represented John Doe in a workers' compensation arbitration against his workers' compensation carrier and third-party administrator for breach of fiduciary duty and intentional infliction of emotional distress relating to their denial of medically necessary cervical spine surgery, recommended by a carrier-approved orthopedic surgeon, and their termination of his workers' compensation benefits.

Since 2001, Ms. Kroeger has been an active member of FJA, serving on the Executive Committee from 2011-2021 and more recently as FJA's President in 2019-2020. She is a past Chair of the Women's Caucus.

FJA has also recognized Ms. Kroeger for her leadership and advocacy efforts. In 2017, 2018 and 2019, she was presented with FJA's Cornerstone Award in recognition of her leadership and efforts in recruiting new members to the organization. In 2015, Ms. Kroeger was awarded FJA's Champion of Consumer Safety Award for her lobbying efforts before the Florida legislature, resulting in passage of SB 518, a state law requiring children under age five to be secured in federally-approved child-restraint devices.

Ms. Kroeger also currently serves on the Board of Directors of Communities Connected for Kids, and she oversees the Cohen Milstein/Safe Kids bi-annual booster seat giveaway. She is Past-President and Founder of the Martin County Chapter of the Florida Association for Women Lawyers. She also served seven years on the Florida Bar Professional Ethics Committee.

Ms. Kroeger is widely recognized for her leadership and legal skills. Lawdragon has named her to its "500 Leading Lawyers in America" (2020, 2021) and "500 Leading Plaintiff Consumer Lawyers" (2019-2022) lists. In 2020 and 2018, Ms. Kroeger was named Daily Business Review's "Distinguished Leader," and in 2018, Best Lawyers in America recognized her as "Lawyer of the Year" in West Palm Beach for Mass Tort Litigation /Class Actions. Annually, Ms. Kroeger is annually recognized by Best Lawyers in America in the areas of Consumer Protection Law; Mass Tort Litigation / Class Actions; Personal Injury Litigation; Product Liability Litigation, as well as by Florida Super Lawyers, Palm Beach Illustrated, and Florida Trend's Legal Elite. Ms. Kroeger is AV rated by Martindale-Hubbell.

Ms. Kroeger often speaks and writes on a range of issues dealing with litigation strategies and tactics from addressing the standards for expert witness testimony in light of the Supreme Court's Daubert ruling to delivering compelling opening statements and other trial skills, as well as legal trends related to automotive negligence, roadway safety and guardrail systems, managed care abuse, and denial of workers' compensation claims. She is frequently invited to speak at the Florida Workers' Advocates Annual Conference, the Annual Trial Lawyers Summit, and Florida Justice Association seminars and conventions throughout the year. In 2016, Ms. Kroeger was named to Law360's Product Liability Editorial Advisory Board.

Ms. Kroeger graduated with high honors from the University of Tennessee at Knoxville, and obtained her law degree from the Cumberland School of Law, Samford University. Following law school, she served in a trial clerkship in Miami.

Emmy L. Levens

Emmy Levens is a partner at Cohen Milstein and a member of the firm's Antitrust and Public Client practices. Ms. Levens has particular expertise in litigating large, high-profile complex litigation, class actions, and appellate litigation involving anticompetitive, consumer fraud, and environmental justice claims.

Ms. Levens has been repeatedly recognized by the legal industry for her exceptional work, including being named to The National Law Journal's 2021 "Elite Women of the Plaintiffs Bar," recognizing the top female litigators in the U.S., who "have demonstrated repeated success in cutting-edge work on behalf of plaintiffs," as well as Bloomberg Law's 2021 "They've Got Next: The 40 Under 40 – Mass Torts" and Law360's 2020 "Rising Stars – Class Action."

Currently, Ms. Levens is litigating the following notable matters:

- Flint Water Crisis Litigation (E.D. Mich.): On November 10, 2021, the Court granted final approval of a landmark $626.25 million settlement between Flint residents and businesses and multiple governmental defendants, including the State of Michigan, Michigan Department of Environmental Quality (DEQ), and individual defendants, including former Governor Rick Snyder, in this environmental toxic tort class action, affecting over 90,000 Flint residents and businesses. Litigation will continue against other defendants, including two private engineering firms, Veolia North America and Lockwood, Andrews & Newnam (LAN), both charged with professional negligence, and separate litigation against the U.S. Environmental Protection Agency will also continue. Cohen Milstein's is Interim Co-Lead Class Counsel in this litigation. Ms. Levens oversees class strategy and manages all aspects of the litigation.

- Iowa Public Employees Retirement System et al. v. Bank of America Corp. (S.D.N.Y.): Cohen Milstein is co-counsel in this groundbreaking putative class action, in which investors accuse Morgan Stanley, Goldman Sachs, Credit Suisse, UBS, J.P. Morgan, and other Wall Street banks of conspiring to thwart the modernization of and preserve their dominance over the $1.7 trillion stock loan market. Ms. Levens is one of the lead Antitrust partners in this suit.

Some of her past successes include:

- Pre-Filled Propane Tank Antitrust Litigation (W.D. Mo.): Cohen Milstein served as Co-Lead Counsel to Direct Purchasers in this price fixing class action against two of the largest distributors of propane exchange tanks. In June 2020, the court granted final approval of the $12.6 million settlement. Ms. Levens drafted the successful appellate brief argued before the Eighth Circuit en banc. The Court adopted Plaintiffs' articulation of the continuing violation doctrine and held that sales made pursuant to an anticompetitive agreement constitute new acts for purposes of determining the timeliness of a claim, thereby reviving Direct Purchasers' antitrust claims against distributors of pre-filled propane tanks. In January 2018, the U.S. Supreme Court refused to review the Eighth Circuit's ruling, allowing it to stand.
- Resistors Antitrust Litigation (N.D. Cal.): Cohen Milstein served as Interim Co-Lead Counsel for the direct purchasers of resisters, who accused the world's largest manufacturers of resistors of fixing prices. In November 2019, the court granted final approval of a $50.25 million settlement – a remarkable recovery, reflecting 33% - 57% of estimated single damages according to Plaintiffs' preliminary analysis. Estimated payments to class members would be an average payment of $46,850.64; a median payment of $768.39. Ms. Levens managed all aspects of this litigation.
- Allen vs. Dairy Farmers of America (D. Vt.): Cohen Milstein served as Lead Counsel for one of two subclasses of dairy farmers challenging anticompetitive conduct in the Northeast which resulted in lower prices paid to farmers. In April 2017 the Second Circuit Court of Appeals affirmed a $50 million settlement between plaintiffs and the remaining defendants, bringing the total settlement to more than $80 million, in addition to industry-changing equitable relief. Ms. Levens served as one of the principle attorneys litigating this matter since its inception.
- Plasma-Derivative Protein Therapies Antitrust Litigation (N.D. Ill.): Cohen Milstein served as Co-Lead Counsel for plaintiffs alleging that the two largest manufacturers of IVIG and Albumin – life-saving therapies derived from blood plasma – conspired to reduce the supply, and increase the prices, of these therapies. Ms. Levens played an active role in the litigation, helping to obtain settlements totaling $128 million for hospitals and other direct purchasers.
- Bulk Bleach Litigation (D.S.C.): Ms. Levens served as one of the key attorneys at Cohen Milstein representing a class of municipalities and other direct purchasers of bulk bleach in a case alleging that the two dominant manufacturers of bulk bleach in the Carolina's engaged in an illegal market allocation agreement. After successfully defeating multiple motions to dismiss, class counsel obtained a settlement that satisfied nearly all of the class's damages. In approving the settlement, Judge Gergel complimented counsel, stating that the, "whole case has been, I think, very professionally handled, skillfully handled."

Ms. Leven's recent pro bono work includes:

- Access to Education Class Action (Circ. Crt., Prince George's Cnty.): On June 12, 2019, Cohen Milstein, the ACLU of Maryland, and the Howard University School of Law Civil Rights Clinic filed an education discrimination class action and motion for a temporary restraining order against the Prince George's County School Board, seeking to declare its charging of fees for summer school violates the Maryland Constitution (which requires the state to provide a free education), causing serious, irreparable harm to students in the county who cannot afford the fees.

Ms. Levens was also a member of the Apple price-fixing litigation team recognized as "Legal Lions" by Law360.

In addition to her work at the Cohen Milstein, Ms. Levens has served as an adjunct Professor at Georgetown School of Law and is a Board member and Secretary of Global Playground, a nonprofit that builds schools in the developing world. She recently co-authored an article entitled, "Heightened Ascertainability Requirement Disregards Rule 23's Plain Language," which appeared in the Spring, 2016 issue of Antitrust magazine.

Prior to joining the firm, Ms. Levens worked as a staff law clerk at the U.S. Court of Appeals for the Seventh Circuit.

Ms. Levens attended the University of Kansas, graduating with honors, and earned her J.D. at UCLA Law School, graduating Order of the Coif. While at law school, Ms. Levens served as the Managing Editor for the UCLA Journal of Environmental Law and Policy, Director of the Downtown Legal Housing Clinic, and President of Moot Court.

Jeanne A. Markey

Jeanne A. Markey is a Partner at Cohen Milstein and Co-Chair of the firm's Whistleblower/False Claims Act practice group.

Ms. Markey has successfully represented whistleblowers in federal and state cases across the country in some of highest-profile qui tam litigation in the healthcare, defense, financial services, and education industries. She has also represented whistleblower clients in the public housing sector, in S.E.C. related matters, and in matters involving complex financial instruments.

Representative settled cases include:

- United States of America et al., ex rel. Lauren Kieff, v. Wyeth: Ms. Markey was co-lead counsel in this False Claims Act whistleblower case against pharmaceutical giant Wyeth (subsequently acquired by Pfizer), in which the whistleblowers alleged that Wyeth defrauded Medicaid, the joint federal/state healthcare program for the poor, when it reported falsely inflated prices for its acid suppression drug Protonix from 2001 through 2006 for Medicaid rebate purposes. Weeks before trial, in February 2016, in one of the largest qui tam settlements in U.S. history, Wyeth agreed to pay $784.6 million to the U.S. government and the over 35 intervening states.
- United States et al. ex relators v. Southern SNF Management, Inc. and Rehab Services in Motion, LLC: Ms. Markey was lead counsel in this False Claims Act case in which three whistleblowers employed by a chain of skilled nursing facilities located in Florida and Alabama alleged that the chain was engaged in a multi-year scheme of inflating the facilities' Medicare collections by assigning Medicare patients to levels of therapy, (often referred to as "RUG" levels), higher than what was medically reasonable and necessary for that patient. In July 2018 this case settled for $10 million.
- Ven-A-Care Whistleblower Litigation: Ms. Markey was involved in a series of Ven-A-Care whistleblower cases which pertained to the inflated reimbursement amounts drug companies were causing Medicare and Medicaid to pay for prescription drugs by reporting inflated wholesale prices to the government. These large, highly-successful groundbreaking cases helped to pave the way for a wide range of subsequent False Claims Act cases in the realm of healthcare and directed at drug companies in particular.

In 2016, Ms. Markey was recognized as one of the top 25 women lawyers in the Commonwealth of Pennsylvania by The Legal Intelligencer.

In 2018, Ms. Markey, an alumna of Cornell University Law School, was invited to become a member of The President's Council of Cornell Women.

She is also an active member of Taxpayers Against Fraud, a nonprofit, public interest organization dedicated to combating fraud against the Federal Government through the promotion and use of the Federal False Claims Act and its Qui Tam provisions, and the Association of qui tam attorneys.

She frequently speaks about developments in the qui tam field and has co-authored several articles about topics including statistical sampling and representing whistleblowers in cases involving issues of medical necessity.

Ms. Markey received her B.A. (cum laude) from Colgate University and her J.D. from Cornell University Law School.

Daniel McCuaig

Dan McCuaig is a Partner at Cohen Milstein and a member of the firm's Antitrust practice group. In this role, Mr. McCuaig represents a broad range of plaintiffs in civil litigation, with a focus on class actions and antitrust litigation. He regularly is sought to speak on antitrust and class certification panels and has been repeatedly recognized by Lawdragon as one of the nation's "500 Leading Plaintiff Financial Lawyers."

Currently, Mr. McCuaig is litigating the following notable matters:

- Iowa Public Employees Retirement System et al. v. Bank of America Corp. (S.D.N.Y.): Cohen Milstein is co-counsel in this groundbreaking putative class action, in which investors accuse Morgan Stanley, Goldman Sachs, Credit Suisse, and other Wall Street investment banks of conspiring to thwart the modernization of, and preserve their dominance over, the $1.7 trillion stock loan market.
- In Re: Da Vinci Surgical Robot Antitrust Litigation (N.D. Cal.): On September 24, 2021, the Court appointed Cohen Milstein Interim Co-Lead Counsel in this consolidated antitrust class action against Intuitive Surgical, Inc. Plaintiffs allege that Intuitive engages in an anticompetitive scheme under which it ties the purchase or lease of its must-have, market-dominating da Vinci surgical robot to the additional purchases of (i) robot maintenance and repair services and (ii) unnecessarily large numbers of the surgical instruments, known as EndoWrists, used to perform surgery with the robot—a violation of Sections 1 and 2 of the Sherman Act.
- Pacific Steel Group v. Commercial Metals Company (N.D. Cal.): Cohen Milstein represents Pacific Steel Group, a steel rebar fabricator, in challenging the lawfulness of an agreement extracted by one of the world's largest steel companies (CMC) from the world's only manufacturer of steel rebar micro mills to refuse to build a micro mill for Pacific Steel in any location that could threaten CMC's rebar monopoly in Southern California or otherwise allow Pacific Steel to become a more formidable competitor in the downstream rebar fabrication market.

Immediately prior to joining Cohen Milstein, Mr. McCuaig was a trial attorney in the Antitrust Division at the U.S. Department of Justice for more than a decade, where he led investigation and litigation teams in both criminal and civil matters related to price fixing, bid rigging, anticompetitive mergers, and other antitrust law violations.

As a criminal prosecutor at the DOJ, Mr. McCuaig led the investigation and prosecution of antitrust, fraud, and obstruction of justice claims against corporations and individuals. He was the principal trial lawyer in related plea hearings, sentencings, and before grand juries, and successfully generated significant charges and guilty pleas. Even while carrying out his prosecutorial duties, Mr. McCuaig continued to provide his expertise on major Antitrust Division civil actions, such as its successful challenge to the proposed merger between Anthem and Cigna—in which Mr. McCuaig cross-examined Anthem expert economist Robert Willig at trial.

While a civil litigation trial lawyer at the DOJ, Mr. McCuaig oversaw the government's investigation into the e-books price fixing conspiracy litigated in In Re Electronic Books Antitrust Litigation (S.D.N.Y.), involving Apple and five major publishers, and played a principal role in the government's successful trial of Apple. Leading up to that trial, Mr. McCuaig coordinated with foreign enforcement agencies, 33 state attorneys general, and private plaintiffs' counsel, and negotiated consent decrees with all publisher defendants. More generally, Mr. McCuaig investigated competitive effects of proposed mergers in media, sports, real estate, and tangential industries, as well as potential anticompetitive effects of non-merger activity in the same industries, and negotiated divestitures and consent decrees to remedy anticompetitive aspects of mergers and non-merger activities.

Prior to his work with the DOJ, Mr. McCuaig was counsel at a prestigious international white collar and corporate defense firm, where, in addition to civil antitrust defense work, he focused on telecommunications disputes before the FCC, state public service commissions, and state and federal courts.

Mr. McCuaig is the co-author of Telecommunications Convergence Overview (with William T. Lake and Thomas P. Olson), 698 PLI/Pat 9 (May 2002), and the author of Halve the Baby: An Obvious Solution to the Troubling Use of Trademarks as Metatags, 18 J. Marshall J. Computer & Info. L. 643 (Spring 2000).

Mr. McCuaig received his B.A., summa cum laude, from The George Washington University. He is a member of Phi Beta Kappa. He received his J.D., cum laude, from Harvard Law School, where he was a Senior Editor and the Treasurer of the Harvard Negotiation Law Review.

Mr. McCuaig was a judicial clerk to The Honorable Algenon L. Marbley of the United States District Court for the Southern District of Ohio (Columbus).

Douglas J. McNamara

Douglas J. McNamara is a Partner at Cohen Milstein, and a member of the firm's Consumer Protection practice group. In this role, Mr. McNamara specializes in litigating complex, multi-state class action lawsuits against manufacturers and consumer service providers, such as banks, insurers, credit card companies and others. He has helped litigate precedent-setting cases, involving issues of preemption, choice of law, and class certification. He is a hands-on litigator who takes pleasure in the details, facts, and documents of each case. Mr. McNamara is a highly regarded speaker who has presented at several forums on such topics as federal preemption, class certification and civil litigation, and is the author of scholarly articles focusing on emerging legal issues.

Mr. McNamara has worked on numerous cases involving dangerous pharmaceuticals and medical devices, light cigarettes, defective consumer products, and environmental torts. Mr. McNamara is currently litigating the following notable matters:

- In re Apple Inc. Device Performance Litigation (N.D. Cal.): On January 9, 2018, Cohen Milstein and co-counsel, filed a putative nationwide class action against Apple Inc., on behalf of owners of Apple's iPhone SE, 6, 6 Plus, 6s, 6s Plus, 7, and 7 Plus, for unfair and deceptive business practices in violation of California Business & Professions Code § 17200 and making material misrepresentations and failing to disclose material information related to Apple's iOS software operating system updates for Apple iPhones. Mr. McNamara was appointed to the Plaintiffs' Steering Committee and is Co-Chair of the Expert Committee.
- Cape Fear River Contaminated Water Litigation (E.D.N.C.): On January 4, 2018, Cohen Milstein was appointed Interim Co-Lead Class Counsel in a consolidated toxic tort class action filed against DuPont and Chemours, alleging that for more than four decades the companies polluted the Cape Fear River near Wilmington, North Carolina with a chemical called GenX, contaminating the water supply of five counties, and misrepresented their conduct to state and federal regulators.
- In re: Marriott International Inc. Customer Data Security Breach Litigation (D. Md.): In April 2019, Cohen Milstein was appointed Consumer Plaintiffs' Co-Lead Counsel to oversee a class action related to the data breach that compromised the personal data of nearly 400 million customers, making it one of the largest data breaches in U.S. history.
- Johnannessohn, et al. v. Polaris (D. Minn.): In October 2016, Cohen Milstein filed a class action on behalf of purchasers of Polaris Sportsman four-wheel all-terrain vehicles (ATVs) for violating state consumer protection and warranty laws related to a design defect of its exhaust system. The exhaust system gets so hot that it can burn riders and melt the ATV's components.
- BK Trucking Co., et al. v. PACCAR, Inc. et al. (D.N.J.): On August 20, 2015, Cohen Milstein and co-counsel filed a putative class action against PACCAR, the third-largest manufacturer of medium- and heavy-duty trucks in the world, and its subsidiaries, Kenworth Truck Company and Peterbilt Motors for breach of warranty and other products liability and unfair business practices related to the manufacture and sale of its 2010 PACCAR MX-13

diesel engines, which include a specially designed and defective emissions control unit, which causes engine power loss and shut downs, impeding commerce.

Some of Mr. McNamara's recent successes include:

- Herrera v. JFK Medical Center and HCA, Inc. (M.D. Fla.): Cohen Milstein was Lead Counsel in a class action, alleging that emergency room patients were billed unreasonably high fees for emergency radiology services, in excess of the amount allowed by their mandatory Florida Personal Injury Protection (PIP) insurance. In December 2018, the Court granted final approval of a $220 million injunctive relief settlement.
- Lumber Liquidators Chinese-Manufactured Flooring Products Liability Litigation (E.D. Va.): Cohen Milstein is co-lead counsel in a consumer class action lawsuit, alleging the nationwide retailer sold Chinese-made laminate flooring containing hazardous levels of the carcinogen formaldehyde while falsely labeling their products as meeting or exceeding California emissions standards, a story that was profiled twice on 60 Minutes in 2015. On October 9, 2018, the Court granted final approval of a $36 million settlement. Mr. McNamara was involved in all aspects of the litigation, including discovery, writing and arguing pleadings, and settlement.
- Khoday et al. v. Symantec Corp. et al. (D. Minn.): Cohen Milstein was lead counsel in a nationwide class action involving the marketing to consumers of a re-download service in conjunction with the sale of Norton software. In April 2016, the case settled in a $60 million all-cash deal a month before it was to go to trial – one of the most significant consumer settlements in years. Mr. McNamara was involved in all aspects of the case, from managing the litigation to overseeing a staff of contract attorneys to settlement discussions.
- Caterpillar Engine Product Liability Litigation (D.N.J.): Cohen Milstein was co-lead counsel on behalf of 22 trucking and transportation companies in 18 states in a class action lawsuit against Caterpillar alleging that the MY2007 CAT engine, designed to meet the EPA's tougher Clean Air Act emissions standards, was defective, causing power loss and shutdowns that prevented or impeded vehicles from transporting goods or passengers. Caterpillar sought to dismiss the case claiming EPA approval of the engine preempted any state law claims. Mr. McNamara was the architect of the successful opposition to the motion, and he was involved in all aspects of the litigation. On September 20, 2016, the Court granted final approval of the $60 million settlement.

Mr. McNamara also is actively involved in the firm's high-profile pro bono litigation, including:

- NAACP v. Donald J. Trump, President of the United States (D.D.C.): Cohen Milstein is representing the NAACP and two unions in a lawsuit against President Donald J. Trump, Department of Homeland Security and other U.S. immigration enforcement agencies and their efforts to terminate the Deferred Action for Childhood Arrivals (DACA) program.

Prior to joining Cohen Milstein in 2001, Mr. McNamara was a litigation associate at an international defense firm, specializing in pharmaceutical and product liability cases. He started his career at New York City's Legal Aid Society, defending indigent criminal defendants at trial and on appeal.

He has been the lead author on three law review articles: "Buckley, Imbler and Stare Decisis: The Present Predicament of Prosecutorial Immunity and An End to Its Absolute Means,: 59 Albany Law Review, 1135 (1996); "Sexual Discrimination and Sexual Misconduct: Applying New York's Gender-Specific Sexual Misconduct Law to Minors," 14 Touro Law Review, 477 (Winter 1998), and most recently, Douglas McNamara, et al, "Reexamining the Seventh Amendment Argument Against Issue Certification," 34 Pace Law Review, 1041 (2014). He has also taught a course on environmental and toxic torts as an adjunct at George Washington University School of Law. Mr. McNamara is currently on Law360's 2022 Cybersecurity & Privacy Editorial Advisory Board.

Mr. McNamara graduated summa cum laude from SUNY Albany, and he earned his J.D. from New York University School of Law.

Betsy A. Miller

Betsy A. Miller is a Partner at Cohen Milstein and Chair of the Public Client practice group. Ms. Miller represents state Attorneys General and political subdivisions in civil law enforcement investigations and litigation involving consumer protection, Medicaid fraud, and other areas of enforcement that protect government interests and vulnerable communities. She currently represents the states of Indiana, New Jersey and Vermont in the national opioid crisis litigation against manufacturers and distributors of prescription narcotics.

For her accomplishments and continued work in high-stakes matters, Ms. Miller has been honored on several occasions by industry peers, including Lawdragon 500, which recognizes "the best of the best" in the U.S. legal profession, The National Law Journal and The Trial Lawyer, which have identified Ms. Miller as one of America's "50 Most Influential Trial Lawyers," and The National Law Journal, which named Ms. Miller as one of nine women in the nation to its inaugural list of "Elite Women of the Plaintiffs' Bar."

Prior to joining Cohen Milstein, Ms. Miller served as the Chief of Staff and Senior Counsel to the Attorney General for the District of Columbia. Her responsibilities included supervising an office of 700+ employees and serving as the lead lawyer for the historic transition of the D.C. Public Schools under Mayor Adrian Fenty and Chancellor Michelle Rhee.

Earlier in her career, Ms. Miller served as Nominations Counsel for Senator Patrick J. Leahy (D-VT) on the Senate Judiciary Committee, where she was responsible for handling confirmation hearings on presidential nominations to the federal judiciary, the Department of Justice, the Federal Bureau of Investigation, and to the Offices of the United States Attorneys.

Ms. Miller also spent eight years as a litigator for two premier defense firms, where she represented some of the nation's largest companies and individuals in matters including First Amendment issues, complex commercial disputes, collective bargaining negotiations and arbitration, employment class actions and challenges to independent contractor classification. Her civil defense experience adds to Ms. Miller's deep and balanced litigation skillset.

Ms. Miller's public (non-confidential) representations include:

- Grubhub and DoorDash Litigation: Representing the City of Chicago in its investigations and litigation against Grubhub and DoorDash for pervasively deceptive and unfair business practices that take advantage of restaurants, consumers, and drivers. Click here to view the lawsuit filed against DoorDash; click here to view the lawsuit filed against Grubhub.
- Opioid Painkillers: Representing the states of Indiana, New Jersey and Vermont in investigations and litigation against entities responsible for the deceptive marketing and sale of opioids. Click here to view the lawsuit filed by New Jersey; click here to view the lawsuit filed by Vermont.
- Moody's Litigation: Represented the co-lead state (Mississippi) and New Jersey in the $864 million consumer fraud settlement achieved in January 2017 by 22 states and the U.S. Department of Justice with Moody's Corporation, Moody's Investors Service, Inc., and Moody's Analytics, Inc.
- S&P Litigation: Represented co-lead state (Mississippi) in the $1.375 billion-dollar consumer fraud settlement achieved in 2015 by 20 states and the U.S. Department of Justice with Standard & Poor's. Together with the Moody's settlement, these cases against the nation's two largest credit rating agencies produced key industry reforms that provide greater transparency for consumers and that divested the credit rating agencies of more than $2.2 billion for their conduct contributing to the national housing crisis and Great Recession.

Ms. Miller's other investigation and litigation successes include matters in the financial, health care, and employment law sectors. Examples include:

- Representing the states of Arizona and Nevada in litigation against Bank of America for deceptive conduct in connection with servicing approximately 500,000 mortgages; resulting in financial payments to consumers and the states, commitments to mortgage modifications, and other equitable relief valued at nearly $1 billion.
- Representing the state of Montana in an investigation of a Fortune 100 company regarding alleged misclassification of employees as independent contractors; resulting in a multimillion-dollar resolution for the state.
- Representing other state attorneys general and municipalities in numerous confidential investigations and settlements.

Since 2001, Ms. Miller has served as an Adjunct Professor at Georgetown Law, where she teaches seminars on negotiation and mediation strategy. In addition to Georgetown, she has taught intensive negotiation courses at Harvard Law School's Program on Negotiation (PON) (a consortium program of Harvard University, Massachusetts Institute of Technology, and Tufts University) (formerly Harvard's Program of Instruction for Lawyers) and has provided negotiation skills training for a wide variety of federal and state government agencies, law firms, corporations, and non-profit organizations. She also holds Executive Certificates in both Leadership Coaching and Navigating Polarities: Leading and Coaching in a Complex World from Georgetown University's Institute for Transformational Leadership (ITL) and is a member of the International Coach Federation (ICF).

Ms. Miller has authored several articles, including, "Untapped Potential: Creating a Systematic Model for Mediation Preparation," which appears as Chapter 13 in the AAA Handbook on Mediation – Third Edition (2016), and she has been acknowledged for her work in the area of leadership coaching, including in Navigating Polarities: Using Both/And Thinking to Lead Transformation by Brian Emerson and Kelly Lewis (Paradoxical Press, 2019).

Ms. Miller speaks nationally on the practice of law and issues of significance for state attorneys general and other government entities. She is also in high demand as a speaker on negotiation and resolution strategy, leadership, team dynamics, and change management. The development of women leaders is an area of particular focus within these presentation topics. Ms. Miller's thought leadership has been profiled extensively, including by Above the Law, The American Lawyer, Law360, National Law Journal, Thomson Reuters Legal Executive Institute, among others.

Ms. Miller earned her undergraduate degree in Comparative Literature from Dartmouth College, graduating magna cum laude and Phi Beta Kappa, and earned her law degree from Harvard Law School, where she was an editor on the Harvard Human Rights Journal and the Harvard Latinx Law Review. She is the recipient of Harvard Law School's Heyman Post-Grad Fellowship for federal government service and academic excellence and of Harvard Law School's Irving R. Kaufman Public Interest Fellowship for public service. Immediately after graduating from Harvard, she clerked for the Honorable Thomas Penfield Jackson in the U.S. District Court for the District of Columbia.

Kit A. Pierson

Kit A. Pierson is a Partner at Cohen Milstein and a member of the firm's Antitrust practice group. Mr. Pierson has also had the honor of serving as Co-Chair of the Antitrust practice (2010-2017). Under his leadership, the Legal 500 recognized Cohen Milstein as a Leading Plaintiff Class Action Firm for seven years in a row and Law360 selected the Antitrust practice group as a Competition Law Practice Group of the Year in 2013 and 2014.

Mr. Pierson has served as lead or co-lead counsel in many of the nation's most significant antitrust class actions on behalf of the victims of corporations engaged in price-fixing, market monopolization and other unlawful conduct. Prior to joining Cohen Milstein in 2009, Mr. Pierson spent more than 20 years primarily representing defendants in a broad range of complex matters. Some of the companies he represented included Microsoft Corp., 3M Corp. and other major corporations, national associations and individuals in class actions and other antitrust litigation. As a result of his experience as a defense lawyer, Mr. Pierson possesses deep insight into defense strategies, understands the dynamics of the other side and is someone who has earned the respect and credibility of opposing counsel.

Mr. Pierson is a hands-on litigator who has litigated and tried antitrust lawsuits and other complex civil cases in many jurisdictions, helping to win settlements and judgments cumulatively totaling more than $1.8 billion in the past several years. Currently, he is lead or co-lead counsel in many antitrust cases at the firm. Some of Mr. Pierson's recent successes include:

- Domestic Drywall Litigation (E.D. Pa.): Cohen Milstein was co-lead counsel in an antitrust litigation alleging that the seven major U.S. manufacturers of drywall conspired to manipulate prices. Mr. Pierson ran the case for Cohen Milstein and in 2015 took the lead for the direct purchaser plaintiffs in arguing against the defendants' summary judgment motions (which were denied by the Court for four of the five defendants). The Court granted final approval to settlements totaling $190 million.
- Ductile Iron Pipe Fittings Litigation (D.N.J.): Cohen Milstein, as co-lead counsel, represented direct purchasers in a price-fixing class action against the three largest manufacturers of ductile iron pipe fittings—McWane Inc., Sigma Corporation and Star Pipe Products—and a monopolization case against McWane for excluding significant competition in the domestic ductile iron pipe fittings market. In May 2018 the Court granted final approval to the outstanding settlement, ending the litigation and bringing the total recovery to more than $17.3 million.
- Cast Iron Soil Pipe & Fittings Litigation (E.D. Tenn.): Cohen Milstein, as co-lead counsel, represented direct purchasers against the two largest soil pipe and fittings manufacturers in the country (McWane Inc. and Charlotte Pipe & Foundry) and the trade association they control (Cast Iron Soil Pipe Institute) in a class action alleging that the defendants engaged in a nationwide price-fixing conspiracy and other anticompetitive actions. Mr. Pierson directed the litigation team. In May 2017, the Court granted final approval of a $30 million settlement.
- Urethanes (Polyether Polyols) Antitrust Litigation (D. Kan.): Cohen Milstein was co-lead counsel for direct purchaser plaintiffs in an antitrust class action alleging a nationwide conspiracy to fix the prices of chemicals used to make polyurethane foam. Four defendants—Bayer, BASF, Huntsman and Lyondell—settled for a total of $139.5 million, while the case against the fifth manufacturer, Dow Chemical, went to trial. After a four-week jury trial, in which Mr. Pierson was one of the trial lawyers for the class, the jury returned a $400 million verdict for the plaintiffs, which was trebled under federal antitrust law to more than $1 billion, the largest verdict in the country in 2013, as reported by The National Law Journal. The U.S. Court of Appeals for the Tenth Circuit affirmed the judgment, and the case against Dow Chemical was settled for $835 while the matter was pending before the United States Supreme Court (resulting in a total recovery of $974.5 million in the case).
- Community Health Care System Litigation: Cohen Milstein was co-counsel representing an emergency room doctor and nurse who brought claims against Community Health Care System under the False Claims Act for allegedly defrauding the federal government in connection with health care bills. Mr. Pierson led Cohen Milstein's team in the case which was resolved for $94 million.
- Electronic Books Antitrust Litigation (S.D.N.Y.): Cohen Milstein was co-lead counsel in a class action lawsuit alleging that Apple and five of the leading U.S. publishers conspired to raise the retail prices of e-books. Mr. Pierson led the Cohen Milstein team, which secured class certification, defeated motions to exclude the class expert, and successfully moved for exclusion of most of Apple's expert testimony. The five publishing defendants settled for $166 million and a settlement was reached with Apple shortly before trial for an additional $450 million.
- Guantanamo Litigation (D.D.C.): Mr. Pierson represented Alla Ali Bin Ali Ahmed, a young man who had been arrested with many others while residing in a house in Pakistan and was then incarcerated in Guantanamo without a judicial hearing for more than seven years. After filing a habeas corpus petition, Mr. Pierson represented Mr. Ahmed at a multi-day evidentiary hearing before a United States District Court judge. At the conclusion of the hearing, the District Court ruled that the evidentiary record did not support Mr. Ahmed's detention and ordered that he be released from Guantanamo and returned to his home country.

Since 2020, Chambers & Partners has named Mr. Pierson a "Ranked Individual" in the category, "Antirust: Plaintiffs – Nationwide: USA." Mr. Pierson has also been repeatedly named to Lawdragon's list of 500 leading lawyers in the United States (2013, 2014, and 2016), as well as to Lawdragon's annual "500 Leading Plaintiff Financial Lawyers." Since 2017, Legal 500 has named Mr. Pierson a "Leading Lawyer" in Antitrust Class Actions. Since 2012, Mr. Pierson has been selected

as a "Top Rated Antitrust Litigation Attorney" by Super Lawyers. In 2014, Mr. Pierson was distinguished as one of the six most influential antitrust lawyers in the United States, by being named Law360's "MVP – Competition Law."

A champion for civil rights, he is a member of the Board of Trustees for the Lawyers' Committee for Civil Rights Under the Law, a national organization, and a Member of the ACLU of Maryland's Committee on Litigation and Legal Priorities. Mr. Pierson is also a Board member of the Washington Urban Debate League.

Mr. Pierson has taught Complex Litigation as an Adjunct Professor at Georgetown University Law School (a class that focused primarily on legal, ethical and strategic issues presented by class action litigation) and Antitrust Class Actions as a Visiting Lecturer at Yale Law School (a class examining legal, ethical and strategic issues in antitrust class action litigation).

Mr. Pierson attended Macalester College, earning a B.A., magna cum laude, in Economics and Political Science, and graduated from the University of Michigan Law School, magna cum laude, where he was a Note Editor of the Michigan Law Review and a member of the Order of the Coif. Following law school, he served as a Law Clerk for the Honorable Harry T. Edwards, United States Court of Appeals for the District of Columbia Circuit, from 1983-1984 and as a law clerk for the Honorable Chief Judge John Feikens, United States District Court for the Eastern District of Michigan, from 1984-1985.

Laura H. Posner

Laura H. Posner is a Partner at Cohen Milstein and a member of the firm's Securities Litigation & Investor Protection and Ethics & Fiduciary Counseling practice groups.

Prior to joining the firm, Ms. Posner was appointed by the New Jersey Attorney General to serve as the Bureau Chief for the New Jersey Bureau of Securities – the top Securities Regulator in New Jersey. In that capacity, Ms. Posner was responsible for administrating and enforcing the New Jersey Uniform Securities Law and regulations thereunder, as well as managing and overseeing the employees who staff the Bureau of Securities. Cases prosecuted under Ms. Posner's direction as Bureau Chief resulted in hundreds of millions of dollars in recoveries for New Jersey residents, as well as more than 20 criminal convictions.

Ms. Posner is currently involved in the following notable matters:

- Miller Energy/KPMG (E.D. Tenn.): Cohen Milstein is Co-Lead Counsel in this certified securities class action, alleging that KPMG failed to meet its obligation as the independent auditor of Miller Energy Resources, Inc., perpetrating a massive fraud by Miller Energy, including overstating the value of largely worthless oil reserves to more than $480 million, among other claims.
- IBEW Local 98 Pension Fund v. Deloitte (D.S.C.): Cohen Milstein is sole Lead Counsel in this putative securities class action against Deloitte entities for allegedly breaching its external auditor duties related to as SCANA's multi-billion-dollar nuclear energy expansion project in South Carolina.
- Chahal v. Credit Suisse Grp. AG, et al. (S.D.N.Y.): Cohen Milstein is Co-Lead Counsel in this putative securities class action alleging fraud and market manipulation of XIV Exchange Traded Note market.
- In re Wells Fargo & Company Securities Litigation (S.D.N.Y.): Cohen Milstein is Co-Lead Counsel in this putative securities class action, alleging that Wells Fargo and certain executives misrepresented that the bank had improved its governance and oversight structures following a widespread consumer fraud banking scandal in direct violation of its 2018 consent orders with the CFPB, OCC, and the Federal Reserve.
- In Re Overstock Securities Litigation (D. Utah): Cohen Milstein is sole Lead Counsel in this putative securities class action against Overstock.com Inc., its former CEO, CFO, and current Retail President for engineering a market manipulation "short squeeze" scheme in the company's common stock and insider trading.
- In re Pinterest Derivative Litigation (N.D. Cal.): Cohen Milstein, as Interim Lead Counsel, represents the Employees Retirement System of Rhode Island and other Pinterest shareholders in a consolidated shareholder derivative complaint against certain current officers and directors of Pinterest, including its Board Chairman and CEO, for

breaches of fiduciary duty and other violations of Section 14(a) of the Exchange Act, relating to their alleged personal engagement in and facilitation of a systematic practice of illegal discrimination of employees on the basis of race and sex, from at least February 2018 through the present. As a result of this illegal misconduct, the company's financial position, goodwill, and reputation among users has been harmed.

Ms. Posner's recent high-profile successes include:

- L Brands, Inc. Derivative Litigation: Cohen Milstein, in partnership with the State of Oregon, the Oregon Public Employees Retirement Fund, and other shareholders, helped resolve allegations that officers and directors of L Brands, Inc., previous owners of Victoria's Secret, breached their fiduciary duties by maintaining ties with alleged sex offender and pedophile Jeffrey Epstein and fostering a culture of discrimination and misogyny at the company. Following a Delaware General Corporate Law Section 220 books and records demand and an extensive, proprietary investigation, L Brands and the now-standalone company, Victoria's Secret, agreed to stop enforcing non-disclosure agreements that prohibit the discussion of a sexual harassment claim's underlying facts; stop using forced arbitration agreements; implement sweeping reforms to their codes of conduct, policies and procedures related to sexual misconduct and retaliation; and to invest $45 million each, for a total of $90 million, in diversity, equity and inclusion initiatives and DEI Advisory Councils.
- Wynn Resorts, Ltd. Derivative Litigation (Eighth Jud. Dist. Crt., Clark Cnty., Nev.): Cohen Milstein represented New York State Common Retirement Fund and the New York City Pension Funds as Lead Counsel in a derivative shareholder lawsuit against certain officers and directors of Wynn Resorts, Ltd., arising out of their failure to hold Mr. Wynn, the former CEO and Chairman of the Board, accountable for his longstanding pattern of sexual abuse and harassment of company employees. In March 2020, the Court granted final approval of a $90 million settlement in the form of cash payments and landmark corporate governance reforms, placing it among the largest, most comprehensive derivative settlements in history.
- Tradex Global Master Fund SPC Ltd. et al. v. Lancelot Investment Management, LLC, et al. (Crc. Crt., Cook Cnty., Ill.): In August 2018, the Court granted final approval of a $27.5 million settlement, concluding a nearly decade-old putative investor class action against McGladrey & Pullen LLP, an accounting firm, for its alleged fraud and negligence arising out of the Tom Petters' Ponzi scheme, one of the largest Ponzi schemes in U.S. history. This case significant for not only the dollar value of the final settlement, but the rarity of such a case in which the auditor was allegedly complicit in its client's fraud, as well as the number of legal hurdles cleared.

Ms. Posner has recovered billions on behalf of defrauded investors. Her notable successes include 5 of the top 100 securities fraud class action settlements of all time, including:

- In re Schering-Plough Corp./ENHANCE Securities Litigation (D.N.J.) and In re Merck & Co., Inc. Vytorin/Zetia Securities Litigation (D.N.J.): Obtained $688 million for investors on the eve of trial, the third largest recovery ever achieved in the Third Circuit and District of New Jersey, the second largest securities fraud settlement ever against a pharmaceutical company and among the top 25 securities fraud settlements of all time.
- In re The Mills Corporation Securities Litigation (E.D. Va.): Obtained $202.75 million for investors, the largest recovery ever achieved in a securities class action in Virginia, and the second largest recovery ever in the Fourth Circuit.
- In re WellCare Health Plans, Inc. Securities Litigation (M.D. Fla.): Obtained $200 million for investors, the largest recovery ever achieved in a securities class action in Florida, and the second largest recovery in the Eleventh Circuit.

Ms. Posner has also been involved in several landmark derivative cases, including the In re Walt Disney Co. Derivative Litigation, which redefined the fiduciary duties of corporate directors and officers. She has authored several successful amicus briefs to the United States Supreme Court, most recently on behalf of the North American Securities Administrators Association in support of the SEC in Liu v. SEC and Lorenzo v. SEC and in support of the Arkansas Teacher Retirement System in Goldman Sachs v. Arkansas Teacher Retirement System.

Ms. Posner is currently the Chair of the Association of the Bar of the City of New York's (NYC Bar) Securities Litigation Committee, and previously served as a member of the NYC Bar's Securities Regulation and Consumer Affairs Committees. Ms. Posner is also currently a Vice President of the Institute for Law and Economic Policy, a public policy research and educational foundation seeking to preserve, study and enhance investor and consumer access to the civil justice system. Ms. Posner is the former Chairwoman of the North American Securities Administrators Association (NASAA) Enforcement Committee, and previously served on NASAA's Multi-Jurisdictional Action Committee, Technology Committee and State Legislation Committee.

For her work, Ms. Posner has received numerous peer and industry recognitions, including The National Law Journal's 2021 Elite Trial Lawyers "Elite Women of the Plaintiffs Bar Award" and Crain's New York Business 2020 "Notable Woman in Law." Annually, she is honored as a New York Super Lawyer, as a member of Benchmark Litigation's "40 & Under Hot List," and as one of Lawdragon's Leading Plaintiff Financial Lawyers. In 2017, Ms. Posner received NASAA's 2017 "Outstanding Service Award."

Ms. Posner graduated with a B.A. in Political Science, magna cum laude, from the University of California, Los Angeles in 2001. She received her law degree at Harvard Law School in 2004, where she served on the Executive Editorial Committee for the Harvard Women's Law Journal.

Julie Goldsmith Reiser

Julie Goldsmith Reiser is a Partner at Cohen Milstein and Co-Chair of the firm's Securities Litigation & Investor Protection group. Ms. Reiser's practice focuses on public pension plans, institutional investors, retirees and plan participants, representing them in high-stakes, complex litigation, including securities, ERISA, and antitrust litigation.

In 2021, Law360 recognized Ms. Reiser as a "Titan of the Plaintiffs Bar," not long after citing her as one of the "25 Most Influential Women in Securities Law." The National Law Journal placed her among the "Elite Women of the Plaintiffs Bar" and, since 2018, Lawdragon has named her one of the leading 500 lawyers in America.

On October 2, 2020, Ms. Reiser was recognized by The American Lawyer as "Litigator of the Week," for the historic $310 million settlement In re Alphabet Shareholder Derivative Litigation (Sup. Crt. Cal., Santa Clara Cnty.), a shareholder derivative action, which establishes a framework for stockholders to hold boards of directors accountable for long-standing patterns of corporate mismanagement of sexual harassment, discrimination, and retaliation claims at their companies.

Ms. Reiser is highly regarded by clients, co-counsel, and opposing counsel for her tenacious advocacy, shrewd understanding of complex financial and economic issues, meticulous preparation, and dynamic leadership. Indeed, co-counsel and opposing counsel were quoted in Law360's "Titans of the Plaintiffs Bar: Cohen Milstein's Julie Goldsmith Reiser" profile:

"I think [Ms. Reiser] is an excellent attorney. Very good in advocating in the courtroom and in settlement negotiations, a very good strategic thinker and a nice person." Louise Renne, former City Attorney of San Francisco, founding partner of Renne Public Law Group, and co-counsel in Alphabet.

Ms. Reiser is "a very candid, trustworthy person" and working with her and her co-counsel was a "highlight of the case." Boris Feldman, partner at Freshfields Bruckhaus Deringer LLP and opposing counsel in Alphabet.

In addition to Alphabet and the precedent-setting Wynn Resorts Shareholder Derivative Action (Eighth Jud. Dist. Crt., Clark Cnty., Nev.), which she led to a total $90 million settlement, Ms. Reiser has led litigation teams in several of the country's most complex class actions and landmark settlements, including a $500 million settlement related to Countrywide's

issuance of mortgage-backed securities ("MBS") and the Fifth Circuit affirmation of an investor class in the BP securities fraud litigation, stemming from the 2010 Deepwater Horizon oil spill, which settled for $175 million.

Currently, Ms. Reiser is litigating the following notable matters:

- In re Pinterest Derivative Litigation (N.D. Cal.): Cohen Milstein, as Interim Lead Counsel, represents the Employees Retirement System of Rhode Island and other Pinterest shareholders in a consolidated shareholder derivative complaint against certain current officers and directors of Pinterest, including its Board Chairman and CEO, for breaches of fiduciary duty and other violations of Section 14(a) of the Exchange Act, relating to their alleged personal engagement in and facilitation of a systematic practice of illegal discrimination of employees on the basis of race and sex, from at least February 2018 through the present. As a result of this illegal misconduct, the Company's financial position, goodwill, and reputation among users has been harmed. Ms. Reiser is lead counsel in this litigation.
- Bank of America Corp. Stock Lending Markets Antitrust Lawsuit (S.D.N.Y.): Ms. Reiser represents Iowa PERS, Los Angeles County Employees Retirement Association, Orange County Employees Retirement System and Sonoma County Employees' Retirement Association in this ground-breaking lawsuit, in which plaintiffs allege collusion among six of the world's largest investment banks to prevent modernization of the securities lending market, a critical component of a strong economy.
- Public School Teacher' Pension and Retirement Fund of Chicago v. Bank of America Corporation, et al. (S.D.N.Y.): Cohen Milstein is Co-Lead Counsel in this lawsuit charging a number of the world's largest investment banks with conspiring to engineer and maintain a collusive and anti- competitive stranglehold over the interest rate swaps (IRS) market –one of the world's biggest financial markets. Ms. Reiser represents the Los Angeles County Employees Retirement Association.
- In re Valeant Pharmaceuticals International, Inc. Third-Party Payor Litigation (D.N.J.) Ms. Reiser represents a putative class of third-party payors arising from an alleged Racketeer Influenced and Corrupt Organization Act scheme perpetrated by Valeant, its top executives, and co-conspirators at affiliated specialty pharmacies to shield the company's drugs from competition, fraudulently inflate the prices of its products, and artificially boost sales at the expense of third party payors.

Ms. Reiser's successes include:

- L Brands, Inc. Derivative Litigation: Cohen Milstein, in partnership with the State of Oregon, the Oregon Public Employees Retirement Fund, and other shareholders, helped resolve allegations that officers and directors of L Brands, Inc., previous owners of Victoria's Secret, breached their fiduciary duties by maintaining ties with alleged sex offender and pedophile Jeffrey Epstein and fostering a culture of discrimination and misogyny at the company. Following a Delaware General Corporate Law Section 220 books and records demand and an extensive, proprietary investigation, L Brands and the now-standalone company, Victoria's Secret, agreed to stop enforcing non-disclosure agreements that prohibit the discussion of a sexual harassment claim's underlying facts; stop using forced arbitration agreements; implement sweeping reforms to their codes of conduct, policies and procedures related to sexual misconduct and retaliation; and to invest $45 million each, for a total of $90 million, in diversity, equity and inclusion initiatives and DEI Advisory Councils. Ms. Reiser led the Cohen Milstein team in this matter.
- In re Alphabet Shareholder Derivative Litigation (Sup. Crt. Cal., Santa Clara Cnty.): Cohen Milstein, as Co-Lead Counsel, represented Northern California Pipe Trades Pension Plan and Teamsters Local 272 Labor Management Pension Fund in a shareholder derivative lawsuit against the Board of Directors of Alphabet, Inc. Shareholders alleged that the tech giant's Board violated its fiduciary duty by enabling a double standard at Alphabet that allowed powerful executives to sexually harass and discriminate against women without consequence. On November 30, 2020, the court granted final approval of a historic settlement, including a $310 million commitment to fund diversity, equity, and inclusion initiatives at Alphabet-owned companies, and workplace and corporate governance reforms including limiting non-disclosure agreements and ending mandatory arbitration in sexual harassment, gender discrimination, and retaliation-related disputes. Ms. Reiser led this litigation.

- New York State Common Retirement Fund, et al. v. Stephen A. Wynn, et al. (Eighth Jud. Dist. Crt., Clark Cnty., Nev.): Cohen Milstein represented New York State Common Retirement Fund and the New York City Pension Funds as Lead Counsel in a derivative shareholder lawsuit against certain officers and directors of Wynn Resorts, Ltd., arising out of their failure to hold Mr. Wynn, the former CEO and Chairman of the Board, accountable for his longstanding pattern of sexual abuse and harassment of company employees. In March 2020, the Court granted final approval of a $90 million settlement in the form of cash payments and landmark corporate governance reforms, placing it among the largest, most comprehensive derivative settlements in history. Ms. Reiser led this litigation.
- NovaStar Mortgage Backed Securities Litigation (S.D.N.Y.): Cohen Milstein was Lead Counsel in this certified MBS class action. Ms. Reiser represented Iowa PERS, one of the class representatives. In March 2019, the U.S. District Court for the Southern District of New York granted final approval of a $165 million all-cash settlement, bringing this decade-long lawsuit, the last of 11 MBS class actions Cohen Milstein successfully handled, to conclusion.
- In re BP Securities Litigation (S.D. Tex.): Ms. Reiser represented the New York State Common Retirement Fund as Co-Lead Plaintiff in a securities class action filed in 2010, alleging that BP injured investors by intentionally downplaying the severity of the Deepwater Horizon oil spill and preventing investors from learning the magnitude of the disaster. Ms. Reiser took the lead in all aspects of this litigation: case development, motion practice, oversight and implementation of discovery strategies, depositions, expert discovery and argument. After successfully arguing for class certification to the district court, Ms. Reiser presented plaintiffs' defense of that court's decision to the Fifth Circuit U.S. Court of Appeals, which affirmed the class. The case settled for $175 million a few weeks before trial was set to begin.
- Countrywide Mortgage Backed Securities Litigation (C.D. Cal.): Ms. Reiser represented the Iowa, Oregon and Orange County public retirement systems in class action litigation related to Countrywide's issuance of mortgage-backed securities, which culminated in a landmark $500 million settlement. Over the course of the litigation, Ms. Reiser argued on investors' behalf at the motion to dismiss stage. She also handled various arguments related to discovery disputes and oversaw merits and expert discovery. She took a majority of the fact depositions and was recognized for having teased a number of salient points from witnesses during the depositions. Ms. Reiser also took the lead in working with experts to maximize damages.
- Policemen's Annuity and Benefit Fund of the City of Chicago, et al. v. Bank of America, NA, et al. (S.D.N.Y.): Ms. Reiser developed and litigated this novel class action, challenging trustee inaction in preventing investor losses. She represented the Arkansas Public Employees Retirement System, IPERS and Chicago Laborers in the case, which settled for $69 million. Ms. Reiser worked with plaintiffs' statistician to develop a sampling methodology for testing whether mortgages were underwritten properly and with plaintiffs' economist in the bid for class certification and approach to damages. At the final hearing, Judge Katherine B. Forrest commended the investors' legal team: "This is a very, very good result for the plaintiffs … [and] is something of which plaintiff counsel can be proud."
- ERIC v. Read (D. Or.): Oregon became the first state in the nation to implement a defined contribution savings program for private sector employees who either work for companies that don't offer a retirement plan or aren't eligible to participate in their employer's retirement plan, called OregonSaves. In October 2017, the ERISA Industry Committee, a national group representing large businesses filed a lawsuit, arguing that the program is preempted by ERISA. Ms. Reiser, retained as outside counsel, successfully defended OregonSaves from ERISA challenges, resulting in a settlement in March 2018.

Ms. Reiser also maintains an active pro bono practice. Recent notable successes include:

- Vivian Englund v. World Pawn Exchange, LLC (Cir. Crt., Coos Cnty., Or.): Cohen Milstein successfully represented the estate of a Kirsten Englund in a wrongful death case of first impression in Oregon state court and nationally, addressing the legal liability for federally licensed firearms dealers involved in online straw sales. The landmark settlement (October 2018) establishes important legal precedent at the state and federal levels regarding gun dealer responsibility for online sales of firearms. Given the precedential significance of this lawsuit, Cohen Milstein

was named to The National Law Journal's "2019 Pro Bono Hot List" and won Public Justice Foundation's "2019 Trial Lawyer of the Year – Finalist" award.

In addition, Ms. Reiser has represented plaintiffs in employment cases. In Wade v. Kroger (W.D. Ky.), she represented African American employees who received a $16 million settlement to resolve claims that the retailer Kroger had discriminated against them in pay and promotions. She was also involved in Beck v. The Boeing Co. (W. D. Wash.), a case alleging sex discrimination in compensation and promotions that settled for $72.5 million.

Ms. Reiser has twice been named a winner of the Burton Awards, placing her among the "finest law firm writers" in the nation. She was a winner of the Burton Awards in 2019, as a co-author of "INSIGHT: Holding Firearms Dealers Accountable for Online Straw Sales," Bloomberg Law (December 19, 2018), and in 2016 for "Pre-Dispute Arbitration Clauses: Taking the Alternative Out of Dispute Resolution," Bloomberg BNA, Class Action Litigation Report (December 11, 2015). After the publication of "Pre-Dispute Arbitration Clauses," Paul Bland, Executive Director of Public Justice wrote: "This is invaluable advocacy that takes industry-side advocacy and exposes its flaws and failings. I'm very glad to see this kind of very high-quality advocacy and critical thinking."

Ms. Reiser also is the author or co-author of "Boards Must Be Held Accountable for Sexual Harassment Scandals," Financial Times (January 1, 2020); "Event-Driven Litigation Defense," Harvard Law School Forum on Corporate Governance and Financial Regulation (May 23, 2019); "INSIGHT: Sandy Hook Decision Reins in Gun Industry Shield Law," Bloomberg Law (March 28, 2019); "The Critical ABCs of Financial Antitrust Litigation & Recovery Opportunities," an ISS Securities Class Actions Services White Paper (February 18, 2019): "Trends in ERISA Litigation in 2017," Law360 (December 17, 2017); "Carefully Tailored ERISA Claims After Amgen V. Harris," Law360 (January 25, 2017); "Omnicare: Negligence is the New Strict Liability When Pleading Omissions Under the Securities Act," Bloomberg BNA, Corporate Law & Accountability Report (April 10, 2015); the author of "Dodd Frank's Protections for Senior Citizens: An Important, Yet Insufficient Step," University of Cincinnati Law Review, Volume 81, Issue 2 (May 30, 2013); "Why Courts Should Favor Certification of MBS Actions," ABA Securities Litigation Journal, Volume 22, Number 1 (Fall 2011); and the co-author of "The Misapplication of American Pipe Tolling Principles," ABA Securities Litigation Journal, Volume 21, Number 2 (Winter 2011). She also co-authored "Opt-Outs: Making Private Enforcement of the Securities Laws Even Better," featured in the Winter/Spring 2008 edition of the ABA's Class Action and Derivative Suit Committee Newsletter and "Companies in the Cross Hairs: When Plaintiffs Lawyers Choose Their Targets, They Look for These Employment Practices," The Legal Times (February 21, 2005).

Ms. Reiser is a noted speaker, often called on to discuss important issues such as pension system participation in class action litigation, the ABCs of antitrust litigation for investors, and trends in ERISA litigation.

Ms. Reiser attended Vassar College, graduating with honors, and earned her J.D. at the University of Virginia School of Law. She has served as a board member at Seattle Works and the Pacific Northwest Ballet.

Christina Donato Saler

Christina Donato Saler is a Partner at Cohen Milstein, and a member of the firm's Securities Litigation & Investor Protection practice group.

Prior to joining Cohen Milstein in 2017, Ms. Saler was a securities class action litigator at a nationally recognized plaintiffs law firm, where she distinguished herself as a skilled litigator and trusted client counselor of public pension funds and other institutional investors.

Ms. Saler represents her clients in a broad range of securities, shareholder rights, and derivative actions as well as other complex litigation. Ms. Saler gained substantial trial experience prosecuting First Amendment cases involving individual plaintiffs against media defendants. She has been named in Lawdragon's "500 Leading Plaintiff Financial Lawyers" list

(2021) and recognized by Law & Politics and the publishers of Philadelphia Magazine as a Rising Star, as listed in the Super Lawyer's publications (2011 – 2013).

Ms. Saler is currently involved in the following notable matters:

- Pharmacy Benefit Manager (PBM) Ohio Litigation (Franklin C.P., Ohio): Cohen Milstein serves as Special Counsel to the Ohio Attorney General's Office in breach of contract litigation against PBMs Express Scripts, Inc. and OptumRx Administrative Services, LLC for allegedly overcharging certain of Ohio's state-funded health plans on millions of prescription drug claims.
- PBM State Investigations: Led by Ms. Saler, Cohen Milstein serves as Special Counsel to state Attorneys General throughout the United States in their investigation into the billing practices and fee structures of managed care organizations (MCOs) and PBMs in their delivery of services to state-funded health plans.
- In Re Tintri, Inc. Securities Litigation (Sup. Crt., San Mateo County, Cal.): Cohen Milstein represents investors in this securities class action, alleging that Tintri made misstatements and omissions in in its IPO registration statement and prospectus.
- Universal Health Services, Inc. Shareholder Derivative Litigation (Del. Ch.): Cohen Milstein represents Delaware County Employees' Retirement Fund and Chester County Employees' Retirement Fund in a shareholder derivative action alleging that nominal defendant Universal Health Services' directors and officers breached their fiduciary duties of care and loyalty to the company. The complaint cites the directors' and officers' alleged failures to properly oversee Universal Health Services' operations and compliance with applicable laws and regulations pertaining to its billing practices for mental health patients.

Some of Ms. Saler's recent successes include:

- Ohio Department of Medicaid v. Centene, Corp. (Franklin C.P., Ohio): On June 14, 2021, the Ohio Attorney General announced a $88.3 million settlement with Centene Corporation and its wholly owned subsidiaries for their alleged role in not only breaching contractual and fiduciary obligations to the Ohio Department of Medicaid (ODM), but also defrauding ODM out of millions of dollars through an elaborate scheme with pharmacy benefit subcontractors to maximize company profits at the expense of the ODM and millions of Ohioans who rely on Medicaid. Led by Ms. Saler, Cohen Milstein served as Special Counsel to the Ohio Attorney General's Office in this litigation.
- Eric Weiner v. Tivity Health, Inc. (M.D. Tenn.): Cohen Milstein was Class Counsel, representing Class Representative Oklahoma Firefighters' Pension and Retirement System and other purchasers of Tivity Health stock in a putative securities class action for Exchange Act violations related to Tivity's misleading the public about its relationship with United Healthcare, Inc. On October 7, 2021, the Court granted final approval of a $7.5 million settlement. Ms. Saler managed all aspects of the litigation.
- In re Woodbridge Investments Litigation (C.D. Cal.): Cohen Milstein is a part of the executive leadership team in a consolidated securities class action against Comerica Bank for violating California statutory law and breaching its fiduciary duties by aiding and abetting an elaborate multi-billion-dollar Ponzi-scheme fraud committed by Robert H. Shapiro and the Woodbridge Group of Companies, a real estate investment company that transacted the scheme through Comerica bank accounts. On September 3, 2021, the Court granted preliminary approval of a $54.2 million settlement between Woodbridge investors and Comerica Bank.

In addition to her litigation work, Ms. Saler also advises Cohen Milstein's clients to keep them apprised of regulatory trends and legal decisions that may impact the management of their funds. In this capacity, Ms. Saler is the Editor of the Shareholder Advocate, a quarterly publication focused on legal issues relevant to public and Taft-Hartley pension funds and the institutional investor community.

In 2017, Governor Tom Wolf of Pennsylvania appointed Ms. Saler to the Board of the Pennsylvania Humanities Council, whose mission is to find ways of using the humanities to help people take action for positive change in their lives and communities, and to demonstrate this effectiveness to leaders and organizations invested in making Pennsylvania a better place to live. Ms. Saler is a member of the Executive Committee and Chairs the Government Advocacy Committee.

Ms. Saler is also a volunteer at Philadelphia Volunteer Indigence Program (VIP), where she represents individuals in jeopardy of losing their homes in the Philadelphia Common Pleas Court's Mortgage Foreclosure Program.

Ms. Saler received her B.A. from Fairfield University. She received her J.D., with honors, from Rutgers University Law School. In addition to other academic honors, Ms. Saler was selected for the Rutgers Law Journal and served as the Lead Articles Editor. She is also the author of "Pennsylvania Law Should No Longer Allow a Parent's Right to Testamentary Freedom to Outweigh the Dependent Child's 'Absolute Right to Child Support,'" 34 Rutgers Law Journal, 235 (Fall 2002).

Ms. Saler's professional career began in advertising. She was a Senior Account Executive with the Tierney Agency, where she managed various advertising campaigns and Verizon's contractual relationship with its spokesperson, James Earl Jones.

Joseph M. Sellers

Joseph M. Sellers is a Partner at Cohen Milstein, Co-Chair of the firm's Civil Rights & Employment Practice Group, a practice he founded, and the former Chair of the firm's Executive Committee. In a career spanning nearly four decades, Mr. Sellers has represented victims of discrimination and other illegal employment practices individually and through class actions. He brings to his practice a deep commitment and broad background in fighting discrimination in all its forms. That experience includes decades of representing clients in litigation to enforce their civil rights, participating in drafting and efforts to pass landmark civil rights legislation, testifying before Congress on various civil rights issues, training government lawyers on the trial of civil rights cases, teaching civil rights law at various law schools and lecturing extensively on civil rights and employment matters.

Mr. Sellers, who joined the firm in 1997, has been practicing civil rights law for more than 40 years, during which time he has represented individuals and classes of people who have been victims of civil rights violations or denied other rights in the workplace. He has tried to judgment before courts and juries several civil rights class actions and a number of individual cases and has argued more than 30 appeals in the federal and state appellate courts, including the United States Supreme Court. He has served as class counsel, and typically lead counsel, in more than 75 civil rights and employment class actions. His clients have included persons denied the rights and opportunities of employment because of race, national origin, religion, age, disability and sex, including sexual orientation and identity. He has represented victims of race discrimination in the denial of equal access to credit, in the rates charged for insurance and in the equal access to health clubs, retail stores, restaurants and other public places. He has challenged housing discrimination on the basis of race and the denial of housing and public accommodations to people with disabilities.

Some of the noteworthy matters he has handled include: Walmart v. Dukes (U.S. S.Ct.), delivered argument on behalf of class of women who alleged sex discrimination in pay and promotions in case establishing new rules governing class certification; Randolph v. Greentree Financial (U.S. S.Ct.), delivered argument on behalf of consumer challenging enforcement of arbitration agreement in case establishing rules governing the enforceability of arbitration agreements; Beck. v. Boeing Company (W.D. Wash.), co-lead counsel on behalf of class of more than 28,000 women employees alleging sex discrimination in pay and overtime decisions; Conway, et al. v. Deutsch (E.D. Va.), co-lead counsel on behalf of class of female covert case officers at the CIA alleging sex discrimination in promotions and job assignments; Johnson, et al. v. Freeh (D.D.C.), co-lead counsel on behalf of class of African-American FBI special agents alleging racial discrimination in promotion and job assignments; Keepseagle v. Veneman (D.D.C.), lead counsel on behalf of class of Native American farmers and ranchers alleging denial of equal access to credit by USDA; Neal v. Director, D.C.

Dept. of Corrections (D.D.C.), co-lead counsel in which he tried first sexual harassment class action to a jury, on behalf of a class of women correctional employees and women and men subject to retaliation; Doe v. D.C. Fire Department (D.D.C.), in which he established after trial that an applicant with HIV could properly serve as a firefighter; Floyd-Mayers v. American Cab Co. (D.D.C.), in which he represented persons who alleged they were denied taxi service because of their race and the race of the residents at the location to which they asked to be driven; and Trotter, et al. v. Perdue Farms (D. Del.), lead counsel on behalf of chicken processing workers alleging violations of federal wage and hour and employee benefits law.

Prior to joining Cohen Milstein, Mr. Sellers served for over 15 years as the Director of the Employment Discrimination Project of the Washington Lawyers' Committee for Civil Rights and Urban Affairs, an organization providing pro bono representation in a broad range of civil rights and related poverty issues. He was a member of the transition teams of Obama/Biden in 2008 and Clinton/Gore in 1992 and 1993, and served as a Co-Chair of the Special Committee on Race and Ethnicity of the D.C. Circuit Task Force on Gender, Race and Ethnic Bias to which he was appointed by the judges of the D.C. Circuit Court of Appeals and the U.S. District Court for the District of Columbia. In 2018, Mr. Sellers was appointed by the Chief Justice of the United States to the Advisory Committee on Civil Rules of the Judicial Conference of the United States. Established by the Supreme Court in 1935, Advisory Committees on the Rules of Appellate, Bankruptcy, Civil, Criminal Procedure, and the Rules of Evidence carry on a continuous study of the rules and recommend changes to the Judicial Conference through a Standing Committee on Rules of Practice and Procedure.

Throughout his career, Mr. Sellers has also been active in legislative matters. He helped to draft and worked for the passage of the Civil Rights Act of 1991, the Americans with Disabilities Act of 1990 and the Lily Ledbetter Fair Pay Restoration Act of 2009. He has testified more than 20 times before Committees of the United States Senate and House of Representatives on various civil rights and employment matters.

A teacher and mentor, Mr. Sellers has trained lawyers at the U.S. Equal Employment Opportunity Commission and the U.S. Department of Justice on the trial of civil rights cases and was an Adjunct Professor at the Washington College of Law at American University, where he taught Employment Discrimination law, and at the Georgetown University Law Center, where he taught Professional Responsibility. In addition, he has lectured extensively throughout the country on various civil rights and employment topics. Mr. Sellers is also a professionally trained mediator and has served as the President of the Washington Council of Lawyers.

Mr. Sellers has been recognized as one of the top lawyers in Washington and as one of the top plaintiffs' employment lawyers in the U.S. In 2010, The National Law Journal named Mr. Sellers one of "The Decade's Most Influential Lawyers"; in 2011, The Legal Times named him a "Legal Visionary"; and in 2017, American Lawyer recognized him as "A Giant of the Plaintiffs Bar." Other prestigious recognitions include the Washington Lawyers' Committee for Civil Rights and Urban Affairs awarded Mr. Sellers the Wiley Branton Award for leadership in civil rights (2012); Lawdragon named him a "Lawdragon Legend" (2016) for being ranked one of the top 500 lawyers in the U.S. for 10 consecutive years; the NAACP honored him with the "Foot Soldier in the Sand Award" (2018) for his "willingness to go above and beyond the call of duty"; Legal500 has named him a "Leading Lawyer" in plaintiff-side employment law since 2020; and Law360 named him a "2021 MVP – Employment Law," recognizing him as one of the top five most influential employment lawyers in the U.S.

Mr. Sellers received his B.A. in American History and Literature from Brown University, and earned his J.D. from Case Western Reserve School of Law, where he served as Research Editor of the Case Western Reserve Law Review.

Daniel H. Silverman

Daniel H. Silverman is a Partner and a member of the Antitrust Practice Group at Cohen Milstein. Mr. Silverman prosecutes class actions on behalf of consumers, small businesses, and employees in a variety of industries in courts around the country.

Mr. Silverman is highly regarded by the legal industry, economists, and academics alike for his deep engagement with economic experts and for successfully shepherding cases through class certification. In 2022, Law360 named him a "Rising Star - Antitrust," the only plaintiff lawyer to be named, citing Mr. Silverman's keen interest in the dynamic interplay of economics, econometrics, and social science in driving antitrust law and economic justice. The National Law Journal also recognized him as a 2022 Elite Trial Lawyers "Rising Star of the Plaintiffs Bar."

Among his successes, Mr. Silverman has helped litigate the following matters:

- Domestic Drywall Antitrust Litigation (E.D. Pa.): Cohen Milstein was co-lead counsel in an antitrust litigation alleging that the seven major U.S. manufacturers of drywall conspired to manipulate prices. The Court granted final approval of settlements that totaled more than $190 million.
- VFX/Animation Workers (N.D. Cal.): In In re Animation Workers Antitrust Litigation (N.D. Cal.), Mr. Silverman represented a class of animation and visual effects workers in a lawsuit alleging that the defendants, who include Pixar, Lucasfilm Ltd. and DreamWorks Animation, secretly agreed not to solicit class members and to coordinate on compensation. The Court approved settlements with all of the defendants for a total of $168.5 million.
- Plasma-Derivative Protein Therapies Antitrust Litigation (N.D. Ill.): Cohen Milstein was co-lead counsel for plaintiffs alleging a conspiracy to reduce the supply and increase prices of IVIG and Albumin—life-saving therapies derived from blood plasma. The lawsuit was resolved for $128 million to compensate customers who were overcharged for these vital therapies.

Mr. Silverman is currently involved in litigating the following notable matters:

- In re Interest Rate Swaps Antitrust Litigation (S.D.N.Y.): Cohen Milstein is co-lead counsel in a class action against several of the world's largest investment banks that are alleged to have colluded with one another to crush competition in the trillion-dollar market for interest rate swaps, a type of financial derivative. The case is in active discovery.
- Mixed Martial Arts (MMA) Antitrust Litigation (D. Nev.): Cohen Milstein is co-lead counsel in a class action on behalf of MMA fighters alleging that Zuffa LLC – commonly known as the Ultimate Fighting Championship or "UFC" – has unlawfully monopolized the markets for promoting live professional MMA bouts and for purchasing the services of professional MMA fighters.
- Rotavirus Vaccines Antitrust Litigation (E.D. Pa.): Cohen Milstein developed and filed a proprietary case against Merck & Co., Inc. on behalf of a class of direct purchasers, alleging that Merck engaged in an anticompetitive bundled discount scheme to maintain its monopoly power in the rotavirus vaccines market after entry by GlasxoSmithKline plc (GSK).

Prior to joining the firm in 2012, Mr. Silverman served as the Executive Director of Legal Economics, LLC, a Cambridge, Massachusetts-based firm specializing in the analysis of complex economic issues related to legal issues. At Legal Economics, he supported expert economic testimony in a variety of antitrust matters involving horizontal price-fixing, mergers, and loyalty discounts in industries ranging from health care and computer hardware to live music promotion. His experience at Legal Economics provides him with unique insight into the inner workings of expert testimony in antitrust matters. In addition, Mr. Silverman has represented public sector clients before the Federal Energy Regulatory Commission, state public utility commissions, and federal appellate courts.

Mr. Silverman is a magna cum laude graduate of Brown University, with a B.S. in Physics, where he was elected to Phi Beta Kappa. He earned a J.D., magna cum laude, from Harvard Law School. In law school, he served as a Managing Editor of the Harvard Environmental Law Review. Mr. Silverman also served as a summer associate at the U.S. Department of Justice in the Environment and Natural Resources Division, Law and Policy Section.

Daniel A. Small

Daniel A. Small is a Partner at Cohen Milstein and was the Co-Chair of the firm's Antitrust practice group for ten years. He also had the honor of serving on the firm's Executive Committee for over a decade through 2019.

Mr. Small is one of the most respected litigators in antitrust class actions. In 2020, Law360 named him a "Titan of the Plaintiffs Bar" for his decades of success in antitrust and other cases, including his extensive involvement in a class action against Sutter Health that settled on the eve of trial in October 2019 for $575 million and detailed injunctive relief. He is also named on the Lawdragon "500 Leading Lawyers in America" list (2018 – 2022) and the Super Lawyers' list of Top Antitrust Litigation Attorneys in Washington, DC (2013 – 2022). Since 2009, Legal 500 has annually recognized Mr. Small and Cohen Milstein as a "Leading Plaintiffs Antitrust Class Action Lawyer/Firm"; Benchmark Plaintiff has repeatedly awarded Mr. Small with its "National Litigation Star – Antitrust" recognition; and Global Competition Review and Who's Who Legal: Competition has named him a "Leading Thought Leader – Competition" since 2014.

Mr. Small is widely regarded for his intellectual energy, deeply studying the economic issues underpinning antitrust disputes and developing a sophisticated understanding of how conspiracies and monopolies operate in a range of complex markets – from animation and visual effects workers and computer software and hardware to wild blueberries and hospital nurses – and achieving just compensation for victims and promoting more open markets nationwide.

Mr. Small has represented plaintiff classes, and defended unions, as lead or co-lead counsel in numerous antitrust cases and obtained settlements and judgments totaling over one billion dollars. He has tried cases to verdict and argued in numerous appellate courts, including the U.S. Supreme Court.

Currently, Mr. Small is litigating the following notable matters:

- Sutter Health Antitrust Litigation (Sup. Ct., San Fran. Cty., Cal.): On August 27, 2021, the Court granted final approval of a $575 million eve-of-trial settlement, which includes significant injunctive relief, in this closely-watched antitrust class action against Sutter Health, one of the largest healthcare providers in California, for restraining hospital competition through anticompetitive contracting practices with insurance companies. Cohen Milstein was one of five firms that litigated this case since 2014 on behalf of a certified class of self-insured employers and union trust funds. California's Attorney General joined the suit in March 2018.
- Rotavirus Vaccines Antitrust Litigation (E.D. Pa.): Cohen Milstein developed and filed a proprietary case against Merck & Co., Inc. on behalf of a class of direct purchasers, alleging that Merck engaged in an anticompetitive bundled discount scheme to maintain its monopoly power in the rotavirus vaccines market after entry by GlasxoSmithKline plc. Cohen Milstein is co-lead counsel.
- National Association of Realtors Litigation (N.D. Ill.): Cohen Milstein, as co-lead counsel, is representing home sellers in a class action against the National Association of Realtors and four of the largest national real estate broker franchisors for conspiring to require home sellers to pay the broker representing the buyer of their homes, and to pay at an inflated amount, in violation of federal antitrust law.
- Google Wi-Fi Litigation (N.D. Cal.): Cohen Milstein is co-lead counsel in a nationwide class action alleging that Google violated the Wiretap Act when its Street View vehicles secretly collected payload data from unencrypted Wi-Fi networks. Plaintiffs defeated a motion to dismiss raising novel Wiretap Act issues, and the ruling was affirmed on interlocutory appeal to the Ninth Circuit. The court approved a $13 million cy press settlement in March 2020. On December 27, 2021, the Ninth Circuit denied the objectors' appeal.

Past successes include:

- Animation Workers Litigation (N.D. Cal.): Cohen Milstein served as co-lead counsel representing a class of animation and visual effects workers who alleged that Pixar, Lucasfilm, DreamWorks, Disney and other studios

conspired to suppress their pay primarily though no poach agreements. The court granted final approval of $168.95 million in settlements.

- NYU Hospitals Center Litigation (S.D.N.Y.): Cohen Milstein served as lead trial counsel defending 1199SEIU United Healthcare Workers East against an antitrust claim by NYU Hospitals Center alleging that 1199SEIU conspired with a multi-employer bargaining association and others to increase NYU's required contributions to the Union's benefit fund. In June 2018, the court granted defendants' motion to dismiss the antitrust claim. All remaining claims were dismissed with prejudice in December 2018.
- Prime Healthcare Services Litigation (S.D. Cal.): Cohen Milstein defended the Service Employees International Union in an antitrust action brought by Prime Healthcare Services, a hospital chain in Southern California, alleging that SEIU conspired with Kaiser Permanente to drive Prime and certain other hospitals out of the market. Cohen Milstein led the successful effort to dismiss the complaint and amended complaint in the Southern District of California and to defend the dismissal on appeal to the Ninth Circuit.
- Michigan Blue Cross Litigation (E.D. Mich.): Cohen Milstein has served as co-lead counsel in this class action challenging Michigan Blue Cross's use of most favored nation provisions in its provider agreements with numerous hospitals in Michigan. The court granted final approval of a $30 million settlement, and the Sixth Circuit ultimately upheld the settlement on appeal.
- Hy-Ko Products Antitrust Litigation (N.D. Ohio): Cohen Milstein represented Hy-Ko Products Co., a manufacturer of keys and key duplication machines, in a monopolization case against its dominant competitors. The litigation settled on favorable terms.
- In re Buspirone Antitrust Litigation (S.D.N.Y.): Cohen Milstein served as co-lead counsel in an end-payor class action alleging that Bristol Myers-Squibb Co., the manufacturer of the prescription drug Buspar, conspired to keep generic versions of the drug out of the market. The class of end-payors settled for $90 million.
- Pease v. Jasper Wyman & Son, et al. (Sup. Ct., Knox Cty., Me.): Cohen Milstein was lead counsel representing a class of wild blueberry growers in Maine who sued four blueberry processors for conspiring to depress blueberry prices. The case was tried to a jury in Maine state court, where Mr. Small was co-lead trial counsel. The jury found the processors liable for 100% of the damages estimated by plaintiffs' expert, resulting in a judgment of $56 million.

Mr. Small also maintains an active pro bono practice. Current notable cases include:

- Lewis v. Cain, et al. (M.D. La.): Cohen Milstein represents a certified class of more than 6,000 prisoners in a lawsuit filed against the Louisiana State Penitentiary in Angola, LA, the largest maximum-security prison in the country, and the Louisiana Department of Public Safety and Corrections for deficient and discriminatory medical care in violation of the Eighth Amendment, the Americans with Disabilities Act, and the Rehabilitation Act. After an 11-day bench trial and extensive post-trial briefing, on March 31, 2021, the Court ruled in favor of the Plaintiffs, ordering sweeping injunctive relief and medical policy reform at the prison.
- Citizens for Responsibility and Ethics in Washington, et al. v. Trump, and District of Columbia et al. v. Trump: Cohen Milstein represented restaurant and hotel plaintiffs and the Attorneys General of Maryland and the District of Columbia in lawsuits against President Trump, seeking to enjoin his ongoing receipt of emoluments in violation of the U.S. Constitution. After victories in the Second and Fourth Circuits on interlocutory appeal, the lawsuits were mooted when President Trump left office.
- Seeger, et al. v. United States Department of Defense (D.D.C.): Cohen Milstein is representing a group of civilian and military lawyers who represent a detainee in the military commission proceedings at the Guantánamo Bay naval station. Cohen Milstein filed a lawsuit under the Administrative Procedure Act against the Department of Defense, the Navy, and the Convening Authority, claiming that military commission personnel have been forced to live and work for years in facilities that have been found to have dangerous levels of cancer-causing chemicals and other toxic substances, ranging from formaldehyde to heavy metals and mold. The case is before the court on cross motions for summary judgment.

In 2018, Mr. Small, Cohen Milstein, and the co-lead counsel team in Animation Workers Antitrust Litigation were nominated for Public Justice Foundation's Trial Lawyer of the Year, recognizing the legal teams that made the most

outstanding contributions to the public interest through precedent-setting or otherwise extraordinary litigation concluded within the last year.

Mr. Small serves on the Advisory Board of the American Antitrust Institute (AAI), a pre-eminent thought-leadership organization devoted to promoting competition. He is also Chair of the selection committee for the Jerry S. Cohen Memorial Fund Writing Award, which annually recognizes top antitrust scholarship.

Mr. Small clerked for the Honorable Roger Vinson, United States District Court for the Northern District of Florida, from 1986 to 1988.

Mr. Small attended Colgate University, where he graduated with a B.A., cum laude, in History. He earned his J.D. at American University's Washington College of Law.

Daniel S. Sommers

Daniel S. Sommers is a Partner at Cohen Milstein, the immediate past Co-Chair of the firm's Securities Litigation & Investor Protection practice, and a former member of the firm's Executive Committee, on which he served for twelve years from 2007 through 2019.

Mr. Sommers is a highly-regarded securities litigator and thought leader in the areas of securities and class action litigation as well as investor rights. During his over three-decade career at Cohen Milstein, Mr. Sommers has taken leadership roles in litigating large, complex and significant securities cases. He has provided litigation counsel to institutional investors, including state-wide public pension funds; public safety pension funds and Taft-Hartley pension funds. Many of his cases have resulted in important rulings and legal precedents, as well as in significant recoveries for investors totaling hundreds of millions of dollars.

Some of his notable matters include:

- Bear Stearns Mortgage Pass Through Securities Litigation (S.D.N.Y.): Co-lead counsel representing the New Jersey Carpenters Health Fund in a $505 million landmark settlement (including a $5 million expense fund) of a securities class action suit alleging that Bear Stearns violated securities laws in the sale of mortgage backed securities to investors. This is the largest recovery ever obtained in a securities class action on behalf of investors in mortgage-backed securities.
- Converium/SCOR Securities Litigation (Netherlands): Co-lead counsel in a groundbreaking $58.4 million securities class action recovery, in which the Amsterdam Court of Appeal declared binding a world-wide class action settlement of claims of non-U.S. investors who purchased Converium shares outside of the United States. The ruling was a major victory for worldwide investors because it successfully implemented the Dutch Collective Settlement Statute even though the underlying transactions had limited contact with the Netherlands.
- Fannie Mae Securities Litigation (D.D.C.): Played a significant role in a high-profile securities class action representing the Ohio Public Employees Retirement System and the State Teachers Retirement System of Ohio against Fannie Mae, several of its former executives and KPMG involving allegations of falsified financial statements. The $153 million settlement amount represents the largest recovery in a securities fraud class action ever obtained in the United States District Court for the District of Columbia.
- CP Ships Ltd. Securities Litigation (M.D. Fla.): Co-lead counsel in a class action lawsuit alleging that CP Ships, a Canadian company headquartered in England but with substantial operations in Tampa, Florida, issued false financial statements. Mr. Sommers argued an appeal in the U.S. Court of Appeals for the Eleventh Circuit, successfully opposing objections to a settlement that provided non-U.S. investors with the protections of the federal securities laws.

Mr. Sommers has obtained significant recoveries for investors in numerous other securities class action cases in federal courts throughout the United States including: Steiner v. Southmark Corporation (N.D. Tex.) (over $70 million recovery); In re PictureTel Inc. Securities Litigation (D. Mass.) ($12 million recovery); In re Opus Bank Securities Litigation (C.D. Cal.) (representing the Arkansas Public Employees Retirement System and obtaining a $17 million recovery); In re Physician Corporation of America Securities Litigation (S.D. Fla.) ($10.2 million recovery); In re Gilat Satellite Securities Litigation (E.D.N.Y.) ($20 million recovery); In re Pozen Inc. Securities Litigation (M.D.N.C.) ($11.2 million recovery); In re Nextel Communications Securities Litigation (D.N.J.) (up to $27 million recovery); In re PSINet Inc. Securities Litigation (E.D. Va.) ($17.8 million recovery); In re Cascade International Inc. Securities Litigation (S.D. Fla.) (global recovery of approximately $10 million); In re GT Solar Securities Litigation (D.N.H.) (representing the Arkansas Public Employees Retirement System and obtaining a recovery of $10.5 million); Mulligan v. Impax Laboratories, Inc. (N.D. Cal.) (representing the Boilermakers Blacksmith National Pension Trust and obtaining a recovery of $8 million); Plumbers & Pipefitters National Pension Fund v. Orthofix, N.V. (S.D.N.Y.) (representing the Plumbers & Pipefitters National Pension Fund and obtaining a recovery of $11 million) and In re ECI Telecom Securities Ltd. Litigation (E.D. Va.) ($21.75 million recovery). He has also handled significant appellate matters including arguing before the United States Court of Appeals for the Ninth Circuit in Hemmer Group v. Southwest Water Company, where he obtained a reversal of the district court's order dismissing investors' claims under the Securities Act of 1933. In addition, he was co-lead counsel for investors before the Supreme Court of the United States in Broudo v. Dura Pharmaceuticals, Inc., 544 U.S. 336 (2005) (addressing the standards for pleading loss causation).

Mr. Sommers is also experienced in non-class action litigation. He represented TBG Inc., a multi-billion dollar privately-held overseas corporation, in a multi-party, complex action alleging fraud in a corporate acquisition and represented individuals in connection with investigations brought by the United States Securities and Exchange Commission. He also has represented publicly traded corporations in the prosecution and defense of claims.

Mr. Sommers has litigated cases covering a wide-range of industries including the financial services, computer software, pharmaceutical, healthcare, insurance, real estate and telecommunications industries among others. In addition, he has substantial experience in cases presenting complex accounting and auditing issues.

A thought leader in the area of securities and class action litigation, as well as investor rights, Mr. Sommers is frequently called on to speak both to other lawyers and institutional investors. He has been quoted on these topics in a variety of publications including The Wall Street Journal, The Washington Post, Bloomberg BNA, Pension and Investments, and Law360.

Mr. Sommers is the immediate past Chair of the Markets Advisory Council of the Council of Institutional Investors, having served for two consecutive terms (2018 – 2019). He is currently a member of the Securities Litigation Committee of the National Association of Public Pension Attorneys. He served as Chairman and Vice-Chairman of the Investor Rights Committee of the Corporation, Finance and Securities Law Section, District of Columbia Bar, and through the years has been a guest lecturer at Columbus School of Law at the Catholic University of America; Georgetown Law Center; and George Washington University Law School. He has also served as a member of the editorial advisory boards of Bloomberg BNA Securities Litigation & Law Report and Law360 Securities.

Named a Washington, D.C. Super Lawyer every year since 2011, Mr. Sommers has also been awarded Martindale-Hubbell's highest rating of AV Preeminent®, and Benchmark Plaintiff has recognized him as a litigation star in multiple years.

Mr. Sommers attended Union College, where he earned a B.A., magna cum laude, in Political Science, and graduated from George Washington University Law School.

Christine E. Webber

Christine E. Webber is Co-Chair of the Civil Rights & Employment practice group. In this role, Ms. Webber represents victims of discrimination and wage and hour violations in class and collective actions.

Ms. Webber is a tenacious, hands-on litigator, highly-regarded for her ability to organize large, high-profile class and collective actions and work closely with economic and statistical experts on developing sophisticated statistical analyses of class claims.

Ms. Webber has had the honor of representing clients in some of the largest, groundbreaking discrimination and Fair Labor Standards Act (FLSA) class and collective actions in the United States, including Keepseagle v. Vilsack (D.D.C.), a historic nationwide race-based discrimination class action brought by Native American ranchers and farmers against the United States Department of Agriculture (USDA). The landmark $760 million settlement required the USDA to pay $680 million in damages to thousands of Native Americans, to forgive up to $80 million in outstanding farm loan debt and to improve the farm loan services the USDA provides to Native Americans. Ms. Webber was lead counsel in In re Tyson Foods FLSA MDL (M.D. Ga.), a collective action involving FLSA claims at over 40 Tyson chicken processing plants, which ultimately resolved the claims of 17,000 chicken processing workers who had been denied compensation for donning and doffing required safety and sanitary equipment; and Hnot v. Willis Group Insurance (S.D.N.Y.), where she represented a class of women vice presidents in Willis' Northeast region, who complained of discrimination with respect to their salary and bonuses, as well as promotions. This "glass ceiling" case settled for an average payment of $50,000 per woman, a record-breaking settlement in 2007 for a sex discrimination class action. Ms. Webber continues the fight in Dukes v. Wal-Mart – a nationwide pay and promotion sex discrimination class action that went to the U.S. Supreme Court in 2011 and addressed standards for class certification in employment discrimination matters.

Ms. Webber is currently leading several high-profile class and collective actions, including:

- Bird, et al. v. Barr (D.D.C.): Ms. Webber is leading a putative class action of women who suffered systemic discrimination on the basis of sex when they were terminated from the Federal Bureau of Investigation's Basic Training program for new agents and intelligence analysts. In April 2022, the Court denied the FBI's motion to dismiss.
- CFHC, et al. v. CoreLogic Rental Property Solutions (D. Conn.): Ms. Webber represents the Connecticut Fair Housing Center and Carmen Arroyo in a cutting-edge legal challenge to CoreLogic's algorithmic background check system which allegedly discriminates against African-Americans and Latinos seeking rental housing in violation of the Fair Housing Act. Because of the novel artificial intelligence (AI)-related discrimination claims, the case has been identified as one of Law360's "3 Real Estate Cases to Watch in 2022." A bench trial was initiated in March 2022.
- Reynolds et al v. Fidelity Investments Institutional Operations Company (M.D.N.C.): Ms. Webber successfully negotiated a settlement of a nationwide FLSA class action involving thousands of employees at Fidelity Investments Institutional Operations Company, Inc. call centers who were not paid overtime for mandatory pre-shift work. The court granted final approval to the settlement in January 2020.
- Ralph Talarico v. Public Partnerships, LLC (E.D. Pa.): Ms. Webber is leading a conditionally certified collective action of more than 4,900 past and present "direct care" workers, who provide home care for individuals with disabilities, for denied overtime wages. The case involves novel joint employer issues. In 2020, the Third Circuit reversed and remanded the district court's order granting PPL summary judgement. In February 2021, the Third Circuit denied PPL's request for a rehearing, thereby upholding its 2020 ruling and reaffirming Plaintiffs' successful appeal.
- Castillo, et al. v. Western Range Association (D. Nev.): Ms. Webber is also representing a putative class of shepherds hired primarily from Peru and Chile, who allege that Western Range Association, which brought the plaintiffs into the U.S. to work as herders through the H-2A visa program, grossly underpaid them, in violation of Nevada law. As of May 2022, we are awaiting district court rulings on class certification and on summary judgment.
- Dukes v. Walmart (federal courts nationwide): Ms. Webber is coordinating a series of individual gender-related pay and promotion discrimination claims against Walmart on behalf of approximately 1800 women who filed

charges before the EEOC following decertification of the Dukes class. This is the latest step in addressing the merits of this massive discrimination lawsuit, which went up to the Supreme Court in 2011. As of January 2022, nearly all of these lawsuits have been resolved, but many claims remain pending before the EEOC.

For her tireless work, Ms. Webber has been frequently recognized by the legal industry. In 2022, The National Law Journal named her a winner of its 2022 "Elite Women of the Plaintiffs Bar" award, which recognizes a small handful of female plaintiffs' attorneys who "have demonstrated repeated success in cutting-edge work on behalf of [clients]" over their careers. The same year, The Best Lawyers in America named Ms. Webber the "Lawyer of the Year – Employment Law – Individuals – Washington, D.C." In 2019, Ms. Webber was the recipient of the "Roderic V.O. Boggs Award" for her "sustained commitment" to the Washington Lawyers' Committee for Civil Rights and Urban Affairs. Annually, she has been recognized by Lawdragon 500 Leading Plaintiff Employment Lawyers (since 2018), The Best Lawyers in America (since 2018), and Super Lawyers (since 2012).

Ms. Webber is co-chair of the National Employment Lawyers' Association's Class Action Committee, the nation's pre-eminent employee-side legal association, a position she has held since 1999. Ms. Webber is also a member of Law360's Employment Editorial Advisory Board (2020 – 2021). She speaks and writes frequently on employment discrimination, wage and hour issues, and class actions.

Prior to joining Cohen Milstein in 1997, Ms. Webber received a Women's Law and Public Policy fellowship which funded the first of her four years at the Washington Lawyers' Committee for Civil Rights and Urban Affairs in their Equal Employment Opportunity Project. There, she worked on employment discrimination cases, focusing in particular on the sexual harassment class action Neal v. Director, D.C. Department of Corrections, et al. (D.D.C.). Ms. Webber participated in the trial of this groundbreaking sexual harassment class action in 1995. Ms. Webber also tried the race discrimination case Cooper v. Paychex (E.D. Va.), and successfully defended the plaintiffs' verdict before the Fourth Circuit.

Ms. Webber attended Harvard University, graduating magna cum laude, with an A.B. in Government, and earned her J.D., magna cum laude, Order of the Coif, at the University of Michigan Law School. Following law school, she clerked for the Honorable Hubert L. Will, United States District Judge for the Northern District of Illinois.

Michelle C. Yau

Michelle C. Yau, chair of Cohen Milstein's Employee Benefits/ERISA practice, has spearheaded some of the most significant ERISA class actions in the nation. In 2022, Chambers USA named her a "Top Ranked" individual in ERISA Litigation and in 2021, she was named a Law360 Benefits MVP. Ms. Yau combines ardent dedication to protecting her clients' retirement assets with rare insight into complex financial transactions and actuarial issues, informed by her Wall Street and government experience.

Ms. Yau is passionate about righting economic injustice and protecting pension plan participants. She has a unique background having served as an Honors Program Attorney at the Department of Labor where she enforced and administered a variety of labor statutes and working as a financial analyst at Goldman Sachs in the Financial Institutions Group of the Investment Banking Division.

This experience has allowed Ms. Yau to play an instrumental role in important financial litigation, including high-profile ERISA lawsuits emerging from the Madoff Ponzi scheme:

- In re Beacon Association Litigation (S.D.N.Y.): Ms. Yau represented a multi-plan class of participants, beneficiaries, and fiduciaries, which settled along with other consolidated cases for $219 million in 2013, representing 70% of the Class members' out-of-pocket losses. The judge praised the settlement, describing the outcome as "extraordinary" and the praising the "hard work" done by plaintiffs' counsel, including Cohen Milstein.

- Becker v. Wells Fargo & Co. et al. (D. Minn.): Ms. Yau led the team in litigation and recently achieved a $32.5 million settlement prior to class certification and expert discovery. If approved, the settlement will recover 40% of estimated damages.

Ms. Yau is currently involved in a series of high-profile class actions involving 401(k) Plans, Employee Stock Ownership Plans (ESOPs) for the mismanagement of employee retirement savings. Notable matters Include:

- Casino Queen ESOP Litigation (S.D. Ill.): To date, Ms. Yau has won two motions to dismiss in this case on behalf of employee participants. She represents ESOP participants who allege that the Board of Directors of CQ Holding Company, Inc. and related defendants violated ERISA when they created an ESOP to buy their Casino Queen stock for $170 million, a significantly inflated price.
- Western Global Airlines ESOP Litigation (D. Del.): Ms. Yau represents employees in challenging the valuation of Western Global Airlines at approximately $1.3 billion, based on the sale of 37.5% of the company to the ESOP for $510 million. The lawsuit seeks to restore substantial losses to the ESOP and to disgorge all ill-gotten gains received by the Neff family.
- New York Life 401(k) Plan Litigation (S.D.N.Y.): Ms. Yau represents employees in a lawsuit against New York Life which alleges corporate self-dealing and the prohibited transfer of employees' retirement assets to defendants at the expense of the retirement savings of New York Life employees and agents.
- Triad Manufacturing Inc. ESOP Litigation (N.D. Ill.): Ms. Yau defeated a motion to compel arbitration in this case and thereafter achieved a precedent-setting decision in the Seventh Circuit upholding the lower court's denial of the motion to compel arbitration. As a result of this decision, Cohen Milstein and co-counsel were recognized in The American Lawyer as "Litigators of the Week."
- Western Milling ESOP Litigation (E.D. Cal.): Cohen Milstein represents participants and beneficiaries of the Western Milling Employee Stock Ownership Plan, who allege that the ESOP's trustees breached their fiduciary duties by engaging in risky investments in violation of ERISA, including purchasing 100% of Kruse-Western, Inc. company stock, which was valued at approximately 90% of the purchase price for several years after the ESOP Transaction.

Ms. Yau played an instrumental leadership role in the following high-profile cases:

- Dignity Health Church Plan Litigation (N.D. Cal.): Cohen Milstein is co-counsel to a class of defined benefit participants, which alleges that Dignity Health is improperly claiming that its pension plans are exempt from ERISA's protections because they are "church plans," and as a result has underfunded its plans by over $1.2 billion. In June 2017, the Supreme Court reversed previous rulings on consolidated church plan cases and ordered plaintiffs, in this case, to file an amended complaint. On October 19, 2021, the Court granted preliminary approval of a $100 million settlement.
- Presence Health Plan Litigation (N.D. Ill.): Cohen Milstein represented Presence Health Network-sponsored pension plan participants and beneficiaries, who allege that defendants wrongly claimed that the plans under dispute qualified as ERISA-exempt "church plans" and subsequently denied participants the protections of ERISA, including underfunding the plans by over $175 million. In July 2018, the court granted final approval to a $50 million settlement.
- Trinity Church Plan Litigation (D. Md.): Cohen Milstein was counsel to a class of defined benefit participants in which allege that the hospital's plan is not a church plan and thus the class is entitled to ERISA's protections and thereby underfunded the plan by over $600 million. In May 2017, the granted final approval of a $75 million settlement.
- Merrill Lynch ERISA Litigation (S.D.N.Y.): Cohen Milstein served as interim co-lead counsel in a class action alleging that fiduciaries of the Merrill Lynch retirement plans imprudently purchased and held inflated Merrill employer stock for the retirement accounts of the companies' employees. The litigation was resolved for $75 million. Ms. Yau was engaged in all aspects of the litigation.

- Weyerhaeuser Pension Plan Litigation (D. Or.): Cohen Milstein was lead counsel in a lawsuit alleging that the Weyerhaeuser Company caused its Defined Benefit Retirement Plans to engage in a risky investment strategy involving alternative investments and derivatives, causing the Plans' master trust to become underfunded. A settlement was reached for injunctive relief on behalf of Plans' participants and beneficiaries. Ms. Yau was engaged in all aspects of the litigation.

Ms. Yau is a prolific public speaker and is frequently invited to speak on ERISA litigation updates and trends. She is also a senior editor of the ERISA treatise published by Bloomberg BNA, Employee Benefits Law, and a member of the Benefits Editorial Advisory Board for Law360.

Ms. Yau received her law degree from Harvard Law School, where she was awarded several public interest fellowships, including the Heyman Fellowship for academic excellence and a demonstrated commitment to federal public service. She graduated Phi Beta Kappa with a B.A. in Mathematics from the University of Virginia. Ms. Yau was also selected as an Echols Scholar and awarded the Student Council Scholarship for leadership, academic achievement, and community service.

Attorney Profiles – Of Counsel, Associates, Discovery Counsel & Staff Attorneys

Susan Banks

Susan Banks is a Staff Attorney at Cohen Milstein and a member of the Antitrust practice group. In this role, she assists in discovery and evidentiary-related aspects of litigation and deposition preparation.

Ms. Banks brings to bear extensive discovery experience, having worked as a discovery and contract attorney with several renowned defense firms prior to joining Cohen Milstein. Ms. Banks was also the Director of The Socratic School of Language in Washington, D.C. where she created and administered a multilingual language curriculum and innovative afterschool programming in partnership with public, private, and charter school networks.

Ms. Banks is a graduate of The University of Illinois Urbana-Champaign, where she received a B.A. She earned her J.D. and an LL.M. in Intellectual Property Law from The University of Illinois Chicago School of Law. Ms. Banks also holds an A.A.S. in Early Childhood Education from Ashworth College.

Norhan Bassiouny

Norhan Bassiouny is an Associate at Cohen Milstein and a member of the firm's Securities Litigation & Investor Protection practice, where she represents institutional and individual shareholders in derivative lawsuits and securities class actions.

Prior to joining Cohen Milstein, Ms. Bassiouny was a litigation associate at a highly regarded international defense law firm.

Ms. Bassiouny earned her BS. from Indiana University – Kelley School of Business. She earned her J.D. from Columbia Law School, where she was a Harlan Fiske Stone Scholar, and was a member of the Columbia Journal of Transnational Law.

Prior to pursuing a career in law, Ms. Bassiouny was a financial analyst.

Christopher Bateman

Christopher Bateman is an Associate at Cohen Milstein, and a member of the firm's Antitrust practice group. In this role, Mr. Bateman represents a broad range of individuals and businesses in civil litigation, with a focus on multi-district class actions and antitrust litigation. In 2021, Mr. Bateman was recognized as a New York Metro Rising Star by Super Lawyers.

Mr. Bateman is currently working on the following high-profile matters:

- In re Interest Rate Swaps Antitrust Litigation (S.D.N.Y.): Cohen Milstein serves as co-lead counsel and represents the Public School Teachers' Pension and Retirement Fund of Chicago and other proposed buy-side investor class members in this ground breaking putative antitrust class action against numerous Wall Street investment banks. Plaintiffs allege that the defendants conspired to prevent class members from trading IRS on modern electronic trading platforms and from trading with each other, all to protect the banks' trading profits from inflated bid/ask spreads.
- Iowa Public Employees' Retirement System, et al. v. Bank of America Corp. et al. (S.D.N.Y.): Cohen Milstein is representing Iowa Public Employees Retirement System and other investors who allege that six of the world's largest investment banks, including Bank of America, Credit Suisse, Goldman Sachs, JP Morgan, Morgan Stanley, and UBS, conspired together to prevent the modernization of the $1.7 trillion stock lending market in order to maintain control over a critical component of a strong economy.

Before joining Cohen Milstein, Mr. Bateman was a law clerk for the Honorable Naomi Reice Buchwald, U.S. District Court for the Southern District of New York. Before that, he was a litigation attorney at a distinguished global law firm, where he worked with clients in the financial services and energy sectors.

Mr. Bateman received his B.A., cum laude, High Honors, from Dartmouth College, where he was a Rufus Choate Scholar. He received his J.D., cum laude, from Harvard Law School, where he received Dean's Scholar awards in Civil Procedure and in Federal Courts and the Federal System. While in law school, Mr. Bateman was an Article Selection Editor for the Harvard Civil Rights-Civil Liberties Law Review. He is the co-author of "Toward Greener FERC Regulation of the Power Industry," 38 Harvard Environmental Law Review 275 (2014).

While attending law school, Mr. Bateman was a legal intern at the Environmental Defense Fund.

Before law school, Mr. Bateman was an editorial associate at Vanity Fair for several years, where he wrote about politics, civil rights, culture, and environmental issues, and edited feature articles.

Luke Bierman

Luke Bierman is Of Counsel to Cohen Milstein, and adviser to the Firm's Ethics and Fiduciary Counseling and Securities Litigation & Investor Protection practice groups. Mr. Bierman's role is to counsel pension funds and public entities on fiduciary, ethics, governance and compliance issues. He joined Cohen Milstein in 2011, bringing with him a singular perspective and substantive experience as in-house counsel to one of the leading pension funds in the country, appointments to state task forces to review the state code of judicial ethics and professionalism, and a scholarly and academic background as the Dean and Professor of Law at a rising law school that President Bill Clinton has called "interesting and innovative." His experience provides him with a unique context for assisting public pension funds at critical and challenging times for those funds, and to offer collaborative and creative solutions.

Mr. Bierman served from 2007 to 2010 as General Counsel for the Office of the New York State Comptroller, the sole trustee of the state's then $150 billion pension fund and the state's chief fiscal officer for the state of New York's then $130 billion budget. This was during the period when the Office of the Comptroller faced unprecedented challenges including an international placement agent scandal and the Great Financial Crisis, and Mr. Bierman led the review of policies and procedures in the Office. In this role, Mr. Bierman managed a legal staff that included 55 attorneys, and was responsible for legal advice and counsel on all matters relating to the comptroller's constitutional and statutory responsibilities, including fiduciary, governance, ethics, litigation, investment, pension benefits, state and municipal finance and legislative matters. He also managed the 35 outside law firms that represented the Comptroller in litigation and transactional matters.

Mr. Bierman is a noted expert on legal ethics and professionalism, who has spoken and written widely about state courts and judicial conduct. He currently serves as a member of the North Carolina Commission on Administration of Law and Justice and on the North Carolina Chief Justice's Commission on Professionalism. He was a member of the Massachusetts Supreme Judicial Court's Task Force on the Code of Judicial Conduct, which was assigned to review and suggest updates to the Court. He served on the ABA Presidential Task Force on Financing Legal Education and the ABA Presidential Task Force on Legal Access JobCorps. While working at the American Bar Association, Mr. Bierman initiated the project that resulted in revisions to the Model Code of Judicial Conduct (2007), which many states have since adopted.

Mr. Bierman is the Dean and Professor of Law at Elon University School of Law in Greensboro, North Carolina, an innovative law school that blends the most important traditional elements of legal education with highly experiential learning in the nation's first 2½ year JD program. Previously, Mr. Bierman was the Associate Dean for Experiential Education and Distinguished Professor of Practice of Law at Northeastern University School of Law in Boston, where he was responsible for Northeastern's Cooperative Legal Education Program.

Earlier in his career, Mr. Bierman served as a Fellow in Government Law and Policy at Albany Law School. He also has served as Director of the Institute for Emerging Issues at North Carolina State University, where he held the rank of Associate Professor of Political Science; as Founding Director of the Justice Center and Special Assistant to the President of the American Bar Association; as Visiting Specialist in Constitutional Law with the rank of Associate Professor at The Richard Stockton College of New Jersey; and as law clerk to the Presiding Justice and an Associate Justice as well as Chief Attorney of the New York Supreme Court, Appellate Division, Third Department. Mr. Bierman also has taught at Northwestern University School of Law, the University at Albany and Trinity College in Hartford.

Mr. Bierman is widely published for his legal analysis and is a frequent lecturer and commentator about corporate governance reform, fiduciary responsibility and ethics and justice reform. He was a member of the board of directors of the Council of Institutional Investors, where he co-chaired the policies committee.

Mr. Bierman earned his Ph.D. and M.A. in Political Science from the University at Albany; his J.D. from the Marshall Wythe School of Law of the College of William and Mary, where he was a member of the Law Review; and his B.A. in American Political History magna cum laude with High Honors from Colgate University, where he was elected to Phi Beta Kappa. He is an elected member of the American Law Institute.

Chloe Bootstaylor

Chloe Bootstaylor is an Associate at Cohen Milstein and a member of the firm's Public Client practice group. Ms. Bootstaylor's practice focuses on the representation of state Attorneys General and other public-sector clients in investigations and lawsuits involving false claims and fraudulent and deceptive trade practices.

Prior to joining Cohen Milstein, Ms. Bootstaylor was a law clerk for the Honorable Richard F. Boulware, II of the U.S. District Court for the District of Nevada.

Before her clerkship, Ms. Bootstaylor was an associate at a distinguished global defense law firm, where she focused on securities litigation.

Ms. Bootstaylor is involved in the following high-profile litigation:

- DoorDash Litigation: Representing the City of Chicago in its investigation and litigation against DoorDash for deceptive and unfair business practices that take advantage of restaurants, consumers, and drivers. Click here to view the lawsuit filed against DoorDash.

Ms. Bootstaylor received her B.A. from Rhodes College. She received her J.D. from Columbia Law School, where she was a Harlan Fiske Stone Scholar and served as Notes Editor of the Columbia Journal of Race and Law.

Ms. Bootstaylor is admitted only in New York. She is applying for admission to the District of Columbia Bar and is currently working under the close supervision of the partners of the firm who are admitted to practice in the District of Columbia.

Molly J. Bowen

Molly J. Bowen is an Associate at Cohen Milstein and a member of the Securities Litigation & Investor Protection practice group, where she represents clients in securities class actions and shareholder derivative lawsuits.

Ms. Bowen has been recognized by the legal industry for her work, including by Law360, which named her a 2022 "Rising Star - Securities" and The National Law Journal, which named her a 2021 "Rising Star of the Plaintiffs Bar."

Ms. Bowen also brings extensive consumer fraud experience to her securities litigation work, having worked with Cohen Milstein's Public Client practice, representing the interests of state Attorneys General and other public-sector clients in protecting consumers from health care and consumer fraud. Prior to joining Cohen Milstein, Ms. Bowen was a litigator at a prominent national law firm in Miami, where she focused on antitrust and securities class actions, and False Claims Act and legal malpractice claims.

Some of her current representative matters include:

- In re Pinterest Derivative Litigation (N.D. Cal.): Cohen Milstein, as Interim Lead Counsel, represents the Employees Retirement System of Rhode Island and other Pinterest shareholders in a consolidated shareholder derivative complaint against certain current officers and directors of Pinterest, including its Board Chairman and CEO, for breaches of fiduciary duty and other violations of Section 14(a) of the Exchange Act, relating to their alleged personal engagement in and facilitation of a systematic practice of illegal discrimination of employees on the basis of race and sex, from at least February 2018 through the present. As a result of this illegal misconduct, the Company's financial position, goodwill, and reputation among users has been harmed.
- In re Wells Fargo & Company Securities Litigation (S.D.N.Y.): Cohen Milstein is Co-Lead Counsel, representing Public Employees' Retirement System of Mississippi and the State of Rhode Island, Office of the General Treasurer, in this putative securities class action, alleging that Wells Fargo and certain executives misrepresented that the bank had improved its governance and oversight structures following a widespread consumer fraud banking scandal in direct violation of its 2018 consent orders with the CFPB, OCC, and the Federal Reserve.
- FirstEnergy Shareholder Derivative Litigation (S.D. Ohio; N.D. Ohio): Cohen Milstein represents the Massachusetts Laborers Pension Fund in two shareholder derivative actions against certain current and former officers and directors and nominal defendant FirstEnergy related to the Company's involvement in Ohio's largest public bribery schemes, which resulted in FirstEnergy signing a historic $230 million deferred prosecution agreement with the U.S. Department of Justice and admitting to having paid more than $60 million in illegal contributions in return for legislation that benefited FirstEnergy.

Some of Ms. Bowen's recent successes include:

- In re Alphabet Shareholder Derivative Litigation (Sup. Crt. Cal., Santa Clara Cnty.): Cohen Milstein, as Co-Lead Counsel, represented Northern California Pipe Trades Pension Plan and Teamsters Local 272 Labor Management Pension Fund in a shareholder derivative lawsuit against the Board of Directors of Alphabet, Inc. Shareholders alleged that the tech giant's Board violated its fiduciary duty by enabling a double standard at Alphabet that allowed powerful executives to sexually harass and discriminate against women without consequence. On November 30, 2020, the court granted final approval of a historic settlement, including a $310 million commitment to fund diversity, equity, and inclusion initiatives at Alphabet-owned companies, and workplace and corporate governance reforms including limiting non-disclosure agreements and ending mandatory arbitration in sexual harassment, gender discrimination, and retaliation-related disputes.
- Credit Suisse Group AG Securities Litigation (S.D.N.Y.): Cohen Milstein, as Co-Lead Counsel, represented the International Brotherhood of Teamsters Local No. 710 Pension Plan in a securities class action against Credit Suisse Group AG, involving misrepresentations of its trading and risk limits, and subsequent accumulation of billions of dollars in extremely risky, highly illiquid investments, including the surreptitious accumulation of nearly $3 billion in distressed debt and U.S. collateralized loan obligations ("CLOs"). On December 16, 2020, the court granted final approval of a $15.5 million settlement.

Ms. Bowen also maintains an active pro bono practice involving notable matters, such as:

- Small Claims Matter (D.C. Small Claims Court): Ms. Bowen successfully represented a low-income tenant in a small claims action, obtaining summary judgment in her client's favor on a novel claim of unjust enrichment based on the landlord's assessment of late fees deemed excessive by local statute.

- Vivian Englund v. World Pawn Exchange, LLC (Cir. Crt., Coos Cnty., Or.): Cohen Milstein successfully represented the estate of a Kirsten Englund in a wrongful death case of first impression in Oregon state court and nationally, addressing the legal liability for federally licensed firearms dealers involved in online straw sales. The landmark settlement establishes important legal precedent at the state and federal levels regarding gun dealer responsibility for online sales of firearms. Given the precedential significance of this lawsuit, Cohen Milstein was named to The National Law Journal's "2019 Pro Bono Hot List" and won Public Justice Foundation's "2019 Trial Lawyer of the Year – Finalist" award.

Ms. Bowen regularly publishes on developments in securities law and was named a winner of the Burton Awards in 2019, placing her among the "finest law firm writers" in the nation, for "INSIGHT: Holding Firearms Dealers Accountable for Online Straw Sales," Bloomberg Law (December 19, 2018).

Prior to pursing private practice, Ms. Bowen was a law clerk to the Honorable Karen Nelson Moore of the United States Court of Appeals for the Sixth Circuit.

Ms. Bowen graduated magna cum laude from Macalester College with a B.A. in Geography in 2007. She earned her J.D., summa cum laude, graduating first in her class, from Washington University School of Law in 2013, where she was a member of the Appellate Clinic and served as the Articles Editor for the Washington University Law Review. During law school, Ms. Bowen focused on union-side labor law, including participating in an externship at the Service Employees International Union (SEIU) legal department.

John Bracken

John Bracken joined Cohen Milstein in 2014 and is a Staff Attorney in the Antitrust Practice Group. In this role, he assists in discovery and evidentiary-related aspects of the litigation and deposition preparation.

Currently, Mr. Bracken is assisting in litigating the following notable matters:

- Domestic Drywall Antitrust Litigation: Cohen Milstein is co-lead counsel in an antitrust litigation alleging that the seven major U.S. manufacturers of drywall conspired to manipulate prices. To date, settlements for $45 million have been reached with two of the defendants. The case is ongoing.
- VFX/Animation Antitrust Litigation: Cohen Milstein is one of three court-appointed co-lead counsels in a litigation alleging that the major animation studios conspired to limit the opportunities and suppress the pay of special effects and animation workers by agreeing not to poach each other's employees. The litigation has survived a motion to dismiss and the firm is in the process of filing a class motion.
- Mixed Martial Arts (MMA) Antitrust Litigation: Cohen Milstein is co-lead counsel in a class action on behalf of MMA fighters alleging that Zuffa LLC – commonly known as the Ultimate Fighting Championship or "UFC" – has unlawfully monopolized the markets for promoting live professional MMA bouts and for purchasing the services of professional MMA fighters. The district court denied the defendant's motion to dismiss the case in September 2015 and discovery is ongoing.
- Solodyn Antitrust Litigation: Cohen Milstein is a movant in a pay-for-delay litigation, alleging that Medicis Pharmaceutical Corp. and other drug manufacturers colluded to keep a generic version of the acne drug Solodyn off the market. The case is ongoing.

Among Mr. Bracken's successes are the following matters:

- Sports Broadcasting Antitrust Litigation: Cohen Milstein is lead counsel for plaintiffs in class actions alleging that the system of geographical broadcasting territories employed by the National Hockey League (NHL) and Major League Baseball (MLB) amount to unlawful market allocation under Section 1 of the Sherman Act. The NHL lawsuit settled in 2015. A proposed settlement was reached with the MLB in January 2016.

- Symantec Antivirus Antitrust Litigation: Cohen Milstein was lead counsel in a class action alleging Symantec, a computer security provider, and another defendant sold consumers worthless and unnecessary download insurance. The case was resolved just prior to the trial for a $60 million settlement.

Mr. Bracken graduated from Vassar College with a B.A. in History and earned his J.D. from American University, Washington College of Law.

Jay Chaudhuri

Mr. Chaudhuri has spent his career fighting for and working on behalf of the people of North Carolina. Prior to joining Cohen Milstein, Mr. Chaudhuri served as General Counsel & Senior Policy Advisor at the North Carolina Department of State Treasurer, the sole trustee of the state's $90 billion pension fund and administrator of the $8 billion defined contribution plan.

Mr. Chaudhuri oversaw all legal and corporate governance matters. In his role, he recovered more than $100 million for the pension and unclaimed property funds, including settlements with a real estate investment manager and custodian bank. He played a key role in uncovering alleged wrongdoing that led to eight investment managers paying the pension fund back $15 million and tougher, cutting-edge ethical standards for these managers.

Mr. Chaudhuri also helped organize a coalition of 11 public pension funds against Massey Energy's Board of Directors and Chairman, after a coal-mining explosion resulted in the death of 29 workers. That engagement resulted in key corporate governance changes and the Chairman's resignation. Today, the coalition's engagement is cited as a model of collaboration among shareholder rights advocates. In addition, Mr. Chaudhuri worked closely with the Harvard Shareholder Rights Project where the Department helped declassify twenty corporate boards, including Stanley Black & Decker, Hess, Lexmark, Foot Locker, and Jarden Corporation. Mr. Chaudhuri served as Chair of the Council of Institutional Investors, an association of the pension funds with combined assets of more than $3 trillion which serves as the leading voice for effective corporate governance and strong shareholder rights. As Chair, he led the development and adoption of the organization's long-term strategic plan.

Before joining the Department of State Treasurer, Mr. Chaudhuri served as Special Counsel at the North Carolina Department of Justice, where he lead an investigation by all 50 Attorneys General that resulted in a landmark agreement with two leading social networking sites to better protect children from Internet predators. For his efforts, the National Association of Attorneys General honored him with the Marvin Award, given to an individual who furthers that association's goals.

The North Carolina Bar Association has awarded Mr. Chaudhuri its Citizen Lawyers Award, given to lawyers who provide exemplary service to the communities. Lawyers Weekly has also honored him with its Leader in the Law award. In addition, he has been awarded the William C. Friday Fellowship, Henry Toll Fellowship, and American Marshall Memorial Fellowship.

Mr. Chaudhuri currently serves in the North Carolina State Senate representing parts of Raleigh, Cary, and Morrisville. As one of the newest state senators, he serves on the Commerce, Pension & Retirements and Aging, Judiciary II, State and Local Government, and Appropriations on General Government committees. Mr. Chaudhuri has co-sponsored a bill to repeal House Bill 2, a bill critics have referred to as the most anti-LGBT legislation in the country. He is the first South Asian American to serve in the North Carolina General Assembly.

Mr. Chaudhuri graduated from Davidson College, Columbia University School of International and Public Affairs, and North Carolina Central University School of Law (cum laude), where he was executive editor of the Law Journal.

Leonardo Chingcuanco

Leonardo Chingcuanco is an Associate at Cohen Milstein and a member of the firm's Antitrust practice group. Mr. Chingcuanco represents a broad range of individuals and businesses in civil litigation, with a focus on multi-district class actions and antitrust litigation.

Prior to becoming an Associate at Cohen Milstein, Mr. Chingcuanco served as a Law Clerk for the Honorable Rosemary Collyer of the U.S. District Court for the District of Columbia.

Before that, Mr. Chingcuanco worked as an Associate Regional Counsel at the U.S. Environmental Protection Agency, during which time he was the recipient of the Regional Administrator's Award for Excellence and a 2018 Regional Honor Award.

Mr. Chingcuanco earned his B.A., magna cum laude, at the University of California, San Diego. He earned his J.D. from Stanford Law School, where he was a member of the Stanford Law Review.

Arthur E. Coia

Arthur E. Coia is Of Counsel at Cohen Milstein and is a member of the Securities Litigation & Investor Protection practice group. In that role, Mr. Coia works to keep clients, many of which are Taft-Hartley pension plans, informed of potential fraud and corporate governance issues within their investments so they are able to consider appropriate action in a timely manner.

Prior to joining the firm in 2013, Mr. Coia spent more than 20 years in the investment advisory business. He was President of an asset management company for 10 years, where he oversaw the management of more than $4 billion in assets. Earlier in his career, Mr. Coia worked as a Portfolio Manager and Securities Analyst for a well-respected trust company and other independent "buy side" advisors. Because of his prior role as a fiduciary in managing benefit fund assets, Mr. Coia understands how important it is for such funds to recover all assets to which they are legally entitled, and to take timely corporate governance actions where appropriate. Mr. Coia uses his unique combination of investment experience and legal knowledge to raise client awareness of instances where they have been defrauded of assets and helps them with the recovery process.

Mr. Coia earned a B.S. in Finance from Georgetown University McDonough School of Business, and received his J.D. from Georgetown University Law Center.

Brian Corman

Brian Corman is an Associate at Cohen Milstein and a member of the Civil Rights & Employment practice group. Mr. Corman's practice focuses on litigating federal fair housing and employment class actions, as well as wage and hour cases under the federal Fair Labor Standards Act (FLSA).

