UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
NEWPORT NEWS DIVISION

Roger A. Herndon, on behalf of himself and all others similarly situated, Plaintiff, vs. Huntington Ingalls Industries, Inc., the HII Administrative Committee, and John/Jane Does 1–5, Defendants.	Civil Action No.: 4:19-cv-00052-HCM-DEM CLASS ACTION

PLAINTIFF'S MEMORANDUM IN SUPPORT OF UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF CLASS SETTLEMENT

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Plaintiff Roger A. Herndon, individually and as Class Representative for a previously certified Class, moves for an order approving a class action settlement agreement between Plaintiff and Defendants (collectively "Huntington"), approving notice to the class, and setting a date for a fairness hearing.[1] Specifically, Plaintiff asks the Court to: (1) preliminarily approve the proposed Settlement; (2) approve the proposed form and method of notice to the Class; and (3) schedule a hearing at which the Court will consider final approval of the Settlement.

I. Introduction

The proposed Settlement is an excellent result for the Class, with a present value of $2.8 million, or approximately 34% of classwide damages as calculated by Plaintiff's actuarial expert in the reports submitted as part of the summary judgment briefing in the case. The Settlement will increase the amount that Class Members are receiving in their monthly pension checks — a benefit that will continue for the rest of their lives and the lives of their beneficiaries.

The Employee Retirement Income Security Act of 1974 ("ERISA") requires that pension benefits in the form of a Joint and Survivor Annuity ("JSA"), which provides benefits for the life of the participant and beneficiary, or a Pre-Retirement Survivor Annuity ("PSA"), which provides survivor benefits to a retiree's beneficiary, be "actuarially equivalent" to the retiree's single-life annuity ("SLA"). This case is about whether the Huntington retirement plan at issue in this case (the "Covered Plan")[2] complied with those requirements. Plaintiff contends that Huntington shortchanged retirees and beneficiaries receiving JSAs and PSAs and that retiree and

[1] Unless otherwise defined, all capitalized terms herein shall have the same meaning as set forth in the Parties' Settlement Agreement.

[2] The Covered Plan is the "Legacy" part of the Huntington Ingalls Industries, Inc. Newport News Operations Pension Plan for Employees Covered by United Steelworkers Local 8888 Collective Bargaining Agreement, who began receiving pension benefits in the form of a JSA during the Class Period.

beneficiary monthly pension checks should be higher.

The value of the proposed settlement must be considered in light of the substantial litigation risks in this cutting-edge and complex case. Plaintiff's legal theory has not been litigated through trial in any case to date, there are no appellate decisions directly on point, and only one other case involving the same claims has resulted in a class-wide settlement. Indeed, this is the only case of this kind where a court has ruled on a motion for summary judgment. Plaintiff's ability to prevail in this case hinges on which actuarial assumptions are used to measure retiree's benefits. Defendants vigorously disputed the actuarial assumptions selected by Plaintiff's expert through their own expert witness, who opined that Plaintiff's monthly benefits were entirely appropriate. Accordingly, success at trial would depend on Plaintiff winning a battle of experts in a highly technical field. For these reasons, and others discussed in more detail below, the Settlement satisfies the criteria for preliminary approval, and Plaintiff requests that the Court grant this motion.

II. Factual Background

Plaintiff filed this proposed class action on May 20, 2019, on behalf of participants and beneficiaries receiving pension benefits in the form of a JSA or PSA from the Covered Plan. *See* Dkt. 1, generally. As Plaintiff alleged in the Complaint, ERISA requires that JSAs and PSAs be at least the "actuarially equivalent" of the SLA the participant could have taken when he or she began to receive benefits.[3] *Id*. at ¶¶ 21–28 (citing ERISA § 205(d) and (e), 29 U.S.C. § 1055(d) and (e)). Two benefit forms are "actuarially equivalent" when they have the same present value,

[3] The annuities that must be actuarially equivalent to the SLA are the plan's "Qualified Joint and Survivor Annuity" (the "QJSA"), Qualified Optional Survivor Annuities ("QOSAs") and Qualified Pre-Retirement Survivor Annuities ("QPSAs"). *See* ERISA §205(d) and (e), 29 U.S.C. § 1055(d) and (e).

calculated using the same, reasonable actuarial assumptions. Dkt. 1 at ¶¶ 29.

The actuarial assumptions used to calculate present values for determining actuarial equivalence involve mortality and interest rates. A mortality assumption estimates how many benefit payments will be made, based on the ages of the participant and (in the case of JSAs), the beneficiary. An interest rate assumption discounts the value of expected future payments to a present value. When payments under one benefit option are likely to extend longer than those under another, the benefit amount under the first option will be lower to account for the likelihood that more payments will be made. For example, the amount of a JSA benefit will be lower than the amount of an SLA benefit to account for the possibility that the beneficiary will receive benefits after the participant's death. But, the present values of those two forms of benefits must be the same to be actuarially equivalent.

Plaintiff alleged in the Complaint that Huntington calculated his JSA benefit (and the JSAs and PSAs of other Class Members) using outdated mortality and interest rate assumptions which caused his monthly benefit to be less than an "actuarially equivalent" amount. Dkt. 1, ¶¶ 65. In other words, the present values of Class Members' JSA and PSA benefits were less than the present values of the SLAs they could have taken instead; the present values of the two benefit types would have been equal had Defendants used mortality and interest rate assumptions that were reasonable as of the date Class Members began to receive their benefits.

III. Procedural Background[4]

On May 20, 2019, Plaintiff filed the class action Complaint (Dkt. 1), and on June 27, 2019, Defendants moved to dismiss (Dkt. 10), which this Court denied on February 18, 2020, as

[4] Further details concerning the procedural history of the case are set out in paragraphs 3–19 of the attached Declaration of Douglas P. Needham ("Needham Decl.") filed in support of this motion for preliminary approval.

memorialized in a written decision on February 20, 2020 (Dkt. 73).

While Defendants' Motion to Dismiss was pending, the Court entered a scheduling order (the "Scheduling Order") pursuant to Fed. R. Civ. P. 26(f). Dkt. 27. Pursuant to the Scheduling Order, the Parties engaged in fact and expert discovery, including the production of internal HII documents, emails and data, the deposition of HII executives and of Plaintiff Roger Herndon, the exchange of expert reports and the deposition of the Parties' respective actuarial experts.

Plaintiff filed a Motion for Class Certification on December 13, 2019 (Dkt. 46). On January 17, 2020, the Parties filed a stipulation that the claims set forth in the Motion for Class Certification were appropriate for certification under Fed. R. Civ. P. 23. Dkt. 48. Accordingly, on February 25, 2020, the Court certified a Class under Rule 23(b)(1) defined as follows:

> All participants or beneficiaries of the "Legacy" part of the Huntington Ingalls Industries, Inc. Newport news Operations Pension Plan for Employees Covered by United Steelworkers Local 8888 Collective Bargaining Agreement, who began receiving pension benefits in the form of a joint and survivor annuity during the Class Period, which shall be defined as May 20, 2013 through January 17, 2020. Excluded from the Class are Defendants and any individuals who are subsequently determined to be fiduciaries of the Plan.

Dkt. 76, at 2.

After the completion of expert discovery, Defendants filed, *inter alia*, a motion for summary judgment and a *Daubert* motion directed at Plaintiff's expert (Dkt. 53 and 78), while Plaintiff filed, *inter alia,* a *Daubert* motion directed at Defendants' expert (Dkt. 61). All motions were thoroughly briefed and argued.

On August 28, 2020, Magistrate Judge Miller issued a Report and Recommendation on the pending motions, recommending that all three motions be denied. Dkt. 106. Defendants filed an objection to the Report and Recommendation on September 11, 2020 (Dkt. 108), which the Court overruled on September 29, 2020 (Dkt. 113). At a subsequent status conference on January

25, 2021, the Court set the case for a bench trial beginning on November 8, 2021. The Court also set a date for a Settlement Conference with a Magistrate Judge.

The Parties participated in a Settlement Conference with Magistrate Judge Miller on June 14, 2021, but were unable to reach a Settlement during that Conference. The Parties participated in a second Settlement Conference with Magistrate Judge Miller on September 8, 2021, during which the Parties reached an agreement in principle with respect to the amount of the Settlement and other key issues related to the structure of a Settlement Agreement. The Parties subsequently negotiated the details of the settlement, resulting in the execution of the final version of the Settlement Agreement on November 12, 2021.

IV. The Terms Of The Proposed Settlement

The full Settlement Agreement is attached to the Needham Declaration as Exhibit A. The material terms of the Agreement are summarized below:

A. The Class.

The Class is the non-opt out class previously certified by the Court. The Class definition is recited *supra* at page 7.

B. Increased Benefit Payments.

The Settlement provides that the Plan will be amended, and the monthly benefit of each participant who began receiving a benefit in the form of a JSA, and the monthly benefit of each beneficiary who began receiving the survivor benefits of a PSA, will be increased. The amount of the increase will be calculated to allocate the present value of the Net Settlement Amount (the total amount of the Settlement, less amounts approved by the court for payment of fees, expenses and the client contribution award) to Class Member and/or their Associated Beneficiaries in

proportion to the total value of their past and future pension benefit payments.[5] The benefit increase for each Class Member and/or beneficiary will be based on the following steps:

(1) calculate the total amount of benefits paid to each Class Member and/or his or her Associated Participant, including interest at 4.5% annually from the date each benefit was paid, from the beginning of the Class Period until January 1, 2022 (the "Past Benefit Amount");

(2) calculate the value of the Past Benefit Amount if paid as a monthly benefit in the same form (e.g., a 50 or 75 percent JSA) as the Class Member is currently receiving using the Annuitization Assumptions (the "Adjusted Past Benefit");

(3) The Monthly Benefit Increase is the Settlement Percentage multiplied by the sum of (a) the Adjusted Past Benefit and (b) the Currently Monthly Benefit. The Settlement Percentage is calculated by dividing the Net Settlement Amount by the sum of (i) the Past Benefit Amounts of all Deceased Class Members, (ii) the present value as of January 1, 2022 of the Adjusted Past Benefits for all Class Members and/or Associated Participants (other than Deceased Class Members), and (iii) the present value of all future benefit payments owed to Class Members (before the increase contemplated by this Agreement) as of January 1, 2022 (with (ii) and (iii) calculated using the Settlement Assumptions).[6]

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[5] This allocation methodology is considerably simpler than one that is based on the specific damages which might be determined for each Class Member if Plaintiff prevailed at trial. The primary virtue of this method, from Plaintiff's perspective, is that expert expenses for calculating and verifying a plan of allocation specifically tied to the use of different actuarial assumptions are high relative to the present value of claims in this case. Thus, greater precision in the allocation of the Settlement could only be achieved by further reducing the total value of the Settlement that would be available for distribution to the Class.

[6] Settlement Agmt., Section III(B). Both the Adjustment Assumptions and the Settlement Assumptions are based on current interest rates, coupled with a custom mortality table approved for the Plan's use by the Internal Revenue Service in 2019.

C. Plan Amendments.

Effective upon final approval of the Settlement, the Plan shall be amended to provide for payment of benefit increases to Class Members. Settlement Agmt, Section III(A).

D. Release.

Upon entry of the Judgment by the Court, Plaintiff and each Settlement Class Member will be deemed to forever release and discharge Defendants and the Related Parties from any and all Claims arising on or before January 17, 2020 that were brought, or could have been brought, arising out of or relating to the allegations in the Complaint. For the avoidance of doubt, a Claim arises on or before January 17, 2020 if a Class Member's benefit amount is determined as of January 17, 2020 or earlier, even as to monthly payments made after January 17, 2020. "Released Claims" do not include claims by Class Members (other than Plaintiff) that are not related to the conversion of an SLA to a JSA or a PSA. Settlement Agmt., Section IV.

E. Identification of Class Members.

Class Members can be identified using the Plan's records. The Plan's records indicate that there are 1,994 Class Members. Needham Decl., ¶ 23.

F. Notice and Administration.

Defendants agree to pay for and provide notice to the Class and to governmental entities required under the Class Action Fairness Act ("CAFA"). Subject to Court approval of the settlement, the parties agree that Notice will be transmitted to Class Members in the manner selected by the Class Member for receipt of communications from the Plan, or by first class mail to the address that is maintained in Huntington's records. Settlement Agmt. Section II(B). The parties expect no unusual difficulties in locating Class Members for purposes of notice or distribution of the re-calculated benefits.

The proposed Class Notices (Settlement Agmt. Exs. 1 & 3) inform Class Members about the nature of the Action, the terms of the Settlement and the procedures for entering an appearance to be heard or to object to the Settlement. In addition, key court documents, including the Complaint, the Settlement Agreement, preliminary approval papers, Plaintiffs' Motion for Award of Attorneys' Fees, Plaintiffs' Motion for Final Approval, and pertinent Court Orders will be posted on a Settlement Website. For notices that are returned as undeliverable, Defendants will engage in commercially reasonable means to find a current address and re-send the Notice.

G. Attorneys' Fees and Expenses.

The Settlement Agreement provides that proposed Class Counsel Izard, Kindall & Raabe, LLP ("IKR") and Bailey & Glasser LLP ("B&G") will request that this Court award attorneys' fees of up to 25% of the present value of the Settlement, plus expert and other litigation expenses and costs subject to Court approval. Settlement Agmt. Section II(F). The Parties estimate that the present value of the Settlement is $2.8 million. The Settlement expressly provides that the Settlement is not conditioned upon the Court approving the requested amounts for fees, expenses or the Case Contribution Award. *Id.*, Section II(F)(2). Furthermore, the Settlement Agreement does not contain a "clear sailing" provision; Defendants are entitled to object to the request for attorneys' fees, costs and expenses. Settlement Agmt., Section V(B).

H. Case Contribution Award.

The Settlement Agreement provides that proposed Class Counsel intends to request that this Court award a case contribution award to Mr. Cruz of up to $10,000, subject to Court approval. Settlement Agmt., Section II(E). That amount will reduce the present value of the Settlement amount to be paid to Class Members in the form of annuity payments. *Id.*

V. Argument

Federal courts strongly favor and encourage settlements, particularly in class actions and other complex matters, where the inherent costs, delays, and risks of continued litigation might otherwise overwhelm any potential benefit the class could hope to obtain. *See In re MicroStrategy, Inc. Sec. Litig.*, 148 F. Supp. 2d 654, 663 (E.D. Va. 2001); *see also Gould v. Alleco, Inc.*, 883 F.2d 281, 284 (4th Cir. 1989) (noting "the unassailable premise that settlements are to be encouraged"); *Ehrheart v. Verizon Wireless*, 609 F.3d 590, 594-95 (3d Cir. 2010) (recognizing that there is a "strong presumption in favor of voluntary settlement agreements" and that the "presumption is especially strong in class actions and other complex cases where substantial judicial resources can be conserved by avoiding formal litigation" (internal quotation marks omitted)).

A. Standard And Process for Approval

The required approval of a class action settlement is left within the "sound discretion of the Court." *In re Mills Corp. Sec. Litig.*, 265 F.R.D. 246, 252 (E.D. Va. 2009). Under Rule 23(e)(1)(B), a court should grant preliminary approval and order notification to the class if it determines that it "will likely be able to" approve the settlement. Fed. R. Civ. P. 23(e)(1). Determining whether the court will "likely" be able to approve the Settlement requires a preliminary consideration of the final approval factors set out in Rule 23(e)(2) to help assess whether the settlement is "fair, reasonable, and adequate." *See* Fed. R. Civ. P. 23(e)(1)(B)(i) and 23(e)(2).

After its 2018 amendment, Rule 23(e)(2) now provides that a court may approve a proposed Settlement "only after a hearing and only on finding that it is fair, reasonable, and adequate after considering whether": "(A) the class representatives and class counsel have adequately

represented the class; (B) the proposal was negotiated at arm's length; (C) the relief provided for the class is adequate taking into account:

> (i) the costs, risks, and delay of trial and appeal;
>
> (ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims;
>
> (iii) the terms of any proposed award of attorney's fees, including timing of payment; and
>
> (iv) any agreement required to be identified under Rule 23(e)(3); and

(D) the proposal treats class members equitably relative to each other." Fed. R. Civ. P. 23(e)(2). Rule 23(e)'s amendment was designed to "focus[]" the parties "on the primary procedural considerations and substantive qualities that should always matter to the decision whether to approve the [settlement]." Committee Notes on 2018 Amendment.[7]

B. The Proposed Settlement Should Be Preliminarily Approved

Consideration of all relevant factors demonstrates that the Settlement is likely to be finally approved under Rule 23(e)(2) and should therefore be preliminarily approved.

1. The Class Representative and Proposed Class Counsel Have Adequately Represented the Class.

The adequacy determination under Rule 23(e)(2)(A) looks to whether the interests of the

[7] The amended requirements of Rule 23 closely align with prior Fourth Circuit guidance that the Court should, when evaluating the adequacy of a class settlement, consider: (1) the relative strength of the plaintiffs' case on the merits; (2) the existence of any difficulties of proof or strong defenses the plaintiffs are likely to encounter if the case goes to trial; (3) the anticipated duration and expenses of additional litigation; (4) the solvency of the defendants and the likelihood of recovery on a litigated judgment; and (5) the degree of opposition to the settlement. *In re Jiffy Lupe Securities Litig.*, 927 F.2d 155, 158–59 (4th Cir. 1991). Indeed, the Fourth Circuit has acknowledged that its factors "almost completely overlap with the New Rule 23(e)(2) factors" and that outcomes will be "the same under both". *Cantu-Gurrero v. Lumbor Liquidators, Inc.*, 952 F.3d 471, n.8 (4th Cir. 2020). Accordingly, it is appropriate for the district court to consider examine proposed settlements based on Rule 23(e)(2)'s factors. *See, In re Peanut Farmers Antitrust Litig.*, No. 19-463, 2021 WL 3174247 at *2 (E.D. Va. July 27, 2021).

class representatives do not conflict with the interests of any of the class members and that Plaintiffs' counsel are qualified and experienced and provided vigorous representation during the course of the case. *See,* Dkt. 47 at 12–21; *In re Peanut Farmers*, 2021 WL 3174247 at *3. Where, as here, the injuries suffered by the named Plaintiff are the same as those that the class is alleged to have suffered, the adequacy requirement is usually satisfied. *In re Peanut Farmers*, 2021 WL 3174247 at *3.

Mr. Herndon has been an exemplary representative. He has spent significant time on behalf of the class in this hard-fought litigation, gathering his relevant documents and providing them to counsel, responding to counsel's requests, reviewing documents, sitting for a deposition and participating in settlement negotiations. See Needham Decl., ¶ 49; *see also* Declaration of Roger Herndon ("Herndon Decl."), attached to the Needham Declaration as Exhibit C. His claims are the same as the claims of all Class Members, and the relief that he is seeking is calculated using exactly the same formula as that used for all Class Members.

In addition, proposed Class Counsel are well-qualified and have vigorously prosecuted this class action. B&G and IKR are active class action practitioners whose long experience in ERISA and class action litigation is demonstrated by the declarations attached to this memorandum. Declaration of Gregory Y. Porter ("Porter Decl."), ¶¶ 15 and Exh. A; Needham Decl., ¶ 29 and Exh. B. In addition, Class Counsel are pioneers in bringing this and other contemporaneous litigation challenging actuarial equivalence.[8] Needham Decl. at ¶ 29. As this Court determined in

[8] *See, e.g., Belknap v. Partners Healthcare Sys., Inc.*, No. 19-11437, 2020 WL 4506162 (D. Mass. Aug. 5, 2020) (motion to dismiss); *Smith v. Rockwell Automation, Inc.*, 438 F. Supp. 3d 912 (E.D. Wis. 2020) (same); *Duffy v. Anheuser-Busch Companies, LLC*, 449 F. Supp. 3d 882 (E.D. Mo. 2020) (same); *Smith v. U.S. Bancorp*, No. 18-3405, 2019 WL 2644204, at *1 (D. Minn. June 27, 2019) (same); *Torres v. Am. Airlines, Inc.*, 416 F. Supp. 3d 640 (N.D. Tex. 2019) (same).

certifying the class, the "adequacy of representation" factor of Rule 23(e)(2)(A) is met.

2. The Proposed Settlement Was Negotiated at Arm's Length.

Rule 23(e)(2)(B) instructs the court to consider whether the proposed settlement was negotiated at arm's length. There is typically an initial presumption that a proposed settlement is fair and reasonable when it was the result of arm's-length negotiations between experienced, capable counsel after meaningful discovery. *See In re Vitamins Antitrust Litig*., 305 F.Supp.2d 100, 104 (D.D.C. 2004), quoting Manual for Complex Litigation (Third), §30.42 at 238 (1995); *In re Peanut Farmers*, 2021 WL 3174247, *2 ("There is a strong initial presumption that the compromise is fair and reasonable."). Courts look first at whether the parties "have engaged 'in sufficient investigation of the facts to enable the court to intelligibly make an appraisal' of the fairness of a proposed class settlement." *Deem v. Ames True Temper, Inc.*, No. 10-01339, 2013 WL 2285972, at *2 (S.D. W.Va. May 23, 2013) (citation omitted).

Courts consider the extent of discovery conducted to ensure that a plaintiff had access to sufficient material to evaluate the case on an informed basis and to assess the adequacy of the settlement in light of its strengths and weaknesses. *In re Jiffy Lube Sec. Litig.*, 927 F.2d 155, 159 (4th Cir. 1991). Courts also consider the settlement process itself, "the involvement of a neutral or court-affiliated mediator or facilitator in [] negotiations may bear on whether they were conducted in a manner that would protect and further the class interest." Notes on 2007 Amendment to Rule 23; *see also Temp. Servs. Ind. v. Am. Int'l Group Inc.*, C/A No. 08-00271-JFA, 2012 WL 4061537, at *12 (D.S.C. Sept. 14, 2012) ("supervision by a mediator lends an air of fairness to agreements that are ultimately reached").

Here, the case was thoroughly litigated before the parties engaged in settlement discussions; all that remained was trial. The parties completed extensive fact and expert discovery. Defendants produced over 170,000 pages of documents, including actuarial valuation reports

about the Plan, internal memoranda regarding how Huntington selected the actuarial assumptions used to value its pension liabilities and the core mortality tables and economic data upon which these valuations were based. Needham Decl., ¶ 8. Plaintiff deposed HII's Vice President of Compensation and Benefits, its Director of Employee Benefits and its Executive Vice President and Chief Human Resources Officer, while Defendants deposed Mr. Herndon. *Id.* at ¶ 9. The Parties also engaged in substantial expert discovery. Plaintiff proffered the testimony of an actuarial expert, Dr. Mitchell Serota, who opined that the actuarial assumptions used by the Covered Plan did not result in JSAs that were actuarially equivalent to the SLA Class Members could have selected at retirement. Plaintiff's expert opined that, in order to provide an actuarially equivalent benefit, the Covered Plan should have used actuarial assumptions that were reasonable as of Class Members' Annuity Start Dates. Plaintiff's expert also opined on actuarial assumptions that would have been reasonable for each year during the Class Period and reviewed and responded to a report provided by Defendant's expert. Needham Decl., ¶10; *see also* Dkt. Nos. 79-1, 79-2 and 79-3.

At the end of this discovery, the Parties each challenged the admissibility of the other side's expert opinions and Defendants moved for summary judgment (Dkt. Nos. 53, 61 and 78). The motions were thoroughly briefed and argued, and Magistrate Judge Miller issued a Report and Recommendation on all of the pending motions on August 28, 2020, recommending that they all be denied. *See* Dkt. No. 106. Defendants objected to the Report and Recommendations (Dkt. No. 108), but the Court overruled the objections on September 29, 2020 (Dkt. No. 113).

As a result of their thorough initial investigation, their review of Defendants' documents and depositions of Defendants' key witnesses, their work with their own expert and deposition of Defendants' expert, their briefing of the motions to dismiss, for class certification, to disqualify

experts and summary judgment, as well as their review of this Court's rulings on the motions discussed above, Class Counsel had ample information to understand the strengths and weakness of the case prior to engaging in settlement discussions.

The settlement process itself took place over several months and was mediated by Magistrate Judge Miller, who was intimately familiar with the claims, the defenses, and the work of the Parties' respective witnesses. Plaintiff sent Defendants a detailed settlement proposal and demand letter in March of 2021 and the Parties engaged in further settlement correspondence before the settlement conference with Judge Miller on June 14, 2021. Needham Decl. ¶ 16. The Parties were unable to reach an agreement at the June 14 settlement conference, and continued to prepare for trial. *Id.* Following a status conference with Judge Miller on August 16, 2021, the Parties agreed to a second mediation session on September 8, 2021. *Id.* at ¶ 18. At this session, the parties reached an agreement in principle on the key terms of the Settlement. *Id.* In the weeks that followed, they negotiated the details and finalized the Settlement Agreement. *Id.* at ¶ 19.

The extent of this litigation, the hard-fought negotiations between experienced attorneys for both sides, the use of a neutral mediator, and the excellent result for the Settlement Class are all testaments to the non-collusive nature of the settlement. *See, e.g.*, *In re Peanut Farmers*, 2021 WL 3174247, at *3 (citing the completion of discovery and the use of a neutral mediator as sufficient evidence to support a finding that the settlement was negotiated at arm's length).

3. The Relief Provided for The Class Is More Than Adequate.

To approve a settlement, a court must determine that the "settlement is fundamentally fair, adequate, and reasonable." *Robinson v. Carolina First Bank, N.A.*, No. 7:18-cv-02927-JDA, 2019 WL 719031, at *7 (D.S.C. Feb. 14, 2019) (citing *United States v. North Carolina*, 180 F.3d 574, 581 (4th Cir. 1999)). An important consideration in judging the reasonableness of a settlement is the strength of the plaintiff's case on the merits balanced against the amount of the

settlement. In balancing, however, a proposed settlement is not to be judged against a speculative measure of what might have been awarded in a final judgment. *Lomascolo v. Parsons Brinckerhoff, Inc.*, No. 1:08-cv-1310, 2009 WL 3094955, at *10 (E.D. Va. 2009) (citing *Cotton v. Hinton*, 559 F.2d 1326 (5th Cir. 1977)). As discussed below, the proposed Settlement provides meaningful, immediate and continuing benefits to the Settlement Class, while avoiding potentially years more of costs and delays, and the risks inherent in all class action litigation if the case were to go to trial.

a) The Costs, Risks, and Delay of Trial and Appeal

Rule 23(e)(2)(C)(i) requires the court to consider the adequacy of class relief in light of the costs, risks, and delay of trial and appeal. "[I]nherent in all litigation is risk which certainly impacts [the] settlement total." *In re Peanut Farmers*, 2021 WL 3174247, at *3.

The risk of delay in this case is high. Although the case was already scheduled to begin trial, because no appellate court has, to date, directly considered Plaintiff's legal theory, the party that lost at trial would almost certainly take an appeal.

While delay is a risk in all litigation, it is a particularly serious risk in a case that involves retirees in their 60s and 70s. ERISA class actions over novel theories of liability like this one tend to have significant life-cycles even after trial. For example, in *Tussey v. ABB, Inc*., the first ERISA fiduciary breach class action trial was conducted in January, 2010. *See, Tussey v. ABB, Inc*., 746 F.3d 327 (8th Cir. 2014). The participants received a trial verdict in 2012, saw that verdict reduced by the court of appeals in 2014 and eventually settled in 2019 — a decade after trial. *Tussey v. ABB, Inc*., 850 F.3d 951 (8th Cir. 2017) (remanding on damages); *Tussey v. ABB, Inc*., No. 06-4305, Dkt. 869 (W.D. Mo. Aug. 16, 2019) (granting final approval of settlement). Such delays significantly harm class members already in retirement. In contrast, if this Settlement is approved, the Class will begin receiving higher monthly pension payments now,

instead of years later if the case were ultimately successful after trial.

The litigation risks in the case are also high. Plaintiff and Huntington have vastly different views about Huntington's potential liability and the likely outcome of the litigation. Plaintiff's core allegations regarding actuarial equivalence survived a motion to dismiss and a motion for summary judgment but are entirely untested on the merits.

The key question — whether the benefits provided to Class Members during the Class period were less than the actuarial equivalent of the SLAs that they could have selected — is one that can only be determined at trial through expert testimony. Plaintiff and Huntington each retained actuarial experts that provided radically different opinions on this issue. *See* Dkt. 54-2, 54-3, 54-4, 55-12, 65-1, and 85-1. Plaintiff is confident in his expert's opinion and believed that the opinion of Defendants' expert, Thomas Terry, was sufficiently lacking in credibility to move to exclude it (Dkt. 61). Notably, however, while the Magistrate Judge's Report and Recommendations found that both experts' opinions were sufficiently credible as to be admissible (Dkt. 106, at 8-26), the Magistrate Judge indicated that he might be persuaded by the arguments of Huntington's actuary if he were sitting as the finder of fact. *Id.* at 34.

The Court's rulings on the *Daubert* motions and the summary judgment motion set up a "battle of experts" for trial. The results of such battles are notoriously difficult to predict. *See In re MicroStrategy*, 148 F. Supp. 2d at 667. And, even if the Court credited *parts* of Terry's testimony, it could reduce or eliminate altogether the damages that could be awarded.

A Settlement that provides 34 percent of the damages that Plaintiff's expert calculated in his litigation report is an outstanding result in light of the likelihood of further lengthy, expensive litigation and the risk that the Class would recover less — or possibly nothing at all. ERISA class settlements involving statutory claims that have been litigated much more frequently (and, thus,

have more of a track-record) often settle for lower percentages of plaintiffs' asserted damages. *See, e.g., Velazquez v. Massachusetts Fin. Services Co*., No. 17-11249, Dkt. 108 (D. Mass Dec. 5, 2019) (approving settlement for 29% of maximum damages); *Prince v. Eaton Vance Corp*., No. 18-12098, Dkt. 57 (D. Mass Sept. 24, 2019) (approving settlement for 23% of total damages); *Richards-Donald v. Teachers Insurance and Annuity Ass'n of Amer*., No. 15-8040 (S.D.N.Y.) ($5 million settlement representing 11.6% of alleged damages); *Figas v. Wells Fargo*, No. 08-4546 (D. Minn.) ($17.5 million settlement representing 19.5% of alleged damages); *Sims v. BB&T Corp*., No. 15-732, 2019 WL 1993519, *2 (M.D.N.C. May 6, 2019) ($24 million settlement representing 19% of alleged damages); *Urakhchin v. Allianz Asset Mgmt. of Amer., L.P*., No. 15-1614, 2018 WL 8334858, *4 (C.D. Cal. July 30, 2018) ($12 million settlement representing 17.7% of maximum alleged damages).

Ultimately, if approved by the Court, Class Members will receive a significant percentage of the total possible recovery as calculated by Plaintiff's expert without the burden and risks of further litigation. This "adequate relief" factor of Rule 23(e)(2)(C) weighs in favor of preliminary approval.

b) The Effectiveness of Distribution to The Settlement Class

The Advisory Committee's Notes to the 2018 amendments to Rule 23(e) indicate that "[m]easuring the proposed relief may require evaluation of any proposed claims process. . . ." Here, no such process is needed.[9] The Settlement Agreement will, if approved, increase Class Members' future monthly benefit payments without the need for Class Members to file claims or

[9] The one exception is where both the Plan Participant Class Member and his or her Associated Beneficiary have both passed away before increase benefits under the Settlement are set to commence. The Settlement provides that Defendants will send notice of the Settlement to the last known address of the person who was receiving benefits, and a payout will be made to the estate or heirs upon receipt of an Estate Claim Form.

have those claims reviewed by a Claims Administrator. Moreover, many people have their benefit checks deposited directly, and those who do not have a strong incentive to ensure that the Covered Plan has their current address information, so that they can receive and promptly cash their benefits checks. Thus, the increase in monthly benefits will result in the efficient and effective distribution of the Settlement's benefits.

The Settlement is non-reversionary. The increased monthly benefit payments will be made automatically and fully over the course of the Class Members' lives, ensuring that none of the settlement will be returned to Huntington.

Finally, Class Members are receiving a distribution in the same form in which they were harmed: a reduction in benefits is being remedied by an increase in benefits. Accordingly, the method of distribution matches the claims alleged.[10] Each Class Member's recovery will be based on the same percentage of the total value of their past and future benefits. Pro rata distributions to the Class are typical and appropriate. *In re Peanut Farmers*, 2021 WL 3174247, at *4.

c) The Terms of Any Proposed Award of Attorneys' Fees, Including Timing Of Payment

Rule 23(e)(2)(C)(iii) directs the Court to consider, as part of its evaluation of the fairness of the Settlement, provisions related to payment of attorneys' fees, including the timing of the payment. The Advisory Committee's Notes on the 2018 Amendment indicates that "[u]ltimately, any award of attorney's fees must be evaluated under Rule 23(h), and no rigid limits exist for such awards. Nonetheless, the relief actually delivered to the class can be a significant factor in determining the appropriate fee award."

[10] Moreover, Class Members will not be responsible for a large tax payment on a lump sum award.

Both the structure and the amount of this fee request are appropriate.

Structure: The $2.8 million present value of the Settlement provides, for purposes of analysis, a "common fund." Under the Settlement, the amount that Defendants pay to Plaintiff for attorneys' fees, costs and expenses, as well as the Client Contribution Award, will be subtracted from the present value of the total class-wide Settlement, and each Class Member will receive a share of the value of the Settlement net of these payments. This is the appropriate methodology to use in a common fund case that involves payment of future benefits. *See, e.g., Cruz v. Raytheon Co.*, No. 19-11425 (D. Mass. June 11, 2021) (Final Order and Judgment) (awarding percentage of the present value of increased future benefit payments)*; Kelly v. Johns Hopkins Univ.,* No. 16-2835, 2020 WL 434473, at *6 (D. Md. Jan. 28, 2020) (awarding counsel a percentage of the total value of the settlement, including future tax deferral and fee savings that would benefit the Class); *Clark v. Duke Univ.*, No. 16-1044, 2019 WL 2579201, at *3 (M.D.N.C. June 24, 2019) (same).[11]

Reasonableness of the Percentage: The Court has discretion to award attorneys' fees based on the "percentage of the fund" method or the lodestar method. *Brown v. Tranurban USA, Inc*., 318 F.R.D. 560, 575 (E.D. Va. 2016); *Grissom v. The Miss Corp*., 549 F.3d 313, 320 (4th Cir. 2008). However, "both in the Fourth Circuit and across the country… the favored method of calculating attorneys' fees in common fund cases is the percentage of the fund method." *Skochin*

[11] This case is thus exactly the opposite of *In re Volkswagen & Audi Warranty Extension Litig*., 692 F.3d 4, 17 (1st Cir. 2012), where the court declined to award fees using the common fund doctrine because the fees were not "'spread around' among the parties benefitted" by the settlement. Here, in contrast, there is "'reason for confidence that the costs [will] indeed be shifted with some exactitude to those benefiting.'" *Id.* (quoting *Alyeska Pipeline Serv. Co. v. Wilderness Soc'y,* 421 U.S. 240, 264 n.39 (1975)). The way that the Settlement is allocated among Class Members ensures that the amounts awarded to counsel will reduce the present value of each Class Member's benefit by the same percentage.

v. Genworth Financial, No. 19-49, 2020 WL 6536140, *4 (E.D. Va. Nov. 5, 2020) (citing *Brown v. Transurban USA, Inc*., 318 F.R.D. 560, 575 (E.D. Va. 2016).

Plaintiff will request that the Court award 25 percent of the present value of the Settlement — $700,000 — plus costs, expenses and a case contribution award. To date, proposed Class Counsel have incurred over $290,000 in litigation expenses, primarily for expert expenses. Additional work remains to be done in connection with final approval and settlement administration.[12] While the Court will ultimately determine the amount of the Settlement to be awarded after Plaintiff has filed and thoroughly briefed the request for fees and expenses, nothing in the Settlement's provisions concerning attorneys' fees should lead the Court to question the reasonableness of the Settlement itself.

First, the percentage that Class Counsel intend to request is reasonable. "Under the percentage-of-the-fund method, courts base attorneys' fee awards on a percentage of the common recovery's value, usually between 25 percent and 30 percent." *Hooker v. Sirius XM Radio, Inc.*, No. 13-3, 2017 WL 4484258, *2 (E.D. Va. May 11, 2017). Empirical research confirms this. Analyzing 458 class action settlements between 2009 and 2013, Professors Eisenberg, Miller and Germano found that the median fee award was 29 percent. *See* Theodore Eisenberg, Geoffrey Miller and Roy Germano, *Attorneys' Fees in Class Actions, 2009-2013*, ("Eisenberg Study"), Law & Econ. Research Paper Series (Dec. 2016), at 11. Both the mean and median percentage awards for ERISA cases was 26 percent. *Id.* at 13.[13] Plaintiff's request of a

[12] "The prevailing view is that expenses are awarded in addition to the fee percentage." Alba Conte, 1 Attorney Fee Awards § 2:19 (3d ed. 2019). This follows from the "equitable principle that all reasonable expenses incurred in the creation of a fund for the benefit of a class are reimbursable proportionately by those who accept benefits from the fund …." *Id.*

[13] Approved fee awards for complex, innovative ERISA class actions are often higher. *See, e.g.*, *Gordan v. Mass. Mutual Life Ins. Co.*, No. 13-30184, 2016 WL 11272044 (D. Mass. Nov. 3, 2016) (approving 33 1/3 percent attorneys' fee award in $30.9 million ERISA class action);

fee request equal to 25 percent is lower than these averages.

Second, this case is highly complex, both legally and factually. The case required detailed familiarity with not only the text of ERISA and the applicable regulations, but the ways in which the Retirement Equity Act modified and enhanced the statute's protections for actuarial equivalence. *See, e.g.*, Plaintiff's Opposition to Defendants' Motion for Summary Judgment, Dkt. 64, at 5–7. Since the caselaw related to this area was undeveloped, Plaintiff could not simply rely on prior precedents to provide a roadmap for how to litigate this case. Finally, Counsel also had to understand and explain the actuarial science behind the statutory requirement of "actuarial equivalence," which involved lengthy and detailed work with actuaries who are experts in the field.

Third, this case had a high degree of litigation risk. As Defendants have pointed out, it centered on a novel legal theory. Dkt. 54 at 2 ("The Complaint advances a novel theory…"). When Plaintiff filed the case, in 2019, ***no*** cases had held that plans were required to update the actuarial assumptions used to calculate benefits once those assumptions ceased to be reasonable. *See Kelly*, 2020 WL 434473, * 3 (noting that "ERISA law is highly complex" and is a "rapidly evolving area of law" when approving class counsel's fee request) (citations omitted); *Kruger v. Novant Health, Inc.*, No. 14-208, 2016 WL 6769066, at * 4 (M.D.N.C. Sept. 29, 2016) (approving fee request in ERISA class action given the "significant risk" due to "the novel nature of [the] case. . . .") Moreover, it was clear from the outset that if the case survived dispositive motions, it would turn into a battle of the experts in a highly arcane field, the outcome of which would be difficult to predict. *See In re MicroStrategy*, 148 F. Supp. 2d at 667.

Bekker v. Neuberger Berman Group 401(k) Inv. Com., 504 F. Supp. 3d 265 (S.D.N.Y. 2020) (in an ERISA class action settlement, "Counsel's request for 28 percent of the common fund is reasonable and represents a discount compared to the norms in similar litigation").

Fourth, Proposed Class Counsel are highly experienced attorneys with substantial background in ERISA cases. IKR and B&G pioneered the legal theory at the heart of the case and have now jointly litigated many of the issues involved in ERISA's "actuarial equivalence" requirements. As demonstrated by their attached firm resumes (Needham Decl., Ex. B and Porter Decl. Ex. A), IKR and B&G are among the leading firms in the country that handle nationwide ERISA class actions. Together and separately, they have been appointed to represent plaintiffs in several significant ERISA class actions. *See, e.g., Cruz v. Raytheon*, No. 19-11425 (D. Mass.) (*see* Final Order and Judgment, Dkt. No. 112, ¶ 6, appointing B&G and IKR to represent the settlement class in an ERISA class action about pension plan's actuarial assumptions); *Nistra v. Reliance Tr. Co.*, No. 16-4773, 2018 WL 835341, at *5 (N.D. Ill. Feb. 13, 2018) (appointing B&G and IKR to represent plaintiffs in an ERISA class action about employee stock ownership plan); *Berry v. Wells Fargo & Co.*, No. 17-304, 2020 WL 9311859, at * 14 (D.S.C. July 29, 2020) (finding that IKR "displayed extraordinary skill and determination" when approving a $79 million settlement in an ERISA class action); *Leber v. Citigroup 401(k) Plan Inv. Comm.*, 323 F.R.D. 145, 166 (S.D.N.Y. 2017) (appointing B&G co-counsel for an ERISA class, noting that "counsel and their respective firms have significant prior experience litigating ERISA class actions"); *Kemp-DeLisser v. St. Francis Hosp. & Medical Ctr.*, No. 15-1113, 2016 WL 6542707, * 16 (D. Conn. Nov. 3, 2016) (describing IKR as a "national leader[] in class action litigation and ERISA matters"); *Harris v. Koenig*, 271 F.R.D. 383, 395 (D.D.C. 2010) (appointing B&G as co-counsel and noting its "extensive experience litigating ERISA class actions"). Moreover, proposed Class Counsel pioneered many of the issues involved in ERISA's "actuarial equivalence" requirements, and thus are uniquely qualified to represent the Class here. *See supra* ftn. 8 and cases cited therein.

Proposed Class Counsel's work on these cases allowed them to litigate this case through to settlement effectively and efficiently. Nonetheless, they have devoted a substantial amount of time to this case over two years. Class Counsel have spent over 2,500 hours litigating the case, including time spent researching the legal theory and working with the experts to draft the initial complaint, successfully responding to Defendants' motion to dismiss, engaging in discovery, reviewing relevant documents, working with experts on testimony, taking and defending fact and expert depositions, preparing and responding to *Daubert* motions and a motion for summary judgment, conducting settlement negotiations, and drafting this motion. Moreover, additional work needs to be done in connection with final approval and administration.

Fifth, when Courts award a percentage of the fee, they may perform a "lodestar crosscheck" to determine whether the proposed fee is reasonable. Here, proposed Class Counsel's lodestar in the case to date is equal to $1,600,804. *See* Needham Decl., at ¶ 41 and Porter Decl, at ¶ 10. Thus, the requested fee represents less than 44% of counsel's lodestar to date. A lodestar multiplier below 1 is below the range typically awarded by courts and is presumptively reasonable. *See, e.g., Wong v Arlo Technologies, Inc*., No. 19-372, 2021 WL 1531171, *11 (N.D. Cal. Apr. 19, 2021); *Krueger v. Ameriprise Financial, Inc*., No. 11-2781, 2015 WL 4246879, *2 (D. Minn. July 13, 2015) (noting the reasonableness of fee request that is below lodestar amount in novel ERISA litigation).[14] In the Eastern District of Virginia, courts have awarded multipliers

[14] The lodestar calculation is based on the contemporaneous time records of Izard, Kindall & Raabe, LLP ("IKR") and Bailey & Glasser, LLP ("B&G"). Needham Decl., at ¶ 40; Porter Decl., at ¶ 10. The hourly rates for each attorney are the same rates that have been approved in other ERISA class actions and are charged to the firms' hourly clients. Needham Decl., at ¶ 43; Porter Decl. at 10. Finally, proposed Class Counsel frequently work cooperatively with other firms that do complex, nationwide ERISA class action work (just as IKR and B&G are working together in this case). While each firm has its own rate structure, in proposed Class Counsel's experience, the hourly rates of firms that engage in this highly specialized nationwide practice are generally comparable. Needham Decl., at ¶ 44; Porter Decl., at ¶ 10.

of close to or greater than two. *See, e.g.*, *In re Microstrategy, Inc.*, 172 F. Supp. 2d 778, 790 (E.D. Va. 2001) (approving a multiplier of 2.6); *Berry v. LexisNexis Risk & Info. Analytics Grp., Inc.*, No. 11-754, 2014 WL 4403524, at *15 (E.D. Va. Sept. 5, 2014), *aff'd sub nom. Berry v. Schulman*, 807 F.3d 600 (4th Cir. 2015) (approving a multiplier of 1.99).

Sixth, public policy considerations favor Plaintiff's fee request. As another court noted in a recent case involving settlement involving complex and novel ERISA claims,

> Public policy considerations weigh in favor of granting the requested fees. In awarding attorneys' fees in common fund cases . . . [courts] have taken into account the social and economic value of class actions, and the need to encourage experienced and able counsel to undertake such litigation. Attorneys' fees should reflect the important public policy goal of providing lawyers with sufficient incentive to bring common fund cases that serve the public interest. Fee awards should also serve to encourage skilled counsel to represent those who seek redress for damages inflicted on entire classes of persons, and to discourage future alleged misconduct of a similar nature.
>
> This is especially true in ERISA class actions. . . . Congress passed ERISA to promote the important goals of protecting and preserving the retirement savings of American workers and [t]he ERISA statute specifically encourages private enforcement.

In re J.P. Morgan Stable Value Fund ERISA Litig., No. 12-2548, 2019 WL 4734396, at *3–4 (S.D.N.Y. Sept. 23, 2019) (internal quotations and citations omitted).

4. The Settlement Treats Class Members Equitably Relative to Each Other.

The Settlement treats Class Members equitably relative to each other.[15] The dollar amount of the benefit that Class Members will receive from the Settlement will vary based on the total

[15] Plaintiff will, in addition, request that the Court approve an additional amount for his services on behalf of the Class. Such a service award does not create a conflict or a situation where Plaintiff is treated more favorably than other members of the Class. Rather, modest service awards to a named plaintiff are simply "intended to compensate [the] class representatives for work done on behalf of the class, to make up for financial or reputations risk undertaken in bringing the action, and sometimes, to recognize their willingness to act as a private attorney general." *In re Peanut Farmers*, No. 17-145, 2021 WL 3174247, at *4, citing *Galloway v. Williams*, No. 19-470, 2020 7482191, at *6 (E.D. Va. Dec. 18, 2020) and *Berry v. Schulman*, 807

present value of their past and future benefit payments. But, each Class Member will receive the same ***percentage*** of the present value of their benefits.

Although the Settlement only provides a ***prospective*** increase in benefits, it ensures that Class Members who retired at an older age and/or earlier in the Class Period (and thus are likely, from an actuarial perspective, to have fewer future benefits payments) are treated equitably by including the value of past benefit payments, plus interest, in the calculation for their future benefit increases, giving past payments the same weight in the calculation as the present value of future benefits.

C. The Proposed Notice to Class Members Is Adequate

Class Members are entitled to notice of any proposed settlement and an opportunity to object before it is finally approved by the Court. *See* Manual for Complex Litig. (Fourth), § 21.31. The Court should "direct notice in a reasonable manner to all class members who would be bound by the proposal." *Soloman v. American Web Loan, Inc*., No. 17-145, 2020 WL 3490606, *6 (E.D. Va. June 26, 2020) (quoting Fed. R. Civ. P. 23(e)(1)(B)). Typically, this means "individual notice to all members who can be identified through reasonable effort." *Id*.

Here the proposed method of notification is adequate. The proposed Notice, attached as Exhibit 3 to the Settlement Agreement, is clear and straightforward, providing Class Members with enough information to evaluate whether to object to the Settlement, as well as directions to the Settlement Website which will include further information. Notice will be provided in the way each Class Member is accustomed to receiving communications about their pensions from Huntington, or first class mail where such election has not been made, and Class Members will not be required to submit a claim form or take any steps to receive the benefit of the

F.3d 600, 613 (4th Cir. 2015).

Settlement.[16] The Class Notice will also be posted to the Settlement Website. This proposed method of providing notice is adequate under Rule 23(c)(2). *See Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 811 (1985) (holding that individual mailed notice which clearly describes the case and Class Members' rights meets due process requirements).

VI. Conclusion

The proposed class action Settlement Agreement is fair, reasonable, and adequate. For the foregoing reasons, Plaintiff requests that this Court approve the Settlement Agreement on a preliminary basis so that Notice may be sent, schedule appropriate deadlines for various settlement requirements as reflected in the accompanying motion and schedule a hearing for final approval of the Settlement.

Dated: November 12, 2021

Respectfully submitted,

Roger A. Herndon

/s/ Gregory Y. Porter

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[16] The only exception is for estates and heirs where both the Class Member Participant and his or her Associated Beneficiary passed away prior to the date when increased benefits commence. *See supra* n. 9.

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CERTIFICATE OF SERVICE

I hereby certify that on the 12th day of November 2021, I caused a copy of the foregoing to be electronically filed using the Court's CM/ECF system. I understand that notice of this filing will be sent to all parties by operation of the Court's electronic filing system.

/s/ Gregory Y. Porter
Gregory Y. Porter (VA 40408)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
NEWPORT NEWS DIVISION

Roger A. Herndon, on behalf of himself and all others similarly situated, Plaintiff, vs. Huntington Ingalls Industries, Inc., the HII Administrative Committee, and John/Jane Does 1–5, Defendants.	Civil Action No.: 4:19-cv-00052-HCM-DEM CLASS ACTION

DECLARATION OF DOUGLAS P. NEEDHAM IN SUPPORT OF PLAINTIFF'S MOTION FOR PRELIMINARY APPROVAL OF CLASS SETTLEMENT

I, Douglas P. Needham, pursuant to 28 U.S.C. § 1746, declare as follows:

1. I am a partner with the law firm of Izard, Kindall & Raabe ("IKR"), co-counsel for the Plaintiff, Roger Herndon ("Plaintiff" or "Herndon"). I make this Declaration in support of Plaintiff's Motion for Preliminary Approval of Class Settlement. A true and accurate copy of the proposed Settlement Agreement, and the exhibits thereto, is attached as Exhibit A to this Declaration.

2. I have been actively involved in the prosecution of this Action, am familiar with its proceedings, and have personal knowledge of the matters set forth herein based on my active supervision and participation in all material aspects of the Action and if called to do so, I could and would testify competently thereto.

I. Summary of Plaintiff's Claims

3. Plaintiff filed this Action on behalf of participants and beneficiaries receiving pension benefits in the form of a Joint and Survivor Annuity ("JSA") or Preretirement Survivor

Annuity ("PSA") from the "Legacy" part of the Huntington Ingalls Industries, Inc., Newport News Operations Pension Plan for Employees Covered by United Steelworkers Local 8888 Collective Bargaining Agreement (the "Covered Plan"). ECF No. 1.

4. Under Section 205(d) and (e) of ERISA, a plan's "Qualified Joint and Survivor Annuities" (the "QJSA"), Qualified Optional Survivor Annuities ("QOSAs") must be "actuarially equivalent" to the single-life annuity ("SLA") that the participant could have taken when he or she began receiving benefits, and Qualified Pre-Retirement Survivor Annuities ("QPSAs") must be equal to the survivor benefit of the plan's designated QJSA. Complaint ("Compl."), Dkt. 1, at ¶¶ 17–24 (citing ERISA Section 205(d) and (e), 29 U.S.C. §§ 1055(d) and (e)). Two benefit forms are "actuarially equivalent" when they have the same present value, so long as the present values of both benefits are calculated using the same, reasonable actuarial assumptions. *Id.* at ¶¶ 29–30.

5. The actuarial assumptions that are used to calculate present values for purposes of determining actuarial equivalence involve mortality and interest rates. Mortality assumptions, which are generally based on a mortality table, estimate how long benefit payments will be made and, therefore, how many benefit payments will be made, based on the ages of the participant and, (in the case of JSAs), the beneficiary. Interest rate assumptions discount the value of expected future payments to a present value. The Complaint alleges that Huntington Ingalls Industries, Inc., ("HII") calculated Class Members' JSA and PSA benefits using outdated mortality and interest rate assumptions (or conversion factors based on, or consistent with, outdated mortality and interest rate assumptions), which caused Class Members' benefits to be less than an "actuarially equivalent" amount. Dkt. 1, ¶¶ 1, 5-7, 65. In other words, Plaintiff alleged that (a) the present values of Class Members' JSA benefits had lower present values than the SLAs they could have taken when they retired using mortality and interest rate assumptions that were reasonable when

Class Members began receiving their benefits; and (2) that PSA benefits were lower than the survivor portion of the plan's Qualified JSA that would have been actuarially equivalent to an SLA on the date benefits commenced.

II. Summary of the Litigation

6. Prior to filing the Complaint, IKR and co-counsel Bailey & Glasser LLP (B&G) engaged in a detailed investigation of the terms of the Covered Plan and the applicable law and regulations. We consulted with an actuarial expert, Dr. Mitchell I. Serota, concerning the Covered Plan's actuarial assumptions and how benefits were calculated under those assumptions.

7. Plaintiff filed the Complaint on May 20, 2019. Dkt. 1. On June 27, 2019, Defendants filed a Motion to Dismiss the Complaint. Dkt. 10. On July 12, 2019, Plaintiff filed a memorandum in opposition to Defendants' motion. Dkt. 19. Defendants filed a reply memorandum on July 17, 2019. Dkt. 21.

8. The Court issued a scheduling order pursuant to Rule 16 on August 21, 2019, while the Motion to Dismiss was pending. Dkt. 36. Plaintiff issued initial discovery requests on August 8, 2019, and subsequently issued additional requests on September 20, 2019 and October 3, 2019. Defendants, in turn, served a discovery request on Plaintiff on September 20, 2019. The Parties proceeded to prepare responses and objections, meet and confer on objections, collect, review and provide documents responsive to the discovery requests. Plaintiff filed a Motion to Compel on November 20, 2019 (Dkt. 42), which Defendants opposed on December 4, 2019. Dkt. 44. Plaintiff filed a Reply Brief supporting the motion on December 10, 2019. Defendants produced over 170,000 pages of documents in response to Plaintiff's discovery requests.

9. Plaintiff began deposing Defendants' fact witnesses in December of 2019. Plaintiff deposed Vice President of Compensation and Benefits Karen Velkey, Director of Employee

Benefits Brian Dahn, and Executive Vice President and Chief Human Resources Officer William Ermatinger. Defendants deposed Plaintiff Roger Herndon on January 23, 2020.

10. On December 3, 2019, Plaintiff disclosed Mitchell I. Serota as his expert witness pursuant to Rule 26(a)(2)(A) and served a report by Dr. Serota on Defendants. Defendants disclosed Thomas Terry as an expert witness on December 17, 2019, and served his report on Plaintiff. Plaintiff served an Amended Report from Dr. Serota on January 3, 2020, as well as a Rebuttal Report responding to Mr. Terry's Report. Defendants deposed Dr. Serota on January 14, 2020. As a result of new evidence disclosed to Dr. Serota during his deposition, he filed a Supplemental Report on February 14, 2020. Plaintiffs deposed Mr. Terry on January 17, 2020.

11. While fact and expert discovery was ongoing, Plaintiff filed a Motion for Class Certification on December 13, 2019, together with a memorandum of law demonstrating that the Class met all of the requirements of Rule 23(a), together with the requirements of Rule 23(b)(1) and 23(b)(2). Dkts. 46 and 47. After reviewing Plaintiff's motion and supporting brief, Defendants agreed to stipulate to the certification of a class. Dkt. 48. The Court subsequently certified the Class under Rules 23(a) and 23(b)(1), appointed Roger Herndon as the representative of the Class, and appointed IKR and Bailey & Glasser LLP ("B&G") as Co-Lead Counsel for the Class. Dkt. 76.

12. On January 27, 2020, Defendants filed a Motion for Summary Judgment together with a supporting brief and multiple exhibits. Dkts. 53-55. Plaintiff filed an opposition to the Motion for Summary Judgment on February 14, 2020, a motion to exclude portions of the testimony of Defendant's expert, Thomas Terry, and supporting documents for both the summary judgment opposition and the motion to exclude. Dkts. 61-62, 64-65. Defendants filed a Reply supporting their summary judgment motion and a motion to exclude the testimony of Plaintiff's

expert on February 28, 2020, and an opposition to Plaintiff's motion to exclude portions of Terry's testimony on March 20, 2020. Dkts. 77-79, 85. With the Court's leave, Plaintiff filed a sur-reply opposing summary judgment on March 11, 2020 (Dkt. 84) and an opposition to the motion to exclude Dr. Serota's testimony on March 24, 2020. Dkt. 86.

13. On February 18, 2020, mid-way through the briefing on Defendants' summary judgment motion, the Court held a hearing on Defendant's Motion to Dismiss. The Court denied the Motion to Dismiss two days after the hearing, on February 20, 2020. Dkt. 73. Defendants filed an Answer, with affirmative defenses, on March 4, 2020. Dkt. 80. Plaintiff filed a Motion to Strike Affirmative Defenses on April 7, 2020 (Dkts. 89-90), which Defendants opposed on April 21, 2020. Dkt. 94.

14. On July 24, 2020, Magistrate Judge Miller held a hearing on the outstanding motions, at the conclusion of which he denied Plaintiff's Motion to Strike Affirmative Defenses and Plaintiff's Motion to Strike a late-filed supplemental declaration by Defendant's expert. Dkt. 103. On August 28, 2020, Magistrate Judge Miller issued a Report and Recommendations with respect to the parties' motions to exclude experts and Defendant's Motion for Summary Judgment, recommending that all three motions be denied. Dkt. 106. Defendants filed objections to the recommendations concerning their pending motions, which Plaintiff opposed. Dkts. 108 and 112. The District Court overruled the objections and adopted the Magistrate Judge's Report and Recommendations on September 29, 2020. Dkt. No. 113.

15. The case was reassigned on October 19, 2020. The Court held a status conference on January 25, 2021 and set a Trial Scheduling Order which set November 8, 2021 as the date for a bench trial. Dkt. 114.

III. Settlement Discussions

16. Following a discussion with the Court at the January 25, 2021 status conference, the Parties were directed to appear before Magistrate Judge Miller for a settlement conference on April 12, 2021. Dkt. 115. In accordance with Judge Miller's settlement conference order, Plaintiffs made a detailed written settlement proposal to Defendants on March 24, 2021. However, at the request of the Parties the Settlement Conference was pushed back to June 14, 2021. Dkt. 116.

17. The Parties provided Judge Miller with confidential mediation statements on June 10, 2021, and attended the June 14, 2021 Settlement Conference virtually. Counsel were accompanied by representatives of the Parties, and Plaintiff Roger Herndon attended the day-long conference. However, the Parties were unable to reach agreement during the conference.

18. On August 16, 2021, Magistrate Judge Miller set a second mediation conference for September 8, 2021, following a conference with the Parties. Dkt. 118. The Parties again submitted confidential mediation statements and attended the mediation virtually, including Plaintiff Herndon. At the conclusion of the September 8, 2021 session, the Parties reached agreement in principle on the main substantive terms of a settlement. The Parties then jointly moved that the Court suspend the deadlines in the Trial Management Order to provide time to conclude negotiations on the terms of a settlement agreement, which the Court granted. Dkt. 120.

19. Throughout the remainder of September, all of October and into November, the Parties negotiated the terms of a Settlement Agreement. The Parties reached agreement on all terms on November 11, and the Settlement Agreement was executed the same day.

III. Analysis of Key Settlement Terms

20. ***Total Benefit to the Class:*** If Plaintiff had prevailed at trial on both liability and damages, the "make whole" relief would have been the difference in value of JSAs and PSAs

calculated during the Class Period with the Covered Plan's assumptions compared to the amount that would have been paid if Dr. Serota's actuarial assumptions had been used instead. As set forth in Dr. Serota's Supplemental Report, filed as part of the summary judgment briefing, the present value of that difference is approximately $8.15 million. The value of the proposed Settlement, $2.8 million, is 34% of this maximum damage amount.

21. Because the basis of Plaintiff's claims is that Class Members are receiving lower monthly pension benefit payments than they should be, the Settlement provides that amount of the Settlement, net of any awards for attorneys' fees, expenses and a lead plaintiff award (the "Net Settlement Value") will be paid to the Class in the form of an increase to their monthly pension benefit payments. This method matches the claims that form the basis for the lawsuit; it also avoids potential negative tax and benefit consequences that can come from lump sum payments. In prior cases that I have worked on, some retirees have raised concerns that receiving a single lump sum payout could negatively impact their taxes and/or jeopardize their eligibility for certain health insurance benefits, the eligibility for which is dependent on annual income amounts.

22. The Settlement is non-reversionary. The payments will be made automatically and fully over the course of the Class Members' lives, ensuring that none of the Settlement will be returned to HII.

23. Based on an analysis of the data provided by Defendants, the Settlement will provide real and meaningful benefits to Class Members. There are 1994 people in the Class, and the average per-Class Member present value of the gross settlement amount is approximately $1,400. The average per-class member present value of the settlement, net of the proposed awards for attorneys' fees, costs and expenses (discussed below) is approximately $888. Each Class Member's monthly benefit increase will depend upon the total value of their past and future benefit

payments under the Covered Plan, as well as their age and (where applicable) the age of their beneficiary as of January 1, 2022.

24. ***Equitable Treatment of Class Members:*** The Plan of Allocation was designed to ensure that Class Members receive compensation both for the shortfall in benefit payments that they have already received as well as benefits they are scheduled to receive in the future. Accordingly, the Net Settlement Amount is equitably allocated among Class Members and/or their Associated Beneficiaries in proportion to the ***total value*** of their past ***and*** future pension benefit payments.

25. The plan of allocation in the Settlement does not take into account the specific damages that might have been established for each Class Member if the case had gone to trial. The primary reason for this is that doing so would have involved considerable additional costs for actuarial work, which would have necessarily lowered the Net Settlement Amount that would be distributed to the Class. Because the Class is relatively small and the total amount of damages was not high, Plaintiff and Class Counsel determined that the additional costs of obtaining greater precision in the plan of allocation outweighed its value.

26. ***Release:*** If approved, all Class Members will be deemed to provide a release of certain claims. Plaintiff took care to ensure that the scope of the release is tailored to the claims at issue in the case. Specifically, the Settlement releases only claims "arising on or before January 17, 2020 that were brought, or could have been brought, arising out of, or relating to, the allegations in the Complaint." The Settlement further specifies that "claims by Class Members (other than Plaintiff) that are not or could not be related to the allegations in the Complaint" are not released.

27. ***Provisions Related to Attorneys' Fees, Expenses and Case Contribution Award:*** The Settlement provides that Plaintiff will ask the Court to make an award of attorneys' fees equal

to 25% of the Gross Settlement Amount, and will also request reimbursement of expenses (which, as discussed below, are currently just under $00,00). The Settlement also provides that Plaintiff will request a case contribution award of $10,000 for his services on behalf of the Class. Importantly, the Settlement clearly provides that any amounts deducted from the Gross Settlement Amount for payment of the Fees, Expenses and Costs Award must be approved by the Court, and the Settlement itself is not contingent upon the Court approving any such awards. Furthermore, the Settlement does not include a "clear-sailing" clause. Defendants are free to object to Plaintiff's motion for a Fees, Expenses and Costs Award.

28. If the Court approves the requested Fees, Expenses and Costs Award in full, the Net Settlement Amount – the amount that will increase the benefits paid to members of the Class – will be approximately 22 percent of the class-wide damages calculated by Plaintiff's expert.

IV. Evaluation of the Reasonableness of the Settlement

29. IKR has substantial experience in class actions, complex litigation and ERISA litigation. A copy of the firm's resume is attached to this Declaration as Exhibit B. Over the course of the past several years, IKR and B&G have served as counsel for Plaintiffs in several cases involving ERISA's actuarial equivalence requirements. Published decisions in these cases include *Herndon v. Huntington Ingalls Indust. Inc.*, No. 19-52, 2020 WL 5809965, at *1 (E.D. Va. Aug. 28, 2020) (cross-motions for summary judgment), *report and recommendation adopted sub nom. Herndon v. Huntington Ingalls Indus., Inc.*, No. 19-52, 2020 WL 5809996 (E.D. Va. Sept. 29, 2020); *Masten v. Metro. Life Ins. Co.*, No. 18-CV-11229 (RA), 2021 WL 2418464 (S.D.N.Y. June 14, 2021) (motion to dismiss); *Belknap v. Partners Healthcare Sys., Inc.*, No. 19-11437-FDS, 2020 WL 4506162 (D. Mass. Aug. 5, 2020) (same); *Smith v. Rockwell Automation, Inc.*, 438 F. Supp. 3d 912 (E.D. Wis. 2020) (same); *Duffy v. Anheuser-Busch Companies, LLC*, 449 F. Supp.

3d 882 (E.D. Mo. 2020) (same); *Smith v. U.S. Bancorp,* No. 18-3405, 2019 WL 2644204, at *1 (D. Minn. June 27, 2019) (same); *Torres v. Am. Airlines, Inc.*, 416 F. Supp. 3d 640 (N.D. Tex. 2019) (same).

30. Based on our experience, knowledge of evolving caselaw and substantial investigation of the facts at issue in this case, IKR strongly supports the proposed Settlement. Several factors are particularly important to this analysis.

31. While the case survived Defendants' Motion to Dismiss and Motion for Summary Judgment, both liability and damages turned on the Parties' experts' dueling views of what are "reasonable" actuarial assumptions. Plaintiff and HII each retained actuarial experts that provided radically different opinions on this issue. *See* Dkt. 54-2, 54-3, 54-4, 55-12, 65-1, and 85-1. Plaintiff is confident in his expert's opinion and believed that the opinion of Defendants' expert, Thomas Terry, was sufficiently lacking in credibility to move to exclude it (Dkt. 61). Notably, however, while Magistrate Judge Miller's Report and Recommendations found that both experts' opinions were sufficiently credible as to be admissible (Dkt. 106, at 8-26), he noted in his opinion that he might be persuaded by the arguments of Huntington's actuary if he were sitting as the finder of fact based on the record before him. *Id.* at 34.

32. If the Court had credited Terry entirely at trial, Plaintiff's case would have failed altogether. If the Court had credited Terry even ***in part,*** damages to the Class might have been dramatically lower. For example, even if the Court only credited Terry's proposed discount rate assumption, that would have substantially lowered the amount of damages. Plaintiff believes that Terry's analysis is incorrect and that the Court would not accept his opinions at trial. However, cases that turn on the testimony of battling experts in arcane fields present significant risks for both parties.

33. At the time that this case was filed on May 20, 2019, no court had ruled on whether plans that used outdated actuarial factors might violate ERISA's actuarial equivalence requirements. While the statutory requirement is long-standing, until that time its application had not been tested in court. Even as of now, no similar case has gone to trial, nor has any appellate court weighed in on the soundness of the legal theory at the heart of the case. Defendants have made numerous legal arguments that, if credited, would result in a judgment in their favor. While Plaintiff believes that Defendants' legal arguments are without merit, there is no question that this area of law is evolving and that Defendants' arguments create a risk that Plaintiff might recover less than a full recovery, or nothing at all.

V. Evaluation of the Reasonableness of the Attorneys' Fee Request

34. Plaintiff will request an award of $700,000 in attorneys' fees. As noted above, the Settlement provides that this amount will be paid by the Defendant in the first instance, but, like payments for litigation expenses and the Case Contribution Award (discussed below), the percentage of the Settlement awarded in attorneys' fees will be applied as a reduction to Class Members' future benefits. In this way, the Class that benefits from the Settlement will share equally in paying for the legal services that generated that benefit, just as in any other common fund case.

35. Plaintiff's requested fee is 25% of the Settlement's $2.8 million present value. "Under the percentage-of-the-fund method, courts base attorneys' fee awards on a percentage of the common recovery's value, usually between 25 percent and 30 percent." *Hooker v. Sirius XM Radio, Inc.*, No. 13-3, 2017 WL 4484258, *2 (E.D. Va. May 11, 2017). The requested award is at the low end of this spectrum.

36. Analyzing 458 class action settlements between 2009 and 2013, Professors

Eisenberg, Miller and Germano found that the median fee award was 29 percent. *See* Theodore Eisenberg, Geoffrey Miller and Roy Germano, *Attorneys' Fees in Class Actions, 2009-2013,* ("Eisenberg Study"), Law & Econ. Research Paper Series (Dec. 2016), at 11. Both the mean and median percentage awards for ERISA cases was 26 percent. *Id.* at 13. Plaintiff's request of a fee request equal to 25 percent is lower than these averages.

37. This case is factually, technically and legally complex, requiring counsel to master then intricacies of obscure provisions of ERISA, the Pension Protection Act, the Tax Code and implementing regulations, as well as the complexities of actuarial valuations and benefit calculations. It could only be litigated by firms with a high degree of competence in ERISA law, complex litigation and class actions. The attorneys at IKR and B&G are well-qualified. Indeed, they are almost the only firms involved in litigating the question of whether retirement plans that have failed to update their actuarial assumptions and conversion factors are providing actuarially equivalent benefits to plan participants.

38. Litigating the case on a pure contingency required counsel to shoulder an unusually high degree of risk. The theory of the case was novel and untested, and proving both liability and damages required sophisticated expert testimony. The expense for work by experts alone was over $240,000. If the case been litigated to trial, counsel would have had to pay far greater amounts out of pocket, with no assurance of recovering those expenses, not to mention the investment of countless hours of attorney time.

VI. Information Concerning Counsel's Lodestar and Expenses

39. In preparation for filing this motion, I reviewed IKR's time and out-of-pocket expenses in connection with the current litigation.

40. The information in this declaration regarding my firm's time and expenses is taken from contemporaneous time and expense printouts prepared and maintained by my firm in the ordinary course of business. The time reflected in my firm's lodestar calculation and the expenses for which payment is sought are reasonable and were necessary for the effective and efficient prosecution and resolution of the litigation. In addition, the expenses are all of a type that would normally be charged to a fee-paying client in the private legal marketplace. IKR prosecuted this case on a wholly contingent basis and has not received any compensation to date for either its litigation expenses or its time.

41. A summary of IKR's hours and lodestar in the case as of November 7, 2021, is shown in the following table:

Attorney	Years of Practice	Rate	Hours	Lodestar
Robert A. Izard	38	$ 925	442.5	409,312.50
Mark P. Kindall	33	$ 850	474	402,900
Craig A. Raabe	32	$ 850	0.5	425.00
Seth R. Klein	25	$ 750	28.75	21,56.50
Douglas P. Needham	14	$ 650	519.75	337,837.50
Jennifer D. Somers	18	$300	108.25	32,475.00
Christopher M. Barrett	12	$550	5.5	3,025.00
Oren Faircloth	5	$ 350	393.25	125,562.50
Eileen McGee	Paralegal	$180	2.5	450.00
Jude Reid	Paralegal	$ 180	64.5	11,610
Total			**2039.5**	**$1,323,597.50**

42. Biographical details for the IKR attorneys who worked on the case are included at the end of the Firm's resume, attached as Exhibit B to this declaration.

43. The hourly rates shown in the chart are IKR's normal rates for both hourly customers and class action work (although hourly clients can receive a discount for prompt payment). IKR's class action work is a specialized national practice; we do not charge differential rates based on the location where a lawsuit is filed. Courts have approved IKR's fees in class actions litigated all over the country.

44. In the course of our nationwide practice, attorneys at IKR have worked with many of the firms that typically represent plaintiffs in ERISA class actions nationwide. As a result, we are familiar with the rates charged by other firms in our practice area. In our experience, our rates are broadly in line with rates of other firms with nationwide ERISA class action practices, and have been the basis for awards of fees in courts around the country.

45. Firms that litigate high-stakes class action cases against major international corporations such as Raytheon can only succeed with lawyers who are able to match the experience, talent and resources of the largest, most respected law firms in the country. The firm representing Defendants in this action – Alston & Bird LLP – is a major national and international firm, with over 750 attorneys and offices in Atlanta, Beijing, Brussels, Charlotte, Dallas, Fort Worth, London, Los Angeles, New York, Palo Alto, Raleigh, San Francisco and Washington, D.C. Alston & Bird's hourly rates appear to be comparable to IKR's, as shown in *HomeGoods, Inc. v. Papanicolaou*, No. CV1906912CJCPLAX, 2019 WL 7171541, at *8 (C.D. Cal. Dec. 4, 2019), an IP case decided two years ago where the court awarded attorneys' fees based on the following rates for Alston & Bird attorneys: "$915 per hour for partner Larry Jones, $850 per hour for partner Yuri Mikulka, $710 for senior associate Evan Woolley, $630 for senior associate Lauren Timmons, $435 for junior associate Sara Miller, and $195 for librarian Elizabeth Powell-Whyte."

VII. Information Concerning Expenses

46. IKR has also incurred $149,683.93 in out-of-pocket expenses while prosecuting this case, as summarized by category in the table below.

Category	Amount
Experts/Investigation	$123,215.67
Research/Discovery	$121.10
Sheriff/Service Fees	$99.00
Transcripts	$8,935.40
Travel	$16,895.88
Postage/Delivery	$416.88
Total Expenses	**$149,683.93**

47. These expenses were necessary to the successful prosecution of this action, and are typical of the types of expenses that IKR would bill to clients in non-contingency cases.

VIII. Information About the Case Contribution Award

48. Class Counsel has requested that the Court award a case contribution award to Mr. Herndon of $10,000. That amount would reduce the Net Settlement Amount which will be paid to the Class.

49. Mr. Herndon has been an active participant in the litigation from the outset, providing documents to Plaintiff's counsel, reviewing court filings, being deposed by Defendants' counsel, participating in both mediation sessions, and consulting with counsel when the Settlement was being negotiated. The case could not have been litigated without Mr. Herndon. His efforts on behalf of all members of the Class deserve compensation. A declaration from Mr. Herndon is attached as Exhibit C.

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

Executed this 12th day of November, 2021 in West Hartford, Connecticut.

/s/ *Douglas P. Needham*
Douglas P. Needham

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
NEWPORT NEWS DIVISION

Roger A. Herndon, on behalf of himself and all others similarly situated, Plaintiff, vs. Huntington Ingalls Industries, Inc., the HII Administrative Committee, and John/Jane Does 1–5, Defendants.	Civil Action No.: 4:19-cv-00052-RCY-LRL CLASS ACTION

Declaration of Douglas P. Needham

EXHIBIT A

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
NEWPORT NEWS DIVISION

Roger A. Herndon, on behalf of himself and all others similarly situated, Plaintiff, vs. Huntington Ingalls Industries, Inc., the HII Administrative Committee, and John/Jane Does 1–5, Defendants.	Civil Action No.: 4:19-cv-00052-RCY-LRL CLASS ACTION

SETTLEMENT AGREEMENT

This Settlement Agreement ("Settlement," "Settlement Agreement," or "Agreement"), dated November 11, 2021, is made and entered into by and among (i) Plaintiff Roger Herndon ("Plaintiff"), on behalf of himself and each member of the Class ("Class Members"), by and through counsel for Plaintiff and the Class ("Class Counsel"), and (ii) Huntington Ingalls Industries, Inc. ("HII") and the HII Administrative Committee (collectively, "Defendants"), subject to the approval of the United States District Court for the Eastern District of Virginia, pursuant to Rule 23(e) of the Federal Rules of Civil Procedure.

This Settlement is intended by the Parties to fully, finally, and forever compromise, resolve, discharge, and settle the Released Claims against Defendants and the Related Parties and result in the complete dismissal of this Action with prejudice, upon and subject to the terms and conditions herein.

WHEREAS:

A. On May 20, 2019, Plaintiff filed a class action complaint in the United States District Court for the Eastern District of Virginia asserting various claims for relief under the

Employee Retirement Income Security Act of 1974, as amended ("ERISA") on behalf of a putative class of certain participants and beneficiaries in the "Legacy" part of the Huntington Ingalls Industries, Inc. Newport News Operations Pension Plan for Employees Covered by United Steelworkers Local 8888 Collective Bargaining Agreement (the "Covered Plan"). ECF No. 1. In his Complaint, Plaintiff challenged the actuarial assumptions used by the Covered Plan to convert Single Life Annuities into alternative forms of payment, including Joint and Survivor Annuities and Pre-Retirement Survivor Annuities.

B. On June 27, 2019, Defendants filed their Motion to Dismiss the Complaint. ECF No. 10. The Court orally denied Defendants' Motion at a hearing on February 18, 2020, with the decision memorialized in a written order on February 20, 2020. ECF No. 73.

C. While the Motion to Dismiss was still pending, the Court entered a scheduling order (the "Scheduling Order") pursuant to Fed. R. Civ. P. 26(f). ECF No. 27.

D. In accordance with the Scheduling Order, the Parties engaged in fact and expert discovery, which included the production of internal HII documents, emails and data, the deposition of HII executives and of Plaintiff Roger Herndon, the exchange of expert reports, and the depositions of the Parties' respective experts.

E. Plaintiff proffered an actuarial expert who opined that the actuarial assumptions used by the Covered Plan to convert Single-Life Annuities into Joint and Survivor Annuities did not result in Joint and Survivor Annuity benefits that were actuarially equivalent to the Single-Life Annuities Class Members could have selected at retirement. Plaintiff's expert opined that, in order to provide an actuarially equivalent benefit, the Covered Plan should have used actuarial assumptions concerning mortality and interest rates that were reasonable as of Class Members' annuity start dates. Plaintiff's expert also opined on actuarial assumptions that would have been reasonable for each year during the Class Period.

F. Defendants proffered an expert who opined that the actuarial assumptions used by the Covered Plan to convert Single-Life Annuities into Joint and Survivor Annuities resulted in reasonable Joint and Survivor Annuities that were within the range of actuarially equivalent benefits. Defendants' expert opined that, at all times during the Class Period, the Joint and Survivor Annuities offered by the Covered Plan were at least actuarially equivalent to Single-Life Annuities using reasonable actuarial assumptions.

G. Plaintiff filed his Motion for Class Certification on December 13, 2019. ECF No. 46. On January 17, 2020, the Parties filed a stipulation that the claims set forth in the Motion for Class Certification were appropriate for certification under Rule 23. ECF No. 48. Accordingly, on February 25, 2020, the Court certified a Class under Fed. R. Civ. P. 23(b)(1) defined as follows:

> All participants or beneficiaries of the "Legacy" part of the Huntington Ingalls Industries, Inc. Newport News Operations Pension Plan for Employees Covered by United Steelworkers Local 8888 Collective Bargaining Agreement, who began receiving pension benefits in the form of a joint and survivor annuity during the Class Period, which shall be defined as May 20, 2013 through January 17, 2020. Excluded from the Class are Defendants and any individuals who are subsequently determined to be fiduciaries of the Plan.

ECF No. 76, at 2.

H. After the completion of expert discovery, Defendants filed, *inter alia*, their Motion for Summary Judgment and their Motion to Exclude Plaintiff's Expert (ECF Nos. 53 and 78), while Plaintiff filed, *inter alia*, his Motion to Exclude Defendants' Expert (ECF No. 61). All motions were fully briefed and argued on July 24, 2020. ECF No. 103.

I. On August 28, 2020, Magistrate Judge Miller issued a Report and Recommendation on the pending motions, recommending that all three motions be denied. ECF No. 106. Defendants filed their Objections to the Report and Recommendation on September 11, 2020 (ECF No. 108), which the Court overruled on September 29, 2020, adopting and approving Magistrate Judge Miller's Report and Recommendation in full (ECF

No. 113). At a subsequent status conference on January 25, 2021, the Court set the case for a bench trial beginning on November 8, 2021. ECF No. 114. The Court also set a date for a Settlement Conference with a Magistrate Judge. *Id.*

J. The Parties participated in a Settlement Conference with Magistrate Judge Miller on June 14, 2021. The Parties were unable to reach agreement on a Settlement during that Conference.

K. The Parties participated in a second Settlement Conference with Magistrate Judge Miller on September 8, 2021, during which the Parties reached an agreement in principle with respect to the amount of the Settlement and other key issues related to the structure of a Settlement Agreement.

NOW, THEREFORE, the Parties, in consideration of the promises, covenants, and agreements herein described, and for other good and valuable consideration, acknowledged by each of them to be fair and reasonable, and intending to be legally bound, do hereby mutually agree as follows, subject to Court approval:

I. Definitions

For purposes of this Settlement Agreement, the following terms, when used in capitalized form, will have the meanings indicated below. Occasionally, a term may be defined in this or another section of the Agreement by putting quotation marks around the term and placing the term in a parenthetical following its definition or by putting quotation marks around the term within a sentence defining the term; a term defined in this manner is considered to be defined in this Section I.

A. "Action" means the class action pending in this Court under the caption *Herndon v. Huntington Ingalls Industries, Inc.*, Case No. 4:19-cv-00052-RCY-DEM (E.D. Va., Newport News Div.).

B. "Annuitization Assumptions" means (a) the substitute mortality table applicable to the Covered Plan approved by the Internal Revenue Service on April 3, 2019, modified to be a unisex table weighted 86% male, 14% female for participants, and 14% male, 86% female for beneficiaries; and (b) interest using the segment rates of 4.75% for the first segment rate, 5.18% for the second segment rate, and 5.92% for the third segment rate.

C. "Annuity Start Date" means (i) for a Participant Class Member or a Surviving Spouse Class Member, the date he or she began receiving annuity benefit payments from the Covered Plan; and (ii) for a Beneficiary Class Member, the date the Beneficiary Class Member's Associated Participant began receiving annuity benefit payments from the Covered Plan.

D. "Associated Beneficiary" shall mean the person a Participant Class Member has designated to receive a contingent annuity under the Covered Plan.

E. "Associated Participant" shall mean the Covered Plan Participant who designated a Beneficiary Class Member to receive a contingent annuity under the Covered Plan.

F. "Beneficiary Class Member" is the Associated Beneficiary of a deceased Participant Class Member.

G. "Benefit Increase Payment Date" shall mean a date no later than the first day of the first calendar month that is at least one hundred and twenty (120) days after Final Approval.

H. "CAFA" means the Class Action Fairness Act of 2005, 28 U.S.C. § 1715, as amended.

I. "Claims" means any and all actions, causes of action, claims, demands, liability, obligations, promises, rights, and suits whatsoever, whether arising under federal, state, local, or foreign law, whether based on statute, ordinance, regulation, constitutional provision, common law, contract, the terms of any of the Covered Plans, or any other source (including

but not limited to ERISA), whether past, present, or future, known or unknown, asserted, or unasserted, foreseen or unforeseen, actual or contingent, liquidated or unliquidated.

J. "Class" means the Class certified by the Court pursuant to Fed. R. Civ. P. 23(b)(1) on February 25, 2020.

K. "Class Counsel" means the law firms of Izard, Kindall & Raabe LLP and Bailey & Glasser LLP.

L. "Class Member" means a member of the certified class.

M. "Clerk of Court" means the Clerk of the United States District Court for the Eastern District of Virginia.

N. "Client Contribution Award" shall have the meaning ascribed to it in Section II(E), *infra*.

O. "Complaint" means the Complaint filed in this Action, located at ECF No. 1.

P. "Covered Plan" means the "Legacy" part of the Huntington Ingalls Industries, Inc. Newport News Operations Pension Plan for Employees Covered by United Steelworkers Local 8888 Collective Bargaining Agreement.

Q. "Court" means the United States District Court for the Eastern District of Virginia.

R. "Court of Appeals" means the United States Court of Appeals for the Fourth Circuit.

S. "Current Monthly Benefit" means the monthly benefit amount that a Deceased Class Member received before his or her death, and that all other Class Members are scheduled to receive as of December 31, 2021.

T. "Deceased Class Members" means the Class Members who are not receiving monthly pension benefits when the Covered Plan begins paying additional benefits under the Settlement because of their death, and includes: (a) a Participant Class Member, when both the

Participant and the Participant's Beneficiary are deceased; (b) a Beneficiary Class Member when that Class Member is deceased; and (c) a Surviving Spouse Class Member, when the Surviving Spouse Class Member is deceased.

U. "Defendants' Counsel" means the law firms of Alston & Bird LLP and McGuireWoods LLP.

V. "Email Notice" means the short form of notice, substantially in the form shown in Exhibit 1, which will be sent to Class Members who have designated an email address as their method of receiving communications from the Covered Plan.

W. "ERISA" means the Employee Retirement Income Security Act of 1974, as amended.

X. "Estate Claim Form" means the document attached as Exhibit 2 hereto that the estate or heirs of Deceased Class Members must complete to receive the lump sum payment amount described in Section III(F), *infra*.

Y. "Fees, Expenses and Costs Award" shall mean the award of attorneys' fees, expenses and costs to Class Counsel in accordance with the provisions of Section II(F), and the Client Contribution Award described in Section II(E), *infra*.

Z. "Final" when referring to an order or judgment means: (1) that the time for appeal or appellate review of the Judgment has expired under applicable law, and no appeal has been taken; or (2) if there has been an appeal, (a) that appeal has been decided by all appellate courts without causing a material change in the order or judgment; or (b) that the order or judgment has been upheld on appeal and is no longer subject to appellate review by further appeal or writ of certiorari.

AA. "Final Approval" of this Settlement occurs when the Judgment has been entered by the Court and either (1) the time for appeal or appellate review of the Judgment has expired under applicable law, and no appeal has been taken; or (2) if there has been an appeal, (a) that

appeal has been decided by all appellate courts without causing a material change in the Judgment; or (b) that the Judgment has been upheld on appeal and is no longer subject to appellate review by further appeal or writ of certiorari.

BB. "Final Approval Hearing" means the hearing set by the Court in the Preliminary Approval Order pursuant to Rule 23(e) of the Federal Rules of Civil Procedure to consider, among other things, approval of the Settlement.

CC. "Gross Settlement Amount" shall mean $2.8 million.

DD. "HII" refers to Huntington Ingalls Industries, Inc.

EE. "Judgment" means an order and judgment, to be entered by the Court pursuant to Rule 54(b) of the Federal Rules of Civil Procedure approving the Agreement and the proposed Settlement embodied herein.

FF. "JSA" means a "joint and survivor annuity," *i.e.*, a monthly annuity for the life of the participant with a monthly survivor annuity (following the participant's death) for the life of the participant's beneficiary (if the beneficiary survives the participant) which is not greater than 100% of the amount of the monthly annuity payable during the joint lives of the participant and the beneficiary.

GG. "Monthly Benefit Increase" shall mean the increase to each Class Member's Current Monthly Benefit under the Settlement, calculated in accordance with Section III(B), *infra.*

HH. "Net Settlement Amount" shall mean the Gross Settlement Amount minus the total amount of the Fees, Expenses and Costs Award.

II. "Notice" means the Notice of Pendency of Class Action and Proposed Settlement, substantially in the form attached hereto as Exhibit 3, which is to be sent to members of the Settlement Class.

JJ. "Participant Class Member" is a participant in the Covered Plan who began receiving benefits in the form of a JSA during the Class Period.

KK. "Parties" means, collectively, (1) Defendants and (2) Plaintiff, by and through his attorneys, on behalf of himself and the Settlement Class.

LL. "Preliminary Approval Order" means the order, substantially in the form attached hereto as Exhibit 4, to be entered by the Court preliminarily approving the Settlement; approving the contents and method of distribution of the Notice; and scheduling a Final Approval Hearing.

MM. "PSA" means a "preretirement survivor annuity," *i.e.*, an annuity (i) that is paid in respect of a participant who dies before he or she begins to receive benefits from the Covered Plan; (ii) that is paid to the surviving spouse of that participant in a Covered Plan for the life of the surviving spouse; and (iii) that is calculated as the survivor annuity component of a hypothetical JSA that would have been payable to the participant if he or she had begun to receive benefits from the Covered Plan prior to his or her death (with the SLA to which such participant would have been entitled being converted to such JSA).

NN. "Recalculated Benefit Amount" refers to the sum of the Class Member's Current Monthly Benefit and his or her benefit increase under the settlement. In no case shall a Class Member's Recalculated Benefit Amount be less than the Class Member's Current Monthly Benefit.

OO. "Related Parties" include the Defendants and all of the officers, directors, employees, agents, attorneys, actuaries, members, managers, advisors, insurers, trustees, administrators, service providers, and fiduciaries of HII, the Covered Plan or the Defendants, and the predecessors, successors, assigns, family members, heirs, executors, trustees, representatives, and administrators of any of the foregoing.

PP. "Released Claims" are those Claims that are released by the Settlement in accordance with the provisions of Section IV(A), *infra*.

QQ. "Released Parties" shall include the Defendants and Related Parties.

RR. "Settlement Amendment" shall mean the amendment to the Covered Plan described in Section III(A), *infra*.

SS. "Settlement Assumptions" means (a) the substitute mortality table applicable to the Covered Plan approved by the Internal Revenue Service on April 3, 2019; and (b) interest using the segment rates of 4.75% for the first segment rate, 5.18% for the second segment rate, and 5.92% for the third segment rate.

TT. "SLA" means a "single life annuity," *i.e.*, a monthly annuity for the life of an individual, with no benefit payable following that individual's death.

UU. "Supreme Court" means the United States Supreme Court.

VV. "Surviving Spouse Class Member" is a person who began receiving PSA benefits from the Covered Plan during the Class Period.

II. Procedures

A. Motion for Preliminary Approval. Promptly after the execution of this Agreement, Plaintiff, by and through Class Counsel, with Defendants' consent, shall submit to the Court a copy of this Agreement, together with the exhibits hereto, and move the Court for entry of the Preliminary Approval Order, that provides for, among other things:

1. Preliminary approval of this Settlement Agreement under Federal Rule of Civil Procedure 23(e);

2. Approval of the contents and method of distribution of the Notice; and

3. Scheduling a Final Approval Hearing.

B. Notice.

1. No later than ten (10) days after the filing of this Agreement with the Court, Defendants shall arrange for effective service of a Notice of the Settlement on the appropriate federal and state officials that meets the requirements of the CAFA. All costs associated with providing notice pursuant to CAFA shall be borne by Defendants.

2. After the entry of the Preliminary Approval Order, Defendants will notify Settlement Class Members of the proposed Settlement, of the date and time of the Final Approval Hearing, and of their right to object to this Agreement, any award of attorneys' fees and costs pursuant to this Agreement, and any Client Contribution Award. Subject to Court approval, the Notice will be transmitted to Class Members by the method the Class Member has designated for receipt of communications from the Covered Plan, or by first class mail to the last known address of the Class Member that is maintained in the Covered Plan's records if the Class Member has not designated any method. For Deceased Class Members, the Notice will be sent to the last address maintained by the Covered Plan for the Deceased Class Member.

3. Class Members who have designated an email address as their method of receiving communications from the Covered Plan will be sent the Email Notice, substantially in the form of Exhibit 1, which will include links to the Settlement website where Plaintiff will post the full Notice and other Settlement-related documents. Class Members who receive notice by first class mail will be sent the Notice, substantially in the form of Exhibit 3

4. Defendants will send the Email Notice and mailings of the Notice to Settlement Class Members within forty-five (45) days after entry of the Preliminary Approval Order, or such other date as the Court may set in a Preliminary Approval Order. In the event that a notice is returned as undeliverable, Defendants will use commercially reasonable means to find a current address and re-send the Notice.

C. Costs of Notice. Defendants will pay the cost of Notice.

D. Entry of Judgment. At the Final Approval Hearing, Plaintiff will request that the Court issue an order:

1. entering the Judgment;

2. awarding attorneys' fees, expenses, and costs to Class Counsel consistent with the terms of this Agreement; and

3. granting a Client Contribution Award to Plaintiff consistent with the terms of this Agreement.

E. Client Contribution Award. At the Final Approval Hearing, Class Counsel will petition the Court for a client contribution award (the "Client Contribution Award") to be paid to Plaintiff in the amount of $10,000. The Client Contribution Award will reduce the present value of the Settlement amount to be paid to Class Members in the form of annuity payments.

F. Payment of Attorneys' Fees, Expenses and Costs Award.

1. At the Final Approval Hearing, Class Counsel will petition the Court for a lump-sum award of reasonable attorneys' fees equal to 25% of the Gross Settlement Amount, plus reimbursement of litigation expenses and costs. The attorneys' fees, expenses and costs awarded by the Court will reduce the present value of the Settlement amount to be paid to Class Members in the form of annuity payments.

2. The Settlement is not contingent upon the Court approving the Fee, Expense and Cost Award that Class Counsel will request in accordance with paragraph 1 above.

3. Within thirty (30) days of Final Approval, Defendants will wire to one or more accounts specified by Class Counsel an amount equal to the Court's award of attorneys' fees, expenses and costs and the Client Contribution Award (the "Fees, Expenses and Costs Award").

G. Termination Rights. Defendants and Plaintiff shall have the right to terminate the Settlement by providing written notice to the other of the election to do so within thirty (30) days of the date on which any of the following occurs: (a) the Court declines to enter the Preliminary Approval Order in any material respect; (b) the Court refuses to approve the Settlement or any material term hereof; (c) the Court declines to enter the Judgment in any material respect; or (d) the Judgment is modified or reversed in any material respect by the Court of Appeals or the Supreme Court. Notwithstanding the foregoing, any decision by the Court or the Court of Appeals with respect to an application for attorneys' fees or costs shall not be considered material to this Settlement and shall not be grounds for termination. The termination rights set forth herein are not intended to limit or impair the Parties' rights under the law of contracts of the Commonwealth of Virginia with respect to any breach of this Agreement.

III. Consideration.

A. Plan Amendment. Within sixty (60) days after Final Approval, the Covered Plan shall be amended (the "Settlement Amendment") to provide that, effective for payments on or after January 1, 2022, each Class Member is entitled to an increased monthly amount of a benefit, in the form of benefit in effect as of December 31, 2021, which will allocate the Net Settlement Amount among Class Members and/or their Associated Beneficiaries in proportion to the total value of their past and future pension benefit payments.

B. Calculation of Monthly Benefit Increases: Except for Deceased Class Members, discussed below, each Class Member shall receive an increase in his or her monthly benefits determined in accordance with the following steps:

(1) calculate the total amount of benefits paid to each Class Member and/or his or her Associated Participant, including interest at 4.5% annually from the date each benefit

was paid, from the beginning of the Class Period until January 1, 2022 (the "Past Benefit Amount");

(2) calculate the value of the Past Benefit Amount if paid as a monthly benefit in the same form (*e.g.*, a 50 or 75% JSA) as the Class Member is currently receiving using the Annuitization Assumptions (the "Adjusted Past Benefit");

(3) The Monthly Benefit Increase is the Settlement Percentage multiplied by the sum of (a) the Adjusted Past Benefit and (b) the Currently Monthly Benefit. The Settlement Percentage is calculated by dividing the Net Settlement Amount by the sum of (i) the Past Benefit Amounts of all Deceased Class Members, (ii) the present value as of January 1, 2022 of the Adjusted Past Benefits for all Class Members and/or Associated Participants (other than Deceased Class Members), and (iii) the present value of all future benefit payments owed to Class Members (before the increase contemplated by this Agreement) as of January 1, 2022 (with (ii) and (iii) calculated using the Settlement Assumptions).

C. Timing of Benefit Increase. The Settlement Amendment shall provide that any increase in benefits on account of the Settlement Amendment shall begin to be paid no later than the first day of the first calendar month that is at least one hundred and twenty (120) days after Final Approval (the "Benefit Increase Payment Date"), and shall include a lump sum equal to the sum of such increases in monthly payments due from January 1, 2022 until the Benefit Increase Payment Date (provided that no interest is required for such period).

D. QDROs. Notwithstanding the foregoing, the amount actually payable to a Class Member following approval of the settlement is subject to the terms of any Qualified Domestic Relations Order ("QDRO") with respect to division of benefits between the Participant and the QDRO's alternate payee.

E. Calculation of Benefits Upon the Death of a Participant Class Member. Upon the death of a Participant Class Member, the amount of the survivor annuity payable to the Participant Class Members' beneficiary, if any, shall be determined using the Class Members' Recalculated Benefit Amount in a manner consistent with the terms of the Covered Plan.

F. Calculation of Benefits for Deceased Class Members. Upon the completion and return of an Estate Claim Form attached hereto as Exhibit 2 ("Estate Claim Form"), the Covered Plan shall pay the estate of a Deceased Class Member (the participant or beneficiary, whichever is most recently deceased) a lump sum amount equal to the Class Member's Past Benefit Amount multiplied by the Settlement Percentage. The Claim form must be returned to Defendants by no later than six months from the date of Final Approval.

IV. Releases

A. Released Claims

This Agreement and the Judgment shall fully and finally release any and all Claims against Defendants and the Related Parties (collectively, the "Released Parties"). The Judgment shall also provide for the dismissal with prejudice of the Action against Defendants, without costs to any Party, except for the payments expressly provided for herein.

Upon entry of the Judgment by the Court, Plaintiff and each Settlement Class Member shall be deemed to forever release and discharge the Released Parties from any and all Claims arising on or before January 17, 2020 that were brought, or could have been brought, arising out of, or relating to, the allegations in the Complaint. For the avoidance of doubt, a Claim arises on or before January 17, 2020 if a Class Member's benefit amount is determined as of January 17, 2020 or earlier, even as to monthly payments made after January 17, 2020. "Released Claims" do not include claims by Class Members (other than Plaintiff) that are not or could not be related to the allegations in the Complaint.

B. Covenant Not to Sue. Plaintiff expressly agrees that he, acting individually or in combination with others, will not institute, maintain, prosecute, sue, or assert in any action or proceeding any Released Claim.

C. Acknowledgement of Release of Unknown Claims. Plaintiff and Settlement Class Members expressly acknowledge certain principles of law applicable in some states provide that a 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. Plaintiff and Settlement Class Members hereby knowingly and voluntarily waive and relinquish the protections of any such principles of law or provisions.

D. Action to Enforce Agreement. Nothing herein will preclude an action to enforce the terms of this Agreement.

E. No Admission of Wrongdoing. Whether or not the Settlement, as embodied in this Agreement, is approved by the Court, and whether or not this Settlement is consummated, the fact and terms of this Settlement, including the exhibits and appendices attached hereto, the settlement embodied within it, all negotiations, discussions, drafts, and proceedings in connection with the Settlement, and any act performed or document signed in connection therewith:

1. shall not be offered or received against Defendants or Released Parties as evidence of, or be deemed to be evidence of, any presumption, concession, or admission by any of the Defendants or Released Parties with respect to the truth of any fact alleged by Plaintiff or the validity, or lack thereof, of any Claim that has been or could have been asserted in the Action or in any litigation, or of any liability, negligence, fault, or wrongdoing on the part of Defendants or the Released Parties;

2. shall not be offered or received against Defendants or the Released Parties as evidence of a presumption, concession, or admission with respect to any liability, negligence, fault, or wrongdoing, or in any way referred to for any other reason as against any of the foregoing 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 this Settlement; provided, however, that if the Settlement is approved by the Court, Defendants and the Released Parties may refer to this Settlement to effectuate the protection from liability granted to them hereunder;

3. shall not be construed against Defendants or the Released Parties as an admission or concession that the consideration provided hereunder represents what could be or would have been recovered after trial; and

4. shall not be construed as or received in evidence as an admission, concession, or presumption against Plaintiff or the other Settlement Class Members that any of their claims are without merit or that relief recoverable under the Complaint would not have exceeded the consideration provided by this Agreement.

V. Miscellaneous

A. Purpose of Settlement. This Settlement Agreement is being entered into by the Parties solely to settle and compromise any and all disputes among the Parties as described more fully herein. This Agreement will not be construed or characterized, publicly or privately, by anyone as an admission of liability of any kind by the Defendants.

B. Cooperation Among the Parties. The Parties will cooperate fully with each other and will use their best efforts to obtain, and will not engage in any conduct to prevent, Court approval of this Agreement and all of its terms. The Parties will use their best efforts to implement the Agreement thereafter. Notwithstanding the foregoing, nothing in this

Settlement shall preclude Defendants from objecting to Plaintiff's motion for attorneys' fees, expenses or costs or to Plaintiff's motion for a Client Contribution Award.

C. Responsibility for Inquiries of Settlement Class Members Regarding Benefits. Any Party may respond to questions from any Settlement Class Member concerning that Settlement Class Member's benefit under this Settlement Agreement. The responses provided to such questions will not create or establish any liability on the part of the Covered Plan, Defendants, or the Released Parties that is not expressly specified in this Agreement.

D. Modifications. The Settlement may not be modified or amended, nor may any of its provisions be waived, except by a writing signed by all Parties or their successors-in-interest.

E. Binding Effect of the Agreement. The terms and provisions of this Agreement shall be binding upon and inure to the benefit of each of the Parties and the Related Parties and each of their respective predecessors, successors, beneficiaries, joint annuitants, estates, legal representatives, heirs, assigns, and any other individual or entity who could make a claim through them.

F. Multiple Originals/Counterparts. The Agreement may be executed in one or more counterparts, including by signature transmitted via facsimile or by a .pdf image of the signature transmitted by email. All executed counterparts and each of them shall be deemed to be one and the same instrument.

G. Authority of Persons Signing the Agreement. The individuals executing this Agreement for the Parties represent and warrant that they do so with full authority to bind each such party to the terms and provisions in this Agreement.

H. Entire Agreement. This Settlement Agreement, and the exhibits and appendices hereto, is the entire agreement and understanding among the Parties and supersedes all prior proposals, negotiations, agreements, and understandings. The Parties acknowledge,

stipulate, and agree that no covenant, obligation, condition, representation, warranty, inducement, negotiation, or understanding concerning any part or all of this Agreement has been made or relied upon except to the extent expressly set forth in this Agreement.

I. Arm's Length Transaction. The Parties agree that they have negotiated all terms and conditions of this Settlement Agreement at arm's length.

J. No Third-Party Beneficiaries. This Settlement Agreement shall not be construed to create rights in, or to grant remedies to, or delegate any duty, obligation, or undertaking established herein to, any third party as a beneficiary to this Agreement, except for the Released Parties.

K. Costs. Apart from the specific costs and duties assigned to each Party in this Agreement, the Parties hereby each agree to bear their own costs and expenses incurred in connection with the Action and this Agreement.

L. Section Titles. The headings in this Agreement are inserted as a matter of convenience only, and do not define, limit, or describe the scope of the Agreement or the intent of the provisions.

M. No Presumption Against Drafter. None of the Parties shall be considered to be the drafter of this Settlement Agreement or any of its provisions for the purpose of any statute, case law, or rule of interpretation or construction that would or might cause any provision to be construed against the drafter.

N. Waivers. The waiver by any Party of any breach of this Agreement shall not be deemed or construed as a waiver of any other breach, whether prior, subsequent, or contemporaneous to this Agreement.

O. Remedy for Breach. After entry of the Final Judgment, the only remedy for a breach of this Agreement will be to petition the Court for specific performance and/or compensatory damages for the breach, as may be available under applicable law.

P. Extensions of Time. The Parties may agree in writing to reasonable extensions of time to carry out any of the provisions of this Agreement, subject to approval by the Court.

Q. Severability. In the event that any one or more of the provisions contained in this Agreement shall, for any reason, be held invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall in no way affect any other provision if the Parties mutually elect in writing to proceed as if such invalid, illegal, or unenforceable provision had never been included in this Settlement Agreement.

R. Tax Consequences. No opinion concerning the tax consequences of the Settlement to individual Class Members is being given or will be given by Defendants, Defendants' Counsel, or Class Counsel, nor is any representation or warranty in this regard made by virtue of this Agreement. Each Class Member's tax obligations, and the determination thereof, are the sole responsibility of the Class Member, and it is understood that the tax consequences may vary depending on the particular circumstances of each individual Class Member.

S. This Agreement Governs. To the extent there is any inconsistency between this Settlement Agreement and any notice or other communication, this Settlement Agreement shall govern and operate to define the rights and obligations of the Parties and the Released Parties.

T. Choice of Law. The Parties understand and agree that this Agreement, and any disputes arising out of this Agreement, shall be governed by, and construed in accordance with, the laws of the Commonwealth of Virginia, without reference to choice of law presumptions.

U. Court's Continuing Jurisdiction. Without altering the finality of any of the Court's orders and judgments, the Court shall retain exclusive jurisdiction over Plaintiff, Defendants, Class Members, and the Action with respect to matters arising out of or connected

with the Settlement, and may issue such orders as necessary to enforce or implement the terms of the Settlement.

V. Notice to Parties. Except to the extent explicitly set forth in the Settlement, if any Party is required to give notice to any other Party under this Settlement, such notice shall be in writing and shall be deemed to have been duly given upon (a) receipt of hand delivery; (b) mailing by means of pre-paid, overnight courier delivery service, or (c) sending of electronic mail, provided that no rejection notice occurs and that identical notice is sent by U.S. mail, first-class postage pre-paid or pre-paid, overnight courier delivery service. Notice shall be provided as follows:

If to Plaintiff or Class Counsel:	IZARD, KINDALL & RAABE LLP 29 S. Main Street, Suite 305 West Hartford, CT 06107 Attn: Douglas P. Needham dneedham@ikrlaw.com
If to Defendants or Defendants' Counsel	ALSTON & BIRD LLP 950 F Street NW Washington, D.C. 20004-1404 Attn: Emily Seymour Costin emily.costin@alston.com

FOR PLAINTIFF ROGER HERNDON AND THE CERTIFIED CLASS:

11/11/2021
Date

Mark P. Kindall
IZARD, KINDALL & RAABE, LLP
Co-Class Counsel and Counsel for Plaintiff

FOR DEFENDANTS:

Date

William Ermatinger
Executive Vice President &
Chief Human Resources Officer
HUNTINGTON INGALLS INDUSTRIES, INC.

FOR PLAINTIFF ROGER HERNDON AND THE CERTIFIED CLASS:

Date

Mark P. Kindall
IZARD, KINDALL & RAABE, LLP
Co-Class Counsel and Counsel for Plaintiff

FOR DEFENDANTS:

November 11, 2021
Date

William Ermatinger
Executive Vice President &
Chief Human Resources Officer
HUNTINGTON INGALLS INDUSTRIES, INC.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
NEWPORT NEWS DIVISION

Roger A. Herndon, on behalf of himself and all others similarly situated, Plaintiff, vs. Huntington Ingalls Industries, Inc., the HII Administrative Committee, and John/Jane Does 1–5, Defendants.	Civil Action No.: 4:19-cv-00052-RCY-LRL CLASS ACTION

SETTLEMENT AGREEMENT

EXHIBIT 1

Email Notice

Legal Notice

If You Are a Participant or Beneficiary of the "Legacy" Part of the Huntington Ingalls Industries, Inc., Newport News Operations Pension Plan for Employees Covered by United Steelworkers Local 8888 Collective Bargaining Agreement (the "Covered Plan")

A Proposed Class Action Settlement May Affect Your Rights

You have *not* been sued. A federal court authorized this notice.

This is not a solicitation.
A detailed Notice and more information is available at the Settlement website:
wwwHIIERISASettlement.com

What is the case about? Plaintiff Roger Herndon filed a class action lawsuit alleging that Huntington Ingalls Industries, Inc. ("HII") provided Participants of the Covered Plan with joint and survivor annuity ("JSA") and pre-retirement survivor annuity ("PSA") benefits that were not "actuarially equivalent" to single-life annuities participants could have taken at the time they started receiving benefits, as required by the federal pension law known as the Employee Retirement Income Security Act, or "ERISA." The Defendants deny Plaintiff's claims, and the Court has not decided who is right.

Who is affected? The Covered Plan's records show that you may be a member of the Class, which is defined as participants or beneficiaries of the Covered Plan who began receiving pension benefits in the form of a joint and survivor annuity during the period from May 20, 2013 through January 17, 2020.

What are the settlement terms? The proposed Settlement provides that the Plan will pay the $2.8 million value of the Settlement, net of amounts awarded for Attorneys' Fees, Expenses and Costs, in the form of a Monthly Benefit Increase to be paid during the lifetimes of the Class Member participants and their designated beneficiaries. Your share of the Net Settlement Value will be based on the value of your past and projected future benefits, compared to the value of ***all*** Class Members' past and projected future benefits. Your share will then be annuitized and paid out over your lifetime (and, where applicable, over the lifetime of your designated beneficiary). Class Members will release Defendants from Defendants and their Related Parties from any and all Claims arising on or before January 17, 2020 that were brought, or could have been brought, arising out of, or relating to, the allegations in the Complaint. This summary does not include all terms of the Settlement, which is available for review as described below.

Where can I read the settlement? The proposed settlement, a detailed Court-approved Notice about the settlement, the final approval hearing, and your right to object, and other important documents, can be found on the Settlement website at **wwwHIIERISASettlement.com**, or you can request copies from Plaintiff's counsel by calling 1-860-493-6292, or sending an email to o.faircloth@ikrlaw.com.

Your Rights May Be Affected. If the Settlement is approved at the final approval hearing on **[DATE], 2022**, it will be binding on you. You cannot opt out of this Settlement. You can object to this Settlement by filing an objection by **[DATE], 2022**. The detailed Notice available at the Settlement website explains how to object. The Court will hold a hearing on **[DATE], 2022,** to consider whether to approve the

Settlement. You may appear at the hearing, but you are not required to attend. You may also hire your own attorney, at your own expense, to appear or speak for you at the hearing.

PLEASE DO NOT TELEPHONE THE COURT OR THE COURT CLERK'S OFFICE TO INQUIRE ABOUT THIS SETTLEMENT, as they cannot answer your questions.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
NEWPORT NEWS DIVISION

Roger A. Herndon, on behalf of himself and all others similarly situated, Plaintiff, vs. Huntington Ingalls Industries, Inc., the HII Administrative Committee, and John/Jane Does 1–5, Defendants.	Civil Action No.: 4:19-cv-00052-RCY-LRL CLASS ACTION

SETTLEMENT AGREEMENT

EXHIBIT 2

Estate Claim Form

ESTATE CLAIM FORM
Huntington Ingalls Industries, Inc.

As a result of the settlement in *Roger A Herndon v. Huntington Ingalls Industries, Inc., et al.* the estate or heir(s) of the following deceased individual is entitled to a monetary payment (the "Benefit") from the Huntington Ingalls Industries, Inc., Newport News Operations Pension Plan for Employees Covered by United Steelworkers Local 8888 Collective Bargaining Agreement (the "Pension Plan").

[Name] ("Decedent")
Last known address:
{address}

This is a claim form for receipt of the Benefit. If you are the executor or an heir of the Decedent, please complete this form and return it to the Pension Center. You can send it by mail or e-mail to addresses below. If you are not the executor or an heir, but have information that would assist the Pension Plan to locate the executor or heirs, we request that you contact the Pension Plan by mail, e-mail or telephone.

HUNTINGTON INGALLS INDUSTRIES, INC.
PENSION CENTER
ADDRESS
ADDRESS
ADDRESS
PHONE NUMBER:
E-MAIL ADDRESS:

1. Please provide the following information about yourself.

NAME	
ADDRESS	
PHONE NUMBER	
EMAIL ADDRESS	

ESTATE CLAIM FORM
Huntington Ingalls Industries, Inc.

YOUR RELATIONSHIP TO THE DECEDENT	❑ Executor of Decedent's Estate * ❑ Beneficiary of Decedent's Estate ❑ Decedent's Spouse ❑ Decedent's Child ❑ Decedent's Sibling ❑ Decedent's Parent ❑ Other – please explain:

* If you are the executor, please provide documentation showing that you are the executor, along with the Tax Identification Number of the estate. Please sign below and have your signature notarized, and return this claim form to the address shown above.

I certify under penalties of perjury that the information provided by me on this Information Form and the documents being provided to the Pension Plan are true and correct.

Dated: _____, ____, 202__.

_____
Signature

_____
Print Name

Sworn to before me this ____ day of _____, 202__

_____
Notary Public
My Commission expires _____ __, 20__

If you are not the executor but have information that may assist the Pension Plan in locating the executor or heir(s), please provide any of the information below that you have.

2. Did the Decedent have a Will when he/she died?

ESTATE CLAIM FORM
Huntington Ingalls Industries, Inc.

_____ **YES** _____ **NO**

3. Was an estate created for the Decedent?

_____ **YES** _____ **NO**

4. Was an executor or administrator of the Decedent's estate appointed?

_____ **YES** _____ **NO**

5. Provide the following information about the executor:

NAME	
ADDRESS	
PHONE NUMBER	
EMAIL ADDRESS	

6. If you have a Tax Identification Number for the Decedent's estate, provide it here:

_____.

7. Please provide the following information about the Decedent's heirs under the Decedent's will. If the Decedent did not have a will, the Decedent's heirs may be the spouse, or children, or children of deceased children, parents or siblings.

ESTATE CLAIM FORM
Huntington Ingalls Industries, Inc.

NAME	RELATIONSHIP	CONTACT INFORMATION

8. If the Decedent was married when he/she died and you are not the surviving spouse, is the Decedent's spouse still living?

_____ YES _____ NO

9. Did the Decedent have any children?

_____ YES _____ NO

**** If yes, please provide the following information for the Decedent's children. Please provide as much information as possible.***

NAME	RELATIONSHIP	CONTACT INFORMATION

10. If the Decedent had no children, are the Decedent's parent(s) alive?

_____ YES _____ NO

ESTATE CLAIM FORM
Huntington Ingalls Industries, Inc.

**** If yes, please provide the full name, address, phone number and email address for the Decedent's living parent(s). Please provide as much information as possible.***

NAME	CONTACT INFO

11. If the Decedent had no children, or surviving parents, did the Decedent have any siblings?

_____ YES _____ NO

**** If yes, please provide the full name, address, phone number and email address for the Decedent's siblings. Please provide as much information as possible***

NAME	CONTACT INFO

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
NEWPORT NEWS DIVISION

Roger A. Herndon, on behalf of himself and all others similarly situated, Plaintiff, vs. Huntington Ingalls Industries, Inc., the HII Administrative Committee, and John/Jane Does 1–5, Defendants.	Civil Action No.: 4:19-cv-00052-RCY-LRL CLASS ACTION

SETTLEMENT AGREEMENT

EXHIBIT 3

Class Notice

United States District Court for the Eastern District of Virginia

PLEASE READ THIS NOTICE CAREFULLY. IT RELATES TO THE PROPOSED SETTLEMENT OF A CLASS ACTION AND CONTAINS IMPORTANT INFORMATION ABOUT YOUR RIGHTS.

A federal court has authorized this Notice. This is not a solicitation from a lawyer.

I. What is this notice about?

You are receiving this notice because the records of Huntington Ingalls Industries, Inc. ("HII") indicate that you receive a monthly benefit payment under the "Legacy" part of the Huntington Ingalls Industries, Inc. Newport News Operations Pension Plan for Employees Covered by United Steelworkers Local 8888 Collective Bargaining Agreement (the "Covered Plan") and are a member of the Class (described below) in a lawsuit relating to this Covered Plan. As such, your rights may be affected by a proposed settlement of this class action lawsuit (the "Settlement"). **Please read the following information carefully to find out what the lawsuit is about, what the terms of the proposed settlement are, what rights you have to object to the proposed settlement agreement if you disagree with its terms, and what deadlines apply.**

You do not need to do anything to be a part of the Class or, if the Settlement is approved, to receive a Monthly Benefit Increase (as described below) under the terms of the Settlement.[1]

II. What is a class action lawsuit?

A class action lawsuit is a legal action in which one or more people represent a large group, or class, of people. The purpose of a class action lawsuit is to litigate at one time similar legal claims of the members of the group.

III. What is this lawsuit about?

This class action lawsuit ("Action") was brought on behalf of certain participants, beneficiaries, and surviving spouses receiving benefits under the Covered Plan. Roger Herndon ("Plaintiff") is the named plaintiff and Court-appointed representative of all members of the Class.

On May 20, 2019, Plaintiff sued HII and the administrator of the Covered Plan ("Defendants") under the Employee Retirement Income Security Act of 1974, as amended ("ERISA"). Plaintiff challenged the actuarial assumptions and factors used by the Covered Plan to convert single-life annuity ("SLA") benefits into alternative forms of payment, including joint and survivor annuity ("JSA"). In particular, Plaintiff alleged that the assumptions and factors used by the Covered Plan to convert SLAs into alternative forms of payment are outdated and do not provide participants with "actuarially equivalent" benefits, as required by law. Plaintiff asserted that the Covered Plan should instead have calculated benefits using different actuarial assumptions.

IV. Why is there a proposed settlement?

The Court has not decided in favor of either side in the Action. Plaintiff and Class Counsel believe the claims have merit. Defendants deny all allegations of wrongdoing, fault, liability, or damage to the Plaintiff and the Class, deny that the actuarial assumptions or factors used by the Covered Plan to calculate benefits are in any way improper, and deny that any Class Member is receiving a benefit amount that is less than what he or she is entitled to receive. Plaintiff and Defendants have agreed to settle in order to avoid the expense, inconvenience, and inherent risk of litigation with respect to the Action.

[1] All capitalized terms not defined in this Notice are defined in the Settlement Agreement.

Plaintiff and Class Counsel believe that the proposed settlement is in the best interest of the Class because it provides appropriate recovery for Class Members now, while avoiding the risk, expense, and delay of pursuing the case through trial and any appeals, including the possibility of no recovery at all.

V. Who is in the Class?

The Court has preliminarily certified a Class. The Settlement will apply to—and will be binding on—the Class. The Class is defined as:

> All participants or beneficiaries of the "Legacy" part of the Huntington Ingalls Industries, Inc. Newport News Operations Pension Plan for Employees Covered by United Steelworkers Local 8888 Collective Bargaining Agreement, who began receiving pension benefits in the form of a joint and survivor annuity during the Class Period, which shall be defined as May 20, 2013 through January 17, 2020. Excluded from the Class are Defendants and any individuals who are subsequently determined to be fiduciaries of the Plan.

Under this Class definition, a participant in the Covered Plan, or someone who is receiving a Preretirement Survivor Annuity from the Covered Plan, must have ***started*** to receive his or her benefits during the Class Period to be a Class Member. For the beneficiary of a participant who received benefits from the Covered Plan to be a Class Member, the first payment of the joint benefit paid to the participant must have occurred during the Class Period. Based on this definition, HII's records indicate that you are a member of the Class.

VI. What are the terms of the Settlement?

The legal rights and obligations relating to the Settlement are set forth in the Settlement Agreement, dated xxx, 2021 (the "Settlement Agreement"), which is available at www.[URL]. The Settlement resolves all issues regarding the actuarial assumptions or factors used by the Covered Plan to convert SLAs to JSAs and PSAs. The present value of the proposed Settlement – that is, its value in today's dollars – is approximately $2.8 million. The terms of the Settlement Agreement are summarized briefly below; you should review the Settlement Agreement itself for a complete and detailed statement of the terms of the Settlement.

A. Benefits to the Class

As discussed above, Plaintiff claimed that the actuarial assumptions and factors used to convert SLA benefits into JSA annuities under the Covered Plan were improper. If the Settlement is approved by the Court, the Covered Plan will be amended to provide Class Members with increased monthly benefits. The present value of the Settlement, $2.8 million, is approximately 34% of the amount of damages Plaintiff's actuarial expert estimated that the Class could obtain at trial.

The proposed Settlement provides that the Plan will pay the value of the Settlement, net of amounts awarded for Fees, Expenses and Costs discussed below, in the form of a Monthly Benefit Increase to be paid during the lifetimes of the Class Member participants and their designated beneficiaries ("Associated Beneficiaries"). Your share of the Net Settlement Value will be based on the value of your past and projected future benefits (including benefits either paid to your Associated Class Member Participant, if you are the beneficiary, or which may be paid to your Associated Beneficiary, if you are the Participant), compared to the value of ***all*** Class Members' past and projected future benefits. Your share will then be annuitized and paid out over your lifetime (and, where applicable, over the lifetime of your designated beneficiary) as an increase to the amount of the benefit payment you already receive each month, in the benefit form that you already selected. For example, if you are receiving a 50% JSA, your beneficiary will receive 50% of your Monthly Benefit Increase if he or she lives longer than you do, just as he or she would be entitled to receive 50% of your current monthly benefit. Monthly Benefit Increases, like your current benefit payments, will be reduced by applicable adjustments (*e.g.*, for taxes).

Although each Class Member will be entitled a Monthly Benefit Increase for pension payments effective as of January 1, 2022, Class Members will not begin receiving any additional benefit under the Settlement until several months after the Settlement becomes Final. The first monthly payment that reflects any additional benefit will include a lump sum amount for the amount of any increase from January 1, 2021 to the date of that first increased payment.

Finally, where ***both*** the Participant Class Member ***and*** his or her Associated Beneficiary have died prior to the first date on which Monthly Benefit Increases are to be paid under the Settlement, the Plan will make a lump sum payment to the estate (or heirs) of the Participant or Associated Beneficiary (whoever died later) upon receipt of a properly completed Estate Claim Form. The payment will be calculated in the same way as benefits for Class Members who are still living, except that (a) the calculation will not include any value for future benefit payments; and (b) the payment will not be annuitized.

B. Release of Claims by the Class

In exchange for benefits conferred by the Settlement, all members of the Class will release Defendants and their Related Parties from any and all Claims arising on or before January 17, 2020 that were brought, or could have been brought, arising out of, or relating to, the allegations in the Complaint. For the avoidance of doubt, a Claim arises on or before January 17, 2020 if a Class Member's benefit amount is determined as of January 17, 2020 or earlier, even as to monthly payments made after January 17, 2020. "Released Claims" do not include claims by Class Members (other than Plaintiff) that are not or could not be related to the allegations in the Complaint.

Pursuant to the Settlement Agreement, Class Members expressly agree that they, acting individually or in combination with others, will not institute, maintain, prosecute, sue, or assert in any action or proceeding any Released Claim. The Release is set forth in full in the Settlement Agreement, which can be viewed online at www.[URL].

VII. Who is representing the interests of Class Members?

The Court has appointed the following lawyers ("Class Counsel") to represent the Class:

Douglas P. Needham Robert A. Izard IZARD, KINDALL & RAABE, LLP 29 South Main Street, Suite 305 West Hartford, CT 06107 (860) 493-6292 dneedham@ikrlaw.com rizard@ikrlaw.com	Mark G. Boyko BAILEY & GLASSER LLP 8012 Bonhomme Avenue, Suite 300 St. Louis, MO 63105 (314) 863-5446 mboyko@baileyglasser.com Gregory Y. Porter BAILEY & GLASSER LLP 1055 Thomas Jefferson Street NW Suite 540 Washington, DC 20007 202-463-2101 gporter@baileyglasser.com

You do not need to hire your own lawyer because Class Counsel is working on your behalf and will seek final approval of the Settlement on behalf of the Class Members. You may hire your own lawyer to represent you in this case if you wish, but it will be at your own expense.

VIII. How will Class Counsel be paid?

From the beginning of the case to the present, Class Counsel has not received any payment for their services in pursuing this case or in obtaining this proposed Settlement, nor have they been reimbursed for any out-of-pocket costs they have incurred. Class Counsel will apply to the Court for an award of attorneys' fees not to exceed 25% of the Settlement's $2.8 million present value, plus litigation expenses of approximately $320,000 and a client contribution award to the Lead Plaintiff of $10,000. This Fee, Expense and Costs Award shall come out of, and reduce, the total present value of the Settlement payable to Class Members in the form of Monthly Benefit Increases.

The motion and supporting papers in support of the Fees, Expenses and Costs Award (including the Client Contribution Award), will be filed on or before [DATE]. After that date, you may review the motion and supporting papers at www.[URL].

IX. What is the Court's process for approving or rejecting the Settlement?

The Court has granted preliminary approval of the proposed Settlement and has approved this Notice. The Settlement will not take effect, however, until the Court approves the final Settlement, enters Judgment, and the Judgment becomes Final. The Court will hold a Final Approval Hearing on [DATE], 2022 at [TIME].m., [which will take place by video conference/which will be held in Courtroom xx of the United States District Court for the Eastern District of Virginia, Newport News Division, 2400 West Avenue, Newport News, VA 23607]. The date and location of the Final Approval Hearing is subject to change by order of the Court, which will appear on the Court's docket for the case.

X. Can Class Members opt out of the Settlement?

No. The federal law that forms the basis for the claims in the case requires that, where appropriate, plan provisions be applied consistently with respect to similarly situated plan participants. The Court has certified the class under a rule that does not permit class members to opt out.

XI. Can Class Members object to the Settlement?

Yes. Prior to the Final Approval Hearing, Class Members will have the opportunity to object to the fairness, reasonableness, or adequacy of the Settlement, to any term of the Settlement Agreement, and to the proposed Fee, Expense and Costs Award. To object, you must file your objection with the Court in writing, sent by first-class mail to the following address and serve a copy of your objection on the Parties' counsel. The addresses for filing objections with the Court and for serving objections on counsel are as follows:

For Filing:

Clerk of the Court
United States District Court for the Eastern District of Virginia
Newport News Division
2400 West Avenue
Newport News, VA 23607
Re: *Herndon v. Huntington Ingalls Industries, Inc.*, No. 4:19-cv-00052- RCY-LRL

To Class Counsel:

Douglas P. Needham
IZARD, KINDALL & RAABE LLP
29 S. Main Street, Suite 305
West Hartford, CT 06107
Tel.: (860) 493-6294
Email: dneedham@ikrlaw.com

To Defendants' Counsel:

Emily Seymour Costin
ALSTON & BIRD, LLP
950 F Street NW
Washington, D.C. 20004-1404
Tel.: (202) 239-3695
Email: emily.costin@alston.com

Objections must be received by the Court on or before [DATE], and must be served on counsel so that they are received on or before [DATE]. Service on counsel may be effected by email, but filing with the Court must be by first-class mail.

To be valid and considered by the Court, any written objection must state: (1) the name and case number of the Action: *Herndon v. Huntington Ingalls Industries, Inc.*, No. 4:19-cv-00052- RCY-LRL; (2) your name, address, and telephone number; and (3) each objection you are making, including any legal support and/or evidence you

wish to bring to the Court's attention or introduce in support of your objection(s). If you so choose, you may file and serve your objection through counsel of your choice, and you (or your counsel) may appear at the final approval hearing. If you decide to hire counsel (at your own expense), your attorney must file a notice of appearance with the Court no later than [DATE], and serve a copy of the notice on the counsel listed above the same day that it is filed. You do not have to appear at the final approval hearing to have the Court consider your objection. If you choose to appear at the final approval hearing, either for yourself or through counsel retained at your expense, you must file a notice of intention to appear (and, if applicable, the name, address, and telephone number of your attorney) with the Court no later than [DATE].

Class members who do not comply with these procedures, or who miss the deadline to file an objection, lose the opportunity to have their objection considered by the Court or to appeal from any order or judgment entered by the Court regarding the Settlement.

XII. Where can Class Members get additional information?

You do not need to do anything to be a part of this Class or, if the Settlement is approved, to receive your Monthly Benefit Increase.

You can visit the Settlement website at www.[URL], where you will find the full Settlement Agreement, the Court's order granting preliminary approval of the Settlement, this Notice, and other relevant documents. If there are any changes to how or when the Final Approval Hearing will be held, the deadlines for objecting to the Settlement, or the Settlement Agreement itself, those changes will be posted on the Settlement website. You will not receive an additional mailed notice with those changes, unless separately ordered by the Court. If you cannot find the information you need on the website, you may also contact Class Counsel for more information. Please do not contact the Court to get additional information.

Dated: [DATE]

By Order of the United States District Court
United States District Judge Roderick C. Young

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
NEWPORT NEWS DIVISION

Roger A. Herndon, on behalf of himself and all others similarly situated, Plaintiff, vs. Huntington Ingalls Industries, Inc., the HII Administrative Committee, and John/Jane Does 1–5, Defendants.	Civil Action No.: 4:19-cv-00052-RCY-LRL CLASS ACTION

SETTLEMENT AGREEMENT

EXHIBIT 4

Proposed Preliminary Approval Order

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
NEWPORT NEWS DIVISION

Roger A. Herndon, on behalf of himself and all others similarly situated, Plaintiff, vs. Huntington Ingalls Industries, Inc., the HII Administrative Committee, and John/Jane Does 1–5, Defendants.	Civil Action No.: 4:19-cv-00052- RCY-LRL CLASS ACTION

[PROPOSED] ORDER GRANTING PRELIMINARY APPROVAL OF SETTLEMENT

WHEREAS, a putative class action is pending before the Court entitled *Herndon v. Huntington Ingalls Industries, Inc.*, No. 4:19-cv-00052- RCY-LRL;

WHEREAS, the Court has reviewed and considered Plaintiff's Motion for Preliminary Approval of Settlement (the "Motion"), as well as all papers submitted in connection therewith; the proposed Settlement as set forth in the Settlement Agreement (the "Settlement"), which, together with the exhibits and appendices thereto, sets forth the terms and conditions of a proposed settlement of the above-captioned Action, dismissing all claims against Defendants with prejudice upon the terms and conditions set forth therein, a copy of which has been submitted with the Motion and the terms of which are incorporated herewith; and all other prior proceedings in this Action; and good cause for this Order having been shown;

NOW, THEREFORE, IT IS HEREBY ORDERED:

1. The provisions of the Settlement, including the definitions and terms used therein, are hereby incorporated by reference as though fully set forth herein. All capitalized terms used herein have the meanings set forth and defined in the Settlement.

Jurisdiction

2. This Court has jurisdiction over the subject matter of this Action and over all parties to this Action, including the Class Members.

Preliminary Findings Regarding Proposed Settlement

3. The Court preliminarily approves the Settlement as fair, reasonable, and adequate to all Class Members, pending a final settlement and fairness hearing (the "Final Approval Hearing"). The Court preliminarily finds that the proposed Settlement should be approved as: (i) the result of serious, extensive arm's length and non-collusive negotiations; (ii) falling within a range of reasonableness warranting final approval; (iii) having no obvious deficiencies; (iv) not improperly granting preferential treatment to Plaintiff or segments of the Class; and (v) warranting Notice of the proposed Settlement and the Final Approval Hearing described below.

Stay Order

4. The Court orders the stay of any pending litigation in the Action and enjoins the initiation of any new litigation by any Class Member in any court, arbitration, or other tribunal that includes any Released Claims against Defendants or any of their respective Related Parties.

Form and Timing of Notice

5. The Court hereby approves, as to form and content, the Notice and Email Notice, substantially in the form attached to the Settlement Agreement as Exhibits 1 and 3, and directs that, no later than forty-five (45) days after entry of this Order ("Notice Date"), Defendants shall

provide the Notice to each known Class Member by the method the Class Member has designated for receipt of communications from the Covered Plan. If the Class Member has not designated any method, then by first class mail to the last known address of the Class Member that is maintained in the Covered Plan's records. Defendants shall file with the Court proof of transmission of the Notice seven (7) days prior to the Final Approval Hearing.

6. The cost of providing the Notice to the Class as specified in this Order shall be paid as set forth in the Settlement.

7. The Court preliminarily finds that the distribution of the Notice, and the notice methodology contemplated by the Settlement and this Order:

a. Constitute the best practicable notice to Class Members under the circumstances of this Action;

b. Are reasonably calculated, under the circumstances, to apprise Class Members of: (i) the proposed Settlement of this Action; (ii) their right to object to any aspect of the proposed Settlement; (iii) their right to appear at the Final Approval Hearing, either on their own or through counsel hired at their own expense; and (iv) the binding effect of the proceedings, rulings, orders, and judgments in this Action, whether favorable or unfavorable, on the Class;

c. Are reasonable and constitute due, adequate, and sufficient notice to all persons entitled to be provided with notice; and

d. Fully satisfy all applicable requirements of the Federal Rules of Civil Procedure (including Rules 23(c) and (d)), the United States Constitution (including the Due Process Clause), the Employee Retirement Income Security of Act of 1974, as amended, the Rules of this Court, and any other applicable law.

Final Approval Hearing

8. The Final Approval Hearing shall take place before the undersigned, United States District Judge Roderick C. Young on [DATE], 2022 at [TIME].m., [which will take place by video conference/which will be held in Courtroom xx of the United States District Court for the Eastern District of Virginia, Newport News Division, 2400 West Avenue, Newport News, VA 23607], to determine:

a. Whether the Settlement, on the terms and conditions provided for in the Agreement, should be finally approved by the Court as fair, reasonable, and adequate;

b. Whether the Action should be dismissed on the merits and with prejudice;

c. Whether the Court should permanently enjoin the assertion of any Released Claims by Class Members;

d. Whether the application for attorneys' fees, expenses and costs to be submitted by Class Counsel should be approved;

e. Whether the application for a Client Contribution Award on behalf of Plaintiff should be approved; and

f. Such other matters as the Court may deem necessary or appropriate.

Petition for Attorneys' Fees and Costs and Client Contribution Awards

9. Any petition for an award to Plaintiff and/or Class Counsel of a Fees, Expenses and Costs Award, and all briefs in support thereof, shall be filed no later than forty-five (45) days prior

to the Final Approval Hearing. Any opposition to such petition by Defendants shall be filed no later than twenty-eight (28) days prior to the Final Approval Hearing.

Briefs in Support of Final Approval of the Settlement

10. Briefs and other documents in support of final approval of the Settlement shall be filed no later than forty-five (45) days prior to the Final Approval hearing.

Objections to the Settlement

11. Any member of the Class may file an objection ("Objection") to the fairness, reasonableness, or adequacy of the Settlement, to any term of the Settlement Agreement, to the proposed award of attorneys' fees and costs, or to the request for a client contribution award for Plaintiff. An objector must file with the Court a statement of his, her, or its Objection(s), specifying the reason(s) for each such Objection made, including any legal support and/or evidence that the objector wishes to bring to the Court's attention or introduce in support of the Objection(s). Any member of the Class who files an Objection to the Settlement must also mail copies of the Objection and any supporting law and/or evidence to Class Counsel and to counsel for Defendants. The addresses for filing Objections with the Court and serving Objections on counsel are as follows:

For Filing:

Clerk of the Court
United States District Court for the Eastern District of Virginia
Newport News Division
2400 West Avenue
Newport News, VA 23607
Re: *Herndon v. Huntington Ingalls Industries, Inc.,* No. 4:19-cv-00052-RCY-DEM

To Class Counsel:

Douglas P. Needham
IZARD, KINDALL & RAABE LLP
29 S. Main Street, Suite 305

West Hartford, CT 06107
Email: dneedham@ikrlaw.com

To Defendants' Counsel:

Emily Seymour Costin
ALSTON & BIRD, LLP
950 F Street NW
Washington, D.C. 20004-1404
Email: emily.costin@alston.com

12. Objectors and their private counsel (if any) must file and serve their Objections and supporting papers so that they are received by the Court and counsel no later than twenty-eight (28) days before the Final Approval Hearing. Service on counsel may be effected by email, but filing with the Court must be done by first-class mail. If objectors hire an attorney for the purpose of making an Objection, the attorney must also file a notice of appearance with the Court no later than twenty-eight (28) days before the Final Approval Hearing and serve a copy of the notice of appearance on the counsel listed above by email or regular mail on the same day that it is filed with the Court. Any member of the Class who does not timely submit a written Objection complying with the terms of this Order shall be deemed to have been waived, and shall be foreclosed from raising, any Objection to the Settlement, and any untimely Objection shall be barred. Any responses to Objections shall be filed with the Court no later than seven (7) days before the Final Approval Hearing. There shall be no reply briefs.

13. Any additional briefs the Parties may wish to file in support of the Settlement shall be filed no later than seven (7) days before the Final Approval Hearing.

14. Any objector who files and serves a timely, written Objection in accordance with Paragraphs 11 and 12 above may also appear at the Final Approval Hearing, either for themselves or through qualified counsel retained at the objector's expense. Objectors or their attorneys intending to appear at the Final Approval Hearing must file a notice of intention to appear (and, if

applicable, the name, address, and telephone number of the objector's attorney) with the Court no later than twenty-eight (28) days before the Final Approval Hearing. Any objector who does not timely submit a notice of intention to appear in accordance with this paragraph shall not be permitted to appear at the Final Approval Hearing, except for good cause shown.

Use of Order

15. This Order is not admissible as evidence for any purpose in any pending or future litigation. This Order shall not be construed or used as an admission, concession, or declaration by or against Defendants of any finding of fiduciary status, fault, wrongdoing, breach, or liability. This Order shall not be construed or used as an admission, concession, or declaration by or against Plaintiff or the Class that their claims lack merit, or that the relief requested in the Action is inappropriate, improper, or unavailable. This Order shall not be construed or used as an admission, concession, declaration, or waiver by any Party of any arguments, defenses, or claims that he, she, or it may have in the event that the Settlement Agreement terminates. Moreover, the Settlement Agreement and any proceedings taken pursuant to the Settlement Agreement are for settlement purposes only. Neither the fact of, nor any provision contained in the Settlement Agreement or its exhibits or appendices, nor any actions taken thereunder shall be construed as, offered into evidence as, received into evidence as, and/or deemed to be evidence of, a presumption, concession, or admission of any kind as to the truth of any fact alleged or validity of any defense that has been, could have been, or in the future might be asserted.

Other Provisions

16. In the event that the Settlement does not become effective in accordance with the terms of the Agreement, this Order shall be rendered null and void to the extent provided by and in accordance with the Agreement and shall be vacated, and in such event, all orders entered and

releases delivered in connection therewith shall be null and void to the extent provided by and in accordance with the Settlement, and without prejudice to the rights to the parties to the Agreement before it was executed. Notwithstanding the foregoing, and for the avoidance of doubt, the effectiveness of the Settlement is not contingent upon the Court approving the attorneys' fees and costs and/or any client contribution award request by Plaintiff and/or Class Counsel.

17. The Court reserves the right to alter the time or the date of the Final Approval Hearing, as well as whether the Hearing will take place in person or by videoconference, without further written notice to the Class, provided that the time or the date of the Final Approval Hearing shall not be set at a time or a date earlier than the time and date set forth in Paragraph 8 above.

18. The Court retains jurisdiction to consider all further applications arising out of or connected with the Settlement.

SO ORDERED in the Eastern District of Virginia on _____, 2021.

_____
THE HONORABLE RODERICK C. YOUNG
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
NEWPORT NEWS DIVISION

Roger A. Herndon, on behalf of himself and all others similarly situated, Plaintiff, vs. Huntington Ingalls Industries, Inc., the HII Administrative Committee, and John/Jane Does 1–5, Defendants.	Civil Action No.: 4:19-cv-00052-RCY-LRL CLASS ACTION

Declaration of Douglas P. Needham

EXHIBIT B

IZARD KINDALL &RAABE LLP

FIRM RESUME

Izard, Kindall & Raabe LLP ("IKR")[1] is one of the premier national firms engaged in class action litigation under the Employee Retirement Income Security Act of 1974 (ERISA) and the securities laws. We have served as lead or co-lead counsel in many large ERISA class actions, including cases against AT&T, AOL Time Warner, Cardinal Health, JDS Uniphase, Merck, Sprint, Tyco International, JP Morgan Chase, Eastman Kodak, Wells Fargo and Raytheon, as well as over 30 securities class actions, including cases involving shares of Campbell Soup Company, Citizens Utilities Company, Newmont Mining Corporation, SS&C Technologies, Inc., SureBeam Corporation, and Veritas Corporation.

ERISA Cases where IKR has been formally appointed as sole or co-lead counsel, or serves as lead or co-lead counsel, include:

- *Overby v. Tyco Int'l, Ltd.,* No. 02-CV-1357-B (D.N.H.);
- *In re Reliant Energy ERISA Litig.,* No. H-02-2051 (S.D. Tex.);
- *In re AOL Time Warner, Inc. Sec. and ERISA Litig.,* MDL Docket No. 1500 (S.D.N.Y.);
- *Furstenau v. AT&T,* Case No. 02 CV 8853 (D.N.J.);
- *In re AEP ERISA Litig.,* Case No. C2-03-67 (S.D. Ohio);

[1] Formerly known as Izard Nobel LLP (2008-2016), Schatz Nobel Izard, P.C. (2006-2008), and Schatz & Nobel, P.C. (1995-2006).

- *In re JDS Uniphase Corp. ERISA Litig.,* Civil Action No. 03-4743-CW (N.D. Cal.);
- *In re Sprint Corporation ERISA Litig.,* Master File No. 2:03-CV-02202-JWL (D. Kan.);
- *In re Cardinal Health, Inc. ERISA Litig.,* Case No. C 2-04-642 (S.D. Ohio);
- *Spear v. Hartford Fin. Svcs Group. Inc.,* No. 04-1790 (D. Conn.);
- *In re Merck & Co., Inc. Sec., Derivative and ERISA Litig.,* MDL No. 1658 (D.N.J.);
- *In re Diebold ERISA Litig.* No. 5:06-CV- 0170 (N.D. Ohio);
- *In re Bausch & Lomb, Inc. ERISA Litig.,* Master File No. 06-CV-6297-MAT-MWP (W.D.N.Y.);
- *In re Hartford Fin. Svcs Group. Inc. ERISA Litig.,* No. 08-1708 (D. Conn.);
- *In re Merck & Co., Inc. Vytorin ERISA Litig.*, MDL No. 1938, 05-CV-1974 (D.N.J.);
- *Mayer v. Admin. Comm. of Smurfit Stone Container Corp.*, 09-CV-2984 (N.D. IL.);
- *In re YRC Worldwide ERISA Litig.,* Case No. 09-CV-02593 (D. Kan);
- *Board of Trustees v. JP Morgan Chase Bank*, Case No. 09-cv-9333 (S.D.N.Y.);
- *White v. Marshall & Ilsley Corp*., No. 10-CV-00311 (E.D. Wis.);
- *Griffin v. Flagstar Bancorp, Inc*., No. 2:10-CV-10610 (E.D. Mich.);
- *In re Eastman Kodak ERISA Litig*., Master File No. 6:12-cv-06051-DGL (W.D.N.Y.);
- *Kemp-DeLisser v. Saint Francis Hospital and Medical Center,* Civil Action No. 3:15-cv-01113-VAB (D. Conn.);
- *Tucker v. Baptist Health System, Inc.*, Case No. 2:15-cv-00382-SLB (N.D.AL.);
- *Cryer v. Franklin Resources, Inc.,* No. 4:16-cv-04265 (N.D. Cal.);
- *Bishop-Bristol v. Massachusetts Mutual Life Insurance Company*, No. 3:16-cv-30082-MGM (D. Mass.);
- *Matthews v. Reliance Trust Company*, No. 1:16-cv-04773 (N.D. Ill.);
- *Brace v. Methodist Le Bonheur Healthcare,* No. 16-cv-2412-SHL-tmp (W.D. Tenn.);
- *Nicholson v. Franciscan Missionaries of our Lady Health Systems,* No. 16-CV-258-SDD-EWD (M.D. LA);

- *In re Mercy Health ERISA Litig.,* No. a:16-cv-441 (S.D. Ohio);
- *Negron v. Cigna Corp.,* No. 3:16-cv-01702 (D. Conn.);
- *Schultz v. Edward D. Jones & Co.,* No. 4:16-cv-01346 (E.D. Mo.);
- *Larson v. Allina Health Syst.,* No. 0:17-cv-03835 (D. Minn.);
- *Johnson v. Providence Health & Services,* No. 2:17-cv-01779 (W.D. Wash.);
- *Berry v. Wells Fargo & Co.,* No. 3:17-304 (D.S.C.);
- *Neufeld v. Cigna Health & Life Ins.,* No. 3:17-cv-01693 (D. Conn.);
- *Myers v. 401(k) Fiduciary Comm. for Seventy Seven Energy,* No. 5:17-cv-00200 (D. Okl.);
- *Quatrone v. Gannett Co., Inc.,* No. 1:18-cv-00325 (E.D. Va);
- *Reidt v. Frontier Communications Corp.,* No. 3:18-cv-01538 (D. Conn.);
- *Sohmer v. UnitedHealth Group, Inc.,* No. 0:18-cv-03191 (D. Minn.);
- *Masten v. Metropolitan Life Ins. Co.,* No. 1:18-cv-11229 (S.D.N.Y.)
- *Smith v. U.S. Bancorp,* No. 0:18-cv-03405 (D. Minn.);
- *Mannino v. Louisiana Health Serv. & Indemnity Co.,* No. 3:19-cv-00185 (M.D. La.);
- *Herndon v. Huntington-Ingalls Industries, Inc.,* No. 4:19-cv-00052 (E.D. Va.);
- *Belknap v. Partners Healthcare System, Inc.,* No. 1:19-cv-11437 (D. Mass.);
- *Cruz v. Raytheon Co.,* No. 1:19-cv-11425 (D. Mass.);
- *Smith v. Rockwell Automation Inc.,* No. 2:19-cv-00505 (E.D. Wisc.);
- *Brown v. United Parcel Service, Inc.,* No. 1:20-cv-00460-MLB (N.D. GA);
- *Berube v. Rockwell Automation Inc.,* No. 2:20-cv-01783 (E.D. Wisc.); and
- *Shafer v. Morgan Stanley,* 1:20-cv-11047 (S.D.N.Y.);

Moreover, IKR was also appointed to the Steering Committee in *Tittle v. Enron Corp.,* No. H-01-3913 (S.D. Tex.); *In re Electronic Data Systems ERISA Litig.,* 3:02-CV-1323 (E.D. Tex.); and *In re Marsh ERISA Litig.*, Master File No. 04 CV 8157 (S.D.N.Y.).

Our notable successes include settlements against the Franciscan Missionaries of Our Lady Health System ($125 million), Saint Francis Hospital and Medical Center ($107 million); AOL Time Warner ($100 million); Wells Fargo ($79 million); Tyco International ($70.5 million); Raytheon ($59 million); Merck ($49.5 million); Cardinal Health ($40 million); and AT&T ($29 million). Moreover, IKR was on the Executive Committee in *In re Enron Corporation Securities and ERISA Litig.*, No. 02-13624 (S.D. Tex.), which resulted in a recovery in excess of $250 million.

Numerous courts have recognized IKR's superior expertise in ERISA actions of this type. In particular, in *In re Merck Sec., ERISA and Deriv. Litig*., the court stated, "[w]hat is clear is that Schatz & Nobel [now IKR] does have substantial experience in this area and much more experience than other contenders." *In re Merck Sec., ERISA and Deriv. Litig*., No. 05 1157, (D.N.J.) (Transcript of proceedings on Apr. 18, 2005). Similarly, the court in *In re Tyco International, Ltd., Securities Litig.* found that IKR and its co-counsel "have the necessary resources, skill and commitment to effectively represent the proposed class" and "extensive experience in both leading class actions and prosecuting ERISA claims." *In re Tyco International, Ltd. Sec. Litig*., Case No. 02 1335, slip op. at 2 (D.N.H. Dec. 18, 2002). In *Cardinal Health*, the court also noted IKR's "extensive experience in ERISA litigation," the "high level of ERISA expertise" and "several well-argued briefs . . . on a range of issues." *In re Cardinal Health, Inc. ERISA Litig*., 225 F.R.D.552, 555-556 (S.D. Ohio Jan. 14, 2005). In *Berry v. Wells Fargo,* the court found that IKR and its co-counsel "displayed extraordinary skill and determination throughout this litigation which fully supports their well-known reputation and clear ability to handle a case of this magnitude." Slip. Op., No. 3:17-cv-00304, Dkt. No. 175, at 25 (D.S.C. July 29, 2020).

Courts have recognized the superior results that IKR has obtained as a result of its experience. In approving the *Sprint ERISA Litig.* settlement, the court found, "[t]he high quality of [IKR's] work culminated in the successful resolution of this complex case" and that "the results obtained by virtue of the settlement are extraordinary. . . ." *In re Sprint Corp. ERISA Litig*., No. 03 2202, slip op. at 33, 35 (D. Kan. Aug. 3, 2006). The District Court's decision approving the settlement negotiated by IKR in the *St. Francis* litigation similarly found the result to be "an extremely favorable one for the class," noting that the recovery achieved by the settlement represented over 76 percent of the amount by which the retirement plan was alleged to be underfunded. *Kemp-DeLisser v. Saint Francis Hosp. & Med. Ctr.,* No. 15-CV-1113 (VAB), 2016 WL 6542707, at *10 (D. Conn. Nov. 3, 2016). The Court also noted that IKR's time and efforts "resulted in an extremely efficient and favorable resolution of the case." *Id.* at *5. Similarly, in *Edwards v. North American Power & Gas, LLC*, No. 3:14-cv-1714 (D. Conn.), the Court observed that IKR is one of the "national leaders in class action litigation" and achieved a "significant settlement for a large class of individuals," while the *Wells Fargo* court noted that the settlement in that case "is the larges recovery in a 'top hat' case in the history of ERISA." Slip. Op., No. 3:17-cv-00304, Dkt. No. 175, at 25 (D.S.C. July 29, 2020).

In the AOL Time Warner ERISA case, the Independent Fiduciary retained to review the $100 million settlement on behalf of the AOL Time Warner retirement plans expected the case to settle for only $70 million. *In re AOL Time Warner, Inc. Sec. and ERISA Litig*., No. 02-CV-1500 (S.D.N.Y), Report & Recommendation of Special Master dated August 7, 2007 at 7, approved by the Court by Memorandum Opinion dated October 26, 2007. The Special Master reviewing an application for attorneys' fees found that in addition to the fact that the quality of counsel's

work was "impressive," "[e]ven more importantly, they used the mediation process to persuade reluctant and determined defendants to part with settlement dollars well above those expected." *Id*. at 30. According to the Special Master, obtaining an additional $30 million for the class stands out as "some of the hardest work and most outstanding results" obtained by IKR and its co-counsel. *Id*. at 37. In negotiating this extraordinary settlement, IKR "stretched the defendants' settlement tolerances beyond their limits." *Id*. Moreover, the Court found that IKR worked with great efficiency. After conducting a "moderately detailed examination of counsels' actual time records," the Special Master lauded the efficiency with which counsel litigated such a large case which inherently tends to produce inefficiencies. *Id*. at 26, 43.

In approving the $49.5 million settlement in *In re Merck & Co., Inc. Securities, Derivative & ERISA Litig.*, in which IKR served as Chair of the Lead Counsel Committee, the Court stated that it was an "extremely successful and extremely appropriate and reasonable settlement." *In re Merck & Co., Inc. Securities, Derivative & ERISA Litig.*, No. 05-2369, (D.N.J.) (Transcript of proceedings on Nov. 29, 2011 at 15).

In the *Tyco ERISA* case, the court stated that the $70.525 million settlement in an "extraordinarily complex case factually" was "outstanding," and "an extraordinary settlement given the circumstances of the case and the knowledge that [the Court] has about the risks that the plaintiff class faced in pursuing this matter to verdict." *In re Tyco International, Ltd., Securities Litig.*, No. 02-1335-B, (D. N.H.)(Transcript of proceedings on Nov. 18, 2009 at 11, 31, 41, 61).

Similarly, in the *Flagstar* case, Court found that the settlement that represented 85% of likely recoverable damages was an "excellent result" as a result of the unquestionable "skill and

expertise of [IKR and its co-counsel] who are nationally known for their successful representation of ERISA clients in class action matters." *Griffin v. Flagstar Bancorp, Inc*., No. 2:10-CV-10610 (E.D. Mich.) (Order and Opinion dated Dec. 12, 2013 at 8, 15-16.)

IKR's ERISA team is led by Robert A. Izard. In approving the *Tyco* settlement, Judge Paul Barbadoro, Chief Judge of the District of New Hampshire, stated with respect to Mr. Izard:

> I have a high regard for you. I know you to be a highly experienced ERISA class action lawyer. You've represented your clients aggressively, appropriately and effectively in this litigation, and I have a high degree of confidence in you so I don't think there's any question that the quality of counsel here is a factor that favor's the Court's endorsement of the proposed settlement....
>
> I have enjoyed working with you in this case. You've always been helpful. You've been a gentleman. You've been patient when I've been working on other matters….

In re Tyco International, Ltd., Securities Litig., No. 02-1335-B, (D. N.H.)(Transcript of proceedings on Nov. 18, 2009 at 74-75).

ATTORNEYS

Robert A. Izard heads the firm's ERISA team and is lead or co-lead counsel in many of the nation's most significant ERISA class actions, including cases against Merck, Tyco International, Time Warner, AT&T and Sprint among others. Mr. Izard has substantial experience in other types of complex class action and commercial litigation matters. For example, he represented a class of milk purchasers in a price fixing case. He also represented a large gasoline terminal in a gasoline distribution monopolization lawsuit.

As part of his thirty-five plus years litigating complex commercial cases, Mr. Izard has substantial jury and nonjury trial experience, including a seven-month jury trial in federal district court. He is also experienced in various forms of alternative dispute resolution, including mediation and arbitration, and is a Distinguished Neutral for the CPR Institute for Dispute Resolution.

Mr. Izard is the author of Lawyers and Lawsuits: A Guide to Litigation published by Simon and Schuster and a contributing author to the Mediation Practice Guide. He is the former chair of the Commercial and Business Litigation Committee of the Litigation Section of the American Bar Association.

Mr. Izard received his B.A. from Yale University and his J.D., with honors, from Emory University, where he was elected to the Order of the Coif and was an editor of the Emory Law Journal.

Mark P. Kindall joined the firm in 2005. Since joining the firm, he has represented clients in many significant class action cases, including ERISA litigation against AOL Time Warner, Kodak and Cardinal Health, consumer fraud cases against Johnson & Johnson, Unilever

and Neutrogena, securities fraud litigation against SupportSoft, American Capital and Nuvelo, and bank overdraft fee litigation against Webster Bank and People's United Bank. Mr. Kindall successfully argued *Berson v. Applied Signal Tech. Inc.*, 527 F.3d 982 (9th Cir. 2008), and *Balser v. The Hain Celestial Group,* No. 14–55074, 2016 WL 696507 (9th Cir. 2016), which clarified standards for victims of securities and consumer fraud, respectively, as well as *Langan v. Johnson & Johnson Consumer Cos., Inc.,* 897 F.3d 88 (2d Cir. 2018), which held that plaintiffs bringing claims under state law could represent a class that included people in states with similar laws.

Mr. Kindall was a lawyer at Covington & Burling in Washington, D.C. from 1988 until 1990. In 1990 he joined the United States Environmental Protection Agency as an Attorney Advisor. He represented the U.S. government in international negotiations at the United Nations, the Organization for Economic Cooperation and Development and the predecessor of the World Trade Organization, and was a member of the U.S. Delegation to the United Nations Conference on Environment and Development (the "Earth Summit") in Rio de Janeiro in 1992. From 1994 until 2005, Mr. Kindall was an Assistant Attorney General for the State of Connecticut, serving as lead counsel in numerous cases in federal and state court and arguing appeals before the Connecticut Supreme Court and the United States Court of Appeals for the Second Circuit.

Mr. Kindall has taught courses in appellate advocacy, administrative law and international environmental law at the University of Connecticut School of Law. He is admitted to practice in Connecticut, California, and the District of Columbia. He is also a member of the bar of the United States Supreme Court, the U.S. Courts of Appeals for the Second, Fourth,

Fifth, Ninth, and D.C. Circuits, and the United States District Courts for Connecticut, the District of Columbia, the Eastern District of Wisconsin, the Central District of Illinois, and all U.S. District Courts in New York and California.

Mr. Kindall is a 1988 graduate of the University of California at Berkeley Law School, where he served as Book Review Editor of the California Law Review and was elected to the Order of the Coif. He has a bachelor's degree in history with highest honors from the University of California at Riverside, and he also studied history at the University of St. Andrews in Scotland.

Craig A. Raabe joined the partnership in 2016 from a large, regional law firm, where he previously served as the chair of the litigation department. Mr. Raabe has tried many complex civil and criminal cases and prosecuted and defended many class actions. He is a Fellow in the American College of Trial Lawyers. He has been listed in The Best Lawyers in America© in the areas of Commercial Litigation and Criminal Defense since 2006 (Copyright 2014 by Woodward/White, Inc., Aiken, SC). Mr. Raabe's commercial trial experience is broad and includes areas such as antitrust, government contracting, fraud, intellectual property, and unfair trade practices. He also has tried many serious felony criminal cases in state and federal court and is active in the criminal defense trial bar. In addition to his trial practice, Mr. Raabe counsels clients on compliance issues and the resolution of regulatory enforcement actions by government agencies.

By appointment of the chief judge of the Second Circuit, Mr. Raabe has served on the Reappointment Committee for Connecticut's federal defender, and the chief judge of the Connecticut district court appointed him to chair the United States Magistrate Reappointment

Committee in Connecticut. In 2012, the Connecticut district court judges selected Mr. Raabe for the district's Pro Bono Award for his service to indigent clients. In addition, he is listed as one of the Top 50 Lawyers in Connecticut by Super Lawyers® 2012 (Super Lawyers is a registered trademark of Key Professional Media, Inc.).

Mr. Raabe is admitted to practice in the U.S. Supreme Court, the Courts of Appeals for the First, Second, and D.C. Circuits, the U.S. District Courts for Connecticut and the Eastern and Southern Districts of New York, the U.S. Tax Court and the state of Connecticut. He is an honors graduate of Valparaiso University and Western New England College of Law, where he served as Editor-in-Chief of the Law Review. Following graduation, Mr. Raabe served as the law clerk for the Honorable Arthur H. Healey of the Connecticut Supreme Court.

Mr. Raabe is a commercial, instrument-rated pilot and is active in general aviation. He serves as a volunteer pilot for Angel Flight Northeast, which provides free air transportation to people requiring serious medical care.

Seth R. Klein graduated *cum laude* from both Yale University and, in 1996, from the University of Michigan Law School, where he was a member of the Michigan Law Review and the Moot Court Board and where he was elected to the Order of the Coif. After clerking for the Hon. David M. Borden of the Connecticut Supreme Court, Mr. Klein served as an Assistant Attorney General for the State of Connecticut, where he specialized in consumer protection matters and was a founding member of the office's electronic commerce unit. Mr. Klein thereafter joined the reinsurance litigation group at Cadwalader, Wickersham & Taft LLP in New York, where he focused on complex business disputes routinely involving hundreds of millions

of dollars. At IKR, Mr. Klein's practice continues to focus on consumer protection matters as well as on complex securities and antitrust litigation.

Douglas P. Needham received his Bachelor of Science degree from Cornell University in 2004 and his Juris Doctorate from Boston University School of Law in 2007. At Boston University, Mr. Needham was the recipient of a merit scholarship for academic achievement and a member of the school's Moot Court Team. Mr. Needham practiced law for six years in Syracuse, New York, devoting his practice to trial and appellate litigation in state and federal court. He moved to Connecticut in May of 2013 to join LeClair Ryan, A Professional Corporation, and became a partner at that firm in 2014. At LeClair Ryan, Mr. Needham prosecuted and defended a variety of business tort claims, including many for breach of fiduciary duty and fraud, in Connecticut, New York and Massachusetts.

Mr. Needham joined IKR in 2016. His practice focuses on fiduciary litigation under ERISA as well as consumer protection and fraudulent business practices.

Christopher M. Barrett has been an integral member of litigation teams responsible for securing monetary recoveries on behalf of plaintiffs that collectively exceed $150 million. In 2015, he was selected by Super Lawyers magazine as a Rising Star. Super Lawyers Rising Stars recognizes top up-and-coming attorneys who are 40 years old or younger, or who have been practicing for 10 years or less.

Prior to joining the Firm, Mr. Barrett was associated with Robbins Geller Rudman & Dowd, where his practice focused on prosecuting class actions on behalf of plaintiffs, and Mayer Brown, where his practice focused on complex commercial litigation.

Mr. Barrett received his J.D., magna cum laude, from Fordham University School of Law where he served as a member of the Fordham Law Review, and was inducted into the Order of the Coif and the honor society Alpha Sigma Nu. For his work in the law school's law clinic, he was awarded the Archibald R. Murray Public Service Award. He earned his B.S. in Finance from Long Island University. During law school, Mr. Barrett served as a judicial intern to two United States District Judges (S.D.N.Y. and E.D.N.Y.) and a New York Supreme Court Justice.

Oren Faircloth graduated from McGill University in 2009 with a Bachelor of Arts degree in Political Science and a concentration in International Relations. Before attending law school, he served in the armed forces from 2010 to 2011.

Mr. Faircloth graduated from Quinnipiac University School of Law, magna cum laude, in 2016, where he received awards for Outstanding Performance in Oral Advocacy and for Excellence in Written Advocacy. During law school, Mr. Faircloth was a member of the Tax Law Society, the Quinnipiac Moot Court Society, and the Quinnipiac Law Review. Shortly after graduating, his note on Mediation and End of Life Futility Decisions for Newborns was published. Mr. Faircloth was admitted to the Connecticut state bar in 2016 and the United States District Court for Connecticut in 2018.

Prior to joining IKR, Mr. Faircloth worked for a regional insurance defense firm where his practice focused on construction, premises liability, and motor vehicle tort actions. Mr. Faircloth joined IKR in 2018. His practice focuses on ERISA and consumer protection actions.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
NEWPORT NEWS DIVISION

Roger A. Herndon, on behalf of himself and all others similarly situated, Plaintiff, vs. Huntington Ingalls Industries, Inc., the HII Administrative Committee, and John/Jane Does 1–5, Defendants.	Civil Action No.: 4:19-cv-00052-RCY-LRL CLASS ACTION

Declaration of Douglas P. Needham

EXHIBIT C

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
NEWPORT NEWS DIVISION

Roger A. Herndon, on behalf of himself and all others similarly situated, Plaintiff, vs. Huntington Ingalls Industries, Inc., the HII Administrative Committee, and John/Jane Does 1–5, Defendants.	Civil Action No.: 4:19-cv-00052-RCY-DEM CLASS ACTION

DECLARATION OF ROGER HERNDON

I, Roger Herndon, pursuant to 28 U.S.C. § 1746 declare as follows:

1. I am the named plaintiff in this case and was appointed by the Court to be the Class Representative for the Class that was certified on February 25, 2020. I make this declaration in support of the Motion for Preliminary Approval of the Class Action Settlement (the "Preliminary Approval Motion,,).

2. I worked for Huntington Ingalls Industries ("HII,,) from 1964 to 1967, and then again from 1973 until 2013. Between 1978 to 1982, I earned a pension benefit under the Huntington Ingalls Industries, Inc. Newport News Operations Pension Plan for Employees Covered by United Steelworkers Local 8888 Collective Bargaining Agreement (the "Plan,,). I currently receive a Joint and Survivor Annuity ("JSA,,) pension benefit under the Plan.

3. I contacted Izard, Kindall & Raabe LLP ("IKR,,) in 2019 about how HII calculated my JSA under the Plan. After the initial communication, I gathered all the paperwork that I had

about my pension under the Plan and sent it to IKR. I then had several follow-up communications with Oren Faircloth of IKR before I decided to hire IKR to bring this case on my behalf. Before the case was filed, I reviewed the drafts of the Complaint that my attorneys sent to me and provided comments about the allegations that were specific to me.

4. Since this case was filed, I have kept in regular contact with the attorneys at IKR (including Oren Faircloth, Doug Needham and Mark Kindall) about the case. They have sent me the key documents that were filed with the Court, including the report from the expert that IKR and Bailey & Glasser ("B&G,,) hired on my behalf, Mitchell I. Serota, and HII's motion for summary judgment, among others, all of which I have reviewed. I understand what the case is about and each side's position.

5. I was deposed by Huntington's attorney on January 23, 2020. Before my deposition, I spoke 3 or 4 times on the telephone with my attorneys and spent several hours reviewing documents to prepare. I also met with Mr. Needham and Mr. Faircloth for 3 hours the day before my deposition to prepare.

6. I remained in regular contact with my attorneys after my deposition and continued to receive updates and the key documents that were filed.

7. I was also actively involved in the settlement process. Before the mediation with Magistrate Judge Miller on August 17, 2021, I spoke with my attorneys twice on the telephone about the mediation process and read each side's mediation statement. I also attended the August 17th mediation, which lasted the entire day. While I primarily relied on my attorneys' advice during the negotiation process, they asked for, and I provided, my input at each stage. I also answered several questions that Judge Miller asked me directly. I also attended the second

mediation session before Judge Miller on September 8, 2021, when the parties reached a preliminary settlement agreement.

8. I am not a lawyer or an actuary, but I know that this case was not a "sure thing,, and that if Class Members won at trial, they may not receive 100% of the amount that we claimed as damages. Also, if the Class Members won, it may take years to receive any money if HII appealed.

9. I understand that the Settlement will provide Class Members with increases to their pension benefits valued at $2.8 million, which is approximately 35% of the total damages calculated by our expert before deductions of fees, expenses and a case contribution award. I am very pleased with the Settlement and believe it is a great result for the Class.

10. I also understand that my attorneys intend to ask the Court for an award of attorneys' fees and expenses of 25% of the Settlement's value, or $700,000. I will fully support their request. IKR and B&G have spent thousands of hours of time working on this case on a contingent basis, with no guarantee that they would be paid or even reimbursed for the expenses they advanced. The Settlement would not have been possible without their efforts and willingness to take on these challenges.

11. Having previously hired a lawyer for an unrelated personal injury matter, I know that lawyers are often paid 33% of the amount they recover when they take a case on a contingent basis. I expect that Class Members would have to pay more than 25% if they hired lawyers on contingent basis to bring their claims individually.

12. I could not have afforded to pay a lawyer by the hour to bring this case (and do not know anyone that could). Even on a contingency basis, it would have been impractical for me or any other Class Member to bring an individual case because of the expenses involved.

Executed on the ___th day of November, 2021.

Roger Herndon

Roger Herndon

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
NEWPORT NEWS DIVISION

Roger A. Herndon, on behalf of himself and all others similarly situated, Plaintiff, vs. Huntington Ingalls Industries, Inc., the HII Administrative Committee, and John/Jane Does 1–5, Defendants.	Civil Action No.: 4:19-cv-00052-HCM-DEM CLASS ACTION

DECLARATION OF GREGORY Y. PORTER
IN SUPPORT OF PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT

I, Gregory Y. Porter, declare as follows:

1. I make this Declaration of my own personal knowledge, and if called as a witness, I would and could testify competently to the matters stated herein.

2. I am a partner of the law firm Bailey & Glasser LLP and have been the lead attorney for my firm in this litigation representing the plaintiffs.

3. My firm, and co-Class Counsel Izard Kindall & Raabe LLP, have been actively involved in all stages of this litigation, including investigating and preparing the Complaint, successfully defending against Defendants' motion to dismiss and for summary judgment, seeking discovery, reviewing documents, taking deposition, hiring experts, briefing and obtaining class certification, preparing for trial, and settling this litigation.

4. Class Counsel have decades of experience with complex ERISA class action and are pioneers in litigation of this type.

5. Throughout the life of this case, the parties have engaged in numerous settlement discussions including a settlement conferences with Magistrate Judge Miller on June 14, 2021 and September 8, 2021. In connection with the settlement negotiations, the Parties exchanged information regarding their views on the merits, strengths, and weaknesses of the Actions, risks of litigation and the financial impact to Defendants, the Class, and the Plan, with respect to any judgment or settlement.

6. Plaintiffs served numerous document requests, interrogatories, and requests for admissions, largely concerning how the Defendants determined and monitored the Plan's actuarial assumptions.

7. In litigating this class action, Class Counsel retained Dr. Mitchell Serota as an expert to opine about actuarial equivalence and calculate damages. Dr. Serota calculated that the present value of additional past and future benefits from revising the pension calculation is approximately $8.15 million.

8. The Settlement does not contemplate the need for a settlement administrator, as Defendants already communicate directly with class members regarding their monthly pension benefits. Class Counsel will secure, host, and operate a website, www.HIIerisasettlement.com, in order to communicate relevant settlement information and provide key case documents to the Class, and the website will be included in the Class Notice. Plaintiffs anticipate the cost of securing and hosting the website will be less than $5,000.

9. In preparation for filing this motion, I also reviewed Bailey & Glasser LLP time and expenses for this case.

10. The information in this declaration regarding my firm's time and expenses are taken from contemporaneous time and expense printouts prepared and maintained by my firm in

the ordinary course of business. The time reflected in my firm's lodestar calculation and the expenses for which payment is sought are reasonable in amount and were necessary for the effective and efficient prosecution and resolution of the litigation. Bailey & Glasser LLP prosecuted this case on a wholly contingent basis and has received no compensation to date for either its litigation expenses or its time. Bailey & Glasser LLP has committed nearly 500 hours to the prosecution of this litigation from the beginning of this case through November 5, 2021, and anticipates exceeding 500 hours before the fairness hearing. Most of this time was spent by Mark Boyko, an experienced ERISA attorney with an hourly rate of $650. He worked under my supervision, and my hourly rate is $900. The total lodestar amount for attorney time based on the firm's current rates is $277,206.50. The rates reflect our standard hourly rates and have been approved in other litigation.

Attorney	Years of Practice	Position	Rate	Hours	Lodestar
Gregory Porter	25	Partner	$900	120.2	$108,180
Katherine Charonko	10	Partner	$750	7.8	$5,850
Mark Boyko	17	Partner	$650	161.9	$105,235
Alex Serber	4	Associate	$400	68.6	$27,440
Melissa Chapman		Paralegal	$265	60.0	$15,900
Melissa Kestner-Clay		Paralegal	$265	46.4	$12,296
Violet Ramos		Paralegal	$265	8.7	$2,306
Total				**473.6**	**$277,206.50**

11. Further, to date Bailey & Glasser LLP has had out-of-pocket expenses for this litigation of $147,178.93. When combined with expert expenses paid by IKR, the total cost for expert services total over $290,000.

Expense Description	Amount
Copying/Printing	$78.80
Postage and Delivery Services	$49.41
Court Fees	$412.5
Depositions	$3,725.95
Experts/Consultants	$121,002.56
Document Management	$16,633.66
Online Research	$183.26
Travel	$5,092.79
Total	**$147,178.93**

12. It is my opinion that the proposed Settlement is fair and reasonable.

13. There are no side-agreements required to be identified under Rule 23(e)(3).

14. Acknowledging that notices have not been mailed to the Class, Plaintiffs are not aware of any Class member who intends to oppose the Settlement.

15. Attached hereto as Exhibit A is a copy of Bailey & Glasser LLP's firm resume including information on the attorneys involved in this matter.

I declare, pursuant to 28 U.S.C. § 1746 and under penalty of perjury, that the foregoing is true and correct to the best of my knowledge, information and belief.

Executed at Washington, D.C. this 12th day of November, 2021.

/s/ Gregory Y. Porter
Gregory Y. Porter

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
NEWPORT NEWS DIVISION

Roger A. Herndon, on behalf of himself and all others similarly situated, Plaintiff, vs. Huntington Ingalls Industries, Inc., the HII Administrative Committee, and John/Jane Does 1–5, Defendants.	Civil Action No.: 4:19-cv-00052-RCY-LRL CLASS ACTION

Declaration of Gregory Y. Porter

EXHIBIT A

BAILEY GLASSER LLP

ERISA, Employee Benefits & Trust Litigation

Bailey Glasser handles class actions and high stakes individual actions involving employee pension benefits—including employee stock ownership plans (ESOPs), 401(k) plans and other defined contribution or individual account plans, and traditional defined benefit pension plans—and trust litigation involving family and other private trusts. We litigate these actions throughout the United States under the federal employee benefits law known as the Employee Retirement Income Security Act (ERISA) and under state trust law.

Our clients include employees, former employees, retirees, and trust beneficiaries, as well as businesses and other professionals victimized by fraud, investment mismanagement, hidden and undisclosed fees, and illegal benefit cutbacks. We have recovered hundreds of millions of dollars for our clients in litigation claiming breaches of fiduciary duty, prohibited transactions, and other violations of the law. Our fiduciary duty practice also includes claims in the growing area of ERISA welfare benefit plan litigation, such as claims challenging systematic denials of treatments under medical plans under policies that violate ERISA.

ESOPs

Bailey Glasser focuses on ESOPs that invest in private companies. Federal pension law provides generous tax subsidies to shareholders and companies that sell their stock to an ESOP. In exchange for these tax benefits, federal law requires that an independent trustee decides whether the stock transaction should happen. Independent trustees are supposed to act like a hypothetical prudent buyer in the market for a private company. Unfortunately, in our experience, these trustees do not conduct adequate due diligence, do not have a sophisticated understanding of corporate transactions, and are more interested in collecting trustee fees paid by the employer than doing their job.

The US Department of Labor has long identified ESOPs as an enforcement priority due to rampant abuses by plan service providers, and the firm has worked closely with the DOL on lawsuits. Bailey Glasser's ESOP practice strives to obtain real money for our clients and create real changes in the industry.

Multi-Trust Class Actions

Bailey Glasser's ERISA team has deep experience with complex, multi-plan class actions involving esoteric trading practices and opaque financial products. We represented hundreds of retirement plans in class actions against major financial institutions engaged in conflicted and imprudent securities lending practices that cost the plans millions. In one such case, against Northern Trust Company in Chicago federal court, we recovered $36 million for our clients. We also successfully prosecuted a

complex, unlawful tax-fee against BNY Mellon on behalf of thousands of family trusts, ultimately recovering millions for our clients. Currently, we are prosecuting an ERISA class action against Intel Corp. involving poor performing hedge funds and private equity investments.

401(k) Plans

Bailey Glasser has a long history of representing employees and retirees harmed by hidden or excessive fees, or imprudent investments, in their 401(k) plans. Our experienced team understands the various ways financial-services companies can profit from workers' hard-earned retirement savings. We have successfully litigated at all levels, including the United States Supreme Court, recovered over $100 million on behalf of our clients, and provided meaningful improvements to retirement plans across the country.

Pension Plans

Our team represents plan participants and beneficiaries in claiming the benefits that they were promised, and earned, under the written terms of their pension plans. In addition, plan sponsors are prohibited by law from amending qualified plans to decrease participants' "accrued benefits" and from eliminating or reducing certain "protected benefits." We have attorneys experienced in "anti-cutback rule" litigation. Bailey Glasser has recently been spearheading litigation alleging that actuarial assumptions used to determine optional forms of benefits or early retirement benefits are outdated. We are seeking losses to participants caused by use of outdated actuarial assumptions that cause benefits to be paid that are not actuarially equivalent to the annual monthly benefit (typically expressed as a single life annuity) payable at normal retirement age.

Trust Litigation

We understand how trustees, money managers, and investment advisors operate, and know how to spot hidden fees and mismanagement. Bailey Glasser recently finalized a nationwide class action on behalf of private family trusts who were being charged hidden fees by a large bank.

Health and Medical Plans

Our team members collectively have decades of experience in ERISA fiduciary duty litigation. We represent participants and beneficiaries in health care and medical plans to challenge systematic denials of treatments under policies that violate ERISA, and violations of mental health parity law.

Active Cases

Urschel Laboratories Employee Stock Ownership Plan

BAILEY GLASSER LLP

Experience

Making the Law

- Won a unanimous decision in the United States Supreme Court in *Sulyma v. Intel Corp*, a case brought on behalf of participants in Intel's 401(k) plan concerning alleged imprudent investments in several of the Plan's investment options. The Supreme Court decision set new standards for ERISA's statute of limitations.
- Won a $30 million trial judgment in *Brundle v. Wilmington Trust*, a case involving multiple breaches of duty by the trustee and complex valuation issues in an ESOP transaction; won a complete affirmance by the US Court of Appeals for the Fourth Circuit, establishing new law on ESOPs that has been cited nationwide.
- Obtained a precedent-setting decision by the US Court of Appeals for the Seventh Circuit in *Allen v. GreatBanc Trust Co.*, which established important pleading standards in ESOP cases.
- Obtained groundbreaking order that ESOP-owned company's indemnification of ESOP trustee violated ERISA in *McMaken v. Chemonics*.

ESOPs

- Won a $30 million trial judgment in *Brundle v. Wilmington Trust*, a case involving multiple breaches of duty by the trustee and complex valuation issues in an ESOP transaction; won a complete affirmance by the US Court of Appeals for the Fourth Circuit, establishing new law on ESOPs that has been cited nationwide.
- Settled an ESOP lawsuit for $19.5 million, in *Jessop v. Larsen*, working closely with the US Department of Labor; yielded an average class member recovery of over $30,000
- Recovered $19.5 million for ESOP participants just before trial. *Choate v. Wilmington Trust*
- Recovered $12 million for ESOP participants after one-week trial. *Nistra v. Reliance Trust*
- Recovered $6.25 million for ESOP participants. *Casey v. Reliance Trust*
- Recovered $5 million for ESOP participants even though plaintiffs had signed releases. *Fiorito v. Wilmington Trust*.

401(k) Plans

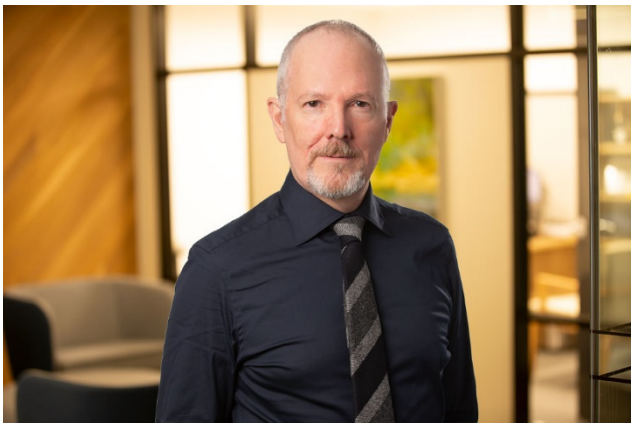
- Recovered $17 million for plan participants from Neuberger Berman in case alleging imprudent investment in proprietary fund. *Bekker v. Neuberger*
- Settled a lawsuit against Franklin Templeton for $26 million where the plaintiffs alleged that Franklin Templeton stuffed its own employee 401(k) plan with Franklin Templeton mutual funds despite a conflict of interest. *Cryer v. Franklin*

- Settled a lawsuit against Fidelity Investments for $12 million where the plaintiffs alleged that Fidelity stuffed its own employee 401(k) plan with Fidelity mutual funds. *Bilewicz v. Fidelity*.

Multi-Trust Financial Class Actions

- Secured a $59.2 million settlement on behalf of participants in certain Raytheon Co. pension plans based on allegations Raytheon used outdated mortality tables to calculate plan benefits.
- Settled a complex securities lending action for $36 million against Northern Trust on behalf of hundreds of retirement plans across the country. *Diebold v. Northern Trust*
- Obtained class certification of hundreds of retirement plans in complex securities lending that settled for $10 million. *Glass Dimensions v. State Street*
- Settled a multi-state class action against BNY Mellon for $10 million on behalf of hundreds of private family trusts who had been charged hidden fees. *Henderson v. BNY Mellon*
- Prosecuting multi-plan class action alleging imprudent investments in hedge funds and private equity that cost plans billions of dollars. Won groundbreaking case in Supreme Court that allowed case to proceed. *Sulyma v. Intel Corp.*

BAILEY GLASSER LLP



Partner

Gregory Y. Porter

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1055 Thomas Jefferson Street NW
Suite 540
Washington, DC 20007
T: 202.548.7790 F: 202.463.2103
gporter@baileyglasser.com

"This is a wonderful result for your clients and for everyone, and I appreciate it. It is really wonderful when a judge has such fine lawyers in front of her. Throughout this case …the quality of the work for all the parties has really been extraordinarily good…Congratulations to all of you for the fine work."

Greg Porter has extensive trial and class action experience in complex pension, 401(k) plan, and employee stock ownership plan (ESOPs) lawsuits in federal court. Greg has led the firm's ERISA and trust practice to major trial and appellate victories, including seminal decisions in the Seventh and Fourth Circuit Courts of Appeal and a $30 million trial judgment that broke new ground for ESOPs. With co-counsel, the firm's ERISA practice won a 9-0 decision in the Supreme Court, Intel Corp v. Sulyma, that established key statute of limitations rights for employees in ERISA cases.

Greg has recovered hundreds of millions of dollars on behalf of employees who lost retirement savings in 401(k) plans and ESOPs. He understands complex financial transactions, investments, and instruments.

Greg has also developed techniques for successfully investigating and prosecuting complex lawsuits involving business valuation, securities lending, hedge funds, and private equity. He is a skilled appellate advocate who has argued appeals in the Second, Fourth, Sixth and Eighth US Circuit Courts of Appeal.

Government Service / Previous Employment

United States Army, Infantry Branch

Executive Director, National Organization for the Reform of Marijuana Laws (NORML)

BAILEY GLASSER LLP

Practice Areas

Appellate Advocacy
Business Valuation
Cannabis Law
Class Actions
Commercial Litigation
ERISA, Employee Benefits & Trust Litigation
Labor & Employment

Education

J.D., University of Southern California Gould *School of Law*, 1996, Order of the Coif, Articles Editor, *Southern California Law Review*, Paralyzed Veterans of America Scholarship - Teaching and Research Assistant
B.A., University of Massachusetts Amherst, 1989, Winning History Department Essay (1988)

Admissions

District of Columbia
New York
Virginia
US Supreme Court
US Court of Appeals for the First Circuit
US Court of Appeals for the Second Circuit
US Court of Appeals for the Third Circuit
US Court of Appeals for the Fourth Circuit
US Court of Appeals for the Fifth Circuit
US Court of Appeals for the Sixth Circuit
US Court of Appeals for the Seventh Circuit
US Court of Appeals for the Eighth Circuit
US Court of Appeals for the Ninth Circuit
US District Court, District of Columbia
US District Court, Central District of Illinois
US District Court, Northern District of Ohio
US District Court, Eastern District of Virginia

BAILEY GLASSER LLP

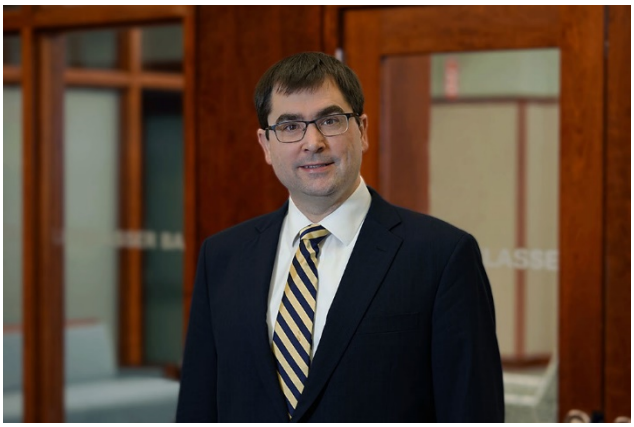
Representative Matters

- Won a $30 million trial judgment in *Brundle v. Wilmington Trust*, a case involving multiple breaches of duty by the trustee and complex valuation issues in an ESOP transaction; won a complete affirmance by the US Court of Appeals for the Fourth Circuit, establishing new law on ESOPs that has been cited nationwide
- Obtained a precedent-setting decision by the US Court of Appeals for the Seventh Circuit in *Allen v. GreatBanc Trust Co.*, which established important pleading standards in ESOP cases
- Settled an ESOP lawsuit for $19.5 million, in *Jessop v. Larsen*, working closely with the US Department of Labor; yielded an average class member recovery of over $30,000
- Settled a complex securities lending action for $36 million against Northern Trust on behalf of hundreds of retirement plans across the country
- Settled a lawsuit against Franklin Templeton for $26 million where the plaintiffs alleged that Franklin Templeton stuffed its own employee 401(k) plan with Franklin Templeton mutual funds despite a conflict of interest
- Settled a lawsuit against Neuberger Berman for $17 million where the plaintiffs alleged that Neuberger pushed a low-performing and expensive proprietary mutual fund on its own employee 401(k) plan despite a conflict of interest
- Represents Intel employees in *Sulyma v. Intel Corp*, a case claiming that retirement plan trustees lost substantial retirement savings by investing in hedge funds and private equity. In February 2020, the Supreme Court issued a unanimous decision in favor of our clients, the employees, on a key the statute of limitations defense
- Represents employees in multiple pension plan lawsuits claiming that employers used outdated mortality tables, some 50 years old, to improperly calculate pension benefits
- Represents employees in multiple ESOP lawsuits claiming that trustees caused employees to pay more than fair market value for employer stock
- Won a trial on behalf of the defendant in *Dupree v. Prudential Insurance Company*, where the plaintiffs alleged hundreds of millions of dollars in pension losses

Community and Professional Activities

Employee Benefits Committee, American Bar Association's Labor and Employment Section, Member

BAILEY GLASSER LLP



Partner

Mark G. Boyko

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Mark Boyko practices primarily in the area of complex fiduciary breach and prohibited transaction litigation, representing clients in actions brought under the Employee Retirement Income Security Act of 1974 (ERISA). He has secured judgments and settlements in this area exceeding $350 million and handled successful appeals in federal circuit courts as well as the US Supreme Court.

Mark is a pioneer in ERISA class action litigation, representing workers and retirees in many of the earliest cases in his field. In these matters, Mark represents 401(k) plan participants alleging breach of fiduciary duties in order to hold employers and Wall Street accountable for the plans' investments and fees.

His practice also includes numerous private company ESOP cases in which he represents workers claiming that fiduciary trustees caused their employee stock ownership plans (ESOPs) to overpay corporate insiders for private company stock. Additionally, Mark represents pension plan participants in cases alleging that plans using decades-old mortality tables have unfairly reduced monthly benefits for married retirees.

Mark also provides legal and strategic services to founders, startups, and small businesses from pre-conception through Series-A funding.

Awards & Accolades

Super Lawyers, Missouri, "Rising Star," Class Action/Mass Torts, Employee Benefits, Business/Corporate, Personal Injury - General (2020)

Practice Areas

Arbitration & Dispute Resolution
Business & Finance
ERISA, Employee Benefits & Trust Litigation
Life Sciences

BAILEY GLASSER LLP

Private & Family Businesses

Education

LL.M., New York University School of Law, 2005
J.D., University of Missouri - School of Law, 2004
B.A., University of Illinois at Urbana–Champaign, 2001

Admissions

Missouri
Illinois
New York

Representative Matters

- Represents employees and 401(k) plan participants in litigation alleging employers used their own expensive proprietary investment products in the plans because of the benefit to the employer
- Represents retirees and defined benefit pension plan participants in litigation against employers such as American Airlines and Anheuser Busch concerning the actuarial calculations the plans use to calculate pension benefits
- Represents current and former employees in litigation alleging that the purchase or sale of privately held stock by an Employee Stock Ownership Plan (ESOP) was not at market prices and instead done to benefit the corporate founders or insiders
- Represents workers and retirees alleging their employer imprudently concentrated their 401(k) plan investments in single stocks or a small number of stocks
- Represents Embark Veterinary, Inc., a canine genetic testing company, on corporate matters from company origin
- Represents startups in diverse fields including medical monitoring and YouTube/entertainment

Community and Professional Activities

Board Member, Places for People
Director, Kirkwood R-VII School District
St. Louis County Economic Rescue Team
Vice-Chair, Employee Benefits General Committee, American Bar Association's Torts, Trial, and Insurance Practice Section (2020-21)
Former professional soccer referee

BAILEY GLASSER LLP

Partner

Katherine E. Charonko

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Kate Charonko is a thought leader and pioneer in the field of Electronically Stored Information (ESI) and is Bailey Glasser's ESI group's Practice Group Leader. Kate is a Certified e-Discovery Specialist (CEDS), which is a globally-recognized credential that assures clients and co-counsel that our approaches are efficient, cost-effective, and reduces risk in all phases of e-Discovery.

The strategic use of ESI – and the timing related to when ESI strategies are deployed in pending or threatened litigation – can greatly impact the flow and cost of legal proceedings.

In her role as ESI Practice Group Leader, Kate designs ESI strategies that provide structured and conceptual analytic functionality for numerous aspects of e-Discovery, including document review strategy, use of technology and technology assisted review (TAR), collection and preservation strategy, ESI protocols, and training and implementation of e-Discovery practices.

Kate also provides consulting services for all Bailey Glasser e-Discovery case managers and attorney case teams to drive analytics adoption at the firm, resulting in significant time and cost savings to clients.

In addition to her e-Discovery practice, Kate serves as part of Bailey Glasser's multidistrict litigation (MDL) teams focusing on automotive and medical device product liability actions across the country. She was appointed to serve as liaison director of e-Discovery and ESI on several MDL leadership committees and creates case-specific document review workflows.

Kate frequently speaks on various e-Discovery topics, including ESI, TAR, and legal ethics. In 2019, she was invited to share her "lessons learned" about her path to becoming a lawyer in Nora Riva Bergman's book, *"50 Lessons for Women Lawyers From Women Lawyers."*

Awards & Accolades

Certified E-Discovery Specialist (CEDS)

Best Lawyers, Spring 2021, Women in the Law

BAILEY GLASSER LLP

Government Service / Previous Employment

Extern, Hon. Irene M. Keeley, US District Court for the Northern District of West Virginia (2011)

Practice Areas

Automotive
Catastrophic Personal Injury
Electronically Stored Information (ESI)
Life Sciences
MDL Panels
Medical Device & Drugs
Product Liability

Education

J.D., West Virginia University College of Law, 2011, Order of the Barrister, Winner 2011 Marilyn E. Lugar Trial Competition
B.F.A., West Virginia University, 2007, *summa cum laude*, Outstanding Senior Award

Admissions

West Virginia
District of Columbia
US District Court, Northern District of West Virginia
US District Court, Southern District of West Virginia
US District Court, Northern District of Illinois

Representative Matters

- Appointed to serve on the leadership team for the Discovery & ESI Subcommittee in a multidistrict class-action litigation in the defective 3M combat arms earplugs case
- Serving as liaison director of e-Discovery to several MDL leadership committees in various cases focusing on medical device product liability claims surrounding manufactured hernia mesh products, including working with the plaintiffs' executive committee in Atrium Medical Corp. C-Qur Mesh Products Liability Litigation (MDL No. 2753)
- Kate was appointed by the Plaintiffs' Steering Committee to be the Liaison Director for e-Discovery for *In re Davol/C.R. Bard Hernia Mesh;* this litigation is coordinated in Rhode Island state court and targets Bard's Composix® Kugel® mesh patches, and raise safety concerns about the company's other hernia repair products, including Composix, Composix E/X, Ventrio, Ventrio ST, Ventralex, Ventralex ST, 3D Max, Perfix Plug, Marlex, and Bard Mesh

- Serves as a member of the bellwether trial team for the Atrium Medical Corp. C-Qur Mesh Products and *In re Davol/C.R. Bard Hernia Mesh*
- Participating as a member of Bailey Glasser's plaintiff steering committee team on the Volkswagen Diesel Emissions MDL in the Northern District of California, the largest automotive class action in history, with settlements predicted to exceed $10 billion
- Serving as part of the team working with the plaintiffs' lead counsel committee for the economic loss cases in the Toyota sudden acceleration MDL in the Middle District of California, which settled for $1.6 billion and handled more than a dozen related death and serious injury cases

Community and Professional Activities

American Association of Justice
The Sedona Conference
Women In E-Discovery
Women En Mass
International Legal Technology Association

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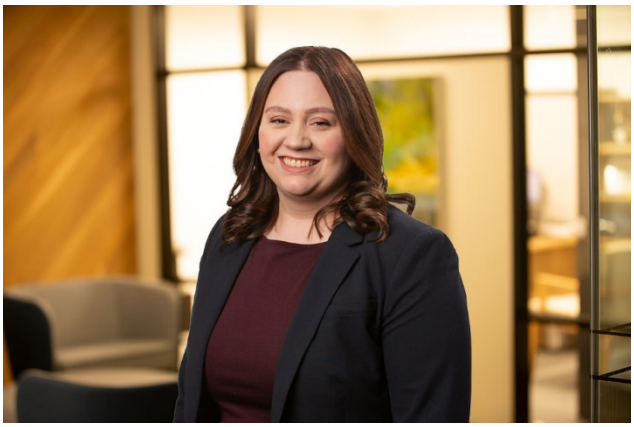

Attorney

Alexandra L. Serber

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Alex Serber lives and breathes the tax code. Alex dedicates her uniquely broad tax practice to providing strategic and pro-active counsel to her clients, including advocacy and resolution of tax controversies, structuring transactions, entity choice and formation, mergers and acquisitions, financial restructurings, and bankruptcies/reorganizations. For non-profit organizations, she also deftly guides her clients through strategic compliance, operational advice, and other complicated tax matters. In short, Alex uses her passion for tax law to benefit her corporate and individual clients.

In addition, Alex finds ways to help clients take advantage of new and noteworthy changes in tax laws that can be financially advantageous, such as the complex structuring of Qualified Opportunity Zone Funds or structuring multi-tiered entities to maximize tax advantages. She counsels companies on qualifying and selecting the most appropriate Federal and State tax credits. Alex takes a proactive approach in structuring deals to minimize tax implications for companies as well as assisting clients when the IRS, DOJ, or State authorities believe there are tax issues.

Alex also assists her clients as she views their circumstances not only through the lens of a tax attorney, but also as a litigator, where she handles multimillion-dollar litigation matters for diverse clients, including governmental entities and private class action plaintiffs.

Government Service / Previous Employment

Extern, Chief Counsel, Internal Revenue Service (2016)

Extern, Missouri Supreme Court (2015)

Practice Areas

Business & Finance
Cannabis Law
Criminal Defense & Internal Investigations
Hospitality and Franchising

BAILEY GLASSER LLP

Life Sciences
Mergers & Acquisitions
Name, Image, & Likeness (NIL)
Tax

Education

L.L.M. Taxation, Georgetown University Law Center, 2019
J.D., University of Missouri - School of Law, 2017, Founding Editor-In-Chief, *Business, Entrepreneurship & Tax Law Review*
B.A., Liberty University, 2014, *magna cum laude*

Admissions

District of Columbia
Maryland
Missouri
US Tax Court
Missouri Supreme Court

Representative Matters

- Advised gaming enterprises on tax structure opportunities and possible use of New Market Tax Credits and Opportunity Zone enhanced financing
- Structured and executed a Qualified Opportunity Zone project in West Virginia
- Advised non-profits entities on federal and state tax compliance and evaluation of unrelated business taxable income
- Advised clients on tax implications of domestic and international M&A transactions
- Consistently advise employees on prospective 409A pitfalls regarding their executive compensation agreements
- Serve as tax counsel to international gaming company
- Advised digital guarantee company of state tax compliance in 10+ states
- Represented client in Department of Justice (DOJ) Investigation in connection with conservation easements

Community and Professional Activities

Co-Chair, Women and Finance Committee, Women's Bar Association of the District of Columbia