

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

IN RE: NATIONAL FOOTBALL  
LEAGUE PLAYERS' CONCUSSION  
INJURY LITIGATION

Kevin Turner and Shawn Wooden,  
*on behalf of themselves and  
others similarly situated,*

Plaintiffs,

v.

National Football League and  
NFL Properties LLC,  
successor-in-interest to  
NFL Properties, Inc.,

Defendants.

THIS DOCUMENT RELATES TO:  
ALL ACTIONS

No. 2:12-md-02323-AB

MDL No. 2323

**Hon. Anita B. Brody**

Civ. Action No. 14-00029-AB

**CO-LEAD CLASS COUNSELS' PETITION FOR AN AWARD OF ATTORNEYS' FEES,  
REIMBURSEMENT OF COSTS AND EXPENSES, ADOPTION OF A SET-ASIDE OF  
FIVE PERCENT OF EACH MONETARY AWARD AND DERIVATIVE CLAIMANT  
AWARD, AND CASE CONTRIBUTION AWARDS TO CLASS REPRESENTATIVES**

Co-Lead Class Counsel respectfully move, pursuant to Rule 23(h) of the Federal Rules of Civil Procedure and Section 21.1 of the Class Action Settlement Agreement, as amended (ECF No. 6481-1) ("Settlement") for the entry of an Order (i) awarding attorneys' fees and reimbursement of costs and litigation expenses for their work to date in this litigation; (ii) conferring upon Co-Lead Counsel Christopher A. Seeger the responsibility and discretion to make the allocation of the attorneys' fees and costs and expenses award among those Plaintiffs' Counsel seeking compensation for common benefit work and common benefit costs and expenses incurred; (iii)

adopting a set-aside of five percent of each Monetary Award and Derivative Claimant Award under the Settlement, for the purpose of reimbursing counsel for future common benefit work and expenses in connection with implementation of the Settlement; and (iv) making case contribution (or incentive or service) awards to the three representatives of the settlement Class (or, where appropriate, to their estates) for their invaluable contributions in connection with the achievement of the Settlement.

The reasons supporting these requests are fully set forth in the accompanying memorandum of law and the Declaration of Christopher A. Seeger, dated February 13, 2017, and exhibits thereto. A proposed Order is submitted herewith.

Dated: February 13, 2017

Respectfully submitted,

s/ Christopher A. Seeger  
Christopher A. Seeger  
Seeger Weiss LLP  
77 Water Street  
New York, New York 10005  
cseeger@seegerweiss.com  
(T) 212-584-0700  
(F) 212-584-0799

***Co-Lead Class Counsel***

Sol Weiss  
ANAPOL WEISS  
One Logan Square  
130 N. 18th St. Ste. 1600  
Philadelphia, PA 19103  
(T) 215- 735-1130  
(F) 215-735-2024  
sweiss@anapolweiss.com

***Co-Lead Class Counsel***

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing was served on all counsel of record via the Court's ECF system on February 13, 2017.

s/ Christopher A. Seeger  
Christopher A. Seeger

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PETITION FOR AN AWARD OF ATTORNEYS' FEES, REIMBURSEMENT  
OF COSTS AND EXPENSES, ADOPTION OF A SET-ASIDE OF EACH  
MONETARY AWARD AND DERIVATIVE CLAIMANT AWARD,  
AND CASE CONTRIBUTION AWARDS FOR CLASS REPRESENTATIVES**

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**I. INTRODUCTION**

On December 12, 2016, following years of hard-fought litigation, negotiation, and ultimately, numerous challenges on appeal, the United States Supreme Court denied further review of the historic and groundbreaking settlement negotiated by Plaintiffs' Counsel and approved by this Court.<sup>1</sup> With the High Court's denial, the Settlement has become effective, and the program established thereunder is now poised to begin providing settlement benefits to the more than 20,000 Retired National Football League Players that comprise the Class.

With the Settlement now effective (and in anticipation thereof), Plaintiffs' Counsel has engaged in months of regular meetings with the Court-appointed Claims, Baseline Assessment Program ("BAP"), and Lien Resolution Administrators, and the NFL Parties to negotiate the documents and processes that will be used for registration, the BAP, and the claims process, and to further establish the independent Provider and Physician Networks that will provide diagnostic services for the Retired NFL Football Players.<sup>2</sup> As a result, the BAP and claims process, the two cornerstones of the Settlement Agreement ("Settlement"), will be delivering benefits to Class Members shortly, now that registration has begun (as of February 6, 2017), and the program is expected to begin delivering benefits to Class Members in the next several months.

What is now recognized as a landmark settlement began over five years ago as a high-risk, long-odds litigation undertaken by Plaintiffs' Counsel on a wholly contingent basis. From the outset, Plaintiffs' Counsel committed substantial time, resources, and expertise in pursuit of recovery for retired NFL players and their families. *See* Decl. of Christopher A. Seeger in

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<sup>1</sup> In accordance with Sup. Ct. R. 44(2) & 45(2)-(3), the Supreme Court's disposition became final on January 6, 2016, upon the expiration of the time for filing a rehearing petition.

<sup>2</sup> This term is employed as defined in the Settlement. *See* Settlement § 2.1(ffff) [ECF No. 6481-1, at 18].

Support of Co-Lead Class Counsel’s Petition for an Award of Attorneys’ Fees and Expenses, dated February 13, 2017 (“Seeger Decl.”) ¶ 4. Indeed, over the course of those years, Plaintiffs’ Counsel expended many thousands of hours of attorney and professional time, and incurred and advanced millions of dollars in expenses, for the benefit of the Class, to achieve and facilitate the Settlement that is now effective.

In that respect, the parties’ Settlement, approved by the Court in April 2015, provides that “the NFL Parties shall pay class attorneys’ fees and reasonable costs,” and that “Class Counsel shall be entitled . . . to petition the Court on behalf of all entitled attorneys for an award of class attorneys’ fees and reasonable costs.” Settlement § 21.1 [ECF No. 6481-1, at 81-82].<sup>3</sup> The NFL Parties have agreed not to oppose or object to a petition seeking an award of class attorneys’ fees and reasonable costs of up to \$112.5 million. *Id.*

With the Settlement now effective, through the instant application, Co-Lead Class Counsel Christopher A. Seeger of Seeger Weiss LLP, and Sol Weiss of Anapol Weiss (“Petitioners”), on behalf of Plaintiff’s Counsel,<sup>4</sup> respectfully petition the Court for an award of attorneys’ fees and reimbursement of costs and litigation expenses for their work to date in this litigation.

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<sup>3</sup> All page number references in this memorandum to documents filed on the Court’s ECF system are to the ECF pagination rather than the pagination at the bottom of the original document.

<sup>4</sup> “Plaintiffs’ Counsel” refers collectively to the lawyers and law firms that comprise the Plaintiffs’ Executive Committee and the Plaintiffs’ Steering Committee. The Court’s Case Management Orders (“CMO”) Nos. 2 and 3 [ECF Nos. 64, 72] appointed those firms to their respective positions. “Plaintiffs’ Counsel” also includes the law firms that have done important common benefit work for the litigation, approved by Co-Lead Class Counsel, and are submitting declarations in support of this Petition.

In addition, as provided by section 21.1 of the Settlement, Plaintiffs' Counsel further requests the holdback of five percent of each Monetary Award and Derivative Claimant Award. The funds provided by such holdbacks are designed to support the substantial common benefit work that will be necessary over the 65-year life of the Settlement program, so as to ensure that Class Members receive the Monetary Awards or other benefits to which they are entitled.<sup>5</sup> Plaintiffs' Counsel must accomplish numerous tasks in overseeing the implementation of the Settlement – including the administration of the Monetary Award Fund (“MAF”) and BAP, as well as the appeals process – to ensure that the Settlement program is properly administered and provides appropriate benefits to all eligible Retired NFL Football Players and their family members. Given the 65-year duration of the MAF, Plaintiffs' Counsels' obligations with respect to the administration of the Settlement will continue for many years.

Lastly, Plaintiffs' Counsel requests Case Contribution Awards of \$100,000 for the Class Representatives. Subclass 1 representatives Corey Swinson<sup>6</sup> and Shawn Wooden and Subclass 2 representative Kevin Turner<sup>7</sup> all made invaluable contributions to the achievement of the Settlement, and are fully deserving of this incentive award.

Petitioners seek a total award of \$112.5 million. The request covers both attorneys' fees and reimbursement of costs and out-of-pocket expenses. The attorneys' fee request is \$106,817,220.62, which, as discussed in further detail below, represents about nine percent of

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<sup>5</sup> Should the Court approve the request for the set-aside, Plaintiffs' Counsel will submit a detailed plan for administering and allocating these funds. Seeger Decl. ¶ 119.

<sup>6</sup> Corey Swinson passed away suddenly in September 2013. Therefore, Petitioners seek an incentive award to be paid to Plaintiff Swinson's estate. Seeger Decl. ¶ 122.

<sup>7</sup> Kevin Turner passed away on March 24, 2016 due to Amyotrophic Lateral Sclerosis (“ALS”). Seeger Decl. ¶ 129. Accordingly, Petitioners seek an incentive award to be paid to Plaintiff Turner's estate.

the value of the benefits conferred on the Class and is well within the ranges accepted by courts within this Circuit. Petitioners' reimbursable out-of-pocket expenses are \$5,682,779.38. For lodestar cross-check purposes, the lodestar amassed by Plaintiffs' Counsel since the inception of this multidistrict litigation ("MDL") in connection with common benefit work is \$40,559,978.60. This Petition, together with the accompanying supporting declarations, sets forth the extensive work that was undertaken by all Plaintiffs' Counsel to obtain the extraordinary relief recovered for the Class. The requested fee is reasonable and appropriate, particularly given the complex subject matter of the case, the exceptional results achieved against daunting odds, the substantial litigation risks incurred by Plaintiffs' Counsel, and the overwhelmingly strong support for the Settlement from the Class following nearly unprecedented media attention and public scrutiny.

The requested award will be used to compensate the attorneys listed in this Petition only for common benefit work performed in this MDL to date. A number of law firms involved in this litigation were retained by individual Class Member clients. This petition does not include attorney time or expenses specific to their individual clients' cases.<sup>8</sup>

When compared with numerous fee awards granted in this District, the totality of the global fee request represents a relatively modest percentage of the recovery achieved under the Settlement. As demonstrated below, the fee award requested herein falls easily within acceptable limits established by the Third Circuit's attorneys' fees jurisprudence.

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<sup>8</sup> Co-Lead Class Counsel's firm, Seeger Weiss LLP, had been individually retained by a number of Class Members. Seeger Weiss has waived attorneys' fees and expenses from Class Members whom the firm represents on an individual basis, and will seek compensation solely from common benefit funds given that its work and expenditures have overwhelmingly focused on common benefit efforts. Seeger Decl. ¶ 98. Other firms, however, are asserting their rights to be compensated pursuant to their retainers for work done on behalf of their individual clients. See ECF Nos. 7071, 7073, 7075, 7085.

Finally, Plaintiffs' Counsel request that, as is frequently done in the case of class action common benefit fee awards, the discretion and responsibility to allocate the fees be entrusted to Co-Lead Class Counsel Christopher A. Seeger, who has exercised overall oversight and leadership of this litigation and thus has familiarity with the roles and contributions of participating Plaintiffs' Counsel. Seeger Decl. ¶ 99.

## **II. THE SETTLEMENT BENEFITS**

The groundbreaking global resolution in this MDL was the result of many months of intense, hard-fought, arm's-length negotiations among the parties, encompassing collectively thousands of hours of professional time with substantial input from medical, actuarial, and other experts. Plaintiffs' Counsel fully brought to bear their abundant experience in complex litigation to conceive, structure, and gain approval of an agreement that will protect many thousands of Retired NFL Football Players and their families for decades. The Settlement resolves the claims of the more than 5,000 cases filed directly in or transferred to this MDL, as well as the claims of thousands of additional Retired Players against the NFL Parties for injunctive relief, medical monitoring, and compensation for the long-term neurocognitive and neuromuscular injuries and other losses suffered by them allegedly as a result of the Defendants' tortious conduct. Seeger Decl. ¶ 11.

The reach and relief offered by the Settlement is substantial and without easy comparison. Retired NFL Football Players who last played in the league long ago, and who have yet to develop a Qualifying Diagnosis, will receive full value for any ultimate qualifying claim – regardless of whether they commenced an underlying action. The novel resolution provided by the Settlement provides broad reach and protection to Retired NFL Football Players and their families.

Plaintiffs' Counsel negotiated to ensure that the Settlement created an uncapped MAF to provide much-needed relief to (i) seriously injured retired players with a "Qualifying Diagnosis" of Level 1.5 Neurocognitive Impairment (early dementia), Level 2 Neurocognitive Impairment (moderate dementia), Alzheimer's Disease, Parkinson's Disease, and/or ALS; (ii) the representatives of deceased players who received a Qualifying Diagnosis while living; and (iii) the representatives of certain players who died before Final Approval (April 22, 2015) and were diagnosed post-mortem with Chronic Traumatic Encephalopathy ("CTE"), and their families. In the event a players' condition worsens, he and his family will be able to seek additional payments. The MAF will be available for 65 years to ensure that even the youngest retired players will have an opportunity to receive these benefits should they become eligible. Importantly, in order to receive a Monetary Award, Class Members will *not* be required to prove that their injuries were caused by the NFL Parties, let alone concussions suffered during professional football play.

Significantly, the Settlement preserves Retired NFL Football Players' rights to pursue claims for worker's compensation and any and all medical and disability benefits under any applicable collective bargaining agreement, including the NFL's Neuro-Cognitive Disability Benefit. In addition, the Settlement ensures that the provision included in Article 65 of the current collective bargaining agreement ("CBA"), Section 2 – requiring that players execute a release of claims and covenant not to sue in order to be eligible for the NFL's Neuro-Cognitive Disability Benefit – will not be enforced or used against players in connection with the Settlement.

The Settlement also establishes a \$75 million BAP designed to determine the existence and extent of cognitive impairment in living Retired NFL Football Players. In the event that they

are found to suffer from moderate cognitive impairment (“Level 1 Neurocognitive Impairment”), they will be entitled to supplemental benefits in the form of medical treatment and/or evaluation, including counseling and pharmaceutical coverage. Another component of the Settlement is a \$10 million Education Fund to promote safety and injury prevention in football players, including youth football players, and to educate Retired NFL Players regarding the NFL’s medical and disability benefits programs and initiatives.

The MAF and the BAP are highly innovative means to implement major objectives of the Settlement. These objectives are to provide the opportunity for Retired NFL Football Players to obtain diagnoses and compensation. The level of planning, research, and coordination required to establish two nationwide networks of board-certified, highly-qualified medical professionals is extremely high, and required a substantial amount of behind-the-scenes work by Plaintiffs’ Counsel. Moreover, information gained through the BAP, combined with the Education Fund, has the potential to greatly improve the understanding, and treatment of head injuries generally, including football and other sports.

This Settlement received unprecedented publicity (and scrutiny) from the moment of its announcement. Considering the ubiquity of the news reports and associated public attention concerning the Settlement and the state-of-the-art class notice program, the reaction of the Class has been extremely favorable. Fewer than one percent of Class Members filed requests for exclusion,<sup>9</sup> and over 12,000 potential Settlement beneficiaries and their counsel have signed up to receive further notices regarding the Settlement and claims process. Declaration of Orran L. Brown, Sr., in Support of Co-Lead Class Counsels’ Petition for an Award of Attorneys’ Fees and

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<sup>9</sup> The number of opt-outs continues to decrease. Nineteen Class Members who had opted out have, with the Settling Parties’ agreement and the Court’s approval, rescinded their decision and rejoined the Class. *See* ECF Nos. 7117-1 (¶¶ 5-6), 7119.

Expenses, dated Feb. 8, 2017 (“Brown Decl.”), at 3-4. Since the registration period opened on February 6, 2017, the Settlement Claims Administrator has received over 6,100 registrants. Seeger Decl. ¶ 11. This high level of favorable response is remarkable.

Plaintiffs’ Counsel expended a great deal of time, energy, and resources to defend this historic Settlement against challenges filed in this Court, the Third Circuit, and the Supreme Court by objectors who doggedly pursued their objections and appeals. Those relentless challenges threatened not only to undo the Settlement itself but also to irreversibly wreck any prospect of a class-wide resolution of the Plaintiffs’ claims in this MDL. Until the Supreme Court declined consideration of the last of those misguided challenges, long-awaited relief could not begin flowing to Class Members. As the Court is aware from recent filings, including applications for approval of pre-registration and supplemental notice to Class Members, Plaintiffs’ Counsel is currently taking the final steps antecedent to the launch of the Settlement program. *E.g.*, ECF Nos. 7104, 7115 (Orders approving amended pre-registration notice and Supplemental Class Notice); Seeger Decl. ¶¶ 107-18 (discussing initial and long-term implementation steps).

### **III. PROCEDURAL HISTORY**

#### **A. Initiation of NFL Players’ Concussion Injury Litigation and Formation of the MDL**

This MDL was established on January 31, 2012 when the Judicial Panel on Multidistrict Litigation (“JPML”) centralized the actions filed against the NFL Parties and the Riddell Defendants by dozens of former NFL players and certain of their wives in this District for coordinated pretrial proceedings, pursuant to 28 U.S.C. § 1407. *See In re Nat’l Football League Players’ Concussion Injury Litig.*, 842 F. Supp. 2d 1378 (J.P.M.L. 2012). The JPML found that these cases “share[d] factual issues arising from allegations against the NFL stemming from

injuries sustained while playing professional football, including damages resulting from the permanent long-term effects of concussions while playing professional football in the NFL” and that “centralization under Section 1407 in the Eastern District of Pennsylvania w[ould] serve the convenience of the parties and witnesses and promote the just and efficient conduct of the litigation.” *Id.* at 1379. By the time of argument on the Section 1407 centralization motion in January 2012, sixteen potentially related actions pending against the NFL Parties were before the JPML. *Id.* at 1378. Soon thereafter, 123 cases were directly filed in the MDL or removed from Pennsylvania state court to this Court, and the JPML transferred an additional 163 cases to the MDL. Seeger Decl. ¶ 13.

**B. Early Proceedings in This Court**

At the first MDL status conference on April 25, 2012, the Court selected Christopher A. Seeger of Seeger Weiss LLP as Plaintiffs’ Co-Lead Counsel for the MDL proceedings, and requested that another co-lead counsel from a Philadelphia-based firm also be selected. CMO No. 2 [ECF No. 64]. Plaintiffs selected and the Court confirmed the appointment of Sol Weiss of Anapol Schwartz (now Anapol Weiss) as Co-Lead Counsel. CMO No. 3 [ECF No. 72]. Plaintiffs also created and the Court appointed a Plaintiffs’ Executive Committee (“PEC”) and a Plaintiffs’ Steering Committee (“PSC”) composed of several of the counsel for Plaintiffs in the cases pending before the Court. ECF Nos. 64, 72. The PEC included counsel who were ultimately also appointed as Class Counsel, Gene Locks and Steven C. Marks, and the PSC included those ultimately also appointed as Subclass Counsel, Arnold Levin and Dianne M. Nast.<sup>10</sup> Seeger Decl. ¶¶ 14-15.

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<sup>10</sup> The Court later appointed Class Counsel and Subclass Counsel, resulting in Messrs. Seeger’s and Weiss’ positions ultimately changing from Co-Lead Counsel to Co-Lead Class Counsel, in accordance with the Preliminary Approval Order, dated July 7, 2014 [ECF No. (Footnote continued . . . )

As part of its initial case management orders, the Court identified the NFL Parties' preemption defense under Section 301 of the Labor Management Relations Act ("LMRA"), 29 U.S.C. § 185, as a threshold legal issue to be addressed before proceeding to the broader merits of Plaintiffs' claims. CMO No. 2 at 2-3; CMO No. 4 [ECF No. 98] ¶ 3. Accordingly, the Court stayed formal discovery, ECF No. 3384, and set a schedule for the filing of Plaintiffs' Master Administrative Complaints and for the NFL Parties to brief the threshold legal issue of whether Plaintiffs' claims were preempted by federal labor law. ECF No. 64.

Thereafter, Plaintiffs' Counsel conducted significant investigation and research in connection with the preparation of and filing of these complaints, preparing 50-state surveys on medical monitoring, preemption, tolling, and fraudulent concealment. Plaintiffs' Counsel also examined the worker's compensation laws of the fifty states during this time. Seeger Decl. ¶ 18. On June 7, 2012, Plaintiffs' Counsel filed a Master Administrative Long-Form Complaint, ECF No. 83, and a Master Administrative Class Action Complaint for Medical Monitoring, ECF No. 84. On July 17, 2012, Plaintiffs then filed an Amended Master Administrative Long-Form Complaint, ECF No. 2642. Seeger Decl. ¶¶ 16-17.

On August 30, 2012, the NFL Parties filed motions to dismiss the operative complaints on federal preemption grounds. ECF Nos. 3589, 3590. Plaintiffs' Counsel prepared and filed opposition papers to the motions, ECF Nos. 4130-34. The NFL Parties filed reply papers, ECF Nos. 4254-55, and Plaintiffs' sur-replies closed the briefing, ECF Nos. 4589, 4591. Mindful that the fate of the litigation hinged on the preemption motions, Plaintiffs' Counsel spent significant time analyzing, researching, drafting, and discussing their opposition to the NFL Parties'

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6084]. These appointments were confirmed upon Final Approval on April 22, 2015 [ECF No. 6510].

motions.<sup>11</sup> Plaintiffs' Counsel also conducted several mooted sessions, which included leading academics and practitioners in the field, to prepare for oral argument. The Court heard oral argument on the motions on April 9, 2013. ECF Nos. 4737-38; Seeger Decl. ¶ 20.

Early in this high-profile litigation, Plaintiffs' Counsel conceived, organized, and directed a communications strategy, so as to ensure that the broader player community (and the public at large) was fully apprised of the factual, medical, and legal issues encompassed by Plaintiffs' claims and the litigation, and to counteract any misinformation from whatever source. *Id.* ¶ 33. Plaintiffs' Counsel worked closely with one another to implement the Plaintiffs' communications strategy, which involved consistent and committed efforts both before and after the Settlement was announced. *Id.*

At the outset of this litigation, the Court advised the Parties to explore the possibility of settlement. Consistent with that instruction, and with Plaintiffs' Counsels' fiduciary duties to zealously represent the interests of all Retired NFL Football Players and their families, Plaintiffs' Counsel carefully evaluated the potential to settle Plaintiffs' claims. *Id.* ¶ 21. Counsel took into consideration the significance and severity of the alleged injuries, the scientific and medical issues relative to causation and concussions, and the ability to achieve through settlement "full value" compensation for serious concussion-related injuries without trials and appeals. *Id.* Counsel also weighed the inherent delays and costs involved in protracted litigation where so

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<sup>11</sup> As discussed in further detail below, the NFL Parties had successfully employed the preemption defense in several member cases of this MDL, a fact the Court acknowledged in its opinion approving the Settlement. *See In re Nat'l Football League Players' Concussion Injury Litig.* [*In re NFL*], 307 F.R.D. 351, 391 (E.D. Pa. 2015) ("Other courts have accepted the NFL Parties' preemption arguments."). The Third Circuit also acknowledged this, stating that it "concur[ed] with the District Court that this factor weighed in favor of settlement because class members "face[d] stiff challenges surmounting the issues of preemption and causation." *In re NFL*, 821 F.3d 410, 439 (3d Cir. 2016).

many former players are extremely ill and dying, as well as the risks of litigation, including the array of potential defenses of the NFL Parties – particularly preemption, but also lack of causation, statutes of limitations, the statutory employer defense, and assumption of risk, among others. This evaluation involved the substantial abilities and committed efforts of Plaintiffs’ legal and science teams. *Id.* ¶ 22.

Armed with a thorough assessment of the legal, factual, and scientific issues associated with Plaintiffs’ claims, Plaintiffs’ Counsel engaged the NFL Parties about the possibility of settlement. The parties thereafter commenced discussions regarding settlement structures and injury categories.<sup>12</sup> *Id.* ¶ 23.

### **C. Mediation**

In early July 2013, in anticipation of its decision on the preemption motions, the Court “held an informal exploratory telephone conference with lead counsel [and directed the] parties, through their lead counsel, to engage in mediation to determine if consensual resolution [wa]s possible.” ECF No. 5128. The Court appointed retired United States District Judge Layn R. Phillips as the mediator, and directed that Judge Phillips report back to the Court on or before September 3, 2013 as to the results of the mediation. *Id.*

Co-Lead Counsel formed a negotiating committee, consisting of Messrs. Seeger, Weiss, Levin, Locks, and Marks, and Ms. Nast (Mr. Levin and Ms. Nast being the respective counsel for the two Subclasses). Seeger Decl. ¶ 25; ECF Nos. 6423-3 ¶ 27, 6423-10 ¶¶ 5, 9, and 6423-11 ¶¶

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<sup>12</sup> The Court has commended the intense preparations undertaken by Plaintiffs’ Counsel prior to mediation. “A genuine dialogue between zealous and well-prepared adversaries transpired.” *In re NFL*, 307 F.R.D. at 363. As the Court stated, “[t]he Parties came prepared for these discussions. The Parties had already retained well-qualified medical experts to help determine the merits of the case. These experts advised the Parties on difficult questions such as the type of head trauma associated with NFL Football and the long term health effects of trauma on Retired Players.” *Id.*

6, 9. Mindful of the teachings of *Amchem Products, Inc. v. Windsor*, 521 U.S. 591 (1997), and its progeny, Plaintiffs' Counsel ensured adequate and unconflicted representation for all Class Members and the creation of Subclasses and separate representation for those currently diagnosed with injuries associated with concussive and sub-concussive head trauma and those without such current ailments. Seeger Decl. ¶ 25; ECF Nos. 6073-4 ¶¶ 7, 11; 6423-3 ¶¶ 11-12, 29; 6423-6 ¶ 7.

Plaintiffs' Counsel further investigated and analyzed the claims brought in the Complaints (including the creation and maintenance of a comprehensive database of the Plaintiffs' claims and symptoms collected from over 2,000 Retired NFL Players); retained medical and economic experts; became well-versed in the relevant medical literature<sup>13</sup> and related issues; and, having completed extensive briefing on the NFL Parties' preemption motions to dismiss, achieved a thorough appreciation of the merits of the threshold preemption arguments. Seeger Decl. ¶ 26; ECF No. 6423-3 ¶¶ 19-22, 25, 30, 32.

As part of Plaintiffs' Counsels' due diligence and consistent with their fiduciary responsibilities to the Class and Subclasses, Plaintiffs' Counsel engaged multiple experts in the fields of medicine, namely neurology, neuropsychology, and neuropsychiatry; actuarial science; economics; claims administration; and lien identification and satisfaction, all to determine, develop, and test an appropriate settlement framework to evaluate and meet the needs of Retired NFL Football Players suffering from or at increased risk for the claimed injuries related to

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<sup>13</sup> Plaintiffs' Counsel and their experts conducted a comprehensive review of peer-reviewed medical literature to support settlement discussion and negotiations. With expert guidance, Plaintiffs' Counsel canvassed the peer-reviewed medical and scientific literature on, *inter alia*, brain injury, concussions, the effect of sub-concussive hits to the head on the brain, the epidemiology of the Qualifying Diagnoses, and the methods of diagnosis and treatment for the Qualifying Diagnoses. Seeger Decl. ¶ 29.

concussions and mild traumatic brain injury. Seeger Decl. ¶ 27; ECF Nos. 6423-3 ¶¶ 32, 43; 6423-17 ¶¶ 6-9; 6423-18 ¶ 21; 6423-19 ¶¶ 19, 25, 27. The economists and actuaries assisted Plaintiffs' Counsel in modeling the possible disease incidence and adequacy of funding for the monetary award levels contained in the Settlement. Seeger Decl. ¶ 27; ECF No. 6423-3 ¶ 30.

Plaintiffs' Counsel expended significant time, effort, and funding in preparation for, and during, the settlement discussions, which began in earnest in January 2013, and continued through the mediation process. For almost two months during the mediation process, the Plaintiffs' negotiating team worked at an intense and grueling pace, collectively expending thousands of professional hours and often working around the clock to negotiate a fair and reasonable class settlement on behalf of all retired NFL players, their representative claimants, and derivative claimants. Seeger Decl. ¶¶ 28-30.

Plaintiffs' Counsel, as well as Plaintiffs' experts, were greatly aided in their understanding of Retired NFL Players' head injuries, and the incidence of neurocognitive ailments, through the creation of the Retired NFL Player database. *Id.* ¶¶ 31-32. Analyzing the records of over 2,000 players, Plaintiffs' Counsel created, in essence, an epidemiological study of their clients. *Id.* This database required extensive professional work. The database was vitally important to the entire negotiation process, because it enabled Plaintiffs' Counsel to evaluate disease incidence and occurrence across the retired NFL player population, and appropriately model and negotiate settlement benefits. *Id.* It also served as a cross-check of the epidemiology of neurocognitive disease suffered by retired NFL players. *Id.*

Judge Phillips actively supervised numerous mediation sessions, presiding over dozens of in-person and telephonic meetings with counsel for both sides, either jointly or in separate groups. *Id.* ¶ 34. He also met with the parties' respective experts, without counsel present, to

obtain answers to questions he had regarding the scientific, actuarial, and financial aspects of the settlement. *Id.*; ECF No. 6073-4 (Phillips Decl.) ¶¶ 2 & 5-7; ECF No. 6423-6 ¶ 4. The mediation process culminated in the execution of a Term Sheet on August 29, 2013.

As the Court noted, during their initial negotiations, the Parties did not discuss fees until after the key terms of the settlement – including the total size of the original capped fund – were publicly announced on the docket. *In re NFL*, 307 F.R.D. at 374 (“According to [Judge] Phillips, the Parties were careful not to discuss fees until after the Court had announced, on the record, an agreement regarding the total compensation for Class Members.”); *see* Phillips Supp. Decl. ¶¶ 18-19 [ECF No. 6423-6, at 9]; ECF No. 5235.<sup>14</sup>

**D. Public Announcement of the Proposed Settlement and Further Negotiations**

On August 29, 2013, the Court announced that “in accordance with the reporting requirements in [its] order of July 8, 2013, the Honorable Layn Phillips, the court-appointed mediator, [had] informed [the Court] that the plaintiffs and the NFL defendants had signed a Term Sheet incorporating the principal terms of a settlement.” ECF No. 5235. In its Order, the Court reserved judgment on the fairness and adequacy of the settlement pending the Settling Parties’ presentation to the Court of a settlement agreement, along with motions for preliminary and, eventually, final approval. *Id.*

Following the announcement of the August 29, 2013 term sheet, the parties proceeded to negotiate the detailed terms of the settlement agreement itself. Plaintiffs’ Counsel conducted numerous meetings with the NFL, continued to work with their consultants, and spent significant

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<sup>14</sup> As the Court further stated, “[b]ecause Class benefits were fixed by the time the Parties discussed fees, the amount given to the Class was not compromised.” *In re NFL*, 307 F.R.D. at 374 (citing cases).

time researching an appropriate settlement claims process, to include appeal rights. *See* ECF Nos. 6423-3 ¶ 34, 6423-6 ¶¶ 2, 4.

On January 6, 2014 – after over four months of additional, extensive, and often grueling negotiations – Co-Lead Class Counsel completed negotiation of the settlement agreement and submitted a motion for preliminary approval of a class action settlement incorporating the terms of the settlement agreement. *Seeger Decl.* ¶ 39; ECF No. 5634-5. This settlement agreement limited the funding of the MAF to \$675 million, which the parties and their actuarial and economic experts believed would be sufficient to pay all benefits throughout the 65-year term of the proposed settlement. Class Action Settlement Agreement [ECF No. 5634-2] § 23.1 (Jan. 6, 2014); Report of Analysis Research Planning Corp. to Special Master Perry Golkin [ECF No. 6167] at 33-36; Report of the Segal Group to Special Master Perry Golkin [ECF No. 6168] ¶¶ 19-20. Also on January 6, 2014, Co-Lead Class Counsel, Class Counsel, and Subclass Counsel filed the class action complaint in *Turner v. NFL*, No. 14-cv-00029-AB (E.D. Pa.), naming Plaintiffs Kevin Turner and Shawn Wooden as proposed Class Representatives. *Seeger Decl.* ¶ 40; ECF No. 5634.

**E. Court Appointment of Special Master Perry Golkin**

On December 16, 2013, pursuant to Fed. R. Civ. P. 53, the Court appointed Perry Golkin to serve as Special Master to assist the Court in evaluating the financial aspects of the proposed settlement in view of its financial complexities. *Seeger Decl.* ¶ 38.

**F. Initial Preliminary Class Certification Motion and Decision**

Plaintiffs' Counsel researched, briefed, and filed their initial motion for preliminary approval of the settlement and certification of a settlement class on January 6, 2014. ECF No. 5634. This motion consisted of the negotiated settlement agreement; multiple supporting declarations from Class Counsel, Subclass Counsel, and player representatives; and extensive

briefing. On January 14, 2014, the Court denied the motion without prejudice. ECF No. 5657. The Court praised the “commendable effort” of the parties to reach the negotiated class action settlement, but expressed concern as to the adequacy of the proposed \$675 million MAF, in light of the 65-year lifespan of the MAF, the settlement class size of more than 20,000 members, and the potential magnitude of the awards. Seeger Decl. ¶ 41. The Court directed the parties to share the documentation described in their submissions with the Special Master. *Id.*; ECF No. 5658.

### **G. Renegotiations and Preliminary Approval**

Guided by the Court’s Memorandum Opinion and the Special Master, the parties worked nearly around the clock from January to June 2014 to provide the Court with the assurance that “all Retired NFL Football Players who ultimately receive a Qualifying Diagnosis or their related claimants will be paid.” Seeger Decl. ¶ 42; ECF No. 5657 at 10. The parties and their actuarial and economic experts met separately with Special Master Golkin and with one another to further analyze the data and to determine whether, and if so, in what manner, the settlement could be amended that would be acceptable to the parties while at the same time satisfying the Court’s concerns. Seeger Decl. ¶ 42. Notably, Plaintiffs’ Counsel refined and tightened definitions of key terms in the Settlement, and improved claim procedures in order to protect against fraud.<sup>15</sup>

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<sup>15</sup> The concerns about fraud and abuse were not idle. Aside from these concerns being overriding to the NFL Parties were the MAF to be uncapped, Plaintiffs’ Counsel was fully aware of the need to ensure the integrity of the Settlement’s claims process. In *In re Diet Drugs*, a settlement in this District that contained a testing component, the Court was faced with a motion “to disqualify all 60,000 echocardiograms conducted by a company known as EchoMotion from supporting claims for matrix benefits on the grounds that these echocardiograms were not ‘conducted under the supervision’ of a Board-Certified Cardiologist as required by § VI.C.1.b(4) of the Settlement Agreement.” Whether “the individuals performing these echocardiograms were properly supervised by cardiologists and whether these echocardiograms therefore should be disregarded in determining benefits [became] a major controversy before the court.” Questions regarding the echocardiograms “generated many hotly contested issues and substantial motion practice” which “unduly delayed the payment of valid claims.” *In re Diet Drugs Prods. Liab. Litig.*, 226 F.R.D. 498, 507-08 (E.D. Pa. 2005).

These changes were the result of significant analysis, coordination, and research, and required many hundreds of attorney hours to accomplish. *Id.* ¶ 43. These further analyses led to an uncapping of the deal and a revised settlement agreement. *Id.*

Under the revised agreement, the NFL Parties were to pay all valid claims for the next 65 years, and the MAF was no longer fixed at \$675 million. *Id.* ¶ 44. The NFL Parties became responsible for providing all of the funding for the MAF, BAP, and Education Fund, as well as paying, either directly or through their funding of the MAF or the BAP, for Class Notice costs, class attorneys' fees, and the fees and expenses of the Special Master, Claims Administrator, and BAP Administrator, as well as certain fees of the Lien Resolution Administrator. *Id.* During this additional five-month negotiation, Plaintiffs' Counsel was assisted by Special Master Golkin, numerous medical experts, and actuaries and economists. *Id.* ¶ 45. Plaintiffs' Counsel modified the settlement documents to reflect these new features and prepared new briefing to support approval of the revised agreement. *Id.*

On June 25, 2014, Plaintiffs' Counsel filed a motion for preliminary approval of the revised proposed settlement agreement and for preliminary class certification. ECF No. 6073. On July 7, 2014, the Court granted preliminary certification and approval of the settlement, ECF Nos. 6083-84, and on July 9, 2014, approved the notice to be disseminated to putative Class Members, ECF No. 6093. Seeger Decl. ¶ 46. Plaintiffs' Counsel established and supervised the set-up of the informational website "www.NFLconcussionsettlement.com," which has provided invaluable information to Class Members and has allowed the Claims Administrator to refine the data in its Class Member database, improving its ability to provide information to the Class. *Id.* ¶ 47.

The Settlement website has been a tremendous source of information for Retired NFL Players and family members. As of February 6, 2017, it had already received over 180,000 unique visits; it provides access to the Settlement Agreement, the Court-approved notices, the Court's Orders and frequently asked questions, among other documents and information. Brown Decl. at 2. The Claims Administrator's other efforts to provide accurate information to Class Members, coordinated with Plaintiffs' Counsel, have been equally successful. The Claims Administrator has received over 1,000 written communications and responded to those that asked questions about the Settlement. *Id.* The Settlement Call Center has received over 14,000 calls with well over 7,000 of these callers speaking directly to live operators, for a combined total of nearly 500 hours. *Id.* at 3.

Starting after the Court granted preliminary approval to the Settlement, and continuing to the present, Co-Lead Counsel, as well as other Plaintiffs' Counsel, have devoted hundreds of hours to communicating with Retired NFL Players and family members concerning the Settlement. Seeger Decl. ¶ 51. Co-Lead Class Counsel has conducted multiple seminars and presentations with Retired NFL Player groups throughout the country, including presentations at the Super Bowl and the Pro Football Hall of Fame. *Id.* These well-attended sessions have educated Retired NFL Players about the Settlement's benefits and procedures, and have been a valuable and effective means of spreading information about the Settlement. *Id.* ¶ 52. Co-Lead Class Counsel also hosted a series of webinars, with the same goal of increasing awareness of the Settlement. Co-Lead Class Counsel also hosts frequent telephone conference calls with Retired NFL Players and family members to provide updates on the Settlement. *Id.*

#### **H. First Appeal and Multiple Briefings**

After preliminary approval, Plaintiffs' Counsel dealt with a wide array of motions and attempted interlocutory appeals by certain objectors. *Id.* ¶ 53. A group of objectors, represented

by Steven F. Molo of MoloLamken LLP, filed a petition for interlocutory review with the Third Circuit, arguing that immediate review of the Court's preliminary approval was appropriate under Federal Rule of Civil Procedure 23(f) because of the Court's provisional certification of a settlement class. *Id.* Those objectors protested the fairness of the proposed settlement and challenged the preliminary class certification. They maintained that Rule 23(f) allowed immediate appellate review even though there had been no final ruling on class certification. *Id.*

Plaintiffs' Counsel and the NFL Parties both filed opposition papers to the 23(f) petition and, after requesting a reply brief from the objectors represented by Mr. Molo, the Third Circuit heard oral argument on September 10, 2014. *Id.* ¶ 54. The Court of Appeals denied the petition the next day in a one-page order. ECF No. 6166. The Court subsequently issued a written opinion explaining its ruling, *see In re NFL*, 775 F.3d 570 (3d Cir. 2014). The majority held that the Third Circuit lacked appellate jurisdiction under Rule 23(f) because this Court had "yet to issue 'an order granting or denying class certification.'" *Id.* at 588-89.<sup>16</sup>

In addition to this unsuccessful 23(f) attack, six other Class Members, led by Roy Green and represented by three Missouri-based law firms, mounted their own challenge, filing an appeal to the Third Circuit by invoking appellate jurisdiction under 28 U.S.C. § 1292(a)(1), on the reasoning that this Court's Preliminary Approval Order had enjoined Class Members' prosecution of litigation against the NFL Parties and was therefore an interlocutory order granting an injunction. Seeger Decl. ¶ 55. Following the completion of briefing of that appeal, Class Plaintiffs successfully moved to dismiss it as moot because, in the meantime, the

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<sup>16</sup> Judge Ambro dissented from that jurisdictional rationale but nonetheless concurred that the petition should be denied because the Molo-led objectors were creating "inefficient (indeed, chaotic) piecemeal litigation that would interfere with the formal fairness hearing on the settlement." *Id.* at 589.

appellants had opted out of the settlement class and were hence no longer Class Members subject to any injunction. *See In re NFL*, No. 14-3520 (3d Cir. June 4, 2015) (Order dismissing appeal).

In addition to fending off these interlocutory appellate attacks, Plaintiffs' Counsel handled a myriad of other motions during this time, all in an effort to expedite the process and begin implementation of the Settlement. Seeger Decl. ¶ 56. These included third-party intervention motions seeking access to documents<sup>17</sup>; Class Member bids to take discovery of Class Counsel as to how the Settlement was negotiated or requests to obtain additional information about the Settlement<sup>18</sup>; motions to intervene<sup>19</sup>; motions seeking to extend the opt-out deadline<sup>20</sup>; requests for *amicus curiae* participation in the Rule 23(e) fairness proceedings<sup>21</sup>; and a motion to prevent improper communication with Class Members.<sup>22</sup>

### **I. Fairness Hearing**

The Court received all timely objections to the Settlement by October 14, 2014. On November 12, 2014, Plaintiffs' Counsel filed their brief and extensive exhibits in support of final approval. ECF No. 6423. Plaintiffs' thorough briefing addressed objections by approximately

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<sup>17</sup> ECF No. 6101 (July 24, 2014) (Am. Mot. to Intervene to Seek Access to Docs. and Inform., filed by Bloomberg L.P., ESPN, Inc.).

<sup>18</sup> ECF No. 6155 (July 31, 2014) (Mot. to Permit Access to Med., Actuarial, and Econ. Info. Used to Support the Settlement Proposal); ECF No. 6169 (Morey Plaintiffs' motion for leave to take "limited discovery").

<sup>19</sup> ECF No. 6131 (Aug. 13, 2014) (Mot. to Intervene, filed by Richard Dent).

<sup>20</sup> ECF No. 6172 (Sept. 19, 2014) (Emergency Mot. to Modify or Amend the July 7, 2014 Order Requiring Opt-Outs on or before Oct. 14, 2014).

<sup>21</sup> ECF No. 6180 (Sept. 30, 2014) (Mot. for Leave to File *Amicus Curiae* Brief in opposition to final approval of the settlement, filed by Brain Injury Ass'n of Am.); ECF No. 6214 (Oct. 14, 2014) (Mot. for Leave to File *Amicus Curiae* Mem., filed by Pub. Citizen).

<sup>22</sup> ECF No. 6257 (Oct. 24, 2014) (Motion for Order Prohibiting Improper Communications with the Class by MoloLamken LLP, filed by Mr. Seeger).

200 represented and pro se objectors, and fully described the Settlement. Seeger Decl. ¶ 57. Plaintiffs' Counsel prepared the Class's motion for final approval of the Settlement, as well as the supporting memorandum of law. They coordinated extensively with the Settlement's administrative support providers in securing the latter's declarations in support of the final approval motion. *Id.* These included Katherine Kinsella, for the notice plan; the Garretson Firm, for lien administration; and BrownGreer, for claims administration. Plaintiffs' Counsel also continued their work with several medical and other experts – including Drs. Kenneth C. Fischer (neurology), Christopher C. Giza (neurology and neurosurgery), David Hovda (neurosurgery and brain injury), Richard Hamilton (sports concussions), and John Keilp (neuropsychology) – and submitted declarations regarding the science on various points raised by objectors. *Id.* ¶¶ 59-60; *see also* ECF Nos. 6423-17 to 6423-20, 6423-23.<sup>23</sup>

The Court held an all-day Fairness Hearing, pursuant to Rule 23(e)(2), on November 19, 2014. *See* Fairness Hr'g Tr., Nov. 19, 2014 [ECF No. 6463]. At that hearing, the Court heard from fourteen counsel for the various objector groups and the Settling Parties, and from five

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<sup>23</sup> Although he did not submit a declaration for Plaintiffs' final approval papers, Dr. Grant Iverson also worked extensively with Plaintiffs' Counsel. Seeger Decl. ¶ 61. Dr. Iverson is a professor at Harvard Medical School in the Department of Physical Medicine and Rehabilitation. He is a specialist in neuropsychology and a clinician scientist in the area of mild traumatic brain injury and mental health. He has an internationally-recognized research program concerning outcomes from mild traumatic brain injury suffered by athletes, civilians, military service members, and veterans. His work was instrumental in designing the BAP testing program. The work of Plaintiffs' expert Thomas Vasquez was also integral in modelling the economics of the proposed settlement during negotiations, based on financial and epidemiological principles. Dr. Vasquez is the Vice President of Analysis Research Planning Corporation and has over 35 years of experience in management consulting for private sector clients, and the development of economic models for the U.S. and foreign governments to analyze and develop tax, expenditure, and regulatory policy. His analysis assisted in developing a monetary award grid that could be used in negotiating claims and modeling the total cost of resolving all pending and future claims by former NFL players. Seeger Decl. ¶ 60; ECF No. 6423-21.

unrepresented objectors. ECF No. 6463 *passim*. Plaintiffs' Counsel prepared the comprehensive presentation for the Court for the Fairness Hearing, and Mr. Seeger and his partner, David Buchanan, presented on behalf of the Settling Plaintiffs. Seeger Decl. ¶ 58.

**J. Post-Hearing Briefing and Court-Proposed Modifications to the Settlement**

The Court permitted post-hearing briefing to address certain issues and to afford objectors additional time to file a response to Plaintiffs Counsels' final approval motion papers. *See* ECF Nos. 6444, 6453-56. In December 2014, Plaintiffs' Counsel filed their reply to the objectors' post-hearing submissions. ECF No. 6467.

On February 2, 2015, the Court "proposed several changes to the Settlement that would benefit Class Members." Seeger Decl. ¶ 63; ECF No. 6479. These were: (1) providing some "Eligible Season" credit for play in NFL Europe; (2) assuring that despite the \$75 million cap on the BAP, all those timely registering will receive a baseline assessment examination; (3) moving the deadline for a "Death with CTE" award from the preliminary settlement approval date to the final approval date; (4) allowing for a waiver of the fee for appealing Monetary Award and Derivative Claimant Award determinations for those showing financial hardship; and (5) providing the opportunity to demonstrate a Qualifying Diagnosis without the required medical documentation in instances where such documentation was destroyed by a *force majeure* type event. Seeger Decl. ¶ 63.

After a new round of negotiations, Plaintiffs' Counsel secured agreement on every change that the Court suggested, and on February 13, 2015, the parties submitted a revised settlement agreement, which is the operative Settlement that the Court approved and is now effective in the wake of the Supreme Court's denial of *certiorari*. Seeger Decl. ¶ 64; ECF No. 6481-1. In connection with such approval, Plaintiffs' Counsel also prepared extensive proposed findings of fact and conclusions of law. ECF No. 6497.

**K. Final Approval and Third Circuit Appeal**

On April 22, 2015, the Court granted final approval to the Settlement (and final class certification). ECF Nos. 6509-10. The Court's published 132-page opinion exhaustively addressed class certification; the fairness, adequacy, and reasonableness of the Settlement; and, of course, the myriad arguments raised by the objectors. The Court issued an Amended Final Order and Judgment on May 8, 2015. ECF No. 6534.

On May 13, 2015, the first of several notices of appeal from the Court's grant of final approval was filed. ECF No. 6539. Ultimately, objectors filed eleven separate briefs in connection with the appeals from the Court's final approval decision. Seeger Decl. ¶ 67. The appeals were briefed in tandem and consolidated for argument and decision by the Third Circuit. *Id.* After receiving the objectors' briefs and those of the two *amici curiae* opposed to the Settlement (the Brain Injury Association of America ["BIAA"] and Public Citizen, who had also appeared in this Court as *amici curiae*), Plaintiffs' Counsel devoted extensive hours to analyzing the various briefs and researching and drafting their answering brief. *Id.* Also, Plaintiffs' Counsel prepared for and presented at the Third Circuit oral argument, which was held on November 19, 2015. *Id.*

On April 18, 2016, the Third Circuit issued a published opinion unanimously affirming this Court in all respects. *In re NFL*, 821 F.3d 410 (3d Cir. 2016). Certain objectors then filed petitions for *en banc* rehearing. The Third Circuit denied those petitions on June 1, 2016, and issued its mandate on June 9, 2016. ECF No. 6840.

**L. Petitions for Writ of *Certiorari***

Following the Third Circuit's denial of *en banc* rehearing, two groups of objectors filed petitions for writ of *certiorari* with the United States Supreme Court. *See Gilchrist v. Nat'l Football League*, No. 16-283 (U.S. filed Aug. 30, 2016); *Armstrong v. Nat'l Football League*,

No. 16-413 (U.S. filed Sept. 26, 2016). The same two *amici curiae* who had opposed the Settlement in both this Court and the Third Circuit (BIAA and Public Citizen) filed briefs in support of the *certiorari* petitions. Plaintiffs' Counsel prepared and filed their brief in opposition to the petitions and *amici* briefs on November 4, 2016. Seeger Decl. ¶ 69. On December 12, 2016, the Supreme Court denied both petitions. *Gilchrist v. NFL*, 137 S. Ct. 591 (2016); *Armstrong v. NFL*, 137 S. Ct. 607 (2016). In accordance with Supreme Court Rules 44(2) & 45(2)-(3), the Supreme Court's disposition became final on January 6, 2016, upon the expiration of the time for filing a rehearing petition. Seeger Decl. ¶ 69; Sup. Ct. R. 44(2) & 45(2)-(3).

**M. Initial Settlement Implementation Efforts**

Meanwhile, even before the Supreme Court's rejection of the two *certiorari* petitions, Plaintiffs' Counsel began the groundwork for the implementation of the Settlement. Since April 2016, Plaintiffs' Counsel has had regular working calls with Claims Administrator BrownGreer PLC and Lien Administrator Garretson Resolution Group, Inc. to review work plans, draft materials, and settlement implementation issues. *Id.* ¶ 108. Plaintiffs' Counsel have finalized retention of administrators and special masters; the Settlement Trust Agreement; and prepared conflicts of interest plans. *Id.* ¶ 109.

Moreover, Plaintiffs' Counsel finalized and the Court has approved [ECF Nos. 7107, 7115] Preregistration and Supplemental Class Notices to be disseminated to Class Members to advise them concerning the registration and benefits timetable, and Plaintiffs' Counsel will oversee the effectuation of registration forms, the transition of call center operations to the Claims Administrator, and ongoing revisions of the Settlement website (including FAQs). Seeger Decl. ¶ 109.

Other implementation efforts are in connection with the upcoming June 6, 2017 launch of the BAP. These include reviewing the applications of BAP Providers and vetting candidates for

retention, receiving reports on contracting with providers in order to establish networks convenient to a majority of players by metropolitan region, and finalizing BAP procedures (including assessment scheduling and Supplemental Benefits). *Id.* ¶¶ 108, 110. Still other work has pertained or will pertain to the MAF (whose claims platform for pre-Effective Date Qualifying Diagnoses opens on March 23, 2017; Retired NFL Football Players will contact MAF physicians on their own from the MAF Network that will open on April 7th): the review of applications of MAF Physicians and vetting candidates for retention, finalizing claims forms and processes, and finalizing appeals forms and processes. *Id.*

Still other Settlement implementation steps include the retention of the Appeals Advisory Panel (composed of five neurologists/board certified neurospecialists) and Appeals Advisory Panel Consultants (3 neuropsychologists) by April 7, 2017. *Id.* ¶ 113. This body is charged with reviewing diagnoses made prior to January 7, 2017, and will be advising the Special Masters and the Court. *Id.*

#### **N. The Settlement Agreement and Fees**

As noted above and as the Court is already aware, the parties discussed the payment of attorneys' fees separate and apart from all other Settlement benefits. Section III.C, *supra*; Seeger Decl. ¶ 74. The NFL Parties have agreed to pay attorneys' fees and reasonable costs and expenses incurred by Plaintiffs' Counsel provided that the request does not exceed \$112.5 million. Seeger Decl. ¶ 74 (citing Settlement § 21.1 [ECF No. 6481-1, at 82]). Thus, unlike traditional common fund cases, where attorneys' fees are paid as a percentage of the recovery, the NFL Parties will pay any fee award over and above the Settlement's benefits and thus the Class here is further benefitted by not incurring such payment for work done for its common benefit.

Due to the lengthy term of the Settlement (65 years) and the necessary involvement of Plaintiffs' Counsel in the coming years (indeed, decades) to ensure that its terms are met and that Class Members' rights and interests are protected, *see* Seeger Decl. ¶¶ 101-19, the Settlement includes a provision authorizing a petition to the Court to set aside up to five percent of each monetary award and Derivative Claimant award to facilitate the Settlement program and related efforts of Plaintiffs' Counsel. *See id.*; ECF No. 6423-3, ¶ 55. The provision was expressly mentioned in the Class Notice. ECF No. 6086-1, at 18.

If a Class Member is represented by individual counsel, the attorney's fees payable to that counsel would be reduced by the amount of this proposed set-aside, so that the holdback will in no way increase the attorney's fees paid by Class Members who hire their own counsel on a contingency fee basis. Seeger Decl. ¶ 103; Settlement § 21.1 [ECF No. 6481-1, at 82]. These monies will be held in a separate fund overseen by the Court, pending subsequent application to the Court for remuneration of those counsel performing settlement-related work. Seeger Decl. ¶ 101. The NFL Parties will take no position on this issue. Settlement § 21.1.

#### IV. ARGUMENT

##### A. **Third Circuit Legal Standards for Fee Applications**

Two methods are generally used for determining attorneys' fees in class action cases: the percentage-of-recovery method and the lodestar method. *In re Prudential Ins. Co. of Am. Sales Practice Litig. Agent Actions*, 148 F.3d 283, 333 (3d Cir. 1998). In the Third Circuit, "[t]he percentage-of-recovery method is generally favored in cases involving a common fund, and is designed to allow courts to award fees from the fund 'in a manner that rewards counsel for success and penalizes it for failure.'" *Welch & Forbes, Inc. v. Cendant Corp. (In re Cendant Corp. PRIDES Litig.)*, 243 F.3d 722, 732 (3d Cir. 2001) (quoting *In re Prudential*, 148 F.3d at 333).

The lodestar method is more commonly used in statutory fee-shifting cases. *In re Rite Aid Corp. Sec. Litig.*, 396 F.3d 294, 300 (3d Cir. 2005). The Third Circuit recommends, but does not require, that district courts using the percentage of the fund method conduct a lodestar cross-check on the reasonableness of the fee award. *See In re Cendant Corp. Sec. Litig.*, 404 F.3d 173, 183 n.4 (3d Cir. 2005) (affirming district court's percentage of the fund fee award, even though district court did not conduct lodestar cross-check); *O'Keefe v. Mercedes-Benz USA, LLC*, 214 F.R.D. 266, 310 (E.D. Pa. 2003) (Third Circuit recommends but does not require lodestar cross-check). Thus, the lodestar cross-check is "suggested," but not mandatory. *Moore v. GMAC Mortgage*, No. 07-4296, 2014 WL 12538188, at \*2 (E.D. Pa. Sept. 19, 2014) (citing *In re Cendant Corp. PRIDES Litig.*, 243 F.3d at 735).

The instant case does not involve either an application for assessment of fees against the defendant pursuant to a fee-shifting statute, or a traditional common fund out of which payment of fees are sought. As this Court has noted, "[a] fee award in this case will not come from a common fund. The ultimate amount the NFL Parties must pay in attorneys' fees will have no impact on the Monetary Awards paid or baseline assessment examinations given because the NFL Parties have already guaranteed these benefits, in full, to eligible claimants." *In re NFL*, 307 F.R.D. at 374 (citing Settlement § 21.1).

Nevertheless, the principles employed in assessing a percentage-of-the common fund attorneys' fees claim are appropriate here because the sundry settlement benefits secured by Plaintiffs' Counsel, totaling over \$1 billion in value, are a *constructive* common fund. In such circumstances, courts often rely on common fund principles and their inherent management powers to award fees to lead counsel in cases that do not actually generate a common fund. *See, e.g., Dewey v. Volkswagen Aktiengesellschaft*, 558 F. App'x 191, 197 (3d Cir. 2014); *Jackson v.*

*Wells Fargo Bank, N.A.*, 136 F. Supp. 3d 687, 713 (W.D. Pa. 2015) (“[G]iven that each of these amounts will be paid by defendants, the economic effect essentially is that of a common fund.”); *In re Heartland Payment Sys., Inc. Customer Data Sec. Breach Litig.*, 851 F. Supp. 2d 1040, 1072 (S.D. Tex. 2012) (“Having two funds—one for the claimants, one for the attorneys—is a well-recognized variant of a common-fund arrangement.”). Furthermore, although it is uncapped, there is a clearly delineated fund recovered on behalf of the Class that lends itself well to valuation. In fact, the MAF has been valued by both Class Plaintiffs and the NFL Parties’ experts.

By contrast, “[t]he lodestar method is generally applied in statutory fee shifting cases and ‘is designed to reward counsel for undertaking socially beneficial litigation in cases where the expected relief has a small enough monetary value that a percentage-of-recovery method would provide inadequate compensation.’” *Hegab v. Family Dollar Stores, Inc.*, No. 11-1206, 2015 WL 1021130, at \*11 (D.N.J. Mar. 9, 2015) (citing *In re Cendant Corp.*, 243 F.3d at 732). Also, the lodestar method is preferable where “the nature of the recovery does not allow the determination of the settlement’s value required for application of the percentage-of-recovery method.” *In re Rite Aid Corp. Sec. Litig.*, 396 F.3d 294, 300 (3d Cir. 2005). This concern is inapplicable here because, as noted above, the Settlement’s components lend themselves to valuation. Moreover, Plaintiffs’ Counsel are not applying for an award of fees against the NFL Parties pursuant to a statute that carves an exception from the “American Rule” that each side is responsible for its own attorneys’ fees, so this is plainly not a statutory fee-shifting case. Nonetheless, because the Third Circuit recommends a lodestar cross-check in addition to the percentage of fee recovery analysis, both methods are discussed below.

**B. Analysis Under the Percentage of Recovery Method Supports the Requested Award**

There are ten factors that the Third Circuit has identified in considering whether an attorneys' fee award is reasonable under the percentage-of-recovery method. Known as the *Gunter/Prudential* factors, these are:

1. The size of the fund and the number of persons benefited;
2. Whether members of the class have raised substantial objections to the settlement terms or fee proposal;
3. The skill and efficiency of the attorneys involved;
4. The complexity and duration of the litigation;
5. The risk of nonpayment;
6. The amount of time devoted to the case by Plaintiffs' counsel;
7. The fee awards in similar cases;
8. The value of benefits attributable to the efforts of class counsel relative to the efforts of other groups, such as government agencies conducting investigations;
9. The percentage fee that would have been negotiated had the case been subject to a private contingent fee arrangement at the time counsel was retained; and
10. Any innovative terms of settlement.

*In re Diet Drugs Prods. Liab. Litig.*, 582 F.3d 524, 541 (3d Cir. 2009); *Gunter v. Ridgewood Energy Corp.*, 223 F.3d 190, 197-201 (3d Cir. 2000); *In re Prudential*, 148 F.3d at 336-40.

**1. The Size of the Fund and the Number of Persons Benefited**

“In applying the percentage-of-recovery method, [the Court] must begin by making a reasonable estimate of the settlement value.” *Cullen v. Whitman Med. Corp.*, 197 F.R.D. 136, 147 (E.D. Pa. 2000). “Generally, the factor given the greatest emphasis [in awarding a percentage of the recovery] is the size of the [recovery] created, because [the recovery] ‘is itself the measure of success . . . [and] represents the benchmark from which a reasonable fee will be awarded.’” David F. Herr, *Annotated Manual for Complex Litigation, Fourth* § 14.121, at 220 & n.518 (rev. ed. 2016) (quoting 4 Alba Conte & Herbert B. Newberg, *Newberg on Class Actions* [“*Newberg on Class Actions*”] § 14.6, at 547, 550 (4th ed. 2002)).

When calculating the value of a settlement, courts usually include any cash compensation to class members, cash the defendant must pay to third parties, non-cash relief that can be reliably valued, attorneys' fees and expenses, and administrative costs paid by the defendant. *E.g., In re: Heartland Payment*, 851 F. Supp. 2d at 1080; *In re Oil Spill by the Oil Rig "Deepwater Horizon" in the Gulf of Mexico, on Apr. 20, 2010*, No. 2179, 2016 WL 6215974, at \*15-16 (E.D. La. Oct. 25, 2016).

Here, the Class is estimated to exceed 20,000. The Class is composed of three types of claimants:

- (1) Retired NFL Football Players, defined as all living NFL Football Players who, prior to the date of the Preliminary Approval and Class Certification Order, retired, formally or informally, from playing professional football with the NFL or any Member Club, including American Football League, World League of American Football, NFL Europe League and NFL Europa League players ....
- (2) Representative Claimants, defined as authorized representatives, ordered by a court or other official of competent jurisdiction under applicable state law, of deceased or legally incapacitated or incompetent Retired NFL Football Players; and
- (3) Derivative Claimants, defined as spouses, parents, and children who are dependents, or any other persons who properly under applicable state law assert the right to sue independently or derivatively by reason of their relationship with a Retired NFL Football Player or deceased Retired NFL Football Player.

Settlement §§ 1.1(a) & 2(ee), (eee), (fff) [ECF No. 6481-1, at 8, 12, 18].

The Class consists of two Subclasses. Subclass 1 is defined as Retired NFL Football Players who were not diagnosed with a Qualifying Diagnosis prior to the date of Preliminary Approval (July 7, 2014), and their Representative Claimants and Derivative Claimants. *Id.* § 1.2(a) [ECF No. 6481-1, at 8]. Subclass 2 is defined as Retired NFL Football Players who were diagnosed with a Qualifying Diagnosis prior to July 7, 2014, and their Representative Claimants

and Derivative Claimants, and the Representative Claimants of deceased Retired NFL Football Players who were diagnosed with a Qualifying Diagnosis prior to death, or who died prior to April 22, 2015 and who received a post-mortem diagnosis of CTE. *Id.* §§ 1.2(b), 6.3(f) [ECF No. 6481-1, at 8].

The Settlement has three components: the uncapped MAF; the BAP, a \$75 million medical testing and benefit program, with its central function of establishing the neurocognitive conditions of players when they enter the settlement program; and a \$10 million education fund “to promote safety and injury prevention for football players of all ages[.]”

The MAF is an uncapped, inflation-adjusted fund that provides cash awards for Retired NFL Players who receive Qualifying Diagnoses over the next 65 years. In dollar terms, the MAF constitutes the bulk of the Settlement. Actuarial projections are that the MAF will pay out some \$900-\$950 million by the end of its 65-year term, with the risk of any additional payment for claims being borne entirely by the NFL. *In re NFL*, 307 F.R.D. at 364-66, 418; ECF No. 6167, at 4.<sup>24</sup> The Settlement offers monetary awards of up to \$5 million for serious medical conditions associated with concussions and other brain traumas associated with NFL play; the medical conditions include Parkinson’s Disease, Alzheimer’s Disease, ALS, and others. *See* Settlement, Ex. A-3 [ECF No. 6481-1, at 122 (Monetary Award Grid)]. In terms of the designated dollar amounts, the Court found that “[t]he maximum awards are in line with other personal injury settlements.” *In re NFL*, 307 F.R.D. at 405.

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<sup>24</sup> The actuarial model that Class Counsel developed anticipated certain participation rates for filed and unfiled cases. It also anticipated certain incident rates for the compensable disease categories (*i.e.*, the Qualifying Diagnoses). Specifically, Class Counsel assumed a 50% participation rate for Class Members who had not filed suit and a 90% participation rate for those who had. Seeger Decl. ¶ 44 n.1. If registrations exceed the participation assumption, as may occur given the pre-registrations and registrations to date, the value of the Settlement, given the negotiated uncapped nature of the MAF, will likely exceed prior valuations. *Id.*

Although the BAP is initially funded at \$75 million, a baseline examination is guaranteed for all participating Class Members by the NFL, even if the initial \$75 million is exhausted: the Settlement “ensures that all Retired Players with half of an Eligible Season credit have access [during a specified period] to free baseline assessment examinations so that they may monitor their symptoms, and receive Qualifying Diagnoses more easily if their symptoms worsen.” *Id.* at 395. Finally, the Settling Parties created a \$10 million fund to promote safety and injury prevention for football players of all ages, including youth football players, and to educate Class Members about their NFL CBA Medical and Disability Benefits. Settlement Art. XII [ECF No. 6481-1, at 68]; *In re NFL*, 307 F.R.D. at 368-69.

Under the terms of the Settlement, the NFL Parties are obligated to fund the administrative costs of the Settlement program. First, the NFL Parties paid \$4 million for the notice plan. Settlement § 14.1(b) [ECF No. 6481-1, at 70]. Second, the compensation for the Special Masters is paid by the NFL Parties, through the MAF (without, of course, reducing any Class Member’s individual MAF benefit because the MAF is uncapped). *Id.* § 10.1(c) [ECF No. 6481-1, at 55]. Third, compensation for the Appeals Advisory Panel and Appeals Advisory Panel Consultants will also be paid by the NFL Parties from the MAF (again, without reducing any Class Member’s individual MAF benefit). *Id.* § 9.8(a)(v) [ECF No. 6481-1, at 53]. Fourth, the Settlement also provides that the NFL Parties will pay the reasonable compensation of the Claims Administrator (*id.* § 10.2(c) [ECF No. 6481-1, at 58]) and the Lien Resolution Administrator (*id.* § 11.1(c) [ECF No. 6481-1, at 63-64]) from the MAF.

It is important to note that although the compensation amounts for the Special Master, Appeals Advisory Panel and Appeals Advisory Panels Consultants, the Claims Administrator, and the Lien Resolution Administrator will be paid from the MAF, these amounts are *not* part of

the approximately \$950 million actuarial calculations as what the MAF will pay out as *benefits* awards to Class Members over the 65-year term of the Settlement. *See In re NFL*, 307 F.R.D. at 365, 418. Consequently, all of these administrative costs to be borne by the NFL Parties represent an added benefit to the Class.

Finally, as noted in Section III above, an additional value conferred on the Class is that Members will have Plaintiffs' Counsel's attorneys' fees and reimbursement of expenses for common benefit work paid for by the NFL Parties, rather than have a portion of the settlement recovery sliced off to pay fees and expenses, which is ordinarily the case with common fund recoveries.

Thus, when considering these amounts, Plaintiffs' Counsel secured a benefit of nearly \$1.2 billion for the Class:

<b>BENEFIT</b>	<b>AMOUNT/VALUE</b>	<b>SOURCE</b>
Monetary Award Fund	\$950,000,000	ECF No. 6167, at 4 (NFL Concussion Liability Forecast)
Baseline Assessment Program	\$75,000,000	Settlement § 23.1(b)
Education Fund	\$10,000,000	Settlement § 23.1(c)
Notice Costs	\$4,000,000	Settlement § 14.1(b)
Claims Administration	\$11,925,000	Decl. of Orran Brown, Sr.
Attorneys' Fees Provision	\$112,500,000	Settlement § 21.1
<b>TOTAL:</b>	<b>\$1,163,425,000</b>	

These are remarkable benefits for a large class and this factor favors approval of the requested fee and expense award, which seeks an award equal to approximately nine percent of the value of the recovery. Again, it bears repeating that not a penny of this award will come out of the pockets of a single Class Member. *See In re Oil Spill by Oil Rig Deepwater Horizon in*

*Gulf of Mexico, on Apr. 20, 2010*, 910 F. Supp. 2d 891, 909, 933-34 (E.D. La. 2012) (settlement that provided that defendant would not oppose “a significant award of common benefit attorneys’ fees and costs, effectively spar[ed] the class from having to pay for common-benefit fees and expenses”), *aff’d sub nom. In re Deepwater Horizon*, 739 F.3d 790 (5th Cir. 2014).

## 2. Whether Members of the Class Have Raised Substantial Objections to the Settlement Terms or Fee Proposal

It cannot genuinely be disputed that the reaction of the Class – approximately one-quarter of whose members had individual representation – to the Settlement was overwhelmingly positive.<sup>25</sup> As the Third Circuit noted in affirming this Court’s final approval of the Settlement, only about one percent of Class Members objected to the Settlement and approximately another one percent opted out. *In re NFL*, 821 F.3d at 438. Notably, of those opt-outs, a significant number have since revoked their opt-outs with the consent of the Settling Parties and the approval of the Court. *See* ECF Nos. 7117-1 (¶¶ 5-6), 7119.<sup>26</sup>

It was not just the paucity of objections and opt-outs that demonstrated the resoundingly positive response to the Settlement. While objectors’ appeals were proceeding, Class Members and their counsel expressed significant interest in the commencement of the Settlement program, and the Settling Parties worked hard to prepare for implementation. At present, more than 12,000 Class Members and their counsel have signed up for future information about the

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<sup>25</sup> Prior to the Fairness Hearing, several objectors included challenges to the amount provided for in the Settlement. *See, e.g.*, ECF Nos. 6213, 6233, 6237. These objections baldly asserted that the fees were excessive, with no analysis of relevant Third Circuit caselaw. As discussed throughout this brief, the requested fee is reasonable and any objection asserting that it is excessive lacks merit.

<sup>26</sup> As this Court observed at the time of Final Approval, “[t]hese figures [we]re especially impressive considering that about 5,000 Retired Players [were] represented by counsel in this MDL, and could easily have objected or opted out to pursue individual suits.” *In re NFL*, 307 F.R.D. at 389.

settlement program, and provided the Claims Administrator with contact information to receive notification once the Settlement becomes effective. Brown Decl. at 2. Thousands more have communicated with the Claims Administrator about the Settlement since it received this Court's Final Approval. The Settlement website has received over 180,000 unique visits. *Id.* The Claims Administrator has received nearly 1,100 written communications and responded to the over 1,000 that asked questions about the Settlement. The Settlement Call Center has received over 14,000 calls with well over half of the callers speaking directly to live operators for a total of nearly 500 hours. *Id.* at 2-3. "The absence of substantial objections by class members to the fees requested by counsel strongly supports approval." *In re AT & T Corp.*, 455 F.3d 160, 170 (3d Cir. 2006).

### **3. The Skill and Efficiency of the Attorneys Involved**

"The skill and efficiency of Plaintiffs' Counsel is measured by the quality of the result achieved, the difficulties faced, the speed and efficiency of the recovery, the standing, experience and expertise of the counsel, the skill and professionalism with which counsel prosecuted the case and the performance and quality of opposing counsel." *Meijer, Inc. v. 3M*, No. 04-5871, 2006 WL 2382718, at \*21 (E.D. Pa. Aug. 14, 2006) (citation omitted). Here, "[c]ounsel are experienced practitioners . . . [t]his experience and the results obtained for the class reflect Class Counsel's skill and efficiency." *In re Wellbutrin SR Antitrust Litig.*, No. 04-5525, 2011 U.S. Dist. LEXIS 158833, at \*16-17 (E.D. Pa. Nov. 21, 2011); *In re Linerboard Antitrust Litig.*, No. MDL-1261, 2004 WL 1221350, at \*5 (E.D. Pa. June 2, 2004).

No objector challenged the expertise of Plaintiffs' Counsel. Co-Lead Class Counsel Christopher Seeger has spent a quarter-century litigating mass tort and class actions, particularly in the MDL context. He has served as plaintiffs' lead counsel or as a member of the plaintiffs' executive committee or steering committee in dozens of cases. *See* ECF No. 6423-3 (¶¶ 2-4);

Seeger Decl. ¶ 2. In particular, he has served as lead plaintiffs' negotiator for multiple large settlements, including the *Vioxx* settlement totaling \$4.85 billion, the DePuy Orthopaedics, Inc. ASR Hip Implant Products settlement, totaling nearly \$2.5 billion, and the first and second *Zyprexa* settlements, which resulted in a total \$1.2 billion payout. *Id.* ¶ 2.

Co-Lead Class Counsel Sol Weiss, Subclass Counsel Arnold Levin and Dianne Nast, and Class Counsel Gene Locks and Steven Marks possess similarly impeccable credentials. *See In re Diet Drugs Prods. Liab. Litig.*, MDL No. 1203, 2000 WL 1222042, at \*44 (E.D. Pa. Aug. 28, 2000) ("Each of the Class Counsel [Messrs. Levin, Weiss, Locks, and others] are experienced in the conduct of class litigation, mass tort litigation and complex personal injury litigation[.]"); ECF No. 6423-3 (¶ 27) (noting that Messrs. Marks and Weiss are "attorneys with decades of class action and MDL litigation experience"); ECF No. 6423-10 (¶ 2) (describing Mr. Levin's leadership positions in over 100 class actions, mass torts, and complex personal injury suits); ECF No. 6423-9 (¶ 2) (discussing Ms. Nast's leadership positions in over 48 complex cases). Plaintiffs' appellate counsel, Professor Samuel Issacharoff of the New York University School of Law, is also an extremely experienced and talented advocate. Professor Issacharoff helped steer the defense of the 23(f) and final approval appeals, successfully arguing twice before the Third Circuit, and serving as counsel of record in the Supreme Court in opposition to the two *certiorari* petitions. Seeger Decl., Ex. O (Issacharoff Decl.).

The achievements of Plaintiffs' Counsel are particularly noteworthy because they went up against the NFL Parties' counsel – Paul, Weiss, Rifkind, Wharton & Garrison – one of this nation's premier law firms. The firm is commonly recognized for its excellence, *see, e.g., In re Warner Communications Sec. Litig.*, 618 F. Supp. 735, 749 (S.D.N.Y. 1985), *aff'd*, 798 F.2d 35 (2d Cir. 1986); *In re WorldCom, Inc. Sec. Litig.*, 388 F. Supp. 2d 319, 358 (S.D.N.Y. 2005)

(stating defense counsel, including Paul, Weiss, the lead defense firm, were “formidable opposing counsel” and among “some of the best defense firms in the country”); *In re Schering-Plough Corp.*, No. 08-2177, 2013 WL 5505744, at \*27 (D.N.J. Oct. 1, 2013) (noting caliber of the Paul Weiss firm), and it routinely leads the defense of immensely complex and challenging litigation.

The NFL called upon the services of other elite law firms as well in this litigation, such as Dechert LLP and Paul D. Clement (formerly of Bancroft PLLC and now with Kirkland & Ellis), who argued the NFL’s motion to dismiss on federal preemption grounds. Simply put, “[c]lass counsel . . . faced formidable opposition from the skilled counsel opposing this litigation. All of these facts weigh in favor of granting Class Counsel’s request for attorneys’ fees.” *In re Wellbutrin SR Antitrust Litig.*, 2011 U.S. Dist. LEXIS 158833, at \*16-17; *see also Meijer, Inc. v. 3M*, No. 04-5871, 2006 WL 2382718, at \*21 (E.D. Pa. Aug. 14, 2006) (“Defense Counsel are also very experienced . . . and have defended this suit skillfully.”); *Stagi v. Nat’l R.R. Passenger Corp.*, 880 F. Supp. 2d 564, 570 (E.D. Pa. 2012) (“[T]he fact that Plaintiffs’ counsel obtained this settlement in the face of formidable legal opposition further evidences the quality of their work.”).

#### **4. The Complexity and Duration of the Litigation**

As this Court noted, this MDL involved a large class, with events and injuries spread over decades. The litigation “attempt[ed] to resolve issues of considerable scale. Class Members allege[d] negligence and a fraudulent scheme dating back half a century.” *In re NFL*, 307 F.R.D. at 388. “The claims of over 20,000 Retired Players [we]re at issue.” *Id.* The litigation also encompassed “complex scientific and medical issues not yet comprehensively studied.” *Id.* The Court noted further that document discovery, medical record discovery, expert discovery, and motion practice would be complex. *Id.* In particular, the Court noted the

uncertainties in linking CTE to head trauma suffered playing professional football “because clinical study of CTE is in its infancy.” *Id.* at 398.

The Third Circuit agreed, concurring with this Court that the “stiff challenges surmounting the issues of preemption and causation” that Class Members faced strongly weighed in favor of the Settlement’s approval. *Id.* at 439; *see also id.* at 435 (“Given our experience with similar MDLs, we expect the proceedings would result in years of costly litigation and multiple appeals, all the while delaying any potential recovery for retired players coping with serious health challenges.”). In addition, as discussed below, Class Members would have had to confront a litany of defenses, including federal preemption, assumption of risk, lack of causation (both general and specific), and, for many, the statute of limitations. *See generally* Section IV.B.5, *infra*. Given the complexity of this case and the daunting obstacles that stood in the path to a favorable judgment, the settlement benefits of almost \$1.2 billion that were secured for the Class truly represent a remarkable achievement, amply justifying the fees requested here that equal approximately nine percent of that recovery.

### **5. The Risk of Nonpayment**

The Court’s analysis should logically proceed from the beginning of the case with an evaluation of the serious risks of non-recovery faced by Plaintiffs’ Counsel when they committed themselves to this litigation on a contingency basis. *See In re Diet Drugs Prods. Liab. Litig.*, 553 F. Supp. 2d 442, 478 (E.D. Pa. 2008). “Risk must be assessed *ex ante* from the outset of the case, not in hindsight.” *In re Cendant Corp. Litig.*, 264 F.3d 201, 282 (3d Cir. 2001).

“Plaintiffs’ Counsel’s compensation for their services in this case was wholly contingent on the success of the litigation.” *Meijer, Inc.*, 2006 WL 2382718 at \*21; *Hegab v. Family Dollar Stores, Inc.*, No. 11-1206, 2015 WL 1021130, at \*13 (D.N.J. Mar. 9, 2015) (“Class counsel undertook this action on a contingent fee basis, assuming a substantial risk that they might not be

compensated for their efforts. . . . Courts recognize the risk of non-payment as a major factor in considering an award of attorney fees.”). This factor further supports the requested award. *E.g.*, *In re Diet Drugs*, 553 F. Supp. 2d at 479 (“At the inception, and throughout this litigation, there was a substantial risk that the efforts of the Joint Fee Applicants would not be successful.”); *In re Am. Investors Life Ins. Co. Annuity Mktg. & Sales Practices Litig.*, 263 F.R.D. 226, 244 (E.D. Pa. 2009) (fee request reasonable where class counsel “undertook representation on a contingency basis[,] . . . advanced hundreds of thousands of dollars in expenses” and prosecuted the case “without any guarantee of payment”); *McGee v. Continental Tire of N. Am.*, No. 066234, 2009 WL 539893, at \*15 (D.N.J. Mar. 4, 2009) (“Class Counsel accepted the responsibility of prosecuting this class action on a contingent fee basis and without any guarantee of success or award. Accordingly, this factor weighs in favor of approval.”); *In re Ins. Brokerage Antitrust Litig.*, No. 04-5184, 2009 WL 411856, at \*5 (D.N.J. Feb 17, 2009) (same).

This litigation presented very significant legal and scientific challenges, any one of which would have spelled doom for Plaintiffs. From the initiation of the litigation, Plaintiffs’ claims were at risk due to the NFL Parties’ threshold argument that federal labor law precludes the litigation of Plaintiffs’ claims in court. In particular, in their motions to dismiss the Master Administrative Class Action Complaint and the Amended Master Administrative Long-Form Complaint on Preemption Grounds, the NFL Parties claimed that Section 301 of the LMRA mandates the preemption of all state-law claims – whether based in negligence or fraud – whose resolution is substantially dependent upon or inextricably intertwined with the terms of a CBA,

or that arise under the CBA. *See* 29 U.S.C. § 185(a) (codifying Section 301(a)); *see also Allis-Chalmers Corp. v. Lueck*, 471 U.S. 202, 220 (1985).<sup>27</sup>

The formidable issue of federal preemption aside, the NFL Parties also could have asserted statute of limitations defenses in future motions to dismiss, a significant potential risk for Plaintiffs and Class Members (several thousand of whom had suits that had been centralized in this MDL at the time of the settlement). *See* ECF 6073-4 (Phillips Decl. ¶ 15). Many of the Retired NFL Football Players have not played for years, or even decades. Certain Class Members' brain injuries and symptoms have been present for several years or even decades. Clearly, these circumstances presented potentially fatal obstacles to Plaintiffs' Counsels' efforts to secure compensation for the Class. Another potential defense for the NFL Parties was the statutory employer defense – with the consequence that Class Members' exclusive remedy would be workers compensation benefits. This is a defense that the NFL Parties had stated they would raise. *See* Seeger Decl. ¶ 22 n.2.

In addition to those threshold defenses, as it has done in other litigation, the NFL would undoubtedly have raised the defense that Plaintiffs had assumed the risks of the cognitive injuries they developed. *See* ECF No. 6073-4 (Phillips Decl. ¶ 15). It is well known that football poses serious injury risks, as countless individuals (at all levels of the game) incur personal injuries every year while playing the sport. It is also well known that countless individuals suffer serious

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<sup>27</sup> The risk that Plaintiffs faced on account of this defense is not idle speculation. The NFL had successfully invoked this defense in several individual suits. *E.g.*, *Duerson v. Nat'l Football League*, 12-C-2513, 2012 WL 1658353 (N.D. Ill. May 11, 2012); *Maxwell v. Nat'l Football League*, 11-08394, Order (C.D. Cal. Dec. 8, 2011); *see also Stringer v. Nat'l Football League*, 474 F. Supp. 2d 894 (S.D. Ohio 2007). In each of these cases, the courts held that the NFL players' claims against the NFL or its member clubs relating to duties that are imposed by the CBAs were preempted because they required interpretation of CBA terms. The *Duerson* and *Maxwell* cases involved head injuries and were transferred to this MDL.

head trauma, including concussions, while playing football. Therefore, the NFL Parties would have presented a strong assumption of risk defense to Plaintiffs' claims.

Further hurdles remained. From a scientific standpoint, as the Court aptly noted, "even if Class Members could conclusively establish general causation, the problem of specific causation remain[ed]. Class Members argue[d] that the cumulative effect of repeated concussive blows Retired Players experienced while playing NFL Football led to permanent neurological impairment. Yet the overwhelming majority of Retired Players likely experienced similar hits in high school or college football, before they ever reached the NFL. Brain trauma during youth, while the brain is still developing, could also play a large role in later neurological impairment." *In re NFL*, 307 F.R.D. at 393. It would have been difficult, therefore, to isolate "the effect of hits in NFL Football from hits earlier in a Retired Player's career." *Id.*

The Third Circuit agreed with this Court's assessment, stating that it "concur[ed] with the District Court that this factor weighed in favor of settlement because Class Members face[d] stiff challenges surmounting the issues of preemption and causation." *In re NFL*, 821 F.3d at 439 (citing this Court's opinion; internal quotation marks omitted). In short, Plaintiffs would have had a panoply of daunting (and possibly insurmountable) hurdles to overcome in obtaining a favorable judgment. The risk of non-payment to Plaintiffs' Counsel was therefore, to say the least, considerable.

#### **6. The Amount of Time That Plaintiffs' Counsel Devoted to the Case**

Plaintiffs' Counsel have expended a total of almost 51,000 hours on this litigation (including innumerable late nights, weekends, and holidays). Seeger Decl. ¶ 78. As detailed above, this time has included many hours in mediation and negotiations; extensive research of claims from both legal and scientific standpoints; research and briefing for multiple filings and appeals; and wide-ranging coordination with both the Claims Administrator and the Lien

Administrator to establish the administrative infrastructure to ensure effectiveness of the Settlement. *See* Sections III.B-M, *supra*. The needed commitment of so much time and resources to this undertaking – which necessarily resulted in Plaintiffs’ Counsel foregoing other professional opportunities – further militates in favor of the instant application. *See, e.g., Wellbutrin SR Antitrust Litig.*, 2011 U.S. Dist. LEXIS 158833, at \*17 (more than 41,000 hours spent on case was a “substantial” time commitment favoring approval of fee application).

To be sure, as some objectors noted (and misguidedly placed undue reliance upon), there may not have been *formal* discovery, but that certainly does not mean that these claims were not intensely litigated or that a great deal of time and resources did not go into achieving the Settlement and putting it into effect. Those efforts included researching Plaintiffs’ claims, developing information about the Class, contesting the NFL Parties’ threshold preemption motions, consulting with numerous experts (including medical, economic, and actuarial),<sup>28</sup> exchanging reams of information with the NFL Parties, extensive and spirited mediation, and defending the Settlement at three judicial levels (including unorthodox onslaughts such as the attempts at interlocutory review of the Court’s preliminary approval). *See* Sections III.B-L, *supra*. “The record of this litigation . . . indicates that the time spent by Plaintiffs’ counsel was necessary for the successful prosecution of this case, considering both the complexity of the issues and the robust defense mounted by the defendants.” *In re Flonase Antitrust Litig.*, 291 F.R.D. 93, 104 (E.D. Pa. 2013); *In re Automotive Refinishing Paint Antitrust Litig.*, MDL No. 1426, 2008 WL 63269, at \*5 (E.D. Pa. Jan. 3, 2008) (“amount of time and expense”

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<sup>28</sup> Plaintiffs’ Counsel, with the assistance of their experts, also thoroughly reviewed peer-reviewed medical literature on, *inter alia*, brain injury, concussions, the effect of sub-concussive hits to the head on the brain, the epidemiology of the Qualifying Diagnoses, and the methods of diagnosis and treatment for the Qualifying Diagnoses. Seeger Decl. ¶ 29.

demonstrated counsel’s “significant commitment of resources” to litigation and weighed in favor of approving fee petition).

### 7. Fee Awards in Similar Cases

“This factor requires the Court to compare the percentage of recovery requested as a fee in this case against the percentage of recovery awarded as a fee in other common fund cases in which the percentage of recovery method, rather than the lodestar method, was used.” *Meijer, Inc.*, 2006 WL 2382718 at \*22; *In re Cendant Corp. PRIDES Litig.*, 243 F.3d at 737. Here, Plaintiffs’ Counsel request an award amounting to approximately nine percent of the value of the total relief secured for the Class. This is a modest percentage that is well within the parameters for class action fee awards in this Circuit.<sup>29</sup> Indeed, in *In re Rite Aid*, the Third Circuit noted

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<sup>29</sup> *E.g., Bodnar v. Bank of Am. N.A.*, No. 14-3224 (E.D. Pa. Aug. 4, 2016) (ECF No. 90) (approving fee request that “would be approximately 36.8 percent of the mere cash value of the fund, and considering non-monetary, injunctive relief as well”); *In re Viropharma Inc., Sec. Litig.*, No. 12-2714, 2016 WL 312108, at \*16 (E.D. Pa. Jan. 25, 2016) (approving 30% of \$8 million settlement fund); *In re Flonase Antitrust Litig.*, 951 F. Supp. 2d 739, 751 (E.D. Pa. 2013) (awarding one-third fee on settlement of \$150 million); *In re Processed Egg Prods. Antitrust Litig.*, MDL No. 2002, 2012 WL 5467530, at \*1 (E.D. Pa. Nov. 9, 2012) (approving fees equal to 30% of \$25 million fund); *Alexander v. Washington Mut., Inc.*, No. 07-4426, 2012 WL 6021103, at \*3 (E.D. Pa. Dec. 4, 2012) (30% of \$4 million fund); *Stagi v. Nat’l R.R. Passenger Corp.*, 880 F. Supp. 2d 564, 571 (E.D. Pa. 2012) (“[T]his District’s fee awards generally range between nineteen and forty-five percent of the common fund.”) (citing *In re Corel Corp., Inc. Sec. Litig.*, 293 F. Supp. 2d 484, 497 (E.D. Pa. 2003), and other cases); *In re Auto. Refinishing Paint Antitrust Litig.*, MDL No. 1426, 2008 WL 63269, at \*3 (E.D. Pa. Jan. 3, 2008) (33% of \$39 million supplement to fund); *Bradburn Parent Teacher Store, Inc. v. 3M*, 513 F. Supp. 2d 322, 342 (E.D. Pa. 2007) (approving 35% of \$81 million, plus reimbursement of expenses); *In re Ravisent Techs., Inc. Sec. Litig.*, No. 1014, 2005 WL 906361, at \*10-11 (E.D. Pa. Apr. 18, 2005) (33% of \$7 million fund, and noting that “courts within the [Third Circuit] have typically awarded attorneys’ fees of 30% to 35% of the recovery, plus expenses”); *In re Linerboard Antitrust Litig.*, No. MDL 1261, 2004 WL 1221350, at \*1 (E.D. Pa. June 2, 2004) (awarding 30% of \$202,572,489 settlement fund), *amended*, 2004 WL 1240775, at \*1 (June 4, 2004); *In re Rent-Way Secs. Litig.*, 305 F. Supp. 2d 491, 519 (W.D. Pa. 2003) (25% of \$25 million settlement fund); *In re Flat Glass Antitrust Litig.*, MDL No. 1200 (W.D. Pa. May 20, 2003) (33% of fund); *In re ATI Techs. Inc. Sec. Litig.*, No. 01-2541, 2003 WL 1962400, at \*2 (E.D. Pa. Apr. 28, 2003) (30% of \$8 million fund); *In re Cell Pathways Secs. Litig. II*, No. 01-cv-1189, 2002 WL 31528573, at \*1 (E.D. Pa. Sept. 23, 2002) (30% of fund comprised of \$2 million and 1.7 million (Footnote continued . . .))

three studies which found that fee awards ranging between 25-33 percent of common funds were not unusual. *In re Rite Aid*, 396 F.3d at 303. If anything, Plaintiffs Counsel’s fee request is well below the norm.

Although in the Third Circuit “it may be appropriate for percentage fees awarded in large recovery cases to be smaller in percentage terms than those with smaller recoveries[,] . . . the declining percentage concept does not trump the fact-intensive *Prudential/Gunter* analysis.” *In re Rite Aid Corp. Sec. Litig.*, 396 F.3d at 302-03. Indeed, “there is no rule that a district court must apply a declining percentage reduction in every settlement involving a sizable fund.” *Id.*<sup>30</sup>

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shares of common stock); *In re Warfarin Sodium Antitrust Litig.*, 212 F.R.D. 231, 262-63 (D. Del. 2002) (22.5% of \$44.5 million settlement); *In re Ikon Offices Solutions Inc. Sec. Litig.*, 194 F.R.D. at 192 (30% of \$108,915,874.43 settlement fund); *Cullen*, 197 F.R.D. at 150 (“[T]he award of one-third of the fund for attorney’s fees is consistent with fee awards in a number of recent decisions within this district.”); *Ratner v. Bennett*, No. 92-4701, 1996 WL 243645, at \*9 (E.D. Pa. May 8, 1996) (35% of \$400,000); *Lazy Oil Co. v. Witco Corp.*, 95 F. Supp. 2d 290, 322-23 (W.D. Pa. 1997) (28% of \$18.9 million settlement fund); *In re Greenwich Pharm. Sec. Litig.*, No. 92-3071, 1995 WL 251293, at \*6 (E.D. Pa. Apr. 25, 1995) (33.3% of \$4,375,000 fund).

<sup>30</sup> Many courts and commentators reject the sliding scale or “mega-fund” (as it is sometimes referred to) approach, including because it irrationally punishes lawyers for achieving large recoveries on behalf of classes. *E.g.*, *In re Linerboard Antitrust Litig.*, No. 98-5055, 2004 WL 1221350, at \*16-17 (E.D. Pa. June 2, 2004) (“The Court rejects [the sliding scale] in this case because the highly favorable settlement was attributable to the petitioners’ skill and it is inappropriate to penalize them for their success. Moreover, the sliding scale approach is economically unsound.”); *In re Ikon Office Solutions, Inc., Secs. Litig.*, 194 F.R.D. at 197 (“[A]pproach also fails to appreciate the immense risks undertaken by attorneys in prosecuting complex cases in which there is a great risk of no recovery.”); *In re Synthroid Mktg. Litig.*, 264 F.3d 712, 718 (7th Cir. 2001) (“We have held repeatedly that, when deciding on appropriate fee levels in common-fund cases, courts must do their best to award counsel the market price for legal services, in light of the risk of nonpayment and the normal rate of compensation in the market at the time. . . . We have never suggested that a ‘megafund rule’ trumps these market rates[.]”); *In re Toyota Motor Corp. Unintended Acceleration Mktg., Sales Practices, & Prods. Liab. Litig.*, No. 8:10-mdl-02151-JVS, at 17 n.16 (C.D. Cal. Jun. 17, 2013) (“The Court also agrees with . . . other courts . . . which have found that decreasing a fee percentage based only on the size of the fund would provide a perverse disincentive to counsel to maximize recovery for the class.”); *Allapattah Servs., Inc. v. Exxon Corp.*, 454 F. Supp. 2d 1185, 1213 (S.D. Fla. 2006)

(Footnote continued . . .)

As the Court of Appeals explained in *Rite Aid*, “the reason courts apply the declining percentage principle ‘is the belief that in many instances the increase [in recovery] is merely a factor of the size of the class and has no direct relationship to the efforts of counsel.’” *Id.* at 302 (quoting *In re Prudential*, 148 F.3d at 339 (internal quotations omitted)). That cannot genuinely be said here.

Thus, in *In re Prudential*, in vacating the fee award of \$90 million on a settlement estimated at \$1 billion, *id.* at 338-40, much of the Third Circuit’s concern was case-specific. In particular, the Court of Appeals questioned such a sizable fee award when much of the settlement apparently had resulted from the work of state regulators and a multi-state insurance task force. *See In re Prudential*, 148 F.3d at 342. In *Rite Aid*, in contrast, the Court found that class counsel’s “extraordinarily deft and efficient” handling of the complex securities matter had resulted in a “rich settlement,” *In re Rite Aid Corp. Sec. Litig.*, 269 F. Supp. 2d 603, 609-11 (E.D. Pa. 2003), and although it remanded the Court’s fee award for further determination because of an error in the lodestar cross-check, it nonetheless agreed that “class counsel’s efforts [had] played a significant role in augmenting and obtaining an immense fund,” and that the Court had acted within its discretion in declining to apply a “sliding scale” percentage. *In re Rite Aid*, 396 F.3d at 303.

But even taking this “mega-fund” approach into account, an award of approximately nine percent is still well within the norm in this Circuit for class counsel fees in cases involving recoveries that exceed \$100 million. *E.g.*, *King Drug Co. of Florence v. Cephalon*, No. 06-cv-01797-MSP, 2015 WL 12843830 at \*5 (E.D. Pa. Oct. 15, 2015) (awarding 27.5% of \$512 million settlement); *In re Rite Aid Corp. Sec. Litig.*, 362 F. Supp. 2d 587, 588-90 (E.D. Pa. 2005)

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(sliding scale does not “reward[] Class Counsel for the additional work necessary to achieve a better outcome for the class” and “creates the perverse incentive for Class Counsel to settle too early for too little.”).

(awarding 25% of \$125 million fund); *In re Rite Aid Corp. Sec. Litig.*, 146 F. Supp. 2d 706, 736, n.44 (E.D. Pa. 2001) (25% of \$193 million fund); *In re Ikon Offices Solutions Inc. Sec. Litig.*, 194 F.R.D. 166, 192 (E.D. Pa. 2000) (30% of \$108,915,874.43 settlement fund).<sup>31</sup> In fact, a frequently cited study of class action recoveries found that the average fee award for large class settlements was 13.7% nationwide, with a median of 9.5 percent. Brian T. Fitzpatrick, *An Empirical Study of Class Action Settlements*, 7 J. of Empirical Legal Stud., 811-46, 839 (Dec. 2010) (Table 11) (copy annexed to Seeger Decl. as Exhibit Y).

#### **8. The Value of Benefits Attributable to the Efforts of Class Counsel Relative to the Efforts of Other Groups**

“This factor seeks to compare the actions of government prosecutions, similar private cases, and agency litigation to the instant private litigation.” *In re Diet Drugs*, 582 F.3d at 544. Here, as noted, Plaintiffs’ Counsel began this litigation in 2011, and there was no similar, previously-existing litigation against the NFL that could be used as a template. Plaintiffs’ Counsel conducted their own extensive research, developed their own experts, briefed all the

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<sup>31</sup> It is also within the norm of awards made by courts outside this Circuit. *E.g.*, *Lawrence E. Jaffe Pension Plan v. Household Int’l, Inc.*, No. 02-C05893, ECF No. 2265, at 1-2 (N.D. Ill. Nov. 10, 2016) (awarding 24.68% of \$1.575 billion settlement); *In re TFT-LCD (Flat Panel) Antitrust Litig.*, No. M 07-1827, 2013 WL 1365900, at \*7 (N.D. Cal. Apr. 3, 2013) (28.5% of \$1.1 billion fund); *In re Priceline.com, Inc. Sec. Litig.*, No. 00-1884, 2007 WL 2115592, at \*5 (D. Conn. July 20, 2007) (30% of \$80 million fund); *In re Tyco Int’l, Ltd. Multidist. Litig.*, 535 F. Supp. 2d 249, 266, 272, 274 (D.N.H. 2007) (14.5% of \$3.3 billion fund); *In re Adelphia Communs. Corp. Sec. and Derivative Litig.*, No. 03 MDL 1529, 2006 WL 3378705, at \*1, \*3 (S.D.N.Y. Nov. 16, 2006) (awarding 21.4% of \$455 million fund); *In re Freddie Mac Sec. Litig.*, No. 03-CV-4261 (JES), slip op. at 1 (S.D.N.Y. Oct. 27, 2006) (20% of \$410 million fund); *In re Royal Ahold N.V. Sec. & ERISA Litig.*, 461 F. Supp. 2d 383, 387 (D. Md. 2006) (12% of \$1.1 billion fund); *Allapattah Servs., Inc. v. Exxon Corp.*, 454 F. Supp. 2d 1185, 1192 (S.D. Fla. 2006) (31.33% of \$1.1 billion fund); *Shaw v. Toshiba Am. Info. Sys., Inc.*, 91 F. Supp. 2d 942, 972 (E.D. Tex. 2000) (15% of \$1-1.1 billion award); *In re NASDAQ Mkt.-Makers Antitrust Litig.*, 187 F.R.D. 465, 485-86 (S.D.N.Y. 1998) (14% of \$1.027 billion fund).

relevant issues in multiple filings to the Court, and conducted their negotiation sessions without the benefit of previous lawsuits or government prosecutions.

Although there were congressional hearings<sup>32</sup> regarding head injuries in the NFL that produced some useful documentation and testimony, there was no parallel state or federal action that provided any impetus toward resolution – as in, for example, an antitrust case. Here, “[t]here is no contention . . . that the settlement could be attributed to work done by other groups, such as government agencies.” *Esslinger v. HSBC Bank Nevada, N.A.*, No. 10-3213, 2012 WL 5866074, at \*14 (E.D. Pa. Nov. 20, 2012). Thus, “class counsel in this case was not aided by a government investigation. . . . [T]his [i]s a significant factor for courts to consider.” *In re AT & T Corp.*, 455 F.3d at 173. Put simply, there was no “litigation roadmap” of which Plaintiffs’ Counsel could avail themselves. *Haught v. Summit Res., LLC*, No. 1:15-cv-0069, 2016 WL 1301011, at \*10 (M.D. Pa. Apr. 4, 2016). This factor thus further supports the requested award.

**9. The Percentage Fee That Would Have Been Negotiated Had the Case Been Subject to a Private Contingent Fee Arrangement at the Time Counsel Was Retained**

Also weighing in favor of the requested award is the fact that the size of the award as a percentage of the recovery obtained (nine percent) is markedly below the “percentage fee that would have been subject to a private contingent fee agreement at the time counsel was retained.” *In re AT & T*, 455 F.3d 160 (citing *In re Prudential*, 148 F.3d at 340); *In re CertainTeed Fiber Cement Siding Litig.*, 303 F.R.D. 199, 224 (E.D. Pa. 2014).<sup>33</sup> “In private contingency fee cases,

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<sup>32</sup> *E.g.*, in 2009 and 2010, the U.S. House of Representatives Judiciary Committee held several hearings related to head injuries in the NFL.

<sup>33</sup> *Accord*, *Alexander v. Washington Mut., Inc.*, No. 07-4426, 2012 WL 6021103, at \*3 (E.D. Pa. Dec. 4, 2012) (citing *Esslinger*, 2012 WL 5866074, at \*14); *In re Remeron Direct Purchaser Antitrust Litig.*, No. 03-0085, 2005 WL 3008808, at \*16 (D.N.J. Nov. 9, 2005) (“Attorneys regularly contract for contingent fees between 30% and 40% with their clients in (Footnote continued . . .)

lawyers routinely negotiate agreements between 30% and 40% of the recovery.” *Esslinger*, 2012 WL 5866074 at \*14 (citing *In re Ins. Brokerage Antitrust Litig.*, 282 F.R.D. 92, 123 (D.N.J. 2012)); *Schuler v. Meds Co.*, No. 14-1149, 2016 WL 3457218, at \*10 (D.N.J. June 24, 2016) (“The attorneys’ fees request one-third of the settlement fund . . . comports with privately negotiated contingent fees privately negotiated on the open market.”) (citation and internal quotation marks omitted).<sup>34</sup>

#### 10. The Settlement Agreement Contains Many Innovative Features

Also favoring approval of the instant fee petition is that this Settlement contains multiple innovative terms. *See Haught v. Summit Res., LLC*, No. 1:15-cv-0069, 2016 WL 1301011, at \*11 (M.D. Pa. Apr. 4, 2016) (“Particularly where a settlement involved ‘innovative’ or unique terms, such a finding [that the results achieved by class counsel were nothing short of remarkable] may be warranted.”); *Tavares v. S-L Distrib. Co.*, 1:13-cv-1313, 2016 WL 1732179, at \*13 (M.D. Pa. May 2, 2016) (same).

As noted above, the Settlement provides a 65-year, inflation-adjusted Monetary Award for several Qualifying Diagnoses – including neurological manifestations of a certain severity

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non-class, commercial litigation.”); *In re Aetna Inc. Secs. Litig.*, MDL No. 1219, 2001 WL 20928, at \*14 (E.D. Pa. Jan. 4, 2001) (“[A]n award of thirty percent is in line with what is routinely privately negotiated in contingency fee tort litigation.”); *In re Ikon Office Sols., Inc. Sec. Litig.*, 194 F.R.D. 166, 194 (E.D. Pa. 2000) (“[I]n private contingency fee cases, particularly in tort matters, plaintiffs’ counsel routinely negotiate agreements providing for between thirty and forty percent of any recovery.”).

<sup>34</sup> In *Chakejian v. Equifax Info. Svcs, LLC*, 275 F.R.D. 201 (E.D. Pa. 2011), the Court analyzed a fee application that involved an attorneys’ fees payment that was not to be taken from a common fund but, rather, to be paid separately by the defendant pursuant to a statutory fee-shifting provision. *Id.* at 216. Although there would be no reduction to any common fund to pay attorney’s fees, the Court nevertheless looked to the percentage of recovery method as a cross-check, noting that “contingency fees representing 30% to 40% of recovery are fairly typical” and that class counsel’s request for attorney’s fees equivalent to 11% of the benefits obtained for the class was “comparatively very reasonable.” *Id.* at 220.

that are associated with CTE, even though CTE cannot be diagnosed in living people. The Settlement provides an innovative matrix to establish award amounts, based on a Retired NFL Football Player's age at time of diagnosis, and the amount of years played in the NFL (a reasonable proxy for the resulting degree of exposure to concussive and sub-concussive hits). Although a matrix for monetary awards had been used in other mass tort settlements, the application of this concept to multiple neurocognitive and neuromuscular diseases, using years played as a proxy for exposure to head trauma, was truly innovative.

Providing assessments and Qualifying Diagnoses to retired players in various age groups, spread throughout the country, by qualified medical professionals, called for creating medical networks – the Qualified BAP Providers and the Qualified MAF Physicians. The use of these networks will further the Settlement's goals of providing accurate and consistent diagnoses, as well as ready access to qualified medical providers by Retired NFL Players and their families.

The BAP will provide neurocognitive testing for thousands of Retired NFL Football Players. It is an innovative feature designed to detect and diagnose Level 1, Level 1.5 and Level 2.0 Neurocognitive Impairment. The program requires the BAP Administrator to create a network of qualified medical professionals to administer and evaluate the tests, and to provide BAP Supplemental Benefits. Settlement § 5.7(a)(i) [ECF No. 6481-1, at 28]. Qualified BAP Providers from all over the country will participate in the program, easing travel burdens for Retired NFL Players. *Id.* § 5.7(a)(ii) [ECF No. 6481-1, at 28-29]. The BAP includes state-of-the-art neuropsychological exams, and Plaintiffs' Counsel and their experts drafted guidelines for these tests for the doctors to apply.

The Settlement also creates a network of board-certified neurologists, neurosurgeons, and other neuro-specialist physicians – the Qualified MAF Physicians' network. Settlement § 6.5(a)

[ECF No. 6481-1, at 38]. This network will operate for 65 years, in order to provide Qualifying Diagnoses for Retired NFL Football Players for the duration of their lifetimes. As with the BAP, Qualified MAF Physicians will be available throughout the country, and the Settlement will ease the difficulty of Retired Players finding qualified healthcare providers.

As the Court observed, “Retired Players cannot be compensated for CTE in life because no diagnostic or clinical profile of CTE exists, and the symptoms of the disease, if any, are unknown. But the Settlement *does* compensate the cognitive symptoms allegedly associated with CTE.” *In re NFL*, 307 F.R.D. at 396-97 (emphasis in original). CTE “inflicts symptoms compensated by Levels 1.5 and 2 Neurocognitive Impairment and is strongly associated with the other Qualifying Diagnoses in the Settlement.” *Id.* at 400. The ability to compensate these cognitive symptoms despite the current lack of scientific means to diagnose CTE in a living retired NFL player, is another innovative aspect of the Settlement.

Also innovative is the Settlement’s lien resolution program, which will lower Class Members’ costs. The Settlement provides for the retention of an expert (the Lien Resolution Administrator) for the purpose of negotiating collective resolution of governmental and health benefit liens against class member recoveries. Absent global resolution, as is common in an individual injury action, such liens can reduce a claimant’s gross award by a third or more. As the Court found, “the lien resolution program will streamline this necessary process and ensure that Class Members receive Monetary Awards as quickly as possible,” and “the lien resolution process represents a substantial benefit for Class Members” because the appointed administrator “will be able to negotiate on a class-wide basis” and thereby obtain a “discount” for the Class. *In re NFL*, 307 F.R.D. at 367, 421; *see also* Seeger Decl., Ex B (Decl. of Matthew L. Garretson, dated Jan. 20, 2017).

In addition, the Settlement is innovative in that it protects neurocognitive benefits that Retired NFL Players had bargained for. The Settlement ensures that settlement benefits do not in any way compromise pre-existing benefits to which a Retired Player might be entitled. Significantly, it preserves Retired NFL Football Players' rights to pursue claims for workers compensation and any and all medical and disability benefits under any applicable collective bargaining agreement, including the NFL's Neuro-Cognitive Disability Benefit and the "88 Plan" (which reimburses or pays for up to \$100,000 in medical expenses per year for qualifying retired players with dementia, ALS, and Parkinson's Disease). Settlement § 18.6 [ECF No. 6481-1, at 79-80]. In addition, the Settlement ensures that the provision included in Article 65 of the current CBA, Section 2 – requiring that players execute a release of claims and covenant not to sue in order to be eligible for the NFL's Neuro-Cognitive Disability Benefit – will not be enforced or used against Class Members in connection with this Settlement. *Id.* § 29.1 [ECF No. 6481-1, at 96].

The appeals process is also an innovative feature of the Settlement in that it provides added structural protections for Class Members. Co-Lead Counsel have standing to appeal as part of the Settlement Agreement. *Id.* § 9.5 [ECF No. 6481-1, at 51]. The Settlement provides rights to appeal various decisions, including denial of registration, denial of Monetary Awards, and the amount of a Monetary Award. *Id.*

**C. A Lodestar Cross-Check Shows That the Fee Request Is Reasonable**

As noted above, *see* Section IV.A, *supra*, while it has not made it mandatory, the Third Circuit has suggested that, in addition to reviewing the fee award reasonableness factors, "it is 'sensible' for district courts to 'cross-check' the percentage fee award against the 'lodestar' method." *In re Rite Aid*, 396 F.3d at 305 (citing *In re Prudential*, 148 F.3d at 333). The lodestar is calculated by multiplying the number of hours worked by the hourly rates of counsel. The

proposed percentage of the recovery award is then divided by the lodestar to yield the “lodestar multiplier.” *In re AT & T Corp.*, 455 F.3d at 164. “The court may then multiply the lodestar calculation to reflect the risks of nonrecovery, to reward an extraordinary result, or to encourage counsel to undertake socially useful litigation.” *In re Aetna Inc. Secs. Litig.*, No. MDL 1219, 2001 WL 20928, at \*15 (E.D. Pa. Jan. 4, 2001) (citing *In re Ikon*, 194 F.R.D. at 195).

The lodestar cross-check however, “does not trump the primary reliance on the percentage of common fund method.” *In re Rite Aid*, 396 F.3d at 307. Moreover, “[t]he lodestar cross-check calculation need entail neither mathematical precision nor bean-counting. The district courts may rely on summaries submitted by the attorneys and need not review actual billing records. . . . [T]he resulting multiplier need not fall within any pre-defined range, provided that the District Court’s analysis justifies the award.” *Id.* at 306-07 (footnotes and citations omitted). In short, a lodestar cross-check serves merely as a rough yardstick to gauge the reasonableness of a common benefit fee request.

### **1. Plaintiffs’ Counsels’ Lodestar Is Eminently Reasonable**

Here, Plaintiffs’ Counsels’ lodestar totals \$40,559,978.60. *See* Seeger Decl. ¶ 78 & Exs. C-X (compiling supporting declarations of Co-Lead Counsel, Class Counsel, Subclass Counsel, and all other firms having performed common benefit work). The total hours expended on this litigation were 50,912.39, which included time reasonably spent investigating the claims, conferring on and formulating case strategy, drafting complaints and master administrative complaints, defending against dispositive motions, the extensive and spirited mediation (including the second round that followed the Court’s January 2014 rejection of the first settlement agreement), the actual negotiation and drafting of the Settlement (including its precursors), the drafting of Rule 23(e) preliminary and final approval papers, overseeing the preparation and dissemination of Class Notice, dealing with innumerable Class Members,

preparing for implementation of the Settlement, and defending against multiple appeals (both interlocutory and from the final judgment and order approving the Settlement).

Besides the time reasonably expended in this complex MDL and its many (and sundry) moving parts, the hourly attorney rates underlying the lodestar are reasonable. Specifically, Seeger Weiss' rates range from \$985 to \$500 per hour, Seeger Decl., Addendum 1; Anapol Weiss' rates range from \$650 to \$275 per hour (Seeger, Decl., Ex. G [Weiss Decl., Ex. 1]); Podhurst Orseck's rates range from \$895 to \$405 per hour (Seeger