Prior to joining Cohen Milstein in 2015, Mr. Corman was a Litigation Associate at a top-tier defense firm. There, he focused on Foreign Corrupt Practices Act internal investigations for Fortune 500 clients, as well as pro bono cases in federal district court and before the Supreme Court.

Mr. Corman's current high-profile cases include:

- Thompson, et al. v. Trump, et al. (D.D.C.): The NAACP and Cohen Milstein represent 11 Members of Congress in a suit alleging that Donald J. Trump, Rudolph Giuliani, the Proud Boys and the Oath Keepers conspired to prevent members of Congress from carrying out their duty to certify the results of the 2020 election on January 6, 2021.

- Long Island Housing Services, Inc., et al. v. NPS Holiday Square LLC, et al. (E.D.N.Y.): Cohen Milstein is representing Long Island Housing Services (LIHS), Suffolk Independent Living Organization (SILO) and Suffolk County residents in a Fair Housing Act race and disability discrimination class action against a prominent Long Island-area property management company.
- Lopez, et al. v. Ham Farms, LLC, et al. (E.D.N.C.): Cohen Milstein represents migrant seasonal and H-2A farm labor workers in a wage and hour dispute under the FLSA, the Migrant and Seasonal Agricultural Worker Protection Act (MSPA), and the North Carolina Wage & Hour Act. On September 21, 2020, the Court preliminarily approved a $720,000 settlement and certification of the class and collective action. Final approval of the settlement is pending.
- Castillo v. Western Range Association (D. Nev.): Cohen Milstein represents H-2A shepherds in a class action against Western Range Association in a wage and hour dispute.
- Arroyo v. CoreLogic Rental Property Solutions (D. Conn.): Cohen Milstein, Connecticut Fair Housing Center and the National Housing Law Project are representing an individual plaintiff against CoreLogic, a tenant-screening company, for race-based discrimination in violation of the Fair Housing Act related to its criminal record check.
- Walmart: Cohen Milstein represents female Walmart workers in multiple federal district and appellate court cases alleging gender-based discriminatory pay and promotions practices in violation of Title VII of the Civil Rights Act. These individual actions stem from Dukes v. Walmart, a seminal class action that went before the Supreme Court.

Recent notable litigation successes include:

- Sutton v. McCoy (N.D. Ga.): Cohen Milstein and the ACLU represented a plaintiff in a race-based Fair Housing Act discrimination lawsuit, where the plaintiff claimed she was unjustly evicted for inviting an African-American family to her home. In February 2020, Cohen Milstein and the ACLU settled the case, requiring that the landlords admit to their discriminatory actions and making racist statements in violation of the Fair Housing Act, apologize for the harm they caused, and agree to pay the plaintiff $150,000.
- Gentiva Health Services (N.D. Ga.): Cohen Milstein represented hundreds of health care workers in a nationwide class action against Gentiva, one the country's largest home health care service providers. Plaintiffs sought unpaid overtime wages under FLSA. In June 2017, the court granted final approval of a confidential settlement.
- Long Island Housing Services, Inc., et al. v. Village of Mastic Beach (E.D.N.Y.): Cohen Milstein represented LIHS and African American tenants in a Fair Housing Act race discrimination case. The case settled in August 2017 for $387,500.

Following law school, Mr. Corman clerked for the Honorable Harry Pregerson of the Ninth Circuit Court of Appeals. He then participated in a D.C. Bar Association Pro Bono Fellowship at the Lawyers' Committee for Civil Rights Under Law, working on education, voting rights and fair housing cases.

Mr. Corman earned his law degree from the University of California, Berkeley, School of Law, where he was an editor of the California Law Review, a member of the Jessup International Law Moot Court Team, co-chaired the Berkeley Law Expulsion Clinic, and externed for the Honorable William Alsup of the U.S. District Court for the Northern District of California. Mr. Corman received his B.A., summa cum laude, Phi Beta Kappa, in Political Science from Columbia University School of General Studies.

Mr. Corman was a professional ballet dancer for eight years, performing with the Houston Ballet and Washington Ballet, among other companies.

Zoya Davis

Zoya Davis is Discovery Counsel at Cohen Milstein and a member of the firm's Public Client practice. In her role, Ms. Davis manages factual and legal research in litigation and confidential investigations, including overseeing discovery issues and supervising contract attorneys.

Prior to joining Cohen Milstein, Ms. Davis was a Staff Attorney at several of the country's leading global defense firms, where she led and was an integral member of discovery teams working on high profile congressional, regulatory, and litigation-related investigations involving the U.S. Department of Justice, Federal Trade Commission, Securities and Exchange Commission, Commodity Futures Trading Commission, and other state and federal government entities.

She is a member of the D.C. Chapter of Women in E-Discovery (WiE) and she served as Secretary on the WiE Executive Board in 2017-2018.

Ms. Davis received her B.S. in Environmental & Marine Science from Hampton University and her J.D. from Temple University, James E. Beasley School of Law, where she was the Associate Editor of the Temple University International & Comparative Law Journal. She received her LL.M. in International Legal Studies from American University, Washington College of Law.

Alison Deich

Alison Deich is an Associate at Cohen Milstein and a member of the firm's Antitrust practice group. In this role, Ms. Deich represents a broad range of individuals and businesses in civil litigation, with a focus on multi-district class actions and antitrust litigation.

Ms. Deich is working on the following high-profile antitrust matters:

- Jien v. Perdue Farms, Inc. (D. Md.): Cohen Milstein serves as Co-Lead Counsel, representing a proposed class of poultry plant workers, in a suit alleging that the nation's largest chicken and turkey producers conspired to suppress their wages.
- In re Broiler Chicken Antitrust Litigation (N.D. Ill.): Cohen Milstein represents a putative class of broiler chicken consumers in a suit alleging that the nation's largest chicken producers, including Perdue Farms and Tyson Foods, conspired to raise the price of chicken.

Ms. Deich is also involved in other high-profile matters on behalf of the firm, including:

- Thompson v. Trump (D.D.C.): The NAACP and Cohen Milstein represent Congressman Bennie Thompson in a suit alleging that Donald J. Trump, Rudolph G Giuliani, the Proud Boys and the Oath Keepers conspired to prevent members of Congress from carrying out their duty to certify the results of the 2020 election on January 6, 2021.
- Cape Fear River Contaminated Water Litigation (E.D.N.C.): Cohen Milstein serves as Interim Co-Lead Class Counsel, overseeing a putative class action against E.I. DuPont de Nemours Company and The Chemours Company for discharging toxic chemicals into the Cape Fear River—a source of drinking water for five counties in North Carolina.
- In re Flint Water Crisis Class Action Litigation (E.D. Mich.): Cohen Milstein is Interim Co-Lead Class Counsel for a group of related class action lawsuits filed in federal court on behalf of Flint, Michigan residents and businesses harmed by exposure to toxic levels of lead and other hazards from the city's drinking water.

Prior to joining Cohen Milstein, Ms. Deich clerked for the Honorable Cornelia Pillard of the United States Court of Appeals for the D.C. Circuit. She also clerked for the Honorable Katherine Polk Failla of the U.S. District Court for the Southern District of New York, as well as the Honorable Goodwin Liu of the California Supreme Court.

Ms. Deich received her B.A. from the University of Virginia, where she graduated with highest distinction, Phi Beta Kappa, and received several honors, including the Lewis M. Hammond Award. Ms. Deich received her J.D. from Harvard Law School, where she graduated magna cum laude and won the Ames moot court competition.

Prior to law school, Ms. Deich helped draft research papers for various non-profit organizations.

Suzanne Dugan

Suzanne M. Dugan is Special Counsel to Cohen Milstein and leads the firm's Ethics & Fiduciary Counseling practice, a practice she helped found within the Securities Litigation & Investor Protection practice group.

Ms. Dugan joined Cohen Milstein after more than 20 years of service in government, including as Special Counsel for Ethics for the Office of the New York State Comptroller, and as counsel to and acting director of the New York State Ethics Commission. Her service and experience in government offer the broad and unique perspective of a regulator and the understanding of an in-house counsel.

Ms. Dugan brings her experience gained from having served as ethics counsel to the third largest public pension fund in the country to advise and counsel pension fund trustees and senior managers on issues and challenges, providing collaborative and creative solutions for pension funds as they navigate changing economic challenges and organizational requirements.

From this unique vantage, Ms. Dugan counsels pension funds on fiduciary responsibility, ethical duties, strategic governance and compliance issues. She consults with governmental entities and other clients on design, implementation, management and assessment of comprehensive ethics programs. She also assists in conducting investigations and structuring recommendations, and provides expert legal and consulting services to law firms retained to conduct special reviews, providing an additional layer of oversight and accountability.

Ms. Dugan has worked with public pension fund and municipal government clients in the following capacities:

- Service as Fiduciary Counsel, Ethics Counsel, and Compliance Counsel to public pension plans from coast to coast, including some of the largest institutional investors in the country.
- Providing ethics and fiduciary training to boards of trustees, designing and delivering educational programs for sophisticated public pension plans and government entities.
- Outside Ethics Officer to municipalities across the country, evaluating and investigating complaints of unethical conduct, providing objective and independent guidance, and working to ensure a culture of ethical leadership.

Ms. Dugan serves on the Executive Board of the National Association of Public Pension Attorneys (NAPPA), a professional organization dedicated to providing legal educational opportunities and informational resources to its member attorneys. She also serves on NAPPA's Fiduciary & Plan Governance Committee. In addition, Ms. Dugan is an active member of the Council on Government Ethics Laws, an international organization dedicated to issues involving governmental ethics, elections, campaign finance, lobby laws and freedom of information. She is a member of the Hearing Officer panel for the New York State Joint Commission on Public Ethics.

Ms. Dugan is a frequent lecturer at conferences and forums addressing ethics and fiduciary issues in the public and nonprofit sectors, including pension funds, bringing with her an understanding of ethical issues born out of practical experience as well as scholarly pursuits. She has served as an adjunct professor, teaching a course on Government Ethics, and writes frequently on ethics, fiduciary responsibilities of pension trustees and the role of pension fund attorneys. In 2014, Ms. Dugan won the Burton Award, the country's most prestigious legal writing award run in association with the Library of Congress, for her Bloomberg BNA article, "Ethics and Fiduciary Issues for Public Pension Plans: Lessons Learned".

Ms. Dugan is also an active member of her community. She is currently an elected Trustee of her local public library. In addition, she serves as a member of the Governance Committee of a Planned Parenthood affiliate, following many years of service on the Board of Directors. She also previously served as the pro bono legal director of a not-for-profit in the Albany area.

Ms. Dugan is an elected member of the American Law Institute, where she is a member of the Consultative Group on Government Ethics.

Ms. Dugan began her career as a judicial clerk with the Appellate Division, Third Department, of the New York State Supreme Court. She graduated magna cum laude from Siena College and earned her J.D. cum laude from Albany Law School of Union University.

Robert Dumas

Robert Dumas is a Staff Attorney at Cohen Milstein and a member of the Securities Litigation & Investor Protection Practice Group. In this role, Mr. Dumas is engaged in document discovery and review and in preparing the attorneys in deposing witnesses. Since joining thefFirm in 2014, he has worked on some of the most important mortgage backed securities (MBS) litigations to emerge from the financial crisis.

Prior to joining Cohen Milstein, Mr. Dumas practiced at a leading plaintiff firm, litigating securities fraud matters, and then later at a smaller plaintiff firm, where he helped litigate the In re IPO Securities Litigation, in which investors accused the leading investment banks of rigging IPOs during the 1990s tech bubble; after nearly a decade of legal wrangling, a $586 million settlement was reached. Earlier, he practiced at a leading intellectual property and trademark law firm, where he defended trademark matters for an international clothing manufacturer.

Donna M. Evans

Donna M. Evans is Of Counsel at Cohen Milstein and a member of the firm's Antitrust practice group.

Ms. Evans' practice spans thirty years as a trial lawyer in civil cases and includes many years as a litigation partner at large global firms. Ms. Evans is an accomplished trial lawyer and has tried numerous cases to verdict, including obtaining, as part of a trial team, one of the largest plaintiff jury verdicts in Massachusetts Superior Court.

Ms. Evans' experience includes pharmaceutical litigation in which she has represented plaintiffs in antitrust class actions; prescription drug manufacturers; biomedical device companies and inventors; private medical consulting services; and global pharmaceutical companies. For nearly a decade, Ms. Evans has focused on cutting-edge pay-for-delay pharmaceutical antitrust litigation, which addresses collusive, non-competition agreements between brand and generic drug manufacturers in order to delay entry of lower-priced generic drug products. Ms. Evans was part of the trial team in In re Nexium Antitrust Litigation, the first pharmaceutical antitrust case to go to trial following the Supreme Court's landmark decision in FTC v. Actavis, 570 U.S. 756 (2013). She is also involved in the litigation of generic drug price-fixing cases, which come on the heels of a government investigation led by the U.S. Department of Justice alleging similar conduct, which, while ongoing, has already resulted in indictments and guilty pleas.

Ms. Evans currently serves as a member of Cohen Milstein's Professional Development Mentoring Committee and co-led the firm's two-day young associate training program in 2017 and 2019.

Among other honors, since 2019, Ms. Evans has been annually selected for Lawdragon's "500 Leading Plaintiff Financial Lawyers" list. Ms. Evans has also been named a Massachusetts Super Lawyer numerous times, and served on the Hon. Nancy Gertner's Equality Commission and the Corporate Advisory Board of the Commonwealth Institute, advising women-owned businesses.

Ms. Evans' successfully concluded matters include:

- In re Lidoderm Antitrust Litigation (N.D. Cal.): Cohen Milstein served as Co-Lead Counsel for the End-Payor Class in a suit alleging that Endo and Teikoku, manufacturers of the Lidoderm patch, paid Watson Pharmaceuticals to delay its generic launch. The case settled on the eve of trial and on September 20, 2018, Plaintiffs obtained final approval of a $104.75 million settlement – more than 40% of Plaintiffs' best-case damages estimate. This case was ranked by Law360 as "The Biggest Competition Cases Of 2017 So Far" (July 7, 2017).
- In re Loestrin Antitrust Litigation (D.R.I.): Cohen Milstein served as Co-Lead Counsel for the End-Payor Plaintiffs in a case alleging that Warner Chilcott PLC entered into agreements to delay the introduction of a generic version of the contraceptive drug Loestrin and thereafter engaged in a "product hop" to further impede generic entry. The case settled on the last business before trial for $63.5 million – representing one of the largest settlements in a federal generic suppression case in over a decade. On September 1, 2020, the settlements received final approval.
- In re Solodyn Antitrust Litigation (D. Mass.): Cohen Milstein served as a member of the executive committee and Ms. Evans played a significant role in discovery on behalf of the End-Payor Plaintiffs. The case, which settled mid-trial, resulted in a $43 million recovery for the Class.

Ms. Evans is currently representing End-Payor Plaintiffs in the following pay-for-delay pharmaceutical antitrust cases in which Cohen Milstein serves as Co-Lead Counsel:

- In re Lipitor Antitrust Litigation (D.N.J.): Plaintiffs allege that Pfizer, the manufacturer of the cholesterol drug Lipitor, the best-selling drug in pharmaceutical history, conspired with Ranbaxy, the generic manufacturer, to delay its introduction of a generic Lipitor product. On August 21, 2017, the Third Circuit handed a sweeping victory to Plaintiffs, reviving their antitrust claims. This case was ranked by Law360 as "The Biggest Competition Cases Of 2017 So Far" (July 7, 2017).
- In re Tracleer Antitrust Litigation (D. Md.): Plaintiffs allege that Defendant Actelion engaged in an anticompetitive scheme to withhold samples of its life-saving pulmonary arterial hypertension medication from would-be rivals, under the guise of the REMs program, which conduct ultimately delayed generic competition.
- In re Bystolic Antitrust Litigation (S.D.N.Y.): Plaintiffs allege that Forest Laboratories Inc., now a part of AbbVie, engaged in an illegal scheme with pharmaceutical generic manufacturers not to make generic versions of Bystolic®, a hypertension prescription medication containing the active pharmaceutical ingredient nebivolol hydrochloride.
- In re Zytiga Antitrust Litigation (D.N.J.): Plaintiffs allege that Janssen Biotech and BTG International Limited engaged in sham litigation, thereby delaying generic manufacturers from entering the market with competing generic versions of Zytiga for more than year.

Ms. Evans is also currently involved in pay-for delay cases in which Cohen Milstein plays a significant role, including: In re Niaspan Antitrust Litigation (E.D. Pa.), In re Suboxone Antitrust Litigation (E.D. Pa.), In re ACTOS Antitrust Litigation (S.D.N.Y.) and In re Zytiga Antitrust Litigation (D.N.J).

In addition, Ms. Evans is involved in cases on behalf of direct purchaser plaintiffs, including: In re Zetia Antitrust Litigation (E.D. Va.), In re Generic Pharmaceuticals Pricing Antitrust Litigation (E.D. Pa.), In re Sensipar (Cinacalcet Hydrochloride Tablets) Antitrust Litigation (D. Del.), In re Intuniv Antitrust Litigation (D. Mass.) and In re Ranbaxy Fraud Antitrust Litigation (D. Mass.).

Throughout her career, Ms. Evans has been deeply involved in the issue of equality. She served on the Honorable U.S. District Court Judge Nancy Gertner's Equality Commission, the Boston Bar Association's Diversity and Attorney Attrition Standing Committee, and the BBA's Task Force on Professional Challenges and Family Needs. Ms. Evans participated in writing a ground-breaking BBA report addressing the costs of attorney attrition, Facing the Grail: Confronting the Cost of Work-Family Imbalance, as well as implementing the report's recommendations in Boston law firms. Ms. Evans has also served on the Board of Directors of Greater Boston Legal Services and has been active in pro bono representation, including fair housing issues.

Ms. Evans graduated from the University of North Carolina at Chapel Hill with a B.A. in English and Political Science, and an M.A. in English. She received a J.D., cum laude, from the University of North Carolina at Chapel Hill Law School, where she served as a Note and Comment Editor on the Board of the North Carolina Law Review. She interned with the Criminal Division of the U.S. Attorney's Office for the District of Massachusetts during law school.

Ms. Evans has written articles on topics including the federal mail fraud statute and construction pay-when-paid contract clauses, and she authored a chapter in Inside the Minds, addressing best practices in client relationships. She taught legal writing at Boston University Law School for six years, has guest lectured at Duke University and the University of North Carolina law schools, and – prior to practicing law – she taught English at the University of North Carolina and was a Visiting Lecturer in English at North Carolina State University.

David O. Fisher

David O. Fisher is an Associate at Cohen Milstein and a member of the firm's Antitrust practice group. Mr. Fisher represents a broad range of individuals and businesses in civil litigation, with a focus on multi-district class actions and antitrust litigation.

Prior to becoming an Associate at Cohen Milstein, Mr. Fisher served as a Law Clerk for the Honorable Paul B. Matey of the United States Court of Appeals for the Third Circuit and for the Honorable Thomas I. Vanaskie of the United States Court of Appeals for the Third Circuit.

Earlier, Mr. Fisher was a Staff Attorney for the United States Court of Appeals for the Fourth Circuit and a Law Clerk for the Honorable Randy Crane of the United States District Court for the Southern District of Texas.

Mr. Fisher's current cases include:

- Stock Lending Antitrust Litigation (S.D.N.Y.): Cohen Milstein is co-leading an antitrust class action alleging that major investment banks conspired to prevent the stock lending market from evolving by boycotting and interfering with various platforms and services designed to increase transparency and reduce costs in the stock lending market.
- In re Tracleer Antitrust Litigation (D. Md.): Cohen Milstein is representing the City of Baltimore and other plaintiffs who allege that Defendant Actelion engaged in an anticompetitive scheme to withhold samples of its life-saving pulmonary arterial hypertension medication from would-be rivals, under the guise of the REMs program, which conduct ultimately delayed generic competition.
- Center for Reproductive Rights v. Department of Health and Human Services (D.D.C.): Cohen Milstein currently represents the Center in FOIA litigation against the HHS, in which the Center seeks budget and staffing documents of the Conscience and Religious Freedom Division ("CRFD") of the HHS's Office for Civil Rights ("OCR") and information related to HHS's use of HIPAA enforcement funds under the Trump Administration.

Mr. Fisher earned his B.A., with High Honors, in the Plan II Honors Program at the University of Texas at Austin. He earned his J.D., with Honors, from the University of Texas School of Law. During law school, Mr. Fisher was an Articles and Notes Editor for the Texas International Law Journal and a Symposium Director for the Texas Environmental Law Journal.

Mr. Fisher's publications include: "The U.S.-Mexico Border Wall and the Case for 'Environmental Rights,'" 50 Tex. International Law Journal 145 (2015).

Mr. Fisher is fluent in Spanish and proficient in Portuguese.

Rachael Flanagan

Rachael Flanagan is an Associate at Cohen Milstein and a member of the firm's Complex Tort Litigation practice group. In her role, Ms. Flanagan's practice focuses on catastrophic injury, wrongful death, medical malpractice, and sexual abuse, sex trafficking, and domestic violence cases.

Prior to joining Cohen Milstein, Ms. Flanagan was an associate at a highly regarded medical malpractice and personal injury law firm in Florida.

Ms. Flanagan is currently working on the following high profile litigation:

Doe, et al. v. Washington Hebrew Congregation, et al. (D.C. Supr. Ct.): On April 15, 2019, Cohen Milstein, on behalf of the families of 11 children between the ages of three and four, filed a lawsuit against Washington Hebrew Congregation Edlavitch Tyser Early Childhood Center and its Director for failing to protect their children from sexual abuse by a preschool teacher over a two-year period.
Doe v. Scores, et al. (13th Jud. Cir., Fla.): On January 29, 2020, Cohen Milstein filed a lawsuit on behalf of a young woman against Scores Holding Company, Inc., and its affiliates for illegally employing her when she was a minor at one of its Florida locations, subjecting her to be sexual abuse and human trafficking.
Ms. Flanagan proudly serves the legal and local community as a board member of the Palm Beach County chapter of the National Alliance on Mental Illness (NAMI) and a board member of the Florida Justice Association's Women's Caucus. She is also a member of the local chapter of the Florida Association for Women Lawyers (FAWL) and the Palm Beach County Bar Association's Lawyers for Literacy Committee.

Ms. Flanagan earned her B.S. at East Tennessee State University. She earned her J.D., magna cum laude, at Barry University, Dwayne O. Andreas School of Law, where she graduated in the top 10% of her class and served as managing editor of the Barry Law Review.

Before pursuing a career as a lawyer, Ms. Flanagan was a paralegal for over a decade, working in the areas of medical malpractice, managed care abuse, products liability, mass torts, and class action litigation. During that time, she worked for several years at Leopold Law, which merged with Cohen Milstein in 2015.

Leslie Greening

Leslie Greening is a Staff Attorney at Cohen Milstein and a member of the Public Client practice group. In this role, she assists in legal research, as well as discovery and evidentiary-related aspects of the firm's representation of state Attorneys General and other public sector clients in investigation and lawsuits involving health care fraud and other fraudulent and deceptive trade practices.

Ms. Greening previously worked as a contract attorney with Cohen Milstein. She joined the firm as a Staff Attorney in 2018.

Prior to her work at Cohen Milstein, Ms. Greening was a Post-Graduate Fellow at nonprofit legal aid groups in North Carolina, including the Wake Forest University Innocence & Justice Clinic.

Ms. Greening attended Davidson College, graduating with a B.A. She earned her J.D. from Wake Forest University School of Law.

Susan M. Greenwood

Susan M. Greenwood is a member of Cohen Milstein's Securities Litigation & Investor Protection Practice Group. With extensive experience in the area of securities law and class action litigation, Ms. Greenwood analyzes and evaluates securities litigation case opportunities.

Prior to joining Cohen Milstein, Ms. Greenwood was a Securities Law Specialist at Bloomberg Law, providing analysis of trends and developments in securities litigation, regulation and enforcement and serving as the editor of the Bloomberg Law Securities Litigation and Enforcement Report. She also has served as counsel at a prominent insurance company and two large litigation firms.

Ms. Greenwood attended Cornell University, graduating cum laude with Distinction, and earned her J.D. at the University of Pennsylvania School of Law.

Alicia Gutiérrez

Alicia Gutiérrez is Discovery Counsel at Cohen Milstein and a member of the firm's Antitrust practice group. In her role, Ms. Gutiérrez is engaged in a number of the group's ongoing cases. Additionally, she is a member of the group's New Case Investigations Team, where she identifies and helps develop potential cases.

Ms. Gutiérrez's case work in the Antitrust practice group includes the following:

- Sutter Health Antitrust Litigation (Sup. Crt., San Fran. Cnty., Cal.): On August 27, 2021, the Court granted final approval of a $575 million eve-of-trial settlement, which includes significant injunctive relief, in this closely-watched antitrust class action against Sutter Health, one of the largest healthcare providers in California, for restraining hospital competition through anticompetitive contracting practices with insurance companies. Cohen Milstein was one of five firms that litigated this case since 2014 on behalf of a certified class of self-insured employers and union trust funds. California's Attorney General joined the suit in March 2018.
- Animation Workers Litigation (N.D. Cal.): Cohen Milstein served as co-lead counsel representing a class of animation and visual effects workers who alleged that Pixar, Lucasfilm, DreamWorks, Disney and other studios conspired to suppress their pay primarily though no poach agreements. The court granted final approval of $168.95 million in settlements.
- In re Broiler Chicken Antitrust Litigation (N.D. Ill.): Cohen Milstein represents a class of end-user consumers of broiler chicken in a litigation alleging that the defendants, who include Perdue Farms and Tyson Foods, agreed to restrict the supply of broilers, among other things, thereby raising their price to consumers.

Ms. Gutiérrez's legal practice has focused for more than a decade on complex commercial litigation, with an emphasis on antitrust litigation. She has worked on cases in both state and federal courts, as well as advised clients on investigations and litigation involving government agencies. Prior to joining Cohen Milstein, Ms. Gutiérrez was Counsel and an Associate at two notable firms, where she represented both defendants and plaintiffs. A significant case from one of her prior firms was a single plaintiff antitrust case in the credit card industry, which resulted in a $4 billion settlement. Before embarking on her legal career, she was a financial analyst in investment banking at Merrill Lynch and a management consultant at The Boston Consulting Group.

Ms. Gutiérrez attended Princeton University, where she graduated with an A.B. from the Woodrow Wilson School of Public and International Affairs. She received her J.D. from Stanford Law School in 2002 and her M.B.A. from the Stanford Graduate School of Business in 2002.

D. Michael Hancock

D. Michael Hancock is Of Counsel at Cohen Milstein and a member of the firm's Civil Rights & Employment practice group.

Mr. Hancock is the former Assistant Administrator for the U.S. Department of Labor's (DOL) Wage and Hour Division. As a senior DOL employee for 20 years, conducting policy-related work, including policy interpretation and enforcement, he helped enforce a wide range of workplace protections, from minimum wage, overtime, child labor and the Family Medical Leave Act, to guest worker and other employment-based immigration programs. Most recently, as Acting Director, DOL's Division of Interpretation and Regulatory Analysis, and as Assistant Administrator for Policy, Mr. Hancock managed a team of 40 senior managers and analysts and worked with, among others, the Solicitor of Labor, the Secretary of Labor, the Office of Management and Budget, and the White House.

At the DOL, Mr. Hancock also served as Branch Chief, Wage and Hour Division, Division of Interpretations and Regulatory Analysis, and as National Farm Labor Coordinator, Wage and Hour Division. While on detail from the DOL, he served as Senior Labor Advisor to the U.S. Agency for International Development (USAID), where he provided guidance to the Bureau of Democracy, Conflict and Humanitarian Assistance, Office of Democracy and Governance, on a broad range of labor, civil society, democracy and development programs funded and administrated by USAID.

Prior to joining the DOL in 1995, Mr. Hancock was the Executive Director of Farmworker Justice, where he helped provide policy support to farmworker organizations, labor unions, migrant legal services programs, administrative and legislative bodies, and other organizations. Before that, he was General Counsel of the National Coalition to Ban Handguns and President of the Foundation for Handgun Education. He also served as Executive Director of the Aviation Consumer Action Project.

Mr. Hancock was awarded a fellowship from Howard University — the Reginald Heber Smith Community Lawyer Fellowship, Ozark Legal Services, Fayetteville, Arkansas — to practice poverty law in rural Arkansas, and was a law clerk at Ozark Legal Services. He also worked as an administrator and social worker with the Arkansas Department of Human Services.

Mr. Hancock received his B.S. from Oklahoma State University, and his J.D., with honors, from the University of Arkansas, where he was appointed to the Arkansas Law Review.

Johanna M. Hickman

Johanna M. Hickman is an Of Counsel at Cohen Milstein and a member of the Public Client practice group. Ms. Hickman is also the Co-Chair of the firm's Hiring and Diversity Committee.

Ms. Hickman represents state Attorneys General and other public-sector clients in investigations and lawsuits involving health care fraud and other fraudulent and deceptive trade practices. Previously, she assisted in litigation by a state attorney general regarding the robo-signing of mortgage foreclosure documents. In addition, she has worked on a number of confidential investigations.

Currently Ms. Hickman is representing public clients in the following high-profile matters:

- Grubhub and DoorDash Litigation: Representing the City of Chicago in its investigations and litigation against Grubhub and DoorDash for pervasively deceptive and unfair business practices that take advantage of restaurants, consumers, and drivers. Click here to view the lawsuit filed against DoorDash; click here to view the lawsuit filed against Grubhub.
- Nursing Homes: Representing attorneys general in investigations and litigation related to deceptive marketing by several nursing home chains that promised, but failed to provide, basic care to their elderly residents. She is

involved in all aspects of the investigations and litigation, including conducting and analyzing the results of investigations, developing legal theories, conducting fact and expert discovery and writing briefs.

Ms. Hickman serves on the adjunct faculty at Georgetown Law, where she teaches a course in advanced legal writing and practice. Prior to joining Cohen Milstein in 2013, Ms. Hickman practiced at a leading defendants' firm, where she advised clients regarding environmental and toxic tort liability, negotiated the environmental aspects of corporate transactions, and represented clients in complex insurance coverage litigation. Prior to that, Ms. Hickman clerked for two years for the Honorable James I. Cohn of the United States District Court for the Southern District of Florida.

Ms. Hickman graduated with Highest Honors from the University of North Carolina at Chapel Hill with a B.A. in Journalism and Mass Communication. Ms. Hickman earned her J.D., cum laude, from Georgetown Law. She served as a Law Fellow, a Global Teaching Fellow, and a Staff Member and Symposium Editor of the Georgetown Journal of Legal Ethics. As a member of Georgetown's Barristers' Council, she was a finalist in Georgetown's 35th Annual Leahy Moot Court Competition, and her team won the Award for Best Brief Overall at the 2005 Pace National Environmental Law Moot Court Competition.

Benjamin F. Jackson

Benjamin F. Jackson is an Associate at Cohen Milstein and a member of the firm's Securities Litigation & Investor Protection practice, where he represents institutional and individual shareholders in derivative lawsuits and securities class actions.

Prior to joining Cohen Milstein, Mr. Jackson was a litigation associate at a highly regarded national defense firm, where he focused on securities, antitrust, white collar investigations, and intellectual property litigation.

Currently, Mr. Jackson is involved in litigating the following notable matters:

- In re EQT Corporation Securities Litigation (W.D. Pa.): Cohen Milstein is Co-Lead Counsel in this securities class action, in which Plaintiffs allege that EQT misrepresented the synergies and cost savings that could be expected to arise from EQT's $6.7 billion merger with rival natural gas producer Rice Energy, and then concealed that EQT was suffering from undisclosed well collapses and skyrocketing costs after the merger closed.
- Bayer Securities Litigation (N.D. Cal.): Cohen Milstein is Lead Counsel in this securities class action, in which Plaintiffs allege that in connection with its $63 billion acquisition of Monsanto, Bayer misrepresented the rigor of its due diligence and the nature of the legal risk presented by Monsanto's flagship product, the herbicide Roundup. Bayer investors incurred significant losses after bellwether jury trials in toxic tort cases repeatedly found in favor of the plaintiffs against Monsanto, including finding that Roundup was a "substantial factor" in causing the plaintiffs' non-Hodgkin's lymphoma, and leading to jury awards totaling hundreds of millions of dollars.
- Bristol-Myers Squibb CVR Securities Litigation (S.D.N.Y.): Cohen Milstein is Lead Counsel in this securities class action arising from Bristol Myers' alleged subversion of the FDA approval process for the cancer therapy Liso-cel for the purpose of avoiding a $6.4 billion payment to holders of contingent value rights (CVRs).
- Nikola Corp. Derivative Litigation (Del. Ch.): Cohen Milstein filed a shareholder derivative action against Trevor Milton, the founder and former CEO and Executive Chairman of Nikola Corporation, a zero-emissions vehicle startup company, and certain other current and former directors and officers of Nikola. The action alleges that Milton engaged in an ongoing criminal fraud involving the dissemination of materially false and misleading statements regarding Nikola's business, technology and expected financial performance to Nikola stockholders and the public. Nikola ultimately paid the SEC $125 million to settle an investigation relating to Milton's fraudulent scheme.

Mr. Jackson served as a law clerk to the Honorable Katherine B. Forrest of the United States District Court for the Southern District of New York and to the Honorable Robert D. Sack of the United States Court of Appeals for the Second Circuit.

Mr. Jackson earned his A.B., summa cum laude, at Washington University in St. Louis, where he was a Lien Scholar. He earned his J.D., magna cum laude, from Harvard Law School, where he served as Forum Chair of the Harvard Law Review and won the Ames Moot Court Competition.

Mr. Jackson's legal publications include Censorship and Freedom of Expression in the Age of Facebook, 44 N.M. L. Rev. 121 (2014); Note, Danger Lurking in the Shadows: Why Regulators Lack the Authority to Effectively Fight Contagion in the Shadow Banking System, 127 Harv. L. Rev. 729 (2013); and Recent Case, U.S. Bank National Ass'n v. Ibanez, 941 N.E.2d 40 (Mass. 2011), 125 Harv. L. Rev. 827 (2012).

Mr. Jackson currently serves as the Co-Chair of the Committee on Securities and Exchanges of the New York County Lawyers Association (NYCLA), and he is also a member of NYCLA's Committee on Federal Courts. Before attending law school, he was a consultant in the financial services practice of a global strategy consulting firm.

Nicholas J. Jacques

Nicholas J. Jacques is an Associate at Cohen Milstein and a member of the firm's Human Rights practice. Mr. Jacques's practice focuses on representing individuals who have been victims of torture, human trafficking, forced and slave labor, and other violations of international law.

Prior to becoming an Associate at Cohen Milstein, Mr. Jacques was a Law Fellow at the firm. In this role, he worked across Cohen Milstein's practices and was involved in litigating individual and class action cases at the district and appellate levels.

Immediately before his Fellowship, Mr. Jacques was a law clerk to the Honorable Carolyn Dineen King for the United States Court of Appeals for the Fifth Circuit, as well as a law clerk to the Honorable Nancy Moritz for the United States Court of Appeals for the Tenth Circuit.

Mr. Jacques received his B.A., summa cum laude, from Northeastern University, where received several academic awards, including the Kappa Tau Alpha Top Scholar Award. He received his J.D., magna cum laude, from Cornell Law School, where he received numerous academic awards, including The Freeman Award for Civil-Human Rights and the Arthur S. Chatman Labor Law Prize.

While at law school he was Articles Editor at Cornell Law Review, Executive Bench Editor for the Moot Court Board, and Chapter President of the National Lawyers Guild.

Mr. Jacques's publications include, "Information Gathering in the Digital Age: Towards a Liberal Right to Record," 102 Cornell Law Review 783 (2017).

Prior to law school, Mr. Jacques was a journalist at The Boston Globe.

Brian E. Johnson

Brian E. Johnson is an Associate at Cohen Milstein and a member of the Consumer Protection practice group, where he assists in the development of potential cases and provides support in all aspects of current litigation.

Prior to joining Cohen Milstein, Mr. Johnson was an Associate at a Missouri-based law firm where he represented consumers in financial lawsuits involving the Fair Debt Collection Practices Act, Fair Credit Reporting Act and the Telephone Consumer Protection Act. Following law school, Mr. Johnson served as a Law Clerk for the Honorable Margaret L. Sauer and the Honorable Janette K. Rodecap, 16th Circuit Court of Jackson County, Missouri.

Mr. Johnson is a graduate of Missouri State University, where he received a dual B.A., magna cum laude, in History and German in 2005. He earned his J.D. from the George Washington University Law School in 2012. Mr. Johnson also studied at Webster University in Vienna, Austria, earning a M.A. in International Relations in 2007.

Nicholas C. Johnson

Nicholas C. Johnson is Of Counsel at Cohen Milstein and a member of the firm's Complex Tort Litigation practice group. In that role, Mr. Johnson's practice focuses on catastrophic injury and wrongful death, medical malpractice, nursing home abuse, and personal injury cases.

Prior to joining Cohen Milstein in 2014, Mr. Johnson worked for two South Florida defense firms, gaining valuable experience representing Fortune 500 insurance companies in the defense of claims and lawsuits. Earlier in his career, Mr. Johnson practiced as an Assistant Public Defender in Palm Beach County, where he represented indigent clients charged with misdemeanors and felonies, ranging from DUI to crimes punishable by life in prison. He was awarded the Best Advocate Award at the Florida Public Defender College in November 2008. Mr. Johnson tried approximately 30 jury trials to verdict as an Assistant Public Defender. Eager to resume his representation of individuals, Mr. Johnson joined Cohen Milstein.

Some of his past successes include:

- Doe. v. JFK Medical Center (Cir. Crt., Palm Beach Cnty., Fla.): In April 2019, Cohen Milstein settled a medical malpractice lawsuit against JFK Medical Center on behalf of a client who had a documented seizure disorder, for which he was prescribed twice daily anticonvulsant medication. During a medical evaluation, one of the doctors employed by JFK Medical Center withheld our client's anticonvulsant medication, causing him to suffer a severe and debilitating seizure. The seizure resulted in comminuted shoulder fractures, a reverse total shoulder replacement surgery, and severe permanent functional impairment to both shoulders.
- Doe v. Florida Medical Corporation: Cohen Milstein represented the family of a woman who tragically died while being held in the Marion County Jail. Upon booking, she immediately exhibited symptoms of MRSA, a deadly disease, which the jail medical staff failed to include in her differential diagnosis. Her condition continued to deteriorate during her incarceration, leading to her death from bacterial endocarditis, a condition of her untreated infection. She left behind an 8-year-old-son, the sole beneficiary of her estate.
- Skiles v. Boca Raton Regional Hospital (Cir. Crt., Palm Beach Cnty., Fla.): Cohen Milstein represented the Estate of Mr. Skiles in a medical malpractice, wrongful death case, arising from the defendant's failure to perform an x-ray on Mr. Skiles to rule-out a potential bowel perforation following a colonoscopy procedure. The x-ray was never performed, and Mr. Skiles was sent home. Later that day, Mr. Skiles returned to the hospital with severe abdominal pain. He was diagnosed with a perforated bowel, ultimately leading to bowel resection surgery. Although Mr. Skiles initially survived his surgery, he later died due to complications of sepsis. The case settled for a confidential sum.
- Doe v. Unnamed Hospital (Cir. Crt., Orange Cnty., Fla.): Cohen Milstein represented the widow and children of a man against an unnamed hospital in a medical malpractice lawsuit. Our client checked into the hospital's Emergency Room complaining of severe chest pain and shortness of breath. The hospital-employed physicians ran tests, evaluated him only for cardiac related issues, and gave an order to discharge him. While he was still in the hospital, our client suffered a massive pulmonary embolism and died. The complaint alleges that the physicians failed to recognize the signs and symptoms of pulmonary embolism, and thereby fell below the standard of care. The case settled for a confidential sum.
- Doe v. Unnamed Hospital (Cir. Crt., Seminole Cnty., Fla.): Cohen Milstein represented a client in a medical malpractice lawsuit against an unnamed hospital. Our client, a patient at the hospital, was dropped on his head during a routine surgical procedure, allegedly as a result of the hospital technicians' failure to properly secure him to the operating room table. The fall resulted in a mild traumatic brain injury with debilitating consequences,

including significant emotional, behavioral, and memory deficits. After extensive litigation, including over 40 depositions, the case settled for a confidential sum.

- Doe v. Unnamed Hospital (Cir. Crt., Highlands Cnty., Fla.): Cohen Milstein represented an emergency room patient of an unnamed hospital, who was never notified by the hospital of the results of a "critical" blood culture, ultimately leading to irreversible damage of his spinal cord and paraplegia. The case settled for a confidential sum.
- Pavlov v. PBSO (S.D. Fla.): Cohen Milstein represented the mother of a 28-year-old mentally disturbed man who was shot and killed by a Deputy Sheriff of the Palm Beach County Sheriff's Office. Mr. Johnson was instrumental in litigating this case, which at that time, resulted in the largest settlement paid out by the Palm Beach County Sheriff's Office.
- Negligent Security Matter (Cir. Crt., Palm Beach Cnty., Fla.): Cohen Milstein represented the mother of a 20-year-old man who was shot and killed in the parking lot of a West Palm Beach nightclub, which had been plagued with violent crimes over the years. The complaint alleged that the nightclub failed to provide adequate security that led to this tragic incident. On October 6, 2017, the parties entered into a confidential settlement.
- Patient v. Confidential Defendant (Cir. Crt., Alachua Cnty., Fla.): On March 17, 2016, Cohen Milstein successfully negotiated a confidential settlement on behalf of their client who had suffered permanent bodily damage at the hands of a Florida Cardiologist. Mr. Johnson exposed the Defendant's misconduct and medically negligent treatment when using a stent inappropriately.
- Nursing Home Neglect Litigation (Cir. Crt., Alachua Cnty., Fla.): Cohen Milstein represented the spouse of an 85-year-old man who experienced a series of falls in a nursing home before finally fracturing his hip, which required hip replacement surgery. Mr. Johnson was instrumental in reaching a confidential settlement in this case that alleged neglect on the part of the nursing home.

Mr. Johnson has been selected by National Trial Lawyers as a "Top 100 Plaintiff Civil Trial Lawyer" in the State of Florida. He is consistently recognized by the "Best Lawyers in America" as a "Best Lawyer" in the field of Personal Injury Litigation and Product Liability Litigation – Plaintiffs, as well annual recognitions by Florida Trend, Florida Super Lawyers and Palm Beach Illustrated.

In June 2019, Mr. Johnson was appointed to serve on the Florida Justice Association's (FJA) Board of Directors.

Mr. Johnson is Past President of the prestigious F. Malcolm Cunningham, Sr. Bar Association. He has been a member since 2014.

In October 2020, Mr. Johnson was appointed to serve on The Florida Bar's Grievance Committee and will serve until 2023. He is a 2016 alumnus and active member of The Florida Bar's Wm. Reece Smith, Jr. Leadership Academy, and currently serves as Chair for the Academy's 2021-2022 term.

Mr. Johnson has served as an appointed member of the Palm Beach County Bar Association's Judicial Campaign Practices Commission since 2018. In addition, he served on the North County Section's Board of Directors between 2017 and 2019.

Mr. Johnson is also an active member of the American Association for Justice (AAJ). He is involved in several AAJ committees, including the Minority Caucus, the Voter Protection Committee, and the Public Education Committee. In June 2019, Mr. Johnson was appointed to serve on AAJ's Board of Directors by FJA as the minority state delegate. Mr. Johnson is an alumnus of AAJ's Leadership Academy (2016-2017).

Mr. Johnson is a community advocate and was appointed to the Board of Scholar Career Coaching in June 2018.

Mr. Johnson is also a prolific writer, and his articles have been published in Florida Justice Association Journal and AAJ's Trial magazine.

Mr. Johnson was born and raised in Kingston, Jamaica, and graduated from Boston University with a B.A. in Economics and completed his Master's in Sports Management at the University of Florida. He graduated cum laude from St. Thomas University School of Law in 2007.

Eric A. Kafka

Eric A. Kafka is an Associate at Cohen Milstein and a member of the firm's Consumer Protection practice group.

Mr. Kafka is a tireless advocate for consumers. Since joining Cohen Milstein in 2015, Mr. Kafka has represented plaintiffs in a wide range of consumer class actions, including product liability, false advertising, and data breach class actions.

Mr. Kafka is also an active member of the Plaintiffs' Bar. He is a member of both the American Association for Justice (AAJ) and Public Justice. Mr. Kafka serves on Public Justice's Class Action Preservation Committee.

Currently, Mr. Kafka is litigating the following notable matters:

- LLE One, LLC v. Facebook (N.D. Cal.): Cohen Milstein represents a putative class of advertising purchasers, who claim that Facebook intentionally inflated key metrics regarding their paid video advertisements' performance. Plaintiffs allege that the inflated metrics caused them to buy more video advertisements and to pay a higher price than they otherwise would have paid.
- Johnannessohn, et al. v. Polaris (D. Minn.): Cohen Milstein represents a putative class of purchasers of Polaris Sportsman four-wheel all-terrain vehicles (ATVs) who allege that their Sportsman ATV's have a defect where it emits excess exhaust heat, which can burn riders and melt ATV components. Plaintiffs allege that Polaris violated state consumer protection laws by failing to disclose the exhaust heat defect.
- Singer, et al. v. Facebook (N.D. Cal.): Cohen Milstein represents a putative class of advertisers who claim that Facebook's key advertising metrics (Potential Reach and Estimated Daily Reach) are inflated and misleading.
- In re: Marriott International Inc. Customer Data Security Breach Litigation (D. Md.): In April 2019, the Court appointed Cohen Milstein the Consumer Plaintiffs' Co-Lead Counsel to oversee a class action related to the data breach that compromised the personal data of nearly 400 million customers, making it one of the largest data breaches in U.S. history.

Mr. Kafka was actively involved in the following concluded matters:

- In re Anthem, Inc. Data Breach Litigation (N.D. Cal.): Cohen Milstein was Co-Lead Counsel on behalf of a putative class of 78.8 million insureds, whose personal data and health information was stolen as a result of a massive data breach of Anthem, Inc., one of the nation's largest for-profit health care companies. In August 2018, the Court granted final approval of a $115 million settlement – the largest data breach settlement in history.
- HCA Litigation (M.D. Fla.): Cohen Milstein was Lead Counsel in a class action, alleging that emergency room patients were billed unreasonably high fees for emergency radiology services, in excess of the amount allowed by their mandatory Florida Personal Injury Protection (PIP) insurance. In December 2018, the Court granted final approval of a $220 million injunctive relief settlement.

Prior to attending law school, Mr. Kafka worked on multiple political campaigns, including President Obama's 2008 presidential campaign.

Mr. Kafka earned his J.D. from Columbia Law School, where he was a Harlan Fiske Stone Scholar. He received his B.A. from Yale University.

Louis Katz

Louis Katz is an Associate at Cohen Milstein and a member of the firm's Antitrust practice group. In this role, Mr. Katz represents a broad range of individuals and businesses in civil litigation, with a focus on multi-district class actions and antitrust litigation.

Before joining Cohen Milstein, Mr. Katz was a law clerk for the Honorable David J. Barron, U.S. Court of Appeals for the First Circuit.

Mr. Katz's publications include co-authoring, "A Time to Serve: Proposals for Renewing the Civil Service," Great Democracy Initiative (August 2020).

Mr. Katz received his B.A., with high honors, from Swarthmore College, and he received his J.D. from Yale Law School.

Prior to attending law school, Mr. Katz was a legislative aide for U.S. Senator Elizabeth Warren, where he served as Senator Warren's staff representative on the Energy and Natural Resources Committee, among other roles.

Mr. Katz is admitted only in Massachusetts. He is applying for admission to the District of Columbia Bar and is currently working under the close supervision of the partners of the firm who are admitted to practice in the District of Columbia.

Peter Ketcham-Colwill

Peter Ketcham-Colwill is an Associate at Cohen Milstein and a member of the firm's Public Client practice group. Mr. Ketcham-Colwill's practice focuses on the representation of state Attorneys General and other public-sector clients in investigations and lawsuits involving false claims and fraudulent and deceptive trade practices.

Prior to joining Cohen Milstein in 2018, Mr. Ketcham-Colwill practiced as a litigation associate at an international disputes and transactions law firm in Washington, D.C. Before that, Mr. Ketcham-Colwill served as the Voter Protection Director for the Democratic Party of Virginia's 2018 Coordinated Campaign. He also worked as a Regional Voter Protection Director for the Ohio Democratic Party's 2016 Coordinated Campaign.

Mr. Ketcham-Colwill is involved in the following high-profile litigation:

- Grubhub and DoorDash Litigation: Representing the City of Chicago in its investigations and litigation against Grubhub and DoorDash for pervasively deceptive and unfair business practices that take advantage of restaurants, consumers, and drivers. Click here to view the lawsuit filed against DoorDash; click here to view the lawsuit filed against Grubhub.

Following law school, Mr. Ketcham-Colwill served as a Law Clerk for the Honorable David Ezra, U.S. District Court for the Western District of Texas.

Mr. Ketcham-Colwill graduated from Princeton University with an A.B. in the Woodrow Wilson School of Public and International Affairs. He earned his J.D. with Highest Honors from The George Washington University Law School, where he was the Senior Executive Editor of The George Washington Law Review.

Prior to law school, Mr. Ketcham-Colwill worked for the U.S. House of Representatives Committee on Energy and Commerce, where he organized investigative hearings and drafted legislation related to consumer protection and the environment.

Jessica Kim

Jessica (Ji Eun) Kim is an Associate at Cohen Milstein and a member of the firm's Securities Litigation & Investor Protection practice group, where she represents institutional and individual shareholders in securities class actions.

Ms. Kim was named among "Ones to Watch" in Securities Litigation in 2021 and 2022 by Best Lawyers in America.

Ms. Kim's current matters include:

- IBEW Local 98 Pension Fund v. Deloitte (D.S.C.): Cohen Milstein is sole Lead Counsel in this putative securities class action against Deloitte entities for allegedly breaching its external auditor duties related to as SCANA's multi-billion-dollar nuclear energy expansion project in South Carolina.
- In re EQT Corporation Securities Litigation (W.D. Pa.): Cohen Milstein is Co-Lead Counsel in this putative securities class action against EQT Corporation for allegedly misrepresenting the "substantial synergies" that were expected to arise from a planned merger with rival natural gas producer Rice Energy due to "the contiguous and complementary nature of Rice's asset base with EQT's."
- Myun-Uk Choi, et al. v. Tower Research Capital LLC, et al. (S.D.N.Y.): Cohen Milstein is representing traders who transacted in KOSPI 200 futures contracts in 2012 in a class action against Tower Research Capital and Mark Gorton for violations of the Commodity Exchange Act and for unjust enrichment.

Some of Ms. Kim's recent successes include:

- In re GreenSky Securities Litigation (S.D.N.Y.): Cohen Milstein was co-Lead Counsel in this putative securities class action against GreenSky, a financial technology company, for failing to disclose the substantial change in the composition of GreenSky's merchant business mix and the resulting diminution in transaction-fee revenue, accounting for 87% of its overall revenue, as it moved from solar panel energy merchant sector to the healthcare sector. On October 22, 2021, the court granted final approval of a $27.5 million settlement.
- Eric Weiner v. Tivity Health, Inc. (M.D. Tenn.): Cohen Milstein, as sole Lead Counsel, represented Oklahoma Firefighters Pension and Retirement System and other purchasers of Tivity Health stock in a putative securities class action for violations of the Exchange Act related to Tivity's misleading the public about its relationship with United Healthcare, Inc. On October 7, 2021, the court granted final approval of a $7.5 million settlement. During the final approval hearing on October 4, 2021, the court commended counsel for being "outstanding [client] representatives."

Prior to joining Cohen Milstein, Ms. Kim was a litigation associate at a highly-regarded international defense firm, where she focused on white collar defense, government enforcement, and internal investigations.

Ms. Kim received a dual B.B.A. and B.A. from Korea University and her J.D. from Harvard Law School. While in law school, Ms. Kim was an Executive Technical Editor for the Harvard Civil-Rights Civil-Liberties Law Review, and Co-President of the Harvard Mediation Program. She was also a member of the Harvard Criminal Justice Institute, where she represented clients charged with misdemeanors and felonies in the Roxbury and Dorchester Divisions of the Boston Municipal Court Department.

Ms. Kim is fluent in Korean.

Christopher Lometti

Christopher Lometti is Of Counsel in Cohen Milstein's Securities Litigation & Investor Protection practice group. In this role, Mr. Lometti has litigated some of the most significant mortgage-backed securities (MBS) class action lawsuits to emerge from the financial crisis.

Mr. Lometti, together with his colleague Joel Laitman, initiated the Bear Stearns, Harborview, RALI, Lehman and HEMT MBS litigation at their named firm prior to joining Cohen Milstein. The lawsuits were high-risk matters involving novel claims on behalf of their Taft-Hartley pension fund clients injured by the dramatic downgrades of their MBS holdings from AAA to junk status. The MBS litigations have earned Cohen Milstein's Securities Litigation Practice numerous accolades from the National Law Journal, Law360 and American Lawyer.

Mr. Lometti's successes include the following notable matters:

- Bear Stearns MBS Litigation: $500 million settlement with JPMorgan Chase. Cohen Milstein was lead counsel in a class action lawsuit alleging Bear Stearns violated securities laws in selling toxic mortgage-backed securities that failed to meet the bank's own underwriting standards and that contained false and misleading information as to the appraised values of the underlying mortgages. Mr. Lometti was one of the key litigators in the case, developing strategy and conducting extensive fact discovery into the 22 offerings backed by approximately 71,000 largely Alt-A mortgages that Bear Stearns sold to investors from May 2006 to April 2007.
- RALI MBS Litigation: $335 million settlement with Citigroup, Goldman Sachs and UBS. Cohen Milstein was lead counsel in a class action litigation alleging RALI and its affiliates sold shoddy MBS securities that did not meet the standards of their underwriters. Mr. Lometti was one of the senior litigators on the class action, conducting fact discovery, deposing economic experts and preparing witnesses.
- Harborview MBS Litigation: $275 million settlement with Royal Bank of Scotland. Cohen Milstein was lead counsel in a complex case, in which presiding Judge Loretta A. Preska, of the U.S. District Court, Southern District of New York, commented on the "job well done" by the Cohen Milstein team of which Mr. Lometti was a senior litigator.
- HEMT MBS Litigation: $110 million settlement with Credit Suisse. Cohen Milstein was lead counsel in a case alleging Credit Suisse and its affiliates sold toxic securities to pension fund investors. The suit, filed in 2008, was one of the first class action cases involving mortgage-backed securities to be filed.
- Lehman Litigation: $40 million settlement. Cohen Milstein was lead counsel in a class action lawsuit against individuals affiliated with the bankrupt firm, the largest bankruptcy in U.S. history. Mr. Lometti was a senior litigator on the lawsuit, developing strategy.
- Dynex Litigation: $7.5 million settlement. Cohen Milstein was lead counsel in a class action lawsuit involving the asset-backed securities. Mr. Lometti was a central member of the team to litigate this seminal lawsuit involving hybrid securities. In the litigation, the U.S. District judge issued one of the first decisions certifying an investor class pursuing fraud claims in connection with the sale of asset-backed securities. The Dynex litigation laid out a road map that could be followed in litigating an asset-backed security.
- Braskem Litigation: $10 million settlement. Cohen Milstein represented shareholders in a class action suit alleging that the Brazilian petrochemical company lied to investors in its American Depository Receipts about its role in a bribery scheme involving Petrobras, Brazil's giant oil producer.

Currently, Mr. Lometti is litigating the following matters:

- NovaStar MBS: Cohen Milstein is lead counsel in litigation alleging that RBS, Wells Fargo (formerly Wachovia) and Deutsche Bank sold toxic mortgage-backed securities to investors. The litigation is one of the last outstanding class action MBS lawsuits. The Second Circuit Court of Appeals reversed an earlier dismissal of the lawsuit, paving the way for prosecution of the case. In March 2017, the U.S. District Court, Southern District of New York preliminarily approved a $165 million all-cash settlement. Final approval of the settlement is pending.

Prior to his arrival at Cohen Milstein, Mr. Lometti played a substantive role in litigating and settling the massive class action suit against WorldCom, one of the largest bankruptcies in history, representing significant stakeholders in the telecom's bond offerings. The lawsuit resulted in a settlement of $6.15 billion.

Mr. Lometti has been repeatedly recognized for his career accomplishments, including being named to the 2016 Lawdragon 500, one of the industry's leading peer-reviewed surveys, as well as annually recognized by New York Super Lawyers (2011- 2019).

He has served as a non-industry arbitrator for the New York Stock Exchange and National Association of Securities Dealers helping to resolve disputes, and as a mediator for the New York State Court System.

Mr. Lometti received a Bachelor of Arts from Fordham College in 1983, and his J.D. from Fordham Law School in 1986.

Joshua Lurie

Joshua Lurie is a Staff Attorney at Cohen Milstein and a member of the firm's Antitrust practice. In this role, Mr. Lurie assists in discovery and evidentiary-related aspects of litigation and deposition preparation.

Prior to joining Cohen Milstein, Mr. Lurie was a senior associate at an Illinois-based defense law firm, where he focused on consumer-related financial services litigation, mortgage related disputes, and general civil litigation and criminal proceedings.

Mr. Lurie earned his B.A., magna cum laude, from Elon University and his J.D. from Chicago-Kent College of Law, where he was on the Executive Board of The Chicago-Kent Law Review and a member of the Chicago-Kent Moot Court Honor Society.

While attending law school, Mr. Lurie was a judicial extern for the Honorable Robert E. Gordon for the Illinois Court of Appeals.

Mr. Lurie is the Founder and Editor-in-Chief of Vertical Slice Games, an online website that aggregates video game reviews from professional game critics.

Aaron J. Marks

Aaron J. Marks is an Associate at Cohen Milstein and a member of the firm's Antitrust practice group. In this role, Mr. Marks represents a broad range of individuals and businesses in civil litigation, with a focus on multi-district class actions and antitrust litigation.

Prior to joining Cohen Milstein, Mr. Marks was a Law Clerk for the Honorable Carol Bagley Amon of the United States District Court for the Eastern District of New York.

Before his clerkship, Mr. Marks served as a Litigation Associate at a distinguished international law firm.

Mr. Marks received his B.A. from New York University and his J.D., magna cum laude, from Harvard Law School. During law school, he was Online Editor of the Harvard National Security Journal.

Mr. Marks currently serves on the Antitrust & Trade Regulation Committee of the New York City Bar Association. Prior to pursuing a career in law, Mr. Marks was a software engineer.

Diana L. Martin

Diana L. Martin is Of Counsel at Cohen Milstein, and a member of the firm's Complex Tort Litigation and Consumer Protection practice groups.

Ms. Martin's practice focuses on appellate litigation involving complex product liability, consumer class, mass tort, and managed care litigation. She not only handles appeals in these areas of law, but also provides appellate support at the trial stage. In this role, she works as an integral part of the trial team by strategizing best practices, drafting and arguing complex and case dispositive motions, handling jury instruction charge conferences, and assisting trial counsel in preserving and protecting the record in the event of an appeal.

Ms. Martin is often involved in cases that involve complex issues or require the development of innovative strategies for novel or evolving theories of liability. These areas have included developing legal theories to avoid the application of legal immunity to workers' compensation carriers who deny or delay medical care to injured workers, and using Florida's Deceptive and Unfair Trade Practices Act to hold hospitals accountable for drastically overbilling patients on a uniform basis. Her experience spans various practice areas, such as constitutional and civil rights law, commercial litigation, mass tort and class action litigation, managed care litigation, products liability law, and catastrophic personal injury litigation.

Ms. Martin is on the litigation team for the following notable matters:

- United States ex rel. Long v. Janssen Biotech, Inc. (D. Mass.): Cohen Milstein represents the plaintiff-relator in a whistleblower/qui tam lawsuit against Janssen Biotech (a subsidiary of Johnson & Johnson), alleging that the manufacturer of the rheumatoid arthritis drugs Remicade and Simponi ARIA violated federal law by engaging in a scheme through which it provided physicians free practice management and infusion business consulting services over an extended period to induce the physicians to purchase Remicade and Simponi ARIA and administer these drugs to patients, including Medicare beneficiaries, via infusions performed in their offices.
- Underwood v. Meta Platforms, Inc. (Facebook) (State Crt., Cal.): Cohen Milstein has filed a wrongful death lawsuit on behalf of Angela Underwood Jacobs, the sister of slain federal security officer Dave Patrick Underwood, against Meta Platforms, Inc., formerly Facebook. On May 29, 2020, Officer Underwood was providing security at a federal courthouse during a rally to protest the killing of George Floyd. According to documents filed in federal criminal proceedings, Officer Underwood was the victim of a drive-by shooting by Steven Carrillo and his accomplice, Robert Alvin Justus, Jr., who identify as boogaloo adherents, part of an extremist movement that advocates targeted violence against federal officers. Plaintiff alleges that by connecting users to extremist groups, including Officer Underwood's killers who met through Facebook where they hatched their extremist plot to target and kill federal officers, and promoting inflammatory, divisive, and untrue content, the company bears responsibility for the tragic murder of Officer Underwood.
- Reed, et al. v. USA (E.D. Tenn.): Cohen Milstein is representing plaintiffs in a wrongful death and property damage mass action against the U.S. Department of Interior and National Park Service for the negligence of its employees to perform their duties during The Chimney Tops 2 Fire in Tennessee, which originated in the Great Smoky Mountains National Park and ultimately damaged or destroyed 2,500 homes, buildings and other structures, and killed more than 12 people.
- CSX Litigation (E.D. N.C.): On October 4, 2018, Cohen Milstein filed a putative class action on behalf of faith leaders, businesses, and residents in the southern and western portions of Lumberton, North Carolina who have twice suffered catastrophic flooding and damage due to CSX Corporation and CSX transportation entities ignoring and trying to block government entities from building a floodgate on a train underpass it owns and operates, including preventing the city from building a temporary berm in 2018 to protect its citizens from impending Hurricane Florence.
- Edwards v. Tesla (State Crt., Cal.): On June 25, 2020, Cohen Milstein filed a product liability lawsuit against Tesla, Inc., on behalf of Kristian and Jason Edwards. Ms. Edwards sustained catastrophic injuries as a result of the failure of the airbags to deploy in her Tesla model 3 during an accident.
- Doe v. Chiquita Brands International (S.D. Fla.): Cohen Milstein is representing families of banana workers and others killed or tortured by the Autodefensas Unidas de Colombia, a foreign terrorist organization designated by the United States, which was allegedly receiving financial support and firearms and ammunition from Chiquita, a U.S. corporation with operations throughout Colombia.

Ms. Martin has successfully litigated the following matters:

- Trahan v. Mulholland (Cir. Crt., Alachua Cnty., Fla.): In August 2018, after a week-long trial, a jury awarded Ms. Trahan, an adult survivor of childhood sexual abuse, $4.6 million in damages for more than a decade of sexual abuse perpetrated by her father, a prominent Central Florida businessman. The jury also found her mother negligent in failing to use reasonable care to protect her daughter from the abuse. Ms. Martin represented Ms. Trahan as part of the trial team and on appeal, where she successfully defended the $4.6 million judgment in Florida's First District Court of Appeal.
- S.B. v. FAMU (11th Cir. Ct. of Appeals): Cohen Milstein represented a FAMU student who filed an action alleging the university committed Title IX violations in failing to adequately investigate her claims of sexual assault. To protect her identity, Cohen Milstein named the plaintiff under a pseudonym, and the district court repeatedly denied the university's attempts to make her identity public. Ms. Martin successfully defended the district court's orders, protecting the plaintiff's anonymity, when the university appealed the issue to the United States Court of Appeals for the Eleventh Circuit.
- Herrera, et al. v. JFK Medical Center, et al. (M.D. Fla.): Cohen Milstein was lead counsel in a class action lawsuit alleging that four Florida plaintiffs and others like them were billed inflated and exorbitant fees for emergency radiology services, in excess of the amount allowed by law, covered in part by their mandatory Florida Personal Injury Protection insurance. When the district court struck plaintiffs' class claims, Ms. Martin successfully petitioned the Eleventh Circuit Court of Appeals to accept immediate appellate review and obtained a reversal of the district court's order. Cohen Milstein resolved the case and secured final approval of a $220 million injunctive relief settlement.
- Lindsay X-LITE Guardrail Litigation (State Crts.: Tenn., S.C.): Cohen Milstein successfully represented more than five families of decedents and victims of catastrophic injuries in a series of individual products liability, wrongful death and catastrophic injury lawsuits in Tennessee and South Carolina state courts against the Lindsay Corporation and several related entities for designing, manufacturing, selling, and installing defective X-Lite guardrails on state roadways.
- H.C., et al. v Ric Bradshaw, et al. (S.D. Fla.): Cohen Milstein, in conjunction with the Human Rights Defense Center and the Legal Aid Society of Palm Beach County, successfully represented juvenile offenders against the Palm Beach County Sheriff's Office and the Palm Beach County School Board, challenging the practice of placing juvenile offenders in solitary confinement and for allegedly denying mandated educational services to juvenile offenders held at the Jail, "including services needed to address their disabilities," in violation of the federal Individuals with Disabilities Education Act. Cohen Milstein and its co-counsel resolved the matter in 2018 by obtaining a settlement that was first-of-its-kind in Florida, as it ended the systemic practice of holding juveniles charged as adults in solitary confinement and ensures the provision of educational services to such juveniles.
- Hand et al., v. Scott et.al (N.D. Fla.): Cohen Milstein and Fair Elections Legal Network, a national voting rights organization, achieved a major victory in 2018 on behalf of former felons in Florida, who claimed their constitutional rights had been infringed by Florida's Clemency Board. The court ruled that the Clemency Board's process to grant or deny former felons' restoration of voting rights applications was unconstitutionally arbitrary and violated the U.S. Constitution's First and Fourteenth Amendments. While this case was on appeal before the 11th Circuit, Floridians voted to allow such voting rights restoration to felons.
- In re: Caterpillar, Inc. Engine Products Liability Litigation (D.N.J.): Cohen Milstein was co-lead counsel in a nationwide product liability class action lawsuit alleging Caterpillar sold diesel engines with defective exhaust emissions system that resulted in power losses and shutdowns. The case was settled in September 2016 for $60 million.
- Mincey v. Takata (Cir. Crt., Duval Cnty., Fla.): Cohen Milstein was lead counsel in a lawsuit brought on behalf of Patricia Mincey and her family, a Florida woman who sustained catastrophic injuries that rendered her a quadriplegic in 2014 when the driver's side airbag in her Honda Civic deployed too aggressively during a collision due to a product defect. Patricia Mincey passed away in early 2016 due to complications from her quadriplegia. The suit charged that Takata, the manufacturer of the airbag system, knew of the airbag defect and hid the problem from consumers. When the defendants removed Ms. Mincey's case to federal court in an attempt to

have it bogged down in multi-district litigation, Ms. Martin successfully had the case remanded to Florida state court, where it is was resolved in July 2016.

- Wal-Mart Employment Discrimination Litigation (S.D. Fla.): Cohen Milstein represented individual female Walmart employees in a lawsuit alleging that the company discriminated against them on the basis of their sex. Ms. Martin worked as part of the trial and appellate teams until the parties reached a confidential settlement with the plaintiffs.

Ms. Martin currently serves on the Civil Procedure Rules Committee of the Florida Bar and serves as Audit Committee Chair of Families First of Palm Beach County. She is a past President of Florida Legal Services, where she was a board member from 2007 to 2016, and served as a board member on the Florida Bar Foundation from 2015 to 2016. She has written numerous legal articles, which have been published in a variety of journals, including Trial Magazine, The Florida Bar Journal, and the Florida Justice Association Journal, and co-authors Florida Insurance Law and Practice, an annual publication by Thomson/West. She was recognized by "Best Lawyers in America" in 2021 as "Best Lawyer" for practice areas of Appellate Practice; Mass Tort Litigation / Class Actions; and Personal Injury Litigation. In 2018, Ms. Martin was recognized by the Daily Business Review as the "Most Effective Lawyer" in the area of Pro Bono.

Ms. Martin attended Flagler College, graduating summa cum laude with Departmental Honors in Philosophy/Religion. She earned her J.D. from the University of Florida Levin College of Law, graduating with High Honors and achieving admission to the Order of the Coif.

Ms. Martin clerked for three years between 2002 and 2005 for the Honorable Martha C. Warner in Florida's Fourth District Court of Appeal.

David M. Maser

David M. Maser is an Of Counsel at Cohen Milstein, and a member of the firm's Securities Litigation & Investor Protection practice group.

Prior to joining Cohen Milstein, Mr. Maser worked with a nationally recognized securities class action plaintiffs law firm for more than a decade, where he helped create the firm's securities monitoring program and cultivated important relationships with the firm's growing portfolio of institutional investor clients, nationally and globally.

As a result of his work, Mr. Maser successfully engaged over 25 public fund and union clients with well over $200 billion in assets under management. Clients he has represented have been involved in more than 60 actions, generating more than $4.6 billion in case recoveries.

Mr. Maser has worked extensively in both the public and private sectors and brings more than 25 years of experience and insight to pension funds and other institutional clients, specifically at the intersection of law, business and government.

Through his extensive experience in the public and private sectors, Mr. Maser has established bipartisan relationships in the political arena on the federal, state and local levels. His ability to see the big picture and create bipartisan collaborations has earned him a reputation as an exceptional diplomat and strategic consensus builder.

Kalpish K. Mehta

Kalpish K. Mehta is a Staff Attorney at Cohen Milstein and a member of the Antitrust practice group. In this role, he assists in discovery and evidentiary-related aspects of litigation and deposition preparation.

Mr. Mehta has extensive discovery experience in antitrust class action litigation, including Department of Justice Antitrust Division and Federal Trade Commission investigations.

Mr. Mehta's case work in the Antitrust practice group includes the following:

- Sutter Health Antitrust Litigation (Sup. Crt., San Fran. Cnty., Cal.): On August 27, 2021, the Court granted final approval of a $575 million eve-of-trial settlement, which includes significant injunctive relief, in this closely-watched antitrust class action against Sutter Health, one of the largest healthcare providers in California, for restraining hospital competition through anticompetitive contracting practices with insurance companies. Cohen Milstein was one of five firms that litigated this case since 2014 on behalf of a certified class of self-insured employers and union trust funds. California's Attorney General joined the suit in March 2018.
- Stock Lending Litigation (S.D.N.Y.): Cohen Milstein and co-counsel filed a putative class action on August 17, 2017 in the Southern District of New York on behalf of Iowa Public Employees Retirement System and other investors, alleging collusion among six of the world's largest investment banks to prevent modernization of the $1.7 trillion stock loan market. Plaintiffs allege that Bank of America, Credit Suisse, Goldman Sachs, JP Morgan, Morgan Stanley, and UBS conspired to overcharge investors and maintain the power they hold over the stock loan market, obstructing multiple efforts to create competitive electronic exchanges and enhance price transparency that would benefit both stock lenders and borrowers.

Mr. Mehta served in the United States Army. Prior to military service, he worked in variety of private practice settings. Mr. Mehta's litigation experience includes medical malpractice and criminal defense.

Mr. Mehta attended Santa Clara University, graduating cum laude with a B.S. in Accounting. He earned his J.D. from Brooklyn Law School.

Jan E. Messerschmidt

Jan E. Messerschmidt is an Associate at Cohen Milstein and a member of the firm's Securities Litigation & Investor Protection practice, where he represents institutional and individual shareholders in derivative lawsuits and securities class actions.

Prior to joining Cohen Milstein, Mr. Messerschmidt was an associate at a highly regarded national litigation boutique, where he represented both plaintiffs and defendants in a range of issues involving antitrust, securities, cybersecurity, contract, personal tort, and malicious prosecution claims.

For his work, The National Law Journal named Mr. Messerschmidt one of its 2022 Elite Trial Lawyers "Rising Stars of the Plaintiffs Bar."

Mr. Messerschmidt is involved in the following notable matters:

- Miller Energy/KPMG (E.D. Tenn.): Cohen Milstein is Co-Lead Counsel in this certified securities class action, alleging that KPMG failed to meet its obligation as the independent auditor of Miller Energy Resources, Inc., perpetrating a massive fraud by Miller Energy, including overstating the value of largely worthless oil reserves to more than $480 million, among other claims.
- IBEW Local 98 Pension Fund v. Deloitte (D.S.C.): Cohen Milstein is sole Lead Counsel in this putative securities class action against Deloitte entities for allegedly breaching its external auditor duties related to SCANA's multi-billion-dollar nuclear energy expansion project in South Carolina.

Mr. Messerschmidt's recent successes include:

- In re GreenSky Securities Litigation (S.D.N.Y.): Cohen Milstein was Co-Lead Counsel in this putative securities class action against GreenSky, a financial technology company, for failing to disclose the substantial change in the

composition of GreenSky's merchant business mix and the resulting diminution in transaction-fee revenue, accounting for 87% of its overall revenue, as it moved from the solar panel energy merchant sector to the healthcare sector. On October 22, 2021, the court granted final approval of a $27.5 million settlement.

Before entering private practice, Mr. Messerschmidt served as a law clerk to the Honorable Beryl A. Howell, Chief Judge of the United States District Court for the District of Columbia. He was also a law clerk to the Honorable Rosemary S. Pooler of the United States Court of Appeals for the Second Circuit.

Mr. Messerschmidt earned his B.A., magna cum laude, from New York University, where he was the Co-Founder and Editor of Journal of Politics & International Affairs. He earned his J.D. from Columbia Law School, where he was a Harlan Fiske Stone Scholar and received the Parker School Certificate for Achievement in International and Comparative Law. During law school, Mr. Messerschmidt had the distinction of participating in the Philip C. Jessup International Law Moot Court Competition (U.S. National Champions (2012, 2013)), and he was the Head Articles Editor for Columbia Journal of Transnational Law and the note author of, "Hackback: Permitting Retaliatory Hacking by Non-State Actors as Proportionate Countermeasures to Transboundary Cyberharm," 52 COLUM. J. TRANSNAT'L L. 275 (2013)

Prior to law school, Mr. Messerschmidt was a legislative policy analyst for the New York City Council, Policy Division.

Amy Miller

Amy Miller is Of Counsel at Cohen Milstein and a member of the firm's Securities Litigation & Investor Protection practice, where she represents institutional and individual shareholders in derivative lawsuits and securities class actions.

Prior to joining Cohen Milstein, Ms. Miller was a partner at a highly regarded national securities plaintiffs' class action law firm, where she led the firm's corporate governance practice and represented clients in derivative lawsuits, class actions, investigations, and appraisal proceedings.

Ms. Miller also worked at two other highly regarded plaintiffs' securities litigation boutiques during the last decade.

Prior to representing institutional investors in securities class actions, Ms. Miller started her career and worked as a litigation associate at one of the nation's top securities defense firms for over seven years.

Ms. Miller was an extern for the Honorable George B. Daniels of the U.S. District Court for the Southern District of New York.

Ms. Miller earned her B.A. from Boston University, magna cum laude, and she received her J.D. from New York Law School, summa cum laude. While attending law school, Ms. Miller was the Articles Editor for the New York Law School Law Review.

Blake R. Miller

Blake R. Miller is a Staff Attorney at Cohen Milstein and a member of the Consumer Protection practice. In this role, he assists in discovery and evidentiary-related aspects of litigation and deposition preparation.

Prior to joining Cohen Milstein, Mr. Miller was a staff attorney at the United States Department of Justice, Civil Division, Consumer Protection Branch for nearly a decade. Prior to that he was a contract claims analyst at the U.S. Drug Enforcement Administration and a law clerk at the U.S. DOJ, Civil Rights Division, Special Litigation Section.

Mr. Miller earned his B.B.A. at University of Miami Business School. He earned his J.D. from Emory University School of Law.

Rebecca Ojserkis

Rebecca Ojserkis is an Associate at Cohen Milstein and a member of the firm's Civil Rights & Employment Litigation practice.

Prior to joining Cohen Milstein, Ms. Ojserkis was an associate at a highly regarded national plaintiffs' law firm, where she represented clients in employment discrimination cases, including Title VII and ADA-related cases, and other public interest matters.

Prior to working in private practice, Ms. Ojserkis was a Fellow at the ACLU, where she worked with the Women's Rights Project, Immigrants' Rights Project, and National Prison Project. She also clerked for the Honorable Diane P. Wood of the U.S. Court of Appeals for the Seventh Circuit and the Honorable Sidney H. Stein of the U.S. District Court for the Southern District of New York.

Ms. Ojserkis received her B.A., magna cum laude, from Amherst College. She received her J.D. from Yale Law School, where she served as an editor of the Yale Law Journal and engaged in litigation and advocacy as a member of the Veterans Legal Services Clinic, the Reproductive Rights and Justice Project, and the Liman Project.

Prior to pursuing a career in law, Ms. Ojserkis worked at Massachusetts General Hospital in the area of mental health.

Ms. Ojserkis has applied for admission to the District of Columbia Bar and is currently working under the close supervision of the partners of the firm who are admitted to practice in the District of Columbia.

Laura Older

Laura E. Older is an Associate at Cohen Milstein and a member of the firm's Employee Benefits Practice Group. In this role, Ms. Older represents the interests of employees, retirees, plan participants and beneficiaries in ERISA cases across the country.

Prior to joining Cohen Milstein, Ms. Older was a law clerk for the Honorable John D. Couriel of the Supreme Court of Florida.

Ms. Older earned her B.A., summa cum laude, from The Florida State University. She received her J.D. from Harvard Law School, where she served as the President of Lambda, Harvard Law School's LGBTQ student organization, and the Executive Technical Editor of the Journal of Law & Gender. During law school, Ms. Older interned with the ACLU of Florida and Planned Parenthood.

Before pursuing a career in law, Ms. Older worked as a theatre marketing consultant in New York City.

Ms. Older is admitted only in Massachusetts. She is seeking admission to the District of Columbia Bar, and is currently working under the close supervision of the Partners of the firm who are admitted to practice in the District of Columbia.

Regina D. Poserina

Regina D. Poserina is Of Counsel at Cohen Milstein and a member of the firm's Whistleblower/False Claims Act practice.

Ms. Poserina represents whistleblowers in qui tam cases brought throughout the United States under the federal and state False Claims Act statutes against recipients of Government funds. A retired registered nurse, Ms. Poserina focuses predominantly on representing whistleblowers in healthcare fraud, including Medicare/ Medicaid and nursing home fraud. She also has extensive experience in qui tams related to other Governmental programs, including the Department

of Defense, Housing and Urban Development, Food Stamp/Department of Agriculture, Small Business Administration, and Department of Education fraud.

Prior to joining Cohen Milstein, Ms. Poserina was Of Counsel at a highly regarded False Claims Act and employment litigation firm in New Jersey and Pennsylvania, and was the sole proprietor of her own firm, focusing on False Claims Act and employment litigation. Ms. Poserina has argued cases before the United States Court of Appeals for the Third Circuit, and successfully briefed a case to the United States Supreme Court. Ms. Poserina's career successes include representing the whistleblowers in U.S. ex rel. Druding et al v. Care Alternatives, a precedent setting case involving Medicare hospice care, and in U.S. ex rel. Dunleavy v. The County of Delaware, et al., a case where the United States' Supreme Court ruled on the issue of who can be a proper defendant under the False Claims Act. Ms. Poserina also acted as amici curiae for Taxpayers Against Fraud, a nonprofit whistleblowers organization headquartered in Washington, D.C.

She is also an active member of Taxpayers Against Fraud, a nonprofit, public interest organization dedicated to combating fraud against the Federal Government through the promotion and use of the Federal False Claims Act and its qui tam provisions; and the National Employment Lawyers Association and its local chapters.

Ms. Poserina received her B.S. in Nursing from Villanova University and her J.D. from Temple University.

Prior to pursuing a career in law, Ms. Poserina worked as a registered nurse in Intensive Care and Cardiac Surgical Intensive Care Units throughout the United States.

Casey M. Preston

Casey M. Preston is Of Counsel at Cohen Milstein and a member of the firm's Whistleblower/False Claims Act practice group.

Mr. Preston focuses on representing whistleblowers across the country in qui tam actions brought under the False Claims Act against individuals and corporations that engage in fraudulent conduct that causes significant economic harm to federal and state government programs as well as taxpayers. He has significant experience in investigating, reporting, and prosecuting Medicare and Medicaid fraud schemes and also has substantial experience with other types of government fraud, including non-compliance with government contracts, Title IV federal student aid fraud, customs and tariff fraud, and sales of defective mortgages. He also represents individuals who report securities fraud, tax fraud, and customs fraud through federal whistleblower programs. In addition, Mr. Preston has significant experience handling complex commercial cases and securities litigation in courts across the U.S.

Some of Mr. Preston's current representations include:

- A sealed qui tam action against a drug manufacturer that allegedly induced physicians to prescribe its drugs by providing kickbacks in the form of free practice management and business advisory services.
- A sealed qui tam action against a drug company that is alleged to have violated the Anti-Kickback Statute by paying physicians to provide sham speaker programs to induce them to prescribe its drug.
- A sealed qui tam action alleging that a medical equipment supplier is selling unnecessary equipment and supplies to Medicare beneficiaries.
- A sealed action against a hospital system for overcharging Medicare for services furnished at its off-campus locations.
- A SEC whistleblower program case reporting that a biotech company is misleading investors about the status of a groundbreaking technology that it claims to be developing.

Mr. Preston has played a key role in a number of successful cases, including:

- United States ex rel. Kieff v. Wyeth: A qui tam action alleging that drug manufacturer Wyeth overcharged the state Medicaid programs by not providing them the statutorily required "best price" for a widely prescribed drug. This action resulted in a recovery of more than $780 million by the government.
- United States ex rel. O'Connor v. National Spine and Pain Centers, LLC: A qui tam action alleging that pain management practices defrauded the government health care programs by (a) billing for services furnished by physician assistants and nurse practitioners as "incident to" a physician's service when the services did not qualify as such, and (b) referring patients for unnecessary drug tests. The United States intervened in and settled this action for approximately $3.3 million.
- United States ex rel. Davis v. Southern SNF Management, Inc.: A qui tam action against skilled nursing facilities that were involved in a multi-year scheme of increasing the facilities' Medicare collections by assigning Medicare patients to levels of therapy far greater than medically appropriate and billing Medicare at the higher amounts associated with this unnecessary therapy. There was a $10 million recovery by the government.
- United States ex rel. Saidiani v. NextCare, Inc.: A qui tam action against the NextCare chain of urgent care centers that allegedly billed the government for unnecessary medical tests and services performed on beneficiaries of the government health care programs. There was a $10 million recovery by the government.
- United States ex rel. Rai v. Kool Smiles, P.C.: A qui tam action against the Kool Smiles pediatric dentistry chain for allegedly billing the state Medicaid programs for unnecessary dental procedures. There was a $23.9 million recovery by the federal government and several states.
- [Sealed] v. [Sealed]: Successfully represented an investor in several commercial real estate LLCs in a fraud and breach of fiduciary duty action against the LLCs' manager.
- In re Fleming Cos. Inc. Securities Litigation: Represented stock and bondholders in a class action against grocery chain and food distributor Fleming Companies and its outside auditor that resulted in a $94 million recovery for investors.
- In re Carreker Corp. Securities Litigation: Represented stockholders in a securities class action against a software company that resulted in a $5.25 million recovery for investors.
- Staro Asset Management v. Provell Inc.: Represented a hedge fund in a securities fraud action against a marketing company through which the hedge fund secured a $4 million recovery.
- In re Cigna Corp. Securities Litigation.: Represented a state pension fund in a securities class action against health insurer Cigna that resulted in a $93 million recovery for stockholders.

In addition, Mr. Preston has provided pro bono services to the Legal Clinic for the Disabled and the Brady Center to Prevent Gun Violence.

Mr. Preston served as law clerk for the Hon. William J. Nealon, U.S. District Court for the Middle District of Pennsylvania and the Hon. Terrence R. Nealon, Court of Common Pleas, Lackawanna County, Pennsylvania.

Mr. Preston received his B.S. from The Citadel and his J.D. from the Villanova University School of Law.

Joshua Prince

Joshua Prince is Discovery Counsel at the firm, and a member of the Antitrust practice group, having joined Cohen Milstein in 2009. In this role, Mr. Prince has focused on building expertise in the area of e-Discovery and of becoming a resource for the Antitrust practice. He is involved in all discovery-related matters for the practice: overseeing document review, document production and deposition preparation.

Currently, Mr. Prince is litigating the following notable matters:

- In re Automotive Parts Antitrust Litigation (E.D. Mich.): Cohen Milstein represents direct purchasers of wire harnesses, bearings and other automotive parts, who were overcharged as a result of price-fixing and bid-rigging conspiracies by various sets of defendants throughout the automotive parts industry for more than a decade. The

litigation follows a U.S. Department of Justice price-fixing and bid-rigging investigation into auto parts manufacturers. Mr. Prince is overseeing a team of lawyers who are reviewing documents, and is coordinating deposition preparation.

Mr. Prince has helped litigate the following successes:

- Northeastern Dairy Antitrust Litigation: Cohen Milstein is co-lead counsel in a class action lawsuit on behalf of Northeast dairy farmers against Dairy Farmers of America (DFA) and Dean Foods Company charging a conspiracy to reduce competition for raw milk and that DFA monopolized the milk market in the Northeast, forcing dairy farmers to market their milk through DFA or its affiliate Dairy Marketing Services (DMS). Defendant Dean Foods Company settled for $30 million, and Defendant Dairy Farmers of America has settled for $50 million pending final approval by the Court.
- Plasma-Derivative Protein Therapies Antitrust Litigation: $128 million settlement. Cohen Milstein was co-lead counsel for direct purchaser plaintiffs alleging a conspiracy to reduce the supply and increase prices of IVIG and Albumin, life-saving therapies derived from blood plasma.

Mr. Prince graduated from The College of William and Mary in 2004 with a B.A. in International Relations and received his J.D. from Villanova University School of Law in 2009.

Karina G. Puttieva

Karina G. Puttieva is an Associate at Cohen Milstein and a member of the firm's Consumer Protection practice. Ms. Puttieva's practice focuses on litigating class actions on behalf of consumers who have been misled, deceived or harmed by large corporations.

Prior to joining Cohen Milstein, Ms. Puttieva was a litigation associate at a highly regarded national defense firm, where she focused on consumer data privacy issues, government investigations and criminal litigation, and civil litigation in the areas of antitrust, consumer fraud, and misappropriation of intellectual property.

Ms. Puttieva is currently litigating the following matters:

- Facebook 2018 Data Breach Litigation (N.D. Cal.): Cohen Milstein is Co-Interim Class Counsel in a nationwide personal data breach class action against Facebook. According to Facebook, the data breach was the result of a software vulnerability that existed for over a year between 2017 – 2018.
- DZ Reserve et al. v. Facebook (N.D. Cal.): Cohen Milstein represents a putative class of advertisers who claim that Facebook's key advertising metrics (Potential Reach and Estimated Daily Reach) are inflated and misleading.
- General Motors Litigation (E.D. Mich.): Cohen Milstein is Lead Counsel and Chair of the Plaintiffs' Steering Committee, overseeing this consolidated consumer class action filed against GM in over 30 states. Plaintiffs allege that GM's eight-speed automatic transmissions (GM 8L90 and the 8L45) manufactured between 2015 and 2019 were defective.
- COVID-19 Business Interruption Insurance Litigation: Cohen Milstein represents restaurants and small businesses across the United States in litigation against their property and casualty insurance providers for failing to cover their COVID-19-related business interruption claims.

Ms. Puttieva earned her B.A., magna cum laude, from Haverford College and her J.D. from University of California, Berkeley, School of Law, where she was the Submissions Editor and Associate Editor of the Berkeley Journal of Criminal Law.

While attending law school, Ms. Puttieva was a judicial extern for the Honorable Christina A. Snyder of United States District Court for the Central District of California and she was a law clerk for the United States Attorney's Office for the Northern District of California.

Prior to law school, Ms. Puttieva worked as a victim/witness coordinator at the Family Violence/Sexual Assault Unit of the Philadelphia District Attorney's Office.

Poorad Razavi

Poorad Razavi is an attorney at Cohen Milstein, and a member of the firm's Complex Tort Litigation practice group. Mr. Razavi's practice focuses on products liability, vehicle defects, roadway design and maintenance defects, trucking and car accidents, chemical exposure, negligent security, with a specific focus on multimillion dollar wrongful death and catastrophic injury suits.

Mr. Razavi represents clients in state and federal courts across the nation, including in Florida, California, Indiana, Ohio, Georgia, New York, Nevada, Michigan, Alabama, South Carolina, Maryland, Virginia, Washington D.C., and Tennessee. He has litigated claims against all of the major insurance carriers, as well as automobile, tire, and component part manufacturers, including General Motors, Toyota, Honda, Chrysler, Takata, and Continental, as well as highway guardrail manufacturers, installers and other contractors.

Mr. Razavi has also handled a broad range of non-traditional personal injury and wrongful death cases throughout the country, including claims involving chemical and pesticide exposure, chlorine gas exposure, mold exposure, construction defect, boating defect, negligent vehicle repairs, and negligent tractor-trailer operation.

What is particularly unique about Mr. Razavi's experience is his background as a former civil litigation defense attorney and his perspective into the mindset of insurance companies and corporate defendants. This background gives him a unique understanding about how to maximize the value of a claim in order to ensure that clients receive maximum compensation for their injuries.

Mr. Razavi also has extensive experience in claims against the Department of Transportation and private state contractors for roadway design and defects. He has litigated multiple roadway design and maintenance defect claims resulting in multimillion dollar settlements and subsequent installation and remediation of guardrails, re-paving, curbing, and rehabilitation of roadways in multiple counties.

Currently, Mr. Razavi is litigating the following notable matters:

- Bernardo, et al. v. Pfizer, Inc., et al. (S.D. Fla.): On February 20, 2020, Cohen Milstein filed a false advertising, medical monitoring, and personal injury class action against Pfizer, Inc., Boehringer Ingelheim, Sanofi, and other pharmaceutical companies on behalf of multiple plaintiffs and putative class members across the United States. Mr. Razavi also has extensive experience in claims against the Department of Transportation and private state contractors for roadway design and defects. He has litigated multiple roadway design and maintenance defect claims resulting in multi-million dollar settlements and subsequent installation and remediation of guardrails, re-paving, curbing, and rehabilitation of roadways in multiple counties. States who, as a result of taking Zantac (ranitidine), may have been afflicted with cancer or may now be subject to an increased risk of developing cancer.
- Ratha, et al v Phatthana Seafood Co. (C.D. Cal.): Cohen Milstein is representing seven Cambodian plaintiffs in a cross-border human rights lawsuit involving human trafficking, forced labor, involuntary servitude, and peonage by factories in Thailand that produce shrimp and seafood for export to the United States.
- ExxonMobil - Aceh, Indonesia (D.D.C.): Cohen Milstein is representing eleven Indonesian citizens in a cross-border human rights lawsuit involving allegations of physical abuse, sexual assault, other forms of torture, and murder committed by Indonesian soldiers who were hired by Exxon Mobil Corporation.

Mr. Razavi has successfully litigated the following matters:

- Lindsay X-LITE Guardrail Litigation (State Crts.: Tenn., S.C.): Cohen Milstein successfully represented more than five families of decedents and victims of catastrophic injuries in a series of individual products liability, wrongful death and catastrophic injury lawsuits in Tennessee and South Carolina state courts against the Lindsay Corporation and several related entities for designing, manufacturing, selling, and installing defective, X-Lite guardrails on state roadways.
- Saori Yamauchi, et al. v. Toyota Motor Corporation, et al. (Cir. Crt., Dutchess Cty., N.Y.): Cohen Milstein and local New York co-counsel resolved a product liability and personal injury lawsuit against Toyota Motor Corporation, Autoliv, and related entities on behalf of Saori Yamauchi. Mrs. Yamauchi sustained a catastrophic injury during an accident in her Toyota Sienna as a result of the vehicle's airbag system deploying in a dangerous manner.
- Hand et al., v. Scott et.al. (N.D. Fla.): Cohen Milstein and Fair Elections Legal Network, a national voting rights organization, achieved a major victory on behalf of former felons in Florida, who claimed their constitutional rights had been infringed by Florida's Clemency Board. U.S. District Court Judge Mark E. Walker ruled that the process by which Florida's Clemency Board grants or denies former felons' restoration of voting rights applications is unconstitutionally arbitrary and violates the U.S. Constitution's First Amendment right of free association and free expression, as well as the Fourteenth Amendment
- Quinteros, et al v. DynCorp, et al. (D.D.C.): Cohen Milstein represented over 2,000 Ecuadorian farmers and their families who suffered physical injuries and property damage as a result of aerial spraying of toxic herbicides on or near their land by DynCorp, a U.S. government contractor. A bellwether trial on behalf of the first six Ecuadorian clients came to a conclusion in April 2017, when the ten-person jury unanimously determined that DynCorp was responsible for the conduct of the pilots with whom it had subcontracted to conduct the chemical spraying after April 2003. This resolution allowed for a successful case settlement.
- Staton v. Elite Auto Logistics, Inc. (M.D. Fla.): In July 2018, Cohen Milstein successfully settled this personal injury and negligence lawsuit against Elite Auto Logistics, Inc. The complaint alleged that the driver of Elite Auto Logistics tractor trailer truck was driving in an unsafe manner and his negligence caused an accident and the subsequent disabling injuries to our client.

Additionally, Mr. Razavi initiated the investigation and discovery of a major nation-wide vehicle airbag defect resulting in the filing of a subsequent class action against the world's largest automobile manufacturers, in which he was selected to the Interim Plaintiffs' Executive Committee.

Mr. Razavi has been recognized by Best Lawyers in America (2019, 2020, 2021) for Personal Injury Litigation. He is annually distinguished by Florida Super Lawyers (2010, 2011, 2015, 2016, 2021) and Florida Trend Magazine (2013, 2014, 2018, 2020, 2021), and Palm Beach Illustrated. Mr. Razavi is AV rated by Martindale-Hubbell.

Mr. Razavi is also a frequent writer and speaker. His articles have been published in Florida Justice Association's (FJA) Journal and the American Bar Association (ABA) Journal involving a variety of issues, including preservation of evidence, fighting against large corporations, as well as defective guardrail and roadway design. Annually, Mr. Razavi is invited to speak at FJA seminars, including "Identifying and Developing Roadway and Guardrail Defect Claims" at FJA's Advanced Trial Skills seminars, as well as speaking about the Use of Technology in litigation for the Palm Beach County Justice Association. In addition to his private practice, Mr. Razavi proudly serves the legal and local community, holding several prominent Palm Beach County Bar Association roles, including being appointed Co-Chair for the Palm Beach County Bar Association's Annual Bench Bar Conference in 2016 and an elected Board Member for the Palm Beach County Justice Association from 2015 through 2019.

Mr. Razavi graduated from Indiana University with a B.S. in International Business and Business Economics. He received his J.D. from the University of Cincinnati College of Law and was a Merit Scholarship recipient.

Takisha D. Richardson

Takisha D. Richardson is Of Counsel at Cohen Milstein, and a member of the firm's Complex Tort Litigation practice group and the firm's Sexual Abuse, Sex Trafficking, and Domestic Violence team. Ms. Richardson focuses on representing child sexual abuse victims and adult survivors of sexual abuse.

Prior to joining Cohen Milstein, Ms. Richardson was an Assistant State Attorney and Chief of the Special Victims Unit of the State Attorney's Office for Palm Beach County. She brings more than a decade of experience both as an attorney and as a supervisor of a team responsible for the prosecution of crimes against children and the elderly, and sexually motivated offenses. Prior to that role, she prosecuted felony cases at all levels and was an Assistant Public Defender.

Ms. Richardson has vast trial experience. To date, she has tried over 100 jury and non-jury trials, most of which involved sexual abuse and/or homicide matters.

Currently, Ms. Richardson is litigating the following notable matters:

- Doe, et al. v. Washington Hebrew Congregation, et al. (D.D.C.): On April 15, 2019, Cohen Milstein, on behalf of the families of 11 children between the ages of three and four, filed a lawsuit against Washington Hebrew Congregation Edlavitch Tyser Early Childhood Center and its Director for failing to protect their children from sexual abuse by a preschool teacher over a two-year period.
- Doe v. Scores, et al. (Cir. Crt., Hillsborough Cnty., Fla.): On January 29, 2020, Cohen Milstein filed a lawsuit on behalf of a young woman against Scores Holding Company, Inc. and its affiliates for illegally employing her when she was a minor at one of its Florida locations, subjecting her to be sexual abuse and human trafficking.

Ms. Richardson's past successes include:

- Jimmy Dac Ho (Cir. Crt., Palm Beach Cnty., Fla.): Ms. Richardson helped prosecute and incarcerate a former law enforcement officer for first-degree murder and kidnapping (with a firearm) of a 29-year-old aspiring law school student from Boynton Beach, Florida.
- Stephen Budd (Cir. Crt., Palm Beach Cnty., Fla.): Ms. Richardson brought to trial a former fourth-grade teacher who was found guilty on five charges of sexual assault and sentenced to serve three consecutive life sentences on the first three charges and 15 years on each of the final two charges.
- Carlos Soto (Cir. Crt., Palm Beach Cnty., Fla.): Ms. Richardson successfully prosecuted this lawsuit involving sexual battery of a child. The bravery of the victim, who testified at trial, aided in the conviction of the defendant on all charges and who is serving 45 years in prison.
- Jorge Gonzalez (Cir. Crt., Palm Beach Cnty., Fla.): Ms. Richardson prosecuted the defendant, who is now serving a life sentence in prison, as a result of the seven-year-old victim bravely telling a family friend about being forced to receive inappropriate, sexual touching.

Ms. Richardson was a Fellow in the Florida Bar's Wm. Reece Smith, Jr. Leadership Academy 2019-2020 class, a program designed to assist a select group of lawyers from across the state in becoming better leaders within the Bar and legal community. She is also the Chair of the Legislation Relations Subcommittee for the Florida Bar and Vice Chair of the Family Law Rules Committee for the Florida Bar.

In 2021, Ms. Richardson was recognized as a "Best Lawyer – Personal Injury Litigation - Plaintiffs" by The Best Lawyers in America, and in 2019, Ms. Richardson received the Daily Business Review's "Innovative Practice Areas" award which honors the firm's Sexual Abuse, Sex Trafficking and Domestic Violence team.

Ms. Richardson is a member of the Sex Abuse Response Team (SART), a countywide coalition responsible both for advocacy on behalf of victims of sexual abuse and for maintaining national Law Enforcement protocols.

Ms. Richardson attended Florida Agricultural & Mechanical University in Tallahassee Florida, where she received her B.S. in Political Science. She earned her J.D., from University of Florida's Frederic G. Levin College of Law, where she was the recipient of the Virgil Hawkins Scholarship.

While attending law school, Ms. Richardson was a member of the U.F. Trial Team where she earned the title Vice President of Intramural Competitions and a Final Four Trial Team Competitor. She served as Vice President of the U.F. Black Law Student's Association.

Kai Richter

Kai Richter is Of Counsel at Cohen Milstein and a member of the firm's Employee Benefits / ERISA practice. He has extensive trial and appellate experience and has spoken at numerous national forums on ERISA litigation.

Prior to joining Cohen Milstein, Mr. Richter was a partner and practice leader at a highly regarded national plaintiffs' law firm, where he represented clients in all manner of class actions, including over two dozen ERISA class actions as court-appointed class counsel.

Mr. Richter's experience also includes public service as the Manager of the Complex Litigation Division of the Minnesota Attorney General's Office, and as a litigator in the Office of General Counsel for the Federal Election Commission.

In addition, Mr. Richter has held teaching roles as the Co-Director of the Robert F. Wagner Labor Law Moot Court Program for the University of Minnesota Law School, and as an adjunct legal writing instructor at Hamline University. He also formerly served as the Co-Chair of the Minnesota State Bar Association Consumer Litigation Section.

Mr. Richter received his B.A., cum laude, from Dartmouth College, and his received his J.D., cum laude, from University of Minnesota Law School.

Raymond M. Sarola

Raymond M. Sarola is Of Counsel at Cohen Milstein and a member of the firm's Whistleblower/False Claims Act and the Ethics and Fiduciary Counseling practice groups.

Mr. Sarola represents whistleblowers in qui tam cases brought under the federal and state False Claims Act statutes in industries that conduct business with the government, including health care, defense, and financial services. As a member of the firm's Ethics and Fiduciary Counseling practice, Mr. Sarola calls on his experience as a trustee on the New York City pension fund boards in counseling public pension funds fiduciary issues.

Prior to joining Cohen Milstein, Mr. Sarola served as Senior Policy Advisor & Counsel in the Mayor's Office of the City of New York, where he represented the Mayor and Commissioner of Finance on the boards of the City's pension systems and deferred compensation plan and advised on legal issues regarding pension investments, benefit payments, securities litigation and corporate governance initiatives. Previously, Mr. Sarola was a litigation associate at a noted defendants' firm, where he focused on securities, antitrust, and other complex commercial litigation, and internal investigations.

Mr. Sarola's government service and corporate defense litigation experience has been invaluable to his role in counseling clients in their claims against the government and corporate entities.

Mr. Sarola has been involved in high-profile whistleblower cases including:

- United States et al., ex rel. Lauren Kieff, v. Wyeth: Mr. Sarola assisted in this qui tam action against the pharmaceutical company Wyeth, resulting in a $784.6 million settlement, the seventh-largest False Claims Act recovery on record.
- United States ex rel. Davis, et al. v. Southern SNF Management, Inc. et al.: Mr. Sarola was actively involved in this qui tam case in which the whistleblowers alleged the skilled nursing facilities in which they worked were involved in a multi-year scheme to increase the facilities' Medicare reimbursement by assigning Medicare patients to levels of therapy far greater than medically appropriate and billing Medicare at the higher amounts associated with this unnecessary therapy. The government recovered $10 million from the defendants.

Some of Mr. Sarola's current representations include:

- A sealed qui tam action against a healthcare company alleging that it performed medically unnecessary procedures on patients covered by Medicare and Medicaid.
- A sealed qui tam action against healthcare companies alleging that they denied necessary treatment to patients in violation of Medicare regulations.
- Multiple qui tam actions alleging the unnecessary provision of skilled therapy in nursing homes.
- A sealed qui tam action alleging fraud in the bidding for a public contract.
- A sealed qui tam action against a provider of telehealth services alleging overbilling and underprovision of healthcare services.
- A sealed qui tam action against a healthcare company for allegedly defrauding the government's Electronic Health Record Incentive Programs.
- Sealed qui tam actions against pharmaceutical companies alleging that they overcharged the government healthcare programs for brand-name drugs.
- Submissions under the Securities and Exchange Commission Whistleblower Program and the Internal Revenue Service Whistleblower Program alleging securities and tax fraud against major financial services companies and other entities.
- Submissions under the SEC and Commodity Futures Trading Commission Whistleblower Programs alleging violations of the Foreign Corrupt Practices Act and the Commodity Exchange Act.

Mr. Sarola has published articles on whistleblower issues, including the use of statistical sampling to prove large fraud cases. He has also published and spoken at conferences on pension fund fiduciary issues, in particular the SEC's pay-to-play rule. He is a member of Taxpayers Against Fraud, a nonprofit, public interest organization dedicated to combating fraud against the Federal Government through the promotion and use of the False Claims Act.

In addition, Mr. Sarola was part of the Cohen Milstein team that successfully represented the estate of Kirsten Englund in a wrongful death case of first impression in Oregon state court and nationally, addressing the legal liability for federally licensed firearms dealers involved in online straw sales. The landmark settlement (October 2018) establishes important legal precedent at the state and federal levels regarding gun dealer responsibility for online sales of firearms. Given the precedential significance of this lawsuit, Cohen Milstein was named to The National Law Journal's "2019 Pro Bono Hot List" and won Public Justice Foundation's "2019 Trial Lawyer of the Year – Finalist" award. Mr. Sarola was a co-author of "INSIGHT: Holding Firearms Dealers Accountable for Online Straw Sales," Bloomberg Law (December 19, 2018), which discussed this case and won a 2019 Burton Award for Distinguished Legal Writing.

Mr. Sarola received his B.A. from the University of North Carolina at Chapel Hill, and earned his J.D. from the University of Pennsylvania Law School, where he also earned a Certificate of Study in Business and Public Policy from the Wharton School. While in law school, he was a Summer Intern for the Honorable Clarence Newcomer, United States District Court for the Eastern District of Pennsylvania.

Aniko R. Schwarcz

Aniko R. Schwarcz is an attorney in the Civil Rights and Employment Practice group. She also serves as Director of Civil Rights and Employment Case Development. In that capacity she investigates and develops new cases, and works with other members of the Practice Group to advance litigation. Ms. Schwarcz is often the first point of professional contact for prospective clients and other referral sources, and she has extensive experience working with current and prospective class members.

At present, Ms. Schwarcz is working on cases involving claims of sex discrimination within municipal agencies, access to health care for LGBT Federal employees, Equal Pay Act claims, and others. In her recent work on Jock et al v. Sterling Jewelers Inc., a nationwide Title VII gender discrimination and Equal Pay Act case currently in arbitration, Ms. Schwarcz played an key role interviewing and collecting affidavits from prospective class members, which were produced in support of the successful motion for class certification. Prior to that, Ms. Schwarcz interviewed and filed hundreds of EEOC charges on behalf of former class members in the Dukes v. Wal-Mart Stores, Inc. case.

Ms. Schwarcz attended Vanderbilt University, graduating cum laude with a B.A. in Social Policy, and received her J.D. from the University of Maryland School of Law. Ms. Schwarcz, a practicing attorney, also holds an M.S.W. from the University of Maryland School of Social Work. Her social work training provides her with deeper insight and a broadened capacity for understanding both the social and economic effects of workplace discrimination on the firm's clients.

Richard A. Speirs

Richard A. Speirs is Of Counsel at Cohen Milstein and a member of the firm's Securities Litigation & Investor Protection practice group. He has worked on many of the mortgage-backed securities fraud cases that were successfully litigated by the firm. Currently, in addition to litigating securities fraud cases, Mr. Speirs is principally responsible for developing and litigating the firm's derivative and merger-related lawsuits.

Since joining the firm, Mr. Speirs has litigated the following notable matters:

- Bear Stearns Mortgage Pass-Through Certificates Litigation: $505 million settlement by JPMorgan Chase & Co. to settle a class action litigation arising from Bear Stearns' sale of $27.2 billion of mortgage-backed securities that proved defective during the U.S. housing and financial crises.
- RALI MBS Litigation: $335 million settlement with Citigroup, Goldman Sachs and UBS. Cohen Milstein was lead counsel in a class action litigation alleging RALI and its affiliates sold shoddy MBS securities that did not meet the standards of their underwriters. Mr. Speirs was a critical member of the team of litigators, conducting fact discovery, deposing economic experts and preparing witnesses.
- Harborview MBS Litigation: $275 million settlement with Royal Bank of Scotland. Cohen Milstein was lead counsel in a complex case, in which presiding Judge Loretta A. Preska, of the U.S. District Court, Southern District of New York, commented on the "job well done" by the Cohen Milstein team.
- NovaStar Mortgage Backed Securities Litigation: $165 million settlement on behalf of investors in a Securities Act litigation involving billions of dollars of mortgage-backed securities underwritten by the Royal Bank of Scotland, Wachovia and Deutsche Bank.
- HEMT MBS Litigation: $110 million settlement on behalf of investors in mortgage-backed securities issued and underwritten by Credit Suisse after more than seven years of litigation, which included the first written decision certifying a Securities Act class of mortgage-backed securities in the country.
- Sino-Forest Corp. Securities Litigation: Cohen Milstein served as lead counsel for U.S. investors in securities fraud class action brought on behalf of investors in Sino-Forest Corp., a Canadian corporation, which achieved $150 million in settlements from numerous defendants.
- Intuitive Surgical Inc. Derivative Litigation: Cohen Milstein was co-lead counsel in a now settled derivative action against the company's directors and officers, asserting breaches of fiduciary duties and insider trading claims in

connection with concealing regulatory compliance problems and safety defects in the company's flagship product, the da Vinci robotic surgery system.

- Ocwen Financial Corp. Derivative Litigation: Cohen Milstein was co-lead counsel in a derivative action alleging that Ocwen's board of directors breached their fiduciary duties by permitting a pervasive scheme of wrongdoing in violation of applicable federal and state consumer financial protection laws. The defendants had exposed Ocwen to substantial harm by concealing failures with respect to the Company's compliance with regulations governing the servicing of mortgage loans, failing to establish adequate internal controls, permitting former Chairman and Chief Executive Officer to be involved in a series of improper self-dealing transactions and allowing insiders to trade on material adverse information. The litigation resulted in a settlement involving the adoption of significant corporate governance measures.

Mr. Speirs' current notable matters include:

- Tower Research Capital: Representing Korean traders in a Commodity Exchange Act class action against a high frequency trading firm alleging manipulation of the market for KOSPI 200 futures contracts (the representative stock market index of South Korea and one of the most widely traded futures in the world) using spoofing or faked trades.
- New York State Common Retirement Fund, et al. v. Stephen A. Wynn, et al.: Representing the New York State Common Retirement Fund and the New York City Pension Funds in a derivative shareholder lawsuit against certain officers and directors of Wynn Resorts, Ltd. in light of their failure to hold Mr. Wynn, the former CEO and Chairman of the Board, accountable for his longstanding pattern of sexual abuse and harassment of Company employees. The lawsuit seeks to preserve stockholder value in Wynn Resorts, Ltd. by strengthening procedures for responding to claims of harassment and creating stronger governance and risk management controls at the Board level.
- Mr. Speirs is also actively involved in several matters involving derivative claims and related books and records demands under Delaware or other relevant state laws.

In a career spanning more than 30 years, Mr. Speirs has been lead or co-lead attorney in a number of securities class actions where the court has issued an important decision under the federal securities laws. Among the issues decided were: the improper grouping of unaffiliated investors in a lead plaintiff motion (In re Telxon Corp. Securities Litigation, No. 5:98-cv-02876-KMO, 67 F. Supp. 2d 803 (N.D. Ohio 1999)); recommendation of default sanction against auditing firm for discovery misconduct involving electronic audit work papers (Hayman v. PriceWaterhouseCoopers, No. 1:01-CV-1078, 2004 U.S. Dist. LEXIS 27295 (N.D. Ohio July 2, 2004)); and liability under Section 10(b) of a non-issuer for disclosures made by the issuer (In re BP Prudhoe Bay Royalty Trust Securities Litigation, No. 2:06-cv-01505-MJP, 2007 U.S. Dist. LEXIS 83007 (W.D. Wash. Oct. 26, 2007)).

Mr. Speirs has appeared on numerous panels and legal events to discuss securities fraud and investor protection. He attended Brooklyn College of the City University of New York, where he received a B.A., cum laude, and earned his J.D. at Brooklyn Law School, where he earned the Order of the Coif.

Harini Srinivasan

Harini Srinivasan is an Associate at Cohen Milstein and a member of the firm's Civil Rights & Employment Litigation practice.

Prior to joining Cohen Milstein, Ms. Srinivasan was an associate at a highly respected plaintiff-focused employment litigation firm, where she represented clients in employment discrimination cases involving claims under Title VII, the Age Discrimination Act, the Americans with Disabilities Act, the Fair Labor Standards Act, and state and federal wage theft statutes.

Prior to working in private practice, Ms. Srinivasan was a Georgetown Law Center Women's Law and Public Policy Fellow and worked at the National Partnership for Women & Families.

Ms. Srinivasan has authored and co-authored several articles for Law360 and Corporate Compliance Insight.

Ms. Srinivasan received her B.A., with honors, from the University of Chicago, and she received her J.D., cum laude, from American University Washington College of Law, where she was on the editorial staff of the American University Journal of Gender, Social Policy.

Paul Stephan

Paul Stephan is an Associate at Cohen Milstein and a member of the firm's Consumer Protection practice. Mr. Stephan's practice focuses on litigating class actions on behalf of consumers who have been misled, deceived or harmed by large corporations.

Mr. Stephan is involved in the following high-profile litigation:

- In re MGM Resorts International Data Breach Litigation (D. Nev.): On February 1, 2021, the court appointed Cohen Milstein as Co-Lead Interim Class Counsel in this consolidated data breach class action against MGM Resorts related to the July 2019 data breach of personal information of between 10.6 million and 142 million MGM customers.
- COVID-19 Business Interruption Insurance Litigation: Cohen Milstein represents restaurants and small businesses across the United States in litigation against their property and casualty insurance providers for failing to cover their COVID-19-related business interruption losses.
- Ariza v. Luxottica Retail North America (LensCrafters) (E.D.N.Y.): Cohen Milstein represents purchasers of LensCrafters' Accufit Digital Measurement System (Accufit) services, who allege that LensCrafters used false, misleading advertising and deceptive sales practices about Accufit being "five times more accurate" in measuring pupillary distance than traditional methods, to induce customers to purchase LensCrafters higher-priced prescription lens products.
- Edenville and Sanford Dam Failure Litigation (Mich. Claims Crt.; Saginaw Circ. Crt.): Cohen Milstein represents residents and businesses in Midland and Saginaw County, MI in two property damage lawsuits against Michigan government agencies for their mismanagement of the Edenville and Sandford dams, the subsequent failure of the dams, and the resultant catastrophic flooding.
- Reed, et al. v. USA (E.D. Tenn.): Cohen Milstein represents plaintiffs in a wrongful death and property damage mass action against the U.S. Department of Interior and National Park Service for employee negligence related to the handling of the Chimney Tops 2 Fire in the Great Smoky Mountains National Park, which destroyed more than 2,500 homes and buildings, and killed 14 people in 2016.

Prior to joining Cohen Milstein, Mr. Stephan was a law clerk for the Honorable Anne E. Thompson of the United States District Court for the District of New Jersey.

Mr. Stephan is the author of an article on arbitration that is published in the University of Memphis Law Review.

Mr. Stephan earned his B.A., summa cum laude and Phi Beta Kappa, from University at Buffalo, The State University of New York. Mr. Stephan received his J.D., magna cum laude, Order of the Coif, from University of Pennsylvania Law School, where he was a Comments Editor of the University of Pennsylvania Law Review.

While attending law school, Mr. Stephan was also a law clerk for the U.S. Government Accountability Office, Office of General Counsel.

Nada S. Sulaiman

Nada S. Sulaiman is a Staff Attorney at Cohen Milstein and a member of the Antitrust practice group. In this role, she assists in discovery and evidentiary-related aspects of litigation and deposition preparation.

Prior to joining Cohen Milstein, Ms. Sulaiman was an associate and staff attorney at two highly regarded defense law firms in the area of antitrust litigation.

Ms. Sulaiman's case work includes the following high-profile matters:

- In re Interest Rate Swaps Market Manipulation Litigation (S.D.N.Y.): Cohen Milstein is court appointed Co-Lead Counsel in this groundbreaking putative class action, charging 12 Wall Street banks with conspiring to engineer and maintain a collusive and anti-competitive stranglehold over the interest rate swaps market – one of the world's biggest financial markets.
- Stock Lending Antitrust Litigation (S.D.N.Y.): Cohen Milstein is co-leading an antitrust class action alleging that major investment banks conspired to prevent the stock lending market from evolving by boycotting and interfering with various platforms and services designed to increase transparency and reduce costs in the stock lending market.
- Sutter Health Antitrust Litigation (Sup. Crt., San Fran. Cnty., Cal.): On August 27, 2021, the Court granted final approval of a $575 million eve-of-trial settlement, which includes significant injunctive relief, in this closely watched antitrust class action against Sutter Health, one of the largest healthcare providers in California, for restraining hospital competition through anticompetitive contracting practices with insurance companies. Cohen Milstein was one of five firms that litigated this case since 2014 on behalf of a certified class of self-insured employers and union trust funds. California's Attorney General joined the suit in March 2018.

Outside of the practice of law, Ms. Sulaiman is a regular volunteer at Earth Sanga, a not-for profit native plant nursery working.

Ms. Sulaiman is a graduate of George Washington University, where she received a B.A., magna cum laude, in International Affairs. She earned her J.D., cum laude, from Villanova University.

Daniel R. Sutter

Daniel R. Sutter is an Associate at Cohen Milstein and a member of the firm's Employee Benefits practice group. Mr. Sutter represents the interests of employees, retirees, plan participants and beneficiaries in ERISA cases across the country. In 2022, Chambers USA named Mr. Sutter an "Associate to Watch" in the area of ERISA Litigation - Mainly Plaintiffs.

Prior to becoming an Associate at Cohen Milstein, Mr. Sutter served as a Legal Fellow in the firm's Employee Benefits practice, where he investigated, developed, and drafted complaints against major financial institutions for ERISA violations. Before that, Mr. Sutter worked at Cohen Milstein as a Law Clerk (2013-2016) and as an Analyst (2010-2016), where he researched and aided in the development potential cases for the Employee Benefits practice and other practice groups.

Mr. Sutter is currently litigating the following high-profile matters:

- AT&T Pension Benefit Plan Litigation (N.D. Cal.): Cohen Milstein represents participants and beneficiaries in the AT&T Pension Benefit Plan who allege that AT&T failed comply with ERISA's actuarial equivalence requirements when providing married participants joint and survivor annuities.
- Triad Manufacturing, Inc. ESOP Litigation (N.D. Ill.): Cohen Milstein represents participants and beneficiaries in the Triad Manufacturing ESOP who allege that the ESOP trustees breached their fiduciary duties in connection

with the sale of Triad Manufacturing to the ESOP. In September 2021, the Seventh Circuit, in a precedent-setting decision, cited an exception to the Federal Arbitration Act that permits a court to overrule an arbitration agreement if it blocks a party from being able to bring claims under federal law. As a result of this decision, Cohen Milstein and co-counsel were recognized in The American Lawyer as "Litigators of the Week."

- Western Global Airlines ESOP Litigation (D. Del.): Cohen Milstein represents employees in connection challenging the valuation of Western Global Airlines at approximately $1.3 billion based on the sale of 37.5% of the Company to the ESOP for $510 million. The lawsuit seeks to restore substantial losses to the ESOP and to disgorge all ill-gotten gains received by the Neff family.
- New York Life 401(k) Plan Litigation (S.D.N.Y.): Cohen Milstein represents employees in a lawsuit against New York Life which alleges corporate self-dealing and the prohibited transfer of employees' retirement assets to Defendants at the expense of the retirement savings of New York Life employees and agents.
- Nationwide Savings Plan Litigation (S.D. Oh.): Cohen Milstein represents employees in a lawsuit against Nationwide Mutual Insurance Company for its prohibited transfer of employees' retirement assets into its general account.

Mr. Sutter was also significantly involved in the following high-profile successes:

- Becker v. Wells Fargo & Co. et al. (D. Minn.): Cohen Milstein recently achieved a $32.5 million settlement prior to class certification and expert discovery. If approved, the settlement will recover 40% of estimated damages.
- BlackRock 401(k) Plan Litigation (N.D. Cal.): Cohen Milstein represented participants in the BlackRock 401(k) Plan, who allege that the Plan fiduciaries violated their duties under ERISA by investing employees' 401(k) savings almost exclusively in BlackRock proprietary funds and by using BlackRock subsidiaries to broker securities lending deals using the Plan's assets. In November 2021, the court granted final approval of a $9.65 million settlement.

Mr. Sutter attended George Washington University, graduating with a B.A. in Finance in 2010. He earned his J.D. from the George Washington University Law School in 2016. During law school, Mr. Sutter was a member of the Federal Circuit Bar Journal, and he also worked as a law clerk at the Consumer Financial Protection Bureau, Legal Division, over the summer of 2015. He also studied at the London School of Economics.

Susan G. Taylor

Susan G. Taylor is Of Counsel at Cohen Milstein and a member of the firm's Securities Litigation & Investor Protection practice, where she brings to bear more than 19 years of litigation and trial experience prosecuting high profile securities fraud, consumer fraud, and antitrust class action claims.

Prior to joining Cohen Milstein, Ms. Taylor was a partner at a highly regarded national securities litigation firm, where she recovered over $2.5 billion for shareholders from many of the largest corporations in the United States. In addition to her substantial trial experience, Ms. Taylor has overseen the successful mediation of numerous securities fraud cases of all sizes.

Prior to working in the private section, Ms. Taylor was a Special Assistant U.S. Attorney in the Southern District of California, San Diego, where she focused on criminal prosecutions, as well as a Staff Attorney at the San Diego County District Attorney's Office.

Ms. Taylor volunteers at the Mid-Atlantic Innocence Project as a Case Screener and is a former member of the Board of Directors of the Istanbul International Community School (2014 – 2017). She was named a California Super Lawyer in 2015 and 2016.

Ms. Taylor earned her B.A. from The Pennsylvania State University, and she received her J.D. from The Catholic University Columbus School of Law.

Catherine A. Torell

Catherine A. Torell is the Director of Securities Research and Analysis at Cohen Milstein and is a member of the Securities Litigation & Investor Protection practice group. As Director of Securities Research and Analysis, Ms. Torell has the exclusive role of analyzing every securities case that is brought to the firm.

Ms. Torell is also responsible for thoroughly researching the factual and legal merits of all of the federal securities fraud class actions filed in the United States. Based on her research, she generates written analyses to evaluate the merits of each case for the firm's Case Evaluation Committee and assesses the potential importance of the case to the firm's clients. As a result, she has played an integral role in helping to cultivate and significantly expand the Cohen Milstein's investor client base.

Ms. Torell also prepares the written analyses that are sent to the firm's institutional clients. Those analyses describe and evaluate the merits of the cases in which those clients have sustained substantial losses and include a recommendation as to whether the firm believes the client should pursue a lead plaintiff role in the case.

Prior to focusing exclusively on her current role, Ms. Torell also actively participated in many of the firm's notable securities class actions, including In re Parmalat Securities Litigation 376 F. Supp. 2d 472 (S.D.N.Y. 2005).

Ms. Torell has been practicing law for more than 25 years. Prior to joining Cohen Milstein, Ms. Torell was counsel at a number of prominent plaintiffs' class action firms, serving in co-lead and leadership positions in numerous successful class action cases that resulted in settlements collectively totaling hundreds of millions of dollars for the clients she represented. She served as a co-lead counsel in In re Providian Financial Securities Litigation, which resulted in a $38 million settlement. In approving the settlement, the Court remarked on the "extremely high quality" and "skill and efficiency" of plaintiffs' counsel's work throughout the litigation.

Ms. Torell attended Stony Brook University, receiving a B.A., magna cum laude, in Political Science, and earned her J.D. from St. John's University School of Law, where she was the recipient of the Federal Jurisprudence Award.

Caitlin M. Vaughn

Caitlin McGowan Vaughn is Director of Public Client Case Development at Cohen Milstein and a member of the firm's Public Client practice. In this role, Ms. Vaughn investigates and develops cases filed on behalf of state attorneys general and public sector clients in cases involving consumer protection.

Prior to joining Cohen Milstein as a Director of Case Development, Ms. Vaughn was Law Fellow at the firm, where she assisted the firm's Public Client attorneys with investigations into entities responsible for the marketing, distribution, and sale of opioids, and supported the development of deceptive marketing, public nuisance, and negligence cases.

Before that, Ms. Vaughn worked for several years in the New York State Senate in the capacity of Counsel to several senators, including Senator Sue Serino, Chair of the Senate Aging Committee; Senator Stephen M. Saland, Chair of the Senate Codes Committee; and Senator Kemp Hannon, Chair of the Senate Health Committee. Ms. Vaughn was also the Director of the Joint Legislative Commission on Rural Resources on behalf of Senator Catharine M. Young.

Ms. Vaughn was a consultant and a Duke University Global Health Fellow assigned to the World Health Organization's Tobacco Free Initiative in Geneva, Switzerland.

Ms. Vaughn received her B.A., magna cum laude, from Cornell University. She received her J.D. from Syracuse University College of Law, where she was the winner of the Moot Court Honor Society, Grossman Competition. She received her

M.A. and Ph.D. in Political Science from Georgetown University. Her Ph.D. dissertation studied the potential for political bias in state retirement system investment strategies.

Ms. Vaughn's legal publications include Copyright Infringement and Bankruptcy: The Meaning of Willful in Two Statutory Schemes, SYR. SC. & TECH. LAW REP., 2009, http://sstlr.syr.edu/.

Lyzette M. Wallace

Lyzette Wallace is Discovery Counsel at Cohen Milstein and a member of the firm's Securities Litigation & Investor Protection practice group. Among other things, in this role, Ms. Wallace assists in discovery and evidentiary-related aspects of litigation and deposition preparation.

Ms. Wallace has extensive discovery experience related to government investigations and litigation involving securities, antitrust, and False Claims Act violations, across a range of industries, including financial services, pharmaceuticals, medical devices, healthcare, and involving the U.S. Securities and Exchange Commission, the U.S. Department of Justice, Federal Communications Commission, Federal Trade Commission, Food and Drug Administration, and numerous state Attorney General offices.

Prior to joining Cohen Milstein, Ms. Wallace was as an associate at a highly regarded plaintiffs' firm and a senior associate at a highly regarded defense firm. As a plaintiffs' attorney, Ms. Wallace represented health care insurers against brand pharmaceutical manufacturers in large, antitrust class actions involving False Claims Act violations, kickbacks, Hatch-Waxman abuses and Whistleblower claims. Ms. Wallace was a member of the team that represented a whistleblower against a brand pharmaceutical manufacturer, leading to what was at the time the largest health care fraud settlement in the U.S. Department of Justice's history. As a defense attorney, Ms. Wallace defended clients in internal and external investigations in deferred prosecution agreements, False Claims Act; Food, Drug and Cosmetics Act violations; kickbacks and qui tam matters involving the U.S. Department of Justice, the House Ways and Means Committee, the Senate Finance Committee, Food and Drug Administration, and various state Attorney General offices.

Ms. Wallace is currently involved in the following high-profile matters:

- In re Pinterest Derivative Litigation (N.D. Cal.): Cohen Milstein, as Interim Lead Counsel, represents the Employees Retirement System of Rhode Island and other Pinterest shareholders in a consolidated shareholder derivative complaint against certain current officers and directors of Pinterest, including its Board Chairman and CEO, for breaches of fiduciary duty and other violations of Section 14(a) of the Exchange Act, relating to their alleged personal engagement in and facilitation of a systematic practice of illegal discrimination of employees on the basis of race and sex, from at least February 2018 through the present. As a result of this illegal misconduct, the company's financial position, goodwill, and reputation among users has been harmed.
- PBM State Investigations: Cohen Milstein serves as Special Counsel to state Attorneys General throughout the United States in their investigation into the billing practices and fee structures of managed care organizations (MCOs) and PBMs in their delivery of services to state-funded health plans.
- Pharmacy Benefit Manager (PBM) Ohio Litigation (Franklin C.P., Ohio): Cohen Milstein serves as Special Counsel to the Ohio Attorney General's Office in breach of contract litigation against PBMs Express Scripts, Inc. and OptumRx Administrative Services, LLC for allegedly overcharging certain of Ohio's state-funded health plans on millions of prescription drug claims.

Some of Ms. Wallace's recent successes include:

- Eric Weiner v. Tivity Health, Inc. (M.D. Tenn.): Cohen Milstein was Class Counsel, representing Class Representative Oklahoma Firefighters' Pension and Retirement System and other purchasers of Tivity Health stock in a putative

securities class action for Exchange Act violations related to Tivity's misleading the public about its relationship with United Healthcare, Inc. On October 7, 2021, the Court granted final approval of a $7.5 million settlement.

- Ohio Department of Medicaid v. Centene, Corp. (Franklin C.P., Ohio): On June 14, 2021, the Ohio Attorney General announced a $88.3 million settlement with Centene Corporation and its wholly owned subsidiaries for their alleged role in not only breaching contractual and fiduciary obligations to the Ohio Department of Medicaid (ODM), but also defrauding ODM out of millions of dollars through an elaborate scheme with pharmacy benefit subcontractors to maximize company profits at the expense of the ODM and millions of Ohioans who rely on Medicaid. Cohen Milstein served as Special Counsel to the Ohio Attorney General's Office in breach of contract litigation.
- In re Alphabet Shareholder Derivative Litigation (Sup. Crt. Cal., Santa Clara Cnty.): Cohen Milstein, as Co-Lead Counsel, represented Northern California Pipe Trades Pension Plan and Teamsters Local 272 Labor Management Pension Fund in a shareholder derivative lawsuit against the Board of Directors of Alphabet, Inc. Shareholders alleged that the tech giant's Board violated its fiduciary duty by enabling a double standard at Alphabet that allowed powerful executives to sexually harass and discriminate against women without consequence. On November 30, 2020, the court granted final approval of a historic settlement, including a $310 million commitment to fund diversity, equity, and inclusion initiatives at Alphabet-owned companies, and workplace and corporate governance reforms including limiting non-disclosure agreements and ending mandatory arbitration in sexual harassment, gender discrimination, and retaliation-related disputes.

Ms. Wallace is a certified coach through the Coach Training Alliance and founded C3 Coaching, Inc. She is also an accomplished facilitator and speaker and has had the opportunity to give a presentation to a State Department audience that provided successful strategies for managing difficult client relationships and communications.

Prior to practicing law, Ms. Wallace was a senior technical and marketing recruiter at Microsoft, and she founded, owned, and operated an education consulting business.

Ms. Wallace earned her B.A. from Stanford University, and she received her J.D. from Howard University School of Law, where she was the Founder & President of the Intellectual Property Student Association.

Ryan Wheeler

Ryan Wheeler is an Associate at Cohen Milstein and a member of the firm's Employee Benefits Practice Group. In this role, Mr. Wheeler represents the interests of employees, retirees, plan participants and beneficiaries in ERISA cases across the country.

Prior to joining Cohen Milstein as an Associate, Mr. Wheeler was a Fellow in Cohen Milstein's Fellowship program, where he worked on litigation matters spanning the firm's antitrust, consumer protection, civil rights and employment litigation, human rights, and securities litigation practices.

Before that, Mr. Wheeler was a law clerk to the Honorable Michael H. Simon of the United States District Court for the District of Oregon.

Mr. Wheeler received his B.A. from Pomona College and his J.D. from Harvard Law School, where he was the Solicited Content Editor for Harvard Civil Rights-Civil Liberties Law Review, a founding member of the Pipeline Parity Project (now known as the People's Parity Project), and the Co-President of Project No One Leaves.

Kamilah Williams

Kamilah Williams is a Staff Attorney at Cohen Milstein and a member of the firm's Antitrust practice. In this role, Ms. Williams assists in discovery and evidentiary-related aspects of litigation and deposition preparation.

Prior to joining Cohen Milstein, Ms. Williams was a staff attorney at a highly regarded global defense law firm, where she organized and analyzed, among other things, custodial documents regarding antitrust violations, second requests, state and federal investigations, fraud, and various class actions, as well as conducted deposition, trial, hearing, merger and settlement preparations.

Ms. Williams is currently involved in the following high-profile litigation:

- In re Interest Rate Swaps Market Manipulation Litigation (S.D.N.Y.): Cohen Milstein is court appointed Co-Lead Counsel in this groundbreaking putative class action, charging 12 Wall Street banks with conspiring to engineer and maintain a collusive and anti-competitive stranglehold over the interest rate swaps market – one of the world's biggest financial markets.
- Stock Lending Antitrust Litigation (S.D.N.Y.): Cohen Milstein is co-leading an antitrust class action alleging that major investment banks conspired to prevent the stock lending market from evolving by boycotting and interfering with various platforms and services designed to increase transparency and reduce costs in the stock lending market.

Ms. Williams earned her B.A. from Salisbury State University and her J.D. from Catholic University of America-Columbus School of Law.

While attending law school, Ms. Williams was a student attorney at Catholic University's Columbus Community Legal Services, where she provided legal advice and counsel to disadvantaged individuals and families regarding domestic violence, adoption, special education issues, child support, disabilities and veteran claims.

EXHIBIT 9

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

EMPLOYEES RETIREMENT SYSTEM OF THE CITY OF ST. LOUIS, *et al.*, Plaintiffs, v. CHARLES E. JONES, *et al.*, Defendants, and FIRSTENERGY CORP., Nominal Defendant.	Case No. 2:20-cv-04813 Chief Judge Algenon L. Marbley Magistrate Judge Kimberly A. Jolson

DECLARATION OF JOHN C. CAMILLUS FILED ON BEHALF OF THE LAW OFFICES OF JOHN C. CAMILLUS, LLC IN SUPPORT OF PLAINTIFFS' MOTION FOR FINAL APPROVAL OF SETTLEMENT AND REQUEST FOR ATTORNEYS' FEES AND EXPENSES

I, John C. Camillus, declare as follows:

1. I am the founder of the Law Offices of John C. Camillus, LLC. I submit this Declaration in support of Plaintiffs' Motion for Final Approval of Settlement and Request for Attorneys' Fees and Expenses in connection with the Settlement[1] of the above-captioned shareholder derivative action (the "Action"). I have knowledge of the matters set forth herein based on personal knowledge, my review of the firm's records, and consultation with other firm personnel.

[1] As defined in the Stipulation and Agreement of Settlement dated March 11, 2022 (ECF No. 170-3).

2. This firm is Liaison Counsel for Court-Appointed Co-Lead Plaintiffs Electrical Workers Pension Fund, Local 103, I.B.E.W, and Employees' Retirement System of the City of St. Louis, and additional Plaintiff Massachusetts Laborers Pension Fund.[2]

3. The information in this Declaration regarding the firm's time, including in the schedule attached hereto as Exhibit 1, was prepared from daily time records regularly prepared and maintained by my firm in the ordinary course of business. I am the attorney who oversaw my firm's activities in the litigation, and I, together with staff working under my direction, reviewed my firm's daily time records to confirm their accuracy. The purpose of this review was to confirm both the accuracy of the entries in the time records as well as the necessity for, and reasonableness of, the time and expenses committed to the Action. As a result of this review, reductions were made to both time and expenses in the exercise of billing judgment. Based on this review and the adjustments made, I believe that the time reflected in the firm's lodestar calculation and the litigation expenses for which payment is sought are reasonable and were necessary for the effective and efficient prosecution and resolution of the Action.

4. The total number of hours expended on this Action by my firm's attorneys and professional support staff employees from its inception through March 11, 2022 was 261.9 hours.

[2] The total number of hours my firm expended by in this litigation also includes time the firm spent litigating the related parallel derivative litigation pending in the Northern District of Ohio captioned *Miller v. Anderson et al.*, Case No. 5:20-cv-01743 (N.D. Ohio) (the "Northern District Action"). Co-Lead Plaintiffs intervened in the Northern District Action, which involved "substantively identical" claims as those in the Action, to protect the claims of the Company and its shareholders after overcoming a motion to dismiss in this Action. *Miller v. Anderson*, Case No. 5:20-cv-01743, 2021 WL 4220780 (N.D. Ohio Sept. 16, 2021). The Court in the Northern District of Ohio granted intervention and denied Defendants' motion to dismiss, and this Action and the Northern District Action then proceeded on parallel discovery tracks. Litigating the Northern District Action was necessary to achieve the final resolution of this litigation (and the Settlement here includes the Northern District Action), and thus the firm's time spent on that matter is included here.

The total resulting lodestar for my firm is $154,935. The schedule attached hereto as Exhibit 1 is a detailed summary reflecting the amount of time spent by each attorney and professional support staff employee of my firm who was involved in the Action, and the lodestar calculation based on my firm's current hourly rates.

5. Set forth below is a description of the services rendered by each attorney for whom fees are requested and who committed at least ten hours of work to the prosecution of the Action:

> Attorney John Camillus served as liaison counsel for Court-Appointed Co-Lead Plaintiffs Electrical Workers Pension Fund, Local 103, I.B.E.W, and Employees' Retirement System of the City of St. Louis, and additional Plaintiff Massachusetts Laborers Pension Fund. In that capacity, he substantively engaged in strategic discussions with co-counsel regarding case strategy, engaged in the substance of drafting briefs and other pleadings, ensured that filings complied with Local Rules, participated in regular videoconference team meetings, attended videoconference, telephonic, and in-person status conferences, and participated in the mediation that led to the resolution of this matter.
>
> Paralegal Christina DeVaney assisted Mr. Camillus and other attorneys with the affiliated firms in preparing, filing, and reviewing documents necessary for the prosecution of this case.

6. My qualifications and background may be found in my firms' resume, which is attached hereto as Exhibit 3.

7. My hourly rate is reasonable for several reasons. *First*, my rate is my customary hourly rates for complex matters of this kind.

8. *Second*, my hourly rates by are reasonable in light of my specialized skill and experience when it comes to litigating securities and shareholder derivative matters.

9. *Third*, my hourly rates are consistent with, if not meaningfully *below*, the rates for similar services by lawyers of reasonably comparable skill, experience, and reputation. *See, e.g. In re Snap Inc. Sec. Litig*., No. 2:17-cv-03679-SVW-AGR, 2021 WL 667590, at *4 (C.D. Cal. Feb. 18, 2021), *In re Snap Inc. Sec. Litig.,* No. 2:17-cv-03679-SVW-AGR, ECF No. 386-9, at PAGEID #:18483-18485 (approving fee award in securities fraud class action with hourly rates

ranging from $780-$920 for partners, $390-$690 for associates, and $385 for staff attorneys); *In re BHP Billiton Ltd. Sec. Litig*., No. 16-cv-01445, 2019 WL 1577313, at *1 (S.D.N.Y. Apr. 10, 2019), *In re BHP Billiton Ltd. Sec. Litig*., No. 16-cv-01445, ECF No. 122-1 at 2 (approving fee award in securities fraud class action with hourly ranging from $790-$1030 for partners, $400-$550 for associates, and $375 for staff attorneys).

10. *Fourth*, my hourly rate of $650 falls well within the range of those approved by courts in the Southern District of Ohio in shareholder derivative cases. *See Rudi v. Wexner*, No. 2:20-CV-3068, 2022 WL 1682297, at *5 (S.D. Ohio May 16, 2022) ("*L Brands*") (granting fee award with hourly rates of up to $1,685 for partners and $1,245 for associates), *L Brands*, 2:20-cv-03068, ECF No. 26-9 at PAGEID #: 1080; *In re Big Lots, Inc. S'holder Litig*., No. 2:12-CV-445, 2018 WL 11356561, at *5 (S.D. Ohio Aug. 28, 2018), *Big Lots*, No. 2:12–cv–445, ECF No. 122-3 at PAGEID #: 2760 (approving hourly rates of up to $925 for partners and $650 for associates).

11. Based on records maintained by my firm, the Law Offices of John C. Camillus, LLC has incurred a total of $4,972.90 in unreimbursed litigation expenses in connection with the prosecution and settlement of the Action. (Plaintiffs' Counsel are not seeking separate reimbursement for their unreimbursed litigation expenses in this matter, but instead are seeking an "all in" attorneys' fee as a percentage of the total monetary recovery.) The firm's expenses are fully categorized in Exhibit 2 attached hereto.

12. The litigation expenses incurred in this Action are reflected in my firm's books and records, which are regularly prepared and maintained in the ordinary course of business. These records are prepared from expense vouchers, check records and other source materials and are an accurate record of the expenses incurred. These expenses were reasonably necessary in the

prosecution of the Action. Courts have typically found that these kinds of expenses are payable to counsel who create a benefit for shareholders.

13. My firm undertook this litigation on an entirely contingent basis and has not been paid for any of their work, nor have any of their costs or expenses been reimbursed. My firm undertook the litigation of the Action with the expectation that it would have to devote many hours of hard work to the prosecution of a case involving complex factual and legal issues without any guarantee of successful resolution or of compensation for their efforts. The prosecution of this Action involved the expenditure of significant resources, including my time as well as the substantial expenses that were incurred during the litigation, while my firm received no compensation during the course of the litigation.

14. This Declaration provides the Court with time only through March 11, 2022 (the date that the Stipulation and Agreement of Settlement was signed). Accordingly, this Declaration does not encompass time incurred from March 12, 2022 through the present. Also, this Declaration does not include time spent preparing Plaintiffs' Motion for Final Approval of Settlement and Request for Attorneys' Fees and Expenses.

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

Executed this 6th day of July 2022, at Columbus, Ohio.

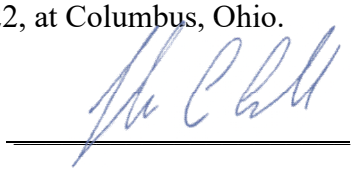


EXHIBIT 1

Employees Retirement System of the City of St. Louis, et al., v. Charles E. Jones, et al.
Case No. 2:20-cv-04813

LAW OFFICES OF JOHN C. CAMILLUS, LLC TIME REPORT

Inception through March 11, 2022

NAME	HOURS	HOURLY RATE	LODESTAR
Attorneys			
John C. Camillus	231.3	$650.00	$150,345.00
Paralegals			
Christina DeVaney	30.6	$150.00	$4,590
TOTAL LODESTAR	**261.9**		**$154,935.00**

EXHIBIT 2

Employees Retirement System of the City of St. Louis, et al., v. Charles E. Jones, et al.
Case No. 2:20-cv-04813

LAW OFFICES OF JOHN C. CAMILLUS, LCC EXPENSE REPORT

CATEGORY	AMOUNT($)
Experts	$240.00
Filing Fees	$3,680.00
Transportation, Hotels and Meals	$7.00
Postage and Delivery	
Printing and Photocopy	
Court Reporting and Transcripts	$1,045.90
Telephone, Conference Call	
TOTAL EXPENSES:	**$4,972.90**

EXHIBIT 3

Employees Retirement System of the City of St. Louis, et al., v. Charles E. Jones, et al.
Case No. 2:20-cv-04813

FIRM RESUME

LAW OFFICES OF JOHN C. CAMILLUS, LLC

JOHN C. CAMILLUS
ATTORNEY AT LAW
P.O. BOX 141410
COLUMBUS, OHIO 43214

614.992.1000 (PHONE)
614.559.6731 (FAX)
JCAMILLUS@CAMILLUSLAW.COM
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LAW OFFICES OF JOHN C. CAMILLUS
SECURITIES AND DERIVATIVE ACTION RESUME

Mr. Camillus, the founding principal of the Law Offices of John C. Camillus, LLC, is a graduate of Yale Law School, where he was an editor of the Yale Law and Policy Review, was named a Schell Fellow, served as President of the Initiative for Public Interest Law at Yale, and was a member of the South Asian Law Students Association. Following law school, Mr. Camillus served as a judicial clerk to the Honorable R. Guy Cole, Jr. of the United States Court of Appeals for the Sixth Circuit. He has been elected to the American Board of Trial Advocates, and received the Ohio Association for Justice's Courage Award for his civil rights work. Mr. Camillus has served as lead counsel, co-counsel, or liaison counsel in numerous class action matters in both federal and state court, in Ohio and around the country.

His experience representing plaintiffs in securities class action and derivative matters includes:

- *Caston v. Hoaglin, et al.*, Case No. 2:08-cv-00200 (Southern District of Ohio);

- *In re Evergreen Ultra Short Opportunities Fund Securities Litigation*, Case No. 1:08-CV-11064 (District of Massachusetts);

- *Yardain Inc. Pension Plan v. Arden L. Shisler*, Case No. 08 CV 03884, (Franklin County Court of Common Pleas);

- *Carter v. Shisler*, Case No. 08 CV 003637 (Franklin County Court of Common Pleas);

- *Alan R. Kahn v. Airnet Systems, Inc.* Case No. 08 CV 006376 (Franklin County Court of Common Pleas);

- *Weiser Rev Trust v. Bair*, Case No. 11 CV 14414 (Franklin County Court of Common Pleas);

- *Spruill v. Weatherby*, Case No. 11 CV 14256 (Franklin County Court of Common Pleas);

- *Henkel v. Aschinger*, Case No. 11 CV 14234 (Franklin County Court of Common Pleas);

- *Nichting v. DPL, Inc.*, Case No. 3:11-CV-141 (Southern District of Ohio),
- *The Booth Family Trust v. Halverson*, Case No. 1:14-CV-1287 (Northern District of Ohio),
- *LR Trust el al. v. DiPaolo et al.*, Case No. 2:14-cv-00612 (Southern District of Ohio),
- *Klein et al. v. Vantiv, Inc., et al.*, Case No. 1:17-cv-00739 (Southern District of Ohio),
- *Chum et al. v. Szilagyi et al.*, Case No. 17CV006933 (Franklin County Court of Common Pleas),
- *Franchi v. Bob Evans Farms, Inc.*, Case No. 2:17-cv-00961 (Southern District of Ohio),
- *Wagner v. Scripps Networks Interactive, Inc. et al.*, Case No. 2:17-cv-00859 (Southern District of Ohio),
- *Schwartz v. Sparton Corp., et al.*, Case No. 1:17-cv-1663 (Northern District of Ohio),
- *Jacobs v. Sparton Corp., et al.*, Case No. 1:17-cv-1731 (Northern District of Ohio),
- *Rosenblatt v. Infinity Property and Casualty Corp., et al.*, Case No. 1:18-cv-00315 (Southern District of Ohio),
- *Rosenblatt v. A. Schulman, Inc. et al.*, Case No. 5:18-cv-00992 (Northern District of Ohio),
- *Scarantino et al. v. Fairmount Santrol Holdings, Inc., et al.*, Case No. 1:18-cv-01047 (Northern District of Ohio),
- *Franchi v. Ayers et al.*, Case No. A1804876 (Hamilton County Court of Common Pleas),
- *Parshall et al. v. Kuntz, et al.*, Case No. 18 CIC 00003 (Scioto County Court of Common Pleas),
- *Schust etc.. v. AmTrust Financial Services, et al.*, Case No. 1:18-cv-1129 (Northern District of Ohio).

- *Ford et al. v. D'Antoni et al.*, Case No. 1:19-cv-02150 (Northern District of Ohio),

- *Sabatini et al. v. Vinecombe et al.*, Case No. A19011994 (Hamilton County Court of Common Pleas),

- *Lameier v. Fifth Third Bancorp*, Case No. A2003023 (Hamilton County Court of Common Pleas), and

- *Davidson v. Wexner et al.*, Case No. 2:20-cv-00926 (Southern District of Ohio),

In *Nichting*, Case No. 3:11-CV-141 (Southern District of Ohio), the Court found that "Mr. Camillus has extensive experience representing plaintiffs in securities and derivative matters, and is familiar with Ohio corporate law and rules of procedure."

EXHIBIT 10

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

EMPLOYEES RETIREMENT SYSTEM OF THE CITY OF ST. LOUIS, *et al.*, Plaintiffs, v. CHARLES E. JONES, *et al.*, Defendants, and FIRSTENERGY CORP., Nominal Defendant.	Case No. 2:20-cv-04813 Chief Judge Algenon L. Marbley Magistrate Judge Kimberly A. Jolson

DECLARATION OF MICHAEL J. HYNES
FILED ON BEHALF OF HYNES & HERNANDEZ, LLC IN SUPPORT OF PLAINTIFFS' MOTION FOR FINAL APPROVAL OF SETTLEMENT AND REQUEST FOR ATTORNEYS' FEES AND EXPENSES

I, Michael J. Hynes, declare as follows:

1. I am a partner of Hynes & Hernandez, LLC ("H&H"). I submit this Declaration in support of Plaintiffs' Motion for Final Approval of Settlement and Request for Attorneys' Fees and Expenses in connection with the Settlement[1] of the above-captioned shareholder derivative action (the "Action"). I have knowledge of the matters set forth herein based on personal knowledge, my review of the firm's records, and consultation with other firm personnel.

2. This firm is counsel of record for plaintiffs Roberta Bloom, Joan Randell, and Arlene Pogolowitz (the "Bloom Plaintiffs"). H&H prepared and filed the Verified Stockholder

[1] As defined in the Stipulation and Agreement of Settlement dated March 11, 2022 (ECF No. 170-3).

Derivative Complaint for the Bloom Plaintiffs in the U.S. District Court for the Southern District of Ohio, No. 2:20-cv-04534, on September 1, 2020 (the "Bloom Action"). Thereafter, H&H, among other things, assisted in the coordination of the Bloom Action with other stockholder derivative actions concerning FirstEnergy Corp. ("FirstEnergy or the "Company") and maintained continuing primary responsibility for interaction with Co-Lead Counsel for the Southern District Plaintiffs, as well as undertaking discrete tasks assigned by Co-Lead Counsel.

3. The information in this Declaration regarding H&H's time, including in the schedule attached hereto as Exhibit 1, was prepared from daily time records regularly prepared and maintained by my firm in the ordinary course of business. I am the Partner who oversaw my firm's activities in the litigation, and I, together with attorneys working under my direction, reviewed my firm's daily time records to confirm their accuracy. The purpose of this review was to confirm both the accuracy of the entries in the time records as well as the necessity for, and reasonableness of, the time and expenses committed to the Action. As a result of this review, reductions were made to both time and expenses in the exercise of billing judgment. Based on this review and the adjustments made, I believe that the time reflected in the firm's lodestar calculation and the litigation expenses for which payment is sought are reasonable and were necessary for the effective and efficient prosecution and resolution of the Action.

4. The total number of hours expended on this Action by my firm's attorneys from its inception through March 11, 2022 was 181.1. The total resulting lodestar for my firm is $142,585. The schedule attached hereto as Exhibit 1 is a detailed summary reflecting the amount of time spent by each attorney from my firm who was involved in the Action, and the lodestar calculation based on my firm's current hourly rates. Different timekeepers within the same employment

category may have different rates based on a variety of factors, including years of practice, relevant experience, relative expertise, and the rates of similarly experienced peers at other firms.

5. Set forth below is a description of the services rendered by each attorney for whom fees are requested and who committed the following number of the hours in prosecuting the Action:

- **Michael J. Hynes** (Partner) (66.1 hours). Mr. Hynes was actively involved in researching the factual allegations and potential claims for the complaint in the Bloom Action. Mr. Hynes reviewed and kept apprised of all relevant pleadings in the Action and was involved in initiating communications with numerous counsel for other derivative actions filed on behalf of First Energy. Mr. Hynes was primarily responsible for communications with Co-Lead Counsel for the Southern District Plaintiffs and undertook discrete tasks assigned by Co-Lead Counsel.

- **Ligaya T. Hernandez** (Partner) (115.0 hours). Ms. Hernandez was primarily responsible for the major strategy and tactical decisions for the Bloom Action. Ms. Hernandez was actively involved in researching the factual allegations and potential claims, crafted the complaint in the Bloom Action, and reviewed and kept apprised of all relevant pleadings in the Action. Ms. Hernandez was primarily responsible for communicating with additional counsel for the Bloom Plaintiffs and certain other counsel involved in other derivative actions filed on behalf of First Energy. Ms. Hernandez also attended the hearing regarding selecting lead counsel for the Action and provided support to Co-Lead Counsel.

6. The qualifications and backgrounds of the attorneys identified in the previous paragraph may be found in my firms' resume, which is attached hereto as Exhibit 3.

7. The hourly rates charged by H&H are reasonable for several reasons. *First*, the rates charged by H&H are its customary hourly rates.

8. *Second*, the hourly rates charged by H&H are reasonable in light of the firm's highly specialized skill and experience when it comes to litigating shareholder derivative litigation. H&H has extensive experience litigating shareholder derivative actions. Several examples include the following: *In re Galena Biopharma Inc. Derivative Litigation*, Lead Case No. 3:14-cv-382-SI (D. Colo.) ($15 million of insurance proceeds paid to the Company and the implementation of extensive corporate governance measures), *County of York Employees Retirement Plan and Lynne*

Schwartz v. Andrea Jung, et al., (Avon Products, Inc.); Index No. 651304/2010, Part 39, Supreme Court of the State of New York (implementation of extensive foreign business practices measures to ensure compliance with the Foreign Corrupt Practices Act), and *In re Fifth Street Finance Corp. Shareholder Derivative Litig.*, Lead Case No. 3:15-cv-01889 (D. Conn.) ($30 million in monetary benefits to FSC plus corporate governance and oversight enhancements, including creation of a Risk and Conflicts Committee). More recently, H&H was part of the litigation team that prosecuted claims on behalf of Equifax Inc. ("Equifax") against certain of Equifax's current and former officers and directors for breaches of fiduciary duty arising out of Equifax's massive 2017 data breach. *In re Equifax, Inc. Derivative Litigation,* Case No. 1:18-cv-17 (N.D. Ga.). The terms of the Equifax settlement included: (1) the Defendants' agreement to cause their insurers to pay to Equifax the sum of thirty-two million five hundred thousand dollars ($32,500,000); and (2) Equifax's adoption and/or maintenance of numerous corporate governance and internal control reforms. *Id*.

9. *Third*, the hourly rates charged by H&H are consistent with the rates for similar services by lawyers of reasonably comparable skill, experience, and national reputation. *See, e.g. In re Snap Inc. Sec. Litig*., No. 2:17-cv-03679-SVW-AGR, 2021 WL 667590, at *4 (C.D. Cal. Feb. 18, 2021), *In re Snap Inc. Sec. Litig.,* No. 2:17-cv-03679-SVW-AGR, ECF No. 386-9, at PAGEID #:18483-18485 (approving fee award in securities fraud class action with hourly rates ranging from $780-$920 for partners); *In re BHP Billiton Ltd. Sec. Litig*., No. 16-cv-01445, 2019 WL 1577313, at *1 (S.D.N.Y. Apr. 10, 2019), *In re BHP Billiton Ltd. Sec. Litig*., No. 16-cv-01445, ECF No. 122-1 at 2 (approving fee award in securities fraud class action with hourly ranging from $790-$1030 for partners).

10. *Fourth*, H&H has special expertise when it comes to litigating shareholder derivative cases, and courts across the country have approved H&H's fees at its standard hourly rates. *See, e.g., JS Halberstam Irrevocable Grantor Trust v. Davis et al.,* Case No. 3:21-cv-00413-SI (D. Or.); *In Re Universal Health Services, Inc., Derivative Litigation*, Case No. 17-02187 (E.D. PA); *In re The RealReal, Inc. Stockholder Derivative Litigation*, Master File No.: 1:20-cv-01212-LPS (D. Del.).

11. *Fifth*, H&H's implied hourly rate of $787, based on the firm's lodestar and total hours billed, falls well within the range of those approved by courts in the Southern District of Ohio in shareholder derivative cases. *See Rudi v. Wexner*, No. 2:20-CV-3068, 2022 WL 1682297, at *5 (S.D. Ohio May 16, 2022) ("*L Brands*") (granting fee award with hourly rates of up to $1,685 for partners and $1,245 for associates), *L Brands*, 2:20-cv-03068, ECF No. 26-9 at PAGEID #: 1080; *In re Big Lots, Inc. S'holder Litig*., No. 2:12-CV-445, 2018 WL 11356561, at *5 (S.D. Ohio Aug. 28, 2018), *Big Lots*, No. 2:12–cv–445, ECF No. 122-3 at PAGEID #: 2760 (approving hourly rates of up to $925 for partners and $650 for associates).

12. Based on records maintained by my firm, H&H incurred a total of $899.67 in unreimbursed litigation expenses in connection with the prosecution and settlement of the Action. (Plaintiffs' Counsel are not seeking separate reimbursement for their unreimbursed litigation expenses in this matter, but instead are seeking an "all in" attorneys' fee as a percentage of the total monetary recovery.) The firm's expenses are fully categorized in Exhibit 2 attached hereto.

13. The litigation expenses incurred in this Action are reflected in the books and records of H&H, which are regularly prepared and maintained in the ordinary course of business. These records are prepared from expense vouchers, check records and other source materials and are an accurate record of the expenses incurred. These expenses were reasonably necessary in the

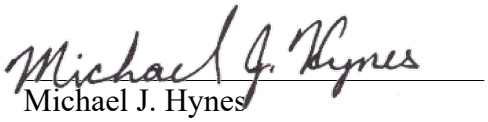
prosecution of the Action. Courts have typically found that these kinds of expenses are payable to counsel who create a benefit for shareholders.

14. My firm undertook this litigation on an entirely contingent basis and have not been paid for any of their work, nor have any of their costs or expenses been reimbursed. My firm undertook the litigation of the Action with the expectation that it would have to devote many hours of hard work to the prosecution of a case involving complex factual and legal issues without any guarantee of successful resolution or of compensation for their efforts. The prosecution of this Action involved the expenditure of significant resources, including the time spent by attorneys and professional staff, as well as the substantial expenses that were incurred during the litigation, while my firm received no compensation during the course of the litigation.

15. This Declaration provides the Court with time only through March 11, 2022 (the date that the Stipulation and Agreement of Settlement was signed). Accordingly, this Declaration does not encompass time incurred from March 12, 2022 through the present. Also, this Declaration does not include time spent preparing Plaintiffs' Motion for Final Approval of Settlement and Request for Attorneys' Fees and Expenses.

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

Executed this 30th day of June 2022, at West Chester, Pennsylvania.



Michael J. Hynes
Hynes & Hernandez, LLC

EXHIBIT 1

Employees Retirement System of the City of St. Louis, et al., v. Charles E. Jones, et al.
Case No. 2:20-cv-04813

HYNES & HERNANDEZ, LLC TIME REPORT

Inception through March 11, 2022

NAME	HOURS	HOURLY RATE	LODESTAR
Partners			
Michael J. Hynes	66.10	$850.00	$56,185.00
Ligaya T. Hernandez	115.00	$750.00	$86,400.00
TOTAL LODESTAR			**$142,585.00**

EXHIBIT 2

Employees Retirement System of the City of St. Louis, et al., v. Charles E. Jones, et al.
Case No. 2:20-cv-04813

HYNES & HERNANDEZ, LLC EXPENSE REPORT

CATEGORY	AMOUNT($)
Online Legal and Factual Research	$724.17
Printing and Photocopy	$67.50
Administrative Costs	$108.00
TOTAL EXPENSES:	**$899.67**

EXHIBIT 3

Employees Retirement System of the City of St. Louis, et al., v. Charles E. Jones, et al.
Case No. 2:20-cv-04813

HYNES & HERNANDEZ, LLC FIRM RESUME

101 Lindenwood Drive
Suite 225
Malvern, PA 19355
Telephone: (484) 875-3116
Fax: (484) 875-9273

FIRM RESUME

I. THE FIRM

Hynes & Hernandez, LLC is a boutique law firm with a national practice dedicated to providing exceptional legal services in shareholder litigation, with a focus on corporate malfeasance and breaches of fiduciary duty. The firm is comprised of experienced attorneys who built their careers at prominent law firms specializing in complex civil litigation.

The attorneys at Hynes & Hernandez, LLC are recognized leaders in shareholder litigation. The firm is dedicated to representing individual and institutional investors who have been wronged by corporate transgressions such as breaches of fiduciary duty, mismanagement, corporate waste and insider trading. The purpose of the firm is to help shareholders hold wrongdoers accountable for the damages inflicted on the company and its shareholders by corporate misconduct. The attorneys at Hynes & Hernandez, LLC have a proven track record of obtaining not only monetary recoveries for shareholders in shareholder litigation, but also significant and innovative corporate governance reforms that inure directly to the benefit of the company and its investors. Corporate governance refers to the system by which companies are directed and controlled. Corporate governance is intended to increase the accountability of a company's management to investors and to avoid corporate wrongdoing and malfeasance that can result in investor loss. The lawyers at Hynes & Hernandez, LLC have witnessed first-hand how companies and their shareholders benefit from improved corporate governance.

Many instances of corporate misconduct result from a lack of adequate corporate governance. Conversely, good corporate governance fosters fairness, transparency, and accountability to shareholders and has been shown to benefit companies and shareholders alike. For example, studies have shown that companies with poor corporate governance scores have 5-year returns that are 3.95% below the industry average, while companies with good corporate governance scores have 5-year returns that are 7.91% above the industry-adjusted average. The difference in performance between these two groups is 11.86%. *Corporate Governance Study: The Correlation between Corporate Governance and Company Performance*, Lawrence D. Brown, Ph.D., Distinguished Professor of Accountancy, Georgia State University and Marcus L. Caylor, Ph.D. Student, Georgia State University.

II. ATTORNEY PROFILES

MICHAEL J. HYNES

Mr. Hynes is a founding Partner of Hynes & Hernandez, LLC. Prior to forming Hynes & Hernandez, LLC, Mr. Hynes was a partner at two nationally recognized securities firms. He

practiced in the area of shareholder derivative litigation at both firms, serving as head of the Shareholder Derivative Litigation Department at the latter firm.

Mr. Hynes has served as lead or co-lead counsel in numerous high profile derivative actions relating to the "backdating" of stock options, including *In re Monster Worldwide, Inc. Derivative Litig.*, Index No. 06-108700 (New York County, NY); *In re Barnes & Noble, Inc. Derivative Litig.*, Index No. 06-602389 (New York County, NY); *In re Affiliated Computer Services, Inc. Derivative Litig.*, Cause No. 06-3403 (Dallas County, TX); and *In re Progress Software Corp. Derivative Litig.*, Civil A. No. 07-1937-BLS2 (Suffolk County, MA). More recently, he was involved in litigation concerning Computer Sciences Corporation, *Bainto v. Laphen, et al.*, Consolidated Case No.: A-12-661695-B (District Court Clark County, Nevada) and NCR Corporation, *Williams v. Nuti, et al.*, No. 1:13-cv-01400-SCJ (N.D. Ga. Apr. 26, 2013). Settlements of these, and similar actions, resulted in significant monetary recoveries and corporate governance improvements for those companies and their public shareholders. Mr. Hynes is currently litigating cases involving breaches of fiduciary duties arising out of the payment of excessive compensation to executive officers, violations of the Foreign Corrupt Practices Act, and violations of the False Claims Act. He has also successfully argued an appeal before the Superior Court of Pennsylvania in the matter of *Gray, L. v. DeNaples, L., et al.,* Docket No. 2198 MDA 2014.

Prior to concentrating on shareholder derivative litigation, Mr. Hynes practiced law at Cozen O'Connor, where he concentrated on bankruptcy and commercial litigation. He was also an attorney with the Defenders' Association of Philadelphia from 1991 to 1996, where he defended thousands of misdemeanor and felony cases and obtained jury trial experience. Mr. Hynes received his law degree from Temple University School of Law (J.D. 1991, *cum laude*), and is a graduate of Franklin and Marshall College (1987). Mr. Hynes is licensed to practice law in Pennsylvania, New Jersey and Montana, and has been admitted to practice in the United States Court of Appeals for the Ninth Circuit and the United States District Courts for the Eastern and Middle Districts of Pennsylvania. He also sat on the Board of Directors of the Public Interest Law Center for six years.

LIGAYA T. HERNANDEZ

Ms. Hernandez has years of experience at some of the top class action litigation firms in the country. She specializes in representing shareholders in derivative suits.

Ms. Hernandez has successfully achieved several multi-million dollar recoveries in derivative cases throughout her career. She has also had a lead role in cases that resulted in significant corporate governance for companies, which greatly benefits its public shareholders. Notable cases include:

- *Harbor Police Retirement System v. Roberts,* Cause No. 09-09061 (95th District Court, Dallas County, Texas). Counsel in a shareholder derivative action alleging corporate waste as to a departing executive officer's retirement package. Settlement of the action required substantial modifications to corporate policies, designed to heighten the independence of outside directors in awarding executive compensation.

- *Williams v. Nuti et al.*, No. 1:13-cv-01400-SCJ (N.D. Ga. Apr. 26, 2013). Counsel in a shareholder derivative action where settlement required a number of enhancements to the company's corporate compliance program.

- *In re Maxwell Technologies, Inc. Derivative Litigation,* Case No. 13-CV-966 (S.D. Cal. 2015). Counsel in a shareholder derivative action based on allegations that management misrepresented its consolidated financial statements as they related to the recognition of certain of the company's revenues. Settlement included improvements to the company's policies and procedures concerning the company's compliance with applicable laws and regulations, as well as enhancing the board of directors' oversight of the company's compliance function.

- *In re Galena Biopharma, Inc. Derivative Litig.,* Case No. 3:10-cv-00382-S (D. Or. 2015). Counsel in a shareholder derivative action where management was accused of inflating the company's share price with a misleading marketing campaign and committing insider trading. Settlement included the payment of $15 million to the company, the cancellation of certain stock options that were accused of being improperly granted, and the implementation of significant corporate governance that addressed, among other things, the company's stock option granting policies.

Ms. Hernandez received her J.D. and a Health Law Certificate from Loyola University Chicago in 2009. While in law school she served as Senior Editor for the Annals of Health Law Journal and received the CALI Award for highest grade in Appellate Advocacy. Ms. Hernandez received a Master in Health Services Administration in Health Policy from The George Washington University and a Bachelor of Science degree in Biology from the University of Pittsburgh. She is licensed to practice law in Pennsylvania and New Jersey and is admitted to practice before the United States District Court for the Eastern District of Pennsylvania and the United States District Court for the District of New Jersey.

Ms. Hernandez has also been named a "Rising Star" by Pennsylvania Super Lawyers since 2015.

III. ACHIEVEMENTS

Below are some notable cases that Hynes & Hernandez, LLC has litigated on behalf of its clients:

***Marvin H. Maurras Revocable Trust v. Bronfman, Jr. et al.*, Case No. 12-cv-03395 (N.D. Ill.)**

Accretive Health Inc. ("Accretive"), a registered debt-collection agency in Minnesota and several other states, was alleged to have violated numerous debt collection statutes and patient privacy laws in connection with the operation of its business. These violations became public when the Minnesota Attorney General's Office filed a lawsuit against Accretive in federal district court in Minnesota on January 19, 2012, citing numerous violations of state and federal health privacy laws, including the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), the Emergency Medical Treatment and Active Labor Act ("EMTALA"), debt collection laws, and consumer fraud laws. *Swanson v. Accretive Health, Inc.*, Civil File No. 12-145 RHK/JJK (D. Minn. Jan. 19, 2012). Through the shareholder derivative suit, Hynes & Hernandez, LLC achieved

important reforms pertaining to Accretive's internal compliance program to address and remediate the alleged misconduct.

Among other things, Accretive implemented the following corporate governance reforms as part of the settlement:

- Creation of a Compliance Oversight Committee whose function, among other things, was to facilitate the continued development, implementation and operation of an effective compliance program and scrutinize the external and internal environment through early detection and reporting of potential risks (economic, regulatory, inadvertent, political) that will minimize losses to Accretive and its clients;

- A Compliance Oversight Committee charter that will allow, among other things, the Compliance Oversight Committee to (1) assess risks of non-compliance with (a) applicable debt collection regulations and laws and (b) HIPAA, EMTALA, and other applicable privacy laws; (2) train and heighten awareness on compliance, ethics, and policies and communicate methods for reporting possible violations; and (3) reinforce Accretive's culture of collaboration and compliance and audit and monitor adherence to Accretive's compliance and ethics related policies and procedures;

- Continued engagement of an independent, third-party supplier to provide and monitor a whistle-blower hotline to Accretive employees, to provide an anonymous communication channel for employees; and

- Procedures governing reported violations of Accretive's Code of Business Conduct and Ethics through the whistle-blower hotline, including the requirement that the General Counsel or his designee, as appropriate (a) evaluate such information; (b) inform the Chief Executive Officer ("CEO") and audit committee of any alleged violations involving an executive officer or a director of Accretive; (c) determine whether an informal inquiry or a formal investigation is necessary, and initiate such inquiry or investigation as appropriate; and (d) report the results of any such inquiry or investigation, together with a recommendation as to a disposition of the matter, to the CEO, or in the event an executive officer or director is involved to the audit committee, for action.

***Gloria Basaraba v. Robert Greenberg, et al.*, Case No. CV-13-05061-PSG (C.D. Cal.)**

Skechers U.S.A., Inc. ("Skechers") was accused of making numerous "unfounded claims" in the advertising of its highly promoted "Shape-ups" line of rocker-bottom shoes. These "unfounded claims" resulted in consumer and personal injury lawsuits and a $40 million settlement with the Federal Trade Commission prohibiting Skechers' continued use of numerous "unfounded claims" in Shape-ups advertising. Through the diligence of Hynes & Hernandez, LLC and after extensive negotiations, a settlement was reached which directly addressed the underlying claims in the litigation. For example, the Settlement called for all significant advertising campaigns to be reviewed by the legal department or outside legal counsel to ensure its appropriateness and legal compliance. The settlement also provided for the maintenance of a code of business ethics to be overseen by Skechers' General Counsel with the assistance of the company's Human Resources Department. The settlement required periodic business ethics and code of conduct training to its

employees and additional training for managers with functions that require the approval, preparation, execution, or dating of documents. The settlement also resulted in various improvements that support Skechers' compliance procedures and board-level oversight, including a requirement that the Head of Internal Audit, who is responsible for reviewing Skechers' internal controls, report to the Chair of the Audit Committee on an ongoing, real time basis.

Moreover, the settlement included measures that strengthen the board of directors' independence and transparency. These measures include rotation of the lead director position, ensuring the independence of the board of directors' committees, written independence guidelines, increased director training and greater access to information for shareholders. As nearly every corporate governance expert has recognized, an independent board of directors and strong audit committee is the bedrock of sound corporate governance and supervision of corporate affairs. *See, e.g.*, Ira M. Millstein & Paul W. MacAvoy, *The Active Board of Directors and Performance of the Large Publicly Traded Corporation*, 98 Colum. L. Rev. 1283, 1318 (1998) (finding "a substantial and statistically significant correlation between an active, independent board and superior corporate performance"); *Beyond "Independent" Directors: A Functional Approach to Board Independence*, 119 Harv. L. Rev. 1553, 1553 (2006) (noting that "the need for active, independent boards has become conventional wisdom").

***In re Maxwell Technologies, Inc. Derivative Litigation*, Case No. 13-cv-966 (S.D. Cal.)**

Maxwell Technologies, Inc. ("Maxwell") was alleged to lack the internal controls necessary to prevent improper revenue recognition and to have falsely represented its operations and finances between April 28, 2011 and 2013. Hynes & Hernandez, LLC was an integral part of a team of attorneys that caused Maxwell to adopt corporate governance reforms that not only strengthened Maxwell's internal controls, but also made Maxwell's board of directors more effective representatives of Maxwell and its shareholders. The governance measures include: (1) the requirement that the board of directors hold executive sessions at least twice quarterly; (2) enhanced director training; (3) the requirement that the audit committee meet periodically with Maxwell's legal, internal audit and regulatory operations department to ensure there is meaningful oversight over Maxwell's financial risks; (4) mandatory quarterly meetings and reports between the audit committee and the Chief Compliance Officer to discuss significant internal control issues and material enterprise, operational, financial legal/regulatory and reputational risks; (5) the implementation of annual comprehensive employee training regarding revenue recognition, Generally accepted accounting principles, and other financial reporting regulations and policies; and (6) the establishment of an internal audit plan to ensure that Maxwell has proper internal controls in place and are being followed by Maxwell employees.

***In re Galena Biopharma, Inc. Derivative Litig.*, Case No. 3:14-cv-382-SI (D. Or.)**

The derivative action brought on behalf of Galena Biopharma, Inc. ("Galena") and its shareholders arose from allegations that certain officers and/or directors of Galena secretly hired a stock promotion firm to "pump up" Galena's stock price, so they could later sell Galena stock while in possession of non-public information at a time when Galena stock was trading at artificially inflated prices. It was also alleged that certain of Galena's directors used inside information to improperly grant stock options to themselves and fellow officers and/or directors which violated Delaware law because such options were spring-loaded, *i.e.*, granted just prior to the release of

material information that was reasonably expected to drive the market price of Galena stock higher, and also failed to comply with the statutory requirements of the Delaware General Corporation Law.

Hynes & Hernandez, LLC was an integral part of a team of law firms that resolved the matter on favorable terms to Galena and its shareholders. The settlement required the payment of $15 million to Galena by its directors and officers' liability insurance carrier. In addition, as part of the settlement, a total of 1.2 million stock options that were alleged to have been improperly granted to the director defendants were cancelled in their entirety. Further, the former CEO forfeited over $800,000 of contractual severance payments due to him and over 1.1 million stock options with an intrinsic value of approximately $503,062. In total, the settlement provided Galena with financial consideration worth over $20.8 million.

Furthermore, the settlement required the implementation of significant corporate governance reforms at Galena specifically designed to remediate the alleged wrongdoing. These measures include reforms to Galena's stock option granting practices, the appointment of a new independent director, reforms to the board of directors and management structure and policies, the adoption of a formal Enterprise Risk Management program and other reforms designed to make Galena's officers and directors more effective and responsive fiduciaries.

***County of York Employees Retirement Plan and Lynne Schwartz, Derivatively on Behalf of Avon Products, Inc. v. Andrea Jung, et al.*, Index No. 651304/2010 (N.Y. Sup. Ct.)**

The derivative action brought on behalf of Avon Products, Inc. ("Avon") alleged breach of fiduciary duty claims against certain officers and directors in connection with, among other things, alleged violations of the Foreign Corrupt Practices Act of 1977 ("FCPA"). It was alleged that Avon violated the FCPA by paying bribes and kickbacks to get or retain business in China. Eventually, Avon was forced to pay fines in the amount of $135 million to settle actions with the U.S. Department of Justice and the U.S. Securities and Exchange Commission.

As a result of the prosecution and settlement of the derivative action, Avon agreed to implement and maintain significant corporate governance measures designed to detect and deter violations of the FCPA and to improve the Company's compliance practices when it conducts business in countries with a high corruption risk profile. The corporate governance provisions include, among other things, the appointment of a Chief Ethics and Compliance Officer ("CECO"), at least bi-annual reporting by the CECO to the audit committee on the status of compliance efforts, implementation of remedial measures, training statistics, and potential violations. The settlement also provided for designated compliance personnel for each business unit, a certification process requiring global commercial business leaders to provide quarterly certifications on unit compliance with the FCPA and amendments to the audit committee charter requiring semi-annual review of FCPA and anti-corruption compliance. The governance measures further include the implementation of an FCPA Testing Program and associated third-party compliance mechanisms that permit Avon to engage in its global businesses with sufficient controls and other safeguards in place. The court concluded that the settlement conferred substantial benefits on Avon and its shareholders.

***In re Fifth Street Finance Corp. S'holder Derivative Litig.*, Lead Case No. 3:15-cv-01795-RNC (D. Conn.)**

The shareholder derivative actions brought on behalf of Fifth Street Finance Corp. ("FSC"), a publicly traded business development company ("BDC"), alleged that insiders at FSC's external manager, Fifth Street Asset Management, Inc. ("FSAM"), caused FSC to take actions contrary to its interests in order to inflate FSAM's stock price before FSAM's November 2014 initial public offering. Hynes & Hernandez, LLC was part of the litigation team that negotiated a settlement conferring substantial monetary and non-monetary benefits on FSC.

In particular, the settlement secured advisory fee enhancements expected to generate monetary benefits worth at least $30 million to FSC. In addition, the settlement provided for corporate governance, oversight, and conflicts management enhancements to substantially improve the compliance control environment at FSC and FSAM. For example, FSC agreed to adopt measures that will: (i) enhance the independence and rigor of FSC Board oversight, including the appointment of two new independent directors, and ensure that FSAM insiders are held accountable to FSC's outside directors; (ii) increase the rigor of FSC's policies and procedures for valuing investments and credits, including enhanced direct Board oversight, more rigorous review of troubled credits, and greater transparency to ensure reasonable valuation and revenue recognition, and timely disclosure of impairments; (iii) create a Risk and Conflicts Committee to address actual and potential conflicts of interest between FSC and FSAM and FSAM insiders, particularly with respect to co-investments, the Investment Advisory Agreement ("IAA"), and FSC's asset valuation procedures; (iv) establish stock ownership requirements that align FSC's directors' interests with the interests of FSC shareholders; and (v) require the formal retention of and consultation with independent outside counsel to enhance the outside directors' ability to assess and mitigate conflicts of interest, particularly with respect to the annual review and negotiation of the IAA with FSAM.

***Salley v. Debrandere, at al.*, Case No. 17-cv-03777 (D. MD)**

The action brought on behalf of Osiris Therapeutics, Inc. ("Osiris") alleged breach of fiduciary duty claims against certain officers and directors in connection with, among other things, their failure to adopt and implement adequate accounting and financial reporting systems and for allegedly causing Osiris to make false and misleading statements regarding its financial condition. Specifically, Osiris issued a restated 2014 Form 10-K and restated Forms 10-Q for the quarters ended March 31, 2015 and June 30, 2015, as the original financial reports were based on misleading accounting regarding distributor relationships. These restatements removed over $3 million of sales and shifted another $3.9 million in sales between the quarters. The restated financials showed Osiris missing its sales targets for all three quarters. Hynes & Hernandez, LLC was part of the litigation team that negotiated a settlement conferring substantial benefits on Osiris.

The settlement included comprehensive reforms designed to enhance Osiris's overall corporate governance practices, and specifically address management's governance failures. These reforms included the adoption of a compensation claw-back policy, the adoption of a related-party transactions policy, enhancements to the Audit Committee of the Board's oversight and compliance policies, annual review of the Corporate Governance Principles by the Board and other reforms designed to make Osiris' officers and directors more effective and responsive fiduciaries.

In sum, these reforms at both the Board and management levels left Osiris as a better governed company with stronger internal controls, enhanced communication and greater independent oversight, and made Osiris' directors and officers more effective representatives of the stockholders.

***In re Equifax, Inc. Derivative Litigation*, Case No. 1:18-cv-17 (N.D. Ga.)**

Hynes & Hernandez LLC was part of the litigation team that prosecuted claims on behalf of Equifax Inc. ("Equifax") against certain of Equifax's current and former officers and directors for breaches of fiduciary duty arising out of Equifax's massive 2017 data breach.

The terms of the settlement included: (1) the Defendants' agreement to cause their insurers to pay to Equifax the sum of thirty-two million five hundred thousand dollars ($32,500,000); and (2) Equifax's adoption and/or maintenance of numerous corporate governance and internal control reforms.

Among other things, these corporate governance reforms included:

- Equifax's compensation clawback policy was revised to add a financial and reputational harm standard;
- The Board eliminated payments totaling approximately $2.8 million under the Company's 2017 Annual Incentive Plan for certain members of the senior leadership team;
- The Compensation Committee approved a cybersecurity metric as part of the 2018 and 2019 Annual Incentive Plans. Achievement of this metric cannot increase compensation, but failure to meet it will decrease any award;
- The Technology Committee Charter was revised to add responsibilities related to cybersecurity and technology related risk management, state that all Committee members must be independent, provide for executive sessions with relevant corporate officers, authorize engagement of outside advisors, and review escalation protocols with respect to reporting of cybersecurity incidents to management, the Committee, and the Board;
- The Technology Committee Charter and Audit Committee Charter were revised to provide that the Committees coordinate to oversee risk management with respect to cybersecurity and hold joint meetings as appropriate;
- Equifax enhanced its training program for all employees, in particular in the areas of security and compliance. Equifax has increased the number of individuals in its security organization; and
- Equifax has implemented a new Enterprise Risk Management ("ERM") framework. Equifax established a new Risk Office, with a direct line of communication to the Board, to enhance and coordinate the second line of defense under the Company's updated ERM framework. Equifax created an ERM team within the Risk Office.

In Re Revolution Lighting Technologies, Inc. Derivative Action, **Case No. 1:19-cv-03913 (S.D.N.Y.)**

Revolution Lighting Technologies, Inc. ("Revolution") designs, manufactures, markets, and sells light-emitting diode lighting solutions for various usages to industrial, commercial, and government markets. The shareholder derivative actions brought on behalf of Revolution allege that from 2014 through 2018, Revolution improperly recorded its revenue using the bill-and-hold method of revenue accounting. In August 2018, Revolution disclosed that it had identified certain deficiencies in its revenue recognition patterns. Specifically, Revolution concluded that the timing of its revenue recognition was incorrect, such that its annual reported revenue should have been less in 2014 to 2016 by, respectively, about $5 million, $7 million, and $5 million, and its revenue should have been more in 2017 and the first half of 218 by about, respectively, $11 million and $3 million. By October 2018, the SEC was investigating Revolution's revenue recognition practices for its financial statements covering 2014 through the second quarter of 2018, and due to the alleged deficiencies related to its internal controls, Revolution was unable to timely file its periodic reports with the SEC. Hynes & Hernandez, LLC was part of the litigation team that negotiated a settlement conferring substantial benefits on Revolution.

The settlement reforms included:

- *Internal Accounting Practices*. Revolution will undertake changes to processes by which inventory bill and hold revenue is tracked and accounted for. In addition to other changes, the Company's accounting department shall now provide monthly reports disclosing where inventory is physically maintained and whether is it subject to bill and hold accounting. Further, any business divisions that are known to use bill and hold accounting shall be directly solicited when preparing such monthly reports. Additionally, the changes provide for the timing of such reports (within three days following the close of the month) and the reporting chain for such information (provided to the Chief Executive Operating Officer, Chief Operating Officer, and the Chief Operations Officer.

- *Establishment of a Corporate Compliance Committee and a Corporate Compliance Officer*. As part of this Settlement, Revolution Lighting will establish both a Corporate Compliance Committee and a Corporate Compliance Officer position. The Compliance Committee will be principally charged with oversight of Revolution's compliance with regulatory risk. This will include oversight of Revolution's Codes of Conduct and ethical responsibilities of directors, officers and employees of the Company. The Compliance Committee shall be responsible for review and evaluation of all compliance complaints and have the power to conduct independent investigations into such complaints. The Compliance Committee shall have a direct line of reporting to the Board. Similarly, the Corporate Compliance Officer (who shall chair the Compliance Committee) shall be primarily responsible for overseeing Revolution's ethics and compliance programs. This will include implementing procedures for measuring and evaluating compliance and informing senior management of the same.

- *Enhanced Board Independence and Director Education*. The reforms bolster the Board's independence and competence by: (i) adding an additional independent director to the Board; (ii) strengthening the definition of director independence requiring and obligations for appointment of independent board members; and (iii) revising Revolution's guidelines to limit directors to serving on, at most, two other public companies' boards of directors.

- *Additional Audit Committee Responsibilities*. Revolution's Audit Committee, in addition to oversight of the new accounting policies, will be responsible for review of the accounting treatment for significant new transactions and greater supervision of the application of the Company's codes of conduct and ethics as it pertains to financial transactions and in particular, bill and hold transactions. The Audit Committee shall also affirmatively determine if related-party transactions are in the best interest of the Revolution and its shareholders. Revolution shall retain an independent consultant to conduct an annual materiality /risk analysis for Revolution.

- *Additional Governance Changes*. In addition, Revolution will adopt changes to its Nominating and Compensation Committee for the purpose of obtaining qualified new directors and provide a more informed basis for determining compensation of Revolution's officers and directors. Additionally, Revolution has adopted a mandatory training program for all employees concerning Revolution's codes of conduct and ethics.

***In Re Capstone Turbine Corp. Stockholder Derivative Litigation,* Case No. 2:16-cv-01569-DMG (RAOx) (C.D. Cal.)**

The action alleged that between at least November 2013 and October 2015, certain officers and directors caused Capstone Turbine Corporation ("Capstone") to make repeated false and/or misleading statements about Capstone's business and business prospects that led stockholders and the investing public to believe Capstone was on an upward trajectory. The alleged false and misleading statements issued by Capstone failed to disclose: (1) BPC Engineering ("BPC"), one of Capstone's main Russian distributors, was unlikely to be able to fulfill many of its legal and financial obligations to Capstone; (2) Capstone failed to make appropriate adjustments to its accounts receivable and backlog to account for BPC's inability to fulfill its obligations to Capstone; (3) as such, Capstone issued financial statements in violation of Generally Accepted Accounting Principles; (4) Capstone lacked adequate internal controls over accounting; and (5) as a result of the foregoing, Capstone's financial statements were false and misleading and/or lacked a reasonable basis.

Hynes & Hernandez, LLC, acting as Co-Lead Counsel, crafted a settlement comprised of substantial and comprehensive reforms to Capstone's corporate governance processes and procedures. The corporate governance measures of the settlement were specifically designed to address the alleged wrongdoing in the action by, among other things, increasing board independence requirements; enhancing the board-level Audit Committee's supervision and oversight duties and responsibilities, including in connection with the Capstone's recognition of revenue and Whistleblower Policy; enhancements to the duties and responsibilities of the management-level Disclosure Committee to ensure sufficient oversight of and to ensure the timeliness and accuracy of Capstone's public disclosures; the separation of the positions of Chief

Financial Officer and Chief Accounting Officer; the appointment of a new Chief Accounting Officer; enhanced monitoring and disclosure practices and requirements relating specifically to Capstone's key distributors; new written policies and requirements relating to Capstone's sales backlog to ensure accurate disclosures concerning Capstone's true revenue and business prospects; additional procedures related to the credit extended by Capstone to its customers; and improvements to Capstone's Whistleblower Policy.

***In re Aqua Metals, Inc. Stockholder Derivative Litigation,* Master File No.: 1:18-cv-00201-LPS (D. Del.)**

The action was brought derivatively on behalf of nominal defendant Aqua Metals, Inc. ("Aqua Metals") and alleges that certain officers and directors violated the federal securities laws and breached their fiduciary duties by making or permitting the Company to make materially false statements or omissions, causing the Company to fail to maintain internal controls, and committing other violations of state and federal law with respect to the Company's AquaRefining technology, a novel process of recycling lead.

Hynes & Hernandez, LLC, acting as Co-Lead Counsel, secured a settlement that guarantees Aqua Metals substantial benefits in the form of corporate governance reforms, which improve the Company's internal controls and address the alleged deficiencies that resulted in the alleged wrongdoing. In particular, the reforms provide for the appointment of a new independent director, separation of the Chairman of the Board and Chief Executive Officer positions, creation of a new executive-level disclosure committee ("DC") and DC charter, implementation of a new formal whistleblower policy, enhanced meeting requirements for certain members of the Board and its committees, and increased director education.

***In re Vanda Pharmaceuticals Inc. Derivative Litigation,* Case No. 1:19-cv-04293-FB-LB (E.D.N.Y.)**

The action concerned alleged breaches of fiduciary duty by certain current and former officers and directors of Vanda Pharmaceuticals Inc. ("Vanda") relating to the purported off-label promotion of Vanda's two commercially-available drugs: Fanapt®, which is FDA-approved to treat schizophrenia in adults, and Hetlioz®, which is FDA-approved to treat Non-24-Hour Sleep-Wake Disorder ("Non-24"), a circadian rhythm disorder, as well as (2) the FDA's imposition of a partial clinical hold on clinical trials for tradipitant, a drug in Vanda's development pipeline.

Hynes & Hernandez, LLC was part of the litigation team that negotiated a settlement conferring substantial benefits on Vanda. The terms of the settlement included the creation of a management-level Disclosure Committee and the adoption of a charter outlining the Committee's membership, the responsibilities and duties of its members, and its annual training. In addition, Vanda's General Counsel and Head of Compliance were required to undertake together a comprehensive review of Vanda's policies to ensure that such policies are consistent with current laws and regulations, and appropriate in scope with respect to Vanda's operations and risks. The Company's decision to implement and maintain the reforms led to improved policies and procedures relating to all of Vanda's most important processes and improved transparency.

***In re The RealReal, Inc. Stockholder Derivative Litigation,* Master File No.: 1:20-cv-01212-LPS (D. Del.)**

The RealReal Inc. ("TRR") promotes itself as the world's largest online marketplace for authenticated, consigned luxury goods. On June 27, 2019, TRR held its Initial Public Offering ("IPO"), wherein the IPO related documents maintained that TRR's luxury items were, *inter alia,* put through a "rigorous, multi-point, brand-specific authentication process" conducted by "highly trained" authentication staff. Other public representations by TRR similarly touted TRR's rigorous authentication processes by highly trained experts. However, the action alleged that the TRR's authentication process was nowhere near as robust as professed, and most items purportedly "authenticated" by TRR were merely reviewed by TRR's copywriters, who had minimal training or experience in authentication. The action further alleged that between June 27, 2019, and November 20, 2019, officers and directors of TRR breached their fiduciary duties by making and/or causing TRR to make a series of materially false and misleading statements and omissions regarding TRR's authentication processes, risk exposure and purported growth and success, and by failing to maintain internal controls.

Hynes & Hernandez, LLC was an integral part of the litigation team that negotiated a settlement that improves TRR's internal controls regarding its authentication practices –the core of the TRR's business– and directly addresses the deficiencies that resulted in the alleged wrongdoing.

The settlement reforms included:

- Improvements to TRR's authentication practices: requires having the Chief Operating Officer ("COO") be responsible for the oversight of the training of the authentication staff by incorporating semi-annual assessments of all authentication staff and certifications into TRR's existing training programs; to ensure that all individuals hired comply with the authentication practices and are skilled regardless of their hire date, a special assessment shall be held for such individual within thirty (30) business days of his or her hiring after which a certification shall be provided; and requires training shall be in person where practicable and determined to be most effective.

- A new written policy that establishes Board oversight of TRR's retail sales practices and relationship with retain customers: requires that the CCO or its designee shall report to the Board no less than semi-annually regarding oversight for retail sales practices and other elements of TRR's relationship with retail customers; requires that the report, at a minimum, shall include any significant and/or potentially material issues with respect to retail sales practices and TRR's relationship with retail customers; and mandates that the Board will monitor any remedial actions taken with respect to any material issues and get updates as needed.

- The creation of a new management-level risk and compliance committee: the committee shall be responsible for (1) determining, implementing, and assessing TRR's risk management policies and the operation of TRR's risk management framework; and (2) identifying material risks relating to TRR's compliance with all applicable laws and regulations; requirements for the committee process include, among other things, reporting to the Audit Committee any compliance issues that may have significant financial implications or are sufficiently material to trigger a disclosure obligation, free and open

access to TRR management and employees to fulfill its responsibilities, and meeting on a quarterly basis.

- Improvements to TRR's Disclosure Committee Charter: the Disclosure Committee Charter shall be amended to require that (1) the Disclosure Committee will report to the Board and Audit Committee; and (2) the Disclosure Committee shall include TRR's authentication process in its disclosure control considerations and in connection therewith the evaluation of customer or whistleblower complaints shall be considered in the assessment and validation of such disclosure.

- Improvements to TRR's Whistleblower policy and procedures: includes amendments to the policy and processes to specify that the whistleblower communication channel may be used to "report concerns relating to business practices, ethical business or personal conduct, integrity, and professionalism" and provides a specific process for complaints regarding officers and directors.

EXHIBIT 11

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

EMPLOYEES RETIREMENT SYSTEM OF THE CITY OF ST. LOUIS, *et al.*, Plaintiffs, v. CHARLES E. JONES, *et al.*, Defendants, and FIRSTENERGY CORP., Nominal Defendant.	Case No. 2:20-cv-04813 Chief Judge Algenon L. Marbley Magistrate Judge Kimberly A. Jolson

DECLARATION OF D. SEAMUS KASKELA FILED ON BEHALF OF KASKELA LAW LLC IN SUPPORT OF PLAINTIFFS' MOTION FOR FINAL APPROVAL OF SETTLEMENT AND REQUEST FOR ATTORNEYS' FEES AND EXPENSES

I, D. Seamus Kaskela, declare as follows:

1. I am the founding attorney and Director of Kaskela Law LLC ("Kaskela Law"). I submit this Declaration in support of Plaintiffs' Motion for Final Approval of Settlement and Request for Attorneys' Fees and Expenses in connection with the Settlement[1] of the above-captioned shareholder derivative action (the "Action"). I have knowledge of the matters set forth herein based on personal knowledge, my review of the firm's records, and consultation with other firm personnel.

2. Kaskela Law is counsel of record for Plaintiffs Roberta Bloom, Joan Randell, and Arlene Pogolowitz (the "Bloom Plaintiffs"). Kaskela Law filed the Verified Stockholder Derivative Complaint for the Bloom Plaintiffs in the U.S. District Court for the Southern District

[1] As defined in the Stipulation and Agreement of Settlement dated March 11, 2022 (ECF No. 170-3).

of Ohio, No. 2:20-cv-04534, on September 1, 2020 (the "Bloom Case"). Thereafter, Kaskela Law assisted in the coordination of the Bloom Case with other stockholder derivative actions concerning FirstEnergy Corp., and maintained continuing primary responsibility for interaction with the Bloom Plaintiffs, including routine and non-routine telephone conferences to update the Bloom Plaintiffs on the status of the coordinated action.

3. The information in this Declaration regarding the firm's time, including in the schedule attached hereto as Exhibit 1, was prepared from daily time records regularly prepared and maintained by my firm in the ordinary course of business. I am the attorney who oversaw my firm's activities in the litigation, and I reviewed my firm's daily time records to confirm their accuracy. The purpose of this review was to confirm both the accuracy of the entries in the time records as well as the necessity for, and reasonableness of, the time and expenses committed to the Action. As a result of this review, reductions were made to both time and expenses in the exercise of billing judgment. Based on this review and the adjustments made, I believe that the time reflected in the firm's lodestar calculation and the litigation expenses for which payment is sought are reasonable and were necessary for the effective and efficient prosecution and resolution of the Action.

4. The total number of hours I expended on this Action from its inception through March 11, 2022 was 23.5. The total resulting lodestar for my firm is $16,450. The schedule attached hereto as Exhibit 1 is a detailed summary reflecting the amount of time spent by each attorney of my firm who was involved in the Action, and the lodestar calculation based on my firm's current hourly rates.

5. My qualifications and background may be found in my firm's resume, which is attached hereto as Exhibit 3.

6. The hourly rates by Kaskela Law are reasonable for several reasons. *First*, the rates by Kaskela Law are its customary hourly rates.

7. *Second*, the hourly rates by Kaskela Law are reasonable in light of the firm's highly specialized skill and experience when it comes to litigating and settling shareholder derivative and stockholder class action litigation. Kaskela Law has extensive experience litigating shareholder derivative and stockholder class actions. Recent examples include the following: *Voigt v. Metcalf, et al. (NCI Building Systems, Inc.)*, C.A. No. 2018-0828-JTL (Del. Ch.) ($100 million cash recovery for derivative claims brought on behalf of nominal defendant NCI Building Systems); *In re HomeFed Corp. Stockholder Litigation*, C.A. No. 2019-0592-LWW (Del. Ch.) ($15 million cash recovery for former stockholders of HomeFed Corp. following acquisition by Jefferies Financial Group Inc.); and *Hawkes v. Bettino, et al.* (*TD Ameritrade Holding Corp.*), C.A. No. 2020-0360-PAF (Del. Ch.) ($31.5 million proposed settlement for former stockholders of TD Ameritrade Holding Corp. following acquisition by The Charles Schwab Corp.).

8. *Third*, the hourly rates by Kaskela Law are consistent with the rates for similar services by lawyers of reasonably comparable skill, experience, and national reputation. *See, e.g. In re Snap Inc. Sec. Litig*., No. 2:17-cv-03679-SVW-AGR, 2021 WL 667590, at *4 (C.D. Cal. Feb. 18, 2021), *In re Snap Inc. Sec. Litig.*, No. 2:17-cv-03679-SVW-AGR, ECF No. 386-9, at PAGEID #:18483-18485 (approving fee award in securities fraud class action with hourly rates ranging from $780-$920 for partners, $390-$690 for associates, and $385 for staff attorneys); *In re BHP Billiton Ltd. Sec. Litig*., No. 16-cv-01445, 2019 WL 1577313, at *1 (S.D.N.Y. Apr. 10, 2019), *In re BHP Billiton Ltd. Sec. Litig*., No. 16-cv-01445, ECF No. 122-1 at 2 (approving fee award in securities fraud class action with hourly ranging from $790-$1030 for partners, $400-$550 for associates, and $375 for staff attorneys).

9. *Fourth*, Kaskela Law has special expertise when it comes to litigating shareholder derivative cases, and courts across the country have approved Kaskela Law's fees at its standard hourly rates. *See, e.g., Voigt v. Metcalf, et al. (NCI Building Systems, Inc.),* C.A. No. 2018-0828-JTL (Del. Ch.) (court granted fee award with implied blended hourly rate of $2,230.00, based on hours billed at each firm's standard hourly rates); *In re HomeFed Corp. Stockholder Litigation*, C.A. No. 2019-0592-LWW (Del. Ch.) (court granted fee award with implied blended hourly rate of $900.00, based on hours billed at each firm's standard hourly rates).

10. *Fifth*, Kaskela Law's implied hourly rate of $700.00, based on the firm's lodestar and total hours billed, falls well within the range of those approved by courts in the Southern District of Ohio in shareholder derivative cases. *See Rudi v. Wexner*, No. 2:20-CV-3068, 2022 WL 1682297, at *5 (S.D. Ohio May 16, 2022) ("*L Brands*") (granting fee award with hourly rates of up to $1,685 for partners and $1,245 for associates), *L Brands*, 2:20-cv-03068, ECF No. 26-9 at PAGEID #: 1080; *In re Big Lots, Inc. S'holder Litig*., No. 2:12-CV-445, 2018 WL 11356561, at *5 (S.D. Ohio Aug. 28, 2018), *Big Lots*, No. 2:12–cv–445, ECF No. 122-3 at PAGEID #: 2760 (approving hourly rates of up to $925 for partners and $650 for associates).

11. Based on records maintained by my firm, Kaskela Law incurred a total of $62.00 in unreimbursed litigation expenses in connection with the prosecution and settlement of the Action. (Plaintiffs' Counsel are not seeking separate reimbursement for their unreimbursed litigation expenses in this matter, but instead are seeking an "all in" attorneys' fee as a percentage of the total monetary recovery.) The firm's expenses are fully categorized in Exhibit 2 attached hereto.

12. The litigation expenses incurred in this Action are reflected in the books and records of Kaskela Law, which are regularly prepared and maintained in the ordinary course of business.

These records are prepared from expense vouchers, check records and other source materials and are an accurate record of the expenses incurred. These expenses were reasonably necessary in the prosecution of the Action. Courts have typically found that these kinds of expenses are payable to counsel who create a benefit for shareholders.

13. My firm undertook this litigation on an entirely contingent basis and have not been paid for any of their work, nor have any of their costs or expenses been reimbursed. My firm undertook the litigation of the Action with the expectation that it would have to devote many hours of hard work to the prosecution of a case involving complex factual and legal issues without any guarantee of successful resolution or of compensation for their efforts. The prosecution of this Action involved the expenditure of significant resources, including the time spent by attorneys and professional staff, as well as the substantial expenses that were incurred during the litigation, while my firm received no compensation during the course of the litigation.

14. This Declaration provides the Court with time only through March 11, 2022 (the date that the Stipulation and Agreement of Settlement was signed). Accordingly, this Declaration does not encompass time incurred from March 12, 2022 through the present. Also, this Declaration does not include time spent preparing Plaintiffs' Motion for Final Approval of Settlement and Request for Attorneys' Fees and Expenses.

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

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Executed this 28th day of June 2022, at West Chester, Pennsylvania.



D. Seamus Kaskela
KASKELA LAW LLC
18 Campus Boulevard, Suite 100
Newtown Square, PA 19073
(484) 258 – 1585

EXHIBIT 1

Employees Retirement System of the City of St. Louis, et al., v. Charles E. Jones, et al.
Case No. 2:20-cv-04813

KASKELA LAW LLC TIME REPORT

Inception through March 11, 2022

NAME	HOURS	HOURLY RATE	LODESTAR
Director			
D. Seamus Kaskela	23.5	$700.00	$16,450.00
TOTAL LODESTAR	**23.5**		**$16,450.00**

EXHIBIT 2

Employees Retirement System of the City of St. Louis, et al., v. Charles E. Jones, et al.
Case No. 2:20-cv-04813

KASKELA LAW LLC EXPENSE REPORT

CATEGORY	AMOUNT($)
Postage and Delivery	$62.00
TOTAL EXPENSES:	**$62.00**

EXHIBIT 3

Employees Retirement System of the City of St. Louis, et al., v. Charles E. Jones, et al.
Case No. 2:20-cv-04813

FIRM RESUME

KASKELA LAW LLC

18 Campus Boulevard, Suite 100
Newtown Square, PA 19073
(888) 715 – 1740
www.kaskelalaw.com

Kaskela Law LLC ("Kaskela Law" or the "Firm") is a litigation boutique that specializes in representing investors in state and federal securities class action fraud litigation, stockholder derivative actions, and stockholder merger & acquisition litigation. The Firm is based in Newtown Square, Pennsylvania, and represents investors nationwide.

ATTORNEYS

D. Seamus Kaskela is a graduate of Saint Joseph's University (B.S. Sociology 2002), Rutgers School of Law (J.D. 2006), and The Pennsylvania State University (M.B.A. 2007). Mr. Kaskela started his legal career with a large Philadelphia area plaintiff-side litigation firm upon graduating from law school, and has represented investors since that time. Mr. Kaskela is licensed to practice law in Pennsylvania and New Jersey, and is admitted to practice before the United States District Courts for the Eastern District of Pennsylvania and the District of New Jersey.

Adrienne Bell is Senior Counsel at Kaskela Law. Ms. Bell is a graduate of New York University (B.A. Music Theory and Composition 1996, *magna cum laude*) and Brooklyn Law School (J.D. 2002). Ms. Bell has represented investors for over a decade in class, representative, and individual actions. Ms. Bell is licensed to practice law in Pennsylvania and is admitted to practice before the United States District Court for the Eastern District of Pennsylvania.

NOTABLE RECENT ACHIEVEMENTS

Kaskela Law has represented investors in the following representative matters:

- *Voigt v. Metcalf, et al. (NCI Building Systems, Inc.)*, C.A. No. 2018-0828-JTL (Del. Ch.) – $100 million cash recovery for derivative claims brought on behalf of nominal defendant NCI (settlement approved 2022).

- *In re HomeFed Corp. Stockholder Litigation*, C.A. No. 2019-0592-LWW (Del. Ch.) – $15 million cash recovery for former stockholders of HomeFed Corp. following acquisition by Jefferies Financial Group Inc. (settlement approved 2022).

- *Tomaszewski v. Trevena, Inc., et al.*, No. 2:18-cv-04378-CMR (E.D. Pa.) – $8.5 million securities fraud class action settlement (settlement approved 2021).

CURRENT REPRESENTATIVE CASES

The Firm is part of the litigation teams currently prosecuting the following actions:

- *Alberici v. Recro Pharma, Inc., et al.*, No. 2:18-cv-02279-MMB (E.D. Pa.);

- *In re Coty Inc. Stockholder Litigation*, C.A. No. 2019-0336-LWW (Del. Ch.);

- *In re Tilray, Inc. Reorganization Litigation*, C.A. No. 2020-0137-KSJM (Del. Ch.);

- *Hawkes v. Bettino, et al.* (*TD Ameritrade Holding Corp.*), C.A. No. 2020-0360-PAF (Del. Ch.);
- *In re AVX Corp. Stockholders Litigation*, C.A. No. 2020-1047-SG (Del. Ch.);
- *Loskot v. Pareteum Corp., et al.*, No. 20-CIV-02279 (Cal. Super. Ct., San Mateo Cnty.);
- *In re MultiPlan Corp. Stockholder Litigation*, C.A. No. 2021-0300-LWW (Del. Ch.);
- *Dinkevich v. Deutsche Telekom AG, et al. (T.D. Mobile US, Inc.)*, C.A. No. 2021-0479-PAF (Del. Ch.);
- *Harris, et al. v. Junger, et al. (FAT Brands)*, C.A. No. 2021-0511-SG (Del. Ch.); and
- *In re Lordstown Motors Corp. Stockholders Litigation*, C.A. No. 2021-1066-LWW (Del. Ch.).

EXHIBIT 12

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

EMPLOYEES RETIREMENT SYSTEM OF THE CITY OF ST. LOUIS, *et al.*, Plaintiffs, v. CHARLES E. JONES, *et al.*, Defendants, and FIRSTENERGY CORP., Nominal Defendant.	Case No. 2:20-cv-04813 Chief Judge Algenon L. Marbley Magistrate Judge Kimberly A. Jolson

DECLARATION OF MATTHEW R. WILSON IN SUPPORT OF PLAINTIFFS' MOTION FOR FINAL APPROVAL OF SETTLEMENT AND REQUEST FOR ATTORNEYS' FEES AND EXPENSES

I, MATTHEW R. WILSON, declare as follows:

I am a principal attorney with the AV-rated law firm Meyer Wilson Co., LPA ("Meyer Wilson"), one of the local counsel of record for plaintiffs Roberta Bloom, Joan Randell, and Arlene Pogolowitz (the "Bloom Plaintiffs"). I am a member in good standing of the bars of the States of California and Ohio. I respectfully submit this declaration in support of Plaintiff's Motion for Final Approval of Settlement and Request for Attorneys' Fees and Expenses in connection with the Settlement[1] of the above-captioned shareholder derivative action (the "Action"). Except as otherwise noted, I have personal knowledge of the facts set forth in this declaration, and could testify competently to them if called upon to do so.

1. Meyer Wilson is a plaintiffs' law firm with its primary office in Columbus, Ohio. With co-counsel, Meyer Wilson handles cases across the country. In addition to its practice on behalf of individual and institutional investors in arbitrations before the Financial Industry Regulatory Authority ("FINRA") and a practice representing patients who have suffered from

[1] As defined in the Stipulation and Agreement of Settlement dated March 11, 2022 (ECF No. 170-3).

defective drugs and medical devices, Meyer Wilson has a robust complex litigation and class action practice involving consumer, employment, financial, and securities matters. I lead that practice.

2. I graduated from Denison University, *magna cum laude*, in Philosophy in 1997, before graduating from the University of Virginia School of Law in 2000. I came to Meyer Wilson (then called Meyer & Associates Co., LPA) in 2006 as an associate and was promoted to named principal of the firm in 2012. Prior to joining Meyer Wilson, I worked as an attorney at Jones Day in its Columbus office, where I defended class actions and litigated other complex civil cases. I was the chair of the Class Action Committee of the Central Ohio Association for Justice from 2007 until 2018. I have also been a member of the Class Action Preservation Project with Public Justice. In addition to the California and Ohio state bars, I am also admitted to the Sixth, Seventh, Ninth, and Eleventh Circuit Courts of Appeals; to the Central, Eastern, Northern, and Southern Districts of California; the Northern and Southern Districts of Ohio; the Central and Northern Districts of Illinois; and the Eastern and Western Districts of Wisconsin. I have litigated class action cases on a *pro hac vice* basis in many other courts throughout the country. I have significant experience in litigating consumer class actions; in the last ten years, I have obtained over $300 million in cash for consumers in class settlements.

3. In many of these matters, including this one, I have been assisted by Michael J. Boyle, Jr., Special Counsel at Meyer Wilson. Mr. Boyle graduated *cum laude* from the University of Pennsylvania School of Law in 2008. Mr. Boyle clerked for the Honorable R. Guy Cole, Jr., of the United States Court of Appeals for the Sixth Circuit and worked at the international law firm Covington & Burling, LLP, prior to coming to work at Meyer Wilson in early 2013. In 2019, 2020, and 2021, Mr. Boyle was recognized as an Ohio "Super Lawyer," and as a Rising Star in 2014, 2016 and 2017. Mr. Boyle is admitted to the bars of California and Ohio, as well as to the Sixth, Seventh, Ninth, and Eleventh Circuit Courts of Appeals, the Northern, Eastern, Central, and Southern Districts of California, the Southern District of Ohio, the Central District of Illinois, and the Eastern and Western Districts of Wisconsin.

4. I was also assisted by Meyer Wilson's newest attorney, Jared Connors. Mr. Connors graduated from the Moritz College of Law at The Ohio State University in 2021, and has been admitted to practice in the State of Ohio in 2021. Prior to being admitted to the Bar, Mr. Connors worked as a law clerk at Meyer Wilson.

5. I was assisted by one of Meyer Wilson's paralegals, Danielle Aldach. Danielle Aldach is a graduate of Simpson College with a Bachelor of Music and has a Masters Degree from the University of Southern Illinois in Carbondale.

6. As local counsel for the Bloom Plaintiffs, Meyer Wilson helped file the Bloom Plaintiffs' complaint in the U.S. District Court for the Southern District of Ohio, No. 2:20-cv-04534, on September 1, 2020 (the "Bloom Action"). The specific work Meyer Wilson actively engaged in for the prosecution of the Bloom Action included: (1) reviewing and consulting on the drafting and filing of the complaint in the Bloom Action; (2) reviewing and coordinating service of the complaint in the Bloom Action; and (3) providing general advice and consulting on Ohio law and procedure before the Court.

7. Virtually all of the work that Meyer Wilson undertakes is on a contingency fee basis. Meyer Wilson expended significant costs - and a great deal of time that could have been spent on fee-generating matters - in litigating the Action. Throughout the case, Meyer Wilson ran the risk of not realizing any monetary gain in the event of an adverse result.

8. Meyer Wilson sets its rates for attorneys and staff members based on a variety of factors, including, among others: the experience, skill, and sophistication required for the types of legal services typically performed; the rates customarily charged in similar matters; and the experience, reputation, and ability of the attorneys and staff members. Meyer Wilson's rates have been specifically approved by courts throughout the country on multiple occasions over many years. *See, e.g., Doe et al. v. CVS Health Corp. et al.*, Case No. 2:18-cv-00238-EAS (S.D. Ohio Feb. 11, 2020) (approving class counsel's rates as "justified and earned and reasonable"); *Yarger, et al. v. ING Bank FSB*, Case No. 1:11-cv-00154-LPS (October 7, 2014, D. Del.) (approving class counsel's rates as a "reasonable reward").

9. Moreover, Meyer Wilson's hourly rates are quite modest compared to their peer lawyers' rates in the national class action bar. *See, e.g. In re Snap Inc. Sec. Litig*., No. 2:17-cv-03679-SVW-AGR, 2021 WL 667590, at *4 (C.D. Cal. Feb. 18, 2021), *In re Snap Inc. Sec. Litig*., No. 2:17-cv-03679-SVW-AGR, ECF No. 386-9, at PAGEID #:18483-18485 (approving fee award in securities fraud class action with hourly rates ranging from $780-$920 for partners); *In re BHP Billiton Ltd. Sec. Litig.,* No. 16-cv-01445, 2019 WL 1577313, at *1 (S.D.N.Y. Apr. 10, 2019), *In re BHP Billiton Ltd. Sec. Litig*., No. 16-cv-01445, ECF No. 122-1 at 2 (approving fee award in securities fraud class action with hourly ranging from $790-$1030 for partners).

10. Furthermore, Meyer Wilson's implied hourly rate of $537, based on the firm's lodestar and total hours billed, fall well within the range of those approved by courts in the Southern District of Ohio in shareholder derivative cases. *See Rudi v. Wexner*, No. 2:20-CV-3068, 2022 WL 1682297, at *5 (S.D. Ohio May 16, 2022) ("*L Brands*") (granting fee award with hourly rates of up to $1,685 for partners and $1,245 for associates), *L Brands*, 2:20-cv-03068, ECF No. 26-9 at PAGEID #: 1080; *In re Big Lots, Inc. S'holder Litig.,* No. 2:12-CV-445, 2018 WL 11356561, at *5 (S.D. Ohio Aug. 28, 2018), *Big Lots,* No. 2:12–cv–445, ECF No. 122-3 at PAGEID #: 2760 (approving hourly rates of up to $925 for partners and $650 for associates).

11. Meyer Wilson has maintained contemporaneous time records since its initial involvement in this matter through March 11, 2022. Meyer Wilson worked a total of 19.80 hours in this action, for a total lodestar of $10,637.50.

12. Although I was the main attorney at Meyer Wilson to work on this case, much of the day-to-day tasks of running the case were performed by Mr. Boyle, an experienced and skilled class action practitioner. Finally, some tasks were assigned to Jared Connors, first as a law clerk and then as an associate attorney. Finally, where appropriate, work was done by Meyer Wilson paralegal Danielle Aldach. The work I delegated was work that required sufficient knowledge of legal concepts that I would have had to perform, absent such assistance. I believe that the time reflected in the firm's lodestar calculation are reasonable and were necessary for the effective and efficient prosecution and resolution of the Action.

13. The following chart details the time each of these attorneys and staff worked on this case and their contribution to Meyer Wilson's total lodestar:

Attorney	Total Hours	Billing Rate	Lodestar
Matthew Wilson (Partner)	5.80	$705.00	$4,089.00
Michael Boyle (Special Counsel)	7.90	$565.00	$4,463.50
Jared Connors (Associate)	5.60	$350.00	$1,960.00
Danielle Aldach (Paralegal)	0.50	$250.00	$125.00
	19.80		**$10,637.50**

14. I have reviewed the time reported for the attorneys and other personnel listed in the schedules set forth above. I reduced or eliminated time entries in some instances to ensure that there was no unnecessary duplication of efforts.

15. Based on records maintained by my firm, Meyer Wilson incurred a total of $200.00 in unreimbursed litigation expenses in connection with the prosecution and settlement of the Action. (Plaintiffs' Counsel are not seeking separate reimbursement for their unreimbursed litigation expenses in this matter, but instead are seeking an "all in" attorneys' fee as a percentage of the total monetary recovery.) These expenses are comprised of filing fees incurred in connection with the Bloom Action.

16. The litigation expenses incurred in this Action are reflected in the books and records of Meyer Wilson, which are regularly prepared and maintained in the ordinary course of business. These records are prepared from expense vouchers, check records and other source materials and are an accurate record of the expenses incurred. These expenses were reasonably necessary in the prosecution of the Action. Courts have typically found that these kinds of expenses are payable to counsel who create a benefit for shareholders.

17. Meyer Wilson undertook this litigation on an entirely contingent basis and have not been paid for any of their work, nor have any of their costs or expenses been reimbursed. Meyer Wilson undertook the litigation of the Action with the expectation that it would have to devote

many hours of hard work to the prosecution of a case involving complex factual and legal issues without any guarantee of successful resolution or of compensation for their efforts. The prosecution of this Action involved the expenditure of significant resources, including the time spent by attorneys and professional staff, as well as the substantial expenses that were incurred during the litigation, while my firm received no compensation during the course of the litigation.

I declare under penalty of perjury of the laws of the United States that the foregoing is true and correct, and that this declaration was executed at Columbus, Ohio on June 30, 2022.

/s/ Matthew R. Wilson

MEYER WILSON CO., LPA
Matthew R. Wilson (0072925)
Michael J. Boyle, Jr. (0091162)
1320 Dublin Road, Ste. 100
Columbus, OH 43215
Telephone: (614) 224-6000
Facsimile: (614) 819-8230
mwilson@meyerwilson.com
mboyle@meyerwilson.com

EXHIBIT 13

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

EMPLOYEES RETIREMENT SYSTEM OF THE CITY OF ST. LOUIS, *et al.*, Plaintiffs, v. CHARLES E. JONES, *et al.*, Defendants, and FIRSTENERGY CORP., Nominal Defendant.	Case No. 2:20-cv-04813 Chief Judge Algenon L. Marbley Magistrate Judge Kimberly A. Jolson

DECLARATION OF MARC H. EDELSON FILED ON BEHALF OF EDELSON LECHTZIN LLP IN SUPPORT OF PLAINTIFFS' MOTION FOR FINAL APPROVAL OF SETTLEMENT AND REQUEST FOR ATTORNEYS' FEES AND EXPENSES

I, Marc H. Edelson, declare as follows:

1. I am a partner of Edelson Lechtzin LLP. I submit this Declaration in support of Plaintiffs' Motion for Final Approval of Settlement and Request for Attorneys' Fees and Expenses in connection with the Settlement[1] of the above-captioned shareholder derivative action (the "Action"). I have knowledge of the matters set forth herein based on personal knowledge, my review of the firm's records, and consultation with other firm personnel.

2. This firm is counsel of record for plaintiff Jennifer L. Miller. Ms. Miller is the representative plaintiff for the first filed federal derivative action in the United States District Court for the Northern District of Ohio, Case No. 5:20-cv-01743.

[1] As defined in the Stipulation and Agreement of Settlement dated March 11, 2022 (ECF No. 170-3).

3. The information in this Declaration regarding the firm's time, including in the schedule attached hereto as Exhibit 1, was prepared from daily time records regularly prepared and maintained by my firm in the ordinary course of business. I am the Partner who oversaw my firm's activities in the litigation, and I, together with attorneys working under my direction, reviewed my firm's daily time records to confirm their accuracy. The purpose of this review was to confirm both the accuracy of the entries in the time records as well as the necessity for, and reasonableness of, the time and expenses committed to the Action. As a result of this review, reductions were made to both time and expenses in the exercise of billing judgment. Based on this review and the adjustments made, I believe that the time reflected in the firm's lodestar calculation and the litigation expenses for which payment is sought are reasonable and were necessary for the effective and efficient prosecution and resolution of the Action.

4. The total number of hours expended on this Action by my firm's attorneys and professional support staff employees from its inception through March 11, 2022 was 801.90. The total resulting lodestar for my firm is $659,842.50. The schedule attached hereto as Exhibit 1 is a detailed summary reflecting the amount of time spent by each attorney and professional support staff employee of my firm who was involved in the Action, and the lodestar calculation based on my firm's current hourly rates. Different timekeepers within the same employment category (*e.g.*, partners and associates) may have different rates based on a variety of factors, including years of practice, years at the firm, year in the current position, relevant experience, relative expertise, and the rates of similarly experienced peers at our firm or other firms.

5. Set forth below is a description of the services rendered by each attorney for whom fees are requested and who committed at least ten hours of work to the prosecution of the Action:

Eric Lechtzin (Partner): Assisted in drafting the initial Complaint, communications with Ms. Miller, and assisted in overall case strategy.

Liberato Verderame (Senior Counsel): Drafted initial Complaint, legal and factual research, and reviewed governmental materials pertaining to indictments.

Shoshana Savett (Senior Counsel): Legal and factual research, and drafted file memos for the individual defendants and others involved in the criminal proceedings.

Marc H. Edelson (Partner): Supervised the litigation, assisted in drafting and editing all pleadings, attendance at Court hearings and Mediation, participated in case strategy and settlement negotiations.

6. The qualifications and backgrounds of the attorneys identified in the previous paragraph may be found in my firms' resume, which is attached hereto as Exhibit 3.

7. The hourly rates by Edelson Lechtzin LLP are reasonable for several reasons. *First*, the rates by Edelson Lechtzin LLP are its customary hourly rates.

8. *Second*, the hourly rates by Edelson Lechtzin LLP are reasonable in light of the firm's highly specialized skill and experience when it comes to litigating and settling class action and shareholder derivative litigation.

9. *Third*, the hourly rates by Edelson Lechtzin LLP are consistent with the rates for similar services by lawyers of reasonably comparable skill, experience, and national reputation. *See, e.g. In re Snap Inc. Sec. Litig.*, No. 2:17-cv-03679-SVW-AGR, 2021 WL 667590, at *4 (C.D. Cal. Feb. 18, 2021), *In re Snap Inc. Sec. Litig.*, No. 2:17-cv-03679-SVW-AGR, ECF No. 386-9, at PAGEID #:18483-18485 (approving fee award in securities fraud class action with hourly rates ranging from $780-$920 for partners, $390-$690 for associates, and $385 for staff attorneys); *In re BHP Billiton Ltd. Sec. Litig.*, No. 16-cv-01445, 2019 WL 1577313, at *1 (S.D.N.Y. Apr. 10,

2019), *In re BHP Billiton Ltd. Sec. Litig*., No. 16-cv-01445, ECF No. 122-1 at 2 (approving fee award in securities fraud class action with hourly ranging from $790-$1030 for partners, $400-$550 for associates, and $375 for staff attorneys).

10. *Fourth*, Edelson Lechtzin LLP has special expertise when it comes to litigating shareholder cases, and courts across the country have approved the individual attorney's fees at their standard hourly rates. *See, e.g.*, *In re: Oppenheimer Rochester Funds Group Secs. Litig.*, No. 09-md- 02063-JLK (D. Col.), which settled for $89.5 million. Mr. Lechtzin served as lead counsel in *In re Transkaryotic Therapies, Inc. Secs. Litig.*, No. 03-CV-10165-RWZ (D. Mass.), which settled for $50 million after successfully obtaining class certification. Other successful securities fraud class actions in which Mr. Lechtzin had leadership roles include: *The Eshe Fund Group v. Fifth Third Bancorp*, No. 1:08-CV-539 (S.D. Ohio) ($16 million settlement); *In re Hemispherx Biopharma, Inc. Litig.*, 09-CV-5262-PD (E.D. Pa.) ($3.6 million settlement); *In re RenaissanceRe Holdings Ltd. Secs. Litig.*, No. 1:05-CV-6764 (S.D.N.Y.) ($13.5 million settlement); *In re Global Crossing Access Charge Litig.*, No. 04-MD-1630 (S.D.N.Y) ($15 million settlement); and *In re Van der Moolen Holding N.V. Secs. Litig.*, No. 1:03-CV-8284 (S.D.N.Y.) ($8 million settlement).

11. *Fifth*, the implied hourly rate on Edelson Lechtzin LLP's billing rates based on the firm's lodestar and total hours billed, falls well within the range of those approved by courts in the Southern District of Ohio in shareholder derivative cases. *See Rudi v. Wexner*, No. 2:20-CV-3068, 2022 WL 1682297, at *5 (S.D. Ohio May 16, 2022) ("*L Brands*") (granting fee award with hourly rates of up to $1,685 for partners and $1,245 for associates), *L Brands*, 2:20-cv-03068, ECF No. 26-9 at PAGEID #: 1080; *In re Big Lots, Inc. S'holder Litig*., No. 2:12-CV-445, 2018 WL 11356561, at *5 (S.D. Ohio Aug. 28, 2018), *Big Lots*, No. 2:12–cv–445, ECF No. 122-3 at PAGEID #: 2760 (approving hourly rates of up to $925 for partners and $650 for associates).

12. Based on records maintained by my firm, Edelson Lechtzin LLP incurred a total of $6015.91 in unreimbursed litigation expenses in connection with the prosecution and settlement of the Action. (Plaintiffs' Counsel are not seeking separate reimbursement for their unreimbursed litigation expenses in this matter, but instead are seeking an "all in" attorneys' fee as a percentage of the total monetary recovery.) The firm's expenses are fully categorized in Exhibit 2 attached hereto.

13. The litigation expenses incurred in this Action are reflected in the books and records of Edelson Lechtzin LLP, which are regularly prepared and maintained in the ordinary course of business. These records are prepared from expense vouchers, check records and other source materials and are an accurate record of the expenses incurred. These expenses were reasonably necessary in the prosecution of the Action. Courts have typically found that these kinds of expenses are payable to counsel who create a benefit for shareholders.

14. My firm undertook this litigation on an entirely contingent basis and have not been paid for any of their work, nor have any of their costs or expenses been reimbursed. My firm undertook the litigation of the Action with the expectation that it would have to devote many hours of hard work to the prosecution of a case involving complex factual and legal issues without any guarantee of successful resolution or of compensation for their efforts. The prosecution of this Action involved the expenditure of significant resources, including the time spent by attorneys and professional staff, as well as the substantial expenses that were incurred during the litigation, while my firm received no compensation during the course of the litigation.

15. This Declaration provides the Court with time only through March 11, 2022 (the date that the Stipulation and Agreement of Settlement was signed). Accordingly, this Declaration does not encompass time incurred from March 12, 2022 through the present. Also, this Declaration

does not include time spent preparing Plaintiffs' Motion for Final Approval of Settlement and Request for Attorneys' Fees and Expenses.

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

Executed this 30th day of July 2022, at Newtown, Pennsylvania.

Marc H. Edelson
Marc H. Edelson
Attorney for Jennifer L. Miller

EXHIBIT 1

Employees Retirement System of the City of St. Louis, et al., v. Charles E. Jones, et al.
Case No. 2:20-cv-04813

EDELSON LECHTZIN LLP TIME REPORT

Inception through March 11, 2022

NAME	HOURS	HOURLY RATE	LODESTAR
Partners			
Marc H. Edelson	407.70	$925.00	$377,122.50
Eric Lechtzin	33.90	$900.00	$30,510.00
Senior Counsel			
Liberato Verderame	207.70	$700.00	$145,390.00
Shoshana Savett	152.60	$700.00	$106,820.00
TOTAL LODESTAR	**801.90**		**$659,842.50**

EXHIBIT 2

Employees Retirement System of the City of St. Louis, et al., v. Charles E. Jones, et al.
Case No. 2:20-cv-04813

EDELSON LECHTZIN LLP EXPENSE REPORT

CATEGORY	AMOUNT($)
Filing Fees	$70.00
Online Legal and Factual Research	$1700.50
Transportation, Hotels and Meals	$3945.91
Postage and Delivery	$4.00
Printing and Photocopy	$295.50
Telephone, Conference Call	
TOTAL EXPENSES:	**$6015.91**

EXHIBIT 3

Employees Retirement System of the City of St. Louis, et al., v. Charles E. Jones, et al.
Case No. 2:20-cv-04813

FIRM RESUME

About the Firm

Edelson Lechtzin LLP is a national class action law firm based in suburban Philadelphia. The firm was founded by Managing Partners Marc H. Edelson and Eric Lechtzin, who have decades of experience litigation class actions and a strong track record of success. They lead a talented team of trial lawyers who possess diverse backgrounds and experience.

The firm represents investors in securities fraud class actions and shareholder derivative litigation. In addition, the firm advocates on behalf of consumers, employees and businesses in class litigation involving anticompetitive business practices, ERISA retirement plans, unpaid wages & overtime claims, and consumer fraud.

Antitrust & Unfair Competition Class Actions

Our experienced team of attorneys is dedicated to protecting the rights of individuals, businesses, and various governmental entities nationwide against companies that engage in anticompetitive practices in class action lawsuits.

Edelson Lechtzin LLP is currently actively involved in the following antitrust matters: *In re Google Digital Publishers Antitrust Litigation*, No. 5:20-cv-08984 (NDCA); *In re Juul Labs, Inc. Antitrust Litigation*, No. 3:20-cv-02345 (NDCA); *In re Deutsche Bank Spoofing Litigation* No. 1:20-cv-03638 (NDIL-Eastern Division), and *In re January 2021 Short Squeeze Trading Litigation* No. 1:21-md-02989 (SDFL).

Securities Fraud & Shareholder Derivative Litigation

In the area of securities fraud, Edelson Lechtzin LLP is currently Co-Lead Counsel in a securities fraud class action lawsuit against A Better Financial Plan and its affiliates, *Melchior v. Dean Vagnozzi, et al.*, No. 2:20-cv-05562 (E.D. Pa.), alleging violations of the federal Racketeer Influenced and Corruption Organizations Act (RICO), and state claims for fraud, breach of fiduciary duties, and civil conspiracy, to recover hundreds of millions of dollars' of investments by individuals who were fraudulently induced by Defendants to purchase unregistered securities backed by risky merchant cash advance loans to small businesses. The case has received extensive press coverage.[2]

[2] *See, e.g.*, DiStefano N., Facing fraud lawsuit, Montco financial salesman Dean Vagnozzi turns against his longtime lawyer, *The Philadelphia Inquirer* (Jun. 28, 2021); Berman, Jeff, "Advisor Known for Unconventional Advice Hit With RICO Suit," *ThinkAdvisor* (Nov. 13, 2020); DiStefano, Joseph N., "Investors sue King of Prussia financial adviser Dean Vagnozzi and his lawyer," *The Philadelphia*

Edelson Lechtzin LLP has also commenced a shareholder derivative action on behalf of shareholders of FirstEnergy Corporation, *Miller v. Michael J. Anderson, et al.*, No.: 5:20-cv-01743 (N.D. Ohio), alleging that the Board of Directors and certain officers breached their fiduciary duties to the company, were unjustly enriched, wasted corporate assets, and committed various violations of federal securities laws. It is further alleged that the various defendants engaged in a concerted effort to curtail losses from nuclear energy operations managed by a subsidiary in order to keep their positions with the company and to increase their compensation. In furtherance of their scheme Defendants sanctioned the corporate policy of illegal payments to government officials including the Ohio House Speaker, Larry Householder, and other individuals, that resulted in a significant reduction in shareholder value when it was subsequently exposed.

Employee Benefits & ERISA Litigation

The firm's recent successes in ERISA litigation include defeating a motion to dismiss in *Crawford v. CDI Corporation*, No. 2:20-cv-03317-CFK (E.D. Pa. Nov. 5, 2020) (final approval of $1.8 million settlement). In addition, the firm currently serves as lead counsel in a number of pending class actions on behalf of participants in 401(k) and 403(b) retirement plans alleging fiduciary breaches under ERISA, including: *Gotta v. Stantec Consulting Services, Inc.*, No. 2:20-cv-01865-GMS (D. Ariz.) (defeated motion dismiss); *Luense v. Konica Minolta Business Solutions U.S.A., Inc.*, No. 2:20-cv-06827-JMV-MF (D.N.J.) (motion to dismiss denied in part);

The firm currently serves on plaintiffs' executive committees in: *Alas v. AT&T Inc.*, No. 2:17-cv-08106 (C.D. Cal. Aug. 6, 2020) (secured class certification on behalf of nearly 250,000 participants of the AT&T Retirement Savings Plan); *Bilello v. Estee Lauder Inc.*, No. 1:20-cv-04770 (S.D.N.Y.) (motion to dismiss denied; reconsideration denied); and *In re The American National Red Cross ERISA Litig*., Master File No. 1:21-cv-00541 (D.D.C.).

Attorney Biographies

Eric Lechtzin is a Managing Partner of Edelson Lechtzin LLP and his practice focuses on securities fraud litigation, ERISA retirement plan class actions, and wage and hour class and collective actions. Mr. Lechtzin received his J.D. from the Temple University Beasley School of Law in 1991. Prior to forming Edelson Lechtzin LLP in early 2020, Mr. Lechtzin was a Shareholder at Berger Montague PC.

Mr. Lechtzin has served as the Pennsylvania State Chair for the National Association of Consumer Advocates since 2017. He has been named a "Super Lawyer" in Pennsylvania for Class and Mass Tort Litigation every year since 2017, he is AV Preeminent rated by Martindale-Hubbell, and he has received a perfect 10.0 rating by Avvo.com.

In the area of securities fraud, Mr. Lechtzin was a member of the litigation team in *In re: Oppenheimer Rochester Funds Group Secs. Litig.*, No. 09-md- 02063-JLK (D. Col.), which

Inquirer (Nov. 10, 2020); and Arvedlund, Erin, How Philly investors were drawn into what SEC alleges is $500 million fraud," *The Philadelphia Inquirer* (Aug. 12, 2020).

settled for $89.5 million. Mr. Lechtzin served as lead counsel in *In re Transkaryotic Therapies, Inc. Secs. Litig.*, No. 03-CV-10165-RWZ (D. Mass.), which settled for $50 million after successfully obtaining class certification. Other successful securities fraud class actions in which Mr. Lechtzin had leadership roles include: *The Eshe Fund Group v. Fifth Third Bancorp*, No. 1:08-CV-539 (S.D. Ohio) ($16 million settlement); *In re Hemispherx Biopharma, Inc. Litig.*, 09-CV-5262-PD (E.D. Pa.) ($3.6 million settlement); *In re RenaissanceRe Holdings Ltd. Secs. Litig.*, No. 1:05-CV-6764 (S.D.N.Y.) ($13.5 million settlement); *In re Global Crossing Access Charge Litig.*, No. 04-MD-1630 (S.D.N.Y) ($15 million settlement); and *In re Van der Moolen Holding N.V. Secs. Litig.*, No. 1:03-CV-8284 (S.D.N.Y.) ($8 million settlement).

In the area of ERISA class actions, Mr. Lechtzin recently co-authored an amicus brief to the U.S. Supreme Court in *Retirement Plans Committee of IBM v. Jander*, 140 S. Ct. 592 (2020), which he argued successfully that the Court should not alter the standard to plead claims against fiduciaries of an employee stock ownership plans alleging that such fiduciaries should have made earlier public disclosures of adverse insider information. Mr. Lechtzin's successful appeals also include *Wilcox v. Georgetown Univ.*, 987 F.3d 143 (D.C. Cir. 2021) (Order dismissing case was vacated by Court of Appeals and remanded to the District Court). Mr. Lechtzin's successful ERISA cases also include *Daugherty v. Univ. of Chicago*, 2018 WL 1805646 (N.D. Ill. 2018) ($6.5 million settlement of ERISA claims alleging breach of fiduciary duties by incurring excessive expenses and retaining underperforming funds); and *Nicolas v. The Trustees of Princeton University*, No. 3:17-cv-03695 (D. N.J.) (member of team that secured a $5.8 million settlement where plaintiffs alleged that fiduciaries of the 403(b) selected imprudent investments and caused the plan to incur unreasonable recordkeeping fees).

Mr. Lechtzin's successful representations in the area of unpaid wages and overtime cases include *Arrington v. Optimum Healthcare IT*, 2018 WL 5631625 (E.D. Pa. 2018), where plaintiffs' litigation team obtained a $4.9 million settlement of class action that alleged failure to pay overtime compensation to IT consultants. In *Meyer v. The LandTek Group, Inc.*, Case No. 2:17-cv-00161-AYS (E.D.N.Y.), Mr. Lechtzin successfully recovered wages for unpaid off-the-clock time on behalf of a group of construction laborers who were "engaged to wait" before their shifts.

Among his successful representations in the area of consumer protection litigation is *Silver v. Fitness Intern., LLC*, No. 10-cv-2326-MMB, 2013 WL 5429293 (E.D. Pa.), a class action against a national health club chain that resulted in substantial changes of the company's membership cancellation polices. Lechtzin was co-lead counsel in *Stromberg v. Ocwen Loan Servicing, LLC*, No. 15-04719, 2017 WL 2686540 (N.D. Cal. 2017), where he represented a group of California borrowers who alleged that certain lenders had failed to timely reconvey deed of trust documents, as required by Cal. Civ. Code § 2941(b), and ultimately obtained a settlement that paid each member of the class more than 66 percent of their total recoverable damages without the need to submit claim forms.
Mr. Lechtzin as a member of the state bars of California, New Jersey, and Pennsylvania, and he is admitted to practice before numerous federal courts across the country.

Marc H. Edelson is a Managing Partner of Edelson Lechtzin LLP, and leads the firm's practices in the areas of antitrust law, defective drugs & medical devices, and property insurance litigation.

Mr. Edelson received his J.D. from the University of California, Los Angeles School of Law, in 1987 and his B.S. in Economics from the Wharton School of The University of Pennsylvania, cum laude in 1984. He has practiced class action litigation for over 34 years and has been appointed to leadership roles in many MDL cases.
Mr. Edelson's MDL experience in pharmaceutical cases includes an appointment in *In re Pharmaceutical Industry Average Wholesale Price Litig.*, MDL No. 1456, as one of the four lead counsel firms. Mr. Edelson was one of the first attorneys to initiate a series of class actions on behalf of end payors against numerous pharmaceutical defendants which were eventually consolidated into MDL 1456. The case involved an in-depth analysis of pharmaceutical pricing and resulted in numerous settlements totaling $341,000,000.

Additionally, Mr. Edelson served as co-lead counsel in New England Carpenters Health Benefit *Fund v. First DataBank, Inc. and McKesson Corp.*, C.A. No. 05-11148 (D. Mass), and *District 37 Health and Securities Fund v. Medi-Span*, C.A. No. 07-10988 (D. Mass). This case was against pharmaceutical wholesaler McKesson Corporation and pharmaceutical publishers First DataBank and Medi-Span. The case focused on unlawful drug pricing markups of various drugs resulting in overpayments by end payors. The case settled for $350,000,000 in addition to an agreement to roll back drug prices by five percent (5%) resulting in additional end payor cost savings totaling hundreds of millions of dollars.

Mr. Edelson has also served as co-lead counsel in additional pharmaceutical cases including *In re Ciprofloxacin Hydrochloride Antitrust Litig.*, MDL 1383 (EDNY), *Sandhaus v. Bayer AG*, No. 00-cv-6193 (Kansas State Court), *In re Premarin Antitrust Litigation*, No. 1:01-cv-00447 (SD Ohio), and *Blevins v. Wyeth Ayerst Laboratories, Inc.*, No. 324380 (Superior Court State of California).

Mr. Edelson was appointed one of the co-lead counsel in *In re Western States Wholesale Natural Gas Antitrust Litig.*, MDL 1566 (D Nevada) and *In re HELOC Minimum Payment Calculation Litig.*, No. 15-cv-00267 (EDPA).

Mr. Edelson has served as a member of the Executive Committee in *In re Copper Antitrust Litig.*, MDL 1301 (WD Wisc), *In re Certainteed Corp. Roofing Shingle Product Litig.*, MDL 1817 (EDPA), and *In re HP Inkjet Printer Litig.*, No. C053580JF (N.D. Cal.).

Liberato Verderame, an Associate, attended Villanova University (B.A., 1994) and Villanova University School of Law (J.D., 1997). Since then he has litigated cases in federal courts nationwide and has litigated successful appeals in both Pennsylvania's Commonwealth and Superior Courts and New Jersey's Appellate Division.

Mr. Verderame has represented plaintiffs in several national class action cases including *In Re: Generic Pharmaceuticals Pricing Antitrust Litig.*, MDL No. 2724 (E.D. Pa.); *Pharmaceutical Industry Average Wholesale Price Litig.*, MDL No. 1456 (D. Mass.); *In Re: Refrigerant Compressors Antitrust Litig.*, MDL 2042 (E.D. Mich.); *In Re: Western Areas Wholesale Natural Gas Antitrust Litig.*, MDL-1566 (D. Nev.); *In Re: Yahoo! Litig.*, 06-cv-2737 (C.D. Cal.); *Kent v. Hewlett-Packard Company*, 5:09-cv-05341 (N.D. Cal.); *New England Carpenters Health*

Benefits Fund v. First Databank, Inc., 1:05-cv-11148 (D. Mass.); *OSB Antitrust Litig.*, 06-CV-00826 (E.D. Pa.); and *Leeds v. IKO Manufacturing, Inc.*, No: 2:17-cv-00339 (E.D. Pa.).

Mr. Verderame also represents individual plaintiffs with regard to insurance coverage, breach of contract and bad faith claims, personal injury and other matters. He serves as lead trial counsel and obtained a jury verdict which was the largest insurance coverage claim reported in Pennsylvania, during 2016.

Mr. Verderame is a member of the bars of Pennsylvania and New Jersey.

Shoshana Savett, a Senior Counsel at Edelson Lechtzin LLP, graduated from Temple University Beasley School of Law in 2003. Prior to joining Edelson Lechtzin, Ms. Savett was Senior Counsel at Berger Montague PC. Ms. Savett has focused on complex litigation throughout her career, representing investors in securities fraud class actions, consumers in class actions involving unlawful and deceptive practices, as well as employees whose wages have been unlawfully withheld, in class and collective actions.

Ms. Savett was selected to Super Lawyers Rising Stars for 2014 – 2017.

Among her notable successes, Ms. Savett helped litigate the following cases: *Lee v. Enterprise Leasing Co.-West*, 2015 WL 2345540 (D. Nev. May 15, 2015), and 300 F.R.D. 466 (D. Nev. 2014), and 30 F.Supp.3d 1002 (D. Nev. 2014) (granting plaintiffs' motions for summary judgment, class certification, and approval of settlement where class members received 80% of their alleged damages, in consumer class action alleging overcharges on airport car rentals); *Sobel v. Hertz Corporation*, 3:06-cv-00545 (D.Nev.) (served as co-lead counsel and obtained a judgment of $53.4m), *In re Merrill Lynch & Co., Inc. Securities, Derivative and ERISA Litigation*, relating to the Securities Action, 07-cv-9633; *Ginsburg v. Philadelphia Stock Exchange* (settlement valued at over $99m); *In re Sepracor Inc. Securities Litigation*, Civil Action No. 02-12235-MEL (D. Mass) ($52.5m settlement), and *Hasemann v. Gerber Products Co.*, 331 F.R.D. 239 (E.D.N.Y. 2019) (granting class certification to purchasers of infant formula in New York and Florida, who allege improper market practices).

Ms. Savett is a member of the bars of Pennsylvania and New Jersey.

Sati O. Gibson, an associate of Edelson Lechtzin LLP, received her J.D. from Boston College Law School in 2002 and her B.A. in Politics from Oberlin College in 1999. Ms. Gibson's practice focuses on all aspects of e-discovery in complex litigation.

Previously, Ms. Gibson worked as an attorney for Legal Aid of Southeastern Pennsylvania, where she represented the senior population in consumer protection matters. She also worked at Kessler Topaz Meltzer & Check LLP as a staff attorney focusing on discovery in securities fraud litigation. She has spent the last 10 years focusing on class action litigation including antitrust and unfair competition law.

Ms. Gibson is currently actively involved in *In re Generic Pharmaceutical Pricing Antitrust Litigation* No. 16-md-2724 (EDPA).

Ms. Gibson is a member of the bar of the Commonwealth of Pennsylvania and the United States District Court for Eastern District of Pennsylvania.

EXHIBIT 14

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

EMPLOYEES RETIREMENT SYSTEM OF THE CITY OF ST. LOUIS, *et al.*, Plaintiffs, v. CHARLES E. JONES, *et al.*, Defendants, and FIRSTENERGY CORP., Nominal Defendant.	Case No. 2:20-cv-04813 Chief Judge Algenon L. Marbley Magistrate Judge Kimberly A. Jolson

DECLARATION OF PAUL J. SCARLATO FILED ON BEHALF OF ROSCA SCARLATO, LLC AND GOLDMAN SCARLATO & PENNY, P.C. IN SUPPORT OF PLAINTIFFS' MOTION FOR FINAL APPROVAL OF SETTLEMENT AND REQUEST FOR ATTORNEYS' FEES AND EXPENSES

I, Paul J. Scarlato, declare as follows:

1. I am a partner of Goldman Scarlato & Penny, P.C. and as of January 1, 2022, a member of Rosca Scarlato, LLC (the "Firms"). I submit this Declaration in support of Plaintiffs' Motion for Final Approval of Settlement and Request for Attorneys' Fees and Expenses in connection with the Settlement[1] of the above-captioned shareholder derivative action (the "Action"). I have knowledge of the matters set forth herein based on personal knowledge, my review of the firms' records, and consultation with other firm personnel.

2. The Firms are Ohio counsel and counsel of record for plaintiff Jennifer L. Miller. Ms. Miller is the representative plaintiff for the first filed federal shareholder derivative action

[1] As defined in the Stipulation and Agreement of Settlement dated March 11, 2022 (ECF No. 170-3).

captioned *Jennifer L. Miller v. Michael J. Anderson, et al.*, No. 5:20-cv-01743, filed in the United States District Court for the Northern District of Ohio on August 7, 2020 (the "Northern District of Ohio Action"). The Action and the Northern District of Ohio Action are referred to collectively as the "Actions."

3. The information in this Declaration regarding the Firms' time, including in the schedule attached hereto as Exhibit 1, was prepared from daily time records regularly prepared and maintained by the Firms in the ordinary course of business. I, along with my partner Alan Rosca, are the partners/members who oversaw the Firms' activities in the litigation. Mr. Rosca and I reviewed the Firms' daily time records to confirm their accuracy. The purpose of this review was to confirm both the accuracy of the entries in the time records as well as the necessity for, and reasonableness of, the time and expenses committed to the Actions. Based on this review, I believe that the time reflected in the Firms' lodestar calculations and the litigation expenses for which payment is sought are reasonable and were necessary for the effective and efficient prosecution and resolution of the Actions.

4. The total number of hours expended on the Actions by the Firms' attorneys and professional support staff employees from its inception through March 11, 2022 was 191.9. The total resulting lodestar for the Firms is $127,523.50. The schedule attached hereto as Exhibit 1 is a detailed summary reflecting the amount of time spent by each attorney and professional support staff employee of the Firms who were involved in the Actions, and the lodestar calculation based on the Firms' current hourly rates. Different timekeepers within the same employment category (*e.g.*, partners, members, associates, paralegals, etc.) may have different rates based on a variety of factors, including years of practice, years at the Firms, year in the current position (*e.g.*, years

as a partner), relevant experience, relative expertise, and the rates of similarly experienced peers at the Firms or other firms.

5. Set forth below is a description of the services rendered by each attorney for whom fees are requested and who committed at least ten hours of work to the prosecution of the Actions:

- Paul J. Scarlato (partner): Participated in drafting the initial shareholder derivative complaint and amended complaint. Performed extensive factual and legal research thereon. Drafted and edited the opposition to defendants' motions to dismiss. Prepared for and attended Court hearings. Participated in case strategy. Drafted responses and objections to defendants' discovery requests.

- Alan L. Rosca (partner): Participated in drafting and editing pleadings. Participated in drafting and editing the opposition to defendants' motions to dismiss. Prepared for and attended Court hearings. Participated in case strategy.

- Brittany May (associate): Drafted responses and objections to defendants' discovery requests. Researched and drafted memoranda re: backgrounds of individual defendants.

6. The qualifications and backgrounds of Alan Rosca and Paul Scarlato may be found in the resume of Rosca Scarlato LLC, which is attached hereto as Exhibit 3.

7. The hourly rates by the Firms are reasonable for several reasons. *First*, the rates by the Firms are their customary hourly rates.

8. *Second*, the hourly rates by the Firms are reasonable in light of the firms' lawyers' highly specialized skill and experience when it comes to litigating and settling complex class actions and shareholder derivative litigation.

9. *Third*, the hourly rates by the Firms are consistent with the rates for similar services by lawyers of reasonably comparable skill, experience, and national reputation. *See, e.g. In re Snap Inc. Sec. Litig.*, No. 2:17-cv-03679-SVW-AGR, 2021 WL 667590, at *4 (C.D. Cal. Feb. 18, 2021), *In re Snap Inc. Sec. Litig.,* No. 2:17-cv-03679-SVW-AGR, ECF No. 386-9, at PAGEID #:18483-18485 (approving fee award in securities fraud class action with hourly rates ranging from

$780-$920 for partners, $390-$690 for associates, and $385 for staff attorneys); *In re BHP Billiton Ltd. Sec. Litig.*, No. 16-cv-01445, 2019 WL 1577313, at *1 (S.D.N.Y. Apr. 10, 2019), *In re BHP Billiton Ltd. Sec. Litig.*, No. 16-cv-01445, ECF No. 122-1 at 2 (approving fee award in securities fraud class action with hourly ranging from $790-$1030 for partners, $400-$550 for associates, and $375 for staff attorneys).

10. *Fourth*, the Firms have special expertise when it comes to litigating shareholder cases, and courts across the country have approved the Firms' fees at its standard hourly rates. *See, e.g.,* Rosca Scarlato LLC resume attached hereto that lists many of the class action settlements that the Firms' lawyers have handled.

11. *Fifth*, the Firms' implied hourly rate of $664.53, based on the firm's lodestar and total hours billed, falls well within the range of those approved by courts in the Southern District of Ohio in shareholder derivative cases. *See Rudi v. Wexner*, No. 2:20-CV-3068, 2022 WL 1682297, at *5 (S.D. Ohio May 16, 2022) ("*L Brands*") (granting fee award with hourly rates of up to $1,685 for partners and $1,245 for associates), *L Brands*, 2:20-cv-03068, ECF No. 26-9 at PAGEID #: 1080; *In re Big Lots, Inc. S'holder Litig.*, No. 2:12-CV-445, 2018 WL 11356561, at *5 (S.D. Ohio Aug. 28, 2018), *Big Lots*, No. 2:12–cv–445, ECF No. 122-3 at PAGEID #: 2760 (approving hourly rates of up to $925 for partners and $650 for associates).

12. Based on records maintained by the Firms, the Firms incurred a total of $963.39 in unreimbursed litigation expenses in connection with the prosecution and settlement of the Actions. (Plaintiffs' Counsel are not seeking separate reimbursement for their unreimbursed litigation expenses in this matter, but instead are seeking an "all in" attorneys' fee as a percentage of the total monetary recovery.) The Firms' expenses are fully categorized in Exhibit 2 attached hereto.

13. The litigation expenses incurred in the Actions are reflected in the books and records of the Firms, which are regularly prepared and maintained in the ordinary course of business. These records are prepared from expense vouchers, check records and other source materials and are an accurate record of the expenses incurred. These expenses were reasonably necessary in the prosecution of the Actions. Courts have typically found that these kinds of expenses are payable to counsel who create a benefit for shareholders.

14. The Firms undertook this litigation on an entirely contingent basis and have not been paid for any of their work, nor have any of their costs or expenses been reimbursed. The Firms undertook the litigation of the Actions with the expectation that they would have to devote many hours of hard work to the prosecution of a case involving complex factual and legal issues without any guarantee of successful resolution or of compensation for their efforts. The prosecution of this Actions involved the expenditure of significant resources, including the time spent by attorneys and professional staff, as well as the reasonable expenses that were incurred during the litigation, while the Firms received no compensation during the course of the litigation.

15. This Declaration provides the Court with time only through March 11, 2022 (the date that the Stipulation and Agreement of Settlement was signed). Accordingly, this Declaration does not encompass time incurred from March 12, 2022 through the present. Also, this Declaration does not include time spent preparing Plaintiffs' Motion for Final Approval of Settlement and Request for Attorneys' Fees and Expenses.

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

Executed this 1st day of July 2022, at Conshohocken, Pennsylvania.



Paul J. Scarlato
Attorney for Plaintiff Jennifer Miller

EXHIBIT 1

Employees Retirement System of the City of St. Louis, et al., v. Charles E. Jones, et al.
Case No. 2:20-cv-04813

ROSCA SCARLATO LLC/GOLDMAN SCARLATO & PENNY, P.C. TIME REPORT

Inception through March 11, 2022

NAME	HOURS	HOURLY RATE	LODESTAR
Members/Partners			
Paul J. Scarlato	122.4	$750	$91,800.00
Alan L. Rosca	34.2	$730	$24,966.00
Brittany May	15.0	$375	$5,625.00
Paralegals/Analyst			
Violet Bunici	15.3	$275	$4,207.50
Alexander Leon	5	$185	$925.00
TOTAL LODESTAR	**191.9**		**$127,523.50**

EXHIBIT 2

Employees Retirement System of the City of St. Louis, et al., v. Charles E. Jones, et al.
Case No. 2:20-cv-04813

ROSCA SCARLATO LLC/GOLDMAN SCARLATO & PENNY, P.C.

EXPENSE REPORT

CATEGORY	AMOUNT($)
Filing Fees	$878.00
Transportation, Hotels and Meals	$85.39
TOTAL EXPENSES:	**$963.39**

EXHIBIT 3

Employees Retirement System of the City of St. Louis, et al., v. Charles E. Jones, et al.
Case No. 2:20-cv-04813

FIRM RESUME

ROSCA SCARLATO LLC
CLEVELAND, OH/CONSHOHOCKEN, PA

ROSCA SCARLATO LLC prosecutes securities fraud, ERISA, and consumer fraud class actions, as well as corporate governance derivative cases and investor arbitration claims nationwide. Through their prior firms, including most recently Goldman Scarlato & Penny, P.C., Alan Rosca and Paul Scarlato have represented the interests of ordinary people victimized by securities fraud, violations of ERISA, corporate misconduct, anticompetitive conduct, deceptive consumer practices, and unscrupulous financial advisors. Messrs. Rosca and Scarlato formed Rosca Scarlato, LLC on January 1, 2022, to continue the representation of their new and existing clients in those practice areas. The Firm's lawyers have helped recover hundreds of millions of dollars on behalf of their clients and helped to institute meaningful changes in business practices that seek to ensure robust competition in commercial markets, honest and fair disclosures in financial markets, and truthful advertising in retail markets.

ALAN L. ROSCA. Mr. Rosca focuses his legal practice on complex financial and commercial matters, particularly in the areas of securities litigation, investment fraud, and international investment disputes. He often represents institutional and individual investors in disputes with financial industry members arising out of investment fraud or misconduct. He prosecutes claims on behalf of investors through class actions in state or federal courts, and FINRA arbitrations. He also practices in the areas of wage-and-hour and other labor-related disputes, whistleblower matters, and antitrust cases, with a focus on market manipulation.

Alan was a lecturer and adjunct professor of Securities Regulation at Cleveland-Marshall College of Law, Cleveland State University, starting in 2012.

Alan has served as co-lead counsel, or is currently involved in a leading role, in class actions on behalf of investors who lost money as a result of alleged investment fraud or Ponzi schemes, as well as in other class action matters arising out of wage-and-hour or business disputes, including *Hanson v. Berthel Fisher & Company Financial Services, Inc., et al*. (N.D. Iowa 2013) (a securities class action on behalf of investors in an allegedly fraudulent real estate investment program); *Carol Prock v. Thompson National Properties, LLC, et al*. (C.D. Cal. 2013) (a securities class action on behalf of investors in an allegedly fraudulent real estate investment program); *YaoYi Liu et al. v. Wilmington Trust Company* (W.D.N.Y. 2014) (a class action lawsuit on behalf of investors of a $145 million fraudulent scheme, alleging that the defendant trustee and custodian bank breached its duties as an escrow agent and aided the perpetrators of the scheme); *Spaude v. Mysyk* (N.D. Ohio 2015) (a securities class action on behalf of investors in a $55 million allegedly fraudulent oil-and-gas investment scheme, against the alleged perpetrators of the scheme and the law firm that assisted the scheme); *Jennifer Roth v. Life Time Fitness, Inc.* (D. Minn. 2015) (a wage-and-hour class action on behalf of fitness instructors seeking unpaid wages for work that was required by defendants); *Aleem v. Pearce & Durick* (D. North Dakota 2015) (a securities class action on behalf of investors in a $65 million fraudulent investment scheme, alleging that the defendants violated their fiduciary duties to the investors and assisted in the scheme's securities violations by serving as escrow agents for the investors' investments and offering materially false opinions to the investors regarding their investments in the scheme); *Strong v. Safe Auto Insurance Group, Inc. et al.* (S.D. Ohio 2016) (a wage-and-hour class action on behalf of employees of defendants seeking unpaid wages for work that was required by defendants); *Hay v. United Development Funding IV et al*. (N.D. Texas 2016) (a securities class action on behalf of investors

in a $625 million allegedly Ponzi-like real estate investment scheme, against entities including the scheme, its principals and affiliated entities, as well as the alleged scheme's underwriter and auditor); *Fastrich v. Continental General Insurance Company* (D. Neb. 2016) (a class action on behalf of insurance agents affiliated with defendants, arising out of the alleged non-payment of certain fees and commissions owed to such agents); *Elliott v. Bank of Oklahoma* (D.N.J. 2016) (a class action on behalf of investors in a $198 million allegedly fraudulent investment scheme perpetrated through a series of municipal bond offerings, against the trustee bank for the bond offerings and the underwriters of some of the offerings).

Alan received his Juris Doctor degree *summa cum laude* from Cleveland-Marshall College of Law in May 2008. While in law school he served as a Managing Editor of the Cleveland State Law Review, received the Dean's (full) scholarship for the entire Juris Doctor program, was on the Dean's List, and won the "Best Oralist" award in the Jessup Moot Court competition, Pacific Region. He passed the Ohio Bar exam in top 1%, with the highest grade in the state to the multistate (federal law) section.

He is licensed to practice law in the Ohio state and federal courts, and in other federal courts nationwide. He is a member of the Public Investors Arbitration Bar Association, the Cleveland Metropolitan Bar Association, where he served as the Chair of the Unlicensed Practice of Law Committee, and the Cleveland Diplomatic Corps. He also holds a Master of Business Administration degree from Baldwin-Wallace College, Ohio. He is a speaker on Ponzi schemes, investment fraud, cryptocurrencies, and attorney professionalism.

PAUL J. SCARLATO. Paul Scarlato has concentrated his practice on the litigation of complex class actions since 1989. He has litigated numerous cases under the federal and state securities laws, ERISA, consumer, antitrust and common law involving companies in a broad range of industries, and has litigated many cases involving financial and accounting fraud.

In securities fraud cases, Mr. Scarlato was one of three lead attorneys for the class in *Kaufman v. Motorola, Inc.,* (N.D.IL), a securities fraud class action that settled weeks before trial. Mr. Scarlato served as lead counsel in *Seidman v. American Mobile Systems, Inc.,* (E.D. PA), a securities class action that resulted in a settlement for the plaintiff class, again on the eve of trail, and served as co-lead counsel in *In re: Corel Corporation Securities Litigation* (E.D. PA) (securities fraud class action).

Mr. Scarlato has played a key role in numerous other securities fraud class actions over the course of his career, including as a member of the plaintiffs' teams that prosecuted *In re Broadcom Securities Litigation*, which resulted in a settlement of $150 million for the class, and *AOL Time Warner Securities Litigation*, which resulted in a settlement of over $2.5 billion for investors, *In re Monster Worldwide, Inc. Securities Litigation* ($47.5 million settlement in case arising out of options backdating), *In re Mercury Interactive Securities Litigation* ($117.5 million settlement, options backdating), *In re SafeNet, Inc. Securities Litigation* ($25 million settlement, options backdating), and *In re Semtech Securities Litigation* ($20 million settlement, options backdating). Mr. Scarlato was one of the lead lawyers in *Leibovic v. United Shore Financial Services* (E.D.MI) (data breach class action), and *Afzal v. BMW of North America, LLC*, (D.NJ) (product defect class action), and served on the plaintiffs' Executive Committee in *Vikram Bhatia, D.D.S. v. 3M Company*, Case No. 16-cv-01304 (D.MN) (product defect class action), and is counsel in *In re Platinum and Palladium Antitrust Litigation,* Case No. 14-cv-09391 (S.D.N.Y), and *In re Treasury Securities Auction Antitrust Litigation*, Case No. 15-md-02673 (S.D.N.Y.).

Mr. Scarlato, along with Mr. Rosca, currently serves as lead counsel in *Paulson v. Two Rivers Water and Farming Co., et. al* (D. Co.) (class action under the Colorado Securities Act); *Yao Yi Liu v. Wilmington Trust Company* (W.D.N.Y.) (representing victims of a Ponzi scheme); *Gregory v. Zions Bancorporation* (D. Utah) (representing victims of a Ponzi scheme); *Chang v.*

Wells Fargo bank, N.A. (N.D. Ca.) (representing victims of a Ponzi scheme); *Elliott v. Bank of Oklahoma* (D.N.J.) (representing victims of a Ponzi scheme); *Miller v. Anderson (First Energy Derivative Litigation),* (N.D. Oh); and *O'Hearn v. Vida Longevity Fund, LP, et al.* (D. De) (class action under the Colorado Securities Act).

Mr. Scarlato graduated from Moravian College in 1983 with a degree in accounting, and received his Juris Doctor degree from the Widener University School of Law in 1986. Mr. Scarlato served as law clerk to the Honorable Nelson Diaz, of the Court of Common Pleas of Philadelphia County, and thereafter to the Honorable James T. McDermott of the Pennsylvania Supreme Court. After his clerkships, and prior to becoming a litigator, Mr. Scarlato was a member of the tax department of "big four" accounting firm where he provided a broad range of accounting services to large business clients in a variety of industries.

Mr. Scarlato is a member of the bars of the Commonwealth of Pennsylvania and the State of New Jersey, and those of various federal district and circuit courts.

EXHIBIT 15

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

EMPLOYEES RETIREMENT SYSTEM OF THE CITY OF ST. LOUIS, *et al.*, Plaintiffs, v. CHARLES E. JONES, *et al.*, Defendants, and FIRSTENERGY CORP., Nominal Defendant.	Case No. 2:20-cv-04813 Chief Judge Algenon L. Marbley Magistrate Judge Kimberly A. Jolson

DECLARATION OF MICHAEL I. FISTEL, JR. FILED ON BEHALF OF JOHNSON FISTEL, LLP IN SUPPORT OF PLAINTIFFS' MOTION FOR FINAL APPROVAL OF SETTLEMENT AND REQUEST FOR ATTORNEYS' FEES AND EXPENSES

I, Michael I. Fistel, Jr., declare as follows:

1. I am a Partner of Johnson Fistel, LLP ("Johnson Fistel"). I submit this Declaration in support of Plaintiffs' Motion for Final Approval of Settlement and Request for Attorneys' Fees and Expenses in connection with the Settlement[1] of the above-captioned shareholder derivative action. I have knowledge of the matters set forth herein based on personal knowledge, my review of the firm's records, and consultation with other firm personnel.

2. This firm represents Ohio State Court Plaintiff Robert Sloan and is Co-Lead Counsel of record in the Ohio State Court Action, styled *In re FirstEnergy Corp., Stockholder*

[1] Except as otherwise expressly provided below or as the context otherwise requires, all capitalized terms contained herein shall have the same meanings and/or definitions as set forth in the Stipulation and Agreement of Settlement dated March 11, 2022 (ECF No. 170-3) ("Settlement Agreement").

Derivative Litigation, Case No. CV-2020-07-2107. Ohio State Court Plaintiffs are parties to the Settlement Agreement, and Johnson Fistel, as Co-Lead Counsel in the Ohio State Court Action, is a signatory of the Settlement Agreement.

3. The information in this Declaration regarding the firm's time, including in the schedule attached hereto as Exhibit 1, was derived from daily time records regularly prepared and maintained by my firm in the ordinary course of business. I am the Partner who oversaw my firm's activities in the litigation, and I reviewed my firm's daily time records. The purpose of this review was to confirm both the accuracy of the entries in the time records, as well as the necessity for, and reasonableness of, the time and expenses committed to the Actions. As a result of this review, certain reductions were made to both time and expenses in the exercise of reasonable billing judgment. Based on this review and the adjustments made, I believe that the time reflected in the firm's lodestar calculation and the litigation expenses for which payment is sought are reasonable and were necessary for the effective and efficient prosecution and resolution of the Actions.

4. My firm's attorneys and professional support staff employees dedicated a total of 1,533.4 hours to the Actions from the inception through March 11, 2022 (the date that the Settlement Agreement was signed). The total resulting lodestar for my firm is $1,014,549.00. The schedule attached hereto as Exhibit 1 is a detailed summary reflecting the amount of time spent by each of the firm's attorneys who were involved in the prosecution of the Actions, as well as the total time spent by the firm's professional support staff in connection with the Actions, and the lodestar calculation is based on my firm's current hourly rates. Different timekeepers within the same employment category (*e.g.*, Partners, Associates, Paralegals, etc.) may have different rates based on a variety of factors, including years of practice, years at the firm, year in the current position (*e.g.*, years as a Partner), relevant experience, relative expertise, and the rates of similarly

experienced peers at our firm or other firms. For personnel who are no longer employed by my firm, the lodestar calculation is based upon the rate for that person in his or her final year of employment with my firm.

5. Set forth below is a description of the services rendered by each attorney for whom fees are requested and who committed at least ten hours of work to the prosecution of the Actions:

- **Frank J. Johnson** (Partner) (66.9 hours): Mr. Johnson is Johnson Fistel's Managing Partner. Prior to starting Johnson Fistel, he was a partner at Sheppard, Mullin, Richter & Hampton, LLP, a full-service Global 100 law firm with over 1,000 attorneys in 15 offices located around the world where he defended matters similar to this one. As a result, he brings significant experience to the prosecution of these cases. Mr. Johnson was an important participant in all tactical and strategic decision-making throughout the litigation. Mr. Johnson also actively participated in the mediation, settlement-related calls with Plaintiffs' Counsel following the mediation, and documentation of the settlement.

- **Michael I. Fistel, Jr.** (Partner) (260.5 hours): I am the Partner at Johnson Fistel primarily responsible for supervising the day-to-day management of the litigation, as well as formulating the overall litigation strategy with respect to Johnson Fistel's prosecution of the Ohio State Court Action and overseeing all aspects of case management throughout the litigation on behalf of the firm. In that role, I was actively involved in client retention, client communications, case initiation, case organization, and case coordination. Specifically, in connection with the Ohio State Court Action, I was actively involved in and directly oversaw: (i) the drafting of the initial and consolidated complaints; (ii) briefing Ohio State Court Plaintiffs' opposition to the motion to intervene filed by another purported First Energy stockholder; (iii) briefing Ohio State Court Plaintiffs' opposition to Defendants' motion to dismiss; (iv) briefing Ohio State Court Plaintiffs' opposition to the Special Litigation Committee's Motion to Stay the Ohio State Court Action; (v) the drafting and follow-up communications related to the inspection demand; (vi) the drafting and service of discovery; (vii) the submission of relevant supplemental authority; and (viii) the drafting and service of a comprehensive settlement demand. I was also the primary point of contact between Ohio State Court Plaintiffs and counsel for Defendants, as well as the primary point of contact between Ohio State Court Plaintiffs and counsel for the Southern District Plaintiffs and Northern District Plaintiffs. Finally, I also oversaw all settlement efforts on behalf of the Ohio State Court Plaintiffs, which included, *inter alia*, coordinating with counsel for the Southern District Plaintiffs and Northern District Plaintiffs, reviewing and materially contributing to various settlement-related documents and submissions, participating in communications with Plaintiffs' governance expert, and actively contributing during the mediation of the Actions and follow-up conversations related thereto with Plaintiffs' Counsel.

- **Mary Ellen Conner** (Partner) (366.2 hours): Ms. Conner was primarily responsible for client communications with Ohio State Court Plaintiff Robert Sloan on behalf of the firm and assisted in formulating overall litigation strategy. Ms. Conner also actively participated in the prosecution and assisted in the management of the Ohio State Court Action, including by: (i) assisting in the investigation and development of the derivative claims and drafting and finalizing the Verified Consolidated Shareholder Derivative Complaint on behalf of Ohio State Court Plaintiffs; (ii) drafting material portions of Ohio State Court Plaintiffs' opposition to Defendants' motion to dismiss and conducting legal research in connection therewith; (iii) providing material input on Ohio State Court Plaintiffs' draft opposition to the motion to intervene in the Ohio State Court Action filed by another purported FirstEnergy stockholder; (iv) materially contributing to and overseeing the drafting of the settlement demand issued on behalf of Ohio State Court Plaintiffs; (v) drafting and/or overseeing the drafting of Ohio State Court Plaintiffs' discovery efforts; (vi) providing input and drafting assigned sections of mediation briefing, and preparing for and participating in mediation; and (vii) assisting with the effectuation of a stay of the Ohio State Court Action pending approval of the Settlement.

- **Jeffrey A. Berens** (Of Counsel) (204.3 hours): Mr. Berens participated in major strategic and tactical decisions and was actively involved in researching Plaintiffs' derivative claims and crafting the factual allegations and the legal arguments advanced in the Ohio State Court Action. Mr. Berens was primarily responsible for drafting the initial complaint, researching and drafting Plaintiffs' opposition to Defendants' motion to dismiss the consolidated complaint, researching and drafting Plaintiffs' opposition to the motion to intervene in the Ohio State Court Action filed by another purported FirstEnergy stockholder, and drafting and assisting in the preparation of various additional court filings.

- **William W. Stone** (Associate) (64.8 hours): Mr. Stone was involved with the investigation of potential claims for breach of fiduciary duty and the initial factual investigation. He also assisted with the drafting of the shareholder derivative complaint and with opposing the Special Litigation Committee's Motion to Stay.

- **Enoch P. Hicks** (Associate) (201 hours): Mr. Hicks was involved with the research and drafting of several documents, including the opposition to the Special Litigation Committee's Motion to Stay and the settlement demand sent on behalf of Ohio State Court Plaintiffs. Mr. Hicks also participated in the continued fact investigation of the alleged breaches of fiduciary duty.

- **Adam J. Sunstrom** (Associate) (43.1 hours): Mr. Sunstrom was involved in the factual investigation and provided research support. Additionally, Mr. Sunstrom assisted with drafting the opposition brief filed in response to Defendants' motion to dismiss the shareholder derivative complaint. Mr. Sunstrom also assisted with the drafting of case management filings, including consolidation and leadership papers.

6. The qualifications and backgrounds of the attorneys identified in the previous paragraph may be found in my firm's resume, which is attached hereto as Exhibit 3.

7. The hourly rates by Johnson Fistel are reasonable for several reasons. ***First*****,** the rates by Johnson Fistel are its customary hourly rates paid by clients who retain the firm on an hourly basis. In part due to Mr. Johnson's experience at Sheppard Mullin, Johnson Fistel is regularly retained by clients involved in complex litigation who agree to pay the firm its customary hourly rates. As an example, the firm was recently retained by the founder of a publicly traded company to defend him against a class action alleging he was responsible for false and misleading statements made in the company's offering documents. He agreed to pay the firm its customary hourly rates. Johnson Fistel successfully resolved that matter by obtaineding a dismissal of the firm's client from the class action.

8. ***Second*****,** Johnson Fistel's hourly rates are reasonable in light of the firm's highly specialized skill and experience when it comes to litigating and settling shareholder derivative litigation. Several examples include the following: *In re: Twitter, Inc. Shareholder Derivative Litigation*, C.A. No. 18-062 (D. Del.), where Johnson Fistel, as Co-Lead Counsel, secured a $38 million payment to the company and successfully negotiated robust governance reforms tailored to address and prevent the reoccurrence of directors and officers of Twitter from issuing materially false and misleading statements about the company's user growth and user engagement prospects, as was alleged in the litigation; *Bagot v. Bracken, et al.*, Case No. 11C5133 (Tenn. Cir. Ct., 6th Cir.), a derivative action in which Johnson Fistel, as Lead Counsel, secured a $19 million payment for HCA Holdings, Inc., the largest private hospital chain in the country, as well as robust corporate reforms which included the appointment of a new independent director; *In re Powerwave Technologies, Inc.*, Case No. 13-10134 (MFW) (Bankr. D. Del.), where, following its appointment

by a bankruptcy court as special counsel to represent the trustee to prosecute derivative claims as assets of the debtor estate and after nearly two years of litigation, Johnson Fistel secured a settlement that included payment of $5.5 million for the benefit of the estate in bankruptcy; *In re Motorola, Inc. Derivative Litigation*, Case No. 07CH23297 (Ill. Cir. Ct. Cook County), where Johnson Fistel, as Co-Lead Counsel, following six years of hard-fought litigation, secured sweeping corporate governance reforms designed to prevent the dissemination of false and misleading statements in the company's financial statements about its prospects of success, reforms that were valued by one expert at over $1 billion; and *In re Southern Company Shareholder Derivative Litigation*, No. 1:17-cv-00725-MHC (N.D. Ga.), where Johnson Fistel as Lead Counsel secured valuable corporate reforms for The Southern Company, estimated by one expert as having the potential to contribute hundreds of millions of dollars in value to the Company. These are but a few notable examples of Johnson Fistel's recent successes which demonstrate the firm's highly specialized skill and experience when it comes to litigating and settling shareholder derivative litigation.

9. ***Third***, Johnson Fistel's hourly rates are consistent with the rates for similar services by lawyers of reasonably comparable skill, experience, and national reputation. *See* ¶11, *infra*; *see also In re Equifax Inc. Customer Data Security Breach Litigation*, 2020 WL 256132, at *39 (finding hourly rates of more than $1,000 for counsel reasonable and noting that prevailing rates for complex litigation around the country are commensurate with or even in excess of those hourly rates).

10. ***Fourth***, Johnson Fistel has special expertise litigating shareholder derivative cases, and courts across the country have approved Johnson Fistel's fees at its standard hourly rates. *See, e.g.*, *In re Southern Company Shareholder Derivative Litigation*, No. 1:17-cv-00725-MHC (N.D.

Ga.) (granting fee award in full based on hours billed at Johnson Fistel's hourly rates, which ranged from $950.00 to $1,100.00 for Partners, $375.00 to $675.00 for Associate attorneys, and $285.00 to $385.00 for professional staff and financial analysts); *Verma v. Costolo, et al.* (*Twitter, Inc.*), No. 2018-0509-PAF (Del. Ch.) (approving Johnson Fistel's requested fee award based on hours billed at the firm's standard hourly rates); *In re HD Supply Holdings, Inc. Derivative Litigation*, Lead Case No. 1:17- cv-02977-MLB (N.D. Ga.) (same); *In re RH Shareholder Derivative Litigation*, No. 4:18-cv-02452-YGR (N.D. Cal.) (same); *Morrison et al. v. Berry et al.* (*The Fresh Market*), Case No. 12808, (Del. Ch.) (same); *Glock v. FTS International, Inc., et al.*, Civil Action No. 4:20-cv-03928 (S.D. Tex.) (same).

11. ***Fifth*,** Johnson Fistel's hourly rates, which range up to $1,100 for Partners and $675.00 for Associates, fall well within the range of those approved by courts in the Southern District of Ohio in shareholder derivative cases. *See, e.g.*, *Rudi v. Wexner*, No. 2:20-CV-3068, 2022 WL 1682297, at *5 (S.D. Ohio May 16, 2022) ("*L Brands*") (granting fee award with hourly rates of up to $1,685 for Partners and $1,245 for Associates); *In re Big Lots, Inc. Shareholder Litigation*, No. 2:12-CV-445, 2018 WL 11356561, at *5 (S.D. Ohio Aug. 28, 2018) (approving hourly rates of up to $925 for Partners and $650 for Associates).

12. Johnson Fistel incurred a total of $37,277.24 in unreimbursed litigation expenses in connection with the prosecution and settlement of the Actions.[2] The firm's expenses are fully categorized in Exhibit 2 attached hereto.

[2] Plaintiffs' Counsel are not seeking separate reimbursement for their unreimbursed litigation expenses in this matter, but instead are seeking an "all in" attorneys' fee as a percentage of the total monetary recovery together with the overall value of the Reforms obtained through the Settlement.

13. The litigation expenses incurred in the Actions are reflected in the books and records of Johnson Fistel, which are regularly prepared and maintained in the ordinary course of business. These records are prepared from expense vouchers, check records, and other source materials and are an accurate record of the expenses incurred. These expenses were reasonably necessary in the prosecution of the Actions. Courts have typically found that these kinds of expenses are payable to counsel who create a benefit for shareholders. Consistent with Johnson Fistel's practice in all cases, including cases for which clients pay the firm by the hour, internal office expenses (*e.g.*, document management, postage, long-distance telephone, fax, and photocopies) are billed at a rate of three percent of hourly fees that would have been charged absent a contingency fee agreement. This practice has been universally approved by federal, bankruptcy, and state courts throughout the country in representative actions, and by Johnson Fistel's hourly paying clients. *See, e.g.*, *In re Southern Company Shareholder Derivative Litigation*, No. 1:17-cv-00725-MHC (N.D. Ga.); *Morrison et al. v. Berry et al.* (*The Fresh Market*), Case No. 12808, (Del. Ch. 2021); *In re MiMedx Group, Inc. Shareholder Derivative Litigation*, No. 1:18-cv-04486-WMR (N.D. Ga.); *In re Flowers Foods, Inc. Securities Litigation*, No. 7:16-cv-0022-WLS (M.D. Ga.); *Mohanty v. Avid Technology, Inc., et al.*, No. 1:16-cv-12336-IT (D. Mass.); *Crystal v. Medbox, Inc., et al.*, No. 2:15-cv-00426-BRO-JEM (C.D. Cal.).

14. My firm undertook this litigation on an entirely contingent basis and has not been paid for any of its work, nor have any of the firm's costs or expenses been reimbursed. My firm also undertook the litigation of the Ohio State Court Action with the expectation that it would have to devote many hours of hard work to the prosecution of a case involving complex factual and legal issues without any guarantee of successful resolution or compensation for the firm's efforts. The prosecution of the Actions involved the expenditure of significant resources, including the

time spent by attorneys and professional staff, as well as the substantial expenses that were incurred during the litigation, while my firm received no compensation during the course of the litigation.

15. This Declaration provides the Court with time only through March 11, 2022 (the date that the Settlement Agreement was signed). Accordingly, this Declaration does not encompass time incurred from March 12, 2022 through the present. Also, this Declaration does not include time spent in connection with the preparation of Plaintiffs' Motion for Final Approval of Settlement and Request for Attorneys' Fees and Expenses.

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

Executed this 1st day of July 2022, at Marietta, Georgia.



Michael I. Fistel, Jr.
Johnson Fistel, LLP

EXHIBIT 1

Employees Retirement System of the City of St. Louis, et al., v. Charles E. Jones, et al.
Case No. 2:20-cv-04813

JOHNSON FISTEL, LLP'S TIME REPORT

Inception through March 11, 2022

NAME	HOURS	HOURLY RATE	LODESTAR
Partners			
Frank J. Johnson	66.9	$1,100.00	$73,590.00
Michael I. Fistel, Jr.	260.5	$950.00	$247,475.00
Mary Ellen Conner	366.2	$675.00	$247,185.00
Of Counsel			
Jeff Berens	204.3	$850.00	$173,655.00
Associates			
William W. Stone	64.8	$675.00	$43,740.00
Enoch P. Hicks	201	$490.00	$98,490.00
Adam J. Sunstrom	43.1	$445.00	$19,179.50
Paralegals	323.1	$280 - $385	$109,047.00
Lead Securities Analyst			
James M. Baker	3.5	$625.00	$2,187.50
TOTAL LODESTAR	**1,533.4**		**$1,014,549.00**

EXHIBIT 2

Employees Retirement System of the City of St. Louis, et al., v. Charles E. Jones, et al.
Case No. 2:20-cv-04813

JOHNSON FISTEL, LLP'S EXPENSE REPORT

CATEGORY	AMOUNT($)
Travel Costs to Attend Hearings	$1,261.75
Filing, Service, Publish, Transcript, Notary, and Overnight Fees	$2,997.08
Online Research	$2,581.94
Document Management, Postage, Telephone, Photocopying, Facsimile, and Related Internal Office Charges	$30,436.47
TOTAL EXPENSES:	**$37,277.24**

EXHIBIT 3

Employees Retirement System of the City of St. Louis, et al., v. Charles E. Jones, et al.
Case No. 2:20-cv-04813

FIRM RESUME

JF JOHNSON FISTEL

FIRM RESUME

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INTRODUCTION

Johnson Fistel is a law firm built on the following five core values: Professionalism, Respect, Integrity, Determination, and Excellence in everything we do. These core values are more than words on a piece of paper; every attorney and staff member at Johnson Fistel embraces them and has PRIDE in everything they do. All of the firm's members affirmatively agree to these core values on an annual basis and have a plaque in their workspace describing what they mean to them, as stated below.

Professionalism

At Johnson Fistel, we believe professionalism—through trust, transparency, and reliability—is critical to developing long-lasting and successful relationships. Not only must our clients trust us to provide excellent legal services in a professional manner, but we must also trust each other to always do the right thing and to zealously advance our clients' interests. Moreover, we share a collective mission to act professional and build trust with judges, juries, and our adversaries so that our professional reputation remains synonymous with our core values.

Respect

We strive to demonstrate high regard for our clients, one another, partners within the legal community, and our ethical obligations as advocates. We value the ideas and beliefs of each of our team members. This principle includes valuing differing opinions and allowing others to express themselves to work together toward common goals.

Integrity

There's never a wrong time to do the right thing. At Johnson Fistel, we consistently do the right thing, in the right way, for the right reasons. We take pride in our reputation for having integrity when zealously advocating for our clients. By always acting with integrity, we build trust and confidence with our clients, colleagues, and juries, and respect with judges and adversaries.

Determination

Determination is key to our success. At Johnson Fistel, we do not give up when faced with well-financed opponents or difficult arguments; instead, we rise to the challenge and meet it head on by relentlessly pursuing innovative and persuasive solutions to advance the best interests of our clients. It is our determination—our will to succeed and never give up—that separates us from most lawyers. To succeed, we know that we must exercise the strength of mind and the willingness to exceed client and industry expectations and provide exceptional advocacy, every time.

Excellence

Simply put, we hold ourselves to a higher standard. Average is easy. Excellence is hard. Perfection is always the goal. Whether it's writing persuasive legal arguments, maintaining a strong and prompt communication line with our clients, or vigorously advocating in a courtroom on their behalf, we wholly reject mediocrity and strive for a competitive edge by delivering excellence in everything we do.

We believe we are only as good as our people, and Johnson Fistel recruits only the best and brightest and most determined candidates possible. Our lawyers include those who started their training by working for esteemed judges in both state and federal courts and have also worked at the largest law firms in the world. We pride ourselves on providing the same level of service with a greater level of efficiency. As a result, we have developed the reputation for delivering big-firm results with the efficiency and personal touch one would expect at a small law firm.

OUR ATTORNEYS

PARTNERS

FRANK J. JOHNSON

Mr. Johnson is one of the founding partners of Johnson Fistel and has more than twenty-seven years of experience as a trial attorney focusing on complex civil litigation. Prior to starting his own law firm in 2004, Mr. Johnson was a partner in the law firm Sheppard, Mullin, Richter & Hampton, LLP, a full-service Global 100 law firm with over 1,000 attorneys in 15 offices located around the world.

While at Sheppard Mullin, Mr. Johnson represented some of the largest companies in the country in complex business disputes conducting trials in state and federal court. He brings this "Big Law" experience to his current practice where he can offer the efficiency and personal touch of a smaller law firm. With the trust and confidence of his colleagues and clients over the past 18 years, the law firm that Mr. Johnson started with just one lawyer has now grown to a full-service law firm with 16 lawyers and offices in California, Georgia, and New York.

Representative Matters: Mr. Johnson's experience representing publicly traded companies at Sheppard Mullin has carried over to his current practice. Mr. Johnson has been and continues to be retained by private and publicly-traded companies. For example, in 2013 the court appointed U.S. Chapter 7 Trustee overseeing the bankruptcy of Powerwave Technologies, Inc. retained Mr. Johnson as lead counsel to pursue claims for breach of fiduciary duty against the company's wayward officers

and directors. Mr. Johnson helped the Trustee recover $5.5 million for the estate. *In re Powerwave Technologies, Inc.*, (Bankr. D. Del.). Mr. Johnson obtained a similar result in *In re Artes Medical, Inc.*, (Bankr. S.D. Cal.) when the U.S. Chapter 7 Trustee of Artes Medical, Inc. retained Mr. Johnson as lead counsel. Mr. Johnson helped the estate recover a multi-million-dollar settlement. In finding that "[t]here's no question in my mind that this settlement is in the best interest of this Estate," the Honorable Laura S. Taylor stated, "I want to compliment Mr. Johnson, and I want to compliment on the successful recovery for the Estate. The creditors thank you, and I thank you." *See also International Real Estate PLC v. Oaktree Capital Management, LLC*, (Cal. Super. Ct. Los Angeles Cnty.) (a public company with shares listed on the London Stock Exchange retained Mr. Johnson as lead counsel to pursue claims for breach of fiduciary duty against former directors of a joint venture company for damages in excess approximately $20 million; the case ultimately settled on favorable terms to International Real Estate) (*See* testimonial from the firm's client under Testimonials).

Mr. Johnson has also continued to represent individual clients and small companies through jury verdicts in complex civil litigation. By way of example, in *Healthy Life Marketing, LLC, et al. v. Jaime Brenkus' Sound Body, Inc.* (San Diego Superior Court), Mr. Johnson helped his client recover a seven-figure verdict following a week-long jury trial. *See* testimonial from the firm's client below. Similarly, in *DCI Solutions v. Urban Outfitters* (S.D. Cal), Mr. Johnson served as lead trial counsel for a small local consulting firm in a case against one of the nation's largest clothing retailers in a matter that would have forced the company into bankruptcy if it lost. Following a week-long trial in federal court, the jury returned a verdict rejecting the retailer's $1.5 million damage claim in its entirety.

In addition to his complex civil litigation practice, Mr. Johnson has served as lead or co-lead counsel in scores of representative matters (class actions and derivative actions) throughout the country, including: *In re Motorola, Inc. Derivative Litigation*, (Ill. Cir. Ct. Cook County) (derivative action settled after six years of litigation on terms that required the implementation of comprehensive corporate therapeutic changes valued by one expert at over $1 billion); *In re the Titan Corp. Derivative Litigation*, (San Diego Superior Court) (derivative action resulting in $29 million in increased consideration to Titan's shareholders in the all-cash merger acquisition); *Bagot v. Bracken, et al.*, (Tenn. 6th Cir.) (derivative action resulting in a payment of $19 million to the company, believed to be among the largest recoveries in a derivative case in the State of Tennessee, and implementation of significant corporate therapeutics); *Englehart v. Brown*, *et al.* (Wash. Super. Ct. King Cnty) (shareholder class action resulting in what is believed to be the largest recovery ever obtained in a class action challenging the price of a merger or acquisition of a public company in a Washington court, $12.75 million additional consideration for class members); and *Baker v. Visa International Corp.*, (San Diego Superior Court)

(consumer class action against Visa for wrongfully assessing undisclosed fees by manipulating the currency conversion rates when consumers used their Visa Card for purchases in other countries and ultimately coordinated with *In re Currency Conversion Fee Antitrust Litigation* which resulted $336 million for the class members).

Areas of Practice: Mr. Johnson's practice focuses on complex litigation. Mr. Johnson has extensive experience in all aspects of trial practice, mediation, trial preparation, and non-jury and jury trials in state and federal court. In addition to his general trial practice, Mr. Johnson has both prosecuted and defended a number of cases involving securities fraud in class actions and derivative cases.

Professional Qualifications and Activities: Mr. Johnson was admitted to the State Bar of California in 1994. He is currently admitted in good standing with the following courts:

- The Supreme Court of the United States of America
- All courts in the State of California
- The United States Courts of Appeals for the Third and Ninth Circuits
- The United States District Courts for the Southern, Central, Eastern, and Northern Districts of California
- The United States Court of Federal Claims
- The United States District Court for the Northern District of Illinois
- The United States District Court for the District of Colorado

Mr. Johnson is currently, or has been previously, a member of the following professional organizations:

- The San Diego County Bar Association
- The Federal Bar Association
- The Litigation Section of the State Bar of California
- SD Regional Chamber of Commerce, Vice Chair Tech Comm. (2002-03, 2003-04, 2004-05)
- Association of Business Trial Lawyers, Member of the Board of Governors (2018-2020)

Mr. Johnson completed the following trial advocacy programs:

- San Diego County District Attorney one-month misdemeanor jury trial program
- Louis M. Welsh American Inn of Court, one-year program
- San Diego Inn of Court College of Advocacy, multi-week trial course
- San Diego Inn of Court College of Advocacy, multi-week evidence course

Following graduation from law school in 1994, Mr. Johnson served as a judicial law clerk for one year for the Honorable John S. Rhoades, a federal trial judge in the United States District Court for the Southern District of California.

Awards and Peer Recognition:

- *Martindale-Hubbell*: Martindale-Hubbell Peer Review Ratings, the gold standard in attorney ratings, have recognized lawyers for their strong legal ability and high ethical standards for more than a century. Mr. Johnson has received an AV rating for more than 18 consecutive years, awarded to only those lawyers with the highest ethical standards and professional ability, as established by confidential opinions from members of the Bar.

- *Super Lawyers*: Mr. Johnson is recognized as a Super Lawyer in Business and Securities Litigation. Thomson Reuters awards this recognition to the top 5% of attorneys who have obtained a high-level of professional achievement and are highly regarded by their peers.

- *San Diego Magazine Top Lawyers*: In its March 2022 edition, San Diego Magazine included Mr. Johnson as one of the 2022 Top Lawyers in business litigation in San Diego. This year is the ninth consecutive year that the publication recognized Mr. Johnson as a Top Lawyer.

- *America's Most Honored Lawyers Top 1%*: In 2022, The American Registry honored Frank J. Johnson with this award. Each year, The American Registry certifies qualifying public recognitions of excellence including significant mentions in the press, honors by recognized trade groups, and acclaimed recognitions by peers or clients. It reserves this award for only the Top 1% of American Lawyers.

Education: Mr. Johnson completed Yale School of Management's Certified Private Wealth Advisor® (CPWA®) curriculum and obtained the CPWA® certification administered by Investments & Wealth Institute® in 2021. The program includes a series of advanced financial advisor courses presented by leading Yale faculty and industry experts covering the most advanced knowledge and techniques to address the sophisticated needs of high-net-worth clients with a minimum net worth of $5 million. Mr. Johnson received his Juris Doctor degree from Washington University School of Law in 1994, where he was in the top 10% of his class while in attendance. At both Washington University School of Law and the University of San Diego School of Law (where Mr. Johnson was a visiting student in his third year), Mr. Johnson won first place awards in each school's Moot Court Competition. He received his Bachelor of Science degree in Business Administration with an emphasis

in Finance from San Diego State University in 1990, where he graduated second in his class major, with honors and *summa cum laude*.

Community and Volunteer Activities: Mr. Johnson serves on the Board of Governors for the San Diego Chapter of the Association of Business Trial Lawyers. For the past several years, Mr. Johnson has spearheaded his firm's efforts to be the leading fund raiser for Feeding San Diego's annual challenge to help fight summer hunger throughout San Diego County. Mr. Johnson also donated time with several members from the firm to organize food for distribution to the needy. Also, for several years, Mr. Johnson served as a volunteer at Voices for Children, where he acted as a CASA (Court Appointed Special Advocate) meeting several times each month with a foster child and attending court hearings to advocate for the child's best interests.

MICHAEL I. FISTEL, JR.

Mr. Fistel is one of the founding partners of Johnson Fistel and manages the firm's Georgia office. He has spent his entire career specifically dedicated to protecting investor rights in shareholder class action and derivative litigation around the country.

Prior to joining as one of the founding partners of Johnson Fistel, Mr. Fistel was a partner at an Atlanta-based boutique litigation firm that represented individuals and businesses in shareholder and other complex litigation in federal and state courts throughout the country. In that role, Mr. Fistel served as partner-in-charge of the firm's active case inventory, and obtained millions of dollars on behalf of injured shareholders, consumers, and businesses. Mr. Fistel was also instrumental in securing sweeping corporate governance reforms at numerous publicly-traded companies.

Representative Matters: Mr. Fistel's success in protecting investor rights in shareholder class action and derivative litigation is exemplified in several cases, including without limitation the following: In *In re: Twitter, Inc. Shareholder Derivative Litigation,* C.A. No. 18-062 (D. Del.), Johnson Fistel serving as co-lead counsel and Mr. Fistel serving as one of the chief negotiators, secured a $38 million payment to Twitter and successfully negotiated robust corporate reforms tailored to address alleged disclosure deficiencies concerning the company's user growth and user engagement prospects. Similarly, in *Alex v. McCullough, et al.*, No. 1:12-cv-08834 (N.D. Ill.), Mr. Fistel helped secure a $20 million recovery and sweeping management and board-level corporate governance reforms for Career Education Corporation. Mr. Fistel has had similar success in the securities class action arena as well. Specifically, in *Gerneth v. Chiasma, Inc.*, No. 1:16-cv-11082-DJC (D. Mass.),a securities class action lawsuit where Johnson Fistel served as co-lead counsel, Mr. Fistel helped secure an $18.75 million class-wide settlement, and *In Re Flowers*

Foods, Inc. Securities Litigation, No. 7:16-CV-00222-WLS (M.D. Ga.), another securities class action where Johnson Fistel served as lead counsel, Mr. Fistel was instrumental in securing a $21 million class settlement.

Areas of Practice: Mr. Fistel devotes his practice to representing individuals, institutions, and businesses in shareholder and other complex litigation. Specifically, a substantial portion of Mr. Fistel's practice is focused on representing shareholders in securities fraud class action litigation and shareholder derivative litigation. In addition to shareholder litigation, Mr. Fistel also represents aggrieved consumers and businesses in other complex litigation arising out of financial and consumer fraud.

Professional Qualifications: Mr. Fistel was admitted to the State Bar of Georgia in 2001, and is currently admitted in good standing with the following courts:

- All courts in the State of Georgia
- The Supreme Court of the United States of America
- The United States Courts of Appeals for the First, Second, Fourth, Tenth, and Eleventh Circuits
- The United States District Courts for the Northern and Middle Districts of Georgia
- The United States District Court for the District of Colorado
- The United States District Court for the Northern District of Illinois
- The United States District Court for the District of Maryland

Mr. Fistel has also been invited to speak at the Georgia State University School of Law in the area of corporate governance and shareholder rights and has served as an invited panelist for the Securities and Corporate Litigation Sub-Section of the Atlanta Bar Association.

Awards and Peer Recognition: In 2011, 2013, 2014, 2015, and 2016, Mr. Fistel was recognized as a Georgia Super Lawyer—Rising Star by Atlanta Magazine, an honor bestowed on just 2.5% of the attorneys in the State of Georgia. Additionally, Mr. Fistel has an AV rating with Martindale-Hubbell, which indicates very high to preeminent legal ability and very high ethical standards as established by confidential opinions from members of the Bar.

Education: Mr. Fistel attended New England Law in Boston, Massachusetts, earning his Juris Doctor degree in 2001. While at New England Law, Mr. Fistel was repeatedly named to the Dean's List and received the CALI Award for Excellence in Trial Practice and Sports Law. Prior to attending New England Law, Mr. Fistel attended Florida State University as a Florida Undergraduate Scholar, and graduated with a Bachelor of Arts degree in English.

Community and Volunteer Activities: Mr. Fistel is an active member of his local Hickory Flat, Georgia community, having served as an Executive Board Member and as Secretary of the Board of Directors of East Cherokee Baseball, a total

volunteer youth sports organization where approximately 500 boys and girls ages 3-17 are provided a safe, fun, and educational baseball experience. Mr. Fistel and his family are members of St. Peter Chanel Catholic Church in Roswell, Georgia.

BRETT M. MIDDLETON

Brett M. Middleton is a partner in Johnson Fistel LLP's San Diego office. He has over two decades of experience representing institutional and individual investors in securities fraud class action litigation, corporate governance derivative litigation, and merger-related class action litigation. Working with the firm's shareholder clients, he strives to hold management of publicly traded companies accountable by achieving significant financial recoveries and meaningful corporate governance reforms.

Representative Matters: Mr. Middleton has served as lead or co-lead counsel in a wide variety of high-profile class action cases that have achieved substantial recoveries for investors. Notable cases include: *Lehman Brothers Securities Litigation* (S.D.N.Y.) (recovered $615 million for investors from multiple defendants arising from the alleged accounting fraud that prolonged the historic bankruptcy), *Williams Securities Litigation* (N.D. Okla.) ($311 million combined settlement for alleged accounting fraud, which was the largest settlement at the time without a company restatement), *Lumber Liquidators Securities Litigation* (E.D. Va.) (obtained over $40 million for class members arising from alleged scheme to inflate margins by importing cheap and illegal flooring products as exposed by the CBS news show *60 Minutes*), *Accredo Health Securities Litigation* (W.D. Tenn.) ($33 million for investors arising from accounting fraud claims), *The Fresh Market (Morrison v. Berry)* ($27.5 million recovered post-closing of merger), *Accredited Home Lenders Securities Litigation* (S.D. Cal.) ($22 million recovered for investors for fraud claims relating to mortgage lending practices), *FTSI Securities Litigation (Glock v. FTS International, Inc.)* ($10 million recovered for investors for alleged violations of Sections 11 and 15 of the Securities Act of 1933), and *Clarent Corp. Securities Litigation* (N.D. Cal.) (after a four-week jury trial, obtained rare jury verdict in favor of plaintiffs and against the company's former CEO).

He also has extensive experience representing individual shareholders in derivative litigation where he helped to improve corporate governance practices and enforce the fiduciary obligations of corporate boards and officers. Among others, he successfully prosecuted and settled shareholder derivative actions on behalf of Applied Opto Electronics, Activision, Apollo, News Corporation, and the Ryland Group.

Moreover, Mr. Middleton has contributed significantly to successful mergers and acquisitions ("M&A") transactional litigation efforts to challenge the improper

use of defensive measures and deal protections for management's benefit, including M&A transactional litigation actions involving Alberto-Culver and Unilever, Caremark and CVS, Emulex and Broadcom, Long Drugs and CVS, Medco and Express Scripts, Ticketmaster and Live Nation, and Yahoo! and Microsoft.

Before joining Johnson Fistel, Mr. Middleton was with Bernstein Litowitz Berger & Grossmann LLP for 15 years, where he was instrumental in the prosecution of securities fraud class actions, shareholder derivative litigation, and M&A transactional actions.

Recognition: For his professional achievements, Mr. Middleton has received multiple industry and national recognitions, including "San Diego Super Lawyer" by Super Lawyers, "Best of the Bar" by the San Diego Business Journal, and "Recommended Lawyer in M&A Related Shareholder Litigation" by Legal 500 USA Guide.

Professional Qualifications and Associations: Mr. Middleton was admitted to the State Bar of California on December 8, 1998, and is admitted in good standing with all courts in the State of California. He is also admitted in good standing with the United States District Courts for the Central, Northern, and Southern Districts of California.

Mr. Middleton is a member of the following professional associations:

- Association of Business Trial Lawyers
- California Lawyers Association, Litigation and Business Law
- San Diego County Bar Association
- UCLA Alumni Association, San Diego Network
- University of San Diego School of Law Alumni Association

Education: On June 18, 1993, Mr. Middleton graduated from the University of California, Los Angeles (UCLA) where he majored in History with an emphasis in Business Administration. He earned his Juris Doctor Degree from the University of San Diego School of Law on May 23, 1998.

MARY ELLEN CONNER

Ms. Conner is a partner in the Atlanta office of Johnson Fistel. Ms. Conner has extensive experience in securities fraud litigation and fiduciary duty litigation.

Prior to joining Johnson Fistel, Ms. Conner practiced law at Jones Day, a full-service law firm with more than 2,500 lawyers and 43 offices around the world, representing *Fortune 500* companies in complex commercial and securities litigation. Additionally, Ms. Conner has since served on the faculty of Atlanta's John Marshall

Law School teaching Civil Procedure I and II; Legal Research, Writing, and Analysis I; and Legal Communications and Process. She also served as the Faculty Adviser to the Moot Court and co-directed the school's Oral Advocacy Competition.

Representative Matters: Ms. Conner's experience in securities fraud litigation is exemplified by her active role in recouping $38 million and negotiating robust corporate governance reforms for Twitter arising out of certain Twitter directors' and officers' alleged breaches of fiduciary duties by issuing materially false and misleading statements about Twitter's user growth and user engagement metrics. In addition, Ms. Conner was instrumental in securing an $18.75 million settlement on behalf of a proposed class of investors alleging the biopharmaceutical company Chiasma, Inc. misled investors in its 2015 initial public offering about the prospects for regulatory approval of the company's drug candidate, Mycapssa, in violation of §§ 11 and 15 of the Securities Act of 1933.

Ms. Conner's fiduciary duty litigation experience is further highlighted by her instrumental work in negotiating a favorable settlement for her client in the In re International Textile Group Merger Litigation, brought by Safety Components International ("SCI") minority shareholders against WL Ross & Co., certain current and former officers and directors of International Textile Group ("ITG"), and others, arising out of the merger of ITG and SCI in which minority shareholders alleged breach of fiduciary duties by controlling shareholders.

Ms. Conner also previously represented numerous businesses, healthcare providers (including hospitals, physician groups, laboratories, Durable Medical Equipment supply companies, and ambulatory surgery centers), and individuals in government investigations and litigation brought by the Department of Justice and Office of Inspector General for alleged violations of the False Claims Act, federal securities and commodities fraud statutes, and insider trading laws.

Areas of Practice: Ms. Conner concentrates her practice on securities litigation and complex commercial disputes, representing businesses and individuals who have been wronged by corporate fraud in shareholder litigation, including in direct and derivative actions.

Professional Qualifications: Ms. Conner was admitted to the State Bar of Georgia in 2011 and is admitted to practice and in good standing with the following courts:

- All courts in the State of Georgia
- The United States District Court for the Northern District of Georgia
- The United States Court of Appeals for the Eleventh Circuit

Education and Awards: Ms. Conner graduated from the University of North Carolina at Chapel Hill as a Public Service Scholar with Bachelor of Arts degrees in English and Psychology. She received her Juris Doctor degree from the University of North Carolina School of Law with Honors in 2011, where she served on the editorial board for The North Carolina Law Review and received the Gressman-Pollitt Award for Excellence in Oral Advocacy from the Holderness Moot Court. While in law school, Ms. Conner also served as a summer clerk to The Honorable Judge Robert J. Conrad, Jr., Chief Judge for the Western District of North Carolina.

Awards and Peer Recognition: For her professional achievements, Ms. Conner has received multiple industry and national recognitions, including "2022 Georgia Rising Star" status by *Super Lawyers*, as well as the Martindale-Hubbell AV Preeminent peer rating—the highest possible rating in both legal ability and ethical standards based upon peer reviews—for 2019, 2020, 2021, and 2022. Ms. Conner was also recognized as a member of the General Litigation Department of the Year, awarded by *The Daily Report*, for the years 2013 and 2014. She also received the Safe Haven Award for Excellence in Pro Bono Representation in 2012.

Publications and Speaking Engagements:

"The 'Advice-of-Counsel' Defense: Cautionary Tales for Counsel in False Claims Act Cases," American Health Lawyers Association.

"Buyers Beware: The Drug Supply Chain Security Act and the False Claims Act," American Health Lawyers Association Fraud & Abuse, April 2017.

Speaker, "Responding to Governmental Civil Investigative Demands and Government Subpoenas," Clear Law Institute, February 21, 2017.

Community and Volunteer Activities: Ms. Conner remains active in legal education. She has served as an instructor at Emory University's School of Law Keissler Eidson Trial Techniques Program and volunteers as an instructor for Empire Mock Trial.

ASSOCIATES

ENOCH P. HICKS

Mr. Hicks is an associate in the Marietta office of Johnson Fistel. Mr. Hicks has experience in all aspects of trial preparation and presentation including factual investigation, drafting and responding to pleadings and discovery, expert discovery, depositions, motion practice, and jury trials.

Areas of Practice: Mr. Hicks focuses his practice on complex commercial litigation with an emphasis on securities class actions and shareholder derivative actions. Mr. Hicks has been successful in bringing about corporate reforms related to accounting, oversight, and disclosures at publicly-traded companies.

Professional Qualifications: Mr. Hicks is a member in good standing with the State Bar of Georgia and is admitted to practice in the following courts:

- The United States District Courts for the Northern, Middle, and Southern Districts of Georgia
- The Georgia Supreme Court
- The Georgia Court of Appeals
- All State and Superior Courts of Georgia

Experience: Prior to joining Johnson Fistel, Mr. Hicks served as an Assistant Attorney General in the Georgia Office of the Attorney General. As an Assistant Attorney General, Mr. Hicks represented numerous state government entities as lead counsel in defending against lawsuits brought under the Georgia Tort Claims Act seeking millions of dollars in government funds. Additionally, Mr. Hicks leverages his wide-ranging experience from working as an associate at a regional law firm, as law clerk, and as a prosecutor to assist clients in reaching their goals.

Education and Awards: Mr. Hicks obtained his Juris Doctor degree from the University of South Carolina School of Law. During law school, Mr. Hicks was a competing member of the Mock Trial Bar with a first-place victory at the Carolinas Competition. Mr. Hicks also developed a passion for giving back by serving as a Student Board Member of the Pro Bono Program and providing his time to causes such as the My Wills program, the Ask-a-Lawyer program, and acting as the eFile Administrator for the Volunteer Income Tax Assistance program.

Additionally, Mr. Hicks is a graduate of the University of Georgia Terry College of Business where he earned a Bachelor of Business Administration degree in Risk Management and Insurance.

KRISTEN L. O'CONNOR

Ms. O'Connor is an associate in the San Diego office of Johnson Fistel. Prior to joining the firm, she served as Managing Counsel at a life sciences contract research organization (CRO), where she negotiated clinical trial agreements with preeminent research institutions and provided market clearance submission development and support for global medtech and pharmaceutical industry clients.

Representative Matters: Among prominent representations, Ms. O'Connor played an active role in securing an $18.75 million settlement on behalf of a proposed

class of investors alleging the biopharmaceutical company, Chiasma, Inc., misled investors in its 2015 initial public offering about the prospects for regulatory approval of the company's drug candidate, Mycapssa, in violation of §§ 11 and 15 of the Securities Act of 1933. She also acted as the lead attorney in procuring an $875k settlement against a grocery chain owned by a global investment firm on behalf of six plaintiff workers alleging sexual harassment and related claims.

Areas of Practice: Ms. O'Connor concentrates her practice on employment and complex securities litigation. She has significant experience representing a diverse clientele in federal and state actions for sexual harassment and discrimination and is deeply committed to serving as a principled and aggressive advocate for workers' rights.

Professional Qualifications and Activities: Ms. O'Connor was admitted to the State Bar of California in 2015, and is currently admitted in good standing with the following courts:

- All courts in the State of California
- The United States District Courts for the Northern, Southern, and Central Districts of California

Ms. O'Connor is also a member of the following professional organizations:

- American Bar Association
- San Diego County Bar Association,
- American Inns of Court—J. Clifford Wallace Chapter
- Lawyers Club of San Diego

Awards and Peer Recognition: Ms. O'Connor was named by Thomson Reuters' Super Lawyers as a leading San Diego, California lawyer in 2020 and 2021. She was also selected by the organization as a 2020 and 2021 Rising Star, a designation awarded to no more than 2.5% of attorneys in each state.

Publications and Speaking Engagements:

Speaker, "Elimination of Bias," The Association of Business Trial Lawyers, February 2017

Mock Trial Presenter, Mini-Annual Seminar on Trial Presentation, The Association of Business Trial Lawyers, January 2019

Going Solo: Harmonizing Judicial Treatment of the Work-for-Hire Preclusion to Music Copyright Termination (2014) 36 T. Jefferson L. Rev. 373

Developments in Political Spending Disclosures, THE MONITOR (Johnson Fistel, LLP, San Diego, Cal.), Sept. 2017, at 1

Equifax Executives Made $1.77 Million from Stock Sales While Your Data Was Stolen, THE MONITOR (Johnson Fistel, LLP, San Diego, Cal.), Dec. 2017, at 1

AT&T-Time Warner: Will This Open the Merger Floodgates? THE MONITOR (Johnson Fistel, LLP, San Diego, Cal.), September 2018, at 3

No-Rehire Provisions Given the Pink Slip in California, THE MONITOR (Johnson Fistel, LLP, San Diego, Cal.), March 2020, at 1

Assembly Bill 9: Sexual Harassment and Discrimination Litigation in California, THE MONITOR (Johnson Fistel, LLP, San Diego, Cal.), Nov. 2020, at 1

Same-Sex Harassment Under Title VII: Broadly Actionable Under Developing Jurisprudence, THE ABTL REPORT (The Association of Business Trial Lawyers), October 2021, at 12

Education: Ms. O'Connor holds an LL.M. degree in Securities and Financial Regulation from Georgetown University Law Center. She received her Juris Doctor degree from the Thomas Jefferson School of Law, where she graduated *summa cum laude* and third in her class, received the CALI Award for Excellence in Legal Writing I, Legal Writing II, Civil Practice, Contracts I, Property II, Entertainment Law Transactions, and Wills and Trusts, and received the Jefferson Medal for Mediation and Negotiation. During law school, she had the distinct honor of serving as both a faculty teaching and research assistant. She also served as an editor for the Thomas Jefferson Law Review, where her work in intellectual property was published.

Ms. O'Connor received a Bachelor of Arts degree from California Lutheran University, where she received academic scholarships. During her senior year, she studied Eastern European history and the Czech language as a visiting student at Charles University in Prague, Czech Republic.

Community and Volunteer Activities: Ms. O'Connor is a proud Partner in Hope at St. Jude Children's Research Hospital, part of a special group of monthly donors committed to saving children with cancer and other life-threatening diseases.

JONATHAN M. SCOTT

Mr. Scott is an associate in the San Diego office of Johnson Fistel. During law school, Mr. Scott took an interest in business and securities law, interning at the California Department of Business Oversight, Enforcement Division and one of the largest plaintiff's firms in the United States specializing in securities litigation. Prior to attending law school, Mr. Scott worked for a large financial institution in Montana where he was in charge of analyzing and restructuring troubled assets in the wake of the 2008 economic recession.

Areas of Practice: Mr. Scott focuses his practice on complex commercial and business litigation, securities class actions, and shareholder derivative suits.

Professional Qualifications: Mr. Scott was admitted to the State Bar of California in 2018. He is currently admitted and in good standing to practice in the following courts:

- All courts in the State of California
- The United States District Court for the Southern District of California

Mr. Scott is also a member of the following professional organizations:

- American Bar Association
- San Diego County Bar Association
- Gonzaga Alumni Association, San Diego Network
- University of Montana Alumni Association, San Diego Network

Education and Awards: In 2018, Mr. Scott received his Juris Doctor degree from California Western School of Law, where he graduated cum laude and was awarded an honors distinction in business law. Mr. Scott earned three American Jurisprudence awards for receiving the highest grade in the following courses: legal writing I, legal writing II, and business entity finance. In recognition of his excellent writing skills, Mr. Scott received the 2018 National Order of the Scribes award and was further recognized as a California Western student of distinction. Mr. Scott served as the Executive Lead Articles Editor for the California Western Law Review and was a teaching assistant for legal writing I. Prior to law school, Mr. Scott earned his MBA degree from Gonzaga University and his Bachelor of Science degree in Business Management from the University of Montana.

Community and Volunteer Activities: After receiving his MBA degree, Mr. Scott tutored elementary school students in math and reading in Missoula, Montana. During law school, Mr. Scott was admitted to the Public Service Honors Society. Mr. Scott further enjoys participating in community runs to raise money for various causes, and volunteering and attending California Western Law School events.

CHASE M. STERN

Mr. Stern is an associate in the San Diego office of Johnson Fistel and concentrates his practice on complex securities, business, consumer, and employment litigation. Mr. Stern also has extensive experience representing individuals and corporations in business tort and contract matters, insurance coverage disputes, and personal injury matters.

Representative Matters: Mr. Stern's work and experience representing individuals and commercial entities in the prosecution of complex class action and individual matters has proven instrumental in securing significant, multi-million dollar settlements from some of the nation's largest employers, healthcare providers, and commercial service providers. Mr. Stern's notable cases include: *Eagle Canyon Owners' Association v. USA Waste of California, Inc.*, Case No. 37-2018-00005897 ($7.85 million dollar settlement on behalf of a class of California consumers); *Anello, et al. v. HealthSouth, et al.*, Lead Case No. GIC806902 ($5 million settlement on behalf of a class of California surgery/rehabilitation patients where the average individual class member recovery exceeded $13,000); *Martin v. Costco*, Case No. 34-2012-00118165 (significant consumer class action settlement arising out of false and misleading product labeling); *Conners v. Rag Traders Retail, LLC*, Case No. BC581413 (significant wage and hour class action settlement); *Orzano v. Hazelwood Enterprises*, Case No. 37-2016-00029231 (significant wage and hour class action settlement); *Gallagher v. H. H. Restaurant, Inc.,* Case No. 37-2016-00031247 (significant wage and hour class action settlement); *Lujano v. Advantage Health Systems,* Case No. 27-2017-00023690 (significant wage and hour class action settlement).

Notably, Mr. Stern has also served as trial counsel on behalf of a corporation in a case involving fraud and related tort claims, resulting in significant jury awards for compensatory and punitive damages.

Areas of Practice: Mr. Stern's practice focuses on class action securities litigation and shareholder derivative matters, business disputes, consumer protection class action litigation, and employment matters, representing both plaintiffs and defendants.

Professional Qualifications and Activities: Mr. Stern was admitted to the State Bar of California in 2013, and is admitted in good standing with the following courts:

- All courts in the State of California
- The United States District Courts for the Northern, Southern, and Central Districts of California
- United States Court of Appeals for the Ninth Circuit

Mr. Stern is also a member of the following professional organizations:

- American Bar Association
- Consumer Attorneys of San Diego
- San Diego County Bar Association
- North County Bar Association
- National Football League Players Association (NFLPA) (certified contract advisor/agent)

Education: Mr. Stern earned his Bachelor of Science degree from Syracuse University in 2008 and his Juris Doctor degree from California Western School of Law in 2012, graduating from both institutions with honors.

WILLIAM W. STONE

Mr. Stone has litigated cases in both federal and state courts throughout the country and has over a dozen years of experience with all aspects of trial practice and discovery, including trial preparation, factual investigation, drafting and responding to pleadings and discovery, expert discovery, depositions, motion practice, trial, and appeals.

Representative Matters: Some of Mr. Stone's representative matters include:

- *In Re Flowers Foods, Inc. Securities Litigation*, No. 7:16-CV-00222-WLS (M.D. Ga.). In a securities class action case alleging violations of §§10(b) and 20(a) of the Securities Exchange Act of 1934, Johnson Fistel's client was appointed Lead Plaintiff and the firm was appointed Co-Lead Counsel under the Private Securities Litigation Reform Act of 1995. The complaint filed in the action alleges that defendants made false and misleading statements in connection with the Company's labor strategy. As a result of these false and misleading statements, Flowers Foods stock traded at artificially inflated prices during the Class Period. A $21 million class settlement became final on January 10, 2020. At the hearing on final approval of the settlement, Judge W. Louis Sands expressed his satisfaction with the settlement and offered the following commentary: "I'd also just like to acknowledge just really the professional way you all handled this case . . . and I think it is that type of substantial work from opposing sides that I think that is what we look at a settlement that both sides of this case have been well represented and represented so the Court is satisfied that it has been in the hands of people who knew what they were doing . . . ."

- *Gerneth v. Chiasma, Inc.*, No. 1:16-cv-11082-DJC (D. Mass.). Johnson Fistel served as co-lead counsel and represented the lead plaintiff in a securities class action alleging violations of Sections 11 and 15 of the Securities Act of 1933. The complaint alleged that defendants made false and misleading statements in connection with the company's IPO regarding the company's business and the prospects for approval of a pharmaceutical drug. A class-wide settlement in the amount of $18.75 million was approved on June 27, 2019.

- *Glock v. FTS International, Inc., et al.*, Civil Action No. 4:20-cv-03928 (S.D. Tx.). Johnson Fistel served as co-lead counsel and represented the

lead plaintiff in a securities class action alleging violations of Sections 11 and 15 of the Securities Act of 1933. A class-wide settlement in the amount of $9.875 million was approved on April 13, 2021.

- *Cobb EMC litigation*: In 2007 and 2008, Mr. Stone prosecuted class and derivative state court claims brought by customer-members of the non-profit Cobb Electric Management Corporation ("EMC") addressing conflicts of interest, transfer of the EMC's employees and assets to a for-profit entity, improper by-laws, and breach of by-laws. The cases resulted in a recovery of over $120 million of assets, return of the employees to the EMC, revision of the by-laws, replacement of the board via elections conducted pursuant to the revised bylaws, dissolution of the for-profit entity, and the resignation of the CEO.

- *Checking account overdraft litigation*. Mr. Stone was instrumental in establishing groundbreaking consumer contract law requiring banks to order transactions and impose overdraft charges in a manner consistent with their implied duty of good faith and fair dealing, leading to over $1 billion in settlements. Reported decisions: 563 F. Supp. 2d 1358 (N.D. Ga. 2008); 694 F.Supp.2d 1302 (S.D. Fl. 2010).

Areas of Practice: Mr. Stone practices complex civil litigation with a focus on securities and consumer fraud class action litigation and shareholder derivative litigation.

Professional Qualifications: Mr. Stone was admitted to the State Bar of Georgia in 2007. He is currently admitted to practice before the following courts:

- The United States Court of Appeals for the Eleventh Circuit
- The United States District Courts for the Middle and Northern Districts of Georgia
- All courts in the State of Georgia

Education and Awards: Mr. Stone received his Juris Doctor degree from the Georgia State University College of Law in 2007. During law school, he received CALI Awards for Excellence in Trial Practice in Research, Writing, Advocacy, and Criminal Law, clerked for a judge, and studied for a term at Johannes Kepler University in Linz, Austria, completing courses focusing on arbitration. Prior to law school, he was a legal assistant for a large law firm in Atlanta during breaks from college. He received his Bachelor of Arts degree with Honors from the University of Georgia's Honors Program in Athens, Georgia, where he published his honors thesis comparing American and European antitrust enforcement.

Community and Volunteer Activities: Mr. Stone volunteers with the Atlanta Community Food Bank and serves on the board of his local homeowners association.

ADAM J. SUNSTROM

Mr. Sunstrom is an associate in the Atlanta office of Johnson Fistel. He has played crucial roles in many high-stakes litigations that have resulted in the recoupment of tens of millions of dollars on behalf of investors as well as the implementation of substantial corporate reforms.

Representative Matters:

- *In re Flowers Foods, Inc. Securities Litigation*, No. 7:16-CV-00222-WLS (M.D. Ga.), a securities class action case brought under §§10(b) and 20(a) of the Securities Exchange Act of 1934, the complaint alleged that defendants made false and misleading statements in connection with the Company's labor strategy. Consequently, Flowers Foods stock traded at artificially inflated prices during the Class Period. After extensive litigation, the Court approved a $21 million class settlement.

- *Glock v. FTS International, Inc., et al.*, Civil Action No. 4:20-cv-03928 (S.D. Tx.), a securities class action brought pursuant to §§11 and 15 of the Securities Act of 1933 that alleged defendants made materially false and misleading statements and omissions in FTS International, Inc.'s initial public offering documents, Mr. Sunstrom was a member of the litigation team that obtained a $9.875 million settlement.

- *In re HD Supply Holdings, Inc. Derivative Litigation*, Lead Case No. 1:17-cv-02977-MLB (N.D. Ga.), a stockholder derivative action brought on behalf of HD Supply alleging that certain executives and directors of HD Supply violated federal and state law by making false and misleading statements to investors, thereby artificially inflating the stock price, and engaged in unlawful insider trading, Mr. Sunstrom was a member of the litigation team that secured a settlement that provided HD Supply with significant corporate therapeutic benefits.

- *In re Southern Company Shareholder Derivative Litigation*, No. 1:17-cv-00725-MHC (N.D. Ga.), a stockholder derivative action brought on behalf of The Southern Company against certain of The Southern Company's current and former officers and directors for breaches of fiduciary duties, unjust enrichment, and corporate waste, Mr. Sunstrom is a member of the firm's litigation team, which the Court appointed to serve as Lead Counsel. This action is currently pending in the Northern District of Georgia.

Also, prior to joining Johnson Fistel, Mr. Sunstrom worked for the Georgia Secretary of State as an enforcement attorney, where he conducted investigations and brought enforcement actions pursuant to the Georgia Uniform Securities Act. Furthermore, during his third year of law school, Mr. Sunstrom worked full-time at the U.S. Securities and Exchange Commission in the Enforcement Division. While there, he was a member of several enforcement teams that brought investigations for violations of the federal securities laws, including one that conducted an investigation into an investment bank's fraudulent multi-million-dollar bond mismarking scheme carried out against the bank's short-term lenders, which resulted in both the U.S. Securities and Exchange Commission and the Department of Justice bringing charges against several individuals.

Practice Areas: Mr. Sunstrom's practice consists of representing investors in securities class actions and shareholder derivative actions as well as taking on other representations in complex litigation actions.

Professional Qualifications and Activities: Mr. Sunstrom was admitted to the State Bar of Georgia in November of 2018 and is currently admitted in good standing with the following courts:

- The United States District Courts for the Middle and Northern Districts of Georgia
- All State and Superior Courts of Georgia
- The Georgia Court of Appeals
- The Georgia Supreme Court

Education: In 2018, Mr. Sunstrom earned his Juris Doctor degree from the University of Georgia School of Law, where he graduated cum laude, served as a Notes Editor on the Georgia Journal of International & Comparative Law, and his article titled *China: Environmental Protectionist or Economic Protectionism*, 46 Ga. J. Int'l & Comp. L. 873 (2018) was approved for publication. Also, Mr. Sunstrom was a member of Mock Trial and finished as a Quarter-finalist in the J. Melvin England Mock Trial Competition. Mr. Sunstrom graduated summa cum laude from the University of West Georgia in 2015 with a degree in Political Science.

Community and Volunteer Activities: Mr. Sunstrom is a member of the Midtown Atlanta Rotary Club and serves on the Public Image Committee.

OLIVER S. TUM SUDEN

Mr. tum Suden is an associate in the Atlanta office of Johnson Fistel. He is part of the firm's commercial, shareholder derivative, and securities class action practices and has experience with all aspects of trial practice and discovery, including drafting

factual investigation, litigation demands, drafting and responding to pleadings and discovery, expert discovery, motion practice, and alternative dispute resolution.

Representative Matters: Mr. tum Suden has played key roles in several high-stakes actions and achieved favorable results for clients. For example, his work was instrumental in the settlement of *Hines v. Gowen, et al.*, No. 2:20-cv-04673 (E.D. Pa.), which alleged breaches of fiduciary duty and other violations of law, resulting in the adoption of significant corporate governance reforms and payment of cash settlement.

Areas of Practice: Mr. tum Suden focuses his practice on complex commercial litigation, including securities class actions and shareholder derivative actions, representing businesses and individuals wronged through fraud and other violations of law.

Prior to joining Johnson Fistel, Mr. tum Suden served as Assistant Attorney General in the Commercial Transactions and Litigation Division of the Georgia Office of the Attorney General, where he prosecuted and defended breach of contract actions, contested asset valuations, and represented clients including Governors Brian Kemp and Nathan Deal, educational institutions under the University System of Georgia, Georgia Lottery Corporation, Georgia Composite Medical Board, Georgia Department of Transportation, and Georgia Department of Revenue, among others. Notably, Mr. tum Suden wrote an *amicus curiae* brief on behalf of the Georgia Department of Revenue in *Heron Lake II Apartments, LP et al. v. Lowndes County Board of Tax Assessors*, 306 Ga. 816 (2019) that was influential in overturning the trial court's decision.

During law school, Mr. tum Suden served an Honors Clerk at the U.S. Securities and Exchange Commission in the Enforcement Division's Complex Financial Instruments Unit, focusing on fraud in connection with sophisticated financial instruments. While at the SEC, Mr. tum Suden investigated an insider trading ring and built a successful case against a hedge fund manager for misrepresenting assets under management.

Professional Qualifications: Mr. tum Suden was admitted to the State Bar of Georgia in 2018 and is currently admitted in good standing with the following courts:

- All courts in the State of Georgia
- The United Stated District Court for the Northern District of Georgia

Awards and Peer Recognition: Mr. tum Suden received an award for his outstanding contributions to the Journal of Intellectual Property.

Education: Mr. tum Suden received his Juris Doctor degree in 2018 from the University of Georgia School of Law, where he was in the top half of his class, served as Notes Editor on the Journal of Intellectual Property, was the President of the Asian

Law Students Association, was a member of Phi Alpha Delta A.H. Stephens Chapter, and acted as the Hearing Officer for the Honor Court. Mr. tum Suden graduated cum laude from West Virginia University with a Bachelor of Science degree in Business Administration.

Community and Volunteer Activities: Mr. tum Suden is an active member of the Georgia Asian Pacific American Bar Association and University of Georgia Mentor program.

SPECIAL COUNSEL & TRIAL ATTORNEY

TIFFANY R. JOHNSON

Mrs. Johnson has years of trial experience as both a Deputy Attorney General for the State of California and a Judge Advocate General in the United States Navy. She now focuses her practice on complex business litigation and civil rights matters. She also has experience representing clients in family law matters.

Prior to joining Johnson Fistel, Mrs. Johnson was a Deputy Attorney General for the State of California for over twelve years where she primarily litigated civil rights cases through trial. In addition, Mrs. Johnson served as a Judge Advocate General in the United States Navy for close to ten years where she achieved the rank of Lieutenant Commander. While in the Navy, Mrs. Johnson represented hundreds of sailors and marines in criminal proceedings through verdict, administrative boards, and disability hearings.

Professional Qualifications and Activities: Mrs. Johnson was admitted to the bar for the State of Minnesota in May of 2000, and to the bar of the State of California in 2005. Additionally, Mrs. Johnson is admitted to practice in the following courts:

- All courts in State of California
- All courts in State of Minnesota
- The United States Court of Appeals for the Ninth Circuit
- The United States District Court for the Southern, Central, Eastern, and Northern Districts of California

Education: Mrs. Johnson received her Juris Doctor degree from Chicago-Kent College of Law in 2000. She received her Bachelor of Arts degree in Education from Concordia University, St. Paul, Minnesota, in 1996.

OF COUNSEL

JEFFREY A. BERENS

Jeffrey A. Berens is an accomplished securities litigator, having made a career of prosecuting violations of federal securities laws on behalf of defrauded stockholders, pursuing derivative claims under state corporate law to redress misconduct committed by corporate officers and directors, and seeking to maximize shareholder value in merger and acquisition litigation. In addition to his securities litigation practice, Mr. Berens litigates a wide variety of other complex matters including cases involving consumer fraud, state and federal RICO violations, antitrust claims, unfair trade practices, and employment law violations.

Between 2007 and 2016, Mr. Berens was a principal of Dyer & Berens LLP, a Colorado-based shareholder rights law firm. Prior to founding Dyer & Berens, he was an associate and later a partner in a boutique law firm which recovered hundreds of millions of dollars for aggrieved investors nationwide. Before entering law school, Mr. Berens worked as a corporate accountant, during which time he passed the Certified Public Accountant examination.

Representative Matters: Mr. Berens has successfully litigated shareholder class and derivative lawsuits against more than one hundred public and private companies including, among others, BancorpSouth, Inc. ($29.25 million recovered), Tele-Communications, Inc. ($26.5 million recovered), FirstWorld Communications, Inc. ($25.925 million recovered), Transcrypt International, Inc. (approximately $25 million recovered), Molycorp, Inc. ($20.5 million recovered), ICG Communications, Inc. ($18 million recovered), Rhythms NetConnections Inc. ($17.5 million recovered), One-Stop Wireless of America, Inc. (approximately $11 million recovered), Fidelity Management & Research Company ($7.5 million recovered), Carrier Access Corporation ($7.4 million recovered), and State Street Corporation ($6.25 million recovered). Early in his career, Mr. Berens successfully argued to the Colorado Court of Appeals that the trial court had erred in failing to allow thousands of victims of a nationwide boiler room fraud to band together and prosecute their claims in a single class action. The Court of Appeals' opinion in *Toothman v. Freeborn & Peters* established new law, making it more difficult for dishonest promoters to evade the reach of the securities laws. Mr. Berens later won entry of a $75 million summary judgment against the alleged ringleader of the scheme.

Areas of Practice: Mr. Berens devotes his practice to representing individuals, institutions, and businesses in securities fraud class action litigation and shareholder derivative litigation.

Education: Mr. Berens attended Marquette University Law School, from which he graduated *cum laude* in 1996. While at Marquette, he served as a judicial extern to the Honorable John L. Coffey of the United States Court of Appeals for the Seventh Circuit and was a member of the Marquette University Law Review. Mr. Berens received his undergraduate degree in business and accounting from the University of Wisconsin.

Admissions: Mr. Berens was admitted to the state bar of Wisconsin in 1996 and the state bar of Colorado in 1997. He is also admitted to practice before the United States District Courts for Colorado and the Eastern District of Wisconsin, the Tenth Circuit Court of Appeals, and has been admitted to practice, on a case by case basis, in various state and federal jurisdictions throughout the country.

Publications: Mr. Berens is the author of Pleading Scienter Under The Private Securities Litigation Reform Act of 1995, which was published in *The Colorado Lawyer*.

RICHARD A. NERVIG

Mr. Nervig is a tenacious litigator with practical securities industry experience obtained from working as both a Dean Witter stockbroker prior to attending law school and as a compliance attorney after graduation. Mr. Nervig has successfully recovered in excess of $20 million dollars on behalf of his clients.

Areas of Practice: For over 23 years, Mr. Nervig's practice has focused primarily upon the representation of investors in securities litigation matters in FINRA arbitration proceedings, as well as matters in both state and federal court. Mr. Nervig is experienced handling all manner of securities sales practice claims ranging from suitability violations, churning, unauthorized trading, and fraud. Mr. Nervig is particularly adept at pursuing secondary liability claims arising from Ponzi schemes, unregistered securities sales, and anti-money laundering violations. Mr. Nervig also routinely represents creditors in bankruptcy adversary proceedings involving securities violation discharge avoidance matters pursuant to §523(a)(19) of the Bankruptcy Code.

Professional Qualifications and Activities: Mr. Nervig is currently admitted in good standing with the following courts:

- All courts in the State of Arizona (1997)
- All courts in the State of California (2003)
- All courts in the State of Colorado (1993)
- The United States District Court for the District of Arizona
- The United States District Courts for the Southern and Central Districts of California

- The United States District Court for the District of Colorado
- The United States Court of Appeals for the Tenth Circuit

Mr. Nervig is also a member of the following organizations:

- American Bar Association (Member Sections of Business Law and Litigation)
- Denver Bar Association
- San Diego County Bar Association
- San Diego North County Bar Association
- Southwest Riverside County Bar Association
- Public Investors Arbitration Bar Association
- Arbitrator, Financial Industry Regulatory Authority (FINRA) and San Diego County Bar Association Fee Arbitration Committee
- Former Member New York Stock Exchange and National Association of Securities Dealers

Education: Mr. Nervig received his Juris Doctor degree from the Claude W. Petit College of Law at Ohio Northern University in 1992. He received a Bachelor of Arts degree in 1988 from the Metropolitan State University of Denver.

SETH SCHECHTER

Seth Schechter has extensive experience counseling high net worth clients with specialized asset protection strategies, wealth preservation ideas, tax mitigation, and estate planning. He has a passion for positive causes, and he loves helping clients seamlessly integrate their business, personal and philanthropic goals.

Mr. Schechter started his legal career over 20 years ago working as a Special Assistant United States Attorney in San Diego. After spending two years defending the United States against civil actions, he spent several years at a prestigious law firm in San Diego providing estate planning services and strategizing with clients on forming the best business structures based upon a number of financial considerations to protect them from personal liability and reduce their tax obligations.

This experience led billionaire Sidney Frank, creator of the Grey Goose and Jagermeister brands, to hire Mr. Schechter as his personal lawyer and in-house counsel for Mr. Frank's enterprises. In that role, Mr. Schechter handled virtually all of Mr. Frank's legal matters including managing his wine brand, real estate development, and the record-setting sale of Grey Goose to Bacardi for $2 billion. Mr. Schechter has since served as general counsel for both established companies and start-ups. In addition, Mr. Schechter has held leadership roles at large nonprofit organizations in San Diego.

Areas of Practice: Mr. Schechter has three primary practice areas:

- Estate Planning: Mr. Schechter combines his practical knowledge and technical expertise to create effective, efficient, and tax sensitive wealth planning and asset transfer arrangements. He provides advice and guidance on trust and gift planning, estate tax mitigation, life insurance strategies, philanthropic and charitable integration, and personalized asset protection. He has counseled clients from across the wealth spectrum, including individuals, families, and business entities in planning and managing estates of varying size and complexity.

- Asset Protection: Combining his education (LLM in Taxation) and his work experience (representing clients such as billionaire Sidney Frank and other high net worth individuals), Mr. Schechter takes estate planning to the next level by ensuring that his clients' assets are insulated from litigation concerns and other potential threats. Schechter helps clients create an individualized Asset Protection Plan designed to make sure that all current and potential personal and professional risks and threats are identified.

- Business Law: Mr. Schechter has a broad range of skills and experience in the fields of commercial, corporate, and securities law. He has counseled domestic and international clients in a wide variety of transactional matters.

Education: Mr. Schechter received his Bachelor of Arts degree from Cornell University in 1990, his Juris Doctor degree from California Western in 1995, and his Master of Laws (LLM) in Taxation from the University of San Diego in 2001.

Community and Volunteer Activities: Mr. Schechter is involved with several nonprofits, including the Jackson Hole Technology Partnership and the Surfrider Foundation.

RALPH M. STONE

Ralph M. Stone is recognized as a leading lawyer in the securities litigation, investor rights, and international discovery fields. He has represented public and private companies, hedge funds, and other institutional investors in a wide variety of commercial litigation in courts around the country and in FINRA and American Arbitration Association arbitrations, on creditor committees in international bankruptcies, and in various other forums. He actively represents and advises private banks and other non-U.S. institutions in major securities litigation, and he regularly

represents and advises them in various hedge fund disputes and matters arising from collapsed funds. He also represents securities industry whistleblowers before the SEC and CFTC, helping whistleblowers maintain their anonymity in presenting tips and helping them to secure financial awards as a result of their whistleblowing.

Prior Experience: From 1990 to 1992, Mr. Stone was associated with the international law firm Mayer, Brown & Platt, where he was involved in a variety of commercial litigation. He was an associate at the law firm of Milberg Weiss from 1992 until 1997. At Milberg Weiss, he focused on the representation of investors and consumers in litigation involving the federal securities laws, consumer fraud statutes, and the fiduciary obligations of corporate officers and directors. From 1997 through 2018, Mr. Stone was a partner at the firm of Shalov Stone & Bonner LLP, which he co-founded, and which later became Stone Bonner & Rocco LLP.

Representative Matters: Mr. Stone has been involved in a large number of mass actions, collective actions, and class actions. Among other achievements, Mr. Stone obtained the first-ever class certification against a foreign government in Urban GmbH v. Republic of Argentina, in which he represented holders of defaulted Republic of Argentina bonds. He has represented a group of more than 100 bondholders of an Uruguayan bank in claims against the bank's former directors who reside in New York. Also, he has represented high-profile hedge funds as well as European and Asian funds in major securities fraud actions.

The significant securities class actions in which he has played a principal role as one of the lead counsel include: In re Winstar Communications Inc. Securities Litigation (S.D.N.Y.) (over $40 million in recoveries, including a substantial recovery secured in connection with the pursuit of innovative claims brought against a business partner of a securities issuer); In re Baan Company Securities Litigation (D.D.C.) (settlement with bankrupt Dutch software company and its executives totaling $32 million, which amounted to nearly all of the damages claimed by class members); In re TEAM Communications Securities Litigation (C.D. Cal.) (settlement with bankrupt American television licensing company predominantly traded on a German stock exchange and its executives totaling $12.5 million); In re Crayfish Inc. Securities Litigation (S.D.N.Y.) (recoveries from Japanese software company and its executives totaling $9 million); In re Intershop Communications AG Securities Litigation (N.D. Cal.) (recovery of more than $3 million from bankrupt German software company and its executives); In re Workstream, Inc., Securities Litigation (recovery of $3.9 million); Cooper v. CPS Systems, Inc. (N.D. Tex.) (recovery of $3.44 million); In re Mitcham Industries Securities Litigation (S.D. Tex.) (recovery of $2.7 million); Yuan v. Bayard Drilling Technologies, Inc. (W.D. Okla.) (recovery of $3.1 million); and Varljen v. H.J. Meyers & Co., Inc. (S.D.N.Y.) (recovery of more than $5 million).

Mr. Stone has also served as lead class counsel on behalf of participants in certain companies' retirement plans in a number of ERISA class actions, including: In re Ferro Corp. ERISA Litigation (N.D. Ohio) (recovery of $4 million for retirement plan participants); In re Comerica, Inc. ERISA Litigation (E.D. Mich.) (recovery of $2.2 million for plan participants).

He also has been involved in a wide variety of securities arbitrations and other commercial cases relating to the securities industry. He has represented a listed company in a dispute with an investment banking firm before the American Arbitration Association and has represented investors with fraud, suitability, and deceptive practice claims against both electronic brokerage firms and traditional brokerages in FINRA arbitrations.

He has, on several occasions, served as a court-appointed receiver or fiduciary to protect and distribute funds in various insider-trading disgorgement and other cases brought by the SEC.

In addition to the wide variety of matters relating to securities and financial services, Mr. Stone has also played an active role representing victims of terrorism, including participating in the Linde v. Arab Bank litigation (E.D.N.Y.) on behalf of victims of terrorism who obtained the first verdict ever against a financial institution for providing material support to a terrorist organization's attacks on Americans, and participating in briefing in connection with various actions seeking to enforce terrorism-based judgments against Iran, including in Peterson v. Bank Markazi, which resulted in a recovery of over $1.8 billion for victims of the 1983 Marine Barracks bombing in Beirut, Lebanon.

Mr. Stone has actively litigated consumer protection class actions in courts around the country. For example, he played a principal role as lead counsel in In re Cablevision Consumer Litigation (E.D.N.Y.), recovering benefits of more than $28 million for cable TV subscribers who were denied access to certain Fox network-affiliated channels during a 2010 carriage dispute between Cablevision and News Corp., and Health Science Products LLC v. Sage Software SB, Inc. (N.D. Ga.), recovering $5.5 million on behalf of a class asserting that software was buggy and defective. He has also served as a lead counsel and made substantial recoveries for classes in many consumer protection cases, including in cases alleging that various finance charges imposed by banks, credit card companies, and other lenders are deceptive or unfair, electronics products were defective, software was defective or invasive of privacy rights, sports memorabilia products were not genuine as represented, insurance products were improperly or deceptively marketed, and that insurance contracts were breached.

Mr. Stone's reported decisions include: Brandi-Dohrn v. IKB Deutsche Industriebank AG, 673 F.3d 76 (2d Cir. 2012); In re Cablevision Consumer Litigation, 864 F.Supp.2d 258 (E.D.N.Y. 2012); In re Ferro Corp. ERISA Litigation, 422 F.Supp.2d 850 (N.D. Ohio 2006); In re Baan Company Securities Litigation, 245 F.Supp.2d 117 (D.D.C. 2003); Macomber v. Travelers Property and Casualty Co., 261 Conn. 620 (Conn. 2002); In re Baan Company Securities Litigation, 81 F.Supp.2d 75 (D.D.C. 2000); Milman v. Box Hill Systems Corp., 72 F.Supp.2d 220 (S.D.N.Y. 1999); Varljen v. H.J. Meyers & Co., [1998 Transfer Binder] Fed. Sec. L. Rep. (CCH) & 90,259 (S.D.N.Y. 1998); Saddle Rock Partners, Ltd. v. Hiatt, [1996.97 Transfer Binder] Fed. Sec. L. Rep. (CCH) & 99,413 (W.D. Tenn. 1996); and Sikes v. American Telephone & Telegraph Co., 841 F. Supp. 1572 (S.D. Ga. 1993).

Areas of Practice: Mr. Stone's practice focuses on complex litigation, investor rights, and whistleblower protection. Mr. Stone has extensive experience in all aspects of complex civil litigation and securities and consumer fraud class actions.

Professional Qualifications and Activities: Mr. Stone was admitted to the Bar of the State of New York in 1991. He is currently admitted in good standing with the following courts:

- The Supreme Court of the United States of America
- All New York State courts
- The United States Courts of Appeals for the Second, Fifth, Sixth and Eleventh Circuits
- The United States District Courts for the Southern and Eastern Districts of New York

Mr. Stone is currently, or has been previously, a member of the following professional organizations:

- American Bar Association (ABA)
- Association of the Bar of the City of New York (ABCNY)
- Former Secretary, Consumer Affairs Committee
- Public Investors Advocate Bar Association (PIABA)

Awards and Peer Recognition: Martindale-Hubbell: Martindale-Hubbell Peer Review Ratings, the gold standard in attorney ratings, have recognized lawyers for their strong legal ability and high ethical standards for more than a century. Mr. Stone has an AV rating which is awarded to only those lawyers with the highest ethical standards and professional ability, as established by confidential opinions from members of the Bar.

Super Lawyers: Mr. Stone is recognized as a Super Lawyer in Securities Litigation. Thomson Reuters awards this recognition to the top 5% of attorneys who have obtained a high-level of professional achievement and are highly regarded by their peers.

Education: Mr. Stone received his Juris Doctor degree from the University of Texas School of Law in 1990, where he was an editor of The Review of Litigation. He received an A.B. in Philosophy from Columbia College, Columbia University in 1987.

Publications: Contributor of chapter "United States" in Shareholder Claims (Jordans 2012), describing U.S. law relating to investor and shareholder rights.

SELECTED EXAMPLES OF REPRESENTATIVE MATTERS

Johnson Fistel aggressively pursues complex litigation matters for both plaintiffs and defendants on an hourly or contingency fee basis depending upon the circumstances of the matter. Below are just a few of the cases the firm has undertaken. To respect the privacy of some of the firm's clients who prefer we do not mention their names involved in litigation and to honor confidentiality provisions in certain settlement agreements, some of the matters are described below without identifying the parties' names.

Business and Commercial Litigation

- *International Real Estate PLC v. Oaktree Capital Management, LLC*, Case No. BC 324973 (Cal. Super. Ct. Los Angeles Cnty.). International Real Estate (a public company with shares listed on the London Stock Exchange) retained Johnson Fistel to pursue claims for breach of fiduciary duty against former directors of a joint venture company. That case involved alleged damages of approximately $20 million, and after years of aggressive litigation and a mediation, ultimately settled on favorable terms to International Real Estate. *See* testimonial from the firm's client, Rolf L. Nordstrom, under Testimonials.

- *Doe Shipping Company v. John Doe* (Cal. Super. Ct. San Diego Cnty.). A national shipping company retained Johnson Fistel after a former employee left the company with customer lists, other employees, and other confidential information. Johnson Fistel filed a complaint alleging claims for fraud, breach of contract, and misappropriation of trade secrets, among others. After a series of depositions and the threat of putting the defendants out of business, Johnson Fistel assisted the company in obtaining a resolution that restricted the former employee from doing business with certain of the company's clients, protected the company's trade secrets, and provided for a significant monetary payment to the company.

- *Liebsohn, et al. v. Augme Technologies, Inc., et al.*, Case No. 13-2-40007-3 SEA (Wash. Super. Ct. King Cnty.). Johnson Fistel represented a group of 47 high net worth investors who were defrauded into trading their stock in a privately-held company for stock in a publicly-traded company. After defeating several motions to dismiss and a petition for discretionary review by the Washington Court of Appeals, Johnson Fistel obtained a highly-favorable confidential settlement from the defendants' insurance carrier on February 2, 2016.

- *John Doe v. Doe Hedge Fund* (Cal. Super. Ct. San Diego Cnty.). Johnson Fistel defended one of the world's most successful hedge funds and its manager against meritless claims of fraud. After aggressively defending the matter, the plaintiff accepted a nuisance value settlement that was less than the cost of defense.

Trials & Arbitrations

- *Healthy Life Marketing, LLC, et al. v. Jaime Brenkus' Sound Body, Inc.*, Case No. GIC822927 (Cal. Super. Ct. San Diego Cnty.). On behalf of a marketing firm, Johnson Fistel pursued claims for breach of contract and fraud against the manufacturer of a weight loss product. After a week-long jury trial, the jury returned a seven-figure verdict in favor of J Johnson Fistel's client, including actual and punitive damages. *See* Noteworthy Success Stories and testimonials from the firm's client, Ronald T. Fricke, and the firm's co-counsel Gerald J. Stubenhofer, Esq. under Testimonials.

- *DCI Solutions v. Urban Outfitters*, (S.D. Cal). Johnson Fistel represented a small local consulting firm in a case against one of the nation's largest clothing retailers in a matter that would have forced the company into bankruptcy if it lost. Following a week-long trial in federal court, the jury returned a verdict rejecting the retailer's $1.5 million damage claim in its entirety. Johnson Fistel also prevailed on all of Urban Outfitter's post-trial motions. *See* testimonial from the firm's client, James Baker, under Testimonials.

- *Timeshare Resale Alliance v. Fleming, et al.*, (San Diego Cnty. Arbitration). Johnson Fistel successfully defended a real-estate broker accused of stealing her former employer's alleged trade secrets. Following a week-long arbitration, the arbitrator issued an order completely exonerating Johnson Fistel's client.

- *Mary Joe v. Jane Doe* (Cal. Super. Ct. San Diego Cnty.). Johnson Fistel represented the minority shareholder of a small family corporation to pursue claims against the other shareholders who wasted millions of dollars of corporate assets by using those assets to pay for their personal expenses. The client retained Johnson Fistel to substitute into the case just two months before trial. On day four of a five-day trial, defendants agreed to settle the case.

Shareholder Derivative Actions

- *In re Powerwave Technologies, Inc.*, Case No. 13-10134 (MFW) (Bankr. D. Del.). On behalf of a shareholder client, Johnson Fistel filed a shareholder derivative action in a California Superior Court alleging that certain of Powerwave's officers and directors had affirmatively engaged in improper accounting to conceal the company's true financial condition. Shortly after filing this action, Powerwave filed for bankruptcy and the United States Bankruptcy Court appointed a Chapter 7 Trustee. The Bankruptcy Court appointed Johnson Fistel as special counsel to represent the Trustee to prosecute these claims as assets of the estate. After nearly two years of litigation, Johnson Fistel secured a settlement that included payment of $5.5 million for the benefit of the estate in bankruptcy.

- *Rubin v. Reinhard*, Case No. 37-2008-00091039-CU-NP-CTL (Cal. Super. Ct. San Diego Cnty.). Johnson Fistel was sole Lead Counsel in this derivative lawsuit. After the company filed a petition for relief under Chapter 7 of the Bankruptcy Code, the Bankruptcy Trustee retained Johnson Fistel as special litigation counsel to prosecute claims for breach of fiduciary duty against certain officers and directors. After several years of hard-fought litigation, the Estate in Bankruptcy settled recovering $3 million. In approving the settlement, the Bankruptcy Court judge remarked: "The Court thanks [Johnson Fistel] for its outstanding work on behalf of the Chapter 7 Trustee and the Estate." *See* full testimonial from the Honorable Laura S. Taylor under Testimonials.

- *In re Southern Company Shareholder Derivative Litigation*, No. 1:17-cv-00725-MHC (N.D. Ga.). Johnson Fistel serves as Lead Counsel in this shareholder derivative action filed in the United States District Court for the Northern District of Georgia against certain current and former officers and directors of Southern Company for breaches of fiduciary duties, unjust enrichment, and corporate waste. After extensive negotiations, an agreement in principle to resolve the case has been reached. The parties are currently negotiating settlement documentation to present to the Court for approval.

- *In re HD Supply Holdings, Inc. Derivative Litigation*, Lead Case No. 1:17-cv-02977-MLB (N.D. Ga.). Johnson Fistel was appointed Co-Lead Counsel in a stockholder derivative action brought on behalf of HD Supply alleging, among other things, that certain executives and directors of HD Supply violated federal and state law by making false and misleading statements to investors, thereby artificially inflating the stock price. The complaint filed in the action also alleges that while the price of HD Supply stock was

artificially inflated, certain corporate insiders engaged in unlawful insider trading of their personally-held HD Supply stock holdings. In its role as Co-Lead Counsel, Johnson Fistel helped to secure a settlement which provided HD Supply with significant benefits, including helping to preserve tens of millions of dollars in corporate assets in connection with the company's settlement of a related securities class action that was funded exclusively by insurance proceeds rather than corporate funds, as well as causing the adoption of important corporate reforms, including reforms to the company's insider trading policy.

- *In re CoreCivic, Inc. Shareholder Derivative Litigation*, Lead Case No. 3:16-cv-03040 (M.D. Tenn.). Johnson Fistel was appointed Co-Lead Counsel in a shareholder derivative action brought on behalf of CoreCivic, Inc. alleging, among other things, that certain officers and directors of CoreCivic violated federal and state law by making false and misleading statements to investors concerning CoreCivic's history of quality, savings, and compliance at Federal Bureau of Prisons facilities, causing its common stock to be traded at artificially inflated levels. On CoreCivic's behalf, Plaintiffs seek damages and disgorgement from the alleged wrongdoers.

- *In re United States Steel Corporation Derivative Litigation*, Lead Case No 2:17-cv-01005-CB (W.D. Pa.). Johnson Fistel was appointed Co-Lead Counsel in a shareholder derivative action brought on behalf of United States Steel Corporation, alleging, among other things, that certain officers and directors of US Steel violated federal and state law by causing the company to make false and misleading statements to investors which concealed that U.S. Steel failed to implement necessary maintenance measures at its facilities and that the Company did not have the capacity to meet then-current market demand, causing its common stock to be traded at artificially inflated levels. On US Steel's behalf, Plaintiffs seek damages and disgorgement from the alleged wrongdoers.

- *In re: Twitter, Inc. Shareholder Derivative Litigation,* C.A. No. 18-062 (D. Del.). Johnson Fistel was appointed Co-Lead Counsel in a shareholder derivative action brought on behalf Twitter, Inc., alleging, among other things, that certain officers and directors of Twitter caused the company to make false and misleading statements concerning the metrics used by the company to measure user growth and engagement, causing its common stock to be traded at artificially inflated levels. In addition, the complaint filed in the action alleges that while the price of Twitter stock was artificially inflated, certain corporate insiders engaged in unlawful insider trading, unloading approximately $281 million worth of their personally-held

Twitter stock holdings. In its role as Co-Lead Counsel, Johnson Fistel helped to secure $38 million for the company and successfully negotiated robust governance reforms tailored to address and prevent the reoccurrence of directors and officers of Twitter from issuing materially false and misleading statements about the company's user growth and user engagement prospects. *See* Noteworthy Success Stories and full testimonial from the firm's client, Jim Porter, under Testimonials.

- *Wells v. Reed, et al.*, Case No.: 2016-CH-16359 (Ill. Cir. Ct., Cook Cnty., Ch. Div.) (*Treehouse Foods, Inc. Derivative Litigation*). Johnson Fistel was appointed Lead Counsel in a shareholder derivative action brought on behalf of Treehouse Foods, Inc., alleging, among other things, that certain officers and directors of Treehouse Foods violated state law by causing the company to make false and misleading statements regarding, among other things, the underperformance of both the Company's private label business and the Company's acquisition strategy. On Treehouse Foods's behalf, Plaintiff seeks damages and disgorgement from the alleged wrongdoers.

- *In re RH Shareholder Derivative Litigation*, No. 4:18-cv-02452-YGR (N.D. Cal). Johnson Fistel was appointed Lead Counsel in a shareholder derivative action brough on behalf of RH, Inc. alleging, among other things, that certain officers and directors of RH violated federal and state laws by making false and misleading statements concerning RH's business operations, financial condition, and growth prospects, as well as that certain defendants engaged in improper insider trading. On RH's behalf, Johnson Fistel negotiated sweeping and innovative corporate governance reforms to benefit the company, including installation of a new Chief Compliance Officer and adoption of a Disclosure Committee Charter. *See* Noteworthy Success Stories and testimonial from the Honorable Yvonne Gonzalez Rogers under Testimonials.

- *In re Motorola, Inc. Derivative Litigation*, Case No. 07CH23297 (Ill. Cir. Ct. Cook County). Johnson Fistel was appointed Co-Lead Counsel in a shareholder derivative action filed against current and former officers and directors of Motorola, Inc. The derivative claims charged certain officers with making misrepresentations about the company's financial statements and prospects of success in order to artificially inflate the company's stock price while they personally sold shares and while causing the company to simultaneously purchase shares on the open market. After six years of hard-fought litigation, the action settled on terms that required the implementation of significant corporate therapeutic changes throughout the company—changes that were valued by one expert at over $1 billion. *See* Noteworthy

Success Stories.

- *In re Heelys Inc. Derivative Litigation*, Case No. 07-CV-1682 (N.D. Tex.). Johnson Fistel's predecessor firm was appointed Co-Lead Counsel in this shareholder derivative action filed against current and former officers and directors of Heelys Inc. After prevailing on defendants' motion to dismiss, and more than a year of litigation including multiple mediations, this matter settled on terms that required the implementation of significant corporate therapeutic changes that benefitted the company and its shareholders for years to come. *See* testimonial from the Honorable Ed Kinkeade under Testimonials.

- *In re MannKind Corporation Derivative Litigation*, Lead Case No. 11-cv-05003-GAF-SSx (C.D. Cal.). Johnson Fistel was appointed sole Lead Counsel in this shareholder derivative action filed against current and former officers and directors of MannKind, alleging that the defendants had misled shareholders about the FDA approval process for MannKind's core product. After more than two years of litigation and a mediation, this matter settled on terms that required the implementation of significant corporate therapeutic changes, including the creation of a new Board-level Disclosure & Controls Committee and significant enhancements to financial reporting requirements.

- *Singh v. Hsu*, Case No. 1-13-cv-243247 (Cal. Super. Ct. Santa Clara Cnty.) (Impax Laboratories, Inc. Derivative Litigation). Johnson Fistel was appointed sole Lead Counsel in this shareholder derivative action against certain current and former officers and directors of Impax Laboratories, Inc. for allegedly failing to correct systemic problems at the company's manufacturing centers and for misleading shareholders about FDA sanctions related to these problems. After two years of litigation and a mediation, the matter settled on terms requiring the implementation of company-wide corporate governance reforms, significantly enhancing reporting and oversight at the Board, officer, and employee level.

- *In re LHC Group, Derivative Litigation*, No. 6:13-CV-02899-JTT-CBW (W.D. La.). Johnson Fistel, as Co-Lead Counsel in this shareholder derivative action, was able to resolve the action for substantial corporate governance reforms at LHC Group which included, among other reforms, amendments to the company's compliance policies designed to address allegations concerning the company's Medicare home health program and to the Audit Committee Charter to provide greater oversight of the company's compliance-related activities, Medicare and Medicaid reimbursement policies, compliance audits, handling of anonymous complaints, and the

effectiveness of the company's Code of Conduct. The settlement also caused changes to be made to the company's insider trading and preclearance policies to provide more clarity and transparency, as well as additional restrictions, on insider sales of company stock.

- *Weitzman v. Ullman, et al.*, Civ. No. 4:13-cv-00585 (E.D. Tex.) (J.C. Penney Company, Inc. Derivative Litigation). In its role as Lead Counsel, and after almost five years of litigation and nearly two years of protracted settlement negotiations, Johnson Fistel was able to secure a settlement that provided for a series of material reforms to JCPenney's corporate governance systems, which were designed to strengthen the Company's internal control functions and board accountability, and ultimately prevent the recurrence of the events that led to the alleged harm to the company and the filing of the derivative lawsuit.

- *Orrego & Kim v. Lefkosky, et al.*, Case No.: 12 CH 12420 (Consolidated with 12 CH 19431) (Ill. Cir. Ct., Cook Cnty., Ch. Div.) (*Groupon, Inc. Derivative Litigation*). Johnson Fistel, serving as Co-Lead Counsel, negotiated a settlement which included extensive and detailed measures designed to improve corporate governance at Groupon and restore and maintain investor confidence in the Company. Groupon's Board of Directors agreed to implement these sweeping corporate governance reforms designed to improve decision-making and legal-regulatory compliance in the critical areas of accounting and financial disclosure, earnings guidance, and committee oversight at the company.

- *In re World Acceptance Corporation Derivative Litigation*, Lead Case No. 6:15-cv-02796-MGL (D.S.C.). Johnson Fistel, as Co-Lead Counsel, was able to resolve the action for the benefit of World Acceptance even though the District Court granted defendants' motions to dismiss the case, and that order was being appealed to the U.S. Court of Appeals for the Fourth Circuit. Johnson Fistel, its co-counsel, and our clients never gave up, and fought to achieve a significant settlement despite significant obstacles. Specifically, the settlement, among other things, preserved corporate resources by ensuring that the related securities class action was resolved within insurance policy limits and without monetary contribution from the company, and caused significant corporate governance reforms designed to increase shareholder control and provide for improved operational oversight at the company. The settlement will have a lasting, positive impact on the Company and its shareholders for years to come.

- *In re Marrone Bio Innovations, Inc. Derivative Litigation*, Lead Case No. CV14-1481 (Cal. Super. Ct., County of Yolo). Johnson Fistel, in its role as

Co-Lead Counsel, negotiated a settlement on behalf of Marrone Bio Innovations which reformed its governance practices in order to prevent the misconduct alleged in case from reoccurring again in the future. The case stemmed from the criminal misconduct of the company's former Chief Operating Officer and the control and oversight environment at the company that allowed such misconduct to occur in the first place causing harm to Marrone Bio Innovations. Specifically, the reforms put into place by the settlement created more transparency in connection with stockholder proposals, created more extensive oversight of management by the Audit Committee, revised the company's Code of Business Conduct and Ethics and added responsibilities to the company's Compliance Officer to foster a corporate environment of legal and ethical compliance, revised the company's policies with respect to expense recognition policies and training in connection therewith, and formalized the company's Disclosure and Controls Committee and defined the responsibilities of it.

- *Bagot v. Bracken, et al.*, Case No. 11C5133 (Tenn. Cir. Ct., 6th Cir.). Johnson Fistel was appointed Lead Counsel in this shareholder derivative action against certain current and former officers and directors of HCA Holdings, Inc., the largest private hospital chain in the country. The parties litigated the action for more than four years and attended multiple mediations, after which Johnson Fistel secured an extremely favorable settlement for HCA and its shareholders, including a payment of $19 million to HCA, the appointment of a new independent director, and implementation of significant corporate therapeutics. *See* Noteworthy Success Stories.

- *In re Brocade Communications, Systems, Inc. Derivative Litigation*, Case No. 1:05cv41683 (Cal. Super. Ct. Santa Clara Cnty.). Johnson Fistel was initially appointed Co-Lead Counsel in state court in one of the highest-profile options backdating cases in the country. Johnson Fistel helped prevent an inadequate settlement of a related federal action from being approved, which would have released the officers, directors, and agents of the company responsible for the criminal backdating scheme which would have resulted in no money to the company and only a payment of attorney's fees for the lawyers in that case. Brocade then formed a Special Litigation Committee and retained Johnson Fistel as co-counsel to assist in litigating claims against ten former officers and directors of the company. After years of litigation, over $24 million was recovered for Brocade. *See* Noteworthy Success Stories.

- *In re 3D Sys. Corp. Deriv. Litig.*, Lead Case No. 0:15-cv-03756-MGL (D.S.C.). Johnson Fistel, as Co-Lead Counsel, served as lead negotiator in

this multi-jurisdictional shareholder derivative litigation alleging, among other things, that between 2008 and 2015, 3D Systems acquired over 40 companies at a cost of over $700 million, without: (i) conducting adequate due diligence to confirm the value of their offerings; (ii) devoting the management systems or supervisory resources necessary to properly integrate operations and establish internal controls over accounting and financial reporting; or (iii) building out sufficient manufacturing capacity to leverage the acquisitions and meet the then-CEO's aggressive sales and revenue projections. The Complaint also alleged that certain of the Company's executives and directors engaged in insider selling while the price of the Company's stock was artificially-inflated. Johnson Fistel successfully negotiated a significant corporate reform package calling for, among other things, an independent chairperson of the board, director term limits, enhancements to director independence and compliance functions, and the establishment of disclosure and merger and acquisition working groups.

Corporate Takeover Litigation

- *Morrison et al. v. Berry et al.,* (The Fresh Market) Case No. 12808, (Court of Chancery of the State of Delaware). Johnson Fistel helped obtain $27.5 million for shareholders in a class action over the 2016 $1.4 billion take-private sale of specialty grocery chain Fresh Market to Apollo Global Management LLC. Plaintiffs accused Fresh Market's former CEO and Chairman, of acting disloyally in concealing his private communications on terms of Fresh Market's sale to Apollo, along with the rollover of his equity as part of the deal. Fresh Market's former President and CEO, and former Chief Legal Officer and Senior Vice President, were accused of fiduciary duty breaches and were also parties to the settlement. Johnson Fistel litigated alongside fellow class attorneys in opposition to the defendants' multiple attempts to dismiss the suit. Efforts by class counsel helped secure an appeal to and reversal by the Delaware Supreme Court in 2018 of the lower court's granting of the first motion to dismiss in which the high court agreed with the plaintiffs that the defendant had disclosure deficiencies in its Schedule 14D-9 and was effectively misleading as a result, only to face yet another motion to dismiss by the defendants on remand. Vice Chancellor Sam Glasscock III, who watched the parties exchange blows both times the suit came through the Court of Chancery, described the case as full of "extraordinarily heavy [and] hard-fought litigation." For example, class attorneys fought for and subsequently analyzed some 286,000 documents in total, amounting to roughly 1.5 million pages, before arriving at the $27.5 million settlement through mediation. Vice Chancellor Glasscock ,

evidently impressed by the resounding outcome of the novel post-closing damages deal case, described the settlement amount as an "excellent result" for the shareholders, stating that the additional payout of $0.75 per share was over half of what was potentially achievable in additional merger consideration.

- *Englehart v. Brown*, Case No. 13-2-33726-6-KNT (Wash. Super. Ct. King Cnty.). Johnson Fistel was appointed as Co-Lead Counsel in a case arising out of the 2014 acquisition of Flow by American Industrial Partners which resulted in a $12.75 million settlement, believed to be the largest recovery ever obtained in a class action challenging the price of a merger or acquisition of a public company in a Washington court. *See* Noteworthy Success Stories.

- *In re the Titan Corp. Derivative Litigation*, Case No. GIC 832018 (Cal. Super. Ct. San Diego Cnty.). Johnson Fistel was appointed Co-Lead Counsel in a derivative lawsuit that involved claims against the officers and directors of Titan Corporation for breach of fiduciary duty. During the pendency of the litigation, Titan announced that it would be acquired, in a deal that would have undervalued the Company's worth, harming its stockholders being cashed out by the deal. To prevent this from happening, Johnson Fistel quickly coordinated with counsel in a related derivative action pending in Delaware Chancery Court to negotiate a settlement that resulted in $29 million in increased consideration to Titan's shareholders in connection with the all-cash merger acquisition. *See* Noteworthy Success Stories.

- *Azar v. Blount International, Inc., et al.*, No. 3:16-CV-00483-SI (D. Or.). Johnson Fistel was appointed as Co-Lead Counsel in a case arising out of the 2016 acquisition of Blount International Inc. by a group comprised of a private equity firm, Blount's largest stockholder, and two Blount insiders. The plaintiffs allege, among other things, that the proxy statement Blount disseminated in connection with the deal failed to disclose a set of financial projections that best reflected Blount's long-term prospects and, instead, disclosed only later, artificially reduced projections. The plaintiffs allege that misleading proxy statement tainted the stockholder approval of the merger, and they are seeking an unspecified amount of monetary damages. This matter recently settled resulting in millions of dollars in additional consideration for Blount's shareholders and is pending final approval.

Securities Class Actions

- *Mollik v. Adomani, Inc., et al.*, No. RIC-1817493 (Sup. Ct. Cal., Riverside). The co-founder and former Chief Technology Officer of a publicly traded company retained Johnson Fistel on an hourly basis to defend him in a class action alleging violations of §§12(a)(2) and 15 of the Securities Act filed against Adomani, Inc., certain of its current and former executives, and two firms that underwrote Adomani's initial public offering. Johnson Fistel aggressively fought the allegations in the complaint and ultimately negotiated for and achieved a full dismissal of all claims and financial liabilities against the firm's client. Additionally, on July 1, 2021, the Court entered an order forever barring the remaining defendants from pursuing any claims for contribution or indemnity against the firm's client, pursuant to an agreement Johnson Fistel negotiated with co-defendants in order to maximize protections for the firm's client.

- *Desrocher v. Covisint Corporation, et al.*, Case No. 1:14-CV-03878-AKH (S.D.N.Y.). In a case alleging violations of §§11 and 15 of the Securities Act of 1933, the Court appointed Johnson Fistel Co-Lead Counsel and certified the firm as Co-Lead Class Counsel. The class action complaint alleged that there were misrepresentations or omissions in documents filed with the SEC in connection with the company's IPO. Under the settlement, defendants agreed to create an $8 million common fund to compensate Covisint stockholders who were harmed by the alleged misrepresentations or omissions, which amount represented a substantial percentage of the maximum potential recovery. The Court approved the settlement in its entirety on December 13, 2016. *See* Noteworthy Success Stories.

- *Gerneth v. Chiasma, Inc., et al.*, No. 1:16-cv-11082-DJC (D. Mass.). Johnson Fistel served as Co-Lead Counsel and represented the Lead Plaintiff in a securities class action alleging violations of §§11 and 15 of the Securities Act of 1933. The complaint alleged that defendants made false and misleading statements in connection with the company's IPO regarding the company's business and the prospects for approval of a pharmaceutical drug. A class-wide settlement in the amount of $18.75 million was approved on June 27, 2019. *See* Noteworthy Success Stories.

- *In re Flowers Foods, Inc. Securities Litigation*, No. 7:16-cv-0022-WLS (M.D. Ga.). In a securities class action case alleging violations of §§10(b) and 20(a) of the Securities Exchange Act of 1934, Johnson Fistel's client was appointed Lead Plaintiff and the firm was appointed Co-Lead Counsel under the Private Securities Litigation Reform Act of 1995. The complaint filed in the action alleges that defendants made false and misleading statements in connection with the Company's labor strategy. As a result of these false and misleading statements, Flowers Foods stock traded at artificially inflated prices during the Class Period. The $21 million class settlement became final on January 10, 2020. *See* Noteworthy Success Stories and testimonial from the Honorable W. Louis Sands under Testimonials.

- *Glock v. FTS International, Inc., et al.*, Civil Action No. 4:20-cv-03928 (S.D. Tx.). Johnson Fistel served as Co-Lead Counsel in a securities class action alleging violations of §§11 and 15 of the Securities Act of 1933. The complaint alleged that defendants failed to disclose in the Company's offering documents that market dynamics impacting FTSI had significantly deteriorated, that the Company's dedicated contracts could be prematurely terminated by FTSI's customers, and that the growth in revenues in the lead up to the IPO attributable to Chesapeake Energy, one of the Company's largest customers, would not be maintained. Eventually, FTSI would file for bankruptcy protection, devastating shareholder value and the Company's investors. A class-wide settlement in the amount of $9.875 million was reached while the Company was seeking protection from creditors in bankruptcy court. The settlement was approved on April 13, 2021. *See* Noteworthy Success Stories.

- *In re EverQuote, Inc. Securities Litigation*, Index No. 651177/2019 (N.Y. Sup. Ct., New York Cnty.). Johnson Fistel served as Co-Lead Counsel in a securities class action alleging violations of §§11 and 15 of the Securities Act of 1933. EverQuote is an online marketplace where consumers looking for insurance submit information to EverQuote's website. The operative Complaint filed in the case alleged strict liability and negligence claims against for misstatements and omissions in the Company's Registration Statement regarding quote requests. Specifically, the Complaint alleged that EverQuote was purposefully moderating quote requests, the Company's sole product, as of the IPO because increased quote requests had been causing pricing compression, and that the Registration Statement not only failed to disclose these material facts, but it was replete with statements attesting to the importance to EverQuote's finances of growing quote requests. Johnson Fistel, along with Co-Lead Counsel, was able to negotiate a $4.75 million

settlement, representing a significant portion of estimated damages, on behalf of investors who purchased shares in the EverQuote IPO. The settlement was approved on June 11, 2020. *See* Noteworthy Success Stories.

- *Mohanty v. Avid Technology, Inc., et al.*, No. 1:16-cv-12336-IT (D. Mass.). Johnson Fistel served as Lead Counsel and represented the Lead Plaintiff in a securities class action alleging violations of §§10(b) and 20(a) of the Securities Exchange Act of 1934. The plaintiff alleged that the defendants made false and misleading statements concerning the company's business, operations, and financial outlook. A class-wide settlement in the amount of $1.325 million was approved on May 2, 2018.

- *Crystal v. Medbox, Inc., et al.*, No. 2:15-cv-00426-BRO-JEM (C.D. Cal.). Johnson Fistel served as Lead Counsel and represented the Lead Plaintiffs in a securities class action alleging violations of §§10(b) and 20(a) of the Securities Exchange Act of 1934. The complaint alleged that defendants made numerous and repeated false and misleading statements concerning Medbox's accounting, finances, internal controls, business, prospects, and outlook throughout the Class Period. A class-wide settlement in the amount of $1.850 million in cash and 2.3 million shares of company stock was approved on May 2, 2018.

- *In re American Realty Capital Properties, Inc. Litigation*, Case 1:15-mc-00040-AKH (S.D.N.Y.). Johnson Fistel represented one of the class representatives in a securities fraud class action arising from the allegedly shady accounting practices at the real estate business formerly known American Realty Capital Partners (now known as Vereit Inc.). The case, which spanned five years of hard-fought litigation, was resolved in 2019 in a deal that saw Vereit pay $738.5 million into a common fund for the investor class, while other defendants, including AR Capital and former ARCP CEO Nicholas Schorsch, would be responsible for $225 million. Former manager Grant Thornton would pay $49 million, and former CFO Brian Block would pay $12.5 million, for a total recovery to the investor class of $1.025 billion. The settlement was approved by the court on January 4, 2020.

- *In re Valeant Pharms. Int'l, Inc. Sec. Litig.*, No. 3:15-cv-07658-MAS-LHG (D.N.J.). Johnson Fistel filed the initial case and thereafter worked with court-appointed lead counsel in this securities fraud class action arising from Valeant's alleged concealment of, among other things, Valeant's unsustainable and deceptive price gouging practices wherein Valeant acquired pre-existing drugs, some of them life-saving medicines, and then dramatically raised prices to boost short-term profitability. After more than

five years of litigation, the case was resolved for $1.21 billion. The court approved the settlement on January 31, 2021

Consumer Class Actions

- *Eagle Canyon Owners' Association v. USA Waste of California, Inc.,* Case No. 37-2018-00005897 (Cal. Super. Ct. San Diego Cnty.). Eagle Canyon Owners' Association retained Johnson Fistel to pursue a class action against USA Waste for allegedly overbilling its California open market commercial and industrial customers in breach of its service agreements. Following years of investigation, discovery, and hard-fought litigation in both federal court and state court, Johnson Fistel negotiated a $7.85 million settlement, representing approximately 50% – 90% of the total, potential class-wide damages, according to Eagle Canyon's expert. The firm also insisted upon an all-cash, non-reversionary, and non-claims made settlement so that individual cash payments would be automatically being mailed to eligible class members without them needing to submit a claim form. *See* testimonial from the firm's client, Jillian Ibave, under Testimonials.

- *Baker v. Visa International Corp.*, Case No. 06cv0376 (Cal. Super. Ct. San Diego Cnty.). Johnson Fistel was appointed Co-Lead Counsel for this nationwide consumer class action that was filed in 2006 against Visa International Corp. for wrongfully assessing undisclosed fees on consumers by manipulating the currency conversion rates when consumers used their Visa Card for purchases in other countries. This matter was removed to federal court, and transferred by the Judicial Panel on Multidistrict Litigation to the United States District Court for the Southern District of New York to be coordinated with the *In re Currency Conversion Fee Antitrust Litigation.* The Court approved a settlement that provided for $336 million for the class members. While the *Baker* case was not the driving force leading to the $336 million for the class members, it was coordinated with that matter and the firm played a material role in the ultimate settlement.

- *Giancola v. Lincare Holdings Inc.*, Case No. 8:17-cv-2427-T-33AEP (M.D. Fla.). Serving as Class Counsel in this action, Johnson Fistel represented a class of current and former employees of Lincare, who were exposed to an unlawful data breach and the potential disclosure of their personal information. After Johnson Fistel filed an amended complaint and engaged in preliminary discovery, the parties agreed to mediation. Johnson Fistel was ultimately able to achieve a class-wide settlement that provided multiple forms of relief to class members, including: (i) a Settlement Fund totaling $875,000 in cash that was used to pay claims of class members impacted by

the data breach; (ii) enhanced credit and identity monitoring protection services for the class, which was valued at more than $972,000; and (iii) Lincare's agreement to implement certain enhanced data security measures to protect the company from future data breaches and safeguard the personal information of its employees.

- *In re: Apple Inc. Device Performance Litigation*, Case No. 18-md-02827-EJD (N.D. Cal.). In December 2017, Johnson Fistel filed a class action complaint against Apple Inc. ("Apple"), alleging that Apple knowingly designed the batteries of certain iPhones to prematurely degrade, causing them to unexpectedly shut down. After the matter was consolidated with numerous other lawsuits filed against Apple for similar alleged misconduct, Johnson Fistel was appointed to the Steering Committee of the consolidated action. The litigation concerns one of the largest consumer frauds in history, affecting hundreds of millions of mobile devices around the world. The Court approved a class-wide settlement pursuant to which Apple will make a minimum, non-revisionary payment of $310,000,000 and a maximum payment of up to $500,000,000, depending on the number of claims submitted. The approval of that settlement is currently on appeal.

Employment and Labor Cases

- *Alcantar, et al. v. Cardenas Markets, LLC,* JAMS Ref. No. 1240022966 (2019) (Brisco, Arb.): Johnson Fistel was retained by six plaintiff grocery workers alleging sexual harassment and related claims. The former employees alleged that the supermarket-employer, which is backed by a leading global investment firm and is a member store of one of the largest Hispanic supermarket chains in the country, permitted and engendered a norm of unwanted and violent sexual interaction between supervisors and their employees. The firm's aggressive prosecution in the multi-plaintiff action, which included extensive discovery practice and arbitration hearings, precipitated a substantial civil rights settlement in the amount of $875k.

- *Call v. Stillwater Hospitality LLC,* Case No. 30-2017-00961765 (Cal. Super. Ct. Orange Cnty.). Johnson Fistel represented a former employee in a lawsuit against the Stillwater restaurant companies seeking civil penalties under and pursuant to the Private Attorneys General Act ("PAGA") for alleged violations of the California Labor Code for, among other things, failure to properly calculate and pay overtime compensation. PAGA allows aggrieved employees to sue over alleged labor code violations on behalf of themselves and other aggrieved employees by stepping into the shoes of state regulators to recover civil penalties. Following extensive investigation

and hard-fought litigation, Johnson Fistel negotiated a significant settlement on behalf of its client and all other aggrieved employees.

- *Jane Doe v. Bad Employer*: Johnson Fistel represented a business development employee who instituted suit against her former employer, an industrial supply company. The plaintiff alleged, inter alia, that she was subjected to severe discrimination and harassment, and ultimately terminated, based on her medical condition. Johnson Fistel's tenacious advocacy procured a confidential settlement in favor of its client at an early stage of the litigation.

NOTEWORTHY SUCCESS STORIES

Johnson Fistel aggressively pursues complex litigation matters for both hourly paying clients and for contingency fee clients. While not an exhaustive list, below are a few of the cases for which the firm has achieved noteworthy successful results for its clients.

A Happy Client Following Trial

On behalf of a marketing firm, Johnson Fistel pursued claims for breach of contract and fraud against the manufacturer of a weight loss product. After a week-long jury trial, the jury returned a seven-figure verdict in favor of Johnson Fistel's client, including actual and punitive damages. *See* testimonials from the firm's client, Ronald T. Fricke, and the firm's co-counsel Gerald J. Stubenhofer, Esq. under Testimonials. *Healthy Life Marketing, LLC, et al. v. Jaime Brenkus' Sound Body, Inc.*, Case No. GIC822927 (Cal. Super. Ct. San Diego Cnty.).

Record Setting Class Action Settlement in Washington

In what is believed to be the largest recovery ever obtained in a class action challenging the price of a merger or acquisition of a public company in a Washington court, on January 20, 2017, the court approved a $12.75 million settlement for the benefit of former Flow shareholders. Specifically, the case challenged the fairness of the price shareholders received from the 2014 acquisition of Flow by American Industrial Partners. Johnson Fistel served as court-appointed Co-Lead Class Counsel.

After three years of hard-fought litigation, which included 26 depositions taken throughout the country, defeating defendants' motions to dismiss, defeating defendants' motion for summary judgment, and obtaining an order certifying the class, the parties reached an agreement to settle the case just before trial. "I am proud to be part of a settlement that achieved what is now a rarity, more money for the shareholders in a merger case," said Frank Johnson, one of the founding partners of Johnson Fistel. Cornerstone Research recently published a report regarding M&A shareholder suits in 2015 and the first half of 2016, reporting that amongst the hundreds of merger-related lawsuits identified, only six of those cases resulted in any monetary recovery for shareholders. The report concluded that in merger-related litigation, "monetary consideration paid to shareholders has remained relatively rare." *Englehart v. Brown*, Case No. 13-2-33726-6-KNT (Wash. Super. Ct. King Cnty.).

Recovering Cash for and Reforming Practices at a Global Social Media Company

Johnson Fistel, as Co-Lead Counsel served as a lead negotiator in this stockholder derivative action against certain current and former officers and directors of Twitter, Inc., recovering $38 million for the company and successfully negotiating

robust governance reforms tailored to address and prevent the reoccurrence of directors and officers of Twitter from issuing materially false and misleading statements about the company's user growth and user engagement prospects, a central allegation in the case. In reflecting on Johnson Fistel's efforts, Jim Porter, one of the shareholder plaintiffs that stepped up to prosecute the claims on behalf of Twitter, referred to the settlement as an "excellent result achieved for the company and its stockholders" and lauded Johnson Fistel's lawyers and staff as "professional, responsive, and personable….I would use them again and recommend them without hesitation." *In re: Twitter, Inc. Shareholder Derivative Litigation,* C.A. No. 18-062 (D. Del.).

One of the Largest Recoveries in a Derivative Case in Tennessee

Johnson Fistel was appointed sole Lead Counsel in this shareholder derivative action against certain current and former officers and directors of HCA Holdings, Inc., the largest private hospital chain in the country. The derivative claims related to similar facts that resulted in the company paying $215 million to settle a class action lawsuit filed by shareholders who alleged the company used false and misleading information to sell stock during its 2011 initial public offering.

The parties litigated the action for more than four years and attended multiple mediations, after which Johnson Fistel secured an extremely favorable settlement for HCA and its shareholders, including a payment of $19 million to HCA (believed to be among the largest recoveries in a derivative case in the State of Tennessee), the appointment of a new independent director, and implementation of significant corporate therapeutics. *Bagot v. Bracken, et al.*, Case No. 11C5133 (Tenn. Cir. Ct., 6th Cir.).

Helped Secure $24 million for the Company

Johnson Fistel was initially appointed Co-Lead Counsel in state court in one of the highest-profile cases in the country challenging the award of backdated stock options by executive officers of Brocade. For years, Brocade's insiders engaged in a secret stock option backdating scheme designed to reward executives and recruit engineers with stock options priced below their fair market value as of the date of the grants. The U.S. Government pursued and ultimately won criminal convictions against the responsible executives.

On behalf of its client, Johnson Fistel helped prevent an inadequate settlement of a related federal action from being approved, which would have released the officers, directors, and agents of the company responsible for the criminal backdating scheme resulting in no money to the company and only a payment of attorney's fees for the lawyers. Brocade then formed a Special Litigation Committee and retained Johnson Fistel as co-counsel to Brocade to help litigate claims against ten former

officers and directors of the company. After years of litigation, over $24 million was recovered for Brocade. *In re Brocade Communications, Systems, Inc. Derivative Litigation*, Case No. 1:05cv41683 (Cal. Super. Ct. Santa Clara Cnty.).

Helped Secure $29 Million for Shareholders

Johnson Fistel was appointed Co-Lead Counsel in a derivative lawsuit that involved claims against the officers and directors of Titan Corporation for breach of fiduciary duty. During the pendency of the litigation, Titan announced that it would be acquired, threatening to cause the shareholders in the derivative action to lose standing. Johnson Fistel then coordinated with counsel in a related derivative action pending in Delaware to negotiate a settlement that resulted in $29 million in increased consideration to Titan's shareholders in the all-cash merger acquisition. *In re the Titan Corp. Derivative Litigation*, Case No. GIC 832018 (Cal. Super. Ct. San Diego Cnty.).

Keeping Corporate America Accountable

Johnson Fistel, as court-appointed Co-Lead Counsel pursuant to the Private Securities Litigation Reform Action of 1995 ("PSLRA"), recovered $21 million for a class of shareholders who invested in Flowers Foods, Inc. The detailed, 154 page, 352 paragraph complaint withstood defendants' motions to dismiss and for reconsideration, and alleged that defendants made false and misleading statements in connection with the Company's labor strategy, resulting in the price of Flowers Foods stock to trade at artificially inflated prices during the Class Period. The $21 million class settlement is believed to be the largest securities fraud class action recovery since the passage of the PSLRA in the Middle District of Georgia. *In re Flowers Foods, Inc. Securities Litigation*, No. 7:16-cv-0022-WLS (M.D. Ga.).

Creating Shareholder Value Through Innovative Corporate Reforms

Johnson Fistel was appointed Lead Counsel in a shareholder derivative action brought on behalf of RH, Inc. alleging, among other things, that certain officers and directors of RH violated federal and state laws by making false and misleading statements concerning RH's business operations, financial condition, and growth prospects, as well as that certain defendants engaged in improper insider trading. On RH's behalf, Johnson Fistel negotiated sweeping and innovative corporate governance reforms to benefit the company, including installation of a new Chief Compliance Officer and adoption of a Disclosure Committee Charter. On December 18, 2020, the Honorable Yvonne Gonzalez Rogers granted final approval, noting that "the Court rarely comments on counsel's performance. Here, such commentary is appropriate. . . . Counsel performed excellent work in not only investigating and analyzing the core of the issues, but in negotiating and demanding the necessary reforms to prevent malfeasance for the benefit of the shareholders and

the consumers. The Court complements counsel for its excellence." *In re RH Shareholder Derivative Litigation*, No. 4:18-cv-02452-YGR (N.D. Cal).

Likewise, as Co-Lead Counsel, Johnson Fistel helped bring about reformative change at Motorola, Inc. The derivative claims there charged certain officers with making misrepresentations about the company's financial statements and prospects of success in order to artificially inflate the company's stock price while they personally sold shares and while causing the company to simultaneously purchase shares on the open market. After six years of hard-fought litigation, the action settled on terms that required the implementation of significant corporate therapeutic changes throughout the company—***changes that were valued by one expert at over $1 billion***. *In re Motorola, Inc. Derivative Litigation*, Case No. 07CH23297 (Ill. Cir. Ct. Cook County).

Helped Investors Harmed In Connection with Public Offerings

Johnson Fistel has extensive experience representing investors who purchased shares and suffered losses in connection with public offerings. In that regard, Johnson Fistel has successfully brought claims under the Securities Act of 1933 and helped investors recover many millions of dollars, including in the following class action cases: *Gerneth v. Chiasma, Inc., et al.*, No. 1:16-cv-11082-DJC (D. Mass.) ($18.75 million settlement achieved on behalf of investors who purchased shares in the Chiasma IPO); *Glock v. FTS International, Inc., et al.*, Civil Action No. 4:20-cv-03928 (S.D. Tx.) ($9.875 million settlement achieved on behalf of investors who purchased shares in the FTSI International IPO); *Desrocher v. Covisint Corporation, et al.*, Case No. 1:14-CV-03878-AKH (S.D.N.Y.) ($8 million settlement achieved on behalf of investors who purchased shares in the Covisint IPO); and *In re EverQuote, Inc. Securities Litigation*, Index No. 651177/2019 (N.Y. Sup. Ct., New York Cnty.) ($4.75 million settlement achieved on behalf of investors who purchased shares in the EverQuote IPO).

TESTIMONIALS

The Honorable Laura S. Taylor
United States Bankruptcy Court Judge
Southern District of California

"There's no question in my mind that this settlement is in the best interest of this Estate. So I'm prepared to approve it. . . . But I want to compliment Mr. Johnson, and I want to compliment on the successful recovery for the Estate. The creditors thank you, and I thank you." *In re Artes Medical, Inc.*, (Bankr. S.D. Cal., Case No. 08-12317-LT7) (approving a $3 million settlement recovered for the estate of a bankrupt public company after the Chapter 7 Trustee retained Johnson Fistel to pursue claims for breach of fiduciary against the directors). In approving the final award of attorneys' fees, Judge Taylor further stated: "The Court thanks [Johnson Fistel] for its outstanding work on behalf of the Chapter 7 Trustee and the Estate."

The Honorable Ed Kinkeade
United States District Court Judge
Northern District of Texas

"The quality of representation by the Derivative Plaintiffs' Counsel was witnessed first-hand by this Court through their articulate, high quality, and successful pleadings. Moreover, as shown by their excellent efforts in this case, Derivative Plaintiffs' Counsel are dedicated to vindicating the rights of shareholders." *In re Heelys, Inc. Derivative Litigation*, Case No. 3:07-CV-1682 (N.D. Tex.) (granting final approval of a settlement agreement that required the company to implement sweeping improvements to its governance).

The Honorable Edward M. Chen
United States District Court Judge
Northern District of California

Johnson Fistel's predecessor firm, Johnson & Weaver ("J&W"), has "demonstrated that they are qualified and experienced and are capable of acting as lead counsel." "The Court is favorably impressed by J&W's presentation and knowledge" and "J&W's experience litigating shareholder derivative actions gives it a certain amount of pre-existing expertise." *In re Oclaro, Inc. Derivative Litigation*, Case No. C-11-3176 EMC (N.D. Cal.) (appointing J&W, Lead Counsel in a complex shareholder derivative litigation in which three separate lawsuits were filed).

The Honorable W. Louis Sands
United States District Court Judge
Middle District of Georgia

"I'd also just like to acknowledge just really the professional way you all handled this case . . . and I think it is that type of substantial work from opposing sides that I think that is what we look at a settlement that both sides of this case have been well represented and represented so the Court is satisfied that it has been in the hands of people who knew what they were doing, and therefore the Court could well adopt and accept the representations made that are supported by the record with regard to just the settlement here."

The Honorable Yvonne Gonzalez Rogers
United States District Court Judge
Northern District of California

"The Court rarely comments on counsel's performance. Here, such commentary is appropriate . . . . Counsel performed excellent work in not only investigating and analyzing the core of the issues, but in negotiating and demanding the necessary reforms to prevent malfeasance for the benefit of the shareholders and the consumers. The Court complements counsel for its excellence. . . ." *In re RH Shareholder Derivative Litig.*, No. C 18-02452YGR (granting final approval of a settlement agreement that required the company to implement innovative and comprehensive corporate governance reforms).

The Honorable Layn R. Phillips
Retired United States District Court Judge
Western District of Oklahoma

"The settlement was reached through hard fought, arm's-length negotiations conducted by skilled counsel in good faith…. The Plaintiffs also are represented by counsel that I know and respect … which I count among the finest shareholder rights advocates."

The Honorable Howard B. Wiener
Retired Associate Justice
California Court of Appeal

"It is worth reiterating that the advocacy on both sides of the case was outstanding. I have decades of experience with attorneys from the law firms on both sides of this case, which are nationally recognized for their work prosecuting and defending large, complex class actions such as this. All counsel displayed the highest level of professionalism in carrying out their duties on behalf of their respective clients. The settlement is the direct result of all counsel's experience, reputation, and ability in these types of complex class actions."

Michelle Yoshida
Attorney & Mediator
Phillips ADR Enterprises

"Counsel for the parties were highly experienced in derivative litigation, well informed on the current law, and had performed considerable work to prepare the case for mediation.… The advocacy on both sides of the case was of the highest caliber and counsel for both parties exhibited great effort, creativity, and zeal in advocating their positions."

Jim Porter
Client

"Throughout five years of litigation, Johnson Fistel delivered thoughtful analysis, aggressive lawyering, and excellent service. As a stockholder of a large publicly traded company, I became concerned about the performance and integrity of the company's officers and directors. I retained Johnson Fistel to investigate potential wrongdoing and ultimately file a derivative lawsuit for the benefit of the company and its shareholders. Throughout the entire litigation, from my initial contact with the firm through the excellent result achieved for the company and its stockholders, the lawyers and staff at Johnson Fistel have been professional, responsive, and personable. I would use them again and recommend them without hesitation."

Rolf L. Nordström
Chairman of the Board
International Real Estate PLC

"As chairman of the board of a public company, my company was represented by Johnson Fistel to pursue claims for breach of fiduciary duty for millions of dollars against former directors of a company formed in England. I have retained law firms throughout the world and found Johnson Fistel's services to be superb. They were very responsive and grasped complex corporate matters involving international real estate transactions. The firm aggressively litigated my company's claims against several defendants who were represented by one of the largest law firms in the world. This case was very complex and complicated and involved three jurisdictions (U.S., Europe, and Sweden). The firm played an instrumental role in bringing the whole case to a successful settlement out of court. We ultimately reached a resolution short of trial with which I was very pleased."

James Baker
Chief Cost Reduction Officer
DCI Solutions

"While I was the Executive Vice President and Chief Financial Officer for a publicly traded company, I consulted Frank Johnson on various legal issues. As CFO

I was responsible for SEC reporting requirements and compliance with GAAP. In addition, I successfully completed the public offering of the company's stock which was a consistent top performer on the NASDAQ from 1998 to 1999. During the ten years I've known him, I've been very impressed with Mr. Johnson's integrity, business acumen, and understanding of complex securities issues. Based upon these factors, I retained Johnson Fistel to represent me in matters where it appeared that a public company's officers or directors engaged in fraudulent conduct to the detriment of the company's shareholders (of which I was one). As a former CFO for a public company and as a shareholder, I can say with confidence that this firm has proven to be aggressive and astute in identifying claims for fraudulent conduct in connection with the sale of publicly traded securities."

Gerald J. Stubenhofer, Esq.
Partner
McGuire Woods LLP

"While I was assistant general counsel for GNC Corporation, a publicly traded company at the time, I had the good fortune of working with Frank Johnson as GNC's lawyer. While he was at Sheppard Mullin, he successfully defended GNC in several matters, including a consumer class action and various business litigation matters. I have since left GNC Corporation and am now a partner at one of the largest law firms in the country. I have worked with Mr. Johnson on various matters, including a jury trial in San Diego, California. Mr. Johnson proved to be an exceptional trial lawyer who assisted my firm in obtaining an outstanding verdict in our client's favor. I have recommended him without reservation to both clients and lawyers who need highly skilled and effective representation."

Sean H. Mallean
President & CEO
Axeus, Inc.

"In 2004, Axeus, Inc. was using Sheppard Mullin, a large law firm, for nearly all of its legal matters. When Frank Johnson, who was then a partner at Sheppard Mullin, announced that he was departing to start his own law firm, I did not hesitate in my decision to send all of Axeus's litigation work to Mr. Johnson. At the time, Axeus was embroiled in a huge legal battle involving more than 20,000 pages of evidence and millions of dollars. Mr. Johnson helped Axeus successfully resolve that matter and has since handled several litigation matters for Axeus, all with outstanding results. I have worked with many different law firms over the years and I can say with confidence that Mr. Johnson is one of the best lawyers I've worked with. He

understands what is important to his clients: excellent legal work and value. While other firms may be less expensive, Johnson Fistel provides value for its fees."

Ted Mount
Owner
Natural Energy

"I am the owner of Natural Energy, which was established in 1977 and is the largest solar energy company in the western United States. Although we have an exceptional reputation, as with any large company, legal disputes are sometimes inevitable. After using a number of law firms, for the past several years Natural Energy has used Johnson Fistel for all of its business litigation matters, from general business disputes to successfully getting a baseless class action dismissed. They are aggressive, have a strong work ethic and, of utmost importance to me, have unquestionable integrity. I have the utmost faith and confidence in them."

Jean Marie Cinotto
Client

"I first retained Johnson Fistel when my husband and I became concerned with what I thought looked like wrongful conduct by executive management at one of the publicly traded companies in which we had invested. They always clearly communicated their strategy and the underlying legal reasons why it needed to be done that particular way. Most importantly, they always responded to any questions or concerns in a timely manner and consistently updated us without overwhelming us with complicated details. We were very happy with the outcome of the securities case. When I needed a lawyer again to help me with employment matters, I retained the firm again. They demonstrated that they were well informed and helped me get a settlement with which I was very pleased. I highly recommend Johnson Fistel and I would not hesitate to use them again."

Trudy York
Client

"I recently had the pleasure of working with the attorneys at Johnson Fistel in connection with a motion to have me appointed the lead plaintiff in a class action alleging claims for securities fraud. Throughout the process, Brett Middleton (the partner in charge at Johnson Fistel) did a fantastic job of explaining everything to me and made himself available for all questions. Unfortunately, I was not selected as the lead plaintiff because the court found other shareholders had even greater losses arising out of what appeared to me to be a fraud on the market. I truly regret not being able to work with Johnson Fistel on this case because I had a great deal of confidence in the firm and its lawyers based upon their attention to detail and

representation of me up to that point. I highly recommend Johnson Fistel to anyone looking for excellent representation."

Jillian Ibave
Secretary
Eagle Canyon Owners' Association

"I've worked with law firms in the past and found the lawyers and paralegals at Johnson Fistel to be first-rate. They kept me informed at every stage of this matter, they were responsive, I found their ideas to be creative, and their relentless approach caused me to believe they were passionate about having my best interest and the best interest of the class in mind."

Ronald T. Fricke
President
Healthy Life Marketing, LLC

"They were Awesome! They were professional, organized and as evidenced by juror testimonials following a one-week jury trial ... extremely effective. On claims for breach of contract and fraud, the firm helped me win a 7-figure verdict for me and my company and I will forever be grateful. You never realize how important it is to have a good attorney until you need one!"

Peter Czuczor
Client

"You guys are truly amazing. We've only worked together for a short period of time, but I already have an amazing opinion of you. The support, the detailed answers, your insights, the transparency, your prompt responses, everything. Please keep up the good work. I think the quality of your service is really unique in this world."

Tyler Martin
Client

"The team at Johnson Fistel far exceeded our expectations from the very beginning. We honestly didn't know what to expect but this team made each step so easy to understand. If we ever need legal counsel for anything else again, we will definitely be using them again. Thank you for everything."

EXHIBIT 16

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

EMPLOYEES RETIREMENT SYSTEM OF THE CITY OF ST. LOUIS, *et al.*, Plaintiffs, v. CHARLES E. JONES, *et al.*, Defendants, and FIRSTENERGY CORP., Nominal Defendant.	Case No. 2:20-cv-04813 Chief Judge Algenon L. Marbley Magistrate Judge Kimberly A. Jolson

DECLARATION OF GEORGE W. COCHRAN ON BEHALF OF THE LAW OFFICE OF GEORGE W. COCHRAN IN SUPPORT OF PLAINTIFFS' MOTION FOR FINAL APPROVAL OF SETTLEMENT AND REQUEST FOR ATTORNEYS' FEES AND EXPENSES

I, George W. Cochran, declare as follows:

1. I am the only member of a sole proprietorship known as the Law Office of George W. Cochran ("the firm"). I submit this Declaration in support of Plaintiffs' Motion for Final Approval of Settlement and Request for Attorneys' Fees and Expenses in connection with the Settlement[1] of the above-captioned shareholder derivative action (the "Action"). I have knowledge of the matters set forth herein based on personal knowledge, my review of the firm's records, and consultation with other personnel.

2. I served as Co-Lead counsel of record for Plaintiff John Gendrich in *Gendrich v. Anderson et al*, Case No. CV-2020-08-2161. I continued serving as co-counsel of record for

[1] As defined in the Stipulation and Agreement of Settlement dated March 11, 2022 (ECF No. 170-3).

Gendrich after the case was consolidated with *Sloan v Anderson*, *et al.* (Case No. CV 2020-08-2161). Upon learning of the charges, I conducted a pre-suit investigation of all available sources. Next, I conducted extensive legal research to evaluate liability and to develop a litigation strategy. With assistance from co-lead counsel, I drafted a derivative complaint that was revised several times before it was filed in Summit County Common Pleas court. Soon thereafter, we joined with *Sloan*'s counsel to work cooperatively on both derivative actions. My role on the state litigation team included conducting original legal research, legal drafting (pleadings, memoranda and briefs), evaluating other parties' filings, assisting with strategic decisions, participating in joint mediation activities, and contributing to global settlement negotiations.

3. The information in this Declaration regarding the firm's time, including in the schedule attached hereto as Exhibit 1, was prepared from daily records regularly prepared and maintained by my firm in the ordinary course of business. I oversaw my firm's activities in the litigation and personally reviewed my firm's time records to confirm their accuracy. The purpose of this review was to confirm both the accuracy of the entries in the time records as well as the necessity for, and reasonableness of, the time and expenses committed to the Action. Based on this review, I believe that the time reflected in the firm's lodestar calculation and the litigation expenses for which payment is sought are reasonable and were necessary for the effective and efficient prosecution and resolution of the Action.

4. The total number of hours the firm expended on this Action from its inception through March 11, 2022 was 403.15. The total resulting lodestar for my firm is $241,890. The schedule attached hereto as Exhibit 1 is a detailed summary reflecting the amount of time I spent in the Action and the lodestar calculation based on my firm's current hourly rates in similar matters.

5. My qualifications and background are attached hereto as Exhibit 2.

6. My hourly rate is reasonable for several reasons. *First*, it accurately reflects my customary hourly rate for serving as lead counsel in class action litigation.

7. *Second*, my hourly rate is reasonable in light of the firm's specialized skill and experience in class action litigation. Examples include:

- *Coulter v Camelot Village*, Case No. 1994-cv-699 (class action for inadequate drainage)
- *Meloy v Grandview Memorial Park,* Case No. 2016-cv-350 (class action to recover burial lot and interment charges)
- *Bodnar v Regional Income Tax Agency*, Case No. CV-19-925019 (class action to enjoin estimated tax penalties and interest)
- *Evans, et al. v Norman, et al.,* Case No. CV-20-941894 (class action to enjoin collection of special registration fee for electric vehicles)
- *Glasgow, et al. v Beers, et al.,* Case No. 5:21-cv-02001JRA (class action to recover excessive charges in healthshare plan)
- *MKMC, LLC v Ohio Dept. of Insurance et al.,* Case No. 22-cv-001504 (class action to refund unlawful license fees)

8. *Third*, the firm's hourly rates are significantly less than the rates charged by lawyers in derivative class litigation with reasonably comparable skill and experience but also a national reputation. *See, e.g. In re Snap Inc. Sec. Litig.*, No. 2:17-cv-03679-SVW-AGR, 2021 WL 667590, at *4 (C.D. Cal. Feb. 18, 2021), *In re Snap Inc. Sec. Litig.,* No. 2:17-cv-03679-SVW-AGR, ECF No. 386-9, at PAGEID #:18483-18485 (approving fee award in securities fraud class action with hourly rates ranging from $780-$920 for partners, $390-$690 for associates, and $385 for staff attorneys); *In re BHP Billiton Ltd. Sec. Litig.*, No. 16-cv-01445, 2019 WL 1577313, at *1 (S.D.N.Y. Apr. 10, 2019), *In re BHP Billiton Ltd. Sec. Litig.*, No. 16-cv-01445, ECF No. 122-1 at

2 (approving fee award in securities fraud class action with hourly ranging from $790-$1030 for partners, $400-$550 for associates, and $375 for staff attorneys).

9. *Fourth*, the firm's implied hourly rate of $600, based on the firm's lodestar and total hours billed, falls well within the range of those approved by courts in the Southern District of Ohio in shareholder derivative cases. *See Rudi v. Wexner*, No. 2:20-CV-3068, 2022 WL 1682297, at *5 (S.D. Ohio May 16, 2022) ("*L Brands*") (granting fee award with hourly rates of up to $1,685 for partners and $1,245 for associates), *L Brands*, 2:20-cv-03068, ECF No. 26-9 at PAGEID #: 1080; *In re Big Lots, Inc. S'holder Litig.*, No. 2:12-CV-445, 2018 WL 11356561, at *5 (S.D. Ohio Aug. 28, 2018), *Big Lots*, No. 2:12–cv–445, ECF No. 122-3 at PAGEID #: 2760 (approving hourly rates of up to $925 for partners and $650 for associates).

10. Based on records maintained by my firm, the Law Office of George W. Cochran incurred a total of $253.72 in unreimbursed litigation expenses related to travel in connection with the prosecution and settlement of the Action. (Plaintiffs' Counsel are not seeking separate reimbursement for their unreimbursed litigation expenses in this matter, but instead are seeking an "all in" attorneys' fee as a percentage of the total monetary recovery together with the overall value of the Reforms obtained through the Settlement.) The firm's expenses are fully categorized in Exhibit 1 attached hereto.

11. The litigation expenses incurred in this Action are reflected in the books and records of the Law Office of George W. Cochran, which are regularly prepared and maintained in the ordinary course of business. These records are prepared from expense vouchers, check records and other source materials and are an accurate record of the expenses incurred. These expenses were reasonably necessary in the prosecution of the Action. Courts have typically found that these kinds of expenses are payable to counsel who create a benefit for shareholders.

12. My firm undertook this litigation on an entirely contingent basis and have not been paid for any of their work, nor have any of their costs or expenses been reimbursed. My firm undertook the litigation of the Action with the expectation that it would have to devote many hours of hard work to the prosecution of a case involving complex factual and legal issues without any guarantee of successful resolution or of compensation for their efforts. The prosecution of this Action involved the expenditure of significant resources, including the time spent by myself, co-counsel and professional staff, as well as the substantial expenses that were incurred during the litigation, while my firm received no compensation during the course of the litigation.

13. This Declaration provides the Court with time only through March 11, 2022 (the date that the Stipulation and Agreement of Settlement was signed). Accordingly, this Declaration does not encompass time incurred from March 12, 2022 through the present. Also, this Declaration does not include time spent preparing Plaintiffs' Motion for Final Approval of Settlement and Request for Attorneys' Fees and Expenses.

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

Executed this 1st day of July, 2022 at Kent, Ohio.

/s/ George W. Cochran
LAW OFFICE OF GEORGE W. COCHRAN

EXHIBIT 1

Employees Retirement System of the City of St. Louis, et al., v. Charles E. Jones, et al.
Case No. 2:20-cv-04813

LAW OFFICE OF GEORGE W. COCHRAN

TIME REPORT

Inception through March 11, 2022

NAME	HOURS	HOURLY RATE	LODESTAR
George W. Cochran	403.15	600.00	$241,890
TOTAL LODESTAR	403.15	600.00	$241,890

EXHIBIT 2

Employees Retirement System of the City of St. Louis, et al., v. Charles E. Jones, et al.
Case No. 2:20-cv-04813

LAW OFFICE OF GEORGE W. COCHRAN
EXPENSE REPORT

CATEGORY	AMOUNT($)
Travel Expenses	$253.72
TOTAL EXPENSES:	$253.72

EXHIBIT 3

Employees Retirement System of the City of St. Louis, et al., v. Charles E. Jones, et al.
Case No. 2:20-cv-04813

FIRM RESUME

DECLARATION OF GEORGE W. COCHRAN

Pursuant to 28 U.S.C. § 1746, I hereby declare as follows:

1. I am a sole practitioner in the Law Office of George W. Cochran, located at 1981 Crossfield Circle, Kent, Ohio 4424o. I am competent to make this Declaration. The facts stated herein are based upon my personal knowledge.

2. I graduated in 1974 from Hiram College. In 1979, I graduated from Case Western Reserve University School of Law, where I won the Dean's Briefwriting Award and was a semi-finalist in the moot court competition. I was later awarded an M.A. in Ministry Management from Ashland Theological Seminary in 1993. Finally, I earned a Ph.D. in Church Leadership from the Southern Baptist Theological Seminary in 2013.

3. I have been licensed to practice law in Ohio since 1979 and Kentucky since 2009. I am a member in good standing of both. I am also admitted to practice in the Northern District of Ohio, Western

District of Kentucky and Eastern District of Kentucky. Finally, I am a member in good standing of the following U.S. Circuit Courts of Appeal: Second, Third, Fourth, Fifth, Sixth, Seventh, Ninth and Tenth.

4. I first began serving as lead counsel in consumer class litigation in 1995. For 25 years, I represented manufactured home park residents in class litigation. Many cases were brought under the auspices of Mobile Justice, Inc., an Ohio nonprofit I formed as Executive Director to extend my support statewide. I have secured far-reaching verdicts that have changed the landscape of manufactured home park law in Ohio. I was also a member of a litigation team which engaged in a longstanding battle with California's largest park operator over unconscionable lease terms.

5. Commencing approximately seven years ago, I branched out of manufactured home park litigation into serving as lead or co-lead counsel in several state and national consumer class actions.

Dated this the 1st day of July, 2022.

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

/s/ *George W. Cochran*
George W. Cochran

EXHIBIT 17

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

EMPLOYEES RETIREMENT SYSTEM OF THE CITY OF ST. LOUIS, *et al.*, Plaintiffs, v. CHARLES E. JONES, *et al.*, Defendants, and FIRSTENERGY CORP., Nominal Defendant.	Case No. 2:20-cv-04813 Chief Judge Algenon L. Marbley Magistrate Judge Kimberly A. Jolson

DECLARATION OF THOMAS J. CONNICK, ESQ FILED ON BEHALF OF CONNICK LAW, LLC IN SUPPORT OF PLAINTIFFS' MOTION FOR FINAL APPROVAL OF SETTLEMENT AND REQUEST FOR ATTORNEYS' FEES AND EXPENSES

I, Thomas J. Connick, Esq., declare as follows:

1. I am a Partner of Connick Law, LLC. I submit this Declaration in support of Plaintiffs' Motion for Final Approval of Settlement and Request for Attorneys' Fees and Expenses in connection with the Settlement[1] of the above-captioned shareholder derivative action (the "Action"). I have knowledge of the matters set forth herein based on personal knowledge, my review of the firm's records, and consultation with other firm personnel.

2. This firm is Co-Lead counsel of record for Plaintiff John Gendrich in *Gendrich v. Anderson et al.*, Case No. CV-2020-08-2161. I continued serving as co-counsel of record for

[1] As defined in the Stipulation and Agreement of Settlement dated March 11, 2022 (ECF No. 170-3).

Gendrich after the case was consolidated with *Sloan v Anderson*, *et al.* (Case No. CV 2020-08-2161). Upon learning of the charges, I conducted a pre-suit investigation of all available sources. Next, I conducted extensive legal research to evaluate liability and to develop a litigation strategy. With assistance from co-lead counsel, I drafted a derivative complaint that was revised several times before it was filed in Summit County Common Pleas court. Soon thereafter, we joined with *Sloan*'s counsel to work cooperatively on both derivative actions. My role on the state litigation team included conducting original legal research, legal drafting (pleadings, memoranda and briefs), evaluating other parties' filings, assisting with strategic decisions, participating in joint mediation activities, and contributing to global settlement negotiations.

3. The information in this Declaration regarding the firm's time, including in the schedule attached hereto as ***Exhibit 1***, was prepared from daily time records regularly prepared and maintained by my firm in the ordinary course of business. I am the Partner who oversaw my firm's activities in the litigation, and I reviewed my firm's daily time records to confirm their accuracy. The purpose of this review was to confirm both the accuracy of the entries in the time records as well as the necessity for, and reasonableness of, the time and expenses committed to the Action. As a result of this review, reductions were made to both time and expenses in the exercise of billing judgment. Based on this review and the adjustments made, I believe that the time reflected in the firm's lodestar calculation and the litigation expenses for which payment is sought are reasonable and were necessary for the effective and efficient prosecution and resolution of the Action.

4. The total number of hours expended on this Action by my firm's attorneys and professional support staff employees from its inception through March 11, 2022 was 258.4. The total resulting lodestar for my firm is $148,580.00. The schedule attached hereto as ***Exhibit 1*** is a

detailed summary reflecting the amount of time spent by each attorney and professional support staff employee of my firm who was involved in the Action, and the lodestar calculation based on my firm's current hourly rates.

5. My qualifications and background are attached hereto as ***Exhibit 3***.

6. My hourly rate is reasonable for several reasons, as reflected in ***Exhibit 3***. Additionally, the hourly rates by Connick Law, LLC are reasonable in light of the firm's highly specialized skill and experience when it comes to litigating and settling high stakes litigation including, but not limited to, several class action and mass tort litigations. Further, the hourly rates by Connick Law, LLC are consistent with the rates for similar services by lawyers of reasonably comparable skill, experience. *See, e.g. In re Snap Inc. Sec. Litig*., No. 2:17-cv-03679-SVW-AGR, 2021 WL 667590, at *4 (C.D. Cal. Feb. 18, 2021), *In re Snap Inc. Sec. Litig.,* No. 2:17-cv-03679-SVW-AGR, ECF No. 386-9 (approving fee award in securities fraud class action with hourly rates ranging from $780-$920 for partners, $390-$690 for associates, and $385 for staff attorneys); *In re BHP Billiton Ltd. Sec. Litig*., No. 16-cv-01445, 2019 WL 1577313, at *1 (S.D.N.Y. Apr. 10, 2019), *In re BHP Billiton Ltd. Sec. Litig*., No. 16-cv-01445, ECF No. 122-1 at 2 (approving fee award in securities fraud class action with hourly ranging from $790-$1030 for partners, $400-$550 for associates, and $375 for staff attorneys). Finally, Connick Law, LLC's implied hourly rate of $575, based on the firm's lodestar and total hours billed, falls well within the range of those approved by courts in the Southern District of Ohio in shareholder derivative cases. *See Rudi v. Wexner*, No. 2:20-CV-3068, 2022 WL 1682297, at *5 (S.D. Ohio May 16, 2022) ("*L Brands*") (granting fee award with hourly rates of up to $1,685 for partners and $1,245 for associates), *L Brands*, 2:20-cv-03068, ECF No. 26-9; *In re Big Lots, Inc. S'holder Litig*., No. 2:12-CV-445, 2018

WL 11356561, at *5 (S.D. Ohio Aug. 28, 2018), *Big Lots*, No. 2:12–cv–445, ECF No. 122-3 (approving hourly rates of up to $925 for partners and $650 for associates).

7. Based on records maintained by my firm, Connick Law, LLC incurred a total of $2,146.60 in unreimbursed litigation expenses in connection with the prosecution and settlement of the Action. (Plaintiffs' Counsel are not seeking separate reimbursement for their unreimbursed litigation expenses in this matter, but instead are seeking an "all in" attorneys' fee as a percentage of the total monetary recovery.) The firm's expenses are fully categorized in ***Exhibit 2*** attached hereto.

8. The litigation expenses incurred in this Action are reflected in the books and records of Connick Law, LLC, which are regularly prepared and maintained in the ordinary course of business. These records are prepared from expense vouchers, check records and other source materials and are an accurate record of the expenses incurred. These expenses were reasonably necessary in the prosecution of the Action. Courts have typically found that these kinds of expenses are payable to counsel who create a benefit for shareholders.

9. My firm undertook this litigation on an entirely contingent basis and have not been paid for any of their work, nor have any of their costs or expenses been reimbursed. My firm undertook the litigation of the Action with the expectation that it would have to devote many hours of hard work to the prosecution of a case involving complex factual and legal issues without any guarantee of successful resolution or of compensation for their efforts. The prosecution of this Action involved the expenditure of significant resources, including the time spent by attorneys and professional staff, as well as the substantial expenses that were incurred during the litigation, while my firm received no compensation during the course of the litigation.

10. This Declaration provides the Court with time only through March 11, 2022 (the date that the Stipulation and Agreement of Settlement was signed). Accordingly, this Declaration does not encompass time incurred from March 12, 2022 through the present. Also, this Declaration does not include time spent preparing Plaintiffs' Motion for Final Approval of Settlement and Request for Attorneys' Fees and Expenses.

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

Executed this 5th day of July 2022, at Beachwood, Ohio.

/s/ Thomas J. Connick
Thomas J. Connick
Managing Member
Connick Law, LLC

EXHIBIT 1

Employees Retirement System of the City of St. Louis, et al., v. Charles E. Jones, et al.
Case No. 2:20-cv-04813

CONNICK LAW, LLC TIME REPORT

Inception through March 11, 2022

NAME	HOURS	HOURLY RATE	LODESTAR
Thomas J. Connick	258.4	$575/hr.	$148,580

EXHIBIT 2

Employees Retirement System of the City of St. Louis, et al., v. Charles E. Jones, et al.
Case No. 2:20-cv-04813

CONNICK LAW, LLC EXPENSE REPORT

CATEGORY	AMOUNT($)
Filing Fees	1,802.50
Investigation Expense	0
Mediator	0
Online Legal and Factual Research	2.60
Transportation, Hotels and Meals	0
Postage and Delivery	74.40
Printing and Photocopy	267.10
TOTAL EXPENSES:	**$2,146.60**

EXHIBIT 3

CONNICK LAW, LLC FIRM RESUME

Connick Law, LLC
Attorneys at Law

Connick Law, LLC

25550 Chagrin Boulevard Suite 101, Beachwood, Ohio 44122 | (216) 364-0512 | www.connicklawllc.com

Thomas J. Connick, Esq.
Writer's Ext. 502

THOMAS J. CONNICK

CONNICK LAW, LLC *– Managing Member*
25550 Chagrin Blvd., Suite 101, Beachwood, OH 44122
216-364-0512; cell 440-724-6895

BIOGRAPHY

Tom is the founding Member & Principal of Connick Law, LLC, a top-rated Cleveland, OH law firm.

He's established a reputation of handling complex & high-stakes litigation. His experience includes: Insurance law, Catastrophic Personal Injury, Wrongful Death, Medical Malpractice, Class Actions, Commercial & Business Litigation, Corporate Risk Management, Mass Torts, Construction Law, Consumer Fraud & Employment Law, and Shareholder disputes.

His legal ability has led to successfully defending multi-million-dollar exposure lawsuits, as well as recovering in excess of $20,000,000 in verdicts and/or settlements. His appointment as class counsel in several class actions stem from his willingness to represent clients with extremely difficult circumstances. Tom's also succeeded in representing clients in litigation matters, including business contingency plaintiff cases, as well as successfully prosecuting consumer fraud cases. Tom's committed to his client's success through aggressive, integrity-based & skilled legal advocacy.

Tom is listed in the A.M. Best's Directory of Recommended Insurance Attorneys, and was named a Rising Star in the 2009 edition of Ohio Super Lawyers. His annual recognition in Cleveland's Top Rated Lawyers is based on his AV Preeminent rating from Martindale-Hubbell, the industry's leading peer-review ranking system, signifying he exhibits the highest level of professional & ethical standards. Tom is also a Life Member of the Multi-Million Dollar Advocates Forum and a 2020 and 2021 Best Lawyers in the area of Construction Law. Connick law, LLC has also been identified as a 2021 Metropolitan Tier 3 Best Law Firm.

Tom has argued before the Ohio Supreme Court three (3) times, and is an experienced appellate lawyer complementing his litigation practice. He is admitted to practice law in the following courts:

All Ohio Courts
U.S. District Court Ohio – Northern District
US. District Court Ohio – Southern District
U.S. Court of Appeals (Ohio) 6th Circuit
U.S. District Court – Northern District of Indiana
U.S. District Court – Middle District Florida
U.S. District Court – Middle District Georgia
U.S. District Court, Eastern District of Michigan
U.S. District Court, District of Delaware
U.S. District Court, Western District VA, Charlottesville Division
U.S. Court of Appeals, Fourth Circuit
Licensed to practice law as of January 25, 2022 in Virginia State

Tom also worked as an insurance adjuster and insurance Litigation Manager for an insurance company while he attended law school. After graduating law school, Tom spent nearly the first ten years of his practice serving as insurance defense counsel for some of the largest insurance carriers in Ohio and nationally. Since then, Tom continues to serve as insurance defense counsel, but also represents policyholders in breach of contract and bad faith actions in a variety of insurance related actions against various insurance companies locally and nationwide.

Tom has been described as "an excellent attorney and a good person," a "results-oriented client advocate," and as the "go-to guy for the tangled, messy, and interesting cases that can only be handled by one of the best."

PRACTICE AREAS

Insurance Law, Class Action, Mass Torts, Consumer Law, Construction Law, Large Loss Property Damage and Subrogation, Complex Litigation, Commercial/Business Litigation, Corporate Risk Management, General Liability, Appellate Practice, Shareholder litigation.

Mr. Connick's practice focuses on complex litigation involving all areas of law identified above. He is routinely involved in complex litigation with exposures ranging from the mid six figures to multi-million-dollar claims. Mr. Connick routinely serves as first chair counsel documenting, managing, negotiating, and litigating a wide variety of small to multi-million-dollar cases within his practice areas. Mr. Connick has also successfully represented clients in nearly all Ohio Appellate Courts, including the Ohio Supreme Court. Additionally, Mr. Connick has significant experience in corporate risk management, business litigation, shareholder litigation, as well negotiating business deals on behalf of corporate clients, both nationally and internationally.

EMPLOYMENT

Managing Member — Oct. 2014 - Present
Connick Law, LLC, 25550 Chagrin Blvd., #101, Beachwood, OH 44122

Partner — Oct. 2010 – Oct. 2014
Dubyak Connick Sammon Thompson & Bloom

Partner — 2000 - 2009
Davis & Young

Associate — May, 1998 – Feb. 2000
Weston Hurd

EDUCATION

B.A. — 1992
John Carroll University — *Cleveland, OH*

M.P.A. — 1994
University of Akron — *Akron, OH*

J.D. — 1998
Cleveland-Marshall College of Law — *Cleveland, OH*

PROFESSIONAL ASSOCIATIONS

- Ohio State Bar Association
- Cleveland Bar Association
- National Association of Consumer Advocates

HONORS AND AWARDS

- Cleveland Top Rated Lawyer
- AV Rated – Martindale-Hubbell
- Best's Recommended Insurance Attorney
- America's Top 100 Attorneys
- Multi-Million Dollar Advocates Forum
- Lead Counsel Rated
- 2020, 2021 Best Lawyers (Construction Law)
- Metropolitan Tier 3 Best Law Firm

EXHIBIT 18

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

EMPLOYEES RETIREMENT SYSTEM OF THE CITY OF ST. LOUIS, *et al.*, Plaintiffs, v. CHARLES E. JONES, *et al.*, Defendants, and FIRSTENERGY CORP., Nominal Defendant.	Case No. 2:20-cv-04813 Chief Judge Algenon L. Marbley Magistrate Judge Kimberly A. Jolson

DECLARATION OF MICHAEL P. DONOVAN ON BEHALF OF CO-LEAD PLANTIFF ELECTRICAL WORKERS PENSION FUND, LOCAL 103, I.B.E.W.

I, Michael P. Donovan, do hereby state as follows:

1. I am the Administrator of Electrical Workers Pension Fund, Local 103, I.B.E.W. ("IBEW Local 103"), which has served as a Co-Lead Plaintiff in this action. I make this declaration in support of Co-Lead Plaintiffs' application for final approval of the proposed settlement preliminarily approved by the Court on May 9, 2022 (the "Settlement"), an award of attorneys' fees and expenses (the "Fee and Expense Award"), and service awards to be paid to IBEW Local 103 and its fellow plaintiffs from the Fee and Expense Award (the "Service Awards").

2. IBEW Local 103 is a pension fund organized for the benefit of current and retired electrical workers in the Greater Boston area. IBEW Local 103 is a beneficial owner of shares of

common stock in FirstEnergy Corp. ("FirstEnergy") and has been a beneficial owner of shares of FirstEnergy common stock throughout the course of this action.

3. IBEW Local 103 has monitored the work of litigation counsel in this action and has been kept apprised of the status of the litigation from its inception to the present. Litigation counsel at Bernstein Litowitz Berger & Grossmann LLP ("BLB&G") have been in regular contact with me concerning significant developments and major decisions throughout the course of the litigation.

4. IBEW Local 103, based on the advice and recommendations of counsel, provided its approval to proceed with settlement negotiations and approved the terms of the Settlement, which include a $180,000,000 cash recovery for FirstEnergy as well as significant corporate governance reforms designed to deter and prevent the recurrence of misconduct similar to that which gave rise to this action. IBEW Local 103 believes the terms of the Settlement are fair and reasonable and represent an excellent result for FirstEnergy and its shareholders.

5. IBEW Local 103's litigation counsel at BLB&G have actively litigated this matter from September 2020 to the present on a fully-contingent basis, receiving no payment of attorneys' fees from IBEW Local 103. While IBEW Local 103 recognizes that any determination concerning attorneys' fees is left to the discretion of the Court, IBEW Local 103 believes that Plaintiffs' counsel's application for a total, all-in, Fee and Expense Award of 27% of the $180,000,000 monetary recovery realized in this action is fair and reasonable in light of the benefit achieved and the work performed by Plaintiffs' counsel on a fully-contingent basis.

6. I have also personally dedicated significant time and energy to the prosecution of this matter over the course of the past 22 months. I have, throughout the course of the litigation, regularly communicated with litigation counsel by email and telephone calls regarding the posture

and progress of the case and matters of litigation and settlement strategy and reviewed significant filings and Court orders. I dedicated particularly significant time and energy responding to discovery served by the Defendants in this action. Defendants propounded six sets of interrogatories (including 104 separate interrogatories), six sets of document requests (including 77 separate requests), and two sets of requests for admission (totaling 31 separate requests) on IBEW Local 103. I worked closely with litigation counsel to formulate IBEW Local 103's written responses to this voluminous discovery. I, along with other employees of IBEW Local 103 also expended considerable time and effort, on an expedited basis, to collect documentary materials for litigation counsel's review and production in response to the requests for production propounded by Defendants. I was also closely involved in overseeing the settlement of this action, regularly receiving updates and consulting with counsel on strategy throughout the period of mediation and negotiations culminating in the Settlement. In light of these significant efforts, and the benefits achieved for FirstEnergy and its shareholders as a result thereof, IBEW Local 103 believes it would be appropriate for IBEW Local 103 to receive the $10,000 requested Service Award, to be paid from the Fee and Expense Award.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct, and that I have authority to execute this Declaration on behalf of IBEW Local 103.

Executed this 6 day of July, 2022.

Michael P. Donovan, Administrator
Electrical Workers Pension Fund, Local 103

EXHIBIT 19

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

EMPLOYEES RETIREMENT SYSTEM OF THE CITY OF ST. LOUIS, *et al.*, Plaintiffs, v. CHARLES E. JONES, *et al.*, Defendants, and FIRSTENERGY CORP., Nominal Defendant.	Case No. 2:20-cv-04813 Chief Judge Algenon L. Marbley Magistrate Judge Kimberly A. Jolson

DECLARATION OF DENISE M. DROEGE ON BEHALF OF CO-LEAD PLANTIFF EMPLOYEES RETIREMENT SYSTEM OF THE CITY OF ST. LOUIS

I, Denise M. Droege, do hereby state as follows:

1. I am the Manager of the Employees Retirement System of the City of St. Louis ("St. Louis ERS"), which has served as a Co-Lead Plaintiff in this action. I make this declaration in support of Co-Lead Plaintiffs' application for final approval of the proposed settlement preliminarily approved by the Court on May 9, 2022 (the "Settlement"), an award of attorneys' fees and expenses (the "Fee and Expense Award"), and service awards to be paid to St. Louis ERS and its fellow plaintiffs from the Fee and Expense Award (the "Service Awards").

2. St. Louis ERS is a public pension fund organized for the benefit of current and retired employees of the City of St. Louis, Missouri. St. Louis ERS is a beneficial owner of shares

of common stock in FirstEnergy Corp. ("FirstEnergy") and has been a beneficial owner of shares of FirstEnergy common stock throughout the course of this action.

3. St. Louis ERS has monitored the work of litigation counsel in this action and has been kept apprised of the status of the litigation from its inception to the present. Litigation counsel at Saxena White P.A. have been in regular contact with St. Louis ERS's General Counsel, Scott Lang Harper, concerning significant developments and major decisions throughout the course of the litigation and Mr. Harper has kept the Board of Trustees of St. Louis ERS (the "Board") informed of important developments throughout the course of the litigation.

4. The Board, based on the advice and recommendations of counsel, provided its prior approval to proceed with settlement negotiations and approved the terms of the Settlement, which include a $180,000,000 cash recovery for FirstEnergy as well as significant corporate governance reforms designed to deter and prevent the recurrence of misconduct similar to that which gave rise to this action. St. Louis ERS believes the terms of the Settlement are fair and reasonable and represent an excellent result for FirstEnergy and its shareholders.

5. St. Louis ERS's litigation counsel have actively litigated this matter from September 2020 to the present on a fully-contingent basis, receiving no payment of attorneys' fees from St. Louis ERS. While St. Louis ERS recognizes that any determination concerning attorneys' fees is left to the discretion of the Court, St. Louis ERS believes that Plaintiffs' counsel's application for a total, all-in, Fee and Expense Award of 27% of the $180,000,000 monetary recovery realized in this action is fair and reasonable in light of the benefit achieved and the work performed by Plaintiffs' counsel on a fully-contingent basis.

6. Personnel of St. Louis ERS have also dedicated significant time and energy to the prosecution of this matter over the course of the past 22 months. Mr. Harper has, throughout the

course of the litigation, regularly communicated with litigation counsel by email and telephone calls regarding the posture and progress of the case and matters of litigation and settlement strategy and reviewed significant filings and Court orders. Mr. Harper and I both dedicated particularly significant time and energy responding to discovery served by the Defendants in this action. Defendants propounded six sets of interrogatories (including 104 separate interrogatories), six sets of document requests (including 77 separate requests), and two sets of requests for admission (totaling 31 separate requests) on St. Louis ERS. Mr. Harper and I worked closely with litigation counsel to formulate St. Louis ERS's written responses to this voluminous discovery. Mr. Harper and other employees of St. Louis ERS also expended considerable time and effort, on an expedited basis, to collect documentary materials for litigation counsel's review and production in response to the requests for production propounded by Defendants. Mr. Harper was also closely involved in overseeing the settlement of this action, regularly receiving updates and consulting with counsel on strategy throughout the period of mediation and negotiations culminating in the Settlement. In light of these significant efforts, and the benefits achieved for FirstEnergy and its shareholders as a result thereof, St. Louis ERS believes it would be appropriate for St. Louis ERS to receive the $10,000 requested Service Award, to be paid from the Fee and Expense Award.

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

Executed this 1st day of July, 2022.

Denise M. Droege

Denise M. Droege, Manager
Employees Retirement System
of the City of St. Louis

EXHIBIT 20

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

EMPLOYEES RETIREMENT SYSTEM OF THE CITY OF ST. LOUIS, *et al.*, Plaintiffs, v. CHARLES E. JONES, *et al.*, Defendants, and FIRSTENERGY CORP., Nominal Defendant.	Case No. 2:20-cv-04813 Chief Judge Algenon L. Marbley Magistrate Judge Kimberly A. Jolson

DECLARATION OF NATHAN GOLDSTEIN ON BEHALF OF PLANTIFF MASSACHUSETTS LABORERS PENSION FUND

I, Nathan Goldstein, do hereby state as follows:

1. I am Executive Director at Massachusetts Laborers Pension Fund ("MLPF"), which has served as one of the named Plaintiffs in this action. I became Executive Director on May 23, 2022, succeeding Louis Mandarini. Mr. Mandarini was the principal executive from MLPF involved in this matter from inception through settlement. I make this declaration in support of Co-Lead Plaintiffs' application for final approval of the proposed settlement preliminarily approved by the Court on May 9, 2022 (the "Settlement"), an award of attorneys' fees and expenses (the "Fee and Expense Award"), and service awards to be paid to MLPF and its fellow plaintiffs from the Fee and Expense Award (the "Service Awards").

2. MLPF is a multi-employer Taft-Hartley Pension Benefit Fund located in Burlington, Massachusetts, that provides retirement and pension benefits to workers who build roads, tunnels, bridges and skyscrapers. MLPF is a beneficial owner of shares of common stock in FirstEnergy Corp. ("FirstEnergy") and has been a beneficial owner of shares of FirstEnergy common stock throughout the course of this action. The following is my understanding of the pertinent facts based on discussion with counsel.

3. MLPF authorized this litigation and has monitored the work of litigation counsel in this action and has been kept apprised of the status of the litigation from its inception to the present. Litigation counsel at Cohen Milstein Sellers & Toll, PLLC ("Cohen Milstein" or "CMST") have been in regular contact with Darren Corrente counsel to the fund ("Fund Counsel"), and my predecessor, Louis Mandarini, concerning significant developments and major decisions throughout the course of the litigation. Fund Counsel, and Mr. Mandarini have kept the Board of Trustees of MLPF (the "Board") informed of important developments throughout the course of the litigation.

4. Based on the advice and recommendations of counsel, the MLPF Board provided its prior approval to proceed with settlement negotiations and subsequently approved the terms of the Settlement, which include a $180,000,000 cash recovery for FirstEnergy as well as significant corporate governance reforms designed to deter and prevent the recurrence of misconduct similar to that which gave rise to this action. MLPF believes the terms of the Settlement are fair and reasonable and represent an excellent result for FirstEnergy and its shareholders.

5. MLPF's litigation counsel have actively litigated this matter from September 2020 to the present on a fully-contingent basis, receiving no payment of attorneys' fees from MLPF. While MLPF recognizes that any determination concerning attorneys' fees is left to the discretion

of the Court, MLPF believes that Plaintiffs' counsel's application for a total, all-in, Fee and Expense Award of 27% of the $180,000,000 monetary recovery realized in this action is fair and reasonable in light of the benefit achieved and the work performed by Plaintiffs' counsel on a fully-contingent basis.

6. Personnel of MLPF have also dedicated significant time and energy to the prosecution of this matter over the course of the past 22 months. Mr. Mandarini and Fund Counsel have, throughout the course of the litigation, regularly communicated with CMST by email and telephone regarding the posture and progress of the case, substantive litigation matters, settlement strategy and reviewed significant filings and Court orders. Mr. Mandarini and MLPF staff dedicated significant time and energy responding to discovery served by the Defendants in this action. Defendants propounded six sets of interrogatories (including 104 separate interrogatories), six sets of document requests (including 77 separate requests), and two sets of requests for admission (totaling 31 separate requests) on MLPF. Mr. Mandarini worked closely with litigation counsel to formulate MLPF's written responses to this voluminous discovery. Mr. Mandarini and other employees of MLPF also expended considerable time and effort, on an expedited basis, to collect documentary materials for litigation counsel's review and production in response to the requests for production propounded by Defendants. Mr. Mandarini was also involved in overseeing the settlement of this action, regularly receiving updates and consulting with counsel on strategy throughout the period of mediation and negotiations culminating in the Settlement. In light of these significant efforts, and the benefits achieved for FirstEnergy and its shareholders as a result thereof, MLPF believes it would be appropriate for it to receive the $10,000 requested Service Award, to be paid from the Fee and Expense Award.

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

Executed this 6th day of July, 2022.

Nathan Goldstein
Executive Director Massachusetts
Laborers Pension Fund

EXHIBIT 21

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

EMPLOYEES RETIREMENT SYSTEM OF THE CITY OF ST. LOUIS, *et al.*, Plaintiffs, v. CHARLES E. JONES, *et al.*, Defendants, and FIRSTENERGY CORP., Nominal Defendant.	Case No. 2:20-cv-04813 Chief Judge Algenon L. Marbley Magistrate Judge Kimberly A. Jolson

DECLARATION OF JENNIFER L. MILLER

I, Jennifer L. Miller, do hereby state as follows:

1. I am a Plaintiff in *Miller v. Anderson, et al*., Case No. 5:20-cv-01743, pending in the United States District Court for the Northern District of Ohio. I make this declaration in support of Co-Lead Plaintiffs' application for final approval of the proposed settlement preliminarily approved by the Court on May 9, 2022 (the "Settlement"), an award of attorneys' fees and expenses (the "Fee and Expense Award"), and service awards to Plaintiffs from the Fee and Expense Award (the "Service Awards").

2. I am an individual residing in the State of California and have been a beneficial owner of shares of FirstEnergy common stock throughout the course of this action.

3. I have monitored the work of litigation counsel in this action and have been kept apprised of the status of the litigation from its inception to the present time. Litigation counsel at

Edelson Lechtzin LLP have been in regular contact with me concerning significant developments and major decisions throughout the course of the litigation. I also participated telephonically in the first case management conference in the Northern District litigation.

4. I believe the terms of the Settlement are fair and reasonable and represent an excellent result for FirstEnergy and its shareholders.

5. My litigation counsel at Edelson Lechtzin LLP have actively litigated this matter from August 2020 to the present on a fully-contingent basis, receiving no payment of attorneys' fees. While I recognize that any determination concerning attorneys' fees is left to the discretion of the Court, I believe that Plaintiffs' counsel's application for a total, all-in, Fee and Expense Award of 27% of the $180,000,000 monetary recovery realized in this action is fair and reasonable in light of the benefits achieved and the work performed by Plaintiffs' counsel on a fully-contingent basis.

6. I also have dedicated significant time and energy to the prosecution of this matter. I have, throughout the course of the litigation, regularly communicated with litigation counsel at Edelson Lechtzin LLP by email and telephone calls regarding the posture and progress of the case and matters of litigation and settlement strategy, and reviewed significant filings and Court orders. I dedicated significant time and energy responding to discovery served by the Defendants in this action. Defendants propounded interrogatories, document requests, and requests for admission. I worked closely with litigation counsel at Edelson Lechtzin LLP to formulate written responses to this voluminous discovery. In light of these significant efforts, and the benefits achieved for FirstEnergy and its shareholders as a result thereof, I believe it would be appropriate for me to receive the requested $10,000 Service Award, to be paid from the Fee and Expense Award.

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

Executed on 7/6/2022.

By: DocuSigned by: Jennifer Miller 8B3F8F8AFF0540A...

Jennifer L. Miller

EXHIBIT 22

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

EMPLOYEES RETIREMENT SYSTEM OF THE CITY OF ST. LOUIS, *et al.*, Plaintiffs, v. CHARLES E. JONES, *et al.*, Defendants, and FIRSTENERGY CORP., Nominal Defendant.	Case No. 2:20-cv-04813 Chief Judge Algenon L. Marbley Magistrate Judge Kimberly A. Jolson

DECLARATION OF ROBERT SLOAN IN SUPPORT OF PLAINTIFFS' MOTION FOR FINAL APPROVAL OF SETTLEMENT AND REQUEST FOR ATTORNEYS' FEES AND EXPENSES AND PLAINTIFF SERVICE AWARDS

I, Robert Sloan, do hereby state as follows:

1. I, along with John Gendrich, am one of the plaintiffs in the Ohio State Court Action,[1] styled *In re FirstEnergy Corp., Stockholder Derivative Litigation*, Case No. CV-2020-07-2107. I make this declaration in support of Plaintiffs' application for final approval of the proposed settlement preliminarily approved by the Court on May 9, 2022, an award of attorneys' fees and expenses (the "Fee and Expense Award"), and service awards to be paid to Plaintiffs from the Fee and Expense Award (the "Service Awards").

[1] Except as otherwise expressly provided below or as the context otherwise requires, all capitalized terms contained herein shall have the same meanings and/or definitions as set forth in the Stipulation and Agreement of Settlement dated March 11, 2022 (ECF No. 170-3) ("Settlement Agreement").

2. I have monitored the work of Co-Lead Counsel in the Ohio State Court Action from case inception through the present. Specifically, since the outset of the litigation, Michael I. Fistel, Jr. and Mary Ellen Conner at Johnson Fistel, LLP have continually updated me concerning developments in the litigation by providing me with regular written and verbal reports, supplying me with a number of documents describing the facts and claims in the case, and explained important developments, particularly with respect to settlement negotiations and the Settlement.

3. As a result of these communications, I believe I understand the issues presented in the case, the evolution of the settlement negotiations, and my lawyers' reasons for recommending the Settlement. I agree with my lawyers' recommendation. Specifically, I believe the Settlement, which included a $180,000,000 cash recovery for FirstEnergy, as well as significant corporate governance reforms designed to deter and prevent the recurrence of misconduct similar to that which gave rise to the Actions, will substantially benefit FirstEnergy and its shareholders. Balanced against the risks and uncertainty involved in pursuing further litigation, I am satisfied that the terms of the Settlement are fair and reasonable and represent an excellent result for FirstEnergy and its shareholders.

4. I understand that Plaintiffs' Counsel have actively litigated this matter since June 2020 to the present on a fully contingent basis, receiving no payment of attorneys' fees or expense reimbursement from me. While I understand that any determination concerning attorneys' fees and expense reimbursement is left to the discretion of the Court, I believe that Plaintiffs' Counsel's application for a total, all-in, Fee and Expense Award of 27% of the $180,000,000 monetary recovery secured by the Settlement is fair and reasonable in light of the benefit achieved and the work performed by Plaintiffs' Counsel on a fully contingent basis.

5. I understand and appreciate that my counsel has requested on my behalf a service award in the amount of $10,000 in recognition of my role in commencing the Ohio State Court Action, and for the time and effort I have spent since June 2022 overseeing the work of my lawyers and interacting with them regarding material developments in the case. I wish the Court to understand that my counsel offered me no assurance that I would receive any compensation for my involvement in the Ohio State Court Action or related litigation, and the prospect of such an award was not a factor in my decision to initiate, pursue, or settle the case. My lawyers explained that, in some cases, plaintiffs may apply for nominal service awards in recognition for their efforts, but they made clear that any such award would be subject to the Court's approval.

6. Specifically, since prior to and following the initiation of the Ohio State Court Action, I, among other things, reviewed and approved the initial and amended complaints filed in the Ohio State Court Action, reviewed various briefs sent to me in connection with Defendants' motion to dismiss, the motion to intervene, and the Special Litigation Committee's Motion to Stay, regularly received and reviewed written status reports regarding the prosecution and progress of the Ohio State Court Action and related litigation, reviewed and authorized the sending of the settlement demand, and communicated with counsel regarding settlement negotiations and settlement-related proceedings.

7. In light of these efforts, and the substantial benefits achieved for FirstEnergy and its shareholders as a result thereof, I respectfully submit that it would be appropriate for the Court to approve the requested $10,000 Service Award, to be paid from the Fee and Expense Award to me and to each of my fellow Plaintiffs.

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

Executed this 6 day of July, 2022.

DocuSigned by:
3226B9323E084BF...
Robert Sloan

EXHIBIT 23

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

EMPLOYEES RETIREMENT SYSTEM OF THE CITY OF ST. LOUIS, *et al.*, Plaintiffs, v. CHARLES E. JONES, *et al.*, Defendants, and FIRSTENERGY CORP., Nominal Defendant.	Case No. 2:20-cv-04813 Chief Judge Algenon L. Marbley Magistrate Judge Kimberly A. Jolson

DECLARATION OF JOHN GENDRICH IN SUPPORT OF PLAINTIFFS' MOTION FOR FINAL APPROVAL OF SETTLEMENT AND REQUEST FOR ATTORNEYS' FEES AND EXPENSES AND PLAINTIFF SERVICE AWARDS

I, John Gendrich, do hereby state as follows:

1. I, along with Robert Sloan, am one of the plaintiffs in the Ohio State Court Action,[1] styled *In re FirstEnergy Corp., Stockholder Derivative Litigation*, Case No. CV-2020-07-2107. I make this declaration in support of Plaintiffs' application for final approval of the proposed settlement preliminarily approved by the Court on May 9, 2022, an award of attorneys' fees and expenses (the "Fee and Expense Award"), and service awards to be paid to Plaintiffs from the Fee and Expense Award (the "Service Awards").

[1] Except as otherwise expressly provided below or as the context otherwise requires, all capitalized terms contained herein shall have the same meanings and/or definitions as set forth in the Stipulation and Agreement of Settlement dated March 11, 2022 (ECF No. 170-3) ("Settlement Agreement").

2. I have monitored the work of Co-Lead Counsel in the Ohio State Court Action from case inception through the present. Specifically, since the outset of the litigation, Thomas J. Connick of Connick Law LLC has continually updated me concerning developments in the litigation by providing me with regular written and verbal reports, supplying me with a number of documents describing the facts and claims in the case, and explained important developments, particularly with respect to settlement negotiations and the Settlement.

3. As a result of these communications, I believe I understand the issues presented in the case, the evolution of the settlement negotiations, and my lawyers' reasons for recommending the Settlement. I agree with my lawyers' recommendation. Specifically, I believe the Settlement, which included a $180,000,000 cash recovery for FirstEnergy, as well as significant corporate governance reforms designed to deter and prevent the recurrence of misconduct similar to that which gave rise to the Actions, will substantially benefit FirstEnergy and its shareholders. Balanced against the risks and uncertainty involved in pursuing further litigation, I am satisfied that the terms of the Settlement are fair and reasonable and represent an excellent result for FirstEnergy and its shareholders.

4. I understand that Plaintiffs' Counsel have actively litigated this matter since June 2020 to the present on a fully contingent basis, receiving no payment of attorneys' fees or expense reimbursement from me. While I understand that any determination concerning attorneys' fees and expense reimbursement is left to the discretion of the Court, I believe that Plaintiffs' Counsel's application for a total, all-in, Fee and Expense Award of 27% of the $180,000,000 monetary recovery secured by the Settlement is fair and reasonable in light of the benefit achieved and the work performed by Plaintiffs' Counsel on a fully contingent basis.

5. I understand and appreciate that my counsel has requested on my behalf a service award in the amount of $10,000 in recognition of my role in commencing the Ohio State Court Action, and for the time and effort I have spent since June 2022 overseeing the work of my lawyers and interacting with them regarding material developments in the case. I wish the Court to understand that my counsel offered me no assurance that I would receive any compensation for my involvement in the Ohio State Court Action or related litigation, and the prospect of such an award was not a factor in my decision to initiate, pursue, or settle the case. My lawyers explained that, in some cases, plaintiffs may apply for nominal service awards in recognition for their efforts, but they made clear that any such award would be subject to the Court's approval.

6. Specifically, since prior to and following the initiation of the Ohio State Court Action, I, among other things, reviewed and approved the initial and amended complaints filed in the Ohio State Court Action, reviewed various briefs sent to me in connection with Defendants' motion to dismiss, the motion to intervene, and the Special Litigation Committee's Motion to Stay, regularly received and reviewed written status reports regarding the prosecution and progress of the Ohio State Court Action and related litigation, reviewed and authorized the sending of the settlement demand, and communicated with counsel regarding settlement negotiations and settlement-related proceedings.

7. In light of these efforts, and the substantial benefits achieved for FirstEnergy and its shareholders as a result thereof, I respectfully submit that it would be appropriate for the Court to approve the requested $10,000 Service Award, to be paid from the Fee and Expense Award to me and to each of my fellow Plaintiffs.

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

Executed this 5th day of July, 2022.

John Gendrich

EXHIBIT 24

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D. C. 20549

FORM 8-K

CURRENT REPORT

PURSUANT TO SECTION 13 OR 15(d) OF THE
SECURITIES EXCHANGE ACT OF 1934

Date of Report (Date of earliest event reported): June 15, 2022

Commission File Number	Registrant; State of Incorporation; Address; and Telephone Number	I.R.S. Employer Identification No.
333-21011	FIRSTENERGY CORP (An Ohio Corporation) 76 South Main Street Akron OH 44308 Telephone (800) 736-3402	34-1843785

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

☐ Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
☐ Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
☐ Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
☐ Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Securities registered pursuant to Section 12(b) of the Act:

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common Stock, $0.10 par value per share	FE	New York Stock Exchange

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (17 CFR §230.405) or Rule 12b-2 of the Securities Exchange Act of 1934 (17 CFR §240.12b-2).
Emerging growth company ☐

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act. ☐

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Item 8.01 Other Events.

On June 15, 2022, the Board of Directors (the "Board") of FirstEnergy Corp. (the "Company") established the Special Review Committee of the Board (the "Committee"), commencing the process to review the Company's current c-suite executives, pursuant to the Stipulation and Agreement of Settlement, dated March 11, 2022, in the shareholder derivative actions, *Employees Retirement System of the City of St. Louis, et al. v. Jones, et al.* , Case No. 2:20-cv-04813 (S.D. Ohio); *Miller, et al. v. Anderson, et al.* , Case No. 5:20-cv-1743-JRA (N.D. Ohio), and *In re FirstEnergy Corp., Stockholder Derivative Litigation* , Case No. CV-2020-07-2107 (Summit Cty. Ct. Common Pleas). The Board appointed Ms. Lisa Winston Hicks and Messrs. Paul Kaleta, Sean Klimczak, Jesse A. Lynn, Andrew Teno, and Melvin Williams to serve on the Committee. After completing its review, which is expected to be by mid-September 2022, the Committee will make recommendations to the full Board, which retains the authority to make final determinations regarding any such recommendations.

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Forward-Looking Statements: This Form 8-K includes forward-looking statements based on information currently available to management. Such statements are subject to certain risks and uncertainties and readers are cautioned not to place undue reliance on these forward-looking statements. These statements include declarations regarding management's intents, beliefs and current expectations. These statements typically contain, but are not limited to, the terms "anticipate," "potential," "expect," "forecast," "target," "will," "intend," "believe," "project," "estimate," "plan" and similar words. Forward-looking statements involve estimates, assumptions, known and unknown risks, uncertainties and other factors that may cause actual results, performance or achievements to be materially different from any future results, performance or achievements expressed or implied by such forward-looking statements, which may include the following: the potential liabilities, increased costs and unanticipated developments resulting from government investigations and agreements, including those associated with compliance with or failure to comply with the Deferred Prosecution Agreement entered into on July 21, 2021 with the U.S. Attorney's Office for the Southern District of Ohio; the risks and uncertainties associated with government investigations and audits regarding Ohio House Bill 6, as passed by Ohio's 133rd General Assembly ("HB 6") and related matters, including potential adverse impacts on federal or state regulatory matters, including, but not limited to, matters relating to rates; the risks and uncertainties associated with litigation, arbitration, mediation, and similar proceedings, particularly regarding HB 6 related matters, including risks associated with obtaining court approval of the definitive settlement agreement in the derivative shareholder lawsuits; weather conditions, such as temperature variations and severe weather conditions, or other natural disasters affecting future operating results and associated regulatory actions or outcomes in response to such conditions; legislative and regulatory developments, including, but not limited to, matters related to rates, compliance and enforcement activity, cybersecurity, and climate change; the ability to accomplish or realize anticipated benefits from our FE Forward initiative and our other strategic and financial goals, including, but not limited to, overcoming current uncertainties and challenges associated with the ongoing government investigations, executing our transmission and distribution investment plans, greenhouse gas reduction goals, controlling costs, improving our credit metrics, growing earnings, and strengthening our balance sheet; the risks associated with cyber-attacks and other disruptions to our, or our vendors', information technology system, which may compromise our operations, and data security breaches of sensitive data, intellectual property and proprietary or personally identifiable information; mitigating exposure for remedial activities associated with retired and formerly owned electric generation assets; the ability to access the public securities and other capital and credit markets in accordance with our financial plans, the cost of such capital and overall condition of the capital and credit markets affecting us, including the increasing number of financial institutions evaluating the impact of climate change on their investment decisions; the extent and duration of the COVID-19 pandemic and the related impacts to our business, operations and financial condition resulting from the outbreak of COVID-19 including, but not limited to, disruption of businesses in our territories, supply chain disruptions, additional costs, workforce impacts and governmental and regulatory responses to the pandemic, such as moratoriums on utility disconnections and workforce vaccination mandates; actions that may be taken by credit rating agencies that could negatively affect either our access to or terms of financing or our financial condition and liquidity; changes in assumptions regarding factors such as economic conditions within our territories, the reliability of our transmission and distribution system, or the availability of capital or other resources supporting identified transmission and distribution investment opportunities; changes in customers' demand for power, including, but not limited to, economic conditions, the impact of climate change, or energy efficiency and peak demand reduction mandates; changes in national and regional economic conditions, including recession and inflationary pressure, affecting us and/or our customers and those vendors with which we do business; the potential of non-compliance with debt covenants in our credit facilities; the ability to comply with applicable reliability standards and energy efficiency and peak demand reduction mandates; changes to environmental laws and regulations, including, but not limited to, those related to climate change; changing market conditions affecting the measurement of certain liabilities and the value of assets held in our pension trusts, or causing us to make contributions sooner, or in amounts that are larger, than currently anticipated; labor disruptions by our unionized workforce; changes to significant accounting policies; any changes in tax laws or regulations, or adverse tax audit results or rulings; and the risks and other factors discussed from time to time in our Securities and Exchange Commission filings. These forward-looking statements are also qualified by, and should be read together with, the risk factors included in FirstEnergy Corp.'s filings with the SEC, including, but not limited to, the most recent Annual Report on Form 10-K and any subsequent Quarterly Reports on Form 10-Q and Current Reports on Form 8-K. The foregoing review of factors also should not be construed as exhaustive. New factors emerge from time to time, and it is not possible for management to predict all such factors, nor assess the impact of any such factor on FirstEnergy Corp.'s business or the extent to which any factor, or combination of factors, may cause results to differ materially from those contained in any forward-looking statements. FirstEnergy Corp. expressly disclaims any obligation to update or revise, except as required by law, any forward-looking statements contained herein or in the information incorporated by reference as a result of new information, future events or otherwise.

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SIGNATURE

Pursuant to the requirements of the Securities Exchange Act of 1934, the Registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

June 17, 2022

FIRSTENERGY CORP.

Registrant

By: /s/ Jason J. Lisowski

Jason J. Lisowski

Vice President, Controller and

Chief Accounting Officer

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EXHIBIT 25

Electronically Filed
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Case #19CV341522
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SUPERIOR COURT OF CALIFORNIA

COUNTY OF SANTA CLARA

IN RE ALPHABET INC. SHAREHOLDER DERIVATIVE LITIGATION

Lead Case No.: 19CV341522

ORDER AFTER HEARING ON NOVEMBER 30, 2020 AND JUDGMENT

(1) Motion for Final Approval of Derivative Settlement
(2) Motion for Award of Attorneys' Fees and Expenses

The above-entitled matter came on regularly for hearing on Monday, November 30, 2020 at 1:30 p.m. in Department 1 (Complex Civil Litigation), the Honorable Brian C. Walsh presiding. A tentative ruling was issued prior to the hearing, which no party challenged. The appearances are as stated in the record. Having reviewed and considered the written submissions of all parties and being fully advised, the Court adopts the tentative ruling and enters judgment as follows:

These consolidated shareholder derivative actions arise from allegations that officers and directors of Alphabet, Inc., the parent company of Google LLC, breached their fiduciary duties and committed other misconduct in connection with multi-million-dollar severance

awards to male executives accused of assaulting female employees, amid a broader culture of discrimination against women at the company. The plaintiffs also allege claims arising from a data breach impacting the Google+ service.

The parties reached a settlement, which the Court preliminarily approved in an order filed on October 22, 2020. The factual and procedural background of the action and the Court's initial analysis of the settlement are set forth in that order and are not repeated here.

Before the Court are plaintiffs' motions for final approval of the settlement and for approval of their attorney fees and costs. Plaintiffs' motions are unopposed, but two Google shareholders filed written objections to the settlement.

I. Legal Standard for Approving a Derivative Settlement

"A court reviewing a settlement agreement considers whether the proposed settlement is fair and reasonable in light of all relevant factors. [Citations.] A court reviews the settlement of a derivative suit as a means of protecting the interests of those who are not directly represented in the settlement negotiations." (*Robbins v. Alibrandi* (2005) 127 Cal.App.4th 438, 445.) "The duty of a court reviewing a settlement of a class action provides a useful analogy because the court in such cases seeks to protect the members of the class who, like the corporation and non-named shareholders in a derivative suit, may have no independent representation and little control over the action." (*Id.* at p. 449, fn. 2.) Thus, in evaluating the fairness of this derivative settlement, the Court's analysis is guided by relevant legal authorities regarding the approval of class action settlements.

Generally, "questions whether a settlement was fair and reasonable, whether notice to the class was adequate, … and whether the attorney fee award was proper are matters addressed to the trial court's broad discretion." (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 234-235, citing *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, disapproved of on another ground in *Hernandez v. Restoration Hardware, Inc.* (2018) 4 Cal.5th 260.)

> In determining whether a class settlement is fair, adequate and reasonable, the trial court should consider relevant factors, such as the strength of plaintiffs' case,

> the risk, expense, complexity and likely duration of further litigation, ... the amount offered in settlement, the extent of discovery completed and the stage of the proceedings, the experience and views of counsel, the presence of a governmental participant, and the reaction of the class members to the proposed settlement.

(*Wershba v. Apple Computer, Inc., supra*, 91 Cal.App.4th at pp. 244-245, internal citations and quotations omitted.)

The list of factors is not exclusive and the court is free to engage in a balancing and weighing of factors depending on the circumstances of each case. (*Wershba v. Apple Computer, Inc., supra*, 91 Cal.App.4th at p. 245.) The court must examine the "proposed settlement agreement to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned." (*Ibid.*, quoting *Dunk v. Ford Motor Co., supra*, 48 Cal.App.4th at p. 1801, internal quotation marks omitted.)

> The burden is on the proponent of the settlement to show that it is fair and reasonable. However "a presumption of fairness exists where: (1) the settlement is reached through arm's-length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small."

(*Wershba v. Apple Computer, Inc., supra*, 91 Cal.App.4th at p. 245, citing *Dunk v. Ford Motor Co., supra*, 48 Cal.App.4th at p. 1802.)

The presumption does not permit the Court to "give rubber-stamp approval" to a settlement; in all cases, it must "independently and objectively analyze the evidence and circumstances before it in order to determine whether the settlement is in the best interests of those whose claims will be extinguished," based on a sufficiently developed factual record. (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 130.)

II. Terms of the Settlement and Notice to Shareholders

The settlement provides for the adoption, within 12 months of its effective date, of certain "Agreed-To Measures" summarized in the Court's October 22nd order granting

preliminary approval, which shall remain in place for at least five years. Key measures include Alphabet's agreements to extend its waiver of mandatory arbitration to harassment, discrimination, and retaliation disputes involving Other Bets (Alphabet's subsidiaries other than Google); to formalize and augment the duties of the Leadership Development and Compensation Committee ("LDCC") related to claims of sexual harassment, discrimination, and retaliation, as well as compensation decisions for "Senior Executives" found to have engaged in serious misconduct involving sexual harassment, sexual misconduct, or retaliation; to formalize and augment the duties of the Audit and Compliance Committee ("AC Committee") and Google employees that will report to the AC regarding compliance, including the creation of a "rapid response" team responsible for certain cases involving "Senior Executives" and/or the most serious allegations; to create an Employee Disciplinary Committee to review the relevant investigative team's disciplinary recommendations for certain cases and a Corrective Action Committee to make final disciplinary determinations in certain cases; to commit to continuing its current practice of not providing severance to any employee, including a "Senior Executive," terminated for sexual harassment, sexual misconduct, or retaliation while formalizing and revising related protocols; to commit to continue disallowing any employee, including a "Senior Executive," investigated or sued for such misconduct to modify their 10b5-1 plan while Google's investigation is ongoing or results in a recommendation of termination; and to formally include Google values as performance expectations and provide compensation-based incentives for positive behavior, while also communicating that misconduct is considered in pay, promotions, and severance decisions.

The Stipulation further provides that Alphabet shall establish and maintain a Diversity, Equity, and Inclusion Advisory Council (the "DEI Advisory Council") for at least five years from the effective date of the settlement. The DEI Advisory Council will be responsible for overseeing the creation, implementation, and ongoing operation of the Agreed-To Measures. It will have three internal members, in addition to Alphabet's CEO Sundar Pichai for the first year, as well as a minimum of three external members with expertise in diversity, inclusion, equity and/or sexual harassment. The external members will be Judge Nancy Gertner (Ret.),

Grace Speights, and Fred Alvarez, who were jointly selected by Alphabet and plaintiffs' co-lead counsel. The DEI Advisory Council will meet at least once per quarter and external members are free to meet without other members. Representatives of the council will participate in at least one annual meeting with the LDCC, and the council will provide written quarterly reports to the CEO and LDCC for three years, which may thereafter be made annual.

Finally, Alphabet shall cause to be spent a total of $310 million over the course of up to 10 years on the following workplace initiative and programs (the "Workplace Initiative"): (1) Expanding the pool of technologists, especially those who are diverse, historically underrepresented, and/or disadvantaged, including by increasing educational and career opportunities through investments in computer science programs to build computer science talent; (2) Hiring, progression, and retention of historically underrepresented talent at Alphabet and in particular at Google; (3) Fostering respectful, equitable, and inclusive workplace cultures; and (4) Helping historically underrepresented groups and individuals succeed with their businesses and in the digital economy and tech industry, including by supporting conferences and events and increasing access to digital tools and opportunities. The Chief Diversity Officer will be responsible for tracking the spending of this funding, and will report annually to the LDCC and the DEI Advisory Council.

In exchange for the measures described above, the individual defendants, Alphabet, and their Related Persons will obtain a release of all claims

> that Alphabet, the Settling Stockholders derivatively on behalf of Alphabet, or any Alphabet stockholder derivatively on behalf of Alphabet (i) asserted in any of the complaints filed in the Litigations or in the Demands in the Settled Matters, or (ii) could have asserted in any court, tribunal, forum, or proceeding, arising out of, relating to, or based upon the facts, allegations, events, disclosures, nondisclosures, occurrences, representations, statements, matters, transactions, conduct, actions, failures to act, omissions, or circumstances that were alleged or referred to in any of the complaints filed in the Litigations or in the Demands in the Settled Matters; provided, however, that the Released Stockholder Claims shall not include (i) any claims asserted in the pending stockholder and consumer class actions captioned *In re Alphabet, Inc. Securities Litigation*, Lead Case No. 4:18-CV-6245-JSW (N.D. Cal.), and *In re Google Plus Profile Litig.*, Case No. 5:18-CV-6164-EJD (N.D. Cal.), (ii) any claims relating to the enforcement of the Settlement or this Stipulation, or (iii) any claims that arise out of or are based upon any conduct of the Released Defendant Persons after the Effective Date.

Defendants have agreed not to oppose an award of fees and expenses of up to $29 million. Notice of the settlement has now been provided to shareholders in the manner directed at preliminary approval. The notice and stipulation of settlement were posted online and will remain available through final approval. The notice was filed by Alphabet in a Form 8-K with the SEC on October 23, 2020. The summary notice was published in the weekly national edition of *Investor's Business Daily* on October 26, 2020. The notices provided that Alphabet shareholders would have until November 16, 2020 to submit a written objection to the settlement or proposed fee and expense award to plaintiffs' counsel. Only two shareholders have filed objections, which are addressed below.

III. Fairness of the Settlement

At preliminary approval, the Court found that the proposed settlement is fair and reasonable to Alphabet shareholders considering the benefits it provides in relation to the risks of continued litigation. After discussing the merits of plaintiffs' claims and their associated risks, the Court concluded:

> … [T]he settlement of this California Action is fair and reasonable for purposes of preliminary approval. While some of the allegations underlying plaintiffs' complaints are scandalous, their path to wresting control of this action from the Board and, in particular, the [Special Litigation Committee ("SLC")], is difficult and uncertain. The merits are hotly disputed, and continuing to battle them out in public may well do the company more harm than good given the nature of the claims and the uncertain recovery at issue. The settlement provides significant value to Alphabet in the form of meaningful governance reforms and financial commitments addressed to the issues giving rise to these actions. Ultimately, the Court believes that preventing further incidents like those described by plaintiffs will be more valuable to the company and its shareholders than any likely financial recovery in this action, and it appears that the reforms negotiated by the parties are well-designed to accomplish this.

The Court's preliminary conclusions are further supported by declarations from two individuals with relevant expertise: Professor Suzanne B. Goldberg of Columbia Law School and Professor Daniel J. Morrissey of Gonzaga University School of Law. Professor Goldberg has deep experience in law and policy related to workplace sexual harassment and other forms of employment discrimination and was retained by plaintiffs' co-lead counsel in this matter on

January 6, 2020, as settlement efforts began. She declares that she has consulted with plaintiffs' co-lead counsel on all aspects of the development of the settlement agreement since she was retained, and explains her belief that the various aspects of the settlement will "reform systems that permitted sexual harassment, discrimination and retaliation and enabled rewards for those who were credibly accused of sexual misconduct in the past," discussing how key aspects of the settlement will further this goal. She describes the qualifications of the three independent members of the DEI Advisory Council, which are considerable, and explains how the structure and duties of the Council and the access it will have will allow it to ensure that Alphabet does not regress in its efforts regarding workplace equity and continues to adopt state-of-the-art policies and plans to prevent and respond to harassment, discrimination, and retaliation throughout its workforce.

Professor Morrissey has expertise in securities litigation, including derivative suits like this one, and concludes that the corporate governance reforms achieved by the settlement are extremely valuable to Alphabet and its shareholders, likely in excess of $100 million. He explains how the various reforms provided by the settlement will reduce the risk that sexual misconduct by a senior officer will go unaddressed in the future, which is particularly important given the importance of Google's employees to the company's long-term value and the prior negative impact on stockholder value arising from credible allegations of sexual misconduct at Alphabet that was allowed to fester. While acknowledging that it is impossible to state precisely the dollar value of the benefits conferred on Alphabet by the settlement, he "confidently" and persuasively concludes that they will be very substantial over the long term.

The first objection to the settlement is by a John Doe shareholder, who is represented by attorney Chris Baker in unrelated litigation against Alphabet.[1] Doe raises various criticisms

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[1] Plaintiffs object to the Court's consideration of Doe's objection and contend that it is not supported by admissible evidence. Because the objection ultimately does not impact the Court's ruling, it need not rule on plaintiffs' objections to it. (See, e.g., Code Civ. Proc., § 437c, subd. (q) [in summary judgment context, "the court need rule only on those objections to evidence that it deems material to its disposition of the motion. Objections to evidence that are not ruled on for purposes of the motion shall be preserved for appellate review."].) Plaintiffs' request for judicial notice of the fact that Mr. Baker represents plaintiffs in several Private Attorneys General Act actions against Alphabet and/or Google (Ex. 1 to plaintiffs' November 19th, 2020 request) is GRANTED. (Evid. Code, § 452, subds. (c) and (h).)

of the settlement, including that it does not require the individual defendants to return their challenged severance payments or stock sales and that it does not provide adequate value to Alphabet. However, a settlement is by definition a compromise and need not achieve the maximum recovery that might be possible to constitute a fair result. It has long been held that "the realization of substantial, if nonpecuniary, benefits by the corporation" supports a nonmonetary settlement of a derivative action. (*Fletcher v. A. J. Industries, Inc.* (1968) 266 Cal.App.2d 313, 324–325; see also *Cziraki v. Thunder Cats, Inc.* (2003) 111 Cal.App.4th 552, 558.) Such benefits are provided by the settlement here. While Doe points to two settlements of derivative actions related to sexual harassment that did achieve substantial monetary recoveries, different circumstances were present in those cases.[2] Doe argues that many of the commitments and reforms encompassed by the settlement already were or would have been adopted by Alphabet even without this lawsuit. However, the Court finds that the key governance reforms summarized above, including the creation of the DEI Advisory Council, are attributable to the settlement. While Doe criticizes two of the external DEI Advisory Council members for having represented Google in the past or for being a member of a law firm that currently represents Google, he does not establish that either of these well-qualified individuals has a conflict of interest.[3] Doe contends that Google already spends millions on diversity efforts, but its formal commitment to the Workplace Initiative at a time of great economic uncertainty is meaningful. Finally, Doe raises criticisms of Alphabet's confidentiality policies and employment nondisclosure agreements, but those policies and

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[2] For example, the plaintiffs in *In re Wynn Resorts, Ltd. Derivative Litigation* had successfully opposed a motion to dismiss based on demand futility, and regulators had imposed substantial fines due to the conduct at issue. *City of Monroe Employees' Retirement System v. Murdoch et al.* settled before derivative litigation was even filed, after a lawsuit by a high-profile television host prompted many other suits alleging sexual misconduct, racial discrimination, and retaliation and led to the public disclosure of many prior settlements.

[3] As explained by Professor Goldberg, the DEI Advisory Council is designed to be an extension of the LDCC, and the LDCC's engagement with the Council is crucial. Consequently, it is important that the Council's members were jointly agreed to by all parties to promote collegiality and collaboration with the LDCC.

agreements are not at issue in these derivative actions, and claims arising from them are not released by the settlement.[4]

On November 23, 2020, a second objection to the settlement was filed by DeWayne Cassel, who is also represented by Mr. Baker in unrelated litigation against Alphabet. The Court has read and considered this objection, which raises many of the same arguments as Doe's objection. Cassel's objection does not change the Court's conclusion that the settlement achieves valuable benefits for Alphabet and its shareholders and warrants approval.

Having considered the briefing and evidence submitted at preliminary and final approval, including Doe's and Cassel's objections, and in light of its own experience with this action and other derivative litigation, the Court finds the settlement is fair and reasonable for purposes of final approval.

IV. Attorney Fees and Costs

Plaintiffs seek a combined fee and cost award of $29 million, which is a substantial sum, but which represents less than a third of the at least $100 million in long-term value that Professor Morrissey estimates the settlement will provide to Alphabet. Under the circumstances,

> the court considers whether the litigation has conferred a substantial benefit on the corporation, i.e., a benefit that is actual and concrete and not conceptual or doctrinal. [Citations.] The benefit need not be pecuniary [citation], but it must be " 'something more than technical in its consequence and ... one that accomplishes a result which corrects or prevents an abuse which would be prejudicial to the

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[4] Doe also contends that notice of the settlement was inadequate because it states that Alphabet stockholders who held stock as of 2014 may object, but Alphabet was not formed until 2015, and the notice requires that shareholders who submit a written objection satisfy "onerous and intrusive requirements that serve no legitimate purpose (including the disclosure of objector addresses and phone numbers)." While the notice might have been improved in these respects, it also clearly stated that "[a]ny current Alphabet stockholder may also appear and object at the Settlement Hearing … with or without having submitted a written objection." The Court has considered Doe's objection although he has not even disclosed his name, and Alphabet has not objected: indeed, Alphabet assured the objector that "should any current Alphabet shareholders who did not continuously hold stock during the period covered by the litigation, file an objection, Alphabet will not object to consideration of their objection by the Court." The notice ordered at preliminary approval was adequate, and there is no indication that any Alphabet shareholder who desired to be heard with regard to the settlement has not been heard. Plaintiffs' request for judicial notice of similar notices issued in connection with other derivative settlements (Exs. 2–8 to plaintiffs' November 19th, 2020 request) is GRANTED, although the mere issuance of these notices does not provide authority for the proposition that any particular aspect of the notices was adequate.

> rights and interests of the corporation or affect[s] the enjoyment or protection of an essential right to the stockholder's interest.' " (*Mills v. Electric Auto–Lite* (1970) 396 U.S. 375, 396, 90 S.Ct. 616, 24 L.Ed.2d 593, quoting *Bosch v. Meeker Cooperative Light and Power Ass'n* (1960) 257 Minn. 362, 101 N.W.2d 423, 427.)

For the reasons already discussed, the Court finds that the settlement before it provides substantial benefits to Alphabet shareholders, justifying an award of fees and costs to plaintiffs' counsel.

"[A] court awarding fees under the 'substantial benefit doctrine' begins by establishing a 'lodestar' amount." (*Robbins v. Alibrandi, supra,* 127 Cal.App.4th at p. 453.) The lodestar figure is "based on the careful compilation of the time spent and reasonable hourly compensation of each attorney involved in the presentation of the case." (*Id.* at p. 448.) "The court then has the power and the duty to enhance, or to reduce, the lodestar through the use of multipliers, by taking into consideration factors such as the novelty and complexity of the issues, the skill and expertise of counsel, the extent that the litigation precluded other employment and the contingent nature (or risk) of nonrecovery." (*Ibid.*)

> Although [a] negotiated fee need not be perfectly consistent with the fees the court would award under the "substantial benefit doctrine," it must be in the same range. A negotiated fee that clearly is out of that range is not a fair and reasonable settlement of the attorneys' claim for fees.

(*Robbins v. Alibrandi, supra,* 127 Cal.App.4th at p. 451.)

Here, plaintiffs' counsel's collective reported lodestar, as of October 24, 2020, was $8,906,457, representing 12,698.61 hours spent on the matter billed at each firm's regular hourly rates. The declarations supporting this lodestar amount summarize the time billed by counsel at a very high level, broken down only by timekeeper and not by task or even category of task. Given the nature of the matter before the Court and the number of attorneys whose time is included in the lodestar, this is inadequate. (See *In re Vitamin Cases* (2003) 110 Cal.App.4th 1041 [discussing concerns with duplication of efforts in parallel class actions litigated by many different law firms].)

Plaintiffs' counsel bears "the burden of proving the reasonable number of hours they devoted to the litigation, whether through declarations or redacted or unredacted timesheets or

billing records," and the Court may not " 'rubberstamp [their] request for attorney fees, but must determine the number of hours *reasonably* expended.' " (*Concepcion v. Amscan Holdings, Inc.* (2014) 223 Cal.App.4th 1309, 1325, quoting *Donahue v. Donahue* (2010) 182 Cal.App.4th 259, 271, italics original.) A trial court is well within its discretion to request additional information where, as here, declarations supporting a fee request report the total number of hours spent by each lawyer on the case, but fail to "indicate[] how much time a specific lawyer spent on the tasks in a category, let alone on discrete projects." (*Id.* at p. 1325; see also *Robbins v. Alibrandi, supra,* 127 Cal.App.4th at p. 453 [noting "questionable" billing including an entry by lead counsel "for 884.74 hours of 'factual investigation' at a rate of $565 per hour"].)[5]

The Court will continue the hearing on plaintiffs' motion for approval of their fees and costs so that their counsel can file supplemental declarations providing the necessary detail to enable a lodestar evaluation. Specifically, plaintiffs' counsel shall provide their raw billing records, along with summaries breaking down the time billed not only by timekeeper, but also (for each timekeeper) by project or by task category, providing enough detail for the Court to independently evaluate whether time was duplicated, excessive, or otherwise inappropriate.

V. Order and Judgment

In accordance with the above, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT:

Plaintiffs' motion for final approval of the parties' settlement is GRANTED.

Judgment shall be entered through the filing of this order and judgment. (Code Civ. Proc., § 668.5.) Plaintiffs shall take from their complaint only the relief set forth in the settlement agreement and this order and judgment. Without affecting the finality of this judgment in any way, this Court retains continuing and exclusive jurisdiction over: (a) the

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[5] While Hon. Layn Phillips (Ret), who mediated the parties' fee dispute, submits a declaration stating that he believes the requested fee award is "fair and reasonable in light of the substantial benefits conferred upon Alphabet and its shareholders, and is consistent with fee provisions in similar complex, large shareholder derivative actions," he does not indicate that he reviewed counsel's billing records as part of his evaluation.

settling parties and all current Alphabet stockholders for purposes of the administration, interpretation, implementation, and enforcement of the settlement; (b) plaintiffs' motion for an award of attorney fees and expenses and any application for service awards for co-lead plaintiffs herein; and (c) all other matters relating to this California Action.

Plaintiffs' motion for an award of attorney fees and expenses is CONTINUED to **February 4, 2021** at 1:30 p.m. in Department 1. By **January 12, 2021**, plaintiffs' counsel shall file the supplemental materials described above in support of their requested fee award. A separate order shall be entered regarding this motion. Such order shall in no way affect or delay the finality of this judgment and shall not affect or delay the effective date of the settlement.

IT IS SO ORDERED.

Dated: Nov. 30, 2020

Brian C. Walsh

Honorable Brian C. Walsh
Judge of the Superior Court

EXHIBIT 26

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

IN RE: COMMUNITY HEALTH SYSTEMS, INC., SHAREHOLDER DERIVATIVE LITIGATION	)	
Plaintiffs,	)	
vs.	)	3:11-CV-00489 Nashville, TN
THIS DOCUMENT RELATES TO: ALL ACTIONS Defendants.	)	Consolidated with 3:11-CV-0059 and 3:11-CV-00952

TRANSCRIPT OF SETTLEMENT PROCEEDINGS
BEFORE THE HONORABLE KEVIN H. SHARP,
UNITED STATES CHIEF DISTRICT JUDGE
JANUARY 17, 2017

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UNITED STATES DISTRICT COURT

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UNITED STATES DISTRICT COURT

The above-styled cause came on to be heard on January 17, 2017, at 10:44 a.m., before the Honorable Kevin H. Sharp, when the following proceedings were had, to-wit:

COURTROOM DEPUTY: All rise, please.

THE COURT: All right. Thanks. Y'all can be seated.

All right. There's a lot of laughing going on out here.

So, tell me, I've read through all of your papers, but maybe Mr. Robbins or whoever with the plaintiff wants to just give me a thumbnail of what their deal is and explain to me a little more about what your government -- your governance proposal is.

MR. GOODMAN: Sure, Your Honor.

Your Honor, my name's Benny Goodman. I'm with Robbins Geller. I'm here on behalf of plaintiffs. I'm here with my colleagues, Darren Robbins, Eric Luedeke, and our local counsel, Wade Cohen [sic], Kevin Seely.

At the end of --

THE COURT: Or Cowan, either way. [Laughter.]

MR. GOODMAN: Oh. I get other people's names in my head sometimes.

Your Honor, this -- we're -- we're -- we're happy to be here to put this approval before your Court, before Your Honor, to be finally approved. It has two elements that are important. We have the $60 million cash payment, which stands

on its own two feet as a reason to settle this -- this case, Your Honor. It accounts for approximately 60 percent of the damages that we allege the company suffered.

But to get directly to your question, Your Honor, what was the corporate governance elements here and why are they important? I think that the value of the settlement brings to the company -- really the $60 million pales in comparison to the value we bring to the company from the corporate governance. The corporate governance contains numerous, important, and unique, I think, issues -- terms, Your Honor. For example, we allege that there was health care compliance problems with Medicare and Medicaid regulations in this action. So one of the corporate governance terms is a health care law compliance coordinator. Now, the devil's in the details with these kinds of terms, Your Honor. It's not just an aspirational position at the company. We have requirements for this health care law compliance coordinator that include at least a law degree or a master's degree in health care administration, a requirement that the person reports directly to the board of directors and the CEO of the company.

The health care law compliance coordinator has to visit at least 10 percent of the company's hospitals or facilities each year and write detailed reports about the compliance at each of those facilities, and those reports need to be kept at the company for 10 years.

We have enhanced whistle-blower protections, Your Honor, making it a lot easier I think for individuals at the company who are aware of compliance issues to come forward, either in person, anonymously, or otherwise to a third party to bring up these compliance failures and get that information, Your Honor, directly to the people who have the authority, the wherewithal, and the experience to make a chance to stop whatever the compliance issue is if it's a failure, or enhance the compliance issue if -- if it's something good.

Now, Your Honor, we have two new directors coming on the board, two shareholder-nominated directors. One on its own is pretty significant, but here we have two. They have to have a background in accounting and compliance or compliance or both. So we're bringing what I think is a new level of depth and independence to the board with regards to ensuring the company is looking directly at compliance issues, addressing those compliance issues, and preventing future problems with compliance.

We have a lead independent director. I like to call that filling a void of leadership. Sometimes you have a board of directors, Your Honor, with a lot of independent directors and some management directors, and none of the independent directors step up to take leadership of the independent directors as a balance against management. Here we have a new lead independent director who will do just that, again,

providing continuity for the board in terms of focusing on independence and standing against potential violations of compliance like we alleged here, that the company had implemented at some of its facilities.

I think another factor in the corporate governance is very important and very unique is the clawback provision. Your Honor, a lot of companies in the United States have clawback provisions. In fact, most of the companies have clawback provisions, and I'm not aware of one that's an automatic clawback like this. Usually, what happens is the company has to do a restatement, and the board of directors has to make a decision about whether the incentive compensation earned under the previous pre-restatement financials is kept. For example, Your Honor, the Pfizer settlement, which is similar to this case, the shareholder derivative settlement. In that case, there's a committee that has to go to the board, the comp committee, and recommend whether or not they should get the money back from an incentive compensation that was later restated to be a lower amount. Here, there is no discretion. It's automatic. If there is a restatement and the incentive compensation would have been less under the now restated financial results, then that compensation comes back for the previous two years.

And, Your Honor, we have another factor here that I -- or another revision here that I think is very important, which

is -- I like to call it the citizens' united political contribution disclosures. Here we -- we have a system set up now where the company is going to unify the disclosure of all of its political contributions. Now, I -- I'm summarizing here, Your Honor. It's a multi-page portion of the corporate governance reforms but at the end of the day, everything's in one place. Investors and shareholders can look and see what the company is doing in terms of political contributions, and there are requirements that the company only do political contributions, for example, that benefit the company and not any of the individuals in management personally. And those are just some of the corporate governance reforms, Your Honor. And I'm -- I'm happy to answer any more direct questions, if you have any about them, but --

THE COURT: No. You've hit the high points. I appreciate that. That's helpful.

MR. GOODMAN: Thank you, Your Honor.

So I think what I want to say that's important here is the settlement does two things: It sort of fills a hole at the company for past behavior. And that hole we -- I call it the $98 million hole from the Department of Health and Human Services settlement where the company paid $98 million. We have $60 million going into that. And then going forward, we have a robust set of corporate governance that will stop the company from -- ideally from being able to overlook or miss any

compliance issues and actively participate in addressing compliance issues related to Medicare compliance. Now, I -- I don't think you think it's surprising I'm up here telling you this is a great settlement, Your Honor. It is a good settlement. This is the biggest derivative settlement in the Sixth Circuit and in Tennessee, but shareholders are the ones who matter. We issued notice pursuant to Your Honor's preliminary approval order and, as of today, not a single shareholder has objected. Now, the reason that I think that's particularly notable is in this age of shareholder activism, when things are awry and publicly revealed and they are awry, people show up and object. And here we have 94 -- the company has over 100 million shares in the market. 94 percent or more are owned by institutional investors and mutual funds. Now, those entities in particular have the expertise, they have the wherewithal, and they have the ability to file objections where they're appropriate. And I -- personally, Your Honor, I don't find it surprising there's no objections here. The -- the benefits the company will reap from this settlement are significant, and I don't think can really be disputed. So the fact that no shareholders have objected I think also supports the fact that this settlement should be approved, Your Honor. And after we negotiated the settlement terms, the principal terms, the governance and the cash payment, we negotiated the fee and expense amount. Those negotiations, similar to all the

negotiations, were overseen by Judge Phillips, who was our mediator, nationally recognized mediator. And he worked at arm's length with all of us to negotiate the fee and expense amount. And based on the substantial benefit that this brings to the company, benefits that CHS will reap for years to come, we agree that the fee and expense amount should be 33 percent of the cash payment or $20 million. Now, Your Honor, that doesn't reflect the full value, I want to be clear, of this settlement because I think that the corporate governance is extremely valuable, but it's a straight-forward and simple way to reach the end point that we did, and it includes expenses, Your Honor.

THE COURT: Right.

MR. GOODMAN: It's expenses and fees.

So given this benefit, given the fact that there's no objections, we respectfully request that the Court enter the final approval order and approve the settlement on each of its terms.

Of course, I'm happy to address any other questions you may have, Your Honor.

THE COURT: No, I've got it. I appreciate it.

Mr. Riley, is there anything that you want to add to Mr. Goodman's presentation?

MR. RILEY: No, Your Honor.

I -- I think that -- first, I'm here with my

colleague, Matt Madden, and Mr. Fardon represents the individual defendants who represent the company.

We had stipulated that we think that this settlement is fair and reasonable to the company, and I think that's all I need to say about it.

THE COURT: Yes. I -- I think -- there is no need for us to spend a bunch of time going through this so y'all can hear me talk. I think y'all have done a great job pulling this thing together. It was complicated, it was drawn out, and a lot of work clearly went into this. There is no sense in holding this up. I was surprised. I went through it, waiting for the objections to come in, and I was surprised not to see them, even if they were for other reasons and -- and didn't get them.

Now, you did confuse me by filing a reply to your own motion. [Laughter.] I go, wait a minute. Where's the response? [Laughter.] What's going on here? But it was helpful, so all that was good. I'll -- I'll approve this settlement. I appreciate the work you all did on this. I think this is one where -- I can't always say this, where it's not just the lawyers who are making money on this. I think there is some benefit to the shareholders that are above and beyond money, a benefit to the company above and beyond money that changed hands. So I -- I appreciate y'all's work on this, and Judge Phillips, too, who obviously did a great job and put

in a lot of work to bring it all together.

So I will get these -- your settlement approved and your judgment entered.

Anything else you all want to talk about?

MR. GOODMAN: No, Your Honor. We appreciate your time. And we know these cases take a lot of the Court's resources. And I -- I do want to note, just for the record, Your Honor, that Judge Brown was highly responsive in this case. We do these cases all over the country, and Judge Brown was beyond responsive.

THE COURT: He's good, yeah.

MR. GOODMAN: And we really appreciate that.

THE COURT: Uh-huh.

MR. GOODMAN: We know it takes a lot of the Court's time.

THE COURT: Judge Brown is really good, and he is not afraid to say what he's thinking. And to get those entertaining orders sometimes that come in. As he's -- as he's typing direct text orders in, and I wait to see what's happened. So, hopefully, we can keep him around. He's -- he's a recall, so he goes year to year. And I don't know -- you all probably know this, we're down to three judges. We have no more seniors and we have a vacancy. So, anyone interested? Let the Senators know.

All right. Okay. Thanks, guys.

MR. GOODMAN: Thank you, Your Honor.

COURTROOM DEPUTY: All rise, please.

[Proceedings concluded at 10:56.]

REPORTER'S CERTIFICATE

I, Traci D. Walker, Official Court Reporter for the United States District Court for the Middle District of Tennessee, with offices at Nashville, do hereby certify:

That I reported on the Stenograph machine the proceedings held in open court on January 17, 2017 in the matter of Community Health Systems, Inc., Shareholder Derivative Litigation vs. This document relates to all actions, CASE NUMBER: 3:11-CV-00489; that said proceedings in connection with the hearing were reduced to typewritten form by me; and that the foregoing transcript (Pages 1-12) is a true and accurate record of the proceedings.

This 4th day of FEBRUARY, 2017.

/s/ Traci D. Walker, RMR-CRR
Official Court Reporter

UNITED STATES DISTRICT COURT

EXHIBIT 27

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

IN RE CARDINAL HEALTH, INC. DERIVATIVE LITIGATION	Case No. 2:19-cv-2491 JUDGE SARAH D. MORRISON Magistrate Judge Elizabeth A. Preston Deavers

PLAINTIFFS' UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF PROPOSED SETTLEMENT

Plaintiffs Melissa Cohen, Stanley M. Malone, and Michael Splaine (collectively, "Plaintiffs") move the Court for an Order granting preliminary approval of the proposed settlement set forth in the concurrently filed Stipulation and Agreement of Compromise, Settlement, and Release dated May 25, 2022 (the "Stipulation"), attached hereto as Exhibit 1.

Plaintiffs request that the Court enter the proposed Order Preliminarily Approving Settlement and Authorizing Dissemination of Settlement Notice (the "Preliminary Approval Order") submitted herewith (and agreed to in the Stipulation), which: (i) grants preliminary approval of the Settlement; (ii) approves the form of Notice[1] and Summary Notice attached to the Stipulation as Exhibits C and E; and (iii) sets a time and date for a hearing for the Court to consider final approval for the Settlement and Plaintiffs' requested Fee and Expense Award.

The grounds for the motion are set forth in the accompanying Memorandum and the exhibit attached hereto.

Defendants do not oppose the motion.

[1] Unless otherwise indicated, all capitalized terms shall have the same definitions as set forth in the Stipulation.

Dated: May 25, 2022

Respectfully submitted,

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MEMORANDUM IN SUPPORT

I. INTRODUCTION

Plaintiffs Melissa Cohen, Stanley M. Malone, and Michael Splaine (collectively, "Plaintiffs") submit this unopposed motion (the "Motion") for preliminary approval of the proposed settlement (the "Settlement") reached with the Individual Defendants[2] and nominal defendant Cardinal Health, Inc. ("Cardinal" or the "Company") in this shareholder derivative Action. The Settlement provides for the payment of $124 million to Cardinal on behalf of the Individual Defendants. This represents one of the largest cash recoveries in a derivative settlement ever on behalf of an Ohio corporation.

For almost three years, Plaintiffs have engaged in hard-fought litigation seeking to prove that the Individual Defendants breached their fiduciary duties owed to the Company through oversight failures. The Action alleged that the Individual Defendants, each a current or former member of the Cardinal board of directors (the "Board"), acted with reckless disregard for the best interests of Cardinal by allowing Cardinal to distribute prescription opioids without fully adhering to the laws governing the distribution of controlled substances, including the Controlled Substances Act (the "CSA"). Plaintiffs alleged that the Individual Defendants ignored red flags of non-compliance with the CSA and other laws, ultimately causing the Company significant financial exposure and harms from investigations and litigation by federal, state, and local governments.

The Settlement easily satisfies the relatively low threshold required for preliminary approval. *See, e.g.*, *Robinson v. Ford Motor Co.*, Nos. 1:04-cv-844, 1:04-cv-845, 2005 WL

[2] Unless otherwise indicated, all capitalized terms shall have the same definitions as set forth in the Stipulation. The Stipulation is attached hereto as Exhibit 1.

5253339, at *3 (S.D. Ohio June 15, 2005) (at preliminary approval stage, court ensures that the "settlement is neither illegal nor collusive" (citation omitted)); *In re Telectronics Pacing Sys., Inc.*, 137 F. Supp. 2d 985, 1015-16 (S.D. Ohio 2001) (preliminary approval is appropriate where there were non-collusive negotiations and the settlement does not exhibit "obvious deficiencies" (citation omitted)). The Parties reached the Settlement after arm's-length negotiation with the assistance of two well-respected mediators. More fundamentally, the Settlement provides a substantial monetary recovery by the Company, while avoiding the additional expense and uncertainty of continued litigation.

Accordingly, Plaintiffs ask that the Court enter the proposed Order Preliminarily Approving Settlement and Authorizing Dissemination of Settlement Notice ("Preliminary Approval Order") submitted herewith[3], which (i) grants preliminary approval of the Settlement; (ii) approves the form of Notice and Summary Notice attached to the Stipulation as Exhibits C and E; and (iii) sets a time and date for a hearing for the Court to consider final approval for the Settlement and Plaintiffs' requested Fee and Expense Award.

II. PROCEDURAL AND FACTUAL BACKGROUND

On June 14, 2019, Plaintiff Melissa Cohen filed the first of three derivative lawsuits against current and former members of the Board, with allegations supported by significant public information regarding Cardinal's role in the opioid crisis. (Complaint, ECF. No. 1 at PageID 1). Prior to filing suit, Plaintiff Stanley M. Malone made a demand for the inspection of the Company's books and records pursuant to Ohio Rev. Code § 1701.37 and Ohio common law. After Cardinal produced internal corporate records responsive to the demand, Plaintiff Malone

[3] The Preliminary Approval Order is substantially in the form attached to the Stipulation as Exhibit D and has been agreed to by the Parties.

filed a derivative action on December 13, 2019, and Plaintiff Michael Splaine filed a derivative action on January 13, 2020. *See Malone v. Anderson*, No. 2:19-cv-5442 (S.D. Ohio); *Splaine v. Anderson*, No. 2:20-cv-203 (S.D. Ohio).

The Court consolidated the actions on January 28, 2020. (Order, ECF No. 31 at PageID 1567.) On February 11, 2020, the Court appointed Kessler Topaz Meltzer & Check, LLP and Gardy & Notis, LLP as Co-Lead Counsel, Isaac Wiles Burkholder & Teetor, LLC and Strauss Troy Co., LPA as Co-Liaison Counsel, and Mark Troutman, Esq. as Trial Attorney in the Action for Plaintiffs. (Order, ECF No. 34 at PageID 1712.)[4]

Plaintiffs filed a Consolidated Verified Shareholder Derivative Complaint (the "Complaint") on March 12, 2020, based on public information and non-public information obtained through the books and records process by plaintiff Malone. (Consolidated Complaint, ECF No. 35 at PageID 1715.) Defendants moved to dismiss the Complaint pursuant to Fed. R. Civ. P. 12(b)(6) and 23.1 (the "Motion to Dismiss"), principally arguing that Plaintiffs failed to state a claim for breach of fiduciary duty or waste, failed to make the required pre-suit demand on the Board, failed to plead with particularity that pre-suit demand was excused, and that certain of Plaintiffs' claims were time-barred. (Motion to Dismiss, ECF No. 43 at PageID 1821.) Plaintiffs and Defendants fully briefed the Motion to Dismiss, and the Court held oral argument on January 21, 2021. (ECF Nos. 43-56).

On February 8, 2021, the Court issued an Opinion and Order granting in part and denying in part the Motion to Dismiss (the "MTD Order"): (i) sustaining Count I of the Complaint alleging Defendants' breach of fiduciary duties to Cardinal; and (ii) dismissing Count II of the Complaint

[4] On February 8, 2021, Mr. Troutman joined Gibbs Law Group LLP and remained as Trial Attorney for Plaintiffs in the Action.

alleging corporate waste. (Opinion, ECF No. 58 at PageID 2218.) In sustaining Count I against all Defendants, the Court found the Complaint demonstrated a substantial likelihood of liability as to a majority of the then-current Board, thereby excusing demand. *Id*.

The Court entered a Preliminary Pretrial Order on March 25, 2021, and Cardinal and Defendants each filed Answers to the Complaint. (ECF Nos. 66-82). Defendants denied that any breaches of fiduciary duty had occurred and asserted various affirmative defenses to Plaintiffs' claims. *Id.*

Thereafter, the Parties engaged in extensive discovery. Plaintiffs propounded document requests on Defendants and Cardinal on March 26, 2021, to which Cardinal and Defendants served written responses and objections on June 10, 2021. Plaintiffs also propounded interrogatories on Cardinal on October 28, 2021, to which Cardinal served responses and objections on December 8, 2021. The Parties engaged in numerous meet and confer sessions regarding the discovery sought by Plaintiffs, objections asserted by Defendants, and the scope and parameters of the document production, including relevant custodians, prior discovery efforts and documents collected in connection with the federal multi-district litigation pending before Judge Polster in the U.S. District Court for the Northern District of Ohio (the "MDL"), and other discovery matters. In sum, Cardinal produced to Plaintiffs more than 15 million pages of documents, which included the transcripts of the depositions of certain key fact witnesses and written discovery responses from cases comprising part of the MDL proceedings. Plaintiffs also served requests under applicable federal and state open access laws for documents related to the government actions pending against the Company to the United States Drug Enforcement Agency ("DEA"), as well as the Attorney General Offices in 42 states. In addition, Plaintiffs obtained the trial transcripts from the trial of *City of Huntington v. AmerisourceBergen Drug Corporation*, Case No. 3:17-cv-01362 and *Cabell*

County Commission v. AmerisourceBergen Drug Corporation, Case No. 3:17-cv-01665—a bellwether trial in which two West Virginia municipalities sued Cardinal Health and two additional opioid distributors on public nuisance grounds. Plaintiffs devoted enormous efforts to investigate their claims and review and analyze the massive document production provided by Defendants.

On July 21, 2021, Cardinal and the two other major drug distributors in the U.S., McKesson Corporation ("McKesson") and AmerisourceBergen Corporation ("AmerisourceBergen"), announced that they had negotiated a proposed settlement agreement of numerous lawsuits in the MDL litigation that would, if certain conditions were met, settle a substantial majority of the lawsuits filed against them by states and localities related to the distribution of opioids (the "2021 Settlement").[5] Under the 2021 Settlement, Cardinal, McKesson, and AmerisourceBergen agreed to collectively pay up to $21 billion over an 18-year period, with Cardinal reportedly agreeing to pay $6.4 billion of that amount. In addition, the distributors agreed to injunctive relief terms, including compliance and governance reforms to improve the corporations' diversion-related controls and director-level oversight of the same, as well as to provide for greater information sharing and concerted efforts among the distributors to help detect and prevent opioid diversion (the "Governance Reforms").[6] The Governance Reforms became final before the Parties executed the Stipulation in this Action.

[5] A copy of the "Injunctive Relief" terms of the "Distributor Settlement Agreement" is attached as Exhibit A to the Stipulation.

[6] By September 4, 2021, 42 states had accepted the 2021 Settlement. By January 26, 2022, 46 states accepted the 2021 Settlement (with one state, New Hampshire, agreeing to settle only as to Cardinal and other distributors) and 90% of the eligible local municipalities had also agreed to join the Settlement. On February 25, 2022, Cardinal and the other distributors each independently determined that there was sufficient participation by states and litigating political subdivisions to proceed with the 2021 Settlement.

Following the announcement of the 2021 Settlement, and as the Parties were deeply involved in the discovery process, the Parties also began preliminary discussions regarding a potential resolution of the Action and agreed to conduct settlement discussions with the help of experienced private mediators.

On December 9, 2021, counsel for Plaintiffs, Defendants, and representatives of Defendants' insurers, participated in a full-day, in-person mediation session in New York City before the Hon. Daniel Weinstein (Ret.) and Jed D. Melnick of JAMS. In advance of that mediation session, the Parties submitted and exchanged detailed confidential mediation statements, addressing liability, causation, damages, and Defendants' affirmative defenses. At the mediation session, the Parties engaged in arm's-length negotiations before agreeing in principle to resolve the Action in return for a cash payment of $124 million to be paid to Cardinal by Defendants' insurers. Following the mediation, the Parties negotiated and agreed upon the Stipulation, which sets for the definitive terms of the Settlement.

III. ARGUMENT

A. The Preliminary Approval Standard

Plaintiffs filed this Action pursuant to Federal Rule of Civil Procedure 23.1, which provides that "[a] derivative action may be settled, voluntarily dismissed, or compromised only with the court's approval." Fed. R. Civ. P. 23.1(c). At the preliminary approval stage, the Court is required only to determine if the proposed settlement could potentially be given final approval. *See, e.g.*, *Robinson*, 2005 WL 5253339, at *3; *Telectronics*, 137 F. Supp. 2d at 1015-16 ("If the proposed settlement appears to be the product of serious, informed, non-collusive negotiations, has no obvious deficiencies, does not improperly grant preferential treatment to class representatives or segments of the class, and falls with the range of possible approval, then the Court should direct

that notice be given to the class members of a formal fairness hearing, at which evidence may be presented in support of and in opposition to the settlement.") (quoting *Manual for Complex Litig.* § 30.44 (2d ed.1985)). Once the Court grants preliminary approval, notice will be provided to shareholders, and the Court will hold a final fairness hearing to assess the merits of the Settlement and hear any objections. *See Brent v. Midland Funding, LLC*, No. 3:11 CV 1332, 2011 WL 3862363, at *12 (N.D. Ohio Sept. 1, 2011) (*citing Williams v. Vukovich*, 720 F.2d 909, 920-21 (6th Cir. 1983)). After the final fairness hearing, the Court makes a final determination whether the settlement agreement is "fair, reasonable, and adequate." *Id.*

When seeking approval of a derivative settlement, "cases involving dismissal or compromise under Rule 23(e) of nonderivative class actions . . . are relevant by analogy." 7C Charles Alan Wright, Arthur R. Miller & Mary Kay Kane, *Federal Practice & Procedure: Civil* § 1839 at 195 (3d ed. Apr. 2022 Update). The three-step procedure used in class action settlements under Rule 23(e), is thus instructive. In such cases the "(1) the court must preliminarily approve the proposed settlement, i.e., the court should determine whether the compromise embodied in the decree is illegal or tainted with collusion; (2) [shareholders] must be given notice of the proposed settlement; and (3) a hearing must be held to determine whether the decree is fair to those affected, adequate and reasonable." *Tenn. Ass'n of Health Maint. Orgs. v. Grier*, 262 F.3d 559, 565-66 (6th Cir. 2001) (citing *Vukovich*, 720 F.2d at 920-21); *see also Connectivity Sys. Inc. v. Nat. City Bank*, No. 2:08-cv-1119, 2011 WL 292008, at *1 (S.D. Ohio Jan. 26, 2011) (citations omitted).[7] Preliminary approval thus serves as "only the first step in an extensive and searching judicial

[7] The Sixth Circuit has recognized that the Court "enjoys wide discretion in evaluating the settlement of derivative actions under Rule 23.1." *McDannold v. Star Bank, N.A.*, 261 F.3d 478, 488 (6th Cir. 2001) (citing *Granada Invs., Inc. v. DWG Corp.*, 962 F.2d 1203, 1205-06 (6th Cir. 1992)).

process[.]" *In re Inter-Op Hip Prosthesis Liability Litig.*, 204 F.R.D. 330, 337-38 (N.D. Ohio 2001).

B. The Settlement Is the Result of Good Faith, Arm's-Length Negotiations Among Experienced Counsel with the Assistance of Respected Mediators and Lacks Any Deficiencies

A settlement agreement reached through vigorous, arm's-length negotiations among experienced counsel is generally presumed to be fair. *See In re Inter-Op*, 204 F.R.D. at 350-51 (citing *Vukovich*, 720 F.2d at 922-23). "The fact that the plaintiff might have received more if the case had been fully litigated is no reason not to approve the settlement." *Priddy v. Edelman*, 883 F.2d 438, 447 (6th Cir. 1989).

Here, Plaintiffs are represented by law firms with substantial experience litigating representative shareholder derivative actions. Defendants' counsel are also well-respected and experienced securities litigators. The fact that counsel for both Plaintiffs and Defendants support the proposed Settlement favors preliminary approval. Indeed, "[t]he endorsement of the parties' counsel is entitled to significant weight, and supports the fairness of the class settlement: 'It is . . . well recognized that the court should defer to the judgment of experienced counsel who has competently evaluated the strength of the proofs.'" *UAW v. Gen. Motors Corp.*, No. 05-cv-73991-DT, 2006 WL 891151, at *18 (E.D. Mich. Mar. 31, 2006) (citations omitted).

In addition, the Parties reached the proposed Settlement only after an in-person mediation session lasting late into the night with the assistance of two highly experienced mediators in complex litigation, including similar shareholder actions. This fact also speaks in favor of preliminary approval. *See, e.g.*, *In re Se. Milk Antitrust Litig.*, No. 2:08-md-1000, 2012 WL 2236692, at *4 n.6 (E.D. Tenn. June 15, 2012) (noting that the participation of a "well respected" mediator helps support the court's conclusion that settlement negotiations were made at arm's length).

Moreover, Plaintiffs' settlement negotiations were well-informed by the extensive document discovery record, which included over 15 million pages of Company records and deposition transcripts of key compliance and anti-diversion personnel. The discovery obtained by Plaintiffs included substantial Board-level documents, as well as reports and presentations prepared by third-party advisors to the Company regarding their role in the opioid crisis. Plaintiffs' counsel also reviewed trial transcripts in the bellwether case prosecuted by two West Virginia political subdivisions against Cardinal, McKesson, and AmerisourceBergen. *See City of Huntington v. AmerisourceBergen Drug Corp.*, No. 3:17-cv-01362 (S.D. W.Va.) and *Cabell Cty. Comm'n v. AmerisourceBergen Drug Corp.*, No. 3:17-cv-01665 (S.D. W.Va.). Those actions and the evidence presented therein focused on whether Cardinal and the other distributors' alleged failure to implement necessary anti-diversion controls ultimately created a public nuisance and compensable harms.

In addition, counsel and both mediators were able to rely on their experience with a similar derivative action brought nominally on behalf of McKesson, challenging its officers and directors' oversight of opioid distribution practices and compliance with the CSA. The settlement in that case was approved by Judge Wilken in April 2020 and provided for a cash payment to McKesson of $175 million, as well as certain corporate governance reforms.[8] Based on the relative market shares of Cardinal and McKesson and the relative conduct and various defenses available in each action, this Settlement compares favorably to the McKesson settlement. Accordingly, counsel was able to assess the strengths and weaknesses of the claims here, relative to that similar action, when

[8] *See* Stipulation and Agreement of Compromise, Settlement, and Release, *In re McKesson Corp. Derivative Litig.*, No. 4:17-cv-01850-CW (N.D. Cal. Dec. 27, 2019) (ECF No. 203-1 at PageID 16-17 of 123) (describing mediation sessions before Judge Weinstein, Mr. Melnick, and Robert Meyer).

deciding to recommend the Settlement to Plaintiffs. *See Castillo v. Morales, Inc.*, No. 2:12-cv-650, 2015 WL 13022263, at *1 (S.D. Ohio Aug. 12, 2015) (granting preliminary approval where settlement was "result of arms-length negotiations conducted after Class Counsel has adequately investigated the claims and became familiar with the strengths and weaknesses of those claims").

Ultimately, Plaintiffs and their counsel determined that the interests of Cardinal and its shareholders are best served if the Action resolves on the terms of the proposed Settlement, rather than through continued litigation. Plaintiffs and their counsel considered: (i) the substantial financial benefit under the proposed Settlement; (ii) the comprehensive Governance Reforms already secured by the 2021 Settlement that are designed to protect Cardinal and help ensure compliance with the CSA going forward; (iii) the uncertain outcome, inherent delays, and significant risks of continued litigation; and (iv) the desirability of permitting the Settlement to be consummated as provided by the terms of the Stipulation.

Plaintiffs' chances of achieving a better outcome for the Company through continued litigation also strongly speak in favor of preliminary approval. The claims asserted in the Action (i) involve complex factual and legal issues regarding the actions of mostly outside, non-management directors in their oversight of corporate executives and (ii) are notoriously difficult for a shareholder plaintiff to prove at trial. Indeed, the seminal case describing oversight claims under Delaware law described such claims as "possibly the most difficult theory in corporation law upon which a plaintiff might hope to win a judgment." *In re Caremark Int'l, Inc. Derivative Litig.*, 698 A.2d 959, 967 (Del. Ch. 1996). Absent allegations that Defendants sought to personally profit from the Company's unlawful practices, Ohio law required Plaintiffs to prove to a trial jury by clear and convincing evidence that Defendants recklessly disregarded the best interests in Cardinal. *See Cross v. Ledford*, 120 N.E.2d 118, 123 (Ohio 1954). Thus, in deciding to enter into

the proposed Settlement, Plaintiffs and their counsel weighed the guaranteed recovery of $124 million—one of the largest derivative cash recoveries in history in Ohio—against the risk of losing completely at (or before) trial and failing to recover any money for Cardinal. In addition, the Settlement amount represents a significant portion of the insurance coverage remaining at the time of the mediation.

Accordingly, the Court should preliminarily approve the Settlement as a favorable "compromise which has been reached after the risks, expense and delay of further litigation have been assessed." *Griffin v. Flagstar Bancorp, Inc.*, No. 2:10-cv-10610, 2013 WL 6511860, at *3 (E.D. Mich. Dec. 12, 2013) (quoting *Vukovich,* 720 F.2d at 922); *see also Bailey v. AK Steel Corp.*, No. 1:06-cv-468, 2008 WL 495539, at *4 (S.D. Ohio Feb. 21, 2008) ("[C]ourts are particularly likely to defer to the judgment of experienced trial counsel when, as in this case, significant discovery has been completed." (citing *Vukovich*, 720 F.2d at 922-23; *Bronson v. Bd. of Educ.*, 604 F. Supp. 68, 73 (S.D. Ohio 1984))); *see also Castillo*, 2015 WL 13022263, at *1.

C. The Notice Plan Is Appropriate and Should Be Approved

Notice satisfies the requirements of Rule 23.1 where it is "reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford[s] them an opportunity to present their objections." *In re Gen. Tire and Rubber Co. Sec. Litig.*, 726 F.2d 1075, 1086 (6th Cir. 1984) (citation omitted). Here, the proposed Notice and Summary Notice adequately apprise the Company's shareholders of the Settlement and afford them the ability to make informed decisions. The Company will file the Notice on a Form 8-K filing with the Securities and Exchange Commission ("SEC") and post the Notice and the Stipulation on the investor relations section of the Company's website. The proposed Notice clearly states what the Action concerns, its procedural history, and summarizes the terms of the Stipulation and its legal effects. The proposed Notice further advises the Company's shareholders of information regarding

Plaintiffs' counsel's application for an award of attorney's fees and expenses, including Plaintiffs' request for service awards, and sets forth the procedures whereby any shareholder may submit an objection to the Settlement and/or the Fee and Expense Award. The Notice further provides the date, time, and place of the Settlement Hearing, as well as contact information for inquiries. The Summary Notice will supplement the Notice and will be published in the national edition of *The Wall Street Journal* and national distribution through *PR Newswire* (or other equivalent national press release service). This comprehensive notice regime is more than sufficient. *See In re Regions Morgan Keegan Sec., Derivative & ERISA Litig.*, No. 08-2260, 2015 WL 11145134, at *5 (W.D. Tenn. Nov. 30, 2015) (finding a similar notice methodology to be substantively adequate); Order, *Booth Family Tr. v. Jeffries*, No. 2:05-cv-0860-EAS-TPK (S.D. Ohio Nov. 01, 2011) (ECF No. 254 at PageID 4410) (same); Order, *In re Big Lots Inc. S'holder Litig.*, Case No. 2:12-cv-00445-MHW-KAJ (S.D. Ohio Apr. 6, 2018) (ECF No. 120 at PageID 2602) (same).

D. The Agreed-Upon Attorney's Fees and Expenses Are Reasonable

Assuming the Court preliminarily approves the Settlement, Plaintiffs' request for attorney's fees and expenses will be fully addressed in connection with the briefing on Plaintiffs' motion for final approval of the Settlement. In recognition of the efforts and expenditures of Plaintiffs' Counsel and the substantial benefits conferred upon Cardinal as a result of the prosecution and settlement of the Action, Cardinal has agreed to pay Plaintiffs' Counsel an aggregate Fee and Expense Award of 25% of the Settlement Amount, subject to Court approval. Defendants and Cardinal have likewise agreed, subject to court approval, that each of the named Plaintiffs can receive service awards, not to exceed $2,500, which amounts will be paid exclusively from the Fee and Expense Award, also subject to Court approval. The amount of the agreed-upon Fee and Expense Award is the product of arm's-length negotiations, which took place after agreement on the material terms of the Settlement had already been reached. The U.S. Supreme

Court has endorsed this type of consensual resolution of attorney's fees as the ideal towards which litigants should strive. *See Hensley v. Eckerhart*, 461 U.S. 424, 437 (1983) ("A request for attorney's fees should not result in a second major litigation. Ideally, of course, litigants will settle the amount of a fee.").

IV. PROPOSED SCHEDULE OF EVENTS

Pursuant to the proposed Preliminary Approval Order, the Parties propose the following schedule of events leading to the Settlement Hearing:

Event	Date
Filing the Notice on a Form 8-K filing with the SEC; posting the Notice and Stipulation on the Investor Relations page of the Company's website; publishing the Summary Notice on the *PR Newswire* (or other equivalent national press release service) and in *The Wall Street Journal*	Within ten (10) business days after entry of the Preliminary Approval Order (the "Notice Date").
Filing of papers in support of the Settlement, including the Fee and Expense Award application	At least 35 calendar days prior to the Settlement Hearing.
Last day for Cardinal shareholders to submit written objections to the Settlement	At least 21 calendar days prior to the Settlement Hearing.
Filing of reply papers in further support of the Settlement, including responses to any objections filed	At least seven (7) calendar days prior to the Settlement Hearing.
Settlement Hearing	At the Court's convenience, at least 60 calendar days after the Notice Date.
Last day for counsel for Cardinal to file appropriate proof of compliance with respect to dissemination of Notice	At least five (5) business days prior to the Settlement Hearing.

V. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request this Court grant preliminary approval of the Settlement, approve the form, substance, and dissemination of the proposed notice plan to Current Company Stockholders, and set forth a schedule for the events described herein.

Dated: May 25, 2022

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on May 25, 2022, a copy of the foregoing document was filed electronically. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

/s/Mark H. Troutman
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EXHIBIT 28

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN RE BOEING COMPANY DERIVATIVE LITIGATION : Civil Action : No. 2019-0907-MTZ

- - -

Chancery Courtroom No. 12B
Leonard L. Williams Justice Center
500 North King Street
Wilmington, Delaware
Wednesday, February 23, 2022
1:30 p.m.

- - -

BEFORE: HON. MORGAN T. ZURN, Vice Chancellor.

- - -

SETTLEMENT HEARING AND RULING OF THE COURT

CHANCERY COURT REPORTERS
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- - -

THE COURT: Good afternoon. Before we do introductions, a brief note on masks. If you are speaking, you may remove it. If you are not speaking, please leave it on covering your nose. I will do the same.

With that, introductions, beginning with counsel for the plaintiffs.

ATTORNEY FRIEDLANDER: Good afternoon, Your Honor. Joel Friedlander from Friedlander & Gorris on behalf of Thomas DiNapoli, comptroller of the State of New York, as administrative head of the New York state and local retirement system and as trustee for the New York State Common Retirement Fund, all of which we refer to as "NYSCRF," and also on behalf of the Fire and Police Pension Fund Association of Colorado, which we refer to as "FPPA." I am joined by my partner Christopher Foulds.

From Lieff Cabraser Heimann & Bernstein is Katherine Benson, who was just admitted *pro hac vice*, and Nicholas Diamand and Sean Petterson. And from NYSCRF we have Andrew Neidhardt and Caitlin Heim. And from FPPA, investment counsel, Steven Miller.

THE COURT: Thank you.

And counsel for the individual defendants.

ATTORNEY ABRAMS: Good afternoon, Your Honor. Kevin Abrams of Abrams & Bayliss. I'm pleased to introduce Sharon Nelles from Sullivan & Cromwell and her partner David Rein.

THE COURT: Thank you. Good afternoon.

Counsel for the nominal defendant.

ATTORNEY ROHRBACHER: Your Honor, Blake Rohrbacher from Richards Layton & Finger for the nominal defendant The Boeing Company. And we have Matthew Perri from my office too.

THE COURT: Thank you.

And counsel for objecting stockholders.

ATTORNEY WILLIFORD: Evan Williford of The Williford Firm for objector Walter E. Ryan. With me is Clinton Krislov of Krislov & Associates. Your Honor granted his *pro hac vice* application yesterday.

With Your Honor's permission, he will speak for Mr. Ryan today.

THE COURT: Thank you.

Sir, if you could stand and state your

name.

JUSTIN DIDEON: I am Justin Dideon. I got a notice in the mail about this hearing. I believe I am here by accident.

THE COURT: Do you want to stay?

ATTORNEY KRISLOV: Your Honor, I spoke with the gentleman as he was sitting here. Apparently, he's from Washington State. He received -- his father had shares of Boeing. His father died, unfortunately, at age 55, recently, and the shares had not been transferred. He came here thinking that this is where he had to go to get the shares transferred.

And it's not a part of this hearing, but I feel badly because, now that I've known him for 30 seconds, to have come so long a way on something that probably he'll just have to go back home and get that taken care of at home ...

THE COURT: I understand.

Mr. Dideon, is all of that your understanding as well?

JUSTIN DIDEON: Yes, correct.

THE COURT: I am sorry for the loss of your father, and I'm sorry that -- we do our best in

all of these proceedings to have the paperwork that goes out be as clear as possible. So I'm sorry that there was confusion there.

The point of this hearing is to see if there are any stockholders who object to a settlement between some other stockholders and the Boeing directors. You are welcome to stay as a member of the public and as a potential Boeing stockholder. But unless you have an objection, perhaps it would make more sense for you to sit in the back, if that's all right with you.

JUSTIN DIDEON: All right.

THE COURT: Thank you very much.

With that, Mr. Friedlander.

ATTORNEY FRIEDLANDER: Good afternoon, Your Honor.

I guess we're here to consider -- the first thing I was going to mention was the sufficiency of the notice, along with the fairness as a settlement and the fee application, including the incentive award request by FPPA.

As to notice, I just want to note we filed a declaration of publication by Al Lambert, a declaration of distribution by Phillip Barone, a

declaration of Sean Petterson respecting the establishment of the website about the litigation. I'd just like to note there are 587 million Boeing shares. Market caps, $116 billion as of a couple hours ago. It's a very widely held stock. And the objectors who are here today obviously represent one or two, if you can count the second letter that's attached to our reply papers.

Turning to the settlement. When this stockholder litigation began, I argued before Chancellor Bouchard that it was important that NYSCRF, FPPA, and Lieff Cabraser and our firm lead the litigation. We thought we were best suited to do so in part because of the gravity of the case. It arises out of a generational corporate governance scandal, I think it's fair to say, with one of the country's most powerful companies having built a fleet of airplanes that were not airworthy. We alleged that two passenger planes had crashed due to the absence of a board-supervised safety-engineering culture at Boeing. And given the stakes, we thought we were best suited, with co-lead plaintiffs, to oversee and litigate and ultimately, whatever the resolution may be, to see it through to the conclusion of the litigation.

NYSCRF is the third-largest public pension fund in the country. It oversees approximately $280 billion in assets. At the outset of the litigation, it owned 1,186,627 shares in Boeing. The office of the state comptroller's division of legal services includes two assistant counsel, who are here today, who worked on the matter. They are supervised by the Fund's general counsel, Joyce Abernethy, and the comptroller's counsel, Nelson Sheingold. And they approved the strategy and participated in the mediation negotiations and the ultimate settlement decision.

The office of the state comptroller also employees nine full-time professionals in its bureau of corporate governance, several of whom worked closely with co-lead counsel in formulating the corporate governance reforms that are part of the proposed settlement.

FPPA is a nearly $8 billion fund. Its current executive director is Kevin Lindahl. Throughout the course of litigation, he was the general counsel of FPPA, and he's also a past president of the National Association of Public Pension Attorneys. He and Mr. Miller attended the

September 12th mediation session in New York and participated in all of the mediation sessions and the negotiations.

And I note this background because of the clients' involvement in the litigation and the mediation and because they have endorsed the proposed settlement.

In a joint press release, New York State Comptroller DiNapoli stated, "We sued Boeing's board because they failed in their fiduciary responsibility to monitor safety and protect the company, its shareholders and its customers from unsafe business practices and admitted illegal conduct. It is our hope, moving forward, that the reforms agreed to in this settlement will help safeguard Boeing and the flying public against future tragedy and begin to restore the company's reputation. This settlement will send an important message that directors cannot shortchange public safety and other mission-critical risks."

In the same joint press release, Mr. Lindahl of FPPA stated, "The 737 MAX crashes were catastrophic tragedies. As shareholders, we sued Boeing's Board of Directors to ensure the safety of

its aircraft and to hold the directors accountable for their failure to uphold their fiduciary duties. In addition to the monetary recovery obtained we are extremely proud of the mandatory safety reporting and increased focus on safety metrics that have been established as a part of the settlement, including a robust [ombudsman] oversight program. This renewed priority on safety will further drive Boeing to regain its reputation and maintain shareholder value."

And I quote those statements because I think that they better say what I could say about why we believe the settlement should be approved by the Court.

I will not recite the history of the litigation since the litigation phase culminated in a 102-page opinion written by Your Honor. Critically, our complaint alleged that a majority of the board at the time of the filing of the complaint faced a substantial likelihood of liability for Boeing's losses based on a complete failure to establish a reporting system for airplane safety and for turning a blind eye to a red flag representing airplane safety problems. Notably, the Court held that it was reasonable to infer scienter and also held that the

difficult scienter element is directly met by the board's own words, as pled in the complaint.

In particular, the Court held that plaintiffs supported the allegation that the board was aware or should have been aware that its response to the Lion Air crash fell short.

Turning to the value of the claims. There are several important points I'd like to make. Basically eight points.

The first is I'd like to dilate on the Court's holding respecting the response to the Lion Air crash because it reflects how most of the Court's analysis deals with events after the Lion Air crash. We believe that aspect of the *Caremark* claim was the strongest as compared to -- or the stronger as compared to the pre-Lion Air crash *Caremark* claim.

We believed it would be very difficult to prove to the satisfaction of the Court that any of the director defendants would be held liable for a bad faith failure to oversee the establishment of an airplane safety oversight system that would have sufficiently in time -- in advance of the Lion Air crash such that the fleet of 737 MAX would not have been manufactured as it was or would not have been

marketed with the defect in it such that the Lion Air crash would not have occurred, the grounding would not have occurred, and there never would have been a defective fleet of aircraft. So we think that would have been, I submit, a very difficult claim.

The stronger claim was that after the Lion Air crash, but before the Ethiopian Airlines crash, one or more director defendants should have recognized the need for greater safety oversight and the need to incur what still would have been massive costs to the -- that would be associated with grounding the airplane and fixing the 737 MAX.

So in that hypothetical scenario, in which the aircraft is grounded -- the fleet of aircraft are grounded after the Lion Air crash, the damages would have been significant, but they would have been far smaller than the 20 billion-plus dollars in economic harm that Boeing attributes to the grounding of the fleet arising out of the defects in the 737 MAX.

For instance, there would be the costs associated with the Ethiopian Airlines crash itself, the mass tort liability as a result of the deaths on that plane, and perhaps other costs associated with

the duration of the grounding and the trouble the company got in with the FAA and the government generally and the need for the grounding to last as long as it did -- that those costs could plausibly be associated with the fact that the aircraft had not been grounded sooner and that the safety oversight had not been undertaken in a more aggressive fashion after the Lion Air crash. So the damages would be far smaller than what we could plausibly allege in the complaint, that there were 20 billion-plus damages of economic harm associated with the 737 MAX.

The second point is that even those damages associated with the post-Lion Air oversight failures would have likely exceeded the amount of the available D&O coverage.

So the D&O coverage is $550 million. That's not a secret. If anybody asked, we were prepared to answer it, make sure it got answered. Mr. Ryan could have propounded that request months ago in discovery. But the simple fact is, which we always were well aware of, that there's $550 million of available D&O coverage, 280 of which -- for which Boeing is also an insured. So there's one tower of 270 in which the directors and officers are the only

insureds. There's an additional 280 for which the directors and officers plus Boeing is an insured, which means that claims against Boeing could be covered under the policy, such as, say, federal securities claims against Boeing could be covered by that insurance.

So that brings me to point three, which is that the size of the coverage, the scale of it, which is obviously a significant number, is greater than the personal resources of the most plausible liable defendants.

So if we're looking at who would fund a resolution of the claim in any fashion or who would fund a judgment, that -- compared to $550 million in D&O coverage -- you know, if you start to think about who are the most plausible defendants from a liability perspective and what their wealth is, it's not going to be at that scale such that -- you know, there's not some deep-pocket corporate defendant. We're talking about individuals. And therefore, the most obvious place to look for recovery was from the D&O policies.

The fourth point is -- I don't think I'm breaching any mediation privilege, but I'll keep it at a pretty high level. But it was very apparent

to us that in the structure of any settlement, if it was going to happen, was -- it was either going to involve D&O coverage or it wasn't. And if we were going to insist on individual coverage, there wouldn't be -- there wouldn't be a settlement contemplating D&O coverage. That was not a plausible structure for a settlement.

At a very basic level, all the defendants are insureds. And it's a bedrock principle of Delaware law, it's a bedrock to the insurance that directors and officers have insurance, there is that insurance. It's there to cover situations such as this litigation -- or this type of litigation. And seeking some symbolic amount from some individual director, or even a nonsymbolic amount, was not going to be consistent with a settlement in which the defendants and their insurers would fund it through D&O coverage.

So given that practical reality, we thought the way to maximize the recovery was to get as much as possible from the D&O insurance.

Which brings me to point five. In looking at the monetary component, we're looking to negotiate for as much as possible of that insurance.

So our posture was -- you know, we were willing to participate in the mediation. We were very, very pleased that the mediator -- available mediator was Layn Phillips, former U.S. District Judge, who is perhaps the most deeply experienced and the most accomplished in complex insurance negotiations. So we were glad to be involved with him.

And the second aspect of the mediation was we were not going to slow down any aspect of the litigation. Either the litigation was going forward -- the mediation may or may not be successful, but we're not going to interrupt the progress of the litigation in favor of mediation. And indeed we thought that the prospect of a ruling on the motion to dismiss and the fact of the ruling on the motion to dismiss were all points that we could use to negotiate for as much as possible, and then see if whether that amount is agreeable to our clients and whether the settlement should go forward.

Indeed, as I mentioned at the outset, NYSCRF and FPPA and their counsel and their leadership were deeply involved in all of the negotiation sessions and throughout the protracted negotiations that led to the ultimate settlement.

So there's a lengthy process of negotiating the monetary component. We understood that the defendants and all of the carriers that make up each of the layers of those towers of insurance had to agree to every price move and, therefore, this took a while to ultimately reach a resolution at the number we did. And that's one track of the mediation.

On a parallel, separate track were the negotiations with -- principally with the Boeing personnel, inside and outside counsel to Boeing itself, about the governance measures. And that was also a protracted series of negotiations, a lot of complexities in those issues. And that was a priority for co-lead plaintiffs, especially, if I may add, in light of the practical cap on the monetary component. It was important that on the governance side we can negotiate for governance measures that have a company-wide impact, you know, that affect Boeing and its commercial airplane division on a company-wide basis. So that was proceeding on a separate track.

So that brings me to the next point. Then we had to evaluate, as these negotiations are going forward, what's our position in the overall litigation and what are the likely paths and what do

they mean in terms of where we are and what we could hope to achieve.

And specifically, from the perspective of co-lead counsel, we had no doubt that the alternative to a negotiated settlement would be the imminent creation of a special litigation committee by the board of directors. And that's a background fact, and it had various implications. And we had various, I'd say, complex thoughts about that prospect.

First, speaking for myself, but I think for our group, we do not believe that Boeing was especially eager to appoint an SLC. And the negotiations went on a while without an SLC having been appointed. We think a factual investigation could unearth additional facts that would support our claims. But the litigation over the outcome of an SLC investigation could be quite protracted and could be perhaps perceived as damaging to Boeing in terms of how it shook out in terms of the investigation process and then all of the *Zapata* process that followed if there was a disagreement about the SLC's determination.

We also, I think with a fair amount of confidence, did not think that this was a situation in

which an SLC would investigate for a long time and say everything is fine, the case should be dismissed, it's meritless, and there should be no resolution of any sort other than the dismissal. We do not view that as a likely prospect.

And for all those reasons I just mentioned, we did not particularly fear an SLC. We felt we had lots of negotiating leverage, even though we were negotiating in the shadow of the imminent appointment of a special litigation committee.

But sort of on the other side of the ledger, we have to look at what would happen if an SLC was appointed. There's a bunch of factors to consider.

One would be that there would be a stay of the litigation for some indeterminate but -- probably a relatively long period of time and that, in the interim, there would be some significant erosion of the D&O coverage. Clearly, all the defense costs and SLC costs associated with the litigation to date and the SLC process could be charged against the insurance.

And additionally, we just don't know what the outcome of the federal securities litigation

would be and whether there would be a resolution of that during the pendency of the stay and the whole process of the SLC, which, itself, could significantly reduce the amount of the available D&O coverage.

Separately, additionally, we were concerned that there could be an SLC determination to try to settle the claim based on some component of insurance coverage which could indeed be less than the amount that we were able to negotiate through the mediation.

And then, of course, we just had to think through just how -- what that would mean, if that happened, for a potential motion to terminate by the SLC, followed by *Zapata* discovery and a *Zapata* hearing, in terms of whatever that outcome the SLC determined.

And if there was an SLC process, there would also be a lost opportunity to negotiate for the governance reforms, which we'd been negotiating for; that if we would not be, like, the parties at the table and Boeing -- the SLC might not perceive any need to do things along the lines that we were seeking and they might have whatever agenda they have and that the opportunities to get the governance reforms that

were secured in the negotiation could be lost if we did not agree to go forward on the terms we did.

So I'd say that's -- well, that's about the posture of the litigation, how we thought about the posture of the litigation.

Separately, we also need to weigh the merits of the post-Lion Air crash *Caremark* claim in light of uncertainty about the ultimate record.

Now, certainly, we had an abundant documentary record. I think 440,000 documents produced and really just this wealth of publicly generated information and reports and such, which continues to come out and will probably continue to come out for the indefinite future, about what happened at Boeing. But there are certain things we didn't know.

There were significant privilege redactions about the role of counsel in advising Mr. Muilenburg, advising the board, advising some committees of the board, whatever advice was rendered in that complex legal environment post Lion Air when dealing with the FAA or the DOJ. And, frankly, we don't know what -- whether we'd ever get access to privileged information, whether privilege would be

waived, whether the SLC might get access to certain privileged information which then could become available to us, or whether the company would operate to try to maintain the privilege to the fullest extent. So that -- there was an aspect of the record that was a mystery to us.

There were also what were denominated in the document production as these "Annex 13" redactions, which related to the international agency investigating the crash. We think we ultimately would have gotten those documents unredacted, but we weren't sure what that would yield.

And then in terms of testimony, we didn't know how people would testify on such questions as what oral reports were given to any directors or committees or the board, what discussions were had along the way that were not reflected in documents that we had already received, what the rationale was for not -- for Boeing not undertaking an internal investigation, to the extent that was not privileged, and the extent and timing of exactly what the interaction was between Boeing and, say, the Department of Justice in terms of that inquiry during this period after the Lion Air crash but before the

Ethiopian Airlines crash.

So there were some significant uncertainties in the record, as there always are. But we did, obviously, feel very comfortable with the documentary record that we had.

So ultimately, taking all of that into account, we had these difficult protracted client-driven negotiations that resulted in a mediated settlement component of $237.5 million. And there's questions, like, how to think about that amount.

In gross terms, it's the second highest *Caremark* settlement of which we're aware, just under the *Wells Fargo Derivative Litigation*, which was in federal court in California a few years ago, litigated by Lieff Cabraser. This amount is by far the largest *Caremark* settlement in Delaware. I think the next one is - I think *Fox News* was about 90 million or something.

And then, thirdly, it actually is a record, I think, in the largest cash derivative settlement in the country for a U.S. corporation viewed in net terms. Like we knew the scope of the attorneys' fees we'd be seeking, the order of magnitude it was, which were, frankly, a lot lower

than in *Wells Fargo*, a lot lower than in *Activision*. And even the total fee application, if it's granted, the net to the company is something just under $220 million, which would be the largest net benefit of any cash derivative settlement, of which we're aware, involving a U.S. company.

It represents a significant portion of the available D&O coverage. I don't know if there's -- I don't think there is any magic threshold percentage about how you equate the fairness to a settlement about percentage of D&O insurance. But it's a lot of it.

I note that the objector, in its sur-reply, says we should have gotten at least 50 percent of the D&O coverage. Well, 50 percent would be $275 million. And I don't know how there's a rule of law that says you need to get 50 percent or that 275 would be within a range of reasonableness, but 237.5 is not.

So I look forward to Mr. Krislov's presentation on that subject. But given the order of magnitude involved, I don't see why that -- we're not talking about saying the settlement should be twice what it is or five times what it is or ten times what

it is. They are saying it should be 15 percent higher than it is. But I'll defer to my reply to say more about that.

To turn to the governance components. There are three features I'd like, in particular, to highlight. I would welcome any questions Your Honor may have about any aspect of the governance. And with Your Honor's permission, I would defer to my colleague Ms. Benson to answer all -- she was deeply involved in all of these negotiations and drafting of the corporate governance. But let me just highlight three of them.

The first is about the expertise of the board members. So there's not a mandated requirement for the board now. There would be two directors that have such expertise in terms of aviation/aerospace, engineering, product safety oversight.

So part of what we're saying is to add a third director who has such expertise -- and on a continuing basis the governance and public policy committee will ensure that at least three directors at any time have this expertise for the life of the settlement -- and that the Aerospace Safety Committee,

the ASC committee, will be comprised, to the extent possible, of people with knowledge, experience, expertise in aviation or aerospace, engineering safety systems oversight or product design, development, manufacture, production, operations, maintenance, and delivery; and that this ASC will be comprised solely of independent directors. So there will be a committee of three people with a certain level of expertise about these issues.

Second, there will be required reporting to this committee and then from the committee to the board. So that the chief engineer and the chief aerospace safety officer will ensure that the ASC receives regular -- at least semiannual reporting on aerospace safety performance, including significant communications with the FAA and information about submissions to the whistleblower portals, what's called the Speak Up portal submissions and the Seek, Speak & Listen program, that this -- that there is regular reporting to the ASC about these matters and that the results of this committee's meetings and the actions of the committee will be reported to the full board. So there will be reporting and updates on significant safety issues,

new safety policies and procedures, and significant safety events will be reported to the full board. And the chief aerospace safety officer will report to the board at least twice annually.

And, thirdly, there is the creation of the ombudsperson program. This program would be an entirely new institutional structure that doesn't otherwise exist at Boeing whereby the ombudsperson, operating consistently with, like, an association that handles -- that supervises ombudsperson programs, will be a neutral person for which any employee, if they have issues respecting how Boeing is dealing with the FAA -- because a lot of FAA regulation and oversight is done through what's called the ODA program through folks at Boeing. If there are members within that ODA unit who have concerns, they can raise them on a confidential basis with the ombudsperson, and that person -- the confidential aspect of those concerns will be relayed and discussed in a confidential way with the chief aerospace safety officer. So through that organizational structure that already exists within Boeing, there will be this overlay of this ombudsperson program to which Boeing employees can turn on a neutral, confidential basis to address

ongoing concerns.

And there are other features, but I wanted to -- there's things about public reporting, about having executive compensation, will take into account safety metrics. So there are other aspects. We wanted to highlight those.

That's my presentation on the settlement, if Your Honor wants me to stop right there for now.

THE COURT: The only question I had about the governance reforms was to confirm that -- I suppose suss out the extent to which these are baked into bylaws or other more enduring corporate documents. I saw the separation of management and board shares baked into the bylaws, but I wanted to be sure I had a holistic understanding of the rest.

ATTORNEY FRIEDLANDER: Right. So right now there is, in fact, a different board chair and a different CEO. David Calhoun is the CEO. Mr. Kellner is the board chair. So that's an additional component I hadn't mentioned, was that there be a bylaw requiring that to be in place.

Now, this, as I understand it through these agreements -- I don't think -- a bylaw is not a

mechanism, but these will be part of the requirements of, say, the various committees in terms of, like, how what I'll call the nominating committee would function to make sure this applies and how the Aerospace Safety Committee -- how it operates.

In terms of the mechanic -- I'll defer to Ms. Benson about how -- it's built into, obviously, the order by the Court and then into the settlement agreement. All these terms would be imposed or required in some fashion by the Court and throughout the company.

Do you have any specifics on that?

ATTORNEY BENSON: Thank you, Your Honor. I'll be brief.

So to your question, there are changes that have been proposed -- and this is in Exhibit A to the settlement agreement -- that include changes to the company's bylaws. And that change is the permanent separation of the chairman and CEO position.

There are changes to the -- Boeing has corporate governance principles which are separate and apart from the bylaws. Those principles, to Mr. Friedlander's point, did separate those two positions. We then moved that into the bylaws as part

of the settlement.

The corporate governance principles themselves have been amended in several ways, as set forth in Exhibit A. The first is to add the language -- and if Your Honor is looking at the Exhibit A, the bolded, underlined language is the language that is proposed to be added to the corporate governance principles and to the bylaws. The language that exists already nonbolded, nonunderlined is the existing language from, I believe, the August 2021 corporate governance principles. And so those are changes that go to the number of directors, the director expertise, and the requirement that the governance and public policy committee, which identifies new directors, is looking at particular areas of expertise when bringing individuals onto the board and then as part of the Aerospace Safety Committee.

And then there are changes to the Aerospace Safety Committee charter. And those are set forth -- I'm looking in Exhibit A, Section IV(A), which require the -- certain reportings. So again, the bold, underlined reporting by the chief aerospace safety officer to the Aerospace Safety Committee, the

chief compliance officer, and then additional detail there about the types of reporting that those two individuals and others within management of the company will make to the Aerospace Safety Committee.

And I believe the final edits to the Aerospace Safety Committee charter appear in Section VI(A) regarding the membership. And so that's a change both to require independent directors serving on the Aerospace Safety Committee and then the additional expertise.

THE COURT: Do you know sort of on a clear day or in the ordinary course what it takes to amend the corporate governance principles at the company?

ATTORNEY BENSON: It's my understanding -- and I'm sure counsel for Boeing or the directors will correct me -- that those changes are made by the board itself and ratified -- a proposed amendment and then are ratified by the board itself, and those corporate governance principles are then publicly updated.

THE COURT: Thank you.

ATTORNEY FRIEDLANDER: Your Honor, should I just stop there with the settlement and then

talk about the fee application later after the objections?

THE COURT: Yes, let's proceed that way. Thank you very much.

Mr. Krislov.

ATTORNEY KRISLOV: Your Honor, would you like me to --

THE COURT: If counsel at the front counsel tables are comfortable, I'd prefer that you were at the podium, if that's all right.

ATTORNEY KRISLOV: Thank you, Your Honor. Clinton Krislov for Walter E. Ryan Jr, Ryan Asset Management, and the Ryan Trust.

Mr. Ryan is -- I know that objectors are, at times, not looked at with favor. Mr. Ryan poses a very important -- he's a person who has $6 million worth of shares that are his money. And while I understand that the pension funds, the trustees, they are looking for -- and they do their fiduciary duties. I understand that. But there is no replacement for the fact when it is your investment in the company over a long term. And Mr. Ryan has previously, in other cases, brought cases that have corrected misdeeds with *Maxim Integrated*, the option

backdating that was back before this court some years ago.

Mr. Ryan poses -- when he received the notice, we went through the notice and we looked for it because Mr. Ryan believes in this company. Mr. Ryan wants this company to be the company that it has been in the past. And so there are three items that we focused on that were very important.

Number one, the Court's burden is to -- the Court's job is to evaluate the overall fairness of a settlement. Rather than picking out one point or another, the Court must determine that the settlement, given all of its parameters and all of its terms, is fair and appropriate.

Here, on the monetary component, it was never disclosed in the notices that the -- what the available money was, what the insurance policies amounted to.

THE COURT: Mr. Krislov, before we go much further, could you speak into the microphone.

ATTORNEY KRISLOV: I'm sorry.

THE COURT: Thank you very much.

ATTORNEY KRISLOV: I'm sure Mr. Ryan will want a transcript of this afterwards, so it's

better to be clear.

We noted that the total amount of the policy proceeds available was omitted. And they are saying, well, you could have asked. And somebody could have asked. But it was never revealed in any of the public filings.

And in order for the Court to know even just the monetary -- whether the monetary component is fair, the Court must know the elements of what are the damages, what is the likelihood of prevailing, what are the sources of recovery and how much. And so it was their burden to show those points. And I'm glad to say that after we pointed out the issue, that they did disclose it, which puts it into a different sort of a realm.

We know that there are about $23 billion in actual damages that the company has suffered because of the wrongdoing that the board did, which Your Honor's decision of September 7th points out a great deal of them, which is of grave concern for shareholders of a company that wants their company to be the company that it was, which is the global premier provider of quality, most-advanced airliners, which makes passenger travel as safe as riding on a

bus. In fact, these days, generally safer than riding on a city bus. And it's important to restore that confidence.

It was a big deal when I had my first trip to Chicago on a DC-6 at age seven -- it was a big deal to travel 300 miles by air. Today, we go halfway around the world nonstop. And we need to restore the confidence that this break that caused the 737 MAX crashes -- the break that nobody really knew what was going on at the simulator or the flight experience.

Back to the monetary. The monetary component, evaluating it requires the knowledge of the damages. We know it's about $23 billion so far. And it's going to keep growing because Mr. Robison's book has come out, which identifies the break between the board and the product development and the simulators in the planes flying, and the Ron Howard documentary that just came out last week, *Downfall*, which people will be seeing for months. It will be a long time for the company to get restored to its position of confidence. But we need to do that.

One is the monetary component. And while it took our objection for them to disclose the mere slice that they did -- I mean, they haven't

produced the policies. They say, well, you could have asked for discovery. It's not our burden to show the fairness of the settlement. It is their burden. And that's a necessary element. And if we've done nothing other than force the disclosure of what the policy proceeds were available to negotiate against, we feel that we have helped this Court make a better determination, better evaluation, which the Court needs to do in order to approve a settlement.

Second -- and so the concept that in a case where there's $23 billion in losses, there's $550 million in available resources from just the insurance policies, and that they are only getting 237.5 million, only 43 percent of available policy proceeds -- that's a factor.

It is a factor also in a case like this, which the Court recognized in your September 7th ruling, *Marchand*-type cases, cases which involve a company which exists in a regulatory -- in a very serious regulatory environment for health and human safety. *Marchand*, which involved a listeria outbreak involving an ice cream company that poisoned a number of its customers, three died. 300 people died as a result of the 737 MAX crashes.

Marchand-type cases deserve this Court's special scrutiny to make sure that the fairness ensures that there is both recognition of the wrongdoing, of what needs to be fixed; repairs to fix them; compensation -- restitution, if you want to keep this within the Rs, that there is appropriate compensation for the company for its damages; and restored confidence that it will not recur in the future, as the fourth R.

Now, dealing with the way their settlement went, as soon as the -- as soon as you ruled on the motion to dismiss, they were in mediation less than a week later, and in two or three days they got the settlement. You know, I'm sure they worked hard during those two or three days. That's not a long time for a mediation of a big case. I've been through them where you have three or four sessions spaced by weeks. They get speed on their side. Whether they get to claim credit for the amount, it's less than half, and there are no individual contributions.

And this is one in which the individual contributions -- they say, well, those individuals wouldn't have had the money to contribute

on the same level as the insurance policies. But that doesn't really answer the question because -- for one thing, it's public knowledge that Muilenburg got $62 million as he's going out the door. And a contribution, an individual contribution of even an amount that would be significant for that person -- a million dollars or so from just Mr. Muilenburg would have sent a different signal, would have said that there is recognition by the individuals and a motivation that would deter this from ever happening again. And it wouldn't have cost them that much.

Instead of getting -- and we had a DVI case across the river in the Eastern District of Pennsylvania where the insurance policies were all exhausted within months of the company's filing in bankruptcy, and we spent ten years pursuing individuals. And we got, I believe, 75 percent of security damages from about a dozen different individuals, institutions, brokers, underwriters, whatever, because the insurance in that case was insufficient.

I understand the concept that you want people to serve -- we want people to serve on Delaware corporations who are skilled and know that there will

be insurance for them. By the same token, it sends a great message if there were even the pursuit of some individual contributions. It wouldn't have taken that much. And it wouldn't have required it to be -- you know, it didn't have to be another 237 million, although who knows what assets they had. They chose not to pursue them for any.

This is an overall evaluation, and the Court can say -- whether looking at one point or another point in isolation, you'd say: Well, I don't know if I would agree on that. This Court has to take an overall view and say: Overall, do I believe that this settlement is fair in the Court's determination? And we believe that we have helped in that respect in, number one, the transparency of forcing the public disclosure of the resources available.

The deterrent side brings me to point three, which is, between the complaint, the book, the documentary -- all are clear that what was missing was a connection between people with experience flying the 737 MAX, whether by plane or simulator, because the MCAS took over without -- certainly, in the first crash, with no advice to people that it was their doing whatever and that that had -- that experience

had been experienced by people testing the plane, by people in simulators. They knew there was this problem.

And the problem that Boeing had at the time was that there was no direct connection between people with experience actually flying the planes, developing products -- whether the plane or a simulator -- and the board.

And so their response is to say, well, we'll now have three people who are experienced in aviation/aerospace, engineering, and product safety. And that's great, except that that doesn't ensure the connection that was missing in this case.

And so we proposed -- our initial objection was that they should have someone on the board who actually experienced, whether by plane or by simulator, what it is like to fly in the developing products.

Now, I concur that you don't need a director for every new product. But if there was a requirement that there be a report, it would be best if there was a person on the board who had experienced what it was to fly this plane by plane or by simulator.

Their response is, well, Ms. Harris, Retired Lieutenant General Harris who has 10,000 hours flying 747s but is retired, has not flown this plane. And even in her listing of other planes, she hadn't flown -- she apparently hadn't flown the 737. I don't know. But whatever, a requirement that there be a -- I called it a welded or a solid connection so that there would be a requirement that someone who has actually flown the plane, plane or simulator, would report to the board periodically directly on the experience.

Had that happened, had that been the case -- because this was the main plane that was being developed during that time. There was work on the 787 Dreamliner, which is still slow, but whatever. So there would be two planes that people would have to report on directly what the experience is flying that plane. Had that been the case, this would not have had -- the crashes would not have happened because there would have been the report to the board. There was time.

We can't cure all the problems of the company. We're not asking you to take over running the company. But we think in these three respects,

that the settlement -- it's not the worst settlement. They keep bandying about the numbers, that they are big numbers. But the fact is, there's a lot of damage. The company has suffered $23 billion in damages. And though the company may be worth $19 billion now, it's worth far less than half of what it was at one point in terms of the market.

But the key thing is, they need to get enough money from the proceeds in this type of case -- in a *Marchand* case where people die, there was special scrutiny. It's not just your average case that's a derivative case where people come up and complain and say, well, my company ought to get more. In a case where people die -- and here, more than 300 people died. And the losses are terrible, to be sure. But it puts it into a different category than just your average money-loss case. This is a company whose brand depends upon the flying public's confidence in it.

And so if they would -- in terms of the money they are getting, you have to factor in all the factors. The fact that there is 23 -- more than 23 billion in damages, there is now disclosed $550 million in insurance policies -- we haven't read

the policies, so it can be something more. And to just choose not to pursue the individual defendants at all, figuring that they couldn't come up with anything near 237 million themselves, that's settling a little quick.

And the need for a restored -- or a need for a required connection between people with actual experience flying planes under development so that the board has that connection, knows about such problems so that some CEO just doesn't say in the future: Everything is fine. If there's problems, it's because we sold these planes to some people in the third world who shouldn't be driving it. It puts it in the -- this is not a company that sells junk cars to drunk drivers. This is a company that sells airplanes on which people rely.

And if we are going to evaluate the monetary component, we have to evaluate it along with at least the pursuit of an individual contribution, which would have helped send a signal that the board gets it and to ensure the connection between the board and the products that are being developed.

If Your Honor has any questions, I'd be glad to answer them.

THE COURT: Thank you very much. And I do value the role of objectors. So thank you for being here today.

On your first point as to the presence of a pilot on the board who is certified to fly the most recent or recently developed product, I'm wondering why, especially in view of what the first prong of *Caremark* asks of a board, the improved reporting requirements from the engineers and the pilots and the ombudsman program wouldn't accomplish that same goal, given that is what prong one asks of a board. Prong one doesn't ask of a board that its directors have that technical expertise and knowledge themselves; we look for reporting.

ATTORNEY KRISLOV: The reason -- you would say, as a general concept, maybe that would be okay. You know, if we had no history here and somebody said, well, we have a bunch of people with expertise, blah, blah -- whatever. I don't want to diminish what they do have.

The fact is that those things occurred, and they occurred in a way that if there was a required reporting of the flight experience by people who had -- even it wasn't another person on the

board who was a certified pilot, that there would be a report to -- a required report to the board by somebody who had actually flown the plane physically or by -- real plane or by simulator. If there was a required report. To just say, well, we're going to have a bunch of people who have expertise and we're going to have an ombudsperson who -- that if people think there is a problem, they have somebody to bring it to, and between all the things -- those things, you know, you could look at the board's bylaws and the structure, and you'd say, as just a sort of generic thing, you would think maybe those things would occur.

But the fact is -- and I suppose Mr. Ryan's experience is what I would use as an example, somebody who actually physically is there. A report from somebody who actually does this stuff, to put it in a frame, periodically is a whole different creature than saying, well, we've got a bunch of people who are available to look into things. If you have to have a regular report from someone who has actually flown the thing, it's a whole different matter.

And that's why we're not saying there has to be a certified pilot for each plane that they

are developing on the board, but there has to be a sure link so that there is a regular report that gets to the board so the board doesn't have to think about whether all these other people have gone along with the gestalt framework of making sure that things are safe.

And that's why Mr. Ryan is sort of a hands-on operator from where he started to where he is. And a person who actually does the work and knows the experience can relate it better than people three levels upward who are relating what they have heard and making sure that it comes out in a way that's advantageous or whatever. You need a direct connection. Every board probably needs a direct connection between their board meetings, which take place at, you know, the 12th floor and above, and the people who actually do the work.

And so because of the nature of the things that have occurred, that's why we're saying there has to be a direct link.

THE COURT: Thank you.

My second question goes to -- you know, you are pointing out the very tragic facts underlying the failures here and tying that to

Marchand. And I understand your argument to be that on those facts, and in a *Marchand* context, that the Court should demand personal contributions and a higher monetary award. And I wanted to sort of ask if that isn't, in a way, double-counting, because what *Marchand* does, in a way, is allows -- explicitly allows for the inference of that difficult scienter piece from the structural aspects of the company as opposed to having to, for example, go to trial and put a director on the stand and say: Well, what were you thinking when this happened?

And I'm wondering if our common law in that arena doesn't already increase the likelihood of liability such that in order to double-count it -- in asking for essentially heightened damages or a heightened monetary award wouldn't be double-counting. It's sort of a half-baked idea, but I wanted to engage with you on that.

ATTORNEY KRISLOV: I understand. If we're saying, look, we have insurance for these people and you want the people to contribute as well -- this is a unique sort of case. And what I would say is you look at it overall. Because there will be cases where, in a *Marchand* situation, you'd say, well, we've

only got $10 million worth of insurance, but that D&O should cover it, and we shouldn't look to the directors for anything, even if the company's liability is, like, 12 to 15 million. You don't want the directors to get such small insurance that it doesn't cover for the damage that they could actually do. At the same time, you don't want to deter people from wanting to serve on a Delaware corporation.

So we're not saying that in all cases, *Marchand* cases, it has to be that there is an individual contribution. But what we're saying is that in a *Marchand* case -- and this is a *Marchand* on steroids because of the number of deaths, because of the losses -- because the Court has to make an overall balance and valuation of -- between the insurance available, the damages, and what's available from the individuals. It's not unfair to say, look, you got to at least look to -- in a case where the damages are so huge, that they vastly dwarf the insurance available, maybe there should be some contribution, even a small one, in recognition that they had some liability.

On the other hand, then you'd say, well, in a case like this, just getting 43 percent of the available insurance -- you know, don't pat

yourself on the back too much because you are letting these people off, and you are only compensating the company for, like, 1 percent of the damages that were caused.

And so what we're saying is while it's not each individual thing in isolation, it is the whole thing together. And we think that the Court would be well to -- one option for the Court is to say, look, this is not a terrible settlement, but it needs to be improved. And it needs to be improved in a case like this, where the insurance is what it is -- a higher percentage is required in order to support no individual contributions. But where the insurance -- where we're settling the insurance at 43 cents on the dollar and only 1 percent of the damages, say, well, there might need to be some individual contribution.

On the other hand, if you said -- if we were doing, hypothetically, 90 percent of the insurance, then people would not be saying, well, what about those other guys. Although, you know, there's nothing to say the guy who walks out the door with $60 million or more shouldn't have to pay back. And there have been -- the cases are rare. I acknowledge that the cases are rare where there is substantial D&O

insurance. The cases are very rare. You have to go back to, like, *Enron* for individuals contributing some.

But because the Court's job is to determine whether the recovery -- whether the settlement is overall approvable, where we have a case like this, where the damages are huge, the insurance recovery is only 40 percent, and there is no attempt to even negotiate for any individual contributions -- you know, I think the Court would be well-postured to push the parties to get this a little better before it will approve it. And that's why we put our three points to assist the Court, because we think that -- overall, is it the worst settlement ever? No. Overall, is it the best? No. But we think that because of these elements, considered all together as the Court must, that they need to improve it.

Does that answer your question? I'm sorry I was long-winded in that.

THE COURT: Thank you very much. No further questions.

ATTORNEY KRISLOV: Thank you, Your Honor.

THE COURT: As Mr. Krislov goes back

to his seat, I just wanted to be sure that there isn't a Mr. Leahey in the courtroom today.

(No response.)

THE COURT: Just for the record, I have reviewed Mr. Leahey's objection and taken it into account. And by my count, there were no other objections from stockholders that were received. So thank you very much.

Mr. Friedlander.

ATTORNEY FRIEDLANDER: Your Honor, I'll be brief. I'd like to address, like, three points.

One is, I think it's very telling -- one of the last words out of Mr. Krislov's mouth were the settlement should be a "little better." And that that's not the standard for evaluating a settlement. It's is the settlement reasonable in relation to the "give" and the "get" in terms of the claims and their value and what was negotiated for.

And I think so much of what he says mirrors, I think, the actual reality of the settlement on the table. He said he didn't know about the insurance; we knew about the insurance. We retained special insurance counsel to analyze the insurance.

We spent several weeks in negotiations. So the first mediation session -- after mediation submissions, the first mediation session was before Your Honor's ruling on a motion to dismiss. The last one was a month after that ruling that the settlement was reached. So there were several weeks of negotiations. I appreciate if he says we could have done better, maybe we just didn't do a good job negotiating, but I think we did.

In terms of the decision about whether to settle or not on the terms -- I think the real inquiry is not can this be a little better, but it's just yes, no. Should the settlement have happened or should it not? And if it shouldn't happen, then what's the alternative?

I don't hear Mr. Krislov offering to take over the litigation. But we had to think to ourselves: What would the litigation look like? And I tried to portray that. And I think the real hard question is: From whom do you collect money, and how much?

And I'm going to put two names on it because I think Your Honor's question is really -- it's really a deep question, when you think about it:

Marchand and the implications for personal liability. It's one thing to plead that outside directors have a substantial likelihood of personal liability. That's like a requirement to get past a motion to dismiss. Does that mean Caroline Kennedy, who joined the board in 2017, that her entire personal wealth is at stake and to what extent and to what it means to prove a *Caremark* claim or to prove damages from a *Caremark* claim?

I mean, there's not case law about what it means to prove proximate cause damages from a *Caremark* violation, to establish a *Caremark* violation at trial and what would be the level of proof and then what would be the level of damages. And I think that's really profound, because there is a lot of insurance at Boeing. This is a big number. It would be one thing if it was a company that doesn't have much insurance and what it means for directors to be putting their personal wealth on the stake by becoming directors and not exercising appropriate oversight for purposes of a motion to dismiss and then what it means to assume a directorship and what the risk means at trial and after the fact.

And then to put another name on it, we

think the most likely defendant we could prove damages against would be Mr. Muilenburg. Does he have more than $237.5 million after trial to pay a judgment? I don't think so. But how likely is that?

But it's those hard questions. That's ultimately what we're looking at the whole time -- settle or litigate -- at every juncture. A lot went into this. There's not -- the documents arrived long ago. There was lots of litigation. There's lots we knew going into this by the time the settlement was struck. And there was a lot achieved in the settlement from a money perspective.

And what I really don't understand in terms -- I don't even understand how the proposal that's being made on the governance is even a little bit better. The settlement addresses specifically not just the reporting aspect of *Marchand*, but the expertise aspect of -- that you need directors who actually understand the mission-critical risks of the company and that certain people perhaps are better suited. Like maybe not everybody on a board needs to be, like, a safety oversight expert, but that a board could be lacking if there is no such person. So even if they are getting the reports, do they really

understand the significance of them?

Here, we have a requirement that at least three directors have knowledge, experience, and/or expertise with aviation/aerospace, engineering, and/or product safety oversight. So you have three directors with actual industry-specific -- not just the industry, but from a safety oversight perspective -- expertise and you have the overlay of the reporting to the full board and you have the overlay of the ombudsperson program, which means the actual line employees, whether they be pilots or mechanics or any of the level of engineering folks, that their specific concerns are being addressed and channeled through the chief safety officer position to the committee, ultimately to the board; that that's -- all of that is contemplated by the proposed settlement. So I don't even understand how the proposal is a little bit better than what we are already presenting to the Court.

Thank you.

THE COURT: Mr. Friedlander, just one housekeeping question -- more than housekeeping, but I meant to ask in your opening presentation -- and that is sort of standard -- making sure that I understand

the extent to which direct claims are released here in the release.

ATTORNEY FRIEDLANDER: Well, it's purely a derivative settlement. So there's purely derivative release. So no direct claims are being released.

THE COURT: Because the definition of "Released Plaintiff Claims," I didn't read that to be cabined to derivative claims. It looked like it was in paragraph 7, in the act of release by Boeing stockholders. And I just wanted to make sure that we were all on the same page that this is not releasing any direct claims. And I apologize for not asking that.

ATTORNEY FRIEDLANDER: I'll ask everybody in the room to check out the language and see if we can address that to the Court's satisfaction.

So in paragraph 7, "Boeing stockholders to the extent they are acting or purporting to act derivatively" -- having had litigation over the meaning of the words "to the extent" -- I wish that wasn't the phrase -- I think it means if they are, to the extent -- you know, in such

capacity they are acting or purporting to act derivatively. That's the scope of the release claims.

THE COURT: Because in the definition of "Released Plaintiff Claims," that particular definition, I didn't necessarily appreciate that that was -- that those claims are derivative. It looked like it was more in paragraph 7.

ATTORNEY FRIEDLANDER: Okay, paragraph 7: Release of Released Plaintiff Claims."

THE COURT: Yes.

ATTORNEY FRIEDLANDER: I was just going down to the third -- the fourth line. Part (iii), "Boeing stockholders to the extent they are acting or purporting to act derivatively," which may not be the most felicitous way to phrase it. But it should be derivative only.

THE COURT: That's how I was hoping to read it. Thank you.

No further questions.

Yes, Mr. Krislov. Did you want to add something briefly?

ATTORNEY KRISLOV: One thing. My colleague brought up Caroline Kennedy and serving on the board. The fact is, the difference between

Muilenburg, Calhoun -- what they did and what Caroline Kennedy's role was, which was not a part of any of this, are fundamentally different; that the contribution -- an individual contribution from Mr. Calhoun and Mr. Muilenburg, whether -- they never even sought, and there's no explanation of whether they should have contributed. It's a whole different -- you can wave around a Caroline Kennedy flag and say, well, anybody is going to be fearful. The fact is that people who serve on boards have to be honest. They have to be honest with the public. They have to be honest with their board. And the actions that even this Court identified would make them fair game to at least negotiate some -- even if it was just a representative, a number of something, some contribution, to pursue some contribution from people who -- as identified in the motion to dismiss, the book, the movie. Muilenburg and Calhoun are in totally different situations, and it should not deter a person from serving on the board in whatever capacity the person serves. You just don't make misstatements and mislead people.

I think that's all. I appreciate Your Honor's time.

THE COURT: Thank you.

I will ask if counsel for the individual defendants or the nominal defendant want to remark on the terms of the settlement. And then perhaps we can take a recess, and then we'll come back to address the fee.

ATTORNEY NELLES: Thank you, Your Honor. Sharon Nelles for the defendant directors. Thank you for having us here today. It's very nice to be in a courtroom.

Again, I will be very brief. We're just very pleased that the parties have reached a settlement, and we're very happy to be here today in support of it. And as Mr. Friedlander and Ms. Benson have described, the settlement provides significant government enhancements.

I did want to just note that in Exhibit A that Ms. Benson was discussing in response to, I think, a question that Your Honor had posed, that those enhancements must remain in place for no less than four years -- and that's in IX(A) of that Exhibit A -- unless otherwise specified. The only exception to that is for the ombudsperson, and that has to remain in place for five years.

The company is already very hard at work on implementing many of these. And I know the people involved will tell you that that's a substantial effort.

I also just want to take a very quick moment, if I may, to acknowledge the work of the lead plaintiffs who are here, who dug incredibly deep into the company and learning the company and learning the very significant efforts that have been undertaken since the tragic events of the Lion Air flight and the Ethiopian Airlines flight accidents.

I also just want to thank the Court again for its consideration today. It's very nice, as I said, to be in a courtroom.

And, finally, if I could just be clear on the release. I just want to make sure that there is no confusion. And I think we got it 90 percent of the way there. The language that Your Honor was looking at relates only to the named plaintiffs. So only the named parties to the litigation. And that is -- if you go to the section right beneath it where it talks about "any other Boeing stockholder," it is plain that these are only released for derivative claims. You have to work back, I think, through the

definitions to get there. But if you do, you will see that it is quite plainly only a release of derivative claims.

THE COURT: Thank you.

ATTORNEY NELLES: Thank you.

THE COURT: Mr. Rohrbacher, anything to add?

ATTORNEY ROHRBACHER: Nothing from me, Your Honor.

THE COURT: Thank you. Why don't we take a 15-minute recess.

(Recess taken from 2:55 p.m. until 3:16 p.m.)

THE COURT: Thank you. Please be seated.

Mr. Friedlander.

ATTORNEY FRIEDLANDER: Turning to the fee application. Your Honor, we're seeking $18,260,000 in total, which is 7.69 percent of the monetary component of the settlement. And essentially that is -- that's based on the contractual arrangement by which we originally took on the case to represent NYSCRF and FPPA. Frankly, we wanted to be part of this case. We thought it had the potential to be an important case, and we wanted to be part of it. And

we came together on those terms. So it's not with reference to any of this court's precedence, which, frankly, I think, would all be on a higher level. But that's what we agreed.

And the total hours. So Lieff Cabraser has over 10,000 hours. Our firm has more than 1,300 hours at the time of the opening brief. There's time for insurance counsel, about 138 hours. We also realize that we came in -- as Your Honor will recall from the 220 litigation -- you know, we weren't there, but Prickett Jones and Hach Rose were. We always sort of recognized that there was a positive result; that they would deserve to be compensated for their role in obtaining the 220 documents. So this reflects nearly 1,700 hours by Prickett Jones and over 1,200 hours by the Hach Rose firm. As I understand, that's their time solely as relates to the 220 litigation process, not for the subsequent leadership contest in this action.

So there's over 17,600 hours that are reflected in our various declarations. So the implied rate is less than $1,025 per hour after deducting expenses, which exceed $200,000.

Frankly, that's all I really plan to

say because it is, I think, far below any metric we are aware of under the case law.

The other thing I might as well point out at this time is we are seeking an incentive fee award on behalf of FPPA. I want to advise the Court that this issue sort of arose late in the game, so it was not made part of the notice. And we're not -- we're not aware of any Delaware law requiring that be part of the notice. The amount is $12,500 that we're seeking. It reflects over a hundred hours by Mr. Lindahl and Mr. Miller.

Under Rule 23, according to all the affidavits that we have to put in at the time of filing complaints, et cetera -- all those acknowledge that any return to counsel, or whatever, would have to be -- or to the plaintiff has to be approved by the Court. So, obviously, we're seeking court approval. It's a relatively small amount. Obviously -- I think very obviously -- it had no bearing on the manner in which the case was litigated or negotiated. But we would ask that it be appropriate that their staff time, which they undertook, and/or essential parts of -- they were really essential to the mediation. They requested to be compensated, and we ask the Court

to allow that award out of the attorneys' fee.

Thank you.

THE COURT: Two questions on that.

The first is, the other plaintiff, who I am calling the "Fund" because I didn't have the clever way of squishing together the acronym to say out loud that you have, they are not seeking an incentive fee?

ATTORNEY FRIEDLANDER: NYSCRF is not seeking an incentive award.

THE COURT: And then just to be sure that we're abundantly clear on whether the Isman plaintiff's counsel is seeking a fee or objecting to the fee. I don't believe they are here today.

ATTORNEY FRIEDLANDER: So we were in some communication with them before filing our opening brief, and we haven't heard from them since.

THE COURT: Thank you.

Is there anyone who would like to comment on the fee application?

ATTORNEY KRISLOV: Your Honor, I don't usually object to these in the overall percentage -- sorry. We had no objection to the fees as the total amount. But I was having trouble hearing back there.

The incentive award, does this go to the public pension trustee personally, or does this go to the pension fund to compensate the Fund for their efforts as a plaintiff?

ATTORNEY FRIEDLANDER: It's to the Fund.

ATTORNEY KRISLOV: Okay. Then I have no objection to that.

THE COURT: Thank you.

ATTORNEY KRISLOV: Oh, this is what hadn't been part of the notice; right?

ATTORNEY FRIEDLANDER: Right.

ATTORNEY KRISLOV: Well, it's not a lot of money. I guess I would counsel them to -- if you are looking for an incentive fee in the future -- and we have. And I've written in support of incentive fees. I believe in them because when people stick their necks out, especially individuals, they do a great -- they sometimes do a great job for the class. And so I would caution you to put this in the notice in the future because that's an important aspect that people should consider.

THE COURT: Thank you.

Any further comment by counsel for the

individual defendants?

ATTORNEY NELLES: No, Your Honor.

THE COURT: Mr. Rohrbacher?

ATTORNEY ROHRBACHER: No, Your Honor.

THE COURT: Thank you.

Well, as a final display of inefficiency, I'm going to take another recess, put the bow on my remarks, and then I'll be back with you shortly. It will be at least ten minutes, so you can stretch your legs. Thank you very much for the helpful presentations.

(Recess taken from 3:24 p.m. until 3:47 p.m.)

THE COURT: Thank you. Please be seated.

Today I heard from the parties regarding the proposed derivative settlement of the matter captioned *In re The Boeing Company Derivative Litigation*, 2019-0907-MTZ. The action is brought on behalf of nominal defendant The Boeing Company. For the reasons I will explain, I approve the settlement.

The company is a global aerospace corporation that designs, manufactures, and sells commercial airplanes and other aviation equipment for the airline, aerospace, and defense industries.

On October 29th, 2018, a Boeing 737 MAX aircraft, Lion Air Flight 610, crashed off the coast of Indonesia. The plane was directed down by the airplane's new Maneuvering Characteristics Augmentation System, or "MCAS," which directs the flight control system in certain circumstances. On March 10th, 2019, a second Boeing 737 MAX aircraft, Ethiopian Airlines Flight 302, crashed in Ethiopia, again directed down by MCAS. 346 people lost their lives in these two accidents.

On March 13th, 2019, following the second accident, the Federal Aviation Administration, or "FAA," grounded all 737 MAX airplanes. The aircraft was also grounded by international regulatory authorities.

These tragedies have led to numerous investigations and proceedings in multiple arenas to find out what went wrong and who is responsible. Those investigations have revealed that the 737 MAX tended to pitch up due to its engine placement; that MCAS, designed to adjust the plane downward, depended on a single faulty sensor and therefore activated too readily; and that the software program was insufficiently explained to pilots and regulators.

The 737 MAX fleet was grounded for 20 months, until November 18th, 2020. During the grounding period, the company was mandated to cure the defects in the 737 MAX's MCAS system, and other sensors, and to revamp pilot training. But these measures did not rectify the significant damage done to the company's profitability, credibility, reputation, and business prospects; nor did they unwind the company's exposure to substantial criminal, regulatory, and civil liability.

In 2020, the company estimated it had incurred nonlitigation costs of $20 billion and litigation-related costs in excess of $2.5 billion.

As early as October 2019, various potential plaintiffs began coming forward with derivative suits seeking redress of the damage suffered by the company and its stockholders. I will narrate the procedural history that pushed the co-lead plaintiffs' claims to the top of the heap because it supports the strength of those claims and explains the structure of the fee award. The initial actions were the *Isman*, *Kirby*, and *Slotoroff* actions.

In April 2019, the Kirby Family Partnership, LP, and Jon Slotoroff made Section 220

books and records demands upon the company. The company produced 81 documents to Kirby and 389 to Slotoroff. From this starting point, stockholders began to form a record of the board's alleged failure to monitor aircraft safety standards and alleged failure to react to known issues with MCAS before and after the Lion Air crash.

In November 2019, Kirby and Slotoroff each filed a derivative action alleging various breaches of fiduciary duty relating to aircraft safety by the company's board. Both actions asserted demand on the board was futile.

On October 3rd, 2019, plaintiff Arthur Isman filed a derivative complaint following review of documents produced pursuant to a Section 220 demand. The *Isman* action is unique in that Isman made a demand on the board and thus conceded the director defendants' ability to impartially consider a demand. Importantly, a demand by one stockholder does not bar another stockholder from asserting demand futility per *Abacus Partners v. Brian*.

Plaintiff Slotoroff moved to consolidate the *Isman*, *Kirby*, and *Slotoroff* actions on December 13th, 2019, and asked the Court to either

deny the motion to dismiss pending in the *Isman* action or stay the action as moot.

On December 23rd, 2019, another stockholder entered the fray: Construction and General Building Laborers' Local Union No. 79 General Fund. Local 79, represented by Prickett Jones & Elliott and Hach Rose Schirripa & Cheverie, sought to intervene in the above-mentioned actions and stay them pending Local 79's own Section 220 action against the company, analysis of documents produced, and filing of related claims, with particular interest in an October 11th, 2019, FAA technical review report. The Court granted the motion to intervene on January 28th, 2020, and stayed the three aforementioned actions.

Local 79's vigorous prosecution of its Section 220 action resulted in an extensive post-trial production, which included documents the company had withheld as privileged from other stockholders and documents the company had initially redacted. The company ultimately produced over 41,000 documents to Local 79. Many of those documents were key to drafting a more detailed, informed, comprehensive, and particularized complaint. They included officer-level documents, internal email communications, board

minutes, and other internal company communications not received by any other stockholder to date. Local 79 filed their derivative complaint on June 12th, 2020.

Another set of plaintiffs, Fire & Police Pension Association of Colorado, or "FPPA," and the New York State Common Retirement Fund, which I'll call "the Fund," both represented by Friedlander & Gorris and Lieff Cabraser Heimann & Bernstein, also filed a derivative complaint on June 12th. Prior to filing their derivative action, FPPA and the Fund sent the company books and records demands on February 12th and April 20th. FPPA and the Fund obtained additional documents, including board minutes that postdated those obtained by Local 79. In total, FPPA and the Fund obtained and analyzed approximately 44,100 documents from the company, totaling over 630,000 pages, including those produced to Local 79.

The Court's attention then turned to the appointment of lead plaintiffs and lead plaintiffs' counsel. Concurrently, on June 10th, Isman filed a motion asking the Court to lift the stay on the *Isman* action and not to consolidate it with the demand futility cases; rather, keeping the actions on parallel tracks.

On August 3rd, then-Chancellor Bouchard appointed the Fund and FPPA as co-lead plaintiffs. The Court consolidated the *Kirby*, *Slotoroff* and *Local 79* actions with the Fund and FPPA's action. The Court did not consolidate *Isman* with the rest, but the Court did not lift the stay either.

Co-lead plaintiffs filed a verified consolidated complaint on September 4th.

Count I asserts a derivative breach of fiduciary duty claim against current and former directors, alleging they consciously breached their fiduciary duties by failing to implement an aircraft safety reporting system; by failing to respond to the first crash as a red flag of safety reporting deficiencies; by falsely misleading the public about the safety of the planes and their software; and by cashing out the departing CEO's unvested equity-based compensation.

Count II asserts a similar breach of fiduciary duty claim against the company's officers, arguing they consciously or negligently failed to monitor safety, disregarded red flags, and covered up safety risks.

On November 9th, defendants moved to dismiss.

On January 29th, 2021, co-lead plaintiffs filed a verified amended complaint, addressing recent criminal penalties from the Department of Justice.

On March 19th, defendants moved to dismiss that complaint and submitted 88 exhibits in support. The parties briefed that motion, and the Court heard oral argument on June 25th.

A full-day mediation with defendants and their insurers took place before former United States District Judge Layn R. Phillips on September 3rd.

On September 7th, 2021, this Court denied the motion to dismiss the co-lead plaintiffs' primary claim for breach of fiduciary duty against the director defendants, but granted the motion for the claim against the officers and the claim relating to the CEO's compensation.

In view of the objections received, which I will discuss in a moment, it is important to pause here and remember what questions plaintiffs' complaint poses after the motion to dismiss and what

questions the Court has answered. The complaint asks whether Boeing directors and officers acted in bad faith by failing to fulfill their oversight duties owed to company stockholders, thereby causing monetary loss to the company. The Court reviewed plaintiffs' allegations and certain documents produced under Section 220 that the parties put before the Court.

Taking plaintiffs' allegations as true, and finding the documents defendants put forward did not contradict those allegations, the Court concluded that demanding the board bring this derivative action was futile because a majority of the board faced a substantial likelihood of liability. The Court's decision did not conclude the directors were in fact liable or that they had in fact breached their fiduciary duties; only that liability was substantially likely. The Court thus denied the motion to dismiss Count I. The Court dismissed the claims against the officers in Count II because the plaintiffs had failed to plead with particularity that demand was futile.

After the Court's opinion, more mediation sessions followed on September 12th, September 23rd, October 1st, and October 5th. On a

separate track, plaintiffs and their counsel negotiated with Boeing for corporate governance changes.

On October 6th, 2021, the parties agreed to a settlement in principle. The parties filed the stipulation and agreement of compromise, settlement, and release on November 5th.

Part of the settlement involved engaging with plaintiff Isman once again. The proposed settlement contemplated a release and dismissal of the claims asserted in the *Isman* action. Accordingly, co-lead plaintiffs sought consolidation of the *Isman* action for settlement purposes. Over one week later, on November 17th, 2021, plaintiff Isman stated he had no objection to consolidation.

On November 18th, the Court granted the motion to consolidate the *Isman* action into the current derivative action only for the purposes of settlement. The Isman stockholders have not objected to the settlement or to the fee award.

I have four tasks for purposes of the hearing today: First, I need to determine whether the Rule 23.1 requirements have been met; second, I have to review the adequacy of notice of the settlement

delivered to stockholders; third, I must review the terms of the settlement for fairness and determine whether to approve them; and, fourth, if the settlement is approved, I must resolve the petition for an award of attorneys' fees and expenses.

I begin with the Rule 23.1 requirements. Rule 23.1(c) requires that any representative plaintiff seeking approval of a compromise before this Court file with the Register in Chancery an affidavit in the form required by Rule 23.1(b).

General counsel of FPPA filed an executed version of that affidavit on September 2nd, and the counsel for the Fund's comptroller filed an executed version on September 2nd. I find that the requisite affidavits were filed.

Turning to adequacy of notice. Rule 23.1 requires that notice by mail, publication or otherwise of the proposed settlement has to be given to stockholders in such a manner as the Court directs. A notice of settlement is sufficient if it contains a description of the lawsuit, the consideration of the settlement, the location and time of the hearing, and informs the recipients of where additional information

can be obtained. That standard is drawn from *Philadelphia Stock Exchange*. I conclude that the notice here is sufficient.

Together, the stipulation and the notice of pendency of the action, proposed settlement of the action, and the settlement hearing describe the underlying facts related to the litigation, the claims alleged by the co-lead plaintiffs, the procedural history of the action, and the current proposed settlement. This notice adequately describes the lawsuit, including the claims asserted and the proceedings to date.

The notice also adequately describes consideration for the settlement. On page 13, it states that the proposed settlement contemplates a monetary payment of $237.5 million to be paid by defendants' directors and officers liability insurers. It further states that the company shall undertake the corporate governance measures detailed in Exhibit A to the stipulation.

The notice provides the location and time of the hearing. Page 2 indicates that a hearing will be held here on today's date at 1:30 p.m.

Finally, the notice informs

stockholders who to contact for further information. Pages 20 and 21 contain the contact information of co-lead counsel, as they would be the appropriate parties to answer further inquiries regarding the proposed settlement.

Based on its satisfaction of these factors, I conclude the notice is sufficient.

The notice was also adequately delivered. As this Court explained in *In re Activision Blizzard Stockholder Litigation*:

"'In the context of a proposed settlement, the Court typically enters a scheduling order that, in addition to setting a date for a settlement hearing, tentatively approves the form and content of the notice and sets forth the manner in which notice is to be given.' ... There is no requirement to mail a [] notice to every single class member who ever owned a share of a publicly held company."

Rule 23(e) permits delivering notice by mail, publication or otherwise.

Al Lambert at Boeing Commercial Airplanes states in an affidavit that on December 7th, Boeing posted copies of the stipulation and agreement

of compromise and the notice of pendency, proposed settlement, and settlement hearing on its public website, which would be available through at least today. Lambert also states that Boeing caused the summary notice to be published as a quarter-page advisement in the December 17th national and local editions of the *Wall Street Journal*. Also on December 17th, Boeing caused the summary notice to be published over the *PR Newswire*. Exhibits A through D to Lambert's affidavit contain true and correct copies of these postings.

Philip Barone, a director at Broadridge Financial Solutions, states in an affidavit that Boeing retained Broadridge to distribute the notice by mail and email to Boeing stockholders. Broadridge caused the notice to be mailed by First Class Mail to 96,282 Boeing stockholders between December 8th and December 15th. Further, on December 15th, Broadridge caused the notice to be sent by email to 12,286 Boeing stockholders who had previously authorized electronic distribution of stockholder materials.

As of February 7th, 2022, Broadridge has not received any requests to provide any

additional copies of the notice to any stockholders on behalf of Boeing.

Finally, Sean Petterson, attorney at Lieff Cabraser, states in an affidavit that co-lead counsel created a website regarding the notice which contains information about the action, including links to the documents. The website was included in the notice and the summary notice. The website contains the date of the final settlement hearing, information about case deadlines, hyperlinks to important documents, and contact information for co-lead counsel.

Finally, while reporting in the press is no substitute for actual stockholder notice, I will note that the settlement was widely covered in the press.

I now turn to consider, as I must under Rule 23.1, whether the terms of the proposed settlement are fair and reasonable, recognizing that "[t]his Court generally favors settlement of complicated litigation," as set forth in *Gatz v. Ponsoldt*.

It is important to pause again here and consider why the Court undertakes this task. The

reason that derivative and class action settlements are subject to this Court's approval is to protect the interests of the absent corporation *vis-a-vis* the personal interests of the representative plaintiff and the plaintiff's counsel. In particular, the Court's involvement arises from the need to ensure absent stockholders are adequately represented and to guard against buyouts of plaintiffs at the expense of those whom they purport to represent. *In re Celera* dilates on this theme, explaining that care must be taken in approving a settlement of a publicly traded company to ensure the fiduciary nature of the action is respected and that approval is consistent with due process. The Court is to guard against the risk that absent class members and others with a stake in the litigation could have their claims released without an opportunity to be heard.

As explained in *Activision* and *Forsythe*, the Court's role is to act as a fiduciary, applying a range-of-reasonableness review that is one step removed from the litigant's business judgment to accept the settlement.

This Court put it simply in *Kahn v. Sullivan*. The Court's role in reviewing the proposed

settlement is quite restricted. The Supreme Court went on in that case explaining the Court was to balance the policy preference for settlement against the need to ensure that the interests of the shareholders had been fairly represented.

In sum, the role of judicial review is not to second-guess or optimize every element of the settlement; rather, the Court's role as a fiduciary is to ensure due process is followed and to weigh the "give" against the "get" to be sure the corporation is reaping reasonable benefit alongside the representative plaintiff.

In so doing, *Philadelphia Stock Exchange* explains the court's function is "to consider the nature of the claim, the possible defenses thereto, the legal and factual circumstances of the case, and to apply its own business judgment in deciding whether the settlement is reasonable in light of those factors."

Activision explains the Court must then "determine whether the settlement falls within a range of results that a reasonable party in the position of the plaintiff, not under any compulsion to settle and with the benefit of the information then

available, reasonably could accept."

The Court of Chancery need not limit itself to an examination of the immediate tangible results to a corporation or its shareholders in determining the fairness of a settlement agreement. The probable long-term benefits of the settlement are also properly considered. In other words, I must evaluate the "give" and the "get" of the proposed settlement.

I begin with the nature of the claims and defenses. After the motion to dismiss was granted in part and denied in part, the claim remaining was a *Caremark* claim against Boeing's directors. Such a claim is nonexculpated. It has also repeatedly been called the most difficult theory in corporation law upon which a plaintiff might hope to win a judgment.

Plaintiffs stated claims under both prongs of *Caremark*, with the scienter element satisfied due to the presence of structural factors that supported an inference of scienter in *Marchand*, as well as other facts. Defendants' argument in favor of dismissal focused on the *Marchand* factors, asserting that company documents demonstrated those factors were not present here. The Court disagreed.

Going forward, as plaintiffs explained, they faced the risk that the board would form a special litigation committee and the risk that committee might have lesser settlement requirements, and less of a focus on governance reforms, than plaintiffs were seeking. An SLC also presented the risk of a longer litigation timetable with additional costs to stockholders, including further reputational risk to the company and further use of limited insurance funds. Plaintiffs also faced the inherent uncertainty of trial, especially in light of the limited *Caremark* post-trial case law on this issue, and a win at trial would not result in corporate governance reforms.

In my view, the settlement consideration, both monetary and nonmonetary, reflects the strength of the claims and the road ahead for this case. The proposed settlement contemplates a monetary payment of $237.5 million to be paid by defendants' directors and officers liability insurers. The stipulation also provides that as part of the proposed settlement, Boeing will undertake the following corporate governance measures:

The addition of a board director with

aviation/aerospace engineering and/or product safety oversight expertise;

The creation of an ombudsperson program with the organization of the chief aerospace safety officer;

Amending the company bylaws to require the separation of the CEO and the board chair positions;

Amending the company's corporate governance principles to include language that the governance and public policy committee shall ensure that at least three directors have knowledge, experience and/or expertise with aviation/aerospace, engineering and/or product safety oversight;

Amending the aerospace safety committee, or "ASC," charter to include requirements that the chief aerospace safety officer and chief engineer ensure that certain safety-related matters be reported to the ASC, including Speak Up portal submissions, FAA airworthiness directives, the issuance of FAA-type certificates and/or production certificates, and significant communications with the FAA;

Mandatory at least semiannual

reporting by the chief aerospace safety officer to the full board;

Continued consideration of safety metrics in determining executive compensation for named executive officers;

Amending the ASC charter so that the ASC is comprised of only independent directors; and.

Public disclosure of safety enhancements and initiatives implemented by the company since the events giving rise to the action.

The ombudsperson program must remain in effect for five years, and the other measures are binding for no less than four years.

The co-lead plaintiffs, other plaintiffs in the consolidated action, including the *Isman* action, and any other Boeing stockholder, to the extent they are acting or purporting to act derivatively on behalf of Boeing, release the defendants from claims arising out of the subject matter in this action or the *Isman* action. The released claims do not include direct claims in the securities litigation or derivative Section 14(a) litigation in the Northern District of Illinois, Case Nos. 19 Civ. 2934 and 19 Civ. 9095. The defendants

also release claims arising out of or relating to the initiation, prosecution, or resolution of the action.

The defendants deny any and all allegations of fault, liability, wrongdoing or damages.

I also consider stockholders' objections. Out of over 96,000 Boeing stockholders who received paper notices, two stockholders have objected.

Michael J. Leahey asked the Court to reject the settlement for three reasons: (1) it disproportionately impacts small individual stockholders; (2) it fails to hold the directors accountable; and (3) individual stockholders were excluded from the settlement negotiations.

Walter E. Ryan Jr. sought several modifications to the settlement:

One, disclosure of available insurance policy amounts. This information has since been disclosed.

Two, a meaningful monetary contribution and/or statement by directors in pursuit of a perception of contrition.

Three, addition of a pilot certified

to fly the company's most advanced plane product to the board. In this, Mr. Ryan seeks a direct line of communication between the board and pilots.

And, four, in a sur-reply filed after the defendants' insurance coverage was disclosed, Mr. Ryan objected to the monetary amount of the proposed settlement, contending it was inadequate as a percentage of total insurance coverage and as a percentage of the damages the company suffered. Mr. Ryan continues in his sur-reply to seek director contribution.

For the reasons I will explain, I find the terms of the proposed settlement are fair and reasonable. As an initial matter, as in *Activision*, the fact that this settlement arose from extensive mediation led by a highly respected and experienced former United States District Court Judge speaks to its reasonableness.

First, the "get" for the company. Plaintiffs' counsel achieved significant monetary restitution for the trauma the crashes caused the company. The monetary component is the largest *Caremark* recovery in Delaware and the second largest monetary settlement in a derivative action before this

Court. These funds will be paid to the company to remediate some of its losses.

Further, in view of the scale of Boeing's corporate loses, penalties, fines, and settlements after the two crashes, insurance is the only source of any meaningful recovery. The defendants are individuals, not entities. Their insurance policies are the deepest pocket available to Boeing and its stockholders.

After Mr. Ryan's request for disclosure of available insurance policy amounts, Boeing disclosed those amounts. Boeing disclosed it has a total of $280 million in total Side A, B, and C coverage and another $270 million in excess Side A difference in conditions coverage.

I recognize, as Mr. Ryan pointed out, that the settlement amount is a fraction of the losses Boeing has suffered from the crashes and is less than all of Boeing's available insurance. But full restitution is an impossible goal here. All of Boeing's Side A coverage remains a small percentage of the damage to the company. The insurance payment was the product of mediation with sophisticated and specialized counsel before a mediator with experience

in this space.

Over Mr. Ryan's objections, I conclude the monetary amount is reasonable in light of the circumstances and the accompanying corporate governance reforms.

Indeed, the second component of the settlement is those corporate governance reforms. The reforms are wide-ranging, but also targeted at oversight of Boeing's mission-critical airplane safety and reporting to the board. These reforms benefit Boeing and its stockholders by improving the systems and personnel for board-level oversight of airplane safety.

The two objecting stockholders seek contributions or statements of contrition by the directors. Mr. Leahey does not object to the amount of the recovery, but he and Mr. Ryan want some of it to come from the directors personally. Given the tragic facts of this case, this desire for contrition is understandable. But at bottom, the directors have not been held liable. The claims passed a motion to dismiss, taking plaintiffs' allegations as true.

I offer two responses to the stockholders: one doctrinal and one practical.

As a doctrinal matter, it appears that whether the directors admit guilt is outside the scope of what I am supposed to be policing for in reviewing the settlement. The settlement is subject to my range-of-reasonableness review for indicia of self-dealing or failure to maximize recovery by a plaintiff failing to fairly represent the company or her fellow stockholders. It is not clear to me that I could reject a settlement for failure to extract contrition or confession where the balance of the settlement is reasonable, the amount of recovery is satisfactory, and the plaintiffs have performed loyally and competently.

As a practical matter, there is a trade-off between the benefits that were obtained and the contrition the objectors seek. It is true that a favorable verdict at trial would accomplish the objectors' goal: a finding of liability and potentially a higher monetary judgment. But that path does not allow the other consideration that Boeing and its stockholders have received here: corporate governance reforms. While a settlement does not offer a finding of liability, it opens the door for these valuable governance improvements. Plaintiffs contend

that insisting on personal contributions would also have resulted in a trade-off to the size of the monetary settlement, not, as Mr. Ryan contends, another source of additional funds.

To my mind, the reforms and money obtained here are of great benefit to the company and its stockholders and are rightly prioritized over an admission of liability or personal monetary contributions by directors.

Mr. Ryan asserts the company's critical deficiency was the lack of a connection between the board and anyone with a practical understanding of airplane safety. He argues that to remedy this problem, the settlement should compel Boeing to appoint a certified pilot on the board.

In my view, the settlement recognizes and takes steps to remedy the problem Mr. Ryan identifies. The settlement requires the board to have at least three directors with knowledge, experience, and/or expertise with aviation/aerospace, engineering, and/or product safety oversight and the ASC to include three directors with that same experience and/or safe product design, development, manufacture, production, operations, maintenance, and delivery. It also

includes the creation of an ombudsperson program and improves safety reporting requirements to the ASC and full board.

I find these are eminently reasonable additions and that it is not clear that pilot experience is more appropriate, at all or in significant enough measure to reject the settlement.

Turning to the "give" by the stockholders. The stockholders released derivative claims arising out of the 737 MAX development, the crashes, and corporate oversight of airplane safety. Those claims had passed a motion to dismiss and appeared strong, but were subject to being assumed by a special litigation committee. The stockholders also gave up the opportunity to win a post-trial decree of liability against the directors.

I read Mr. Leahey to object that these releases were negotiated without input from individual stockholders. But respectfully, when this Court appointed FPPA and the Fund as co-lead plaintiffs based on the strength of their complaint and their counsel, this Court empowered those plaintiffs to negotiate on behalf of all stockholders. Mr. Leahey exercised his right to object to the terms of the

settlement, but the fact that the settlement was negotiated by the co-lead plaintiffs is a core element of our civil procedure for derivative cases.

So, for the reasons I have explained, I conclude the terms of the proposed settlement are fair and reasonable, and the settlement is approved. Plaintiffs' claims focus on the Boeing directors' failure to fulfill their duties of oversight with regard to mission-critical airplane safety. The terms of the settlement give the company a very large monetary award to help ameliorate some of the losses from airplane safety failures, and the settlement directly improves the company's oversight and reporting structures for four to five years. Thus, considering the nature of plaintiffs' claims, the possible alternative fates of those claims, the relief available at trial, and the legal and factual circumstances of this case, and applying my own business judgment in deciding whether the settlement is reasonable in light of those factors, I find that the release given by the plaintiffs is appropriate in light of what the company gets.

Finally, I turn to the plaintiffs' request for an award of attorneys' fees and expenses

and an incentive award.

Delaware's policy is to ensure that "even without a favorable adjudication, counsel will be compensated for the beneficial results they produced, provided that the action was meritorious and had a causal connection to the conferred benefit." That's a quote from *Allied Artists Pictures Corporation v. Baron*.

Under Delaware law, plaintiffs' counsel is entitled to fees and expenses under the corporate benefit doctrine for the benefits it conferred on the nominal defendant. In setting fee awards, the Court of Chancery must make an independent determination of reasonableness.

When setting a fee award, the Court will generally follow the factors identified in the Delaware Supreme Court's *Sugarland* decision. The relevant factors here are: (1) the benefit achieved; (2) the time and effort of counsel; (3) the stage at which the litigation ended; (4) the relative complexities of the litigation; (5) any contingency factor; and (6) the standing and ability of counsel. "This Court has consistently noted that the most important factor in determining a fee award is the

size of the benefit achieved," per *Gatz*.

In this settlement, plaintiffs' counsel seek a fee award of $18,260,000. At 7.69 percent of the monetary settlement component, this is less than the 12.5 percent ceiling co-lead counsel agreed upon with their clients and the defendants. That negotiated threshold between sophisticated parties is presumed reasonable where, as here, it falls within a reasonable range. The fee award compensates co-lead counsel, counsel retained to analyze Boeing's D&O insurance, and the firms that represented Local 79 in its Section 220 action to obtain documents that were made available to co-lead counsel.

I turn first to the results achieved. As mentioned, these include the highest monetary *Caremark* derivative settlement this Court has approved and the second highest of any sort of derivative claim. The corporate governance reforms, obtained through settlement but not available at trial, are wide-ranging, meaningful, and tailored to the issues at hand. According to Mr. Friedlander's declaration, co-lead counsel and co-lead plaintiffs negotiated directly with Boeing for these reforms on a separate

track from the mediation. Comparing fees in cases with comparable components of the benefits obtained here, the fee award is more than reasonable.

Turning to the remaining factors.

First, the complexities of the litigation. The *Caremark* claim that plaintiffs brought and that all Section 220 plaintiffs sought to investigate faced doctrinal headwinds. Plaintiffs built their claim using a very large Section 220 production. As noted during the leadership dispute, plaintiffs' claim cogently focused on, and presented factual allegations relevant to, board knowledge. The facts surrounding the crashes continued to evolve as the case was pending, and plaintiffs incorporated these new facts by amending their complaint.

Next is the standing of counsel. Co-lead counsel are some of the nation's leading plaintiff-side complex litigation firms with experience securing large monetary settlements as well as significant governance reforms. Counsel that contributed to the body of Section 220 documents are also excellent attorneys who pursued those documents efficiently and productively and obtained previously nondisclosed documents. The settlement was achieved

across the aisle from excellent firms, further supporting the reasonableness of the fee.

Next is the contingency factor. This Court recognizes that risky contingent litigation in the interest of shareholders, when done efficiently, warrants a fee that is higher than hourly or contractual rates. Such a fee is warranted here.

Next is the stage at which the litigation ended. This litigation ended after a Section 220 action, a complaint this Court selected as the lead complaint, an amended complaint based on new facts, success on a fully briefed and argued motion to dismiss, and several days of mediation. The 7.69 percent fee award is more than appropriate based on the common law sliding scale that has developed.

Finally, I consider the counsel's time and effort. These metrics provide a cross-check on the reasonableness of a fee award. Here, the time spent by several firms in litigating Section 220 actions and negotiating for documents, in presenting the best complaint possible to encapsulate the derivative claim, in surviving a motion to dismiss, and in presenting the case for mediation totals 14,000 hours. The award therefore translates into an

implied hourly rate of approximately $1,231 per hour, well within, and even below, this Court's precedent and providing only a fractional multiplier for most of the experienced counsel in this case.

Finally, I note that counsel in the consolidated demand futility *Slotoroff* case and the demand-refused *Isman* case, which was consolidated into this matter for purposes of settlement, have not petitioned this Court with an objection or for a fee award.

In light of these *Sugarland* factors, including the benefits conferred on the nominal defendant, the complexity of this litigation, and the risk that the plaintiff and its counsel would get nothing, I find the requested fee to be more than reasonable.

The last issue is the matter of plaintiffs' incentive award. FPPA seeks an incentive award of $12,500 to be paid out of counsel's fee. The Fund, which lent its unique internal resources and its legal department and bureau of corporate governance, as noted in the leadership award, does not seek an incentive award.

As recently explained in *Morrison v.*

Berry, such an award is intended to restore to the plaintiff the costs of its involvement, with additional compensation awarded for extraordinary active participation. This balance echoes the principle I began with: the point of reviewing these settlements is to balance and check the interests of the plaintiffs in view of the benefits to the company.

Here, as in *Morrison*, the plaintiff seeking a fee did what it must: reviewed the pleadings. FPPA also attended hearings, including scheduling conferences, the leadership hearing, and the motion to dismiss hearing. FPPA attended one day of mediation in person and participated in all the other sessions. FPPA totaled over 100 hours of participation. Certainly, an interested and participatory plaintiff is a better plaintiff than a rubber stamp or a potted plant would be, but FPPA did not do work resembling the work that warranted an extraordinary award in *Raider* and in *Oliver*. So I award FPPA $5,000.

I ask plaintiffs' counsel to submit an updated form of order reflecting the adjustment of the incentive award.

With that, are there any questions or

is anything unclear, beginning with Mr. Friedlander?

ATTORNEY FRIEDLANDER: Your Honor, I don't think I've ever had a question before, but I actually do, just for the clarity of the record.

I just want to note that Your Honor referred to the fee being -- twice -- more than reasonable and more than appropriate. And I think we can all agree in context that that doesn't mean in excess of the amount reasonable or appropriate. If you don't mind, Your Honor.

THE COURT: Correct. The modifier goes to the reasonableness and not the quantity of funds sought.

ATTORNEY FRIEDLANDER: Thank you, Your Honor.

Mr. Krislov.

ATTORNEY KRISLOV: Your Honor, would you entertain -- I believe that we have served a positive role in this, and we would ask leave to submit a petition for our fees for our work in the case, which we think materially helped the Court's evaluation, even if, obviously, we may disagree on points. I do think that, at the very least, forcing the revelation of the insurance policies was a

material -- was important for the shareholders' benefit and for the company's benefit. So we would ask leave to submit basically a lodestar-based fee petition for our work, if you would entertain that.

THE COURT: I have some concerns about the timeliness of such a petition.

ATTORNEY KRISLOV: Within a week we would be happy to do it.

THE COURT: Meaning I wonder if it might not be too late.

ATTORNEY KRISLOV: Well, we would not know whether there was a basis for submitting the fee -- I mean, too late because you've decided the fee issue. In equity, I suppose a portion of -- it would still be subject -- or within the 30 days for reconsideration.

But, frankly, the role of an objector is to do what we did. And I don't think that the Court would have been in a position to evaluate a fee petition until after evaluating the briefs and the hearing today.

THE COURT: You may submit it, and I'll review it.

ATTORNEY KRISLOV: Thank you.

THE COURT: Thank you.

Counsel for the individual defendants, any questions? Anything unclear?

ATTORNEY NELLES: No questions from us, Your Honor. Thank you.

THE COURT: And counsel for the nominal defendant?

ATTORNEY ROHRBACHER: Not at this time, Your Honor.

THE COURT: Thank you all very much. I will look for any submission from Mr. Ryan within a week. But otherwise, congratulations. I hope everyone has a good rest of the week.

We're adjourned.

(Court adjourned at 4.28 p.m.)

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CERTIFICATE

I, DENNEL NIEZGODA, Official Court Reporter for the Court of Chancery of the State of Delaware, Registered Merit Reporter, Certified Realtime Reporter, do hereby certify that the foregoing pages numbered 3 through 103 contain a true and correct transcription of the proceedings as stenographically reported by me at the hearing in the above cause before the Vice Chancellor of the State of Delaware, on the date therein indicated, except for the rulings at pages 66 through 103, which were revised by the Vice Chancellor.

IN WITNESS WHEREOF, I have hereunto set my hand at Wilmington, this 28th day of February, 2022.

/s/ Dennel Niezgoda

Dennel Niezgoda
Official Court Reporter
Registered Merit Reporter
Certified Realtime Reporter

EXHIBIT 29

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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

IN RE WELLS FARGO & COMPANY SHAREHOLDER DERIVATIVE LITIGATION

This Document Relates to:

ALL ACTIONS.

Lead Case No. 3:16-cv-05541-JST

SUPPLEMENTAL BRIEF IN SUPPORT OF PLAINTIFFS' MOTION FOR PRELIMINARY APPROVAL OF SETTLEMENT

I. INTRODUCTION

In support of their Motion for Preliminary Approval of Settlement (Dkt. 270), and pursuant to the Court's Order Requesting Supplemental Briefing (Dkt. 271), Plaintiffs provide further information regarding the potential range of recovery were Plaintiffs to prevail on the claims being released under the proposed Settlement. The estimated amount of potential damages at trial based on out-of-pocket injury is approximately $1.1 billion. Including the claim for lost income to Wells Fargo, the damages could be as much as $3.5 billion. Thus, the $320 million settlement (comprised of $240 million in cash and $80 million in clawbacks and corporate governance reforms) reflects a recovery of between 9.1 and 29.1 percent of the total potential damages. The maximum amount of *recoverable* damages, however, is, as a practical matter, effectively constrained by the Director and Officer ("D&O") liability insurance policies available to satisfy a derivative judgment against Defendants in this case—$500 million. The $240 million cash portion of the Settlement represents 48 percent of the likely available recoverable damages.

II. ARGUMENT

In shareholder derivative actions, courts recognize two types of remedies: money damages payable to the corporation and non-monetary forms of relief, such as corporate governance reforms.[1] Deborah A. DeMott, Shareholder Derivative Actions: Law & Practice § 7:6, at 1117 (2018–2019). The computation of money damages "is governed by the general tort rule that the defendant's liability is for the full amount of loss or injury suffered by the corporation." *Id.*; *see also Strassburger v. Earley*, 752 A.2d 557, 579 (Del. Ch. 2000) ("The traditional measure of damages is that which is utilized in connection with an award of compensatory damages, whose purpose is to compensate a plaintiff for its proven, actual loss caused by the defendant's wrongful conduct.").

Plaintiffs identified two categories of potential monetary damages resulting from the alleged misconduct: (i) out-of-pocket costs incurred by Wells Fargo attributable to the Improper

[1] As explained in the Motion, the Parties have agreed that the non-cash components of the settlement—the clawback of compensation and corporate governance reforms—have a total value to Wells Fargo of $80 million. Dkt. 270 at 10–11.

Sales Practices, approximately $1.1 billion; and (ii) actual and anticipated loss of income to the Company, preliminarily estimated to be $1.4 billion to $2.4 billion.

Category 1: Out-of-Pocket Damages. The $1.1 billion in out-of-pocket damages Plaintiffs estimate that Wells Fargo suffered from the Improper Sales Practices is based on publicly available information and information provided by Wells Fargo in the course of the litigation. Those damages include the following: (i) $529 million in civil and regulatory fines, penalties, and payments (*i.e.*, including settlements with the Consumer Financial Protection Bureau, the Los Angeles City Attorney, the Office of the Comptroller of Currency, and the Financial Industry Regulatory Authority, and related class actions);[2] (ii) approximately $443 million in costs expended on associated investigations and litigation (*i.e.*, investigations and associated litigation costs, including the Board's Sales Practices Investigation); and (iii) approximately $138 million expended for remediation efforts (*i.e.*, the cost of refunds to customers affected by unauthorized accounts, a 2018 public relations campaign titled "Re-Established 2018," and increased bank monitoring).[3]

Category 2: Loss of Income. Plaintiffs preliminarily assessed the loss of income attributable to Improper Sales Practices at between $1.4 billion and $2.4 billion. This comprises the impact of the Federal Reserve's asset growth restrictions, implemented in its February 2018

[2] *See, e.g.*, Consent Order, *In re Wells Fargo Bank, N.A.*, CFPB No. 2016-CFPB-0015 (Sept. 8, 2016) ($100 million settlement with CFPB); Stipulated Final Judgment, *California v. Wells Fargo & Co.*, No. BC580778 (Cal. Super. Ct. Sept. 13, 2016) ($50 million settlement with Los Angeles City Attorney); Consent Order, *In re Wells Fargo Bank, N.A.*, No. AA-EC-2016-66 (Sept. 6, 2016) ($35 million penalty to OCC); Letter of Acceptance, Waiver and Consent, Financial Industry Regulatory Authority, No. 2012034123501 (Dec. 18, 2014) ($1.5 million penalty to FINRA); *Hefler v. Wells Fargo & Co.*, No. 16-CV-05479-JST, 2018 WL 6619983, at *2 (N.D. Cal. Dec. 18, 2018) ($480 million settlement with class of shareholders, approximately $200 million of which was paid directly by Wells Fargo); Order Granting Final Approval of Class Action Settlement, *Jabbari v. Wells Fargo & Co.*, No. 3:15-cv-02159-VC (N.D. Cal. Jun. 14, 2018), ECF No. 271 ($142 million settlement with class of consumers).

[3] *See, e.g.*, Cal. State Sen., Sen. Comm. on Banking & Finance, An Examination of Wells Fargo's Sales Practices & Management & Board Oversight: Background Paper (Nov. 22, 2016) ($8 million in administration costs attributable to generation of unauthorized accounts); Press Release, Wells Fargo & Co., Wells Fargo Reports Completion of Expanded Third-Party Review of Retail Banking Accounts, Paving Way to Complete Remediation Effort (Aug. 31, 2017) ($6.1 million in refunds to consumers); Q3 2016 Wells Fargo & Co. Earnings Call, at 2 (FD (Fair Disclosure) Wire Oct. 14, 2016) ($50 million in costs for system and process enhancements, including automated email notifications, application acknowledgments, multi-factor authentication, an independent third-party mystery shopper program, and additional risk personnel).

consent order,[4] and the loss of income due to lost business and reputational harm attributable to the Improper Sales Practices. By its nature, this type of damage is difficult to quantify (especially before the conclusion of fact and expert discovery), and Plaintiffs anticipated significant challenges in establishing the existence and value of these damages at trial. Plaintiffs' estimate of this second category of damages is thus a maximum figure that would have been vigorously disputed, discounted and, inevitably, subjected to continued review as the proceedings advanced to trial and possibly through the appeal process.

Estimated Recoverable Damages. Notwithstanding these potential estimated damages, Plaintiffs also considered the amount of damages they "could have *recovered* if they ultimately prevailed on the merits of their claims." *See* Dkt. 271 at 1–2 (citing *K.H. v. Sec'y of Dep't of Homeland Sec.*, No. 15-CV-02740-JST, 2018 WL 3585142, at *5 (N.D. Cal. July 26, 2018)) (emphasis added). The amount of recoverable damages after trial is highly dependent on the limits of the D&O insurance available to satisfy a judgment. Here, the policy limits of the available D&O insurance is $500 million.

Percentage of Available Recovery. Plaintiffs' recovery of $240 million in cash, together with the $80 million in clawbacks and corporate governance reforms, reflects a significant recovery of the total estimated recoverable damages. The cash recovery of $240 million equates to approximately 21.8 percent of the $1.1 billion in out-of-pocket damages to the Company.[5] Alternatively, the cash recovery of $240 million represents 48 percent of the available D&O insurance.[6] These rates of recovery far exceed those typically found in shareholder class action litigation. *See* Stefan Boettrich & Svetlana Starykh, NERA Economic Consulting, Recent Trends in Securities Class Action Litigation: 2018 Full-Year Review 35 fig.27 (2019) (finding the

[4] In February 2018, the Federal Reserve prohibited Wells Fargo from growing its asset base until it sufficiently improved its corporate governance and controls. *See* Dkt. 270 at 18. That prohibition remains in place today.

[5] The cash recovery of $240 million represents between 6.9 and 9.6 percent of the $2.5 billion to $3.5 billion total maximum damages, inclusive of the more speculative loss of income.

[6] Including the value of clawback compensation and corporate governance reforms to which the Parties agreed ($80 million) for a total Settlement value of $320 million, the Settlement equates to 64 percent of the available D&O insurance, approximately 29.1 percent of the $1.1 billion in out-of-pocket damages, and between 9.1 and 12.8 percent of the $2.5 billion to $3.5 billion in total maximum damages, inclusive of the more speculative loss of income.

median ratio of settlement value to investor losses was 1.2 percent for investor losses of $1.000–$4.999 billion);[7] Laarni T. Bulan et al., Cornerstone Research, Securities Class Action Settlements, 2018 Review & Analysis 6 fig.5 (2019) (finding that in cases with "simplified tiered damages" of over $1 billion, the median settlement value was 2.0 percent of the "simplified tiered damages" for settlements in 2018);[8] *see also Hefler v. Wells Fargo & Co.*, No. 16-CV-05479-JST, 2018 WL 4207245, at *9 (N.D. Cal. Sept. 4, 2018) (approving settlement with "a greater than 15 percent recovery").[9]

III. CONCLUSION

The Settlement's cash recovery of $240 million, combined with the additional $80 million in compensation clawbacks and corporate governance reforms, represents a significant percentage of the range of potential damages to Wells Fargo, and nearly half of the potential recoverable damages, as represented by available D&O insurance. As discussed above and in Plaintiffs' Motion for Preliminary Approval of Settlement, the Settlement falls well within the range of reasonableness regularly approved by courts in shareholder derivative actions.

Dated: April 2, 2019

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[7] https://www.nera.com/content/dam/nera/publications/2019/PUB_Year_End_Trends_012819_Final.pdf (last visited Mar. 28, 2019).

[8] https://www.cornerstone.com/Publications/Reports/Securities-Class-Action-Settlements-2018-Review-and-Analysis (last visited Apr. 1, 2019).

[9] Plaintiffs refer to percentages of recovery in securities class action litigation because no similar analyses exist for comparably sized shareholder derivative recoveries.

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EXHIBIT 30

UNITED STATES DISTRICT COURT

MIDDLE DISTRICT OF TENNESSEE

NIKKI BOLLINGER GRAE, Individually and on Behalf of All Others Similarly Situated, Plaintiff, vs. CORRECTIONS CORPORATION OF AMERICA, et al., Defendants.	Civil Action No. 3:16-cv-02267 Honorable Aleta A. Trauger MEMORANDUM OF LAW IN SUPPORT OF CLASS COUNSEL'S MOTION FOR AN AWARD OF ATTORNEYS' FEES AND EXPENSES AND AWARD TO PLAINTIFF PURSUANT TO 15 U.S.C. §78u-4(a)(4)

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LEGISLATIVE HISTORY

Private Securities Litigation Reform Act of 1995,
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Class Counsel submits this memorandum in support of its motion for an award of attorneys' fees and expenses, and in support of Plaintiff Amalgamated Bank, as Trustee for the LongView Collective Investment Fund's ("Plaintiff") request for an award of time and expenses in representing the Class pursuant to 15 U.S.C. §78u-4(a)(4).

I. INTRODUCTION

After more than four years of hard-fought litigation, getting to within a month of the scheduled trial date, and mediation efforts that spanned over two years, Plaintiff and Class Counsel have succeeded in obtaining a $56 million cash recovery for the benefit of the Class.[1] This substantial and definite recovery was achieved through the skill, hard work, and persistent advocacy of Class Counsel. Class Counsel now respectfully moves this Court, on behalf of Plaintiff's Counsel, for an award of attorneys' fees in the amount of one-third of the Settlement Amount and expenses incurred in prosecuting this Litigation of $1,949,862.24, plus interest earned on both amounts.

The requested fee award is within the range of percentages awarded in class actions in this District, in this Circuit and across the country and is warranted in light of the excellent result obtained for the Class. The result is more than five times the median percentage recovery in securities class action settlements in 2020 according to data compiled by NERA Economic

[1] Submitted herewith in support of approval of the proposed Settlement is the Memorandum of Law in Support of Plaintiff's Motion for Final Approval of Class Action Settlement and Approval of Plan of Allocation ("Settlement Brief"). The Court is also respectfully referred to the accompanying Declaration of Christopher M. Wood in Support of: (1) Final Approval of Class Action Settlement and Approval of Plan of Allocation; and (2) an Award of Attorneys' Fees and Expenses and Award to Plaintiff Pursuant to 15 U.S.C. §78u-4(a)(4) ("Wood Decl.") for a more detailed history of the Litigation, the extensive efforts of Class Counsel, and the factors bearing on the reasonableness of the requested award of attorneys' fees and expenses. All terms capitalized herein are defined in the Stipulation of Settlement dated June 24, 2021 (the "Stipulation") (ECF No. 463), unless otherwise indicated. Unless otherwise noted, all emphasis in quotations is added and citations and footnotes are omitted.

Consulting. *See* Janeen McIntosh & Svetlana Starykh, *Recent Trends in Securities Class Action Litigation: 2020 Full-Year Review* (NERA Jan. 25, 2021) ("NERA Report").

The fee award is also reasonable in light of the significant risks involved in bringing and prosecuting this action on behalf of the Class and the extensive effort of counsel in obtaining this result. This action is subject to the provisions of the Private Securities Litigation Reform Act of 1995 ("PSLRA"), which requires a plaintiff to "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).

In addition to the significant risks in prosecuting this Litigation under the PSLRA, the skill and effort to achieve the Settlement was substantial. Class Counsel marshaled considerable resources and committed substantial amounts of time and expense to prosecuting the Litigation. As set forth in the Wood Declaration, the Settlement was not achieved until Class Counsel: (1) conducted an in-depth investigation regarding CCA and the alleged misconduct, including identifying and interviewing several former CCA employees and securing critical documents from the U.S. Bureau of Prisons ("BOP") through Freedom of Information Act requests, completing a review and analysis of SEC filings, conference call transcripts, press releases, and financial analyst research reports concerning the Company; (2) filed a detailed amended complaint sufficient to meet the PSLRA's particularized pleading standards; (3) comprehensively briefed Defendants' motion to dismiss, which the Court denied; (4) achieved class certification over Defendants' strenuous opposition, following a successful motion for reconsideration and Defendants' unsuccessful Rule 23(f) petition; (5) undertook the review and analysis of over 3.7 million pages of documents; (6) took 24 fact depositions; (7) filed more than a half-dozen discovery motions, including motions related to Defendants' interrogatory responses, as well as Defendants' claims of privilege, which

resulted in the appointment of a special master; (8) retained experts in the fields of performance of private prison operators and economics to prepare opening expert and supplemental expert reports; (9) completed expert discovery, including taking eight depositions of Defendants' designated experts and defending Plaintiff's two experts; (10) prepared and filed *Daubert* motions to exclude most of Defendants' expert witnesses and opposed Defendants' motions to exclude Plaintiff's experts; (11) successfully moved for partial summary judgment; (12) opposed Defendants' motion for summary judgment; (13) prepared the case for trial, including drafting motions *in limine*, jury instructions and other pretrial materials, exchanging trial exhibits and deposition designations with Defendants, and negotiating evidentiary objections; (14) assessed the risks of prevailing on Plaintiff's claims at trial and the Class's ability to collect on any judgment awarded; and (15) engaged in settlement negotiations over the course of two years, ultimately resulting in the Settlement. *See generally* Wood Decl.

Class Counsel undertook the representation of the Class on a contingent fee basis, and no payment has been made to Class Counsel to date for its services or for the litigation expenses it has incurred on behalf of the Class. Additionally, Class Counsel invested more than $1,900,000, carrying much of that cost for years without compensation. Class Counsel firmly believes that the Settlement is the result of its diligent and effective advocacy, as well as its reputation as a firm that will not waver in its dedication to the interests of class members, and that is committed to zealously prosecuting a meritorious case through trial and subsequent appeals. In a case asserting claims based on complex legal and factual issues that were vigorously opposed by highly skilled and experienced defense counsel, Class Counsel succeeded in securing a very favorable result for the Class. Significantly, the fee and expense request is supported by Plaintiff. *See* Declaration of Amalgamated Bank Executive Vice President and General Counsel Deborah Silodor ("Silodor

Decl."), ¶5, filed herewith. Plaintiff is an institutional investor and paradigmatic fiduciary of the type Congress envisioned in enacting the PSLRA.[2] Plaintiff was actively involved in the Litigation, including the difficult class certification proceedings and the protracted settlement discussions. Silodor Decl., ¶3. Because of this involvement, now, at the end of the case, Plaintiff is in a unique position to evaluate this multi-million dollar result and assess whether the fee request is fair and reasonable and should be awarded. As the Third Circuit held in *In re Cendant Corp. Litig.*, 264 F.3d 201, 220 (3d Cir. 2001), "courts should afford a presumption of reasonableness to fee requests submitted pursuant to an agreement between a properly-selected lead plaintiff and properly-selected lead counsel."

As discussed herein, and for the reasons detailed in the Settlement Brief and the Wood Declaration, the requested fee is fair and reasonable when considered under applicable Sixth Circuit standards and is within the range of awards in class actions approved by courts in this Circuit and nationwide. Moreover, the requested expenses and charges are reasonable in amount and were necessarily incurred for the successful prosecution of this Litigation. Finally, an award of $17,525 pursuant to 15 U.S.C. §78u-4(a)(4) for Plaintiff's time spent in representing the Class is eminently reasonable. No objections to these requests have been received by Class Counsel.

II. AWARD OF ATTORNEYS' FEES

A. Class Counsel Is Entitled to a Fee from the Common Fund It Obtained

This Settlement has created a common fund. The Supreme Court has long recognized the "common fund" exception to the general rule that a litigant bears his or her own attorneys' fees.

[2] Congress enacted the PSLRA in large part to encourage sophisticated institutional investors to assume control of securities class actions and "increase the likelihood that parties with significant holdings in issuers, whose interests are more strongly aligned with the class of shareholders, will participate in the litigation and exercise control over the selection and actions of plaintiff's counsel." *See* Private Securities Litigation Reform Act of 1995, H.R. Conf. Rep. No. 104-369, 1995 WL 709276, at *32 (Nov. 28, 1995).

Internal Imp. Fund Trustees v. Greenough, 105 U.S. 527 (1881). The rationale for the common fund principle was explained in *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980):

> [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.

The common fund doctrine both prevents unjust enrichment and encourages counsel to protect the rights of those who have small claims. *US Airways, Inc. v. McCutchen*, 569 U.S. 88, 96 n.4 (2013). 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 [SEC] 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)).[3]

B. The Court Should Award Attorneys' Fees Using the Percentage Approach

Class Counsel's efforts have resulted in the creation of a $56 million common fund. Courts favor awarding fees from a common fund based on "a percentage of 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. §78u-4(a)(6); *New York State Tchrs.' Ret. Sys. v. GMC*, 315 F.R.D. 226, 243 (E.D. Mich. 2016) ("[B]ecause the PSLRA refers to an award of attorneys' fees and expenses in relation to 'a

[3] *See also Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308, 313 (2007) (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").

reasonable percentage of the amount of any damages . . . actually paid to the class,' the Court concludes that the percentage-of-the-fund approach is the better method for calculating Lead Counsel's fee award."), *aff'd sub nom. Marro v. New York State Tchrs.' Ret. Sys.*, No. 16-1821, 2017 WL 6398014 (6th Cir. Nov. 27, 2017).

District courts in this Circuit overwhelmingly apply the percentage method, endorsed by the Sixth Circuit in *Rawlings v. Prudential-Bache Props., Inc.*, 9 F.3d 513, 515-16 (6th Cir. 1993), in awarding fees in common fund cases,[4] recognizing that "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.[5] The percentage-of-the-fund method also "affords the Court greater flexibility in assuring that Counsel are adequately compensated for the results that they have achieved and the work that they have done,

[4] *Burges v. Bancorpsouth, Inc.*, No. 3:14-cv-01564, slip op. at ¶3 (M.D. Tenn. Sept. 21, 2018) (using "'percentage-of-recovery'" to award class counsel fees in §10b-5 case) (Ex. 1); *Schuh v. HCA Holdings, Inc.*, No. 3:11-cv-01033, 2016 U.S. Dist. LEXIS 140387, at *32 (M.D. Tenn. Apr. 14, 2016); *Garden City Emps.' Ret. Sys. v. Psychiatric Sols., Inc.*, No. 3:09-cv-00882-WJH, 2015 U.S. Dist. LEXIS 181943, at *6 (M.D. Tenn. Jan. 16, 2015) (same); *North Port Firefighters' Pension-Local Option Plan v. Fushi Copperweld, Inc.*, No. 3:11-cv-00595, slip op. at ¶3 (M.D. Tenn. May 12, 2014) (same) (Ex. 2); *Winslow v. BancorpSouth, Inc.*, No. 3:10-cv-00463, slip op. at ¶3 (M.D. Tenn. Oct. 31, 2012) (same) (Ex. 3); *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.'"); *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 v. Chesapeake Appalachia, L.L.C.*, 695 F. Supp. 2d 521, 528 (E.D. Ky. 2010), *aff'd sub nom. Poplar Creek Dev. Co. v. Chesapeake Appalachia, L.L.C.*, 636 F.3d 235 (6th Cir. 2011).

[5] The Sixth Circuit is not alone in its adoption of the percentage approach. *In re AT&T Corp. Sec. Litig.*, 455 F.3d 160, 164 (3d Cir. 2006); *Wal-Mart Stores, Inc. v. Visa U.S.A. Inc.*, 396 F.3d 96, 121 (2d Cir. 2005); *Petrovic v. AMOCO Oil Co.*, 200 F.3d 1140, 1157 (8th Cir. 1999); *In re Thirteen Appeals Arising Out of San Juan Dupont Plaza Hotel Fire Litig.*, 56 F.3d 295, 301 (1st Cir. 1995); *Florin v. Nationsbank, N.A. of Ga.*, 34 F.3d 560, 566 (7th Cir. 1994); *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); *Swedish Hosp. Corp. v. Shalala*, 1 F.3d 1261 (D.C. Cir. 1993); *Camden I Condo. Ass'n, Inc. v. Dunkle*, 946 F.2d 768, 771 (11th Cir. 1991).

while also protecting the Class' interest in the fund." *Bowling v. Pfizer, Inc.*, 922 F. Supp. 1261, 1280 (S.D. Ohio 1996), *aff'd*, 102 F.3d 777 (6th Cir. 1996).

C. The Requested Fee Award Is Within the Applicable Range of Percentage-of-the-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. *Missouri 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 one-third 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.").

The fee requested here is "certainly within the range of fees often awarded in common fund cases, both nationwide and in the Sixth Circuit." *Se. Milk*, 2013 U.S. Dist. LEXIS 70167, at *15-*16; *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."); *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); *Fushi Copper Weld*, slip op. at 1(awarding 33-1/3% of settlement in §10b-5 case) (Ex. 2); *Bessey v. Packerland Plainwell, Inc.*, No. 4:06-cv-95, 2007 WL 3173972, at *4 (W.D. Mich. Oct. 26, 2007) (awarding one-third of common fund and noting that "'[e]mpirical studies show that . . . fee awards in class actions average around one-third of the recovery'").

The judges of the Middle District are in accord. *BancorpSouth*, slip op. at 1 (Ex. 1); *Morse v. McWhorter*, No. 3:97-0370, slip op. at 1 (M.D. Tenn. Mar. 12, 2004) (Higgins, J.) (awarding a

33-1/3% fee plus expenses) (Ex. 4); *Manners v. Am. Gen. Life Ins. Co.*, No. 3-98-0266, 1999 U.S. Dist. LEXIS 22880, at *88 (M.D. Tenn. Aug. 11, 1999) ("[T]hroughout the Sixth Circuit, attorneys' fees in class actions have ranged from 20%-50%."); *In re Sirrom Cap. Corp. Sec. Litig.*, No. 3-98-0643, slip op. at 6 (M.D. Tenn. Feb. 4, 2000) (Campbell, J.) (awarding 33-1/3% of $15 million settlement) (Ex. 5); *Skeete v. Republic Schools Nashville*, No. 3:16-cv-00043, slip op. at ¶14 (M.D. Tenn. Feb. 26, 2018) (Ex. 6) (ECF Nos. 105, 112) (approving one-third fee).

D. The Fee Is Reasonable Under the Circumstances

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. 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). In determining the reasonableness of attorneys' fees, the Sixth Circuit over the years has identified several relevant factors that District Courts "[o]ften, but by no means invariably," consider. *Moulton v. U.S. Steel Corp.*, 581 F.3d 344, 352 (6th Cir. 2009). 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 & Buttorff Corp.*, 331 F.2d 249, 251 (6th Cir. 1964); *Smillie v. Park Chem. Co.*, 710 F.2d 271, 275 (6th Cir. 1983). Courts also consider "'[t]he 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). Application of the factors articulated by the Sixth Circuit support the requested fee award here.

1. The Value of the Benefits Achieved

Class Counsel has secured a recovery that provides for a substantial (and definite) cash payment of $56 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).[6] This outstanding Settlement was achieved as a direct result of the skill, effort, and tenacity of Class Counsel in prosecuting this action. There is no question counsel overcame numerous obstacles and took significant risks in obtaining this highly favorable result for the Class.

While Class Counsel believes 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 nothing at all. Indeed, at the time the Settlement was reached, the parties were less than a month from trial and success before a jury was less than certain.

Defendants consistently maintained that Plaintiff could not establish liability or damages and challenged virtually every factual and legal issue in this Litigation in an effort to defeat Plaintiff's claims. Wood Decl., ¶¶12-16. Plaintiff anticipated a battle of experts on all disputed issues. *Id.*, ¶15. It is impossible to predict the outcome of such a battle.

Plaintiff also faced the risk of recovering on a judgment had one been obtained. Not only had CCA not won a competitively bid BOP contract in years, but newly-elected President Biden issued an executive order on January 26, 2021 indicating the intent to phase out the federal government's reliance on private prison operators. *Id.*, ¶17. In March 2021, Moody's downgraded CCA's corporate family rating, senior unsecured debt rating, and senior secured credit facility rating to Ba2 from Ba1, and revised its outlook to "negative." *Id.* In April 2021, CCA announced an

[6] *Rawlings*, 9 F.3d at 516 (a percentage of the fund will compensate counsel for the result achieved); *In re Delphi Corp. Sec., Derivative, & ERISA Litig.*, 248 F.R.D. 483, 503 (E.D. Mich. 2008); *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).

offering of new senior notes paying 8.25% interest, a significant increase from the 5% and 4.625% senior notes they replaced, reflecting the Company's increasing credit risk. *Id.* As a result, Plaintiff was faced with the real risk that should it be awarded damages it sought, CCA would not have the resources to fund the judgment and might seek the protection of the bankruptcy courts to avoid paying any judgment. *Id.*

Faced with these substantial risks, and with a keen recognition of the delay and costs to the Class that would be involved in overcoming these risks, Class Counsel was able to achieve a highly favorable settlement on behalf of the Class. Indeed, this result is more than five times the median percentage recovery in securities class action settlements in 2020 according to data from NERA. *See* NERA Report, *supra*. Accordingly, the proposed Settlement is an excellent recovery for the Class, fully justifying a fee award "within the range of fees ordinarily awarded" in this District and Circuit. *Skelaxin*, 2014 U.S. Dist. LEXIS 91661, at *5.

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; *Tellabs*, 551 U.S. at 313. Adequate compensation to encourage attorneys to assume the risk of litigation is in the public interest. 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. *GMC*, 315 F.R.D. at 244 ("The federal securities laws are remedial in nature and adequate compensation is necessary to encourage attorneys to assume the risk of litigating private lawsuits to protect investors.").

Without the willingness of Class Counsel to assume the risks associated with litigation such as this one, members of the Class may not have recovered anything. Because actionable securities

fraud exists and society benefits from strong advocacy on behalf of investors, public policy favors the granting of reasonable fee and expense applications such as this one. *See Tellabs*, 551 U.S. at 313 (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"); *Se. Milk*, 2013 U.S. Dist. LEXIS 70167, at *23-*24 (Attorney fee awards "are necessary to incentivize attorneys to shoulder the risk of nonpayment to expose violations of the law and to achieve compensation for injured parties.").

3. The Contingent Nature of the Fee

Class Counsel undertook this Litigation on a contingent fee basis, assuming a significant risk that the Litigation would yield no recovery and leave counsel uncompensated. Wood Decl., ¶¶152-156. 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 are typically paid an hourly rate and reimbursed for their out-of-pocket expenses on a regular basis, and thereby assumed no risk of non-payment, Class Counsel has not been compensated for any of its time or over $1.9 million in expenses since litigation of this case began over four years ago. Courts have consistently and rightly 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.").

While high-stakes complex class actions are inherently difficult to prosecute, the PSLRA's heightened pleading standards and mandatory discovery stay make securities fraud class actions especially arduous. According to data from NERA Economic Consulting, motions to dismiss are granted, either in whole or in part, in 75% of all securities class actions, sometimes years after a case

is filed.[7] Even when cases proceed past a motion to dismiss, the risk of no recovery is very real. There are numerous class actions in which plaintiffs' counsel expended thousands of hours and yet received no remuneration whatsoever despite their diligence and expertise. *See, e.g.*, *Pompano Beach Police & Firefighters' Ret. Sys. v. Las Vegas Sands Corp.*, 732 F. App'x 543 (9th Cir. May 1, 2018) (summary judgment granted in favor of defendants in securities fraud action after seven years of litigation); *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 plaintiffs' counsel incurred over $6 million in expenses and worked over 100,000 hours), *aff'd*, 627 F.3d 376 (9th Cir. 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 *Bank Atlantic*, the Eleventh Circuit upheld a lower court's decision overturning a jury verdict in favor of the lead plaintiff on the issue of loss causation. *See Hubbard v. BankAtlantic Bancorp, Inc.*, 688 F.3d 713 (11th Cir. 2012). The contingent nature of the representation supports the reasonable fee sought here.

4. The Diligent Prosecution of the Litigation

As discussed in more detail in the Wood Declaration, this Litigation was highly contentious, involving disputes as to practically all elements of the case. In order to obtain the $56 million recovery on behalf of the Class, Class Counsel: (1) conducted an in-depth investigation regarding CCA and the alleged misconduct, including identifying and interviewing several former CCA employees and securing critical documents from the BOP through Freedom of Information Act requests, completing a review and analysis of SEC filings, conference call transcripts, press releases,

[7] Stefan Boettrich & Svetlana Starykh, *Recent Trends in Securities Class Action Litigation: 2017 Full-Year Review*, at 19 (NERA Jan. 29, 2018), available at nera.com/content/dam/nera/publications/2018/PUB_Year_End_Trends_Report_0118_final.pdf.

and financial analyst research reports concerning the Company; (2) filed a detailed amended complaint sufficient to meet the PSLRA's particularized pleading standards; (3) comprehensively briefed Defendants' motion to dismiss, which the Court denied; (4) achieved class certification over Defendants' strenuous opposition and only after a successful motion for reconsideration; (5) undertook the review and analysis of over 3.7 million pages of documents; (6) took 24 fact depositions; (7) filed more than a half-dozen discovery motions, including motions related to Defendants' interrogatory responses, as well as Defendants' claims of privilege, which resulted in the appointment of a special master; (8) retained experts in the fields of performance of private prison operators and economics to prepare opening and supplemental reports; (9) completed expert discovery, including taking eight depositions of Defendants' designated experts and defending Plaintiff's two experts; (10) prepared and filed *Daubert* motions to exclude most of Defendants' expert witnesses and opposed Defendants' motions to exclude Plaintiff's experts; (11) successfully moved for partial summary judgment; (12) opposed Defendants' motion for summary judgment; (13) prepared the case for trial, including drafting motions *in limine*, jury instructions and other pretrial materials, exchanging trial exhibits and deposition designations with Defendants, and negotiating evidentiary objections; (14) assessed the risks of prevailing on Plaintiff's claims at trial and the Class's ability to collect on any judgment awarded; and (15) engaged in settlement negotiations over the course of two years, ultimately resulting in the Settlement. *See generally* Wood Decl.

The Settlement was achieved only by Class Counsel's tenacious advocacy and diligent prosecution. The significant resources devoted by Class Counsel reflect the effort required to bring this difficult Litigation to a successful conclusion less than a month from trial and warrants approval of 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. Courts, including this one in this case, have long recognized that securities class actions present inherently complex and novel issues. *Grae v. Corr. Corp. of Am.*, 330 F.R.D. 481, 498 (M.D. Tenn. 2019) (characterizing case law surrounding price impact "confusing," and the reasoning of recent relevant Supreme Court precedent "difficult to reconcile"); *In re Nat'l Century Fin. Enters., Inc. Inv. Litig.*, No. 2:03-md-1565, 2009 U.S. Dist. LEXIS 45790, at *20-*21 (S.D. Ohio May 27, 2009); *GMC*, 315 F.R.D. at 244. As Judge Finesilver noted four 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. Despite the fact that Plaintiff believes it has uncovered sufficient evidence to sustain a jury verdict in Plaintiff's favor (Wood Decl., ¶11), Defendants believe they have evidence to prove at trial that their statements were true to the best of their knowledge, that all risks had been disclosed, and even if they hadn't, none materialized, and the Class Members' losses were instead the result of a political shift rather than the materialization of the risks arising from CCA's systematically bad performance. *Id.*, ¶12.

At the time the Settlement was reached, motions concerning the admissibility of evidence necessary to Plaintiff's ability to prove its claims at trial were unresolved. *Id.*

The complexity of proving and recovering full damages here cannot be overstated. If, for example, the jury credited Plaintiff's allegations that Defendants misleadingly concealed CCA's deteriorating relationship with the BOP but found that Defendants generally told the truth about the quality of CCA's services (or vice versa), that could have significantly reduced the amount of damages recoverable by the Class. *Id.*, ¶13. Damages could also have been similarly reduced if the jury found the fraud did not commence until some point after the start of the Class Period such that fewer shares were purchased at inflated prices or the amount of the inflation in the shares was less than Plaintiff's experts estimated. *Id.* This could have occurred, for example, if the jury found Defendants misled investors about the deteriorating relationship with the BOP, but not until December 2014, when CCA lost its BOP contract for the Northeast Ohio facility. *Id.* Therefore, risks concerning the establishment of damages subjected the Class to a reduced recovery. *Id.* There also were real risks regarding the recovery of any judgment from the Defendants given the current state of CCA's operations. *Id.*, ¶17.

These legal and factual complexities required skill and resources to deal with efficiently and made the case more difficult and uncertain, as an inherently uncertain "battle of experts" would undoubtedly affect the outcome of the upcoming trial. These complexities support the requested award.

6. The Quality of Representation

Class Counsel include locally and nationally known leaders in the fields of securities class actions and complex litigation. Robbins Geller has either served or is serving as lead counsel in each of the largest and most significant securities class actions in this Circuit and District. Robbins Geller served as lead counsel in *In re Enron Corp. Sec., Derivative & ERISA Litig.*, No. H-01-3624 (MH)

(S.D. Tex.), in which it secured the largest recovery ever obtained in a shareholder class action. Specifically, commenting on counsel's "clearly superlative litigating and negotiating skills" and the firm's "outstanding reputation, experience, and success in securities litigation nationwide," the court in *In re Enron Corp. Sec., Derivative & ERISA Litig.*, 586 F. Supp. 2d 732 (S.D. Tex. 2008), stated, "[t]he experience, ability, and reputation of the attorneys of [Robbins Geller] is not disputed; it is one of the most successful law firms in securities class actions, if not the preeminent one, in the country." *Id*. at 789-90, 797. Robbins Geller served as sole lead counsel in *In re Cardinal Health Inc. Sec. Litig.*, No. C2-04-575 (S.D. Ohio), obtaining the then-largest securities settlement in the Sixth Circuit. In approving the requested attorneys' fees, the court noted that "[t]he quality of representation in this case was superb." *In re Cardinal Health Inc. Sec. Litig.*, 528 F. Supp. 2d 752, 768 (S.D. Ohio 2007). Robbins Geller also served as lead counsel in *Schuh v. HCA Holdings, Inc.*, No. 3:11-cv-01033 (M.D. Tenn.), obtaining a $215 million recovery on behalf of the class – the largest securities class action recovery ever in Tennessee.

But the quality of representation here is best demonstrated by the amount of the Settlement – far above the average of similar securities class actions. Class Counsel used its considerable skill, experience, and reputation for tenacity to negotiate a highly favorable result for the Class that eliminates the substantial delay and risk associated with trial and inevitable appeal.

The quality of opposing counsel is also important when the court evaluates the services rendered by plaintiffs' counsel. *See Delphi*, 248 F.R.D. at 504 ("The ability of [Class] Counsel to negotiate a favorable settlement in the face of formidable legal opposition further evidences the reasonableness of the fee award requested."). Defendants here were represented by extremely capable attorneys from Riley Warnock & Jacobson, PLC and Latham & Watkins LLP, law firms with reputations for vigorous advocacy in the defense of complex civil cases. As detailed in the

Wood Declaration, Defendants' Counsel asserted an arsenal of arguments and litigation strategies in an attempt to obtain the dismissal of this case and to minimize their clients' exposure. The ability of Class Counsel to obtain a favorable result for the Class in the face of such formidable opposition further evidences the quality of its work.

E. Class Member Reaction

"The Class's reaction to the requested fee award is also important evidence of the fairness and reasonableness of the fee request." *Id.* at 504; *In re Nationwide Fin. Servs. Litig.*, No. 2:08-cv-00249, 2009 U.S. Dist. LEXIS 126962, at *39 (S.D. Ohio Aug. 18, 2009) ("The reaction of the Class [only one objection out of nearly 125,000 individual notices sent] also supports the requested fee and expense award.").[8] To date, there have been no objections to Class Counsel's fee request.[9] Even a small number of objections by class members is evidence that the requested fee is fair. *See, e.g.*, *Ressler v. Jacobson*, 149 F.R.D. 651, 656 (M.D. Fla. 1992) (noting that the lack of objections is "strong evidence of the propriety and acceptability" of fee request).

There can be no dispute that all of the factors discussed above weigh in favor of the requested fee award.

[8] *See, e.g.*, *In re Rite Aid Corp. Sec. Litig.*, 396 F.3d 294, 305 (3d Cir. 2005) (district court did not abuse its discretion by finding that absence of substantial objections by class members to fee request weighed in favor of approval); *In re Ravisent Techs., Inc. Sec. Litig.*, No. 00-cv-1014, 2005 U.S. Dist. LEXIS 6680, at *37 (E.D. Pa. Apr. 19, 2005) (absence of objections supports award of requested fee); *In re Charter Commc'ns, Inc.*, No. 4:02-CV-1186 CAS, 2005 U.S. Dist. LEXIS 14772, at *59 (E.D. Mo. June 30, 2005) (small number of objections from institutional investors supported approval of fee request).

[9] As set forth in the Notice, the deadline to provide counsel with objections is October 8, 2021. *See* accompanying Declaration of Ross D. Murray Regarding Notice Dissemination, Publication, and Requests for Exclusion Received to Date ("Murray Decl."), Ex. A.

III. PLAINTIFF'S COUNSEL'S EXPENSES ARE REASONABLE AND WERE NECESSARILY INCURRED TO ACHIEVE THE BENEFIT OBTAINED

Class Counsel also requests payment of expenses and charges incurred by it and Local Counsel in connection with the prosecution of this Litigation in the amount of $1,949,862.24. *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.'"); *see* accompanying Declaration of Christopher M. Wood Filed on Behalf of Robbins Geller Rudman & Dowd LLP in Support of Application for Award of Attorneys' Fees and Expenses ("RGRD Decl.") and Declaration of Jerry Martin Filed on Behalf of Barrett Johnston Martin & Garrison, LLC in Support of Application for Award of Attorneys' Fees and Expenses ("Barrett Johnston Decl."), attesting to the accuracy of Class Counsel's and Local Counsel's expenses. The appropriate analysis to apply in deciding which expenses are compensable in a common fund case of this type is whether the particular costs are of the type typically billed by attorneys to paying clients in the marketplace.[10] The categories of expenses for which counsel seek payment here are precisely the type of expenses routinely charged in similar cases and, therefore, are properly awarded from the common fund.

A significant component of Class Counsel's expenses are the costs of experts, consultants and investigators. In light of the PSLRA discovery stay, the use of investigators to gather detailed fact-specific information from percipient witnesses in order to plead complaints that will survive motions to dismiss is frequently a necessity. These private investigators conducted a substantial amount of work on behalf of the Class and were important in helping Class Counsel achieve this

[10] *See 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 paying client.'"); *see also New Eng. Health Care Emps. Pension Fund v. Fruit of the Loom, Inc.*, 234 F.R.D. 627, 635 (W.D. Ky. 2006) ("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.'"), *aff'd sub nom. Fidel v. Farley*, 534 F.3d 508 (6th Cir. 2008).

result. Similarly, the retention of experts with significant experience in private prison operations, economic analysis and damages in securities class actions was essential to understanding the relevant issues. *See* RGRD Decl., ¶13(e).

In addition, the number of documents produced in the Litigation (the electronic equivalent of over 3.7 million pages) required the use of Relativity, a sophisticated database management program for the hosting, review, and analysis of documents collected or produced in the Litigation. RGRD Decl., ¶13(h). Class Counsel was required to travel in connection with this Litigation and thus incurred the related costs of transportation, lodging, and meals. *Id.*, ¶13(c) and Ex. C thereto. Class Counsel also incurred the costs of electronic legal research. *Id.*, ¶13(g); Barrett Johnston Decl., ¶7(a). It is standard practice for attorneys to use these services to assist them in researching legal and factual issues. Other expenses and charges that were necessarily incurred in the prosecution of this Litigation include expenses for mediation fees, photocopying, filing and witness fees, postage and overnight delivery. Because these were all necessary expenses incurred by Class Counsel, they should be paid from the Settlement Fund. These expenses are described in detail in the accompanying declarations of Class Counsel and Local Counsel. *See generally* RGRD Decl. and Barrett Johnston Decl.

IV. PLAINTIFF IS ENTITLED TO REIMBURSEMENT OF ITS REASONABLE COSTS

Plaintiff also seeks approval for an award of $17,525 to compensate it for the time spent directly relating to its representation of the Class. The PSLRA specifically provides that an "award of reasonable costs and expenses (including lost wages) directly relating to the representation of the class" may be made to "any representative party serving on behalf of a class." 15 U.S.C. §78u-4(a)(4). Numerous courts have approved such awards under the PSLRA to compensate class representatives for the time and effort they spent on behalf of the class. *See, e.g.*, *BancorpSouth*, slip

op. at 2 (Ex. 1); *HCA*, 2016 U.S. Dist. LEXIS 140387, at *33 (awarding lead plaintiff $6,081.25 as payment for its time spent in representing the class); *Garden City Emps.' Ret. Sys.*, 2015 U.S. Dist. LEXIS 181943, at *7 (awarding lead plaintiff more than $20,000 for payment of its time spent and costs incurred in representing the class); *In re Arm Fin. Grp.*, No. 3:99CV-539-H, 2006 U.S. Dist. LEXIS 63528, at *21 (W.D. Ky. Aug. 31, 2006) (plaintiff awarded $6,150 for reimbursement of his costs and expenses directly related to representation of the class); *Fruit of the Loom*, 234 F.R.D. at 635 (awarding individual lead plaintiffs $7,500 each for time and expenses pursuant to the PSLRA).

As set forth in the Silodor Declaration, Plaintiff took an active role in the prosecution of the Litigation, including communicating with Class Counsel regarding issues and developments in the Litigation; reviewing certain documents filed in the case, including the operative Complaint; producing relevant documents; providing deposition testimony; and consulting with Class Counsel concerning the Litigation and settlement strategy. Silodor Decl., ¶3. Pursuant to the PSLRA, Plaintiff's request of $17,525 is based on the value of the hours expended participating in and managing this Litigation on behalf of Plaintiff and the Class. *Id.*, ¶6. The Notice informed potential Class Members that such expenses would be sought (Murray Decl., Ex. A), and no objections have been filed to date.

V. CONCLUSION

For all of the foregoing reasons, Class Counsel respectfully requests that the Court approve its motion for an award of attorneys' fees and expenses and Plaintiff's request for reimbursement of its time and expenses in representing the Class.

DATED: September 24, 2021

Respectfully submitted,

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EXHIBIT 31

UNITED STATES DISTRICT COURT

MIDDLE DISTRICT OF TENNESSEE

NASHVILLE DIVISION

In re COMMUNITY HEALTH SYSTEMS, INC. SHAREHOLDER DERIVATIVE LITIGATION	Master Docket No. 3:11-cv-00489 (Consolidated with No. 3:11-cv-00598 and No. 3:11-cv-00952)
This Document Relates To: ALL ACTIONS.	Judge Kevin H. Sharp Magistrate Judge Joe B. Brown

ORDER APPROVING DERIVATIVE SETTLEMENT AND ORDER OF DISMISSAL WITH PREJUDICE

This matter came before the Court for hearing pursuant to the Order of this Court, dated November 22, 2016 ("Order"), on Plaintiffs' motion for approval of the settlement ("Settlement") set forth in the Stipulation of Settlement, dated November 18, 2016 (the "Stipulation"). Due and adequate notice having been given of the Settlement as required in said Order, and the Court having considered all papers filed and proceedings had herein, and otherwise being fully informed in the premises and good cause appearing therefor, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

1. This Final Approval Order incorporates by reference the definitions in the Stipulation, and all capitalized terms used herein shall have the same meanings as set forth in the Stipulation (in addition to those capitalized terms defined herein).

2. This Court has jurisdiction over the subject matter of the Action, including all matters necessary to effectuate the Settlement, and over all parties to the Action, including, but not limited to, the Plaintiffs, Community Health Systems, Inc. ("CHSI"), CHSI stockholders, and the Settling Defendants.

3. The Court finds that the notice provided to CHSI stockholders was the best notice practicable under the circumstances of these proceedings and of the matters set forth therein, including the Settlement set forth in the Stipulation, to all Persons entitled to such notice. The notice fully satisfied the requirements of Federal Rule of Civil Procedure 23.1 and the requirements of due process.

4. The Action and all claims contained therein, as well as all of the Released Claims, are dismissed with prejudice. As among Plaintiffs, the Settling Defendants and CHSI, the parties are to bear their own costs, except as otherwise provided in the Stipulation.

5. The Court finds that the terms of the Stipulation and Settlement are fair, reasonable and adequate as to each of the Settling Parties, and hereby finally approves the Stipulation and Settlement in all respects, and orders the Settling Parties to perform its terms to the extent the Settling Parties have not already done so.

6. Upon the Effective Date, CHSI, CHSI stockholders and the Plaintiffs (acting on their own behalf and derivatively on behalf of CHSI) shall be deemed to have, and by operation of this

Final Approval Order and the Judgment shall have, fully, finally, and forever released, relinquished and discharged and dismissed with prejudice the Released Claims against the Released Persons and any and all causes of action or claims (including Unknown Claims) that have or could have been asserted in the Action by Plaintiffs, CHSI or any CHSI stockholder derivatively on behalf of CHSI against the Settling Defendants or the Released Persons, based on the Settling Defendants' acts and/or omissions in connection with, arising out of, or relating to, the facts, transactions, events, matters, occurrences, acts, disclosures, statements, omissions or failures to act at issue in this Action through and including the date of execution of the Stipulation and including claims arising out of, relating to, or in connection with the defense, settlement, or resolution of the Action. Nothing herein shall in any way impair or restrict the rights of any Settling Party to enforce the terms of the Stipulation.

7. Upon the Effective Date, Plaintiffs (acting on their own behalf and derivatively on behalf of CHSI and its stockholders), CHSI, and any Person acting on behalf of CHSI, shall be forever barred and enjoined from commencing, instituting or prosecuting any of the Released Claims against any of the Released Persons or any action or other proceeding against any of the Released Persons arising out of, relating to, or in connection with the Released Claims, the Action, or the filing, prosecution, defense, settlement, or resolution of the Action. Nothing herein shall in any way impair or restrict the rights of any Settling Party to enforce the terms of the Stipulation.

8. Upon the Effective Date, each of the Released Persons and the Related Parties shall be deemed to have, and by operation of this Final Approval Order and the Judgment shall have, fully, finally, and forever released, relinquished and discharged each and all of the Plaintiffs and Plaintiffs' Counsel and all CHSI stockholders (solely in their capacity as CHSI stockholders) from all claims (including Unknown Claims) arising out of, relating to, or in connection with the institution, prosecution, assertion, settlement or resolution of the Action or the Released Claims. Nothing herein shall in any way impair or restrict the rights of any Settling Party to enforce the terms of the Stipulation.

9. The Court hereby approves the Fee and Expense Amount in accordance with the Stipulation and finds that such fee is fair and reasonable.

10. Neither the Stipulation nor the Settlement, including the Exhibits attached thereto, nor any act performed or document executed pursuant to or in furtherance of the Stipulation or the Settlement: (a) is or may be deemed to be or may be offered, attempt to be offered or used in any way as a concession, admission, or evidence of the validity of any Released Claims or any fault, wrongdoing or liability of the Released Persons or CHSI; or (b) is or may be deemed to be or may be used as a presumption, admission, or evidence of any liability, fault or omission of any of the Released Persons or CHSI in any civil, criminal or administrative or other proceeding in any court, administrative agency, tribunal or other forum. Neither the Stipulation nor the Settlement, nor any act performed or document executed pursuant to or in furtherance of the Stipulation or the Settlement, shall be admissible in any proceeding for any purpose, except to enforce the terms of the Settlement and Stipulation, and except that the Released Persons may file or use the Stipulation, the Final Approval Order and/or the Judgment in any action that may be brought against them in order to support a defense or counterclaim based on principles of *res judicata*, collateral estoppel, full faith and credit, release, standing, judgment bar or reduction or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim.

11. During the course of the Action, the parties and their respective counsel at all times complied with the requirements of Federal Rule of Civil Procedure 11, any applicable Tennessee law and all other similar laws.

12. Without affecting the finality of this Final Approval Order and the Judgment in any way, this Court hereby retains continuing jurisdiction over the Action and the parties to the Stipulation to enter any further orders as may be necessary to effectuate, implement and enforce the Stipulation and the Settlement provided for therein and the provisions of this Final Approval Order.

13. This Final Approval Order and the Judgment is a final and appealable resolution in the Action as to all claims and the Court directs immediate entry of the Judgment forthwith by the Clerk in accordance with Rule 58, Federal Rules of Civil Procedure, dismissing the Action with prejudice.

IT IS SO ORDERED.

DATED: January 17, 2017

Kevin H. Sharp

THE HONORABLE KEVIN H. SHARP
UNITED STATES DISTRICT JUDGE

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EXHIBIT 32

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

[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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Liaison Counsel

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 33

EFiled: Aug 13 2019 01:58PM EDT
Transaction ID 64091391
Case No. 13007-VCS

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

JOHN CUMMING, derivatively on behalf of NEW SENIOR INVESTMENT GROUP, INC.,	:	
Plaintiff,	:	
v	:	C. A. No. 13007-VCS
WESLEY R. EDENS, SUSAN GIVENS, VIRGIS W. COLBERT, MICHAEL D. MALONE, STUART A. MCFARLAND, CASSIA VAN DER HOOF HOLSTEIN, FIG LLC, FORTRESS OPERATING ENTITY LLP, FIG CORPORATION, HOLIDAY ACQUISITION HOLDINGS LLC, and FORTRESS INVESTMENT GROUP, LLP,	:	
Defendants,	:	
and	:	
NEW SENIOR INVESTMENT GROUP, INC.,	:	
Nominal Defendant.	:	

- - -

Courtroom No. 2
Kent County Courthouse
414 Federal Street
Dover, Delaware
Wednesday, July 31, 2019
11:04 a.m.

- - -

BEFORE: HON. JOSEPH R. SLIGHTS III, Vice Chancellor

- - -

SETTLEMENT HEARING and RULINGS OF THE COURT

CHANCERY COURT REPORTERS
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- - -

THE COURT: Good morning, everyone.

VARIOUS COUNSEL: Good morning, Your Honor.

THE COURT: I apologize for running a bit late. Okay. I am set up.

Shall we do some introductions and then get moving with the presentations?

Good morning.

MS. KHEMKA: Good morning, Your Honor. Shaivlini Khemka from Skadden Arps on behalf of Mr. Evans and the Fortress defendants. With me are my colleagues Mr. Brown and Ms. Martin.

THE COURT: Good morning. Welcome.

Thank you.

MR. NORMAN: Good morning, Your Honor. Steve Norman on behalf of Holiday. I'd like to introduce David Hennes and Logan Pettigrew from the Ropes & Gray firm.

THE COURT: Good morning.

MR. HENNES: Good to see you again, Your Honor.

THE COURT: Good to see you. Welcome.

MR. NORMAN: Thank you, Your Honor.

THE COURT: Thank you.

Mr. Koch.

MR. KOCH: Good morning, Your Honor. For the record, Rudy Koch on behalf of the nominal defendant.

THE COURT: Thank you.

Mr. Hurd, good morning.

MR. HURD: Good morning, Your Honor. Now I feel the pressure to rise as well. Mark Hurd of Morris Nichols for the independent director defendants.

THE COURT: All right. I think we've got everyone.

Mr. Foulds.

MR. FOULDS: Good morning, Your Honor.

THE COURT: Good morning.

MR. FOULDS: Chris Foulds from Friedlander & Gorris on behalf of the plaintiff, John Cumming. With me today I have David Wales from the Bernstein Litowitz firm, Your Honor.

MR. WALES: Good morning, Your Honor.

THE COURT: Good morning.

MR. FOULDS: As well as his colleague Tamara Gavrilova.

THE COURT: Good morning.

MR. FOULDS: And Steve Singer from Saxena White.

MR. SINGER: Good morning, Your Honor.

MR. FOULDS: And, of course, Chris Quinn from my office, whom Your Honor, I think, knows well.

THE COURT: Yes. Good to see you.

MR. QUINN: Good morning.

MR. FOULDS: So it is my privilege to present today for the Court's consideration three unopposed applications in the Cumming v. Edens derivative matter: first, approval of a proposed settlement, which consists principally of a $53 million cash payment, enhanced by certain governance actions agreed to be taken by the board; second, our request for an award of attorneys' fees and expenses; and then, lastly, our client's request for a modest incentive fee.

Unless the Court would prefer that I proceed otherwise, I'll take them in that order.

THE COURT: Yes, please.

MR. FOULDS: In terms of the settlement, as reflected in defendants' affidavits, there have been no objections. Notice was provided to

all record holders. Notice was also provided to more than 10,000 beneficial owners. Notice was posted on New Senior's website, and although it was not required by the stipulation or the scheduling order, notice was provided in two SEC filings by New Senior because of the materiality of the settlement.

The settlement is especially important to New Senior because New Senior is not AIG or Bank of America. New Senior is a relatively small REIT which had, at the time we entered into the settlement, approximately a $450 million market cap. If approved, we believe that the settlement will be the largest, as a percentage of market cap, by far.

We were able to extract, we believe, the $53 million payment because we went so deep into the case. That provided us with both maximum leverage and a wealth of information from which we were able to both assess the merits of the case as well as the advisability of entering into the settlement. We had maximum leverage because it was the result of a mediator recommendation that occurred the weekend before the summary judgment hearing, which was scheduled for a Monday morning. I hope we saved Your Honor at least a little bit of time that weekend.

THE COURT: No comment.

MR. FOULDS: I was highly confident that we would prevail on summary judgment. The defendants, who had, in the prior year, asked for six months in the scheduling order to brief up and then have summary judgment decided, did not move. Those defendants that did move, we believed we had developed a powerful record of at least numerous triable factual issues.

We also had a deep understanding of the case. We obviously used the tools at hand and sent a Section 220 demand. The Court, after denying the motion to dismiss, described our schedule as ambitious, but it had to be because -- Your Honor may recall that within a few days after the opinion issued, the company announced a strategic review, which included a potential merger, which the defendants undoubtedly would have argued extinguished our standing to pursue the claims.

That added a heightened contingency risk to the case. It also meant that we had to move fast. We pushed hard for documents. There were hundreds of items of discovery correspondence, six motions to compel, a total of five oral arguments, not

including today. We received over 800,000 pages of documents, which is, of course, underinclusive, because Excel spreadsheets, the various sheets don't count.

And I am particularly proud, Your Honor, if I may, of Mr. Quinn, my colleague, who performed remarkable forensic accounting, through many late nights, where he was able to not only locate, but to synthesize and decipher an alternative set of projections, called the "closest to the pin" projections, which I think proved certainly valuable to our case.

We took 15 depositions and, most importantly, we exchanged ten expert reports. And I say most importantly because, as I think we've all been reminded in recent cases, just having a defective process isn't enough. You have to be able to prove up the damages.

Now, our primary damages theory was that New Senior, which was managed by Fortress, overpaid for a portfolio of senior housing assets from another Fortress affiliate. We had other subsidiary damages theories that depended on the overpayment, or that at least significantly overlapped with the

overpayment. Our primary damages expert pegged the damages at about $100 million, and that was if we ran the table on all of the various inputs and methodologies.

Defendants, of course, had their own blue chip expert who came in and said that New Senior actually underpaid and benefited by at least $50 million. And much as I might like to today, I'm not going to relitigate that. But suffice it to say, for present purposes, that even slight variations, as I explained in my affidavit, even slight variations resulted in rather large outcomes.

So given the risks and the importance of the settlement to New Senior, we respectfully submit that the settlement is more than fair and reasonable. And unless the Court has any questions on that, I'll move on to the attorneys' fees.

THE COURT: I don't. Thank you.

MR. FOULDS: As I've already touched on, we believe that all of the *Sugarland* factors -- result achieved, efforts, complexity, special set of skills that it took to achieve this result -- all support the unopposed fee application of $14.5 million. It bears noting that we went toe to

toe with what I certainly believe was one of the greatest litigation war machines ever assembled in our state, only a fraction of whom are here today.

We fronted out-of-pocket expenses of over $1.1 million, most of which resulted in how deep we went in the case, and in particular, the expert costs. And even then, we held out for three months after the initial mediation failed in January. And it was only after we had finalized the stipulation that Mr. Koch and I then spent several weeks negotiating an appropriate fee request.

Those negotiations were adversarial and at times, I would say, contentious. Notwithstanding the fact that the company initially said that the claims had no merit, New Senior is, of course, the recipient of the money and is, in effect, paying the fees.

New Senior ultimately agreed that we would request an all-in amount of 14.5 million. That represents slightly less than 27.5 percent of the cash consideration. And netting out the expenses of approximately 1.1 million, the fee award equals approximately 25 percent of the cash.

Now, we cited a number of other

comparable cases at or above that percentage -- pretrial cases at or above that percentage. Perhaps the most applicable was *Starz*, in which Vice Chancellor Glasscock awarded approximately 30 percent for a pretrial cash settlement.

And as I was preparing for today, I realized that we could have cited other pretrial cases; *CNX*, Vice Chancellor Laster awarded 27.5 percent all-in. Again, slightly higher than the amount sought here. And then the one that I -- I perhaps regret most not citing was the partial *Rural Metro* pretrial settlement, where Vice Chancellor Laster not only explained what has affectionately been known, at least in my firm, as the Friedlander-Baron method of netting out the expenses, but he also awarded 28 percent plus expenses. And that was at the November 2013 transcript at pages 35 to 37.

For those reasons, we respectfully submit that the unopposed fee request is warranted. And then, unless Your Honor has questions, I'll move to the incentive fee.

THE COURT: I don't.

MR. FOULDS: On the incentive fee, our client, Mr. Cumming, has requested what we believe is

a relatively modest incentive fee of $4500. We did take a long, hard look at this, and we wanted to come up with something that was appropriate and, frankly, on the safe side. Mr. Cumming is an individual investor, but he is not unsophisticated. He went to the Darden Business School at the University of Virginia. To his credit, he held onto his 8,000 shares, which is a material amount of money, I think, for most people, even while the stock continued sliding, so that we could see this case through. And this was while many, many investors were jumping ship.

He spent time reviewing documents and communicating with counsel, which is, of course, to be expected. I think, more importantly, and more invasively, Mr. Timlin of the Bernstein Litowitz firm and our vendor then collected his documents and we searched his emails.

And most importantly, I think, and what justifies the incentive fee the most, is that he spent time preparing for and being deposed. And I say it's most importantly because this was not, in my experience, a typical stockholder deposition where a junior associate goes and cuts their teeth. But here, the deposition was taken by a senior member of the

defense team who is well known for being an aggressive interrogator. And I dare say that Mr. Cumming more than held his own.

So unless Your Honor has any further questions --

THE COURT: I don't think I do.

MR. FOULDS: -- or if the defendants would like to add anything, I have a form of order.

THE COURT: Sure. I'm certainly happy to hear from anyone on the defense side of the V. I know there's been no objection lodged, but certainly, if there's anything for the record anyone would like to add, I'm happy to hear that now.

All right. I'm seeing shaking of heads, which suggests that there is no --

MR. HENNES: No, Your Honor, if you would like something for the record.

THE COURT: There. That's a collective no on behalf of everyone. Thank you.

Okay. I'll cut to the chase and then offer some remarks to explain where I'm coming from. I'm going to approve the settlement and I'm going to approve the requested attorneys' fees and expenses. I'm not, however, going to approve the incentive fee,

and I'll explain why.

Before I get there, though, I will note that the Court-approved notice was sent to stockholders informing them of the pending settlement, and there have been no objections lodged in accordance with the procedures set forth in that notice. Occasionally, the Court will hear directly from stockholders, notwithstanding the directions that are provided in the notice, either just to ask questions or to raise objections. No such contacts were received in connection with this settlement. So as it stands on this record, the proposed settlement has no objectors. And I'll note none have appeared in court, at least that I'm aware of.

Turning to the fairness of the settlement, I'll note at the outset that I am familiar with this case, having reviewed carefully a motion to dismiss where I ultimately determined that the challenged transactions would likely be subject to entire fairness review. At that point, my sense was -- and I think I at least intimated this in my decision on the motion to dismiss -- that the plaintiff had pled a strong complaint. Once that determination is made, the task is to set about taking

discovery and proving up the allegations that are well pled.

The discovery efforts were substantial. And there is no other way, really, to describe it. The parties have engaged in several months of discovery. This was not a settlement that was reached at the outset. 16 fact depositions, multiple motions to compel; all legitimately contested, but nevertheless, requiring motion practice and decisions. Indeed, at least for me, in a relatively rare stroke, the discovery had reached a point where the Court appointed a special master to facilitate discovery, which suggests hard-fought, engaged discovery on both sides.

The parties exchanged, in total, ten expert reports with rebuttals. And all of this was happening under the specter that the plaintiff could lose his standing as a result of a merger that at least was being considered. Not to say that that would have actually been the determination, but certainly that risk existed all the while.

Amidst summary judgment briefing -- actually, close to the eve of the hearing on summary judgment, so if not fully briefed, almost fully

briefed -- earlier this year, the parties met with a well-regarded mediator, had a full-day session, didn't reach a settlement that day but ultimately did four months later. And I think that settlement was reached, as I said, just two days before we were to have argument on the summary judgment motions.

The settlement provides for a $53 million cash payment and the board's commitment to recommend a stockholder vote on a proposal to declassify New Senior's board and some other governance reforms that are not insignificant.

After the parties reached agreement on the terms of the settlement, they then addressed the request for attorneys' fees and reached an understanding whereby the defendants do not oppose the request for fees and expenses presented here today. Of the $53 million settlement, plaintiff's counsel requests fees in the amount of $14.5 million, inclusive of approximately $1.1 million in expenses, and also a $4,500 incentive award for Mr. Cumming.

All of this is not to say that the plaintiff's case is or was without risk. Through three well-credentialed experts, the defendants raised significant questions regarding the amount of damages

attributable to the transaction and the reliability of the plaintiff's damages theories. Indeed, the upshot of the key opinion is that New Senior not only paid a fair price but actually underpaid and benefited from the transaction by up to $80 million.

Plaintiff also faced the risk that the Court would agree with the outside directors -- who, by the way, are protected by an exculpatory clause -- that they did not personally benefit from the transaction and had established a proper transaction committee. The $53 million that the recovery represents, at least by my estimation, is more than half of the amount that the plaintiff's counsel might have achieved on their best day at trial. And in my view, that's a very solid risk-adjusted outcome, given the challenges that plaintiff faced in this case.

I'll also reiterate that I'm comforted by the fact that the settlement is the product of mediation with a skilled mediator. I'm always comforted when settlements presented to me are the product of mediation. I think that suggests a vigorous vetting of risk, which is what a good mediation is all about, especially when qualified counsel is involved on both sides of the V, as was the

case here.

Additionally, this was not a first-offer settlement, but rather the result of a four-month process, from what I can see, that involved further follow-on conferences with the mediator, direct exchanges back and forth with information between counsel, and eventually, a provocative mediator's proposal that brought the case to resolution.

And then, finally, I'll reiterate that there have been no objections raised with respect to the settlement or the requested fees. The settlement is endorsed by experienced counsel well known to the Court, well regarded by the Court, and both of those are factors that support approval.

With all of that said, in summary, I've considered the factors expressed by our Supreme Court in the *Polk v. Good* case. I'm not going to repeat those well-known factors here, but suffice it to say that I'm satisfied that those factors, when applied to this settlement, support the fairness and reasonableness of the outcome and justify approval.

Turning to the request for fees and expenses, I begin by noting again that there have been

no objections raised to the awards and the fees and expenses were vetted by defense counsel, two factors that support approval.

I've also considered the *Sugarland* factors. Those include the results achieved by the litigation, the amount of time and effort by plaintiff's counsel, the relative complexity of the issues, whether counsel was working on a contingency fee basis, as Mr. Foulds says, whether counsel has a particular set of skills -- I suppose that's the Liam Neeson factor -- and the standing and ability of the attorneys involved.

The most important factor, I think, is the results achieved. That's certainly what I have focused most on, and I've already addressed those impressive results in my remarks.

This was a hard-fought case. It passed the motion to dismiss stage, involved several discovery battles, lasted well into expert discovery, and then required a fully or nearly fully briefed summary judgment motion to put the case in a posture for settlement. And that takes us well into the litigation and justifies a higher percentage of recovery.

At 27 percent, or, adjusted for expenses, probably more closely at 25 percent, the benefit that would be paid as fees is on the higher end of the range for a pretrial fee award, but the benefit achieved is significant, and the effort to achieve that benefit was substantial and commensurate with the fee request.

In this regard, I'll note that I've reviewed counsel's fee affidavits carefully, and they are comprehensive. They state clearly the substantial time and effort that went into achieving this result, and indeed, it appears from the calculations that the requested award reflects an hourly rate of approximately $850, which is eminently reasonable under the circumstances.

I'm not going to grant the requested incentive award to Mr. Cumming. I note that "representative plaintiffs typically receive no compensation for their services other than their pro rata share of the class recovery and their reasonable out-of-pocket ... expenses." That's a quote from this Court's 2006 decision *In re: Fuqua*, and it's a proposition that was recently reiterated by our Supreme Court in last year's *Isaacson* decision.

I've awarded incentive fees in the past, but in those cases, the plaintiff's experience and direct involvement contributed to either the development of case strategy or otherwise contributed directly to the result achieved.

And while I commend Mr. Cumming for his fortitude in sticking with the case, and also don't know the circumstances of the deposition but commend him for enduring what sounds like a challenging interrogation, I can't say that I've seen evidence of the kind of substantive, causally significant effort that would justify an incentive fee in the current regime of our law on that subject.

To conclude, the settlement is approved. Counsel fees are awarded in the amount of $14.5 million inclusive of costs and expenses, and I'll note that those specifically, by the affidavits, are $1,111,553.42.

I have the order that was submitted with the papers. I don't know if this is the right one. I've reviewed it. It appears fine to me, but sometimes counsel sees something that they want to tweak between submission and the hearing. If that's true, I'm happy to take up a revised order. If not,

I'll sign this one.

MR. FOULDS: Your Honor, Mr. Koch assures me that the order is acceptable and correct, and we also agree.

THE COURT: All right. I've filled in the fee award and noted my ruling on the incentive fee request, and I have signed the order. I'll take off all my little notes.

There you go.

All right. Anything else we should take up for the good of the order?

MR. FOULDS: Nothing here, Your Honor. Thank you.

MS. KHEMKA: Nothing from us, Your Honor.

THE COURT: All right. Last thing I'll say. It's just great to see really good lawyers. That's the best part of this job. That's pretty regularly what we see. That was on full display in this case on both sides. Hard fought, but fought in the right way to reach a productive result. So I thank you for that, and I do mean that.

As important, I thank you for coming to Dover today. I wish I could have met you in

Wilmington. I know we've got some folks that came from out of town. I typically like to accommodate folks up there, I do my best, but today I just needed to be here, so I appreciate that. Especially once the notice went out and said this was where we were doing this, I figured this is where we needed to do it. So I appreciate that.

I hope you have some time to walk around our sleepy little town, for those who have not been here before, if that is anyone. But if not, I wish you a safe journey back to Wilmington, and thank you again for your hard work in the case.

We're adjourned.

VARIOUS COUNSEL: Thank you, Your Honor.

(Court adjourned at 11:32 a.m.)

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CERTIFICATE

I, JULIANNE LaBADIA, Official Court Reporter for the Court of Chancery of the State of Delaware, Registered Diplomate Reporter, Certified Realtime Reporter, and Delaware Notary Public, do hereby certify the foregoing pages numbered 3 through 23, contain a true and correct transcription of the proceedings as stenographically reported by me at the hearing before the Vice Chancellor of the State of Delaware, on the date therein indicated.

IN WITNESS WHEREOF, I have hereunto set my hand at Wilmington this 5th day of August, 2019.

/s/ Julianne LaBadia

Julianne LaBadia
Official Court Reporter
Registered Diplomate Reporter
Certified Realtime Reporter
Delaware Notary Public

EXHIBIT 34

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

CITY OF MONROE EMPLOYEES' RETIREMENT SYSTEM, derivatively on behalf of TWENTY-FIRST CENTURY FOX, INC.,	:	
Plaintiff,	:	
v.	:	C.A. No. 2017-0833-AGB
RUPERT MURDOCH, LACHLAN MURDOCH, JAMES MURDOCH, CHARLES G. CAREY, DAVID F. DEVOE, RODERICK I. EDDINGTON, ROGER S. SILBERMAN, JACQUES A. NASSER, JAMES W. BREYER, JEFFREY W. UBBEN, VIET DINH, DELPHINE ARNAULT, TIDJANE THIAME, AND THE ESTATE OF ROGER AILES,	:	
Defendants,	:	
and	:	
TWENTY-FIRST CENTURY FOX, INC.,	:	
Nominal Defendant.	:	

- - -

Chancery Courtroom No. 12A
Leonard L. Williams Justice Center
500 North King Street
Wilmington, Delaware
Friday, February 9, 2018
2:05 p.m.

- - -

BEFORE: HON. ANDRE G. BOUCHARD, Chancellor

- - -

PLAINTIFF'S MOTION TO APPROVE SETTLEMENT AND FOR ATTORNEYS' FEES AND EXPENSES AND THE COURT'S RULING

CHANCERY COURT REPORTERS
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Wilks, Lukoff & Bracegirdle LLC
for Defendant The Estate of Roger Ailes

- - -

THE COURT: Mr. Grant.

MR. GRANT: Good afternoon, Your Honor. With the Court's permission, Mark Lebovitch from Bernstein Litowitz who has already been admitted pro hac will present the settlement and fee petition, and only to the extent Your Honor wants, an opposition to Ms. Miller's motion. But if Your Honor doesn't want to hear that now, he won't do that.

So with Your Honor's permission, I would turn this over to Mr. Lebovitch.

THE COURT: That's fine.

MR. GRANT: Thanks.

MR. LEBOVITCH: Good afternoon, Your Honor.

THE COURT: Good afternoon.

MR. LEBOVITCH: It's been a while. It's good to be back before you.

I know that the Court has read the papers. And the underlying events behind this case, obviously, received a lot of publicity. So I hope to really just give a concise background to it and then talk about the process that led to this case and how it was prosecuted and really focus on the settlement.

Obviously, the settlement is a

$90 million recovery, one of the largest in Delaware, including one of the largest derivative case recoveries ever and we think the largest in a pure oversight case.

THE COURT: All covered by D&O insurance. Is that right?

MR. LEBOVITCH: Yes. And we think even more important than the monetary recovery is what we think is unprecedented and really exceptional governance changes, and I want to spend some time on that.

There have been no objections filed previously, and based on a survey of the room, we don't believe any objectors have shown up either on the settlement or on the fee petition.

I want to start with maybe just a very brief big-picture comment and explain that there's a lot of people here who worked hard on this case. And it's a privilege to practice here in Delaware in the Chancery Court. And if people do it long enough, they'll find a case that they feel like it matters. It's going to be in the *Wall Street Journal*. It's shaping the way deals are done. But it's really economic matters. And we feel good about it but

that's it. It's really rare to have a case where you get involved in it and you find yourself kind of involved in history and something that's about so much more than just the economic issues.

And here, from the origin of this case, what happened, frankly, is disclosures. You know, the filing of the Gretchen Carlson complaint led to a focus on Roger Ailes.

And the first instinct that many people would have is, well, that's not really a Delaware issue. And we touch on this in the papers, that, historically, there's really no precedent in the law for this. There's one case that deals with sexual harassment. That was White versus Panic. And what I knew right up front is I believe from my own knowledge that that's just a dismissal of a plaintiff who didn't do a 220. But there's no precedent for how someone would pursue a derivative claim arising out of sexual harassment by even one executive.

This started -- and I do want to give a little bit of credit up front --

THE COURT: This ultimately is a Caremark-type claim. Right?

MR. LEBOVITCH: Yes.

And what happened is, from the beginning, my partner, Max Berger, who doesn't normally get involved in saying, Hey, you should bring this case or go investigate this or that, he, I think, did see something and saw that this was more than just Roger Ailes.

And I think his perspective is -- was and I think now surely is -- that boards didn't get involved in these issues, because if there's someone who is acting inappropriately, it's like deviant, and you can write it off as deviant and say, This is just not our job. And he said, This is something that's bigger. And there's a historical context here, and kind of "The Times They Are A-Changin'." And so we started an investigation.

We started that investigation, and it was in July. It was pretty early on. It was July 29th of 2016. And there was about a six-month stretch in that case where we were pursuing a 220. Mr. Varallo was on the other side of it, and there was a lot of back and forth, a lot of fighting about documents and the scope of the documents and whatnot.

And then we had essentially a breakdown at the end of 2016 where we said, Okay,

they're not giving us more documents. We don't -- we're not happy. We think there should be more.

And then we get to early 2017, and that's when this case really took a different turn. It was just fortuitous. And I touched on it in the declaration. We had gone to our client, we had a 220 complaint written, and we were getting a verification to file a 220 complaint, and I happened to see an old friend of mine from Skadden who is now a senior M&A lawyer at Fox for Twenty-First Century Fox. And I just happened to see him in a restaurant and I said, What are you guys doing? And I know you're litigious, but this is different.

And he listened, and we had a long conversation in the middle of that restaurant. And I knew that he reports to Gerson Zweifach, who is general counsel. And he listened and listened. I didn't know what was going to come of it. And then it was about a week later, as we were much closer to filing what would be a very public and it was I believe like a 60- or 70-page 220 complaint, I got a phone call during a break in a class cert. hearing I was doing in California, got a phone call from Mr. Varallo, and we had a lengthy conversation.

And it's really -- it was the jawboning you would expect about what kind of case this would be. And, Oh, we've given you the documents. But there was also a kind of getting-real moment as well that is a credit, I think, to him. We spoke and said, Well, how would this -- if there is a 220, what would happen? And then if it led to litigation, what would happen?

And this bled over to our many conversations that, you know, can't happen if people are too venomous and too ideological. And I think Mr. Varallo was not shy telling us the problems we would have in the case, but at the same time, I think was listening and professional about why his clients might have problems in the case. And that's how the praeses started.

We filed a 220, and we were litigating, taking interviews. So we're getting, now, documents. We didn't file a 220. We gave it to them privately. That led to us doing some private interviews and then saying, You know what? There is a case here. And we sent them a private complaint, and we said, We think we have a basis for a complaint but do you want to continue this process?

And over time, that led to an agreement to mediate. And we retained former judge Layn Phillips, who is probably one of the most prominent mediators out there, and we got ready to mediate this very unusual case, knowing that we were doing private discovery but it would be a completely different picture if everything was out in the public and if we're deposing directors, you know, in the spotlight, essentially.

And over time, our group grew. Other people had sent 220 demands to the company. And, you know, I want to just briefly commend people because there's a fair amount, sometimes, of cynicism about how things work amongst plaintiffs' firms, and sometimes I even express some of that cynicism, but this was a case, just as we started it, and we felt that there is something more than just some average derivative suit here. This is important. And really, I think everyone, they bought into that. They agreed. And it was great cooperation by a dozen firms working together. Great cooperation.

There was a leadership, understood, but people really worked together and acted as a team for a very important cause. And a lot of the firms

are here, represented, because people are very proud of what came out of our efforts, which is this settlement.

And the settlement negotiations, what you had was the mediation process that we lay out in our papers. You also had direct meetings, direct negotiations. We, even before having the mediation, sent over a demand relating to what became the Council. And we had direct meetings to talk about what's right and what's wrong and what's going to be best for the company. And I think that through a process that had a lot of fights, a lot of disagreements, both about the case and about the settlement terms, we came to something special.

Before I get to and really focus on the settlement terms, I want to highlight that through this unusual process, the parties entered into a couple of stipulations. And really, the stipulations were because at all times, we were all experimenting with this process but didn't know how it could break down. And in fact, everyone had the ability to blow it up.

And we entered stipulations relating to discovery. We were able to interview Gerson

Zweifach thanks to a stipulation that we put in. And that's how we learned a lot more about what happened.

We put in a stipulation about demand futility early in the process so that once they had a complaint, all agreed, that's the date. Because if this continued for a while, we don't want the board to change and have some argument --

(Overlapping speakers)

THE COURT: -- board changes.

MR. LEBOVITCH: So in the end, we, over the summer, had three mediation sessions. The first one was a bust, it seemed, but it was very substantive. And Your Honor has been in mediations, and sometimes it's just kind of back and forth on numbers.

There were presentations made, and as Your Honor could imagine, I'm not going to go into the details, but you can imagine that questions about White versus Panic and how broad that case is comes up. Questions about demand futility, even if Fox is a controlled company, how would that play out. The Murdochs' role here with Ailes and Fox News. Questions about proving liability of the board if you go forward and proving liability of the Murdochs even

if a claim just went forward against the Murdochs and, eventually, the Ailes estate.

And then you have damages. You have a situation where there are very real damages, quantifiable, there are unquantified damages, and there is also harm that you couldn't know yet, you couldn't know the number yet. But we were able to articulate about $200 million worth of kind of reasonably pursuable damages, and --

THE COURT: How did you get to that number?

MR. LEBOVITCH: Well, it was a bunch of different components. It was the payments of severance to people who we contend should have been removed for cause far earlier. It was the settlements that had already been paid to victims.

Now, there was more litigation that emerged after the Carlson complaint, but I believe the number when we were negotiating was $55 million had already been paid out as settlements.

We had payments on keyman contracts. We made the argument that the board had allowed Roger Ailes to, in a way, insulate himself or sabotage Fox News by putting in the contracts of key talent a

keyman provision tied to him, so if he left, the talent at the company could leave as well and get big severance payouts. So it was a defensive parachute.

THE COURT: A new form of proxy put. All right.

MR. LEBOVITCH: It could be. And it wasn't the scale of what we saw in the Yahoo! case where every employee gets a parachute.

THE COURT: Right.

MR. LEBOVITCH: But the point if the talent from a media company leaves, the dollars isn't what does it but the talent has incentive to leave. That's no more. That no longer exists, thanks to the settlement.

And maybe that's a good segue to focus on the settlement itself, unless Your Honor has questions about the process.

THE COURT: I do have a couple questions.

150 was the number you were saying you sort of pegged as your -- as the exposure here?

MR. LEBOVITCH: 200.

THE COURT: I just remember in reading the brief, frankly, it struck me as low that that

would be the range, because there would be so many tentacles to the thing.

Did you find in the course of negotiating over the dollars that by virtue of any settlements that had been entered, for example, with the Ailes estate or with O'Reilly, that you were precluded from going after them to get a financial contribution?

MR. LEBOVITCH: No, we were not precluded from going after the Ailes estate or -- O'Reilly, I want to be careful, because Ailes -- the Ailes estate was involved in the process at the end. I think that Fox -- my understanding is when Fox settled with the Ailes estate, Fox preserved its ability to have claims with the Ailes estate.

O'Reilly we viewed as damages. He wasn't an officer so we couldn't bring a derivative claim against O'Reilly other than we caused the company to go after O'Reilly. Our point really was, about the board there, is they should have fired him earlier. They shouldn't have renewed his contract. They should have had a contract that insulated him.

Oddly enough, his first contract, part of our complaint about it is they couldn't fire him

for cause no matter how many people sued him unless there was a final nonappealable judgment against him. So I don't want to prejudice the company if they want to go after him --

THE COURT: He has his own protection, I'm sure.

MR. LEBOVITCH: He had his own protection. And we blamed the board for allowing that to happen. And part of the settlement is that can no longer happen. A keyman provision at any dollar amount is one of the specific items that's not a matter of judgment for anyone.

Because a lot of the settlement is about the people that we put in place and the structure that we put in place, which is the Council, which is independent, that has phenomenal people on it, and so they're going to have a lot of tools to use.

But to answer your question, we were not precluded -- and the number, the 200 number, was heavily contested, but we all realized that things like the race discrimination class action is still going on. The --

THE COURT: It's just carved out.

Right? This is only derivative. The release only covers derivative claims.

MR. LEBOVITCH: We're not settling anyone else's claims.

We were able to quantify 200. Your Honor's instinct was fair. When we were negotiating, without going into too much detail, of course, we said, Yeah, you guys want to get ahead of this. You want to fix this. By the time we're at trial, the number may well be larger.

That, itself, was a point of dispute, because, obviously, the company thinks they're going to win all their cases. We said, Clearly, you're going to have to do something about them. You might lose some. You might settle some. So the number would go higher than the 200.

But it's not like they accepted that 200 was even the harm that could be attributed to the misconduct. Right? Because some of it was lost advertising revenue, things like that. We were bringing in everything that we could.

But then even when you go further, if we had a trial in this case, the board, we would have to -- let's assume we got past demand futility. We

would have to prove liability of, clearly, officers. And that would help us, as we had some controlling people who also are officers and may have fewer defenses. But then you could have the board.

If we prove liability, the question of damages is, Okay, well, the company has had to pay out 200 million or 400 million. How much of that is because the board didn't do its job versus, you know, how much -- basically, what happened even if they were doing their job. And there is no automatic strict liability for, you know, a breach of fiduciary duty where we can say, Well, you had to pay it out and that's it. Presumably, damages would be very aggressively contested on all sides.

But taking it all into account, and knowing that we were able to articulate 200, and that realistically, by the time of trial, the number would be higher -- but we did a lot of diligence on those pending lawsuits and whatnot. 90 million, it's 45 percent of the 200. And we think that in the world of shareholder derivative cases, it's, we think, pretty monumental.

So ... okay?

THE COURT: All right. Thank you.

MR. LEBOVITCH: So I just talked about the 90 million. I want to focus on the Council and the governance relief. And there's really two -- I think of what does governance mean? People use the word but don't think about what that means.

I think that there is a corporate form, and everyone knows the corporate form has sort of structural kind of inefficiencies where people who are controlling the money, controlling the company, at times can act for their benefit per ways that aren't guided for the company, that aren't intended to benefit the company.

So governance, to me, that means two things. There's hurdles and there's tools. Hurdles is something that's going to impede someone with an ill intent from getting their way at the expense of the company. And then there's tools. And this settlement, you know, kind of has a combination of those. And the tools have to be used by good people. Right? The outside directors, typically.

Here, we have hurdles put in place. We have things that the company has agreed to put in place no matter what. Like the keyman provision, it would impede someone who attains power within the

company from protecting themselves by giving out these keyman provisions. So that's a hurdle that we're not leaving to chance.

When we've done this, in the Pfizer case, for example, we created a regulatory committee of the board in the Pfizer litigation. We were trusting the board there, but it was still under the board's umbrella. That's not a controlled company. And here, without trying to impugn the controllers, we definitely felt that the fix here had to be sufficiently independent.

And so what we did is we had these hurdles that we put in place. That's part of the governance. And then we had the tools. And the tools really is the creation of the Council and the empowerment of the Council. Four of the six members are independent. We picked two and the company picked two.

THE COURT: That's already happened. Right?

MR. LEBOVITCH: That has happened. The two that we picked, one is former federal judge Barbara Jones and Sylvia Hewlett. The bios are in the record. Barbara Jones was appointed by the Secretary

of Defense to chair the committee that looked at harassment and discrimination in the military. And Sylvia Hewlett -- and particularly, the company's choices, these are stellar people. Brande Stellings and Sylvia Hewlett are really the leaders in the field of working with companies on how to deal with diversity and inclusion issues, is the phrase that they use now.

And actually, technically, the Council can't come into effect until Your Honor approves a settlement, but I think showing the eagerness of the company and the members to get started, we had a meeting -- this is just referenced briefly in our reply paper, but we had a meeting January 29th. And, you know, I was lucky enough to attend the initial part. Mr. Zweifach and the lawyers were there. Viet Dinh, who is on the board, was involved. And we each made initial presentations.

And the point I made to them that I will share that really is what I was just touching on is we're giving them tools and, really, they're stellar people, and this is now their expertise. And they should have everything they need to make Fox News go from -- and I know that they're not going to like

this -- from worst to first. That's really kind of the mission and objective here.

This is a company that had some serious problems. And we know the history since Roger Ailes. I mean, now we hear about Harvey Weinstein and Steve Wynn. So the concept of deviant men in absolute power is not unique, but the solution is. And really, we hope that it's emulated by other companies that find themselves facing these problems.

The committee excused all of us and they met for a lengthy period of time, and they're eager to get started. And so that's where that stands.

I don't know if Your Honor has other specifics about the Council. I'll highlight a couple.

THE COURT: I just read through the papers a little while ago to go through the section that has all the components of the nonmonetary relief. And the thing I would be most interested just to hear, in case I didn't get it in my reading, is how information gets to the board.

I mean, I think I read through this and understand that there are certain meeting reporting relationships they all seem to go through.

Well, I guess the Council meets with the corporate governance committee periodically, but the chair, which is actually a Fox person, has the more frequent contact with that committee.

But the written reports, if I'm reading it correctly, at least for the first two years, go to the entire board. I just want to get confirmation of that.

MR. LEBOVITCH: Yes.

THE COURT: And then for the last three years, I think they get it twice a year.

MR. LEBOVITCH: It's the frequency that changes.

THE COURT: Which is important, because especially when -- I think I was reading, like, the reply paper or the submission from Mr. Varallo, but all the things these people didn't know, I think it's important that they actually have to know.

MR. LEBOVITCH: Yes.

THE COURT: So elaborate a little bit on that.

MR. LEBOVITCH: That's a great question, Your Honor. It actually was a critical

focus.

You could imagine, going into these negotiations, our position is, How could you not know? Of course you knew. And there were all these signs within the company that there is a broader problem. But their position is, Well, we didn't know. And in the litigation, there is always a risk they'd have to kind of justify that it wasn't that bad, which I am sure was a driver for them.

The -- I'll call it the inside-outside component of the Council is really where your answer starts. This is a majority independent committee --

THE COURT: Right.

MR. LEBOVITCH: -- but we felt, collectively, through our process, that the best thing for this company is that the committee not be viewed as internal affairs. Right? They're not just outsiders who are investigating. They needed the legitimacy of well-meaning management.

And Kevin Lord came in after all of this at Fox News and Thomas Gaissmaier came in at Twenty-First Century Fox. We met with them. We understand what was important to them. And the idea was, from the outset, they not only bring legitimacy

of the Council to the employees, which would encourage interaction, but part of their job -- and I think it's paragraph 15. I could pull it from there, but my memory is 15 or 16. I also recently re-read it. There is a long paragraph that talks about the requirement that the Council can get information through the chair from, you know, legal and from marketing and PR and whatnot. All of these different divisions within the corporate structure, they are mandated to provide information to the committee so the committee can do its job.

So they have access to do their job and they can then interact. They can create information. And that's the data gathering, which is a specialty of, I think, Ms. Stellings and Ms. Hewlett. They are not just going to, you know, talk about kind of highfalutin ideas. They get in and they get the data for companies. It's what they do. And they're going to get real-world information and act based on that real-world information. And they then report. Okay?

So they have regular access to the chair of the nominating and governance committee. They have, in the agreement, set meetings with the

governance committee. They provide their reports. And I think it's annually for a meeting with the board as a whole.

The report itself --

THE COURT: Who meets with the board as a whole annually?

MR. LEBOVITCH: The Council.

THE COURT: I didn't see that.

MR. LEBOVITCH: I'll look it up.

Written reports --

THE COURT: Oh, written reports, yes.

MR. LEBOVITCH: 15(a) is the written reports.

THE COURT: They go to the board. I saw that.

MR. LEBOVITCH: It is paragraph 12. I was thinking paragraph 15. It's paragraph 12. They'll meet with the chair, meet with the full nominating corporate governance committee at least once per year.

THE COURT: Right, that committee, but not the board.

MR. LEBOVITCH: Okay. They're going to meet with the whole committee and then they'll

report and provide the report to the board. And the committee report is made public.

THE COURT: I saw that.

MR. LEBOVITCH: And the feature --

THE COURT: You're getting a lot of help here.

MR. LEBOVITCH: Maybe they think I'm struggling.

The feature that's most important about the reporting, Your Honor, is the minority report. Because when you think about it, okay, what's to stop a controlled company or, you know, any company from just thwarting a council, no matter who you put on it?

And we didn't know who the company would put on it. We're very happy with who the company put on, but there was the prospect that there would be two people in management and two people who would fundamentally kind of just be loyal to someone other than the Council's cause.

We're very happy with who they put on, but we agreed upon and insisted that there be a minority report. That's even better than simply publishing a report alone, because now any member who

doesn't like what's going on can issue a report.

And I think, Your Honor, sometimes setting those ground rules actually affects conduct and will deter a problem from emerging.

And the idea is that the prospect of one of these Council members publishing, publicly, a minority report on virtually any issue pretty much assures that the board will have to be educated about it and have to deal with it. Because there's a lot of negative consequences to, you know, whether it's Barbara Jones or Brande Stellings, publishing a report saying, I'm not getting cooperation from management. That's bad for the company. That's bad for management.

Knowing how management has been trying to deal with this now, having dealt so much with Mr. Varallo and Mr. Zweifach, I think it's extremely unlikely that they would willy-nilly overstep and invite such a minority report.

And so you've got that. And you've got five years of the Council being in place. If the board wants to do away with the Council, they have to explain publicly their reasoning.

THE COURT: I would like to explore

that provision. Technically, tomorrow, the board could terminate this, couldn't it? They might have to do it publicly, but they could terminate it. Well, help me out with paragraph 28.

MR. LEBOVITCH: The term is five years.

THE COURT: Then what's it talking about, a decision to modify or terminate?

MR. LEBOVITCH: I -- "... at the time of the termination of this Agreement shall be made by the board." So I think at the end of five years, and I hope Mr. Varallo will agree with me, but at the end of five years, if they don't continue it, they have to publicly state --

THE COURT: Is that how it works, Mr. Varallo?

MR. VARALLO: Your Honor, this isn't a gotcha. We anticipate this being at least a five-year --

THE COURT: So the termination language is just talking about post five years?

MR. VARALLO: That's the way we read it.

THE COURT: When I read the brief, I

read it the way I just articulated. And when I went back to look at the language, it seemed absurd. It would be, as a practical reality, pretty foolish to do that, but I was just surprised.

All right. So you've got five years for sure. You're putting the representation on the record.

MR. LEBOVITCH: We didn't get suckered on that point, Your Honor, so we've got five years.

So we think this is going to work. I mean, that's the key. This is going to work. It's something that can be replicated.

I already covered the risks to the case. Your Honor, I'm sure, is very well-aware of the hurdles that we would face in litigating the case. And all I'll say on that was in the absence of precedent, I think both parties had a situation where we could jawbone each other, but no one really knew how this trial would play out. We mentioned in the papers we knew it would be a media circus, but beyond that, we would be on unchartered grounds.

So, again, with no objections, we think that the settlement should be approved.

I don't know if Your Honor has any

other questions, or I'll move on to --

THE COURT: I don't think so. I think I understand it.

MR. LEBOVITCH: We are seeking $22-1/2 million, which is 25 percent of just the cash, but that's not the way we really have tried to articulate the value and it's certainly not the way we approached it.

If you had just cash of $90 million, there is a very significant fee that I think rightfully would and could be awarded. We believe that this council, because of its importance for this company and its novelty and, really, the thought and tools that we provided it, so that it's not -- you know, let me step back.

Your Honor has seen what I'll call fake governance. Your Honor has seen things that don't really mean a whole lot. I believe -- and I hope Your Honor sees that this was done by professionals, and this is, we believe, as good as it gets in terms of putting in place a structure. So we think that the structure itself would warrant a very significant fee.

We tried to articulate in the papers

that one way to look at it is, Okay, if I think that the Council would justify alone a fee of 10 to 15 million, what would be awarded on the 90 million? You could do it one way or the other, but it's almost a relationship. It's a sliding scale. And we think that a fair view of both elements of the settlement together, you know, could actually justify a more significant fee, but this is what we're seeking.

We think that on the governance side, we cited the precedents, the Activision case, where there's a discussion about the value of the governance aspect of Activision. Vice Chancellor Laster said, Well, this is meaningful because you are limiting the ability of controllers to control, and so that has value.

We think that if you were to compare the terms, here, we have something at least as significant or, really, more significant. We have the Google case where there was, again, we think -- an $8-1/2 million fee was awarded on relief that we don't think really was put together the way this was. I mentioned earlier the Yahoo! case, which was attacking a compensation scheme that would have created value in the event of a future sale of the company.

But, again, we think that this is really different. This is a huge company. There's precedent for saying, Well, let's see how big the company is to assess how much theoretical value there is.

Twenty-First Century Fox is a very large company, and being able to turn the page and show that the board is on top of these issues, and again, is taking their most important division from worst to first, that has, we believe, tremendous value. It can help with ongoing transactions.

You know, something that's not self-evident when you think about what happens if a company has a corrosive culture is it's not just the talent that comes and then, you know, leaves after years. It's the people who never get hired. Because you can only imagine what was going on when Roger Ailes was interviewing people. So there may be -- the leading talent at the competing network may have actually been happy to get the job at Fox News but said, No, I'm not going to do this. So improving the culture is not just about doing the right thing. It is actually good business. So, you know, we think this will help the company in so many ways.

And then, you know, we talk about the time and effort put in. We -- again, a case can't have, you know, too many leaders in it. This was a unique situation where we had a lot of different firms getting involved, but it was under our guidance. And people came together and really cooperated.

And, you know, again, I don't want to go down the list, but I'm tempted to identify everyone who is here because people worked hard together for this cause. And, you know, we put in the numbers. There's a total lodestar. Not including the -- our submission, just so that Your Honor is clear, is up until about an hour before our brief got filed, our total lodestar included a portion of the Levi Korsinsky time. It was really only late on a Friday that we learned that they were not participating in the process. So the $3.8 million of lodestar reflects all of the firms other than Levi & Korsinsky. So you can see that the numbers, the multipliers and the implied hourly rates, get adjusted accordingly if you then add the additional hours.

THE COURT: So there's only one question I have in this regard. I'm obviously too far removed from private practice. So this works out to a

little over 4,000 an hour. Right?

MR. LEBOVITCH: It would be lower if you added the Levi Korsinsky time, but at this time, this is just over --

THE COURT: Help me with this sentence. "The implied hourly rate plaintiff seeks here approximates or is just below the top rate charged by lawyers at certain of their firms"?

MR. LEBOVITCH: I think --

THE COURT: I mean, come on.

MR. LEBOVITCH: You know what, Your Honor --

THE COURT: It's preposterous.

MR. LEBOVITCH: I think there is a footnote --

THE COURT: There is a footnote talking about 1500 an hour, which is the rich end of Wall Street. Am I that removed from private practice?

MR. LEBOVITCH: Well, it is 12 to 1800 an hour. You see that frequently.

But, Your Honor, I will confess what happened, actually -- and this is why we didn't list the multiplier. It's dot 5. You can do the math. But we really, in the last hour, had to -- we didn't

have fee affidavits for all of the time, and there was a lot of changes desperately done on a Friday night and a brief that a lot of people looked at a lot of times. I think in the end, the last editing -- you know, so I apologize for that. It's an oversight.

It's -- what we're asking for on a contingency basis is, yeah, about double or a little more than double the prevailing rates of many of the big defense firms.

I will highlight, Your Honor, that, look, we not only do this on a contingency but even the precedents, and we touch on this in one paragraph in our brief, even the precedents for historical multipliers awarded and implied hourlies that are awarded, I think -- I hope Your Honor agrees -- a lot of those were awarded at a different time in Delaware law.

And now, if what the Court wanted was to see people litigating hard and taking real risk and being willing to lose -- we don't like it, but we do. And I hope Your Honor knows that our firms, we are willing to take those risks. We do. We fought back from near death in some cases in front of Your Honor. But we do fight and we do take losses sometimes.

THE COURT: Whose death? Mine or yours?

MR. LEBOVITCH: Ours. Ours. That was a reference to TIBCO, Your Honor.

THE COURT: I'm not so sure, at times.

MR. LEBOVITCH: That was our reference to TIBCO. But in any event, it's hard, and you take losses. So, yeah, if we're successful, I think that hopefully the Court says, Yeah, you did a good job here. You did what we want you to do, and we're going to reward you.

And, really, the last point that I'll make is, obviously, and we support this, hopefully Your Honor thinks we're good at what we do and we're responsible. Our adversary here, we touched on earlier, it's hard to get anyone better than Richards Layton and Mr. Varallo, but, also, Your Honor sees a lot of the venom that happens in litigations, and it's unfortunate. This could not have happened, this whole process could not have happened, if you didn't have people who could have an argument without hitting each other, have a disagreement without slamming the door and, frankly, trust, because it takes a lot of candor to put this together. And I do want to commend that

for all parties involved.

So unless Your Honor has questions about that ---

THE COURT: I don't.

MR. LEBOVITCH: Okay. So I don't know -- we discussed the issues about the L&K motion. Our view is it's premature. Our view is there is a contract in place that's unambiguous, and there is a process that's followed.

THE COURT: There is a line in Levi & Korsinsky's brief that I'd like you to address. Basically, it says that their two clients are not signatories to the settlement agreement.

Now, I did look back at the settlement agreement and I didn't see a hand signature for their firms, but I thought they were a party to this agreement. Am I mistaken about that?

MR. LEBOVITCH: They're absolutely parties to the agreement. They saw the agreement in advance. And the whole act of signatures, there's a lot of people involved, and when we were in the process of getting it done, it just -- who wants to get 15 more signatures? There's already enough signatures on it. That's it. Everyone in this room

who was involved in the case saw it, reviewed it, approved it. I believe we have an e-mail confirming it, so there is no ambiguity there.

I don't know. There is really only one point I would make on it. I would want to quote Vice Chancellor Glasscock. I don't know if Your Honor is aware but there was a prior situation where the Levi & Korsinsky firm tried to get what I call a preallocation from the Court, you know, in other words, get an allocation before there was a settlement.

THE COURT: I know what you're referring to but I thought this may have been discussed in the brief. There's one of these cases discussed in the brief, but maybe I'm merging them together.

MR. LEBOVITCH: Duke Energy.

THE COURT: Yeah, Duke Energy.

MR. LEBOVITCH: And I just want to quote the three sentences that Vice Chancellor Glasscock said in deciding that the contract will control and that I think it was the Prickett Jones firm would do the allocation and then people could come back if there was a problem.

This is a quote from a transcript that's page 44. We can submit it if Your Honor likes. Vice Chancellor Glasscock says, and I quote, "I am being asked to allocate in the first instance this fee award. I would prefer not to. I would prefer not to for two reasons. The first, I think, like every judge, I dislike litigation about litigation. The second is that however I decide this, it will have incentive effects that may or may not be pernicious."

And we don't like litigation about litigation. I think Your Honor is aware that it's rare for anything like this to happen, and in fact, it's very rare for the Court to ever see a fight even after a settlement is approved and a fee is awarded. And it's because we kind of all have to live with each other and people -- ultimately, you know, the merits prevail.

But here, there is a contract, and I will just stress that to obviate or sidestep the contract would actually create I think a lot of pernicious incentives. And so, you know, I would reserve if there is further argument about the issue but I think that Your Honor knows the law of ripeness. You know, another issue that I've litigated before

Your Honor. I don't think this is a close call. This issue isn't ripe. We should get to perform under the contract.

If the settlement is approved and the fee is approved, we would allocate pursuant to the contract. And then if there is a dispute, we've already said we would put disputed amounts in escrow and we can deal with it. But, you know, I don't think -- I would hope the Court doesn't have a lot of interest in enmeshing itself in those type of issues.

But if Your Honor has no more questions, I just want to reserve to respond if there's further argument.

THE COURT: You may, and you'll have that opportunity if it's necessary.

Mr. Varallo?

MR. VARALLO: Good afternoon, Chancellor. Gregory Varallo for all defendants other than the estate of Mr. Ailes, which is represented today by Mr. Bracegirdle.

Your Honor, I will say two things. The $200 million damages point, I think Mr. Lebovitch had it absolutely correct that there was a substantial disagreement among the parties about that number.

THE COURT: Right.

MR. VARALLO: My client views it very differently the plaintiffs did, and we made that clear, and that was an important part of the negotiation. From our point of view, the $90 million actually represents quite a bit more, a larger percentage of the damages that could be proved. And I think from the insurer's point of view, it's probably a premium to the damages that could be proved.

The other thing I'll say, I take a moment of personal privilege to say we have in the courtroom with us today Mr. Max Berger from the Bernstein Litowitz firm. And I have to say, Your Honor, that without Mr. Berger's leadership and Mr. Lebovitch's leadership, Mr. Grant's leadership, Mr. Barry's leadership, and the hard work of all of the plaintiffs in this firm -- not only in this firm but in this room -- we wouldn't be here today. And I have to say as well, we would have been in a worse place: a worse place for my client, a worse place for society, more broadly.

And I know we all come here in an unusual circumstance, but it's a circumstance the Court should commend, because by virtue of the

leadership of the folks on this side of the room -- and I don't think I've ever used those words in the same sentence before -- but by virtue of that leadership and by virtue --

THE COURT: Feeling generous today, Mr. Varallo?

MR. VARALLO: By virtue of the larger group having collaborated so well together under that leadership, we got to a result that really is a special result for the company. And so I stand up to join in asking the Court to approve the settlement, and I appreciate Your Honor's time.

THE COURT: I do have one quick question for you. I could be off base in thinking about it this way, but I looked quickly at the release before I came up. Does the release in any way impede your client, the entity, the company, if it so wished, from pursuing recourse from the Ailes estate? Maybe that's all wrapped up. I don't know. Or other people that could have underlying liability associated with some of these events?

MR. VARALLO: I believe that the language of the release would preclude the company from pursuing against the Ailes estate for matters

pertaining -- that were covered by or could have been covered by this litigation.

THE COURT: Which the D&O carriers would presumably insist upon.

MR. VARALLO: Your Honor, there is a long story there. I would prefer to go off -- well, I would prefer to be on the record in camera if we could, if Your Honor would like to pursue it. But in candor, yes, we have given up our right to pursue the Ailes estate for these matters.

We have not given up our right to pursue others who are not covered by that release; and there could be such other persons.

THE COURT: Okay. All right. Thank you.

MR. VARALLO: Thank you, Your Honor.

THE COURT: Mr. Bracegirdle, I don't know if you had anything you wanted to add or not.

MS. GULETTA: Your Honor, Thad Bracegirdle on behalf of the Ailes estate. Nothing beyond what Mr. Varallo has said to the Court.

Thank you.

THE COURT: Very well.

First of all, I want to know, are

there any objectors in the courtroom?

Just for the record, there are not.

Ms. Miller, were you seeking to be heard?

MS. MILLER: If the Court want to hear from me, I have something prepared to say.

THE COURT: Briefly. I'll let you speak briefly.

MR. DUPRE: Your Honor, I should say, as Delaware counsel, Andrew Dupre, McCarter & English. It's my pleasure to introduce Ms. Miller.

THE COURT: I'll just say from the outset, Ms. Miller, just to orient you, I am inclined to have you work through the process that is set forth in the contract. That is sort of my direction, which I think makes sense.

I was a little surprised to see the reference to -- the nonsignatory reference in a way that -- I mean, the only reason to say something like that is to, like, disavow that it binds you or your firm. Are you contending that?

MS. MILLER: No, I'm not contending that. I think the point of that was just to go along with the point of everything else, that if you weren't

Monroe's counsel, then you weren't getting the opportunity to have your client sign any documents, verify any complaint, or anything like that. I think that was the point of that. That had nothing to do with saying that we weren't supporting the settlement or anything like that.

THE COURT: I'm sorry. Who is Monroe's client?

MS. MILLER: It is Bernstein Litowitz.

THE COURT: Or whose firm represents Monroe?

MS. MILLER: Grant & Eisenhofer and Bernstein Litowitz.

THE COURT: They both do.

MS. MILLER: Yes.

THE COURT: Like I said, I think you sort of know what my inclination is, but if you want to speak briefly, I will give you the opportunity.

MS. MILLER: Okay. I will be very, very brief, then.

I, of course, think that the contract doesn't apply in this situation because it doesn't cover this situation because I do not believe that the co-lead counsel can decide Levi & Korsinsky's fee in

good faith.

But I do want to focus on one thing that's been represented to the Court. When we asked for our $1.5 million fee request, we did the math, and that comes out to $625 per hour of an implied hourly rate. And if you were to award that fee to us, then you would know exactly what Levi & Korsinsky is going to get paid on an hourly basis.

You just heard co-lead counsel stand up here and say that basically they're seeking a fee of about $4,000 per hour if they get paid on what they're seeking. But to us, we don't believe that's a fair representation of what is actually going to get paid, unless all of the hours are going to be treated accordingly, meaning that everyone is going to get paid that $4,000 per hour for all of their hours.

If that's not the way that it's going to work, then co-lead counsel should tell you, We're actually going to take whatever, $20,000 an hour, and these people are going to get paid $500 an hour. We think that that would be an accurate way to represent the lodestar if that's what it really is.

And that's what we want to say, is that we are happy if the co-lead counsel are going to

stand by their representation and say everyone is entitled to the same hourly rate. We put in more hours, so we get more of the hourly rate.

THE COURT: Are you suggesting they made such a representation?

MS. MILLER: I think their brief does. I think their brief tells you that this is the hourly rate that everyone is going to get paid. And that -- you know, if that's not what they're doling out, then that isn't accurate.

THE COURT: I'm pretty confident that's not what that part of the brief says.

MS. MILLER: Okay. Well, we thought that that was an important distinction.

And if you have any questions about anything, then I'm happy to answer them. Otherwise ...

THE COURT: I don't.

MS. MILLER: Okay. Thank you for your time.

THE COURT: All right.

Anything else from your side?

MR. GRANT: Nothing else, Your Honor.

THE COURT: Okay. So let me talk for

a few minutes about this. Fortunately, I don't have to do the stuff I often have to do at settlement, which is go through all the class elements. Because this is a derivative case, it simplifies things.

I will commend everyone in the room on what happened here. It's pretty unusual, not entirely unprecedented, the prepackaged settlement. But there definitely were sensitivities here that make it, from everything I can see, a really sensible, practical way to resolve a pretty sticky situation. And so for that, I commend you for doing it and bringing it to the Court the way you did.

I obviously wasn't there along the way, so I take everyone's word who spoke sort of glowingly -- recognizing, I'm sure, there were lots of intramural fights along the way -- about the level of cooperation that was exhibited on both sides to get to the point of actually getting this done. So on that, I commend you.

I think the settlement is an excellent settlement. I looked through the therapeutic benefits. Obviously, I misread the termination provision but, otherwise, I think I have the thrust of the settlement. And there's real meaning to the

Council, and, of course, there is always the cash. On the other side of the ledger, the claims are ultimately Caremark claims, which are very hard to prove.

It's very hard to quantify these types of benefits. I thought about asking for some affidavit or something that would give me some notion on that. I know when that's been done in the past, sometimes they've been less helpful than more helpful. And it is difficult to do it. But I think the fee award in the aggregate is fair.

I'm not going to parse it finely. It doesn't fit in the natural framework of our ranges, depending on where the case is, because everything was done prefiling. There was some level of deposition activity and certainly a lot of interviews and other things that were going on here.

So I think the amount is appropriate; the settlement, I think, is an excellent settlement; and I'm going to approve both.

With respect to the Levi & Korsinsky matter, I am going to give you a few points of guidance, but I think the right way to handle it is to go through the process of the good-faith discussion

that needs to occur under the provision of the settlement agreement. But good faith means good faith.

And a couple things: I will want you to escrow a million and a half of the settlement amount pending the outcome of that.

I truly do want a dialogue. I think what people need to recognize -- I'll sort of make two comments to hopefully inform the discussion when it occurs.

I think, Ms. Miller, your firm -- you know, I'm probably one of the few judges, maybe the only one, that's been in the secret sweat lodge of some of this in my days in private practice. I think you would be naive to think there's going to be equivalence between the people that took the leadership role and the manner of compensation. It's not some pro rata exercise, and I think you'd be naive to think that.

But I also want the plaintiffs, the lead folks, to truly exercise good faith and to recognize that if this comes back to me, which I hope it never does, I'm going to need sunlight on where every dollar went in the settlement, who got paid

what, what the multipliers were for every firm, and what the justification is of the treatment down the road.

I never want to see it, frankly. And I wouldn't rule out assigning this to some sort of Master to deal with the situation. I don't know. I haven't thought about it that deeply. I really hope that it can be resolved and would strongly encourage you to resolve it.

So I think I probably need to do a modification of the form of order that reflects the last part of what I said.

The order should be on the system. Right? The final order? I imagine it is.

MR. GRANT: Yes, Your Honor.

THE COURT: And if it's not, somebody from my chambers will call you soon to let you know that, but I'm pretty sure it is. And I'll enter it, and I'll put a modification in reflecting what I just said about how we're going to handle the Levi & Korsinsky matter.

Does anybody have any questions for me?

MR. GRANT: No, Your Honor.

MR. LEBOVITCH: No.

THE COURT: Thank you for your presentations, and to all of you, have a good day.

MR. VARALLO: Thank you, Your Honor.

VARIOUS COUNSEL: Thank you, Your Honor.

(Court adjourned at 3:00 p.m.)

- - -

CERTIFICATE

I, JEANNE CAHILL, RDR, CRR, Official Court Reporter for the Court of Chancery of the State of Delaware, do hereby certify that the foregoing pages numbered 3 through 52 contain a true and correct transcription of the proceedings as stenographically reported by me at the hearing in the above cause before the Chancellor of the State of Delaware, on the date therein indicated.

IN WITNESS WHEREOF I have hereunto set my hand at Wilmington, Delaware, this 13th day of February, 2018.

/s/ Jeanne Cahill

Jeanne Cahill, RDR, CRR
Official Chancery Court Reporter
Registered Diplomate Reporter
Certified Realtime Reporter

EXHIBIT 35

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

OAKLAND DIVISION

IN RE MCKESSON CORPORATION DERIVATIVE LITIGATION	Case No. 4:17-cv-01850-CW [~~PROPOSED~~] FINAL JUDGMENT AND ORDER APPROVING DERIVATIVE ACTION SETTLEMENT Re: Dkt Nos. 221, 222

WHEREAS, a consolidated stockholder derivative action is pending in this Court entitled In re McKesson Corporation Derivative Litigation, No. 4:17-cv-01850-CW (the "California Action");

WHEREAS, (a) plaintiffs in the California Action, Eli Inzlicht; Vladimir Gusinsky, as Trustee for the Vladimir Gusinsky Living Trust; Chaile Steinberg; Michael Berent, Trustee of the Police & Fire Retirement System City of Detroit; and Amalgamated Bank, as Trustee for Longview Largecap 500 Index Fund and Longview Largecap 500 Index VEBA Fund (collectively, the California Plaintiffs); (b) plaintiffs in the stockholder

derivative action pending in the Court of Chancery of the State of Delaware (the Delaware Court), styled as In re McKesson Corporation Stockholder Derivative Litigation, Consol. C.A. No. 2017-0736-SG (the Delaware Action and, together with the California Action, the Actions), Katielou Greene and Charles Ojeda (collectively, the Delaware Plaintiffs and, together with the California Plaintiffs, Plaintiffs); (c) current and former defendants in the California Action or the Delaware Action, Andy Bryant; Wayne A. Budd; John Hammergren; M. Christine Jacobs; Marie L. Knowles; Edward Mueller; Donald Knauss; Susan Salka; N. Anthony Coles; Alton Irby III; David Lawrence; Jane Shaw; Laureen Seeger; Paul Julian; and Mark Walchirk (collectively, Defendants); (d) the Special Litigation Committee formed by the Board of Directors of Nominal Defendant McKesson Corporation (the SLC); and (e) Nominal Defendant McKesson Corporation (Nominal Defendant, McKesson, or the Company and, together with Plaintiffs, Defendants, and the SLC, the Parties) have reached a proposed settlement on the terms and conditions set forth in the Stipulation and Agreement of Compromise, Settlement, and Release dated December 11, 2019, (the Stipulation) subject to the approval of this Court (the Settlement);

WHEREAS, the Settlement provides for a complete dismissal with prejudice of the claims asserted in the Actions against Defendants;

WHEREAS, by Order dated January 31, 2020 (the Preliminary Approval Order), this Court (a) preliminarily approved the Settlement; (b) ordered that notice of the proposed Settlement be provided to McKesson stockholders; (c) provided McKesson

stockholders with the opportunity to object to the proposed Settlement and Plaintiffs' Lead Counsel's application for an award of attorneys' fees and expenses; and (d) scheduled a hearing regarding final approval of the Settlement;

WHEREAS, the Court conducted a hearing on April 21, 2020 (the Settlement Fairness Hearing) to consider, among other things, (a) whether the California Plaintiffs and Plaintiffs' Lead Counsel have adequately represented the interests of McKesson and its stockholders; (b) whether the proposed Settlement on the terms and conditions provided for in the Stipulation is fair, reasonable, and adequate to McKesson and its stockholders, and should be approved by the Court; (c) whether a judgment should be entered dismissing the California Action with prejudice; and (d) whether the application by Plaintiffs' Lead Counsel for an award of attorneys' fees and expenses should be approved;

WHEREAS, no objections to the Settlement were filed; and

WHEREAS, it appearing that due notice of the terms of the Settlement and Releases and the Settlement Fairness Hearing has been given in accordance with the Preliminary Approval Order; the Parties having appeared by their respective attorneys of record; the Court having heard and considered evidence in support of the proposed Settlement; the attorneys for the respective Parties having been heard; an opportunity to be heard having been given to all other persons or entities requesting to be heard in accordance with the Preliminary Approval Order; the Court having determined that notice to McKesson stockholders was adequate and

sufficient; and the entire matter of the proposed Settlement having been heard and considered by the Court;

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED, as follows:

1. Definitions – Unless otherwise defined in this Judgment, the capitalized terms used herein shall have the same meaning as they have in the Stipulation.

2. Jurisdiction – The Court has jurisdiction over the subject matter of the California Action, including all matters necessary to effectuate the Settlement and this Judgment and over all Parties.

3. Incorporation of Settlement Documents – This Judgment incorporates and makes a part hereof: (a) the Stipulation filed with the Court on December 27, 2019; and (b) the Notice and Summary Notice, which were filed with the Court on January 30, 2020.

4. Derivative Action Properly Maintained; Adequacy of Plaintiffs and Plaintiffs' Counsel – Based on the record in the California Action, each of the provisions of Rule 23.1 of the Federal Rules of Civil Procedure has been satisfied and the California Action has been properly maintained according to Rule 23.1. The California Plaintiffs and Plaintiffs' Lead Counsel have adequately represented the interests of McKesson and its stockholders both in terms of litigating the California Action and for purposes of entering into and implementing the Settlement.

5. Notice – The Court finds that the dissemination of the Notice and publication of the Summary Notice: (a) were

implemented in accordance with the Preliminary Approval Order; (b) constituted notice that was reasonably calculated, under the circumstances, to apprise McKesson stockholders of: (i) the pendency of the Actions; (ii) the effect of the proposed Settlement (including the Releases to be provided thereunder); (iii) Plaintiffs' Lead Counsel's application for an award of attorneys' fees and expenses; (iv) their right to object to the Settlement and/or Plaintiffs' Lead Counsel's application for attorneys' fees and expenses; and (v) their right to appear at the Settlement Hearing; (c) constituted due, adequate, and sufficient notice to all persons and entities entitled to receive notice of the proposed Settlement; and (d) satisfied the requirements of Rule 23.1 of the Federal Rules of Civil Procedure, the United States Constitution (including the Due Process Clause), and all other applicable law and rules.

6. Final Settlement Approval and Dismissal of Claims – Pursuant to, and in accordance with, Federal Rule of Civil Procedure 23.1, this Court hereby fully and finally approves the Settlement set forth in the Stipulation in all respects (including, without limitation: the Settlement consideration; the Releases, including the release of the Settled Plaintiffs' Claims as against the Released Defendant Parties; and the dismissal with prejudice of the claims asserted against Defendants in the California Action), and finds that the Settlement is, in all respects, fair, reasonable, and adequate to the Company and its stockholders. The Parties are directed to implement, perform,

and consummate the Settlement in accordance with the terms and provisions contained in the Stipulation.

7. The California Action and all of the claims asserted against all Defendants in the California Action by the California Plaintiffs are hereby dismissed with prejudice. The Parties shall bear their own costs and expenses, except as otherwise expressly provided in the Stipulation.

8. Binding Effect – The terms of the Stipulation and of this Judgment shall be forever binding on the Parties and all McKesson stockholders, as well as their respective successors and assigns.

9. Releases – The Releases set forth in paragraphs 9, 10, and 11 of the Stipulation, together with the definitions contained in paragraph 1 of the Stipulation relating thereto, are expressly incorporated herein in all respects. The Releases are effective as of the Effective Date. Accordingly, this Court orders that: (a) without further action by anyone, and subject to Paragraph 10 below, upon the Effective Date of the Settlement, Plaintiffs, the SLC, the Company, and by operation of law the Company's stockholders shall be deemed to have, and by operation of law and of the Judgment, shall have, fully, finally, and forever discharged, settled, and released, and shall forever be enjoined from commencing or prosecuting, any and all Settled Plaintiffs' Claims and Settled Litigation Claims (including Unknown Claims) against the Released Defendants' Parties; (b) without further action by anyone, and subject to Paragraph 10 below, upon the Effective Date of the Settlement, Defendants, the SLC, and the Company shall be deemed to have, and by operation of

law and of the Judgment, shall have, fully, finally, and forever discharged, settled, and released, and shall forever be enjoined from commencing or prosecuting, any and all Settled Defendants' Claims and Settled Litigation Claims (including Unknown Claims) against the Released Plaintiffs' Parties; (c) without further action by anyone, and subject to Paragraph 10 below, upon the Effective Date of the Settlement, Plaintiffs, Defendants, the Company, and by operation of law the Company's stockholders shall be deemed to have, and by operation of law and of the Judgment, shall have, fully, finally, and forever discharged, settled, and released, and shall forever be enjoined from commencing or prosecuting, any and all Settled Litigation Claims (including Unknown Claims) against the SLC and the SLC's Counsel.

10. Notwithstanding Paragraphs 9(a)-(c) above, nothing in this Judgment shall bar any action by any of the Parties to enforce the terms of the Stipulation or this Judgment. Also, for the avoidance of doubt, the Settlement does not cover, settle, or release: (i) any direct claims held by any current, former, or future stockholder of McKesson who is not a Plaintiff, including any claims asserting violations of the federal or state securities laws, including, without limitation, claims asserted in Evanston Police Pension Fund v. McKesson Corporation, et al., Case No. 3:18-cv-06525-CRB (N.D. Cal.); or (ii) any claims currently asserted in Henry v. Tyler, et al., Case No. 3:19-cv-2869-CRB (N.D. Cal.).

11. No Admissions – Neither this Judgment, the Term Sheet, the Stipulation, including the exhibits thereto, the negotiations leading to the execution of the Term Sheet and the Stipulation,

nor any proceedings taken pursuant to or in connection with the Term Sheet, the Stipulation, and/or approval of the Settlement (including any arguments proffered in connection therewith): (a) shall be offered against any of the Released Defendants' Parties or the SLC as evidence of, or construed as, or deemed to be evidence of any presumption, concession, or admission by any of the Released Defendants' Parties or the SLC with respect to the truth of any fact alleged by Plaintiffs or the validity of any claim that was or could have been asserted or the deficiency of any defense that has been or could have been asserted in the Actions or in any other litigation, or of any liability, negligence, fault, or other wrongdoing of any kind of any of the Released Defendants' Parties or in any way referred to for any other reason as against any of the Released Defendants' Parties, in any arbitration proceeding or other civil, criminal, or administrative action or proceeding, other than such proceedings as may be necessary to effectuate the provisions of the Stipulation; (b) shall be offered against any of the Released Plaintiffs' Parties or the SLC, as evidence of, or construed as, or deemed to be evidence of any presumption, concession, or admission by any of the Released Plaintiffs' Parties or the SLC that any of the Released Plaintiffs' Parties' claims are without merit, that any of the Released Defendants' Parties had meritorious defenses, or that damages recoverable under the Complaints would not have exceeded the Settlement Consideration or with respect to any liability, negligence, fault, or wrongdoing of any kind, or in any way referred to for any other reason as against any of the Released Plaintiffs' Parties, in any

arbitration proceeding or other civil, criminal, or administrative action or proceeding, other than such proceedings as may be necessary to effectuate the provisions of the Stipulation; or (c) shall be construed against any of the Released Parties or the SLC as an admission, concession, or presumption that the consideration to be given in the Settlement represents the amount which could be or would have been recovered after trial; provided, however, that the Parties, the Released Parties, and their respective counsel, the SLC, and the SLC's Counsel may refer to this Judgment and the Stipulation to effectuate the protections from liability granted hereunder and thereunder, to support any and all defenses or counterclaims based on res judicata, collateral estoppel, release, good-faith settlement, judgment bar or reduction or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim, or otherwise to enforce the terms of the Settlement.

12. Award of Attorneys' Fees and Expenses – Plaintiffs' Counsel are hereby awarded attorneys' fees in the amount of 25% of the Cash Settlement Fund, with due consideration given to both the cash settlement and the corporate governance reforms, which constitute an exceptional result. The Court finds the requested attorneys' fees to be fair and reasonable under Delaware law[1] and

[1] Delaware law governs the fee award here because Delaware law governs the claims in this action. See Second Consolidated Amended Complaint ¶ 10, Docket No. 124 (invoking the Court's subject matter jurisdiction under 28 U.S.C. § 1332); see also Mangold v. California Pub. Utilities Comm'n, 67 F.3d 1470, 1478 (9th Cir. 1995) (holding that "state substantive law governs the award of fees in diversity actions" as well as the "calculation of the amount of the fee"). The requested attorneys' fees are

consistent with the twenty-five-percent benchmark used in the Ninth Circuit. When cross-checked against the lodestar of $15,020,210.40, the requested attorneys' fees represent a 2.9 multiplier, which is a reasonable multiplier in light of the excellent results that Plaintiffs' Counsel achieved on behalf of the settlement class members and the risks they undertook to litigate this action on a contingency basis. The Court also finds the requested expenses in the amount of $421,223.91 to be fair, adequate, and reasonable. The Court-awarded attorneys' fees and expenses shall be paid to Plaintiffs' Counsel in accordance with the terms of the Stipulation.

13. No proceedings or court order with respect to the award of attorneys' fees and expenses to Plaintiffs' Counsel shall in any way disturb or affect this Judgment (including precluding this Judgment from being Final or otherwise being entitled to preclusive effect), and any such proceedings or court order shall be considered separate from this Judgment.

14. Retention of Jurisdiction – Without affecting the finality of this Judgment in any way, this Court retains continuing jurisdiction over the Parties and all McKesson

within the range approved by Delaware courts in similar cases. See, e.g., Americas Mining Corp. v. Theriault, 51 A.3d 1213, 1259-60 (Del. 2012) ("A study of recent Delaware fee awards finds that the average amount of fees awarded when derivative and class actions settle for both monetary and therapeutic consideration is approximately 23% of the monetary benefit conferred; the median is 25%.") (citations and internal quotation marks omitted).

stockholders for purposes of the administration, interpretation, implementation, and enforcement of the Settlement.

15. Modification of the Stipulation – Any further amendments or modifications of the Stipulation or any exhibits attached thereto to effectuate the Settlement shall only be made with the prior approval of the Court.

16. Termination of Settlement – If the Settlement is terminated as provided in the Stipulation or the Effective Date of the Settlement otherwise fails to occur, this Judgment shall be vacated, rendered null and void, and be of no further force and effect, except as otherwise provided by the Stipulation, and this Judgment shall be without prejudice to the rights of the Parties or any McKesson stockholders, and the Parties shall revert to their respective litigation positions in the Actions as of October 15, 2019.

17. Entry of Final Judgment – There is no just reason to delay the entry of this Judgment as a final judgment in the California Action. Accordingly, the Clerk of the Court is expressly directed to immediately enter this final judgment in the California Action.

IT IS SO ORDERED.

Dated: April 22, 2020

CLAUDIA WILKEN
United States District Judge

EXHIBIT 36

GRANTED
EFiled: Oct 24 2018 03:11PM EDT
Transaction ID 62593582
Case No. 12286-VCL

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN RE FACEBOOK, INC. CLASS C RECLASSIFICATION LITIGATION	))	Consolidated C.A. No. 12286-VCL

STIPULATION AND [PROPOSED] ORDER OF DISMISSAL

WHEREAS, on May 17, 2016, the Court appointed Grant & Eisenhofer, P.A. and Kessler Topaz Meltzer & Check, LLP as co-lead counsel ("Co-Lead Counsel"), and appointed Prickett, Jones & Elliott, P.A. as additional counsel (together with Co-Lead Counsel, "Plaintiffs' Counsel") in the above-captioned action (the "Consolidated Action");

WHEREAS, on September 25, 2017, the Court entered a Stipulation and Order Dismissing Action as Moot and Retaining Jurisdiction to Determine Plaintiffs' Counsel's Application for an Award of Attorneys' Fees and Reimbursement of Expenses;

WHEREAS, on February 2, 2018, Plaintiffs' Counsel filed a Motion for an Award of Attorneys' Fees and Expenses (the "Fees and Expenses Motion") seeking an award of $129 million in attorneys' fees, including $4,276,353.38 in unreimbursed expenses (the "Unreimbursed Expenses");

WHEREAS, on July 26, 2018, the Court heard argument on the Fees and Expenses Motion;

WHEREAS, following extensive, arms-length negotiations, the Company has agreed, in the exercise of business judgment, to resolve the Fees and Expenses Motion pursuant to the procedures specified below;

WHEREAS, Defendants continue to deny any and all allegations that they engaged in wrongdoing in any way, and the Company has agreed to resolve the Fees and Expenses Motion due to the costs of defense of that application and litigation risk associated therewith; and

WHEREAS, the Court has not passed on the amount of the fee, but requires parties to provide notice with respect to any agreed-upon payment of attorneys' fees and expenses in cases in which the underlying claims are dismissed on mootness grounds;

NOW, THEREFORE, upon consent of the parties and subject to the approval of the Court:

IT IS HEREBY ORDERED this ____ day of _____, 2018 that:

1. The Company shall attach this Stipulation and Order of Dismissal as an exhibit to a Form 8-K that the Company will file with the United States Securities and Exchange Commission following the entry of this Stipulation and Order of Dismissal (the "Order"). The filing by the Company of this Order as an attachment to a Form 8-K constitutes adequate notice for purposes of Rule 23(e) (the "Notice").

2. The Company shall file with the Court an affidavit that the Notice has been made (the "Affidavit") in accordance with Paragraph 1 above no later than five (5) calendar days after the Notice is publicly filed.

3. Upon the filing of the Affidavit:

(a) The Register in Chancery is directed to close this Consolidated Action on the docket; and

(b) The Court will no longer retain any jurisdiction over this Consolidated Action.

4. The Company and/or its insurers shall pay Plaintiffs' Counsel $68,700,000 in full satisfaction of the Fees and Expenses Motion (including the Unreimbursed Expenses) on or before November 15, 2018, to the account previously designated by Plaintiffs' Counsel. The foregoing payment shall fully satisfy and resolve all claims in the Fees and Expenses Motion, and Plaintiffs' Counsel shall not seek any additional fees, expenses, or costs related to the Consolidated Action from any source.

GRANT & EISENHOFER, P.A.

/s/ Stuart M. Grant
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Attorneys for Defendant Facebook, Inc.

Dated: October 24, 2018

SO ORDERED this ___ day of _____, 2018.

_____
Vice Chancellor J. Travis Laster

This document constitutes a ruling of the court and should be treated as such.

Court:	DE Court of Chancery Civil Action
Judge:	J Travis Laster
File & Serve Transaction ID:	62592889
Current Date:	Oct 24, 2018
Case Number:	12286-VCL
Case Name:	CLOSED - CONF ORD - CONS W/ 12282, 12283, 12287, 12292, 12303, 12306, 12309, 12317, 12318, 12319, 12320, 12325-VCL - IN RE FACEBOOK, INC. CLASS C RECLASSIFICATION LITIGATION
Court Authorizer:	Laster, J Travis

/s/ Judge Laster, J Travis

EXHIBIT 37

Electronically Filed
by Superior Court of CA,
County of Santa Clara,
on 2/5/2021 8:22 AM
Reviewed By: R. Walker
Case #19CV341522
Envelope: 5786171

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SANTA CLARA

IN RE ALPHABET INC. SHAREHOLDER DERIVATIVE LITIGATION

Lead Case No.: 19CV341522

ORDER CONCERNING MOTION FOR AWARD OF ATTORNEYS' FEES AND EXPENSES

These consolidated shareholder derivative actions arise from allegations that officers and directors of Alphabet, Inc., the parent company of Google LLC, breached their fiduciary duties and committed other misconduct in connection with multi-million-dollar severance awards to male executives accused of assaulting female employees, amid a broader culture of discrimination against women at the company. The plaintiffs also allege claims arising from a data breach impacting the Google+ service.

The parties reached a settlement ("Settlement") that the Court (Judge Walsh) preliminarily approved on October 22, 2020. Judge Walsh then granted final approval to the Settlement on November 30. The factual and procedural background of the action and the Court's analysis of the Settlement are set forth in those orders and are not repeated here.

The Court continued the hearing on Plaintiffs' motion for approval of their fees and costs, directing their counsel to file supplemental declarations providing the necessary detail to enable

a lodestar evaluation. That supplemental information has now been provided, and the motion for attorney fees and costs has again come on for hearing. The Court (Judge Kulkarni) issued a tentative ruling on February 3, 2021, and no party contested the ruling. The Court now issues its final order and GRANTS Plaintiffs' motion.

I. LEGAL STANDARD

The Settlement previously approved by the Court is non-monetary, although there is significant evidence in the record that the Settlement will provide at least $100 million in long-term value to Alphabet. (See 11/30/21 Final Approval Order, at p. 7.). Under the circumstances,

> the court considers whether the litigation has conferred a substantial benefit on the corporation, i.e., a benefit that is actual and concrete and not conceptual or doctrinal. [Citations.] The benefit need not be pecuniary [citation], but it must be " 'something more than technical in its consequence and ... one that accomplishes a result which corrects or prevents an abuse which would be prejudicial to the rights and interests of the corporation or affect[s] the enjoyment or protection of an essential right to the stockholder's interest.' " (*Mills v. Electric Auto–Lite* (1970) 396 U.S. 375, 396, 90 S.Ct. 616, 24 L.Ed.2d 593, quoting *Bosch v. Meeker Cooperative Light and Power Ass'n* (1960) 257 Minn. 362, 101 N.W.2d 423, 427.)

(*Robbins v. Alibrandi* (2005) 127 Cal.App.4th 438, 448 (*Robbins*).) The Court previously found that the Settlement provides substantial benefits to Alphabet shareholders, justifying an award of fees and costs to plaintiffs' counsel.

"[A] court awarding fees under the 'substantial benefit doctrine' begins by establishing a 'lodestar' amount." (*Robbins, supra,* 127 Cal.App.4th at p. 453.) The lodestar figure is "based on the careful compilation of the time spent and reasonable hourly compensation of each attorney involved in the presentation of the case." (*Id.* at p. 448.) "The court then has the power and the duty to enhance, or to reduce, the lodestar through the use of multipliers, by taking into consideration factors such as the novelty and complexity of the issues, the skill and expertise of counsel, the extent that the litigation precluded other employment and the contingent nature (or

risk) of nonrecovery." (*Ibid.*) "[I]n cases in which the value of the class recovery can be monetized with a reasonable degree of certainty and it is not otherwise inappropriate, a trial court has discretion to [apply] a positive or negative multiplier … to ensure that the fee awarded is within the range of fees freely negotiated in the legal marketplace in comparable litigation," which may involve evaluating the lodestar as a percentage of the benefit. (*Lealao v. Beneficial California, Inc.* (2000) 82 Cal.App.4th 19, 49–52 (*Lealao*).)[1]

As *Robbins* states, "[a]lthough [a] negotiated fee need not be perfectly consistent with the fees the court would award under the "substantial benefit doctrine," it must be in the same range. A negotiated fee that clearly is out of that range is not a fair and reasonable settlement of the attorneys' claim for fees." (*Robbins*, *supra,* 127 Cal.App.4th at p. 451.)

II. ANALYSIS

Plaintiffs' counsel in this matter consist of 20 law firms representing the plaintiffs in this California Action and the related Federal Actions discussed in the Court's prior orders, as well as counsel for other shareholders who made litigation demands associated with the conduct at issue here.[2] Counsel submit that their combined lodestar is $9,784,626.25, reflecting 13,907.01 hours

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[1] Plaintiffs suggest that the Court could evaluate the fees requested here purely as a percentage of a "constructive" common fund, but this approach is unsupported. (See *Lealao, supra*, 82 Cal.App.4th 19, 37–39 [agreeing with respondent "that pure percentage fees have been rejected by the California Supreme Court … in cases such as this in which there is not a conventional common fund"]; see also *Laffitte v. Robert Half Internat. Inc*. (2016) 1 Cal.5th 480, 503 ["We do not address here whether or how the use of a percentage method may be applied when there is no conventional common fund … but only a "'constructive common fund'" created by the defendant's agreement to pay claims made by class members …, or when a settlement agreement establishes a fund but provides that portions not distributed in claims revert to the defendant …, making the fund's value to the class depend on how many claims are made and allowed."].)

[2] Co-Lead Counsel for the plaintiffs in this action are Bottini & Bottini, Inc. and Cohen Milstein Sellers & Toll LLC. Berman Tabacco, Renne Public Law Group, and WeissLaw LLP serve with those firms on the Executive Committee. Kessler Topaz Meltzer & Check, LLP and Prickett, Jones & Elliott, P.A. are counsel for Plaintiff Sjunde AP-Fonden, which has maintained its own complaint on a demand refusal theory. Knox Ricksen LLP and Cotchett, Pitre & McCarthy, LLP are counsel for the plaintiffs in *O'Neil v. Page et al*. (Super. Ct. Santa Clara County, Case No. 20CV365249) and *Morgus v. Page, et al.,* (Super. Ct. Santa Clara County, Case No. 20CV363643), which were consolidated into the lead action herein after the Court appointed lead counsel. The Brown Law Firm, Gainey McKenna & Egleston, P.C., Robbins LLP, and The

billed at each firm's regular hourly rates, which range between $375–795 for associates and $720–1,135 for partners. Their $29,000,000 combined fee and cost request results in a multiplier of 2.9, considering the $28,641,686.01 in fees remaining after deducting counsel's expenses (addressed below).

Having reviewed the detailed billing records and summaries provided by counsel, the Court finds that their lodestar is reasonable. Due to the importance of the issues raised by this case, a number of shareholders became involved. While they and their counsel ultimately worked together on a global settlement, they each spent significant time investigating and preparing their claims in the early stages of the litigation. This was warranted under the circumstances and contributed to the very substantial benefits achieved by the Settlement. The rates billed by their counsel are in line with the market considering their experience, practice area, and expertise.

The multiplier requested by counsel, while significant, is likewise reasonable given the contingent nature of the action and the substantial risk of non-recovery; the novelty and complexity of the issues; and the excellent result achieved for shareholders. Notably, counsel and the Court are aware of only one derivative action in the United States where allegations regarding sexual misconduct and board complicity in concealing that misconduct overcame a challenge to demand futility. The risk counsel took on in devoting the substantial time and resources necessary to pursue this action was high. And the long-term value to shareholders achieved by the Settlement, as discussed in the Court's prior orders and the expert declarations and other materials submitted by the parties, is substantial and likely exceeds any monetary recovery that might have ultimately been achieved here.

Rosen Law Firm, P.A. are counsel for the plaintiffs in the Federal Actions. Bernstein Litowitz Berger & Grossmann LLP, Bragar Eagel & Squire, P.C., Grabar Law Office, Johnson Fistel, LLP, McKay Law, LLC, Rigrodsky & Long, P.A., and The Weiser Law Firm, P.C. represent shareholders who made books and records and/or litigation demands on Alphabet's board and participated in settlement discussions, but never filed derivative actions.

Overall, while the Court might make some deductions to counsel's lodestar if it were directly awarding fees under the substantial benefit doctrine, the negotiated fee is in the same range as the Court would award. Finally, counsel's combined fee and cost request includes $358,313.99 in expenses, which appear reasonable based on the summaries provided in November 2020.

III. CONCLUSION

For the foregoing reasons, the Court GRANTS Plaintiffs' motion for attorney fees and expenses.

IT IS SO ORDERED.

Date: February 5, 2021

The Honorable Sunil R. Kulkarni
Judge of the Superior Court

EXHIBIT 38

EFiled: Nov 20 2013 05:06PM EST
Transaction ID 54591566
Case No. 7469-CS

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN RE GOOGLE INC. CLASS C SHAREHOLDER LITIGATION : Consolidated : C.A. No. 7469-CS

- - -

Chancery Courtroom No. 12A
New Castle County Courthouse
500 North King Street
Wilmington, Delaware
Monday, October 28, 2013
10:01 a.m.

- - -

BEFORE: HON. LEO E. STRINE, JR., Chancellor.

- - -

SETTLEMENT HEARING and RULINGS OF THE COURT

- - -

CHANCERY COURT REPORTERS
New Castle County Courthouse
500 North King Street - Suite 11400
Wilmington, Delaware 19801
(302) 255-0524

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(Continued) ....

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- - -

MR. GOLDBERG: Good morning, Your Honor.

THE COURT: Good morning, everyone.

MR. GOLDBERG: Your Honor, Robert Goldberg on behalf of the plaintiffs in this matter.

I don't know if you want to go through introductions. We got an awful lot of people here.

THE COURT: It's -- it's really your choice.

MR. LAFFERTY: Your Honor, we'll reserve the introductions until we see if I have to speak at all, and then we'll go from there. We'll just get started.

MR. GOLDBERG: On behalf of plaintiffs, Your Honor, we have colead counsel at the table here, Jeffrey Block of the law firm of Block & Leviton; Laurence Paskowitz of The Paskowitz Law Firm; Nicholas Porritt of the Levi & Korsinsky law firm. I also have with me today Whitney Street, who is of the Block & Leviton firm.

Mr. Block has been admitted pro hac vice and will be making the presentation on behalf of plaintiffs, Your Honor.

MR. BLOCK: Thank you, Your Honor.

Good morning, Your Honor. Jeffrey Block on behalf of the plaintiffs from the Block & Leviton firm.

Your Honor, we appreciate your sending us the e-mail over the weekend so we can address your concerns. And I'll start off by hopefully clearly answering the questions you posed, and then I will give you the explanations and the reasons behind what we've achieved here.

I think your first question is asking whether Mr. Page and Mr. Brin will share in any potential payment. And the answer to that is yes, they will.

I think the second question you asked is: What is the math? The math is that the current Class A shareholders have 83 percent of the economic ownership of Google. Page and Brin have approximately 15 percent. And the other Class B shareholders, like Mr. Schmidt, Mr. Doerr, et cetera, have 2 percent.

So if there's any payout that is made under the payment ladder, everybody would share in it pro rata. So 83 percent would go to the As; 15 percent, assuming that's what they still own, would go to Page and Brin; 2 percent would go to the others.

THE COURT: Wait a minute. Go through

that again.

MR. BLOCK: Certainly, Your Honor.

THE COURT: There -- so -- so the founders, with their high-vote stock, they're going to get C shares, too?

MR. BLOCK: Exactly, Your Honor. The way -- the way the recapitalization is going to work is every shareholder who has an A and a B share will be issued one Class C share. So for Mr. Page, for example, right now, according to the 2013 proxy, he owns 24.9 million Class B shares. He will, after the split, have 29. -- 24.9 million Bs, 24.9 million Cs. Same thing for Mr. Brin. He has 24.3. Same.

So if I'm a Class A shareholder and I have a hundred shares of A shares, after the split I'll have a hundred As and a hundred Cs. And that will be the same for every shareholder in the company.

If the company elects to -- if there is a payment made -- and I'm going to assume it's going to be the payment --

THE COURT: So what you're telling me here in terms of the settlement is that the founders who wish to retain voting control but not by continuing to purchase shares with an economic

interest and preserving that voting control that way, they're not taking any haircut in this. For example, I mean, you know, I don't know why everyone -- I mean, maybe it's set up this way -- why everyone had to get the nonvoting stock, because nonvoting stock doesn't affect control. That's the whole point of this exercise.

So if the two founders wanted to continue to exercise -- you know, they wanted to have the -- swing the bat that Ruth used to swing -- you can see a bunch of them in the Orioles museum in Baltimore. And they're pretty formidable things. Because people forget his first team was actually the Baltimore Orioles. It was a minor league team at the time. But they could have done that without getting any of these shares; right?

MR. BLOCK: The -- well, yes, Your Honor, they could have gone into the market. But if --

THE COURT: No, no, no. Is there any reason why, when the company structured this, the founders' class had to get a dividend? Did you have to do a dividend on -- do you have to do a dividend on all, on all classes? I don't know.

MR. BLOCK: I don't know, Your Honor. I know the way that the plan was presented -- and perhaps this is more of a corporate question. But the way the plan was presented and approved by the board and to the stockholders was every single share was going to get the dividend.

THE COURT: Oh, I understand. This was a litigation about stopping the plan.

MR. BLOCK: Right. Right. And --

THE COURT: And so litigations about stopping plans can also have an effect on the shape of those plans.

MR. BLOCK: Yes.

THE COURT: And all I'm saying is, observationally, what you're telling me is there's actually no gain sharing in terms of sacrifice by the founders who wish to retain control. There's no economic sacrifice; and that all of the price support payments that anyone else and the class receives, the nonclass member founders who caused all this hoo-ha --

MR. BLOCK: Well --

THE COURT: I mean, it's a tribute to yourself. I mean I understand. These folks have had -- they're very creative people. They've had a

huge beneficial effect on people who have invested in the company because the company has grown. You know, they created a verb.

MR. BLOCK: Uh-huh.

THE COURT: I mean, not everybody can create a verb. So I'm not being critical. I'm just trying to grasp this.

This wasn't a situation, for example -- it would be much easier for me to understand the very large benefit you're claiming for the settlement if the two founders --

MR. BLOCK: Okay.

THE COURT: -- even with their 17 percent ownership, if essentially they were funding 17 percent of the payment --

MR. BLOCK: Uh-huh.

THE COURT: -- to the class, you got to think that is a better -- that's a kind of bigger contribution than you're telling me that essentially this is all just a support payment to prop up something, that that's something that does not need to be propped up absent this plan going forward.

This plan was suggested by the founders because they wished to retain control over

the company, while having an asymmetry between -- an even more profound potential asymmetry between their economic share of the firm and their voting control; right?

MR. BLOCK: Yes, Your Honor. I think I understand what you're saying. Let me see if I can explain it this way:

The reason why the founders, also the B shares, were also receiving C shares is because the effect of the split would be to have the share price in the market. So instead of having 270 million shares trading at a thousand dollars a share, you're now going to have $540 million a share -- and this would have been a dispute in litigation -- let's say each trading at 500.

So if you -- if the founders don't get the C shares, their economic ownership of the company is now cut in half. So that's why they also received the C shares, because by -- by creating --

THE COURT: They just had to take it.

MR. BLOCK: I'm sorry, Your Honor?

THE COURT: I'm not sure every member of the class would look at it that way, was that this was a measure of sacrifice on their behalf, that they

would have to receive more.

MR. BLOCK: I'm not saying --

THE COURT: Is the payout to the class in cash?

MR. BLOCK: The payout is going to be the election --

THE COURT: Is the true-up in cash or in shares?

MR. BLOCK: It's going to be at the election of the board at the time, either cash or shares, and everybody in that regard will be treated the same.

What --

THE COURT: And why would they -- do they have to, as a matter of corporate law, even though it's a litigation settlement?

MR. BLOCK: Do they have to make the election?

THE COURT: Do the founders -- would it, as a matter of law, be the case that in a settlement of litigation, was there a reason why the two founders needed to be getting a true-up when they suggest that there will be no discount, when, again, you know, you could potentially -- there are limits on

the true-up. If the founders were excluded from the -- from the potential of receiving the true-up, presumably the limits could be expanded a little bit to the benefit of the members of the actual class. Was that explored in the negotiation of this?

MR. BLOCK: Absolutely it was, Your Honor.

THE COURT: And it was objected by the defendants.

MR. BLOCK: Yes, Your Honor.

THE COURT: Because the two founders wished to also get the true-up for themselves.

MR. BLOCK: Correct, Your Honor. And when we tried to weigh those benefits versus what the founders received in some of the payout versus what we think we achieved for the class, at the end of the day, we felt that the risk balanced so that the settlement was -- was valuable and worth it versus allowing, you know, a small payment to go to the founders. If --

THE COURT: Did you explore negotiating that the founders would pay the transaction costs that the company incurred for the pursuit of this initiative?

MR. BLOCK: No, we did not, Your Honor. Our understanding is that -- and perhaps defendants can address this better; but the legal fees incurred in this were, I believe, subject to payments by insurance companies, but I'm not sure on that.

THE COURT: I mean, that also -- that has effect on the future, as you know. Which, I mean -- unless I miss my guess, there's no insurance company in the world who does not take into account past claims experience in setting future rates.

MR. BLOCK: Well --

THE COURT: And I cannot imagine that this was on any front, including the prelitigation front, an inexpensive process in terms of advisor fees.

MR. BLOCK: We did not explore the amount of the fees, Your Honor. What we were focused on were the -- what we thought were the major harms in this deal, one which would be a potential trading discount, which we think will exist. And we wanted to mitigate that.

THE COURT: But the trading discount -- I mean, my only concern -- I mean, I'm not saying you haven't mitigated the trading discount

risk.

And I'm just going to preview for the objectors. I get their point, but I think they somehow misunderstand how settlements work and they misunderstand class actions in terms of Delaware.

MR. BLOCK: Uh-huh.

THE COURT: Which is as I -- I get the point that -- the reality is -- the point is that this -- these kinds of things run with the shares.

MR. BLOCK: Uh-huh.

THE COURT: And that, for example, if you -- if there's a price support aspect to the C shares, then you're able to sell them to somebody and that -- at a higher price than you would otherwise because then when they receive the shares and there's the potential for the true-up that comes with that guarantee. So I get all that.

MR. BLOCK: Okay.

THE COURT: What I think is a more fundamentally important point in assessing what you've actually achieved is that if I'm sitting here as a stockholder right now at Google, I don't need any price support. All the stuff around price support is something that I presumably need, because you're going

to give me something that I did not ask for and that at the polls -- because I understand your own point -- at the polls, when the disinterested electorate got to express their views, they overwhelmingly said, "I don't really need this. Turning my, you know, publicly traded share into two publicly traded shares, one of which is now nonvoting, might be nifty for the two founders; but my own view is they, frankly, have a lot of reasons to stay fairly interested in the business and I'm not really interested in going down this route."

Using their own voting power, they have a different view.

What you're telling me now, though, that the principal economic benefit of this is to provide price support for these C shares which nobody in the class actually wanted, or very few people; right?

MR. BLOCK: Yes. Yes.

THE COURT: And that rather than the founders funding any of it or even the transactional cost of negotiating this thing, it's essentially everybody treated pro rata, except it's not really pro rata, because the only ones who actually get something

different than they already have out of it are the founders whose ability to retain voting control in the future is perpetuated. The public investors are in exactly the same place except that they get some price support that they don't need in the absence of the transaction.

MR. BLOCK: Let me -- let me address that point, Your Honor. I think what you're -- you're hitting the nail on the head of this question, is does this transaction perpetuate the founders' control. And I understand that --

THE COURT: Well, what I mean by "perpetuate" is --

MR. BLOCK: Yes.

THE COURT: -- there's a very obvious reason why the founders came with this.

MR. BLOCK: Uh-huh.

THE COURT: Which is Google is the type of company -- and most companies need to use a lot of equity for other sorts of things. They use it for acquisitions and they use it to provide incentives to their employees.

MR. BLOCK: Right.

THE COURT: If Google, in the normal

course of things, continues to do those things, then the pressure will be on the founders to either, frankly, step up to the plate and buy more actual normal equity in which the voting rights are aligned with the cash flows that are available to the public investors, the cash flow sharing --

MR. BLOCK: Uh-huh.

THE COURT: -- dividend rights -- so to step up and actually have more of their personal wealth locked up in Google -- or to do what they've done, which is to create a situation where Google can give out stock to people that has no voting rights, thereby allow the founders to continue to exercise voting control over Google. Not normal order of things.

And I think it was your argument -- your friend's and your argument in the beginning was -- this is kind of unusual because the only party -- what you're telling us, it's like, you know, if President Obama or President Bush at the end of his term or President Reagan said, "Really what's great for everybody is just that I stay. And what we need to do is to give out nonvoting," you know -- "we need to create a class of nonvoting citizens in which I can

be assured that no changes in the demographics will threaten my control because it's just really good for the USA for me to stay in office. I can't really muster" -- you know, it's an odd kind of concept.

MR. BLOCK: It is, Your Honor. It's an odd concept. And when we, I guess, dug into the case, what we saw -- and let me give you the numbers which hopefully will bear it out. We don't think this plan, just the issuance of the nonvoting stock by themselves, really affects Page and Brin's ability to continue to have control in this company. They have 56 percent voting control together. They're going to have that voting control as long as they want it, whether this plan goes forward or not. They each -- with their stock ownership they each have about -- I think it's about 28 percent of the voting control.

So just -- just to put the numbers on it --

THE COURT: Wait a minute.

MR. BLOCK: -- right now --

THE COURT: Again, I assume smart people, including people smart as this, even have a good eye for islands -- I saw one of the founders' islands. I got to tool by it in a boat. It's kind of

a cool place. It's right next to Richard Branson's island, although Richard Branson bought another island. So there's an island-buying competition going on. So these are very smart people.

MR. BLOCK: Yes.

THE COURT: There's a purpose for this plan.

MR. BLOCK: And that's what I'm getting to.

THE COURT: Well, no. The purpose is exactly what we're talking about. Now you're telling me that the plan has no purpose, in which case everybody could just rescind it and we could avoid all this stuff.

MR. BLOCK: No.

THE COURT: The purpose is -- they're at 56 now. If they wish to do things like take some of their wealth and diversify it, that puts at issue their voting control, or if the company, in order to do the two things that I just mentioned, which are normal things, make acquisitions using your stock as currency or, even probably more important in the case of a company like Google, provide equity-based incentives to the employees, 56 is a lot cooler than

46, but it's still -- there was something on their mind where there's a certain amount of dilution, particularly because, as the point was made in your papers -- and I get it -- that there are two founders. They're friends, but, you know, they're not -- nobody says that they have to be aligned forever.

MR. BLOCK: Right.

THE COURT: Even families like the Koch brothers have had disputes over the years. They get along, but they've had disputes. People and families have disputes, and I get all that.

MR. BLOCK: Uh-huh. Uh-huh.

THE COURT: But what I'm just trying to say, really, economically the only reason why you're trying to get support arrangements is because of a plan that was proposed by these founders in order to lengthen the period of time over which they could exercise voting control of this company. Right?

MR. BLOCK: Correct. Correct. And --

THE COURT: And there is no gain sharing by them in the sense of them stepping up even with transaction costs in the settlement; right?

MR. BLOCK: Right.

THE COURT: There is no gain sharing

by them, the settlement being structured in a way where they don't get the support payment.

MR. BLOCK: Correct.

If I may, Your Honor, what we --

THE COURT: How can I get a benefit to the class, then? Because I don't understand a benefit to a class -- I don't understand this as a derivative benefit and now I don't understand it as an economic benefit to the class, because you would say that the economic benefit to the class is in the price support; right?

MR. BLOCK: Yes.

THE COURT: The problem with that is typically you would say "Okay, let's look at the benefit to the class." And if what you're saying is the company is paying for it, then what we would look at is some differential from a group of people who have been defined outside of the class who would be providing a contribution so that you could say that the class, in comparison to the people being sued, is comparatively better off after the settlement --

MR. BLOCK: Uh-huh.

THE COURT: -- than they are before.

What I'm now understanding, which the

papers didn't really illuminate, is that as between a member of the class and the defendants who have been excluded from the class, there is no economic distinction.

MR. BLOCK: Under the payment plan, that is correct, Your Honor. What -- what we think is -- is the real issue here in terms of the benefit of this plan to Page and Brin is what may happen down the road, which is if they want to divest -- if they want to achieve liquidity, if they want to divest nonvoting stock but still continue --

THE COURT: I understand that; but you have a pretty sizable fee request which is built, in large measure, not on the increases in the limitations in the future on their ability to make transfers, for example, between themselves.

MR. BLOCK: Uh-huh.

THE COURT: The ability to waive the -- the --

MR. BLOCK: TRA.

THE COURT: -- the TRA, which, look, I understand now you've ratched up with that committee and essentially unanimous independent director approval. I get that.

MR. BLOCK: Uh-huh. Uh-huh.

THE COURT: But an expert who's done well in this Court, you know, has wielded around figures of a billion.

MR. BLOCK: Uh-huh.

THE COURT: But that's -- there's pro rata treatment for the two founders in that; right?

MR. BLOCK: Right. What --

THE COURT: And so all I'm saying is, observationally, that is a whole transfer payment that does not have to exist if this plan simply goes away. And because the two founders are treated pro rata and Mr. Doerr is treated pro rata, they might as well just be defined as members of the class for the purposes of that economic benefit.

MR. BLOCK: Well, I think --

THE COURT: And, in fact, that one -- can argue is actually -- I would think most economists would say it's pretty observationally true that if the only point of an expenditure like that is to actually avoid economic harm that you're creating by your own actions, plus you're going to rack up tremendous transaction costs because there will be advisor fees, there will be other things to determine whether it's

stock or cash, there will be, then, SEC communications about the implications to the receiving people about the consequences of receiving stock or cash, that I think most people from Chicago, even those who just eat Chicago-style hot dogs or those who were at the school at Hyde Park, would say, "Just stop where you are. Do not do that which is going to cause you to just to incur costs in a year." If the only reason you're going to incur, make a billion-dollar payout, have to spend millions of dollars on lawyers, have to have people have tax consequences when they wouldn't otherwise -- because that's the other thing. Is some of this potentially taxable?

MR. BLOCK: That's a good question, Your Honor. I --

THE COURT: Well, it is kind of a good question because as a investor, I'm not sure I want a true-up payment when I already have one -- I have one voting share right now of Google. You've turned it into two securities. You're now telling me that there's going to be some sort of discount true-up in a year. I'm going to get mailed either a piece of cash or a stock dividend. I'm going to have to figure out the tax consequences of that, which may already be a

headache for me --

MR. BLOCK: I --

THE COURT: -- all over this? when the only reason we're doing this is because the two founders want to perpetuate their voting control?

MR. BLOCK: Well, I understand that, Your Honor. And, obviously, but for -- if Your Honor ruled in our favor at trial, this plan goes forward because it was approved by the board, shareholders voted to approve it. Obviously that's why we filed the lawsuit to stop it.

And in litigating the case, we identified -- what we didn't identify was a -- a direct concrete valuable benefit that we could quantify today that would go to the founders based on what we see the numbers are. Right now -- if I can -- if I can just give you the numbers, maybe you'll understand where we are coming from.

Right now Page and Brin have 493 million votes based on their shares. The Class A shareholders have 270 million votes based on their shares. At the time of the transaction, Google would have to issue 220 million Class A shares or about $125 billion worth of stock before the Class A would

ever get to be equal to Page and Brin in terms of voting rights. Today it's $220 billion.

The company on average issues around 3 1/2 million shares for employee compensation. So at the old prices it would take forever for --

THE COURT: And for the plan -- if one founder sold to the other their high-vote shares, were there any restrictions?

MR. BLOCK: Selling, no. So, for example, Mr. Page could just buy Mr. Brin's voting shares with cash and they stay as the supervoting shares. So there's no restrictions.

So we think what this plan obviously did is it now creates this currency for Page and Brin to sell nonvoting shares, get this liquidity but keep their voting control, and it also allowed for this founder-to-founder transfer. So if --

THE COURT: No. But what I'm saying is before the plan --

MR. BLOCK: Right.

THE COURT: -- a founder who wished to sell to his friend who said, you know, "My interest in the business, I'm kind of," you know -- "I've moved on to other things" --

MR. BLOCK: Uh-huh.

THE COURT: -- could sell his shares to his friend and fellow founder, and that friend and fellow founder could continue, you know, to reap the voting control.

MR. BLOCK: Correct, Your Honor. Under the charter, if Mr. Page sold to Mr. Brin or Mr. Brin sold to Mr. Page, those shares continued to stay as supervoting shares.

THE COURT: Right. It's only if they sell to someone else.

MR. BLOCK: Exactly. Exactly. So, you know, they're -- they've had two 10b5-1 plans. They sold, I think it was about 20 percent of their holdings. So obviously when they sell, their voting power goes down. This plan, we think that the wealth transfer potential here is if in the future they want to sell their nonvoting stock or they want to do this founder-to-founder transfer, we think the real effect on their control would be if one founder decided to leave and the other founder said, "I'm going to be left with what would work out to be 37 percent control. I no longer will have the control. We need to do something about that."

And that's why we think that the TRA modifications are pretty critical here and we think -- we think the special committee recognized these potential liquidity benefits. They took steps to try to reign them in, but we don't think they went far enough because, as we pointed out in the papers, you know, you've got approval by a majority of the board prior to the settlement. With the settlement, it is now, as Your Honor knows, the special committee, notice to the shareholders, no objection to an entire fairness review, which in the future --

THE COURT: Yeah, I'm trying to figure out what -- you know, whichever of my fellow judges I victimize by assigning that litigation so that he or she has to think about what does it mean for the entire fairness standard to apply in that circumstance.

MR. BLOCK: Well, the intent --

THE COURT: Because I want to hear from the defendants about that, which is does that mean that despite the fact that when it's approved in the future, there will be a special committee with advisors?

MR. BLOCK: Yes.

THE COURT: There will be unanimous approval by the independent directors.

MR. BLOCK: Yes.

THE COURT: That irrespective of any cause law which would give any kind of consequence to that in relieving the defendants of the burden of actually proving substantive fairness, the defendants would bear that and the Court would put aside procedure and the defendants would have to essentially prove the -- to the Court in an evidentiary hearing that what was done was substantively fair.

MR. BLOCK: That was our intent behind that provision. So if there is this potential wealth transfer down the road, we felt that it really -- that is where you get the wealth transfer to Page and Brin. And that's where they potentially would --

THE COURT: So there's no nonlitigation option with a procedural protection to even shift the burden of persuasion on fairness.

MR. BLOCK: Well, I don't think at the time we negotiated the settlement we had the benefit of Your Honor's ruling, that if it's --

THE COURT: It's not really -- I mean, you don't need -- I assume you're going to go to a

case involving initials or something like that.

MR. BLOCK: Yes.

THE COURT: But it's not really even a question of whether that's the case. If you think about Kahn v Lynch, if you think about just what's in the agreement itself --

MR. BLOCK: Uh-huh.

THE COURT: -- traditionally if you had a diligent and well-motivated special committee with qualified advisors who was given the ability to say no --

MR. BLOCK: Uh-huh.

THE COURT: -- and they chose to say yes, that has burden-shifting effect, which rather than the -- the defendants having to prove that the thing is fair, the plaintiffs have the burden of persuasion on fairness.

MR. BLOCK: Right.

THE COURT: I'm trying to get a sense, because I think it's important, when you put in place in a settlement like that, whether people understand what they mean.

As I understand what folks are sort of saying here is, you know, the old-time religion entire

fairness standard applies, which means the defendants have to prove entire fairness. If what you mean is something that you don't -- that you actually don't each understand what you mean, I suppose there's also a kind of thing that's not sort of answered by the text itself, which is what if the board puts it up to a disinterested vote of the stockholders other than the founders and, upon full information, gets those? I just would like to know, you know, for the -- on that one --

MR. BLOCK: Right.

THE COURT: -- what it is that the parties actually mean, because what you're saying -- you know, I mean, we're getting into alternative entity land --

MR. BLOCK: Uh-huh.

THE COURT: -- which --

MR. BLOCK: What -- what we, on our side, meant was that in that scenario, where you had a waiver of the TRA, you went through the whole process, that the defendants, the company, or the board, would still have the burden. We did not at that time contemplate whether there would be a further mechanism allowed for a vote of the disinterested --

disinterested shareholders based on full disclosure. So that -- that never came up in the negotiations, I will -- I will say that.

But, again, that's why we think the TRA modifications -- because that's where we think you get --

THE COURT: But it was understood that the defendants would have the burden on --

MR. LAFFERTY: Yes, Your Honor.

MR. BLOCK: Yes.

THE COURT: What about for a stockholder vote?

MR. LAFFERTY: We did not discuss that issue, and, you know, that -- that's not something that's been the subject of any discussion between the parties, nor have I discussed it even with my colleagues.

THE COURT: Should it be?

MR. LAFFERTY: I -- I mean ... look, Your Honor, I think the understanding was that the defendants were going to bear the burden of fairness in this setting. But we really did not get to the level of talking about what we would do, because I honestly don't think anyone thought it was a likely

option that was going to be used.

THE COURT: Okay. I'm just -- you know, I think it's incumbent upon me, in terms of discharging my obligations towards this Court and its members, particularly because I'm not sure I'd be the victim.

MR. LAFFERTY: Understood.

THE COURT: I might victimize myself with the case, but in a weak moment I might victimize someone else to actually reflect -- to have inquired into this.

MR. LAFFERTY: Understood.

MR. BLOCK: If I can go back for a moment, Your Honor, to the -- to the benefits. You talked about the fee and what benefits would support that. I think even if you wanted to just completely set aside the support payment, I think what Mr. Clarke explains, which would be just the trading benefits, when people who are getting C shares that obviously the A shareholders do not want. They voted against it. It's no question about that --

THE COURT: But, see, again, you're missing my point.

MR. BLOCK: Okay.

THE COURT: That economic benefit is only a benefit --

MR. BLOCK: Right.

THE COURT: -- in the sense that people who do not want something --

MR. BLOCK: Right.

THE COURT: -- are now receiving on pro rata terms with the people who proposed it and who are not -- who are defined out of the class. The same economic support is being provided to the founders; right?

MR. BLOCK: If they sell, yes, that is correct.

THE COURT: If they sell or not.

MR. BLOCK: Right.

THE COURT: People -- you know, rich people -- one of the things that they do is they have assets against which they can borrow, they can do all kinds of things --

MR. BLOCK: Right.

THE COURT: -- and hire those valuations of those assets. You know, that tends to be a good thing for everybody; right?

MR. BLOCK: Yes. I mean, I don't

think there would be a way to structure the support payment to eliminate their ability to sell C shares without getting the potential support, if they sell in the market. I understand the point on the actual payment by the company. But as we said, we think just the effect of the --

THE COURT: Oh, no. There's certainly ways to structure things in litigation settlements unless I hear differently, for example, that they have a lockup for a year of their C, that there won't be any payment to them because the payment is a litigation settlement. Frankly, I think sometimes there are tax benefits to getting a payment. I've heard in past cases people come to me with structures and say, "We want to structure them this way because if we structure the payment" --

MR. BLOCK: Uh-huh.

THE COURT: -- "as litigation damages, that has some favorable" --

MR. BLOCK: Uh-huh.

THE COURT: -- "tax treatment compared to something that's structured as a dividend."

MR. BLOCK: Uh-huh.

THE COURT: So I'm just saying I don't

believe it's a distinct -- I mean, their pro rata on the price support is their pro rata on the payout; right?

MR. BLOCK: Yes.

THE COURT: And they're not locked up any more than anybody else; right?

MR. BLOCK: They are not locked up. Again, Your Honor, that was a point of the negotiations. And at the end, obviously we balanced our risk of prevailing in front of Your Honor and -- and winning the case and getting our injunction versus what we thought those risks were versus what we thought we achieved for the shareholders, balanced against letting the founders share in this -- this potential benefit, which, just to put it in context, if the price support payment is paid at the levels Clarke estimates, it would be a little over a hundred thousand shares of C stock or A stock to each of the two founders.

And when we looked at that, we looked at what we got -- and yes, people don't want this; but absent -- if we had lost, it goes through without any of these protections, without anything else. Hopefully, if we had won --

THE COURT: I'm not -- just, again --
MR. BLOCK: Yes.
THE COURT: -- it's not a question -- this is very helpful to me. I'm just trying to understand --
MR. BLOCK: Right.
THE COURT: -- you know, this is a very different -- there is essentially no economic gain to the class that's not shared in by the founders and Mr. Doerr; right?
MR. BLOCK: That is correct. And we -- we struggled with, you know, this latter point of excluding Page and Brin from sharing in this, notwithstanding the negotiating points, along with a thought that do we want to have their economic interest completely aligned with everybody else with all the C shareholders so that, you know, in the first year, if they're not sharing in that, does that create now a disincentive or different interest between their interest and the class?
And that's one of the factors that we weighed, and we did go round and round on our side on that. And we felt, at the end of the day, the small amount that they would share would be offset by

probably the benefit of having their interest completely aligned with everybody else because, I mean, they have done well as a company. And since Mr. Page has taken over as CEO, the stock's done well.

So when we looked at that -- and we did weigh it and we did balance it, and we ultimately decided that what we got was better off for the class and will do more to protect the A shareholders than if we had lost at trial, because if we had lost at trial, we'd have none of these protections and none of these what we think are benefits.

And that's why we did that balancing act, and that's why we weighed it, and that's why we came down on the side that we did. So that's where we ended up.

And, again, as far as the benefits, I mean, I think just the trading benefits. I understand your point on the circularity of the support payment.

THE COURT: And did you try to get them to pay the advisor cost, or was the argument that it was just absorbed by -- by D and O insurance?

MR. BLOCK: Well, I think -- I think the advisor costs in terms of --

THE COURT: And I'm trying to figure

out how D and O insurance paid for the committee process or the financial advisors.

MR. BLOCK: I'm sorry. I must have misspoke, Your Honor. I wasn't suggesting D and O was paying for those costs.

THE COURT: But that was fairly considerable; right? Bankers are -- I mean, unless something has changed, bankers tend to be paid more than members of our profession. I will say I'm unapologetic --

MR. BLOCK: Uh-huh.

THE COURT: -- ally a fan of our profession. So I don't think that's fair in terms of the contributions people provide to the process, but the market tends to have a different perspective.

MR. BLOCK: I do know, Your Honor -- I feel a little constrained by giving out the numbers of the bankers, what they got here. But it was not very high. It was -- it was -- I was surprised it was pretty much on the low side.

THE COURT: Low side being millions?

MR. BLOCK: Under a couple million.

THE COURT: Under a couple million?

MR. BLOCK: Yes. As I recall.

THE COURT: Okay.

MR. BLOCK: Yes.

THE COURT: Yeah, I won't mention any bankers' names because they --

MR. BLOCK: I won't do that. I -- we don't know what the costs were to pay the attorneys advising the special committee or outside counsel to the company. That I don't know.

THE COURT: No. I mean, you assume -- we would not expect the D and O insurer to pay for that process.

MR. BLOCK: Right. And so I'm sure what you will hear from the company they view this as a valid corporate purpose and it perpetuates, you know, the corporate goal of the corporate governance structure which they would have paraded all the directors in here who would have testified and, you know, that we disagree with them.

THE COURT: Oh, no. Look, I get it.

MR. BLOCK: Yeah.

THE COURT: I get it. I think we all get the concept.

MR. BLOCK: Right.

THE COURT: I think what you would say

is if everybody else in society gets the concept, then there's very little danger that these folks are going to be thrown out. If they reach a different stage of founderdom --

MR. BLOCK: Uh-huh.

THE COURT: -- and people do reach different stages of founderdom where it's less productive --

MR. BLOCK: Uh-huh.

THE COURT: -- cousins and retainers and other people start coming on the payroll or wine sellers get, you know, compensation packages, start getting weird -- I'm not saying this is happening here --

MR. BLOCK: Right.

THE COURT: -- that that's when the stockholders would --

MR. BLOCK: Yes.

THE COURT: -- might take a different view and might rightly take a different view. If it's these two really smart committed folks who, to their credit, I believe, right, they've already promised if they sell the company, they're not taking a premium; right?

MR. BLOCK: Correct.

THE COURT: They've already done some things. You know, they're the kind of -- look, you want -- if you're an investor and you can coinvest it along with very smart founders or private equity and then in the event of a liquidity event, you know, have a contractual promise to pro rata treatment that's honored, that's really, frankly, a very good thing as an investor. And I think sometimes people forget that.

MR. BLOCK: Yes.

THE COURT: So I'm not being critical of anyone here. I'm just saying it's a little odd to create a process --

MR. BLOCK: Yes.

THE COURT: -- where what I think you're saying on behalf of the class is "We kind of get that. And if these two guys are actually -- why would we want to throw them out of control unless they start doing different things? And, frankly, if they start doing different kind of vanity things or -- it's 25 years down the line and they're really not -- you know, there's a new generation and they're kind of -- you know, they're talking about Katy Perry and people

look at Katy Perry as one of the sister acts who were in the movies with Bing Crosby and saying "You guys might have been cool a long time ago," but nobody has heard of these people -- you know, Katy Perry, what are you listening to? And, you know, Bruno Mars, "Come on, we want something new" --

MR. BLOCK: Right. Right.

THE COURT: -- then here at that point Rosemary Clooney might still be in command because of this transaction.

MR. BLOCK: That's very true, Your Honor. And that's -- I don't want to repeat what we put in the papers, but I will to some degree. And that's why what Professor Yadav, I think, put his finger on, which is having both of them in equal control kind of is that balance you're talking about, buying the wine sellers or, you know, spending hundred dollars of millions --

THE COURT: Because they're a check on each other.

MR. BLOCK: Exactly right. And if you get to the future and one wants to leave and the other one says, "Hey, I'll just stay in control," that's where you start getting into those horizontal agency

costs.

And that's why we wanted a strong TRA with the burden on the defendants so that we don't get into that. And maybe if that happens in the future, the tradeoff is "Okay, you'll have control, but we want to have the outside shareholders now start electing a majority of the board," which would be the check. I mean, I don't know. That's obviously for the future, but that's what we were trying to get at.

And one of the arguments you would have heard is any claim that there's a waiver of the TRA is premature, it hasn't happened. We don't know if it's ever going to happen. That's what we're trying to address, exactly what Your Honor said. That's what we foresaw, and that's one of the things we wanted to do in the settlement.

THE COURT: Thank you. Shall we hear from the objector next, maybe? And then if the defendants -- you want to object to the objectors' point?

MR. BLOCK: Thank you, Your Honor.

MR. PENTZ: Thank you, Your Honor. John Pentz on behalf of Howard Essner and Mike MacMurdy and Ms. Rosenzweig.

In light of your comments about our objection, I'd like to pretty much take up where you just left off with your questioning of Mr. Block.

And I think that your questions really put your finger on the fundamental circularity of this settlement whereby because the founders are not being asked to subsidize any amount of this true-up payment, there's really no net economic gain for the class here.

The true-up payment does help to ameliorate, to a certain extent, the damage the class is going to suffer by the creation of these C shares and the dilution of the value of their A shares; but the net costs of this entire process are going to leave the company with less equity, which is, in fact, the thing that they use to acquire companies and incentivize employees. That's the whole point of the C shares. And -- so this settlement is going to leave the company and the A Class A shareholders worse off. And that was the fundamental point of our -- our objection.

I think if you look at --

THE COURT: Well, in terms of your objection, though, your clients did not step up and

try to block this transaction. So to the extent that the world was just one in which your clients did whatever they did, the transaction would be occurring.

MR. PENTZ: That's correct, yes.

THE COURT: Wouldn't you concede -- I think your objection does concede -- that on the corporate governance side of this, the plaintiffs have achieved some substantial tightening which is going to make it much more difficult in the future for these folks to do anything similar and relax these protections; right?

MR. PENTZ: Yes, yes.

THE COURT: I think what you're just saying the point I engaged in with Mr. Block is, "Wait a minute. Don't tell us that this is like a payment to the class that's funded by the two founders, or even, like, it's a payment to the -- that 17 percent of the payment to the class is funded by the founder and the rest by Google. There's essentially no distinction between the class members and the founders in this; and, therefore, we got to look at this really as a corporate governance settlement and not a damage case like a Southern Peru or an AIG or AT&T Wireless kind of case.

MR. PENTZ: Yes, exactly. That's exactly it. There's no shifting of -- of value between two different classes of shareholders, as you might find in certain derivative settlements.

THE COURT: Well, and certainly those, usually it's between the interested parties who have been the fiduciary who propose certain action who then have to engage, either not share in the benefits and, therefore, if you are a -- you know, would even say these fellows necessarily had to go out-of-pocket; but, therefore, because of their ownership of Google, there would be a subsidy to the class of some percent -- you know, 17 percent --

MR. PENTZ: Right.

THE COURT: -- could be a sizable contribution. What you're saying is their percentage contribution is nothing.

MR. PENTZ: Right. That contribution -- the consideration for that contribution would be the benefits they're going to get from these C shares --

THE COURT: Right.

MR. PENTZ: -- to preserve their control of the company and not dilute that in any way

by issuing C shares. So I agree with your analysis.

THE COURT: The point of your -- you're not saying these folks shouldn't be rewarded; but the idea of awarding them something like 3 1/2 times lodestar is excess when you consider that economic factor.

MR. PENTZ: Well, yeah. Moving to attorneys' fees, yes, our point is that we don't believe this is really a case that's appropriate for a percentage-of-the-fund fee award.

THE COURT: I get what you're saying. I don't need you to repeat the --

MR. PENTZ: Right.

THE COURT: -- I think I get your point and the basis for it.

MR. PENTZ: In looking at -- so then you move to, you know, what's the lodestar and what kind of multiplier has been earned here. And I think if you look -- one thing that jumped out at me -- two things, really, is the average hourly rate in this case is $608 an hour, which is very high for a class action where you usually find, say, 60 percent or more of the hours generated by associates and, therefore, you'd have an average hourly rate that's less than

500.

Here we have a very partner-heavy lodestar. And in my quick calculations based on the affidavits, about --

THE COURT: But look at the team you're having to tangle with here.

MR. PENTZ: True. Well, that may be, but 75 --

THE COURT: I was scared to even walk in the room.

(Laughter)

MR. PENTZ: In any event, my calculations come with about 7500 partner hours for the class counsel here, which is well over 50 percent and at rates up to $900 an hour. I guess that's for Mr. Porritt of Levi & Korsinsky. Mr. Paskowitz had 1800 hours, which just -- you know, that jumped out at me. That's an associate billing target. That's full-time work, 40 hours a week for a year. It may be that Mr. Paskowitz worked on nothing else for a year, but I'd question whether all of those hours were necessary.

In going through the declaration of class counsel, in terms of the tasks that were

performed, you know, there are things that might require a partner, consulting with the client, discussions with Google's attorneys, certainly the discovery requests, drafting the complaint --

THE COURT: I mean, some of us have worked at places where, you know, 40 hours is like a day and a half.

MR. PENTZ: We should all be that lucky.

THE COURT: Where you say, like, you can say you worked 10 years someplace but you were actually there only five chronological years, but it --

MR. PENTZ: Yeah, right.

THE COURT: -- actually grew. And so --

MR. PENTZ: Well, yeah. But that's not usually a partner's work schedule, Your Honor. It's usually an associate.

THE COURT: Well ...

MR. PENTZ: In any event, I think that should be taken into consideration, the high number of hours billed by partners, the high rates. And we're not arguing against a reasonable multiplier. But what

we think in this case, maybe, you know, 1.5 or something less than 2, would be more appropriate. I don't -- I would suggest that if Your Honor is going to use lodestar as the basis for a fee here, you may want a little more detail than provided in these summary affidavits.

THE COURT: Yeah. I'm -- I'm going to probably try to muddle through without that.

MR. PENTZ: Okay. Then I would just say that the -- the record --

THE COURT: But I get your point, yeah.

MR. PENTZ: The evidence in the record --

THE COURT: We do apply a sort of gumption factor to these lodestars, realizing that as I think our friends in the plaintiffs' bar recognize, that they're not quite the market-tested lodestars that some other people in the room necessarily have.

MR. PENTZ: Well, that pretty much concludes my points about --

THE COURT: Thank you.

MR. PENTZ: -- about the value of the fees.

Thank you.

THE COURT: Would the defendants like to speak at all or --

MR. LAFFERTY: Your Honor, I guess I would like to add a few things. And I guess I will briefly introduce everybody on our side.

THE COURT: Sure.

MR. LAFFERTY: I think Your Honor knows everyone in the courtroom. Boris Feldman from Wilson Sonsini, Bill Barry from Google, George Garvey from Munger Tolles. He's here on behalf of the founders, and Mr. Lamb from Paul Weiss, also on behalf of the founders. And then back here we've got Mr. Berger and Mr. Chandler, also from Wilson Sonsini.

THE COURT: Welcome.

MR. LAFFERTY: And then Mr. Bouchard is here on behalf of Mr. Schmidt, and then Mr. Coen from my office. Sorry to inundate you with all those.

I just wanted to share, Your Honor, from the perspective of the defendants --

THE COURT: If you could do a quick lodestar, like just an average multiple -- I would just like to see how the hourly fee works out.

MR. LAFFERTY: Any math, I've given

that off to Mr. Garvey today.

THE COURT: We'll let the plaintiffs' lawyers confirm the math because they're better at that. But if you guys could just write down the hourly number, and then they'll do the multiplication and division.

MR. LAFFERTY: We -- we wanted to briefly address --

THE COURT: See, I'm not good at math. So it's not even actually multiplication. It would just be, I believe. addition, then division. I defer to Mr. Lamb, who's pretty good at that stuff, but ...

MR. LAFFERTY: Your Honor, we wanted to add a few points, you know, from our perspective, why we believe the settlement ought to be approved here.

THE COURT: Could you just -- just before you do that, I take it you don't disagree there's essentially pro rata treatment of the founders and the nonclass stockholders of Google, such that there really isn't a transfer payment in any way from the founders or others to the class members?

MR. LAFFERTY: That is correct.

THE COURT: So it can't really be

conceived of as a damages.

MR. LAFFERTY: That is correct, also. And, indeed, we never thought of this as a damages situation.

THE COURT: Right.

MR. LAFFERTY: It was clear from our negotiations of the settlement and the terms of the settlement themselves that it really is a therapeutic settlement --

THE COURT: Right.

MR. LAFFERTY: -- both in the amendments to the TRA and the other nonadjustment payment issues.

THE COURT: And the defendant -- I mean, the plaintiffs pressed on those issues, but the defendants did not relent.

MR. LAFFERTY: That is absolutely true.

THE COURT: Okay.

MR. LAFFERTY: That is absolutely true. And, indeed, if -- if they would have insisted upon a wealth transfer, there would not have been a settlement. That I can say with -- with definite -- definiteness.

Your Honor, Your Honor's well aware that what -- what's required in a settlement hearing is not necessarily a decision on the merits --

THE COURT: Right.

MR. LAFFERTY: -- of the underlying claims. It's a balancing. And here we believe that the balance tilts in favor of approving the settlement.

From our perspective, this transaction would have been -- we had very strong defenses to this case. We believed that the business judgment rule would have applied under Williams versus Geier. We also had statutory authority for doing the amendment to create the class of nonvoting stock under 242.

The purpose, as Your Honor, I think, has delved into, although I think Your Honor takes maybe a slightly different view of the purpose, the purpose here was to give the company additional flexibility to manage this voting dilution problem. The board unanimously viewed that it was in the best interests of the company and all the stockholders to continue the current structure for the long term and to allow the company to continue to prosper as it has done.

It has been wildly successful under anyone's viewpoint. And that has been a benefit to everyone. And rather than the company just continuing to potentially use cash -- because it could have managed this voting dilution problem a different way. It could have simply used more cash for compensation or cash for acquisitions.

THE COURT: But that might potentially be suboptimal for everybody.

MR. LAFFERTY: Absolutely, because the company believes that reinvesting that cash is, again, beneficial for the long term for the company. And having this Class C -- the dividend in and of itself doesn't -- doesn't affect the mix of control. It -- what it does is it gives the board an additional arrow in the quiver later on when it -- when it wants to do an acquisition. It doesn't have to use voting stock. And the same is true for compensation --

THE COURT: No, no. What I'm saying -- everybody -- and, again, part of the reason why I think the plaintiffs face a difficult challenge, even the defendants, that this is a fairly novel situation because, very straightforwardly, what people -- this is about these founders' voting

control, and it's about ... The reality is if you used voting stock for these sorts of things in the future, then even with the high vote/low equity stock that they have, at some point in time, you know, I mean, you make a few major acquisitions, a billion here, a billion there -- and, frankly, you know, Google's also in the type of business where you hire talented people and where equity grants are a regular part of it, that you get to the point where the founder is voting, absolute voting control is there and that creates psychological effects on them. It creates economic incentive effects on them. It makes them feel vulnerable.

So I get -- I'm not being critical. I'm saying it is unusual. I mean, I think we have to concede this is unusual, because it really is motivated only by -- no public company with a CEO had 4.9 percent would do this. He just wouldn't. You wouldn't need to. This is about their voting control and about the ability for them to have voting control while allowing the company to grant equity. And the solution to that is that the equity will have no voting rights. That's just an observation. It's not -- I mean, that was what the lawsuit was going to

be about, whether that was okay or not, well-motivated. And you obviously had a special committee of independent directors whose independence and good faith you were going to defend vigorously.

MR. LAFFERTY: Absolutely. But the plaintiffs' principal challenge here was that that this was a benefit, a unique benefit to the founders and that it was going to potentially give them liquidity and other things that somehow was not available to the A holders. And obviously we believe Williams versus Geier involved the exact same circumstance. We still think it would have been business judgment; but even if not, even if fairness had been the test here, we believe we would have met that burden.

The special committee here --

THE COURT: And I'm trying to put aside, by the way, that one of the benefits of the settlement for me is that I would not have to go back and read Williams v Geier, like, five times because --

MR. LAFFERTY: We would just make you read the --

THE COURT: Incredibly, that is not one of the -- it doesn't flow like a clear mountain

stream.

(Laughter)

MR. LAFFERTY: Your Honor, you may remember from -- from the trial briefs that we submitted, the mound of paper -- I'm sure you've committed them to memory; but this -- this committee process was not just some sort of short "We got this proposal from the founder, we're going to roll over and" -- "and be done with it." The committee engaged independent advisors. It had Latham & Watkins and Richards Layton as its counsel. It engaged Wasserstein Perella -- or Perella Weinberg I guess it is now -- as its financial advisor. And it proceeded to deliberate and negotiate over this -- over this Class C stock issuance and to consider it and what to do for 15 months. And the committee was fully empowered. It had the power to say no. And it negotiated hard over all of the provisions and protections that it got through the transfer restriction agreement, among other things, the equal treatment provision which wasn't in the existing charter, as well as the stapling provisions which prevent the founders from selling their C shares without selling equal number of their voting shares.

These were -- these were significant negotiations. We believe that that -- that we would have proven here that the process and the substance of this were fair.

So let me just turn, I think, briefly to the terms of the settlement. I think one thing that one has to keep in mind -- and I think I -- I've kept in mind -- this was never a damages case. This was always they were seeking an injunction to prevent us from going through with this.

We actually agreed -- they sought an injunction initially. We didn't think it made sense to present this case on a record that was paper. We thought the issues were important. We agreed to a trial. And we -- we agreed to hold off issuing the C shares until -- until that trial was going to happen. So this was always about an injunction. It wasn't a damages case.

And the benefits of the -- of the settlement, as I mentioned, were they're really all therapeutic. The modifications -- some of them haven't really been focused on here -- the modifications to the transfer restriction agreement; the agreement that independent directors will review

issuances of over 10 million Class C in any acquisition and the consideration to afford Class C voting rights in the future. These all have value in addition to the adjustment payment mechanism that you spent more time focusing on.

The amendments to the TRA I think that I would just highlight -- again, I think we've touched on them a little bit. But the concerns that the plaintiffs had throughout this case were that the TRA could just be blithely waived by the board after it was put in place and that the benefits of liquidity and other things that were achieved -- that would be achieved by the founder, somehow to the detriment of the Class As, we never really believed that; but, nonetheless, to address these concerns, we agreed to this heightened oversight procedure.

And I guess there are three or four prongs to it. One is that any -- any waiver has to be considered and approved by an independent committee advised by independent advisors and all.

Second, the committee then makes a recommendation to the full board, and there has to be unanimous approval.

Third, we also agreed to give advance

notice, if you will, of at least 30 days of the decision to allow time for a stockholder challenge.

And then as Your Honor already hit on, we've also said that we would not object to the application of the entire fairness standard and that we would, in essence, bear the burden.

THE COURT: Would you be open to clarifying language that made clear that that meant that in the event of a litigation challenge, the defendants would bear the burden of proving the substantive economic fairness of the transaction?

MR. LAFFERTY: The answer is yes, Your Honor, we would.

THE COURT: I just think it would be helpful. I really do feel an obligation for us all to all of our successors, whether we're counsel -- every lawyer in the room on the defense side at least has known the joy of stepping into a situation created by a distinguished predecessor's ambiguous drafting efforts. And so to the extent we can spot one now and at least be clear and everybody know what they're getting into, I think that's to the betterment of everybody.

MR. LAFFERTY: And we're happy to

either have that on the record or to work out some other clarifying language is fine.

THE COURT: I think I'd prefer to have it in the stipulation.

MR. LAFFERTY: Your Honor, I could touch on -- the other two areas that -- that -- that didn't get much airplay were the large issuance restrictions --

THE COURT: Yeah. Will you talk about that one? because the one question I had about that one is is there any potential to game it with incremental smaller ones?

MR. LAFFERTY: Well --

THE COURT: If you know what I mean.

MR. LAFFERTY: So the plaintiffs had expressed concerns that the recap had created the threat that this new class of nonvoting stock could be used in a manner that would cause unnecessary dilution or -- or economic harm. And to address this, we agreed to provide for greater scrutiny, if you will, of large issuances of C shares in the future. And so for a period of three years following the issuance of the C shares, in the event that we consider issuing in excess of 10 million shares for an acquisition, the

independent directors will consider the effects of any such acquisition on the Class A holders and the company.

Now, you know, that -- that gives a separate, I guess -- I think the board would have done its job, in any event, in one of those issuance. So don't get me wrong. I -- but what it -- what it gets is a guarantee that the independent directors will be tasked with looking at that --

THE COURT: And they will focus on the Class A.

MR. LAFFERTY: Correct.

THE COURT: How about -- wasn't there something on there about issuances to the founders? Or no? Maybe I misread that.

MR. LAFFERTY: Well, there's a -- so the other area was that the plaintiffs have expressed concern about the possibility that the founders -- that once the founders no longer had voting control, a party acquiring less than 25 percent of Google's shares could be in a position to get voting control of the company.

THE COURT: Right.

MR. LAFFERTY: And in order to address

that issue, the settlement provides that once the founders' aggregate voting control goes below 15 percent, the board will take steps to cause the Class C shares to convert to Class A shares if the board determines in good faith that it is no longer in the best interests of Google to have the nonvoting stock.

And, again, this is a prophylactic, therapeutic --

THE COURT: Their aggregate voting power goes down to 15 percent?

MR. LAFFERTY: Correct. So, again, it's a therapeutic settlement on the -- on the -- you know, on the forward-looking side.

THE COURT: What was this 34 percent threshold and if you go beneath 34 percent, the TRA goes away?

MR. LAFFERTY: So that's -- that's the combined voting power of -- of the founders.

THE COURT: If it goes down to 33 1/2 on one day and then goes up to 35 within a week, is the TRA gone forever? I mean, I remember -- I understood that -- you know, I get the point -- look, we're all dealing with --

MR. LAFFERTY: Right.

THE COURT: -- future eventualities that may never happen. But I just saw that that one wasn't -- for example -- I mean, I can -- by analogy to the support payment, right, the support payment thing was measured in some way against a range of trading prices or values.

And the only thing that caught my eye was, again -- you know, things happen. People do liquidity events, they do other things. And, you know, this -- this was a little flip -- you know, if you went to 34. -- you went to 33.99 percent on one day, this thing went way, not that you went below it for some period of time, where you were really sure that they had done that. And I just -- I'm not saying it blows the deal. I just want to understand that if on a day they go to 33.99 percent, the TRA goes away.

MR. LAFFERTY: Your Honor, let me just ask my colleagues about that. I'm not sure whether there's a mechanism in the TRA itself that specifies how you measure the 34 percent. I believe there might be something that addresses that in the TRA itself, but I don't have that at my fingertips.

(Pause in the proceedings)

MR. GARVEY: Your Honor, I'm looking at the proxy statement description of the TRA, and it doesn't answer Your Honor's question. I don't know whether the underlying contract itself does.

THE COURT: Well, maybe your friends, the plaintiffs, can -- I mean, I read it as just a flat out you go to -- and I'm not saying -- again, I'm asking questions. It's not -- I don't want anybody to lose physical or emotional control over the issue.

MR. LAFFERTY: And I apologize, Your Honor. I don't know the absence as I stand here, but we'll try to get that answer -- we'll try to get that answer for you -- for you pronto.

MR. GARVEY: Your Honor, Mr. Bouchard had the contract language here. And it does appear from the contract language that once it drops below 34, it's -- it's terminated, although we're having a hard time envisioning a real-world circumstance under which it would go back up again, since the whole context -- the whole significance of the transfer restrictions in the first place would be how to deal with attempts by founders to liquidate shares and they'd have to buy shares back to get back up.

THE COURT: It's just that has

happened with founders -- the reality is people, even rich people, have liquidity situations or, you know, they have obligations they have to meet. And sometimes they take some of their equity and they meet that and then they top up later. And, you know -- but I get it. I mean, again, I was just asking -- I wanted to make sure my understanding is correct, which is when they go -- you know, if they go buy it on any day, then it's over --

MR. GARVEY: Right.

THE COURT: -- even if they go back up after that. And I think you would also say if they go back up after that, it would be because they bought voting stock that is aligned with economic interest and that they're not able -- you know, once you essentially get out of that high vote/low equity stock, you're out of that high vote/low equity stock, and if you're buying back up, you're in a way that's much more aligned with the normal investor.

MR. GARVEY: Exactly, Your Honor.

MR. LAFFERTY: That's right.

Your Honor, I know we've already touched on the adjustment payment mechanism, but I want to -- I want to just sort of focus it again

because the -- the point of disagreement in the case was that it was always that the plaintiffs' position was the new C was going to trade as a discount to the As. Our view was to the contrary.

Our view was that there wasn't going to be a material discount and that even if there was this so-called discount, that that's just another way of saying that the A was trading at a premium to the Cs. And we thought that --

THE COURT: Which is another way of saying --

MR. LAFFERTY: The enterprise --

THE COURT: -- that it's -- right now I have a certain percentage contractual expectancy if Google pays out dividends, and then I have a certain kind of noncontractual market-based assumption about how people look at the equity of the company.

MR. LAFFERTY: Right.

THE COURT: You've now taken my same interest and just divided it in half, and that what you're saying is if the A got a premium to the C, A plus C equals your preexisting ...

MR. LAFFERTY: That's correct. That's correct. And that was our view -- and this was --

THE COURT: And that's why I'm just analyzing it, and that's why what we've talked about in terms of analyzing whether there's really -- this is like a damages case or any gain sharing for the founders is also true for the founders, because everybody's -- the price support to the C goes equally to everybody.

MR. LAFFERTY: That's correct. And this was going to be the subject of a lot of expert testimony. And the plaintiffs had Professor Clarke or Mr. Clarke and -- and Professor Fischel was going to come in and testify on behalf of the defendants and that would have gotten sorted out here.

But the settlement, the payment mechanism, the adjustment payment mechanism, you know, provides for these payments after calculating potential trading discounts that might occur in the one year after the C begins to trade. And, you know, from our perspective, this was not intended to be a payment per se. I mean, it was -- it was not intended to be a wealth transfer as we talked about. It was done as a mechanism to help support or to lessen the impact if there was going to be a discount. It was intended as a -- I guess as a price support mechanism,

if you will, and nothing more, nothing -- nothing less. And in that sense, again --

THE COURT: Well, I assume you'd have --

MR. LAFFERTY: -- it could be viewed as therapeutic.

THE COURT: -- it could have -- whether ... Look, I mean, I don't know how anybody knows for sure. I mean, I can easily envision down the road there being a disparity that emerges between these classes of shares, particularly in an eventuality where the founders wind out. I mean, if the founders wind out of their high vote/low equity, then you can easily imagine situations where particular buyers in the market would be far more interested in the shares that could vote and influence the company, for all the reasons why they were talking about somebody being able to buy control with a 25 percent, you know ...

MR. LAFFERTY: Yeah. Your Honor, I guess I --

THE COURT: But that's why you have the trigger in there to try to turn the C into voting stock at some point in the future.

MR. LAFFERTY: That's true. And I think the one-year period gives the class members the opportunity, if they --

THE COURT: There's --

MR. LAFFERTY: -- there's a likely scenario to sell.

THE COURT: There's a little bit in plaintiffs' brief of a punt on what would be required to give them the vote. Wouldn't the A have to vote to give them -- would the A have to vote to give the C the vote? I would think --

MR. LAFFERTY: About whether a separate Class A vote was required to provide voting rights to the C.

THE COURT: Yeah. I mean, there was a kind of a punt in that. There was something like "a vote, if required."

MR. LAFFERTY: Right.

THE COURT: I kind of want to know whether it would be required and whether the A at the time -- it's not just the board of directors snapping their fingers and deciding they want to turn a broadly traded class of nonvoting securities into voting securities. Oftentimes there are things in

certificates of designation which protect the interest of stockholders, and would the A have to vote at the time as a class -- well, because -- or even if they don't, who would be voting? Because the non -- you wouldn't have a vote of the nonvoting. So at the time that the C would be turned into a voting security, the voting classes would be the A and the B; right?

MR. LAFFERTY: Right.

THE COURT: But do you need to have a class vote of the A?

MR. LAFFERTY: I -- again, I don't know, but I don't think so. I think it would be a, I think, a combined vote of the A and the B. But I -- again, we'd have to -- we'd have to confer, I think, to make sure that we're right about that.

THE COURT: Which is by no means certain that, you know, to the extent -- it's a huge company now, as one -- unfortunately, we've seen huge companies' market caps become less prodigious at times -- it's not necessarily certain that the voting class, people owning the voting securities are going to be all that hep, getting everybody else to vote; right?

MR. LAFFERTY: I agree with that, although as I stand here now, I'm not sure that the A

would have a separate class vote, but --

THE COURT: No. I'm just saying --

MR. LAFFERTY: -- I don't believe they would, but --

THE COURT: -- this is a scenario where I believe the A -- or the B is the high vote.

MR. LAFFERTY: The B is the high vote.

THE COURT: The scenario where this kicks in is the B's proportion of the voting power has shrunk to --

MR. LAFFERTY: Yes.

THE COURT: -- being fewer than -- fewer than -- less than 15 percent; right?

MR. LAFFERTY: Right.

THE COURT: So that the bulk of the voting, even if it's a combined Class A and Class B, 85 percent of the electorate who would vote on the amendment would be the Class A. And the -- the stark point that would be put to them is "Do you wish, without compensation to yourself of any kind, to give other people voting rights?"

MR. LAFFERTY: Right. That is correct. That is correct.

THE COURT: And no. And I've learned

to live as a judge on this Court. I've lived to learn to understand that even if somebody -- if you have a contractual right that's -- to consent to something and that the party proposing that you consent to is that you give them $10, that they'll usually ask for a dollar just for the consent right, in order to receive the 10.

MR. LAFFERTY: Right.

THE COURT: "Well, you mean you're going to give me 10? But I have a right to consent to it, Mr. Lafferty. I'd really like 11."

MR. LAFFERTY: Your Honor, the bottom line is, I guess where we come out, from our perspective, we -- we -- we litigated this case hard. We believe we had strong defenses. We believe we would have prevailed. We -- we've agreed to a settlement that was negotiated.

THE COURT: And would you confirm -- I mean, there was one affidavit that was not something I'd ever actually seen before.

MR. LAFFERTY: Yeah, I -- I was getting to that, Your Honor. And I -- so my -- my -- my wrap-up on the settlement itself was simply to say look, we negotiated -- we litigated hard. The

plaintiffs litigated the case hard. We were prepared to go to trial. We settled on the eve of trial, literally on the eve of trial. We agreed to the terms that are presented. I think it ought to be approved.

THE COURT: I think I remember the e-mail.

MR. LAFFERTY: Say that again, Your Honor?

THE COURT: I think I got an e-mail.

MR. LAFFERTY: I believe you were in Brazil.

THE COURT: It was interesting that it came from your Yahoo! account. That's not actually true.

MR. LAFFERTY: That's not true.

Your Honor, we would ask that the settlement be approved.

I did want to just briefly -- and I know we haven't gone to the fee issue, but maybe you'll stop me from having to stand up again, is to simply say this: There's a suggestion, at least in one of the objections, that the settlement was collusive because we agreed not to oppose a fee application of up to $25 million.

And that is categorically not true. The parties never talked about a fee until -- not just after we signed the MOU, but until after we signed the settlement stipulation which was submitted to the Court on August 2nd. So for the period from June until August 2nd, when we signed that final settlement agreement, we did not even talk about the concept of what the magnitude of a fee would be or what their request would be. And it wasn't until after that that we began those discussions and we involved Judge -- retired Judge Phillips as a mediator.

THE COURT: As I say, I've never -- I'm not sure -- I may have. Look, memories are faulty and I may have seen such a document before, but I don't recall it. Is -- but is his affidavit correct?

MR. LAFFERTY: In -- in some specific request, Your Honor? But yes --

THE COURT: I believe I have an affidavit from the mediator saying that he gave the number, which I -- again, I'm assuming that that affidavit was --

MR. LAFFERTY: It is -- it is accurate.

THE COURT: -- I'm assuming it was

procured with consent --

MR. LAFFERTY: Correct.

THE COURT: -- of all parties --

MR. LAFFERTY: It was.

THE COURT: -- to the mediation. Okay.

MR. LAFFERTY: It was, and it is accurate. And the parties had negotiated over it. They had, obviously, diametrically opposed views about the number --

THE COURT: But you were aware that the plaintiffs were requesting affidavits?

MR. LAFFERTY: Yes, we were.

THE COURT: Okay.

MR. LAFFERTY: And we saw it before it was submitted.

THE COURT: And you gave them permission to --

MR. LAFFERTY: We did.

THE COURT: Okay.

MR. LAFFERTY: Yes.

So, Your Honor, that's all I have to say about it. I -- the notion that it was somehow collusive is just false.

Thank you.

MR. BLOCK: Thank you, Your Honor. Just a few points. I'll try to be somewhat brief.

Just to follow up on what Mr. Lafferty said, yes, this -- any suggestion this is collusive is just flat-out wrong. The number we got to was a recommendation that was made by Retired Judge Phillips. So that's how we got to that number.

THE COURT: I take it you had a much higher number?

MR. BLOCK: We did, Your Honor.

If I can address the last point you made about the Cs getting vote rights and the founders wanting out.

And I think that -- that, along with a lot of the other issues, highlights that this was not just your average run-of-the-mill kind of a case. There were a lot of complexities to this case. And we did our best to try to address them in the settlement.

And that was an issue. And we identified that issue down the road as well, what happens when the founders leave? You've got probably less than half the economic ownership in the As and more than half in the Cs without voting rights, and we

tried to create a mechanism so this could be addressed. And the reason why our understanding that the board has to recommend it is because it would require an amendment to the charter.

THE COURT: Oh, no, no. I understand why the board has to recommend it.

MR. BLOCK: Yeah.

THE COURT: Just a question of --

MR. BLOCK: Yeah.

THE COURT: -- as -- unlike the situation here, right --

MR. BLOCK: Right.

THE COURT: -- in this situation, if there weren't the founder voting power, we wouldn't have a case; right?

MR. BLOCK: Correct.

THE COURT: The circumstances where we're positing where the high vote/low equity stock falls to less than 15 percent of the total voting power --

MR. BLOCK: Right.

THE COURT: -- the idea of being able to give the Cs -- if the idea -- if the concern there, for example, is that, you know -- you're at a point in

time where people can buy influential blocks of voting securities in Google because the founder voting -- the high vote/low equity stock now is only 15 percent thing, the idea that when the board of directors now says "Let's go out and give the C voting rights," that it's -- you know, that that's just the easy slam dunk, especially because I do expect that over time, given the market cap of Google, that the identity of interests that will exist the nanosecond after the C goes out and before the high-velocity traders have gotten their portion of it, you know, or are into it, that that asymmetry will grow, and such that for years down the line there's no necessarily -- you know, there's not going to be it necessary where everybody has sort of equal shares of A and C.

MR. BLOCK: Right.

THE COURT: Right. And there can be entire classes of -- for example, if the C becomes the primary -- and you can see this, especially if there's not a discount. I mean, one of the issues for the discount, the support for the discount issue, the argument would be that, you know, you have to give more of it to employees if there's a discount.

MR. BLOCK: Right.

THE COURT: But at some point -- there could be a very different block of stockholders who own the B and the C and since the -- I mean not the B -- the A and the C.

MR. BLOCK: Yes, right.

THE COURT: The A would then be voting on giving the C voting rights. It's not clear that they're just going to do that.

MR. BLOCK: I agree, Your Honor. Obviously that 15 percent number I will tell you was a point of negotiation. And we certainly hope -- what we've seen so far from the company is the two times Page and Brin sold stock, it's pursuant to 10b5-1 plans.

THE COURT: Right.

MR. BLOCK: And we certainly hope that will plan for the eventuality that when they decide to leave, that even before they get to 10 percent, that they will undertake the vote with Page and Brin voting to give the Cs voting rights.

So exactly what they -- one of the reasons why they say they want this plan is to prevent, you know, a corporate raider from coming in, that they'll address that in the future so it won't

happen after they leave.

THE COURT: Well, again, there's a lot of practical reasons why --

MR. BLOCK: Yeah.

THE COURT: -- their exit, you know, it's not an easy total exit --

MR. BLOCK: Right.

THE COURT: -- you know, without some sort of big transaction or something like that.

MR. BLOCK: Right.

And as far as the -- the 34 percent trigger number in the TRA that you were asking about, you know, our understanding is that yes, once they go below 34, they go to 33.99, that TRA falls away. But at that point in time, if they're going to go out and buy in to get over the 34 percent, they're going to be buying As. As a practical matter, they wouldn't do it to game the system. It doesn't make any sense to us.

As far as what we're considering the economic benefits in this case -- and you heard from Mr. Lafferty exactly that. They never viewed this as a damages case. And had we won, we would have gotten an injunction; that would have been it. But if you want to just look at what we'll call the trading

benefits -- and I know what Your Honor said is that Page and Brin get to share in those -- pursuant to their 10b5-1 plans, they can sell collectively another 2 million of shares. So presumably they'll sell their 2 million C shares. Mr. Clarke estimates, based on prior trading, that there will be 46 million shares sold. He said, "I went back and looked at the last two years" -- and I think one year -- "and the turnaround in the institutions from the 13Fs," and it shows that 46 million shares were turned over.

So if we just take that number -- and we think that's a low number because we think more people will sell Cs than previously sold As -- and you back out this trading benefit that would go to Page and Brin, it's still $310 million of trading benefits that go just to the A shareholders without including Page and Brin.

Did that make sense or should I --

THE COURT: No, it doesn't.

MR. BLOCK: What -- what --

THE COURT: It's either pro rata or it's not, and you've conceded it's pro rata. And I don't know -- you know, I don't know Mr. Brin and Mr. Page. And if I knew them well enough that they

share with me their anticipated plans under -- you know, for selling over the next year, I would recuse. And I have no affidavit in that. So I don't know and, you know, I'm not sure, you know -- I'm not sure the normal Burton Malchiel rules about the past not necessarily being prologue doesn't apply also to this situation.

MR. BLOCK: I understand, Your Honor. I'm just going by their -- I'm just trying to explain --

THE COURT: Again, let's not argue the inarguable. It's either pro rata or it's not. What -- you did not get at the bargaining table any subsidy from the founders or from Mr. Doerr to this, such that there's a transfer payment from the nonclass stockholders of Google to them. You got -- you did get things from the founders that restricted their future flexibility, and that's the things we've been talking about in terms of the TRA. They gave up things like having to now have every single board member in the future approve any amendment. They gave up other sorts of things which I, you know, recognize as potentially valuable and important; but here, you're just -- I think we're just at a point where

you're kind of imagining situations where they won't sell as many shares, so the price support won't be as beneficial to them as it would be to others; right?

MR. BLOCK: No. That's not the point I was trying to make. Obviously I didn't do it very well.

The point I was trying to make was that if you just assume what Mr. Clarke does in his report, that of the current Class A shareholders, when they receive those C shares, they will sell 46 million of those C shares, that the trading benefit to them as a result of this plan will be $326 million, irrespective of what may go to the founders.

I guess our view is that even if the founders sold more than what's in their 10b5-1 plan, it's not going to affect the amount that's going to go to the Class A shareholders. So even if you just look at those selling benefits that are paid by new C shareholders, it still creates $326 million.

THE COURT: The selling benefits are all paid for by Google.

MR. BLOCK: No, Your Honor.

THE COURT: Yes, they are.

MR. BLOCK: No.

THE COURT: Yes, they are, because the selling benefit that Mr. Clarke aptly points to as plausible is that people who purchase the C will purchase at a higher valuation than they otherwise would because of the contractual promise of Google to deal with any discount to the extent provided for in the stipulation of settlement. Thus, any trading benefit is paid for by Google.

MR. BLOCK: But that -- what -- I think what we're suggesting or what we're saying is, what Mr. Clarke is saying, the $3,626,000,000 that he's pointed to is new money that --

THE COURT: I think Google has been really good, but now we're getting into alchemy. The $326 million of trading benefits is precisely in Mr. Clarke's, I think, fully rational affidavit. Again, I think the -- I don't even know that Professor Fischel and Mr. Clarke would have an argument about the logic behind Mr. Clarke's thing. I think they have an argument primarily about whether there will be a discount at all.

MR. BLOCK: Yes.

THE COURT: Mr. Clarke's point is as follows: To a purchaser of the C who's going to pay

money for the C, if that purchaser knows that along with the C share comes a contractual right at the end of the year, that if there is a trading discount that meets the --

MR. BLOCK: Right.

THE COURT: -- formula in the thing, that you'll get a true-up of some amount, then that essentially affects the security, because what you're buying is the Class C plus the contractual expectancy as a result of that promise you'll pay a higher valuation than you otherwise would. It's not distinct from, in fact, from the true-up. I guess you could argue that it has some complex interaction with the true-up being made because in a weirdly but weird thing, the possibility of the true-up being made minimizes arguably the probability that the discount will arise, that actually would result in the true-up.

And it's early and most of us haven't been fully caffeinated and it's Monday. So I don't -- you know, it's hurting my head to even think through this, and I know it's hurting your heads. But I don't really view -- I don't think you're arguing a distinct thing, because it's still the contractual promise of Google to make the payment at the end of the year,

which results in both the payment itself and any trading benefit to those who sell. That promise is -- is equally beneficial to the nonmembers of the class who are Google stockholders, including the two founders and Mr. Doerr, and they're all pro rata; right?

MR. BLOCK: Uh-huh. Uh-huh. I guess the only way we looked at it, Your Honor, is those -- the trading benefits -- I understand your point.

THE COURT: I think I -- I know how you've --

MR. BLOCK: Yes, okay.

THE COURT: Look, I understand the powerful incentives that you have to look at it the way that you have.

MR. BLOCK: Okay.

THE COURT: Just understand that I have a professional duty to look at it in a way that's different from either side of the --

MR. BLOCK: Understood, Your Honor.

Just if I can just address the points that were made about the lodestar and --

THE COURT: Yes. That is pretty hefty, don't you think?

MR. BLOCK: It is and it's not. This -- we litigated the case on a compressed time frame. We filed this case in April and we originally had an October trial date. So we really had to gear up very quickly and put --

THE COURT: No, no. I get that. I'm talking about the 600 -- what was the average?

MR. BLOCK: 608 I think is what Mr. Lafferty said.

THE COURT: Right.

MR. BLOCK: This is a case which actually required a lot of partner time because of the complexities of the case. I mean, we spent an enormous amount of time with our experts trying to figure out and understand the effects of the trading discount, what the potential benefits could be to Page and Brin out of this. There were 17,000 documents produced here. So it wasn't like it was a heavy document-intensive case where we had to have -- you know, most of the hours were put into reviewing documents.

The heavy hours in this case were preparing for and taking the depositions, putting together the theory of the case, understanding the --

the economics of the case and the potential value of the case, the settlement negotiations.

We then went back to the discovery and trial prep. Most of that is not the kind of thing that we were going to have a, you know, first- or second-year associate do. The document review, yes, we tried to have -- our associates did document review. I can assure you I didn't do any first-level document review in this case. I got what we were told were the hot documents, and then we went from there to prepare our documents.

THE COURT: Hot documents?

MR. BLOCK: Well, that's what we call them. But --

THE COURT: You know, some of us learned early in our career to never create a RedWeld containing the words "hot documents" on it.

MR. BLOCK: Well, I will pass it on to the rest of the plaintiffs' bar.

So that's what you see the high hourly rate, just because of the complexities --

THE COURT: You could have somebody, like, with -- who had bifocals, look over them, or, like, had the reading glasses, look over you and

instruct you never to do that again.

MR. BLOCK: I will take that to heart, Your Honor.

THE COURT: I think there are two of us in the room who have experienced that very precisely at one point in time.

MR. BLOCK: Okay, Your Honor. Thank you.

So that's why the lodestar is where it is, and that's why you have the high hourly rate, because of the nature of the case and the work we put in. And, you know, we then put in a lot of work to get ready for trial.

THE COURT: I just -- I understand -- I mean, you know -- I just think we all have to recognize -- I mean, your lodestars are not market-tested rates; right? What I'm saying is --

MR. BLOCK: Not -- not -- yes, not in the traditional sense in that we have -- I mean, I have some clients who pay me by the hour at those rates, but certainly I can't say all my clients.

THE COURT: Right.

MR. BLOCK: Most of the cases are contingency.

THE COURT: Right. I'm just -- you know, I mean, that's --

MR. BLOCK: Yes.

THE COURT: -- you know, senior associates don't bill out at 600, do they? Or do they?

MR. BLOCK: In my firm, they do not. We -- those aren't our rates.

THE COURT: Okay.

MR. BLOCK: But that's why we got to the lodestar that we did. And, you know, that's -- unless Your Honor has any other questions.

THE COURT: By the way, one good idea in discovery is to always ask in document requests for -- "Produce all files labeled 'Hot Documents.'"

(Laughter)

MR. BLOCK: We'll start doing that. We will.

Okay. Thank you, Your Honor.

THE COURT: Thank you.

MR. PASKOWITZ: Excuse me, Your Honor. A personal privilege, if I may.

THE COURT: Uh-huh.

MR. PASKOWITZ: Mr. Pentz expressed

some doubt whether I devoted as many hours as I put in my affidavit. At this stage of my career -- Your Honor knows me -- I take on very few cases. In the past year or two -- maybe I filed one case in the past year in addition to Google. This is the case I devoted my time to in the past year. My colleagues can attest to my e-mails at 2:00 and 3:00 in the morning. This case aggravated my long-standing insomnia. But between briefing, discovery, trial, and so forth, I may have filed two cases, maybe one case in the past year. This is the case to which I devoted my practice.

Thank you, Your Honor.

THE COURT: Do we have all three things to do?

MR. BLOCK: I believe so, Your Honor.

THE COURT: Class certification?

MR. BLOCK: Yes, Your Honor.

THE COURT: This is -- as is traditional, we have the three things to do. First is whether this should be a class certification.

Corporate actions of this kind are the quintessential examples of when you need to have a single answer to a problem. The only variation

between class members is the amount of shares they own as -- as a -- in this class, the proposal is essentially the certified class, excluding the founders and Mr. Doerr in their capacity. And you cannot have opt-outs in these kinds of cases. And you just cannot. And that's in keeping with long-standing Delaware tradition. And the proposed order makes the requisite findings, and class certification is in order.

With regard to the settlement, this is a complicated and difficult and novel case. Williams versus Geier would be strong precedent on the side of the defendants. You could argue that the logic of cases like Blasius would be on the other side and that just like when people say that, you know -- when people are negotiating deals, a preemptive price is its own deal protection, then a wonderful reputation as a founder is your own ballot box protection.

The reality is that was going to be a big part of what the trial was about. Williams v Geier would weigh heavily in favor of the defendants. I think there are some tensions in our law, because it's never been the case that interested voting power gets a pass simply because it has voting power. That

would be greatly inconsistent with Schnell. And there are some tensions in the law that -- when you suggest an interested voting power can somehow have a cleansing effect.

I think the stronger argument on behalf of the defendants is that they were well-motivated independent directors who they would have presented at trial who believed that this was the right thing for Google's public stockholders and that from the beginning, everyone has been clear with the people who lined up in hoards, as if they were young teenagers trying to go to a One Direction concert, to buy Google stock, with the understanding that these founders were going public but with no attention -- intention to relinquish voting control over the company that they founded and loved, and that when you invested in Google, that was sort of your understanding.

Now, I understand the plaintiff and the class' point is that the understanding is the understanding at the time of their instruments. And we're at a new dawn in terms of the company perhaps being at a stage when it needs to issue additional equity. That puts tension on the voting control

mechanism which was put in place at the IPO stage. But that's what the trial was going to be about.

And I don't think -- I was -- you know, you get to a stage in your judicial career, which some of our distinguished colleagues in the room can identify with, when you've really had enough interesting cases, so that even if you have a really interesting one, you cannot fairly say that the disappointment factor of it going away actually outweighs the psychic impersonal benefits of simply being able to turn to your other workload. I can't say that this was sufficiently interesting that that -- that I wanted the trial to go forward. But it was interesting and novel. And it was a kind of unique situation. So I think it would be hazardous for anyone to predict how it would have come out.

And I think the plaintiffs would have also had to confront the reality that while they had reasoned arguments, that what the committee negotiated was not adequate, that there was clearly a lot of negotiation and there were protections that were put in place that were designed to address any abuses that might emerge as a result of that. And the plaintiffs would have had to overcome that. And very talented

and skillful defense counsel, who were -- this was a situation where, you know, you could imagine situations where a founder or a controlling family, where the idea that it would be laughable that it would be beneficial to others to give more of an opportunity for them to retain voting control, where that would just be kind of met with obvious guffaws.

That's not the case here. I mean, the reality is this is a rather astonishing market success. These are two folks who actually created a company that is, in fact, a verb. They arguably created a company where many Americans spend more time with their invention than the people to whom they owe the most important family and friendship obligations. And that's been hugely beneficial to investors.

So there's a plausibility here in this odd context to this that there wouldn't be in other situations. And that's been proved out by business experience.

So all of that -- for all those reasons, given the novelty of the legal dynamic; given the sort of novelty of the business dynamic; and given, as I said, Williams v Geier, which I take seriously -- and I didn't mean to be critical of it.

I think that was a case that also dealt with an unusual factual situation, and sometimes judicial decisions dealing with those have all the complexity in them of the context. And every time I read it, I have to relearn the facts of the underlying transaction, because they were pretty complicated.

But for all those reasons, I think the settlement should be approved, because when I look at the gains that were achieved by the plaintiffs, I -- I think that they justify the giving of the release.

I believe that the primary gains are in the strengthening of the TRA and in the corporate governance protections that kick in when the founders' percentage interest goes down. I give less weight, as I said, to the -- I think it's nifty to think of converting the C into voting stock. I'm a little less optimistic that that can be done. I think that a very strong antiwaiver aspect of the settlement has considerable value, especially in this day and age, being the reality is that there is a high degree of scrutiny of independent directors. There are network effects that we all know about that come into play with independent directors who often, you know, frankly, do serve as professional directors and who

like to stay in the network of independent directors; that when they take action at one of the companies in which they sit, can have an effect on their ability and popularity at other boards of directors and where other nominating committees may not necessarily wish to be on their slate in the future if they draw adverse attention.

So by requiring essentially every independent director of Google to approve a waiver of the TRA, that gives a lot of assurance to the public shareholders that, frankly, you know, it may be improbable that you'll get any amendment, or, at the very least, the negotiating power of the independent directors will be so substantial that if there is an amendment, there's an ability to actually get concessions from the founders that fully justify in the public investors' mind the amendment. Also, these things which give increased leverage to the independent directors to the extent of big issuances are of value.

I am not saying that the support -- economic support provisions of this are not potentially beneficial to Google. I think, though, we have to be mindful of the fact that there really -- I

don't want to put harm -- I would say cost mitigation factors, which is absent the creation of the C, you wouldn't need anything like this. They're not -- this is not like getting an extra dividend at the expense of the founders. This is essentially a transaction cost to going forward with this transaction.

The plaintiffs have presented a well -- I actually don't -- you know, to the extent that Professor Fischel's opinion is that there will be no discount or market anomaly at all between the A and the C, I find that a little unusual, to be honest. I do. I mean, I'm not saying that there will be a 25 percent thing; but the idea that there isn't even in this context some utility to having the vote in the future, especially when you get pricing anomalies -- I mean, we're talking about something -- I believe that the defendants -- that there will be no discount at all. The market's wacky enough that to imagine that they just trade one for one, I mean, that seems to be mathematically improbable, but maybe they will.

But all I'm saying is I give some weight to Mr. Clarke's idea that there could be -- and he looked at some other situations -- that there could be a disparity of some account -- of the thing.

That's why I was asking the question I did coming into this, which is it would be one thing if the plaintiffs extracted from -- and one can imagine litigation settlements are powerful and normal things like you have to treat everybody equally. Well, no, you don't have to in a settlement; in a situation where the true-up was only available to the members of the class; where the founders were locked up for a year, could not share in the one-time payment. Well, then, there would be some form of transfer payment between -- from the defendants to the class, and you could figure out the economics of that, and that would be a subsidy economically between -- by the founders, not just Google itself, to the class.

That's not this. This is not one of the damages cases that the plaintiffs have cited where the Court has looked at a damages payment that went to the class and that was not shared in by the defendants. It's not this.

I'm not saying that -- again, I want to be clear about that. I'm not being negative about it. I'm being observational. But it's important, as we look at this, to be clear about what it is.

I'm also not saying it isn't

necessarily beneficial to Google sort of as a whole, which is, you know, if you're going to use this C, this nonvoting currency for employee compensation purposes, if you're going to use it for acquisition purposes, then one hopes that Professor Fischel's opinion is actually -- comes to be true, because to the extent -- let's imagine a year from now the C trades at a 25 percent discount to the A and you wish to do a stock-for-stock merger with a company that we would all think is sizable because it's got a market cap of $3 billion. Google, you know, thinks that's cafeteria rounding error after foie gras Thursday, or something like that, you know, a motivational event for -- or if you had employees like me, it would be a motivational event -- is you make a $3 billion acquisition, and you want to do it by giving the stockholders of the $3 billion corporation, you want to give them C shares. If the C shares are trading at a discount to the A shares, that's not going to be particular -- you're going to have to give them more of it. And so there's some interest.

But, again, that's not -- this is not -- I think that's more of a corporate therapeutic. And where I have a problem -- and I will say this in

terms of approving the settlement but also when I get to the fee: Look, this is in some ways initiated by the founders. Not in some ways. It was initiated by the founders. The board thought it was a good idea, but the costs of all that are being borne by the Google stockholders as a whole on a pro rata basis. And that kind of subsidy to the C shares in order to prop them up and the benefit to being -- using -- is really all a matter of doing this transaction to begin with, because if you were giving out voting shares, you wouldn't have to do any of this. You would simply be giving people voting shares. They would obviously have to assess that in relationship to the founders' voting control, but there would be none of the oddments of what happens down the road if the founders get this and whether -- you know, you'd be getting traditional stock with at least the voting rights that the existing public stockholders already have.

So when I approve the settlement, I give credit to this for, again, really, this currency -- in some ways I actually view it as more beneficial to Google in terms of being able to use the C stock for the corporate purposes that people are talking about than I do to the members of the class,

because from the members of the class, this is simply -- I don't even know what it is. It is simply -- I don't really view it as a net gain. I view it as cost or harm mitigation that comes in connection with a complicated corporate transaction; and that, as I said, if you looked at it on a -- if you looked at it simply alone and you took Professor Fischel's view -- he's the defendant -- I think he would say, "Wait a minute. You own A right now. Splitting it into" -- "you own A and B. Let's split it into A, B, plus you get C. Because we split it into something that is nonvoting, there's the potential for an anomaly to come to pass because the C that we give you doesn't have voting rights. So we're going to make a transfer payment from ourselves in a year which has unknown or complicated tax things that we'll have to invest by people who have to advise people about. We'll have to pay investors." I think they would say "Don't go forward with the transaction; just leave everybody where they are."

If you're going to go forward with the transaction, I do think that there are some -- the benefits I've mentioned in terms of the corporate objectives, but I don't think that they can be

translated into a billion-dollar benefit economically to the class, nor -- I mean the trading benefit -- it's -- again, I just -- I'm not saying that those things aren't really numbers in some sense. I just don't think that they're -- they're real in the sense that the plaintiffs would have me adopt.

But overall, I think given the difficulties that the plaintiffs faced, the precedent like Williams v Geier, and this -- the meaningful benefits achieved by the corporate governance provisions, I'm going to approve the settlement.

When it comes to the fee, I think our Supreme Court has been very helpful in making clear that whether -- that -- whether something is quantum meruit or whether something is in the aptly named Sugarland basket, the key is really looking -- the Court trying to make a principled assessment of the benefit to the class and to provide a reasonable fee that takes into account the risk of litigation, the complexities of it, the quality of counsel's effort, and to provide a reasonable fee that recognizes that you need to incentivize people to take on these kind of cases because they take on many cases where they don't get anything.

And with all those factors taken into account, I would say I can't -- again, I'm not looking at this in the same way that the plaintiffs are. I give credit that the mediator was involved. My sense is that he looked at this in the way that the plaintiffs did. I really don't know what to make of the affidavit. I'm comforted that everybody saw it. It gives me comfort, although I really didn't have much doubt in this situation that it was negotiated in good faith, because the principal terms of the settlement had already been established; but I can't get to the 25 million box because, again, the mediator may -- and I respect that a mediator was involved. I think the only way you get there is to actually look at this as if it was some sort of damages case.

And I think the problem with it is all the things that I've said before, which is then this is a damages case in which the principal defendants who are the ones who are the interested party -- and I don't say that in a pejorative sense; but the arguably interested party, which would be the two founders whose voting control was the subject of this, received the same economic benefits as the members of the class. That's not -- I don't really get that. And

even recognizing that there are derivative cases where people say, "Well, wait a minute. You shouldn't measure the fee because I own 35 percent of it. You should really deduct my 35 percent," well, that's a derivative case and -- and this isn't in -- in some ways it's not a derivative case.

Also, there's no money going into Google. This is not like there's money going into Google and the defendants are arguing, "Well, wait a minute. There should an offset for the 17 percent that really is ours." We're not even there. You're talking about pro rata treatment for the class -- all the stockholders of Google, including the defendants.

So I think giving credit to the mediator, "I'm going to give credit when I get my fee," I can't get anywhere close to 25 million. And it makes me feel not as bad as the people on Wheel of Fortune who did that devastating thing to that young man who clearly got a word right and then they penalized him for mispronunciation and took away a million dollars. I don't feel as bad as they should. And that's a normative statement that I make, but -- and I admit that that's a contestable proposition, and defenders of Pat Sajak may -- I note their objection.

I will get to a substantial fee, and the fee I get to is $8 1/2 million. And I'll explain that.

The lodestar is 7. Is that right?

MR. BLOCK: Yes, Your Honor.

THE COURT: And the lodestar does not include the fees and expenses -- I mean the expenses?

MR. BLOCK: No, it doesn't, Your Honor.

THE COURT: Okay. I'm going to get to 8 1/2, plus I will give you the expenses. So -- and the way I get to that is the following: I think this is largely a corporate governance settlement. I think the benefits are substantial. I don't think it's a home run. It's somewhere between a solid single and a double.

What I mean by that -- and I asked some questions about that -- is would I feel differently that this was a more substantial settlement if the dividend -- the true-up was not available to the founders? Yes, I would. That wasn't achieved. Would I feel differently even if, frankly, the advisor cost of this were paid from the founders? I would. Now, that sounds small, but even if D and O

insurers paid for are this, there's no free situation like this. It's priced. And I'm not saying that, in the scope of Google, that's market moving, but this is litigation. And what the plaintiffs are asking me to do is to size a benefit. I didn't see any of those benefits. What I saw is the corporate governance things.

I think when you look at the lodestar, I think, one, I do credit the objector. I think the lodestar is healthy, you know. I think it's, you know, had a really hearty breakfast. And I don't quibble with the hours or anything like that. I think everybody did work probably very hard to settle on the eve of trial, and I give credit to the fact the plaintiffs took it to the eve of trial.

But I think a million and a half on top of a lodestar, which is essentially what it is, I think that is a pretty good incentive premium. And I'm going to give my former -- you know, our former member of the judicial club, I'm crediting a full half million of that to Judge Phillips in the sense I probably would have only given a million-dollar premium, but a mediator was involved. And that gives me some comfort, and, you know, you can credit him

with a half million. I can't get -- the delta on the other one, I think he and I may be just looking at the case in a different way totally economically. I think given the substantial expenses you put in -- and I know those are real out-of-pockets -- I'm going to award that on top of what I did. So it would be 8 1/2 plus the expenses that you submitted.

If you could scriven with the defendants the entire fairness language, I would consider that a meaningful contribution of us all, to future Google stockholders, future Google advisors, future plaintiffs' lawyers, and future members of the Court of Chancery and the Delaware Supreme Court and current ones because you never know how quickly these things move.

But I appreciate everybody being to the point. I appreciate the objector being to the point.

Do we need to do anything else today rather than just get the settlement scrivened and an order filled in? I prefer to see the -- I think for fairness to everybody, I'd prefer to give you the chance to scriven it and then to enter the final order that reflects the little clarification. And that's

all it really is, I think, is a clarification.

MR. LAFFERTY: That makes sense to us, Your Honor.

MR. BLOCK: Yes. Same with us, Your Honor.

THE COURT: Okay. Well, I'll look for that. And, again, thank you all for coming in on Monday morning.

(Court adjourned at 12:05 p.m.)

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CERTIFICATE

I, NEITH D. ECKER, Chief Realtime Court Reporter for the Court of Chancery of the State of Delaware, Registered Diplomate Reporter, Certified Realtime Reporter, and Delaware Notary Public, do hereby certify that the foregoing pages numbered 4 through 112 contain a true and correct transcription of the proceedings as stenographically reported by me at the hearing in the above cause before the Chancellor of the State of Delaware.

IN WITNESS WHEREOF I have hereunto set my hand at Wilmington, this 8th day of November 2013.

/s/ Neith D. Ecker

Chief Realtime Court Reporter
Registered Diplomate Reporter
Certified Realtime Reporter
Delaware Notary Public

EXHIBIT 39

EFiled: Mar 9 2009 9:27AM EDT
Transaction ID 24109254
Case No. 3561-CC



COURT OF CHANCERY
OF THE
STATE OF DELAWARE

WILLIAM B. CHANDLER III
CHANCELLOR

COURT OF CHANCERY COURTHOUSE
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Submitted: March 6, 2009
Decided: March 6, 2009

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Re: *In Re Yahoo! Shareholders Litigation*
Civil Action No. 3561-CC

Dear Counsel:

This case contemplates a fee award arising out of a settlement entered into by Yahoo! Inc. to significantly curtail its employee severance plan. I conclude that the settlement, obtained by plaintiffs, amounted to a substantial benefit to Yahoo's shareholders because the key terms of the settlement made it less expensive to sell Yahoo, making the company a more attractive target to potential suitors. Plaintiffs' seek a total award of $12 million. Defendants insist that the settlement warrants a fee of only $1 million. For the reasons set forth in the order and final judgment entered on this date, I approved the settlement of this class and derivative action as fair, reasonable and in the best interests of the class and Yahoo. In addition, for the reasons briefly stated below, I award plaintiffs $8,400,000, plus expenses.

The Court typically considers a number of factors when setting a fee in connection with a settlement, including: "(1) the results accomplished for the benefit of the shareholders; (2) the efforts of counsel and the time spent in connection with the case; (3) the contingent nature of the fee; (4) the difficulty of the litigation; and (5) the standing and ability of counsel involved."[1] Furthermore, as consistently noted, the most important factor in determining a fee award is the size of the benefit achieved.[2]

I conclude that plaintiffs have met the *Sugarland* factors. Plaintiffs spent over 5,500 attorney hours in hotly contested litigation. They based their compensation entirely on a contingent basis, risking both their own capital and their time, and the case presented what I consider a difficult and complex set of issues.

I also conclude that plaintiffs have bestowed a sufficient benefit on Yahoo's shareholders to warrant their fee. Although somewhat unique, this case substantially parallels the factual circumstances in *Minneapolis Firefighters' Relief Ass'n v. Ceridian*.[3] In *Ceridian*, plaintiffs were awarded attorneys' fees and expenses amounting to $2,110 per attorney hour, for obtaining a settlement that empowered a potential buyer to present a leveraged recapitalization proposal, and eliminating a termination right for the merger partner in the event a new slate of directors was elected before the merger closed. In this case, plaintiffs' settlement resulted in the elimination of the dead-hand provision that, similar to *Ceridian*, would have prevented a new slate of directors from changing the severance plan, and effectively curtailed the employee severance plan, significantly lowering the cost to acquire Yahoo of any potential buyer. Thus, like *Ceridian*, "given what plaintiffs were able to achieve," the benefit bestowed upon Yahoo's shareholders was significant and sufficient to meet the first *Sugarland* factor. I conclude that an award of $8.4 million, similar to that awarded in *Ceridian*, is appropriate in this case.

For the foregoing reasons, I grant plaintiffs an award of $8,400,000 plus expenses.

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[1] *In re Abercrombie & Fitch Co. S'holders Derivative Litigation*, 886 A.2d 1271, 1273 (Del. Supr. Oct. 26, 2005) (citing *Sugarland Indus. Inc. v. Thomas*, 420 A.2d 142 (Del. 1980)).
[2] *See, e.g., Seinfeld v. Coker*, 847 A.2d 330, 336 (Del. Ch. Dec. 4, 2000).
[3] C.A. No. 2996-CC, tr. at 27 (Del. Ch. Feb. 25, 2008).

IT IS SO ORDERED.

Very truly yours,

William B. Chandler III

William B. Chandler III

WBCIII:tet

EXHIBIT 40

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

EMPLOYEES RETIREMENT SYSTEM OF THE CITY OF ST. LOUIS, *et al.*, Plaintiffs, v. CHARLES E. JONES, *et al.*, Defendants, and FIRSTENERGY CORP., Nominal Defendant.	Case No. 2:20-cv-04813 Chief Judge Algenon L. Marbley Magistrate Judge Kimberly A. Jolson JURY TRIAL DEMANDED

[PROPOSED] FINAL JUDGMENT
APPROVING SETTLEMENT AND ORDER OF DISMISSAL

WHEREAS, a stockholder derivative action captioned *Employees Retirement System of the City of St. Louis, et al. v. Jones, et al.*, Case No. 2:20-cv-04813-ALM-KAJ (the "Southern District Action") is pending in the United States District Court for the Southern District of Ohio (the "Southern District Court" or the "Court");

WHEREAS, (i) Co-Lead Plaintiffs in the Southern District Action: Employees Retirement System of the City of St. Louis and Electrical Workers Pension Fund, Local 103, I.B.E.W., and Additional Plaintiff Massachusetts Laborers Pension Fund (collectively, the "Southern District Plaintiffs"); (ii) Plaintiffs in the stockholder derivative action captioned *Miller, et al. v. Anderson, et al.*, Case No. 5:20-cv-1743-JRA (the "Northern District Action"), pending in the United States

District Court for the Northern District of Ohio (the "Northern District Court"): Plaintiff-Intervenors Employees Retirement System of the City of St. Louis and Electrical Workers Pension Fund, Local 103, I.B.E.W. and Massachusetts Laborers Pension Fund, and individual Plaintiff Jennifer L. Miller (collectively, the "Northern District Plaintiffs"); (iii) Plaintiffs in the stockholder derivative action captioned *In re FirstEnergy Corp., Stockholder Derivative Litigation*, Case No. CV-2020-07-2107 (the "Ohio State Court Action," and together with the Southern District Action and the Northern District Action, the "Actions"), pending in the Summit County Court of Common Pleas (the "Ohio State Court"): John Gendrich and Robert Sloan (the "Ohio State Court Plaintiffs," and together with the Southern District Plaintiffs and the Northern District Plaintiffs, "Plaintiffs"); (iv) Defendants in the Actions: Charles E. Jones, Michael J. Anderson, Steven J. Demetriou, Julia L. Johnson, Donald T. Misheff, Thomas N. Mitchell, James F. O'Neil, III, Christopher D. Pappas, Sandra Pianalto, Luis A. Reyes, Leslie M. Turner, Samuel L. Belcher, Bennett L. Gaines, K. Jon Taylor, Christine L. Walker, Gary Benz, Jason L. Lisowski, Irene M. Prezelj, Paul T. Addison, Jerry Sue Thornton, William T. Cottle, George M. Smart, Dennis M. Chack, Michael J. Dowling, James F. Pearson, Robert Reffner, Steven E. Strah, Ebony Yeboah-Amankwah, Eileen Mikkelsen, and Justin Biltz (collectively, "Defendants"); (v) Nominal Defendant FirstEnergy Corp. ("FirstEnergy" or the "Company"); and (vi) the Special Litigation Committee of the Board of Directors of FirstEnergy (the "SLC," and together with Plaintiffs, Defendants, and FirstEnergy, the "Settling Parties"), have entered into the Stipulation and Agreement of Settlement dated March 11, 2022 (the "Stipulation"), which sets forth the terms and conditions of the proposed settlement (the "Settlement") of the Actions, subject to review and approval by this Court pursuant to Rule 23.1 of the Federal Rules of Civil Procedure.

WHEREAS, by Order dated May 9, 2022 (the "Preliminary Approval Order"), this Court: (i) preliminarily approved the proposed Settlement, as embodied in the Stipulation, subject to further consideration at the Settlement Fairness Hearing to be conducted before the Court; (ii) ordered that notice of the proposed Settlement in the manner and form approved by the Court be provided to persons and entities who own shares of FirstEnergy common stock as of the close of business on the date of the Stipulation ("Current FirstEnergy Stockholders"); (iii) provided Current FirstEnergy Stockholders with the opportunity to object to the proposed Settlement and the application for an award of attorneys' fees and expenses to Plaintiffs' Counsel; and (iv) scheduled a hearing regarding final approval of the Settlement;

WHEREAS, due and adequate notice in the form and manner ordered by the Court has been given to Current FirstEnergy Stockholders;

WHEREAS, the Court conducted a hearing on August 4, 2022 (the "Settlement Fairness Hearing"), to consider, among other things: (i) whether the proposed Settlement, on the terms and conditions provided for in the Stipulation, is fair, reasonable, and adequate, and should be approved by the Court; (ii) whether a judgment should be entered dismissing the Southern District Action with prejudice, and settling and releasing, and barring and enjoining the commencement or prosecution of any action asserting, any and all Released Plaintiffs' Claims against the Released Defendants' Persons, as set forth in the Stipulation; and (iii) whether the application by for an award of attorneys' fees and expenses to Plaintiffs' Counsel and service awards for Plaintiffs should be approved; and

WHEREAS, the Court having reviewed and considered the Stipulation, all papers filed and proceedings held herein in connection with the Settlement, all oral and written comments received

regarding the Settlement, and the record in the Southern District Action, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED this ____ day of _____, 2022, that

1. This Final Judgment Approving Settlement and Order of Dismissal (the "Judgment") incorporates by reference the definitions in the Stipulation, and all capitalized terms used in this Judgment shall have the same meaning as set forth in the Stipulation.

2. The Court has jurisdiction over the subject matter of the Southern District Action, including all matters necessary to effectuate the Settlement and this Judgment, and over all parties to the Southern District Action.

3. This Judgment incorporates and makes a part hereof: (a) the Stipulation filed with the Court on March 11, 2022; and (b) the Notice and Summary Notice, which were filed with the Court on March 11, 2022.

4. Notice has been given Current FirstEnergy Stockholders pursuant to and in the manner directed by the Preliminary Approval Order; proof of compliance with the notice procedure required under the Preliminary Approval Order was filed with the Court; and a full and fair opportunity to be heard has been afforded to all Current FirstEnergy Stockholders. The form and manner of the notice provided is hereby confirmed to have been given in full compliance with each of the requirements of Federal Rule of Civil Procedure Rule 23.1, due process, and all other applicable law and rules, and it is further determined that all FirstEnergy stockholders are bound by the Judgment herein.

5. The Court reconfirms that the Southern District Action is properly maintained as a stockholder derivative action on behalf of FirstEnergy, and that the Southern District Plaintiffs

and their counsel fairly and adequately represented the interests of FirstEnergy and its stockholders. Co-Lead Counsel for the Southern District Plaintiffs are authorized to act on behalf of FirstEnergy stockholders with respect to all acts required by the Stipulation or such other acts which are reasonably necessary to consummate the Settlement set forth in the Stipulation.

6. The Settlement is found to be fair, reasonable, and adequate to the Company and its stockholders, and is hereby finally approved in all respects pursuant to Rule 23.1 of the Federal Rules of Civil Procedure. The parties to the Southern District Action are hereby authorized and directed to comply with and to consummate the Settlement in accordance with its terms and provisions, and the Clerk is directed to enter and docket this Judgment in the Southern District Action. The Court finds that this Judgment is a final judgment and should be entered in accordance with Rule 58 of the Federal Rules of Civil Procedure.

7. All claims asserted in the Southern District Action are hereby dismissed with prejudice. The Court further orders, adjudges, and decrees that all other relief be and is hereby denied, and that this Judgment disposes of all the claims asserted in the Southern District Action and ends the Southern District Action.

8. The Settling Parties shall bear their own costs and expenses, except as otherwise expressly provided in the Stipulation.

9. Without further action by anyone, and subject to Paragraph 16 below, upon the Effective Date of the Settlement, Plaintiffs, the Company, and the SLC, on behalf of itself and the Company, and the Company's stockholders shall be deemed to have, and by operation of law and of this Judgment, shall have, fully, finally, and forever discharged, relinquished, settled, and released any and all of the Released Plaintiffs' Claims (defined below) against each and all of the Released Defendants' Persons (defined below), and shall forever be barred and enjoined from

commencing, instituting, or prosecuting any action or proceeding in any court, tribunal, or forum asserting any of the Released Plaintiffs' Claims against any of the Released Defendants' Persons. This Release shall have res judicata, collateral estoppel, and all other preclusive effects in all pending and future lawsuits, arbitrations, or other suits, actions, or proceedings involving any of the Released Defendants' Persons.

10. Without further action by anyone, and subject to Paragraph 16 below, upon the Effective Date of the Settlement, Defendants, the Company, and the SLC, on behalf of itself and the Company, shall be deemed to have, and by operation of law and of this Judgment, shall have, fully, finally, and forever discharged, relinquished, settled, and released any and all of the Released Defendants' Claims (defined below) against each and all of the Released Plaintiffs' Persons (defined below), and shall forever be barred and enjoined from commencing, instituting, or prosecuting any action or proceeding in any court, tribunal, or forum asserting any of the Released Defendants' Claims against any of the Released Plaintiffs' Persons. This Release shall have res judicata, collateral estoppel, and all other preclusive effects in all pending and future lawsuits, arbitrations, or other suits, actions, or proceedings involving any of the Released Plaintiffs' Persons.

11. "Released Plaintiffs' Claims" means any and all claims and causes of action of every nature and description, whether known claims or Unknown Claims, whether arising under federal, state, local, statutory, regulatory, common, foreign or other law or rule, that Plaintiffs, the Company, or the SLC (i) asserted in the Complaints or (ii) could have asserted on behalf of the Company that in any way are based on, arise from or relate to the allegations, transactions, facts, matters, disclosures or nondisclosures set forth in the Complaints, including but not limited to the conduct, actions, inactions, deliberations, votes, statements or representations of any

Released Defendants' Person. For the avoidance of doubt, this release will not cover, include, or release (i) any direct claims of Plaintiffs or any other FirstEnergy stockholder, including without limitation any direct claims asserted under the federal securities laws, including without limitation claims asserted in *In re FirstEnergy Corp. Sec. Litig.*, Case No. 20-cv-03785-ALM-KAJ (S.D. Ohio) (and all consolidated cases), or direct claims of Plaintiffs or any other FirstEnergy stockholder asserted in any of the related actions or proceedings identified in Exhibit B to the Stipulation; (ii) any claims relating to the enforcement of the Settlement; or (iii) any claims of the Company to recoup compensation from Charles Jones, Michael Dowling, and Dennis Chack (which for avoidance of doubt Jones, Dowling, and Chack deny have any basis and reserve their right to oppose and defend against on any and all grounds available and to assert any related claims including, but not limited to, claims for compensation, pensions, deferred compensation, incentive compensation, equity, and any and all benefits under any plan, program, arrangement, or other vehicle, in which any of them participated, accrued benefits, or any other claim for benefits or compensation that is otherwise related to their employment with the Company, and further including any claims for wrongful termination and/or any and all claims relating thereto).

12. "Released Defendants' Persons" means Defendants, any other individual named as a defendant in any complaint filed in any of the Actions, the Company, the SLC, and any entity in which the Company has a controlling interest, as well as their respective current and former parents, affiliates, subsidiaries, officers, directors, agents, successors, predecessors, assigns, assignees, partnerships, partners, committees, joint ventures, trustees, trusts, employees, immediate family members, heirs, insurers and reinsurers (in their capacities as such), and consultants, experts, and attorneys (provided, however, that consultants, experts and attorneys

are only "Released Defendants' Persons" insofar as they were engaged by Defendants and are not released under the Stipulation if and to the extent that they were engaged by the Company).

13. "Released Defendants' Claims" means any and 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 in the Actions, except for claims relating to the enforcement of the Settlement. For avoidance of doubt, Released Defendants' Claims does not include any claims that Charles Jones, Michael Dowling, and Dennis Chack have or may assert against FirstEnergy, including but not limited to, claims for compensation, pensions, deferred compensation, incentive compensation, equity, and any and all benefits under any plan, program, arrangement, or other vehicle, in which any of them participated, accrued benefits, or any other claim for benefits or compensation that is otherwise related to their employment with the Company, and further including any claims for wrongful termination and/or any and all claims relating thereto.

14. "Released Plaintiffs' Persons" means Plaintiffs, Plaintiffs' Counsel, and any entity in which any Plaintiff has a controlling interest, as well as their respective current and former parents, affiliates, subsidiaries, officers, directors, agents, successors, predecessors, assigns, assignees, partnerships, partners, committees, joint ventures, trustees, trusts, employees, immediate family members, heirs, insurers and reinsurers (in their capacities as such), consultants, experts, and attorneys).

15. "Unknown Claims" means any Released Plaintiffs' Claims which any Plaintiff, the Company, the SLC, or any other FirstEnergy stockholder does not know or suspect to exist in its favor at the time of the release of such claims, and any Released Defendants' Claims which

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

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

Plaintiffs, Defendants, the Company, and the SLC, on behalf of itself and the Company, acknowledge, and each of the other FirstEnergy stockholders shall be deemed by operation of law to have acknowledged, that the foregoing waiver was separately bargained for and is a key element of the Settlement.

16. Notwithstanding Paragraphs 9-15 above, nothing in this Judgment shall bar any action by any of the Settling Parties to enforce or effectuate the terms of the Stipulation or this Judgment.

17. Neither this Judgment, the Term Sheet, the Stipulation (whether or not consummated), including the exhibits thereto, the negotiations leading to the execution of the Term Sheet and the Stipulation, nor any proceedings taken pursuant to or in connection with the Term Sheet, the Stipulation, and/or approval of the Settlement (including any arguments

proffered in connection therewith):

(a) shall be offered against any of the Released Defendants' Persons as evidence of, or construed as, or deemed to be evidence of any presumption, concession, or admission by any of the Released Defendants' Persons with respect to the truth of any fact alleged by Plaintiffs or the validity of any claim that was or could have been asserted or the deficiency of any defense that has been or could have been asserted in the Actions or in any other litigation, or of any liability, negligence, fault, or other wrongdoing of any kind of any of the Released Defendants' Persons or in any way referred to for any other reason as against any of the Released Defendants' Persons, in any arbitration proceeding or other civil, criminal, or administrative action or proceeding, other than such proceedings as may be necessary to effectuate the provisions of the Stipulation;

(b) shall be offered against any of the Released Plaintiffs' Persons, as evidence of, or construed as, or deemed to be evidence of any presumption, concession, or admission by any of the Released Plaintiffs' Persons that any of their claims are without merit, that any of the Released Defendants' Persons had meritorious defenses, or that damages recoverable under the Complaints would not have exceeded the Settlement Amount or with respect to any liability, negligence, fault, or wrongdoing of any kind, or in any way referred to for any other reason as against any of the Released Plaintiffs' Persons, in any arbitration proceeding or other civil, criminal, or administrative action or proceeding, other than such proceedings as may be necessary to effectuate the provisions of the Stipulation; or

(c) shall be construed against any of the Released Defendants' Persons or the Released Plaintiffs' Persons as an admission, concession, or presumption that the consideration to be given hereunder represents the consideration which could be or would have been recovered

after trial; *provided, however*, that the Settling Parties, the Released Defendants' Persons, the Released Plaintiffs' Persons, and their respective counsel may refer to the Stipulation and this Judgment to effectuate the protections from liability granted thereunder or hereunder or otherwise to enforce the terms of the Settlement.

18. The application for an award of attorneys' fees and reimbursement of expenses by Co-Lead Counsel for the Southern District Plaintiffs, on behalf of all Plaintiffs' Counsel, is granted. Plaintiffs' Counsel are hereby awarded attorneys' fees and expenses in the amount of __% of the Settlement Fund (the "Fee and Expense Award"), which amount the Court finds to be fair and reasonable, and which shall be paid to Plaintiffs' Counsel from the Settlement Fund in accordance with the terms of the Stipulation.

19. The application for an award of service awards to Plaintiffs is also granted. Each Plaintiff is hereby awarded a service award in the amount of $_____("Service Award"). Each Service Award shall be paid to Plaintiffs from the Fee and Expense Award awarded under Paragraph 18 above.

20. The effectiveness of this Judgment and the obligations of the Settling Parties under the Settlement shall not be conditioned upon or subject to the resolution of any appeal or other matter that relates solely to the Fee and Expense Award or any Service Award.

21. The Court finds that the Southern District Action was filed, prosecuted, defended, and settled in good faith, and that during the course of the Southern District Action, the parties to the Southern District Action and their respective counsel at all times complied with the requirements of Rule 11 of the Federal Rules of Civil Procedure and all similar rules and laws.

22. Without affecting the finality of this Judgment in any way, the Court hereby retains continuing jurisdiction over: (i) implementation of the Settlement; and (ii) the parties to the

Southern District Action and all FirstEnergy stockholders for the purpose of construing, enforcing, and administering the Stipulation and the Settlement, including, if necessary, setting aside and vacating this Judgment, on motion of a Settling Party, to the extent consistent with and in accordance with the Stipulation if the Effective Date fails to occur in accordance with the Stipulation.

23. Upon the Effective Date, Plaintiffs, FirstEnergy, the SLC, FirstEnergy stockholders, and anyone acting or purporting to act on behalf of FirstEnergy are hereby forever barred and enjoined from commencing, instituting, or prosecuting any action or proceeding in any court, tribunal, or forum asserting any and all Released Plaintiffs' Claims against any of the Released Defendants' Persons.

24. In the event that the Settlement is terminated in accordance with the terms of the Stipulation or the Effective Date of the Settlement otherwise fails to occur, then this Judgment shall be rendered null and void to the extent provided by and in accordance with the Stipulation and shall be vacated, and, in such event, all orders entered and releases delivered in connection herewith shall be null and void to the extent provided for in accordance with the Stipulation.

IT IS SO ORDERED.

DATED _____, ___, 2022

_____
ALGENON L. MARBLEY
UNITED STATES DISTRICT JUDGE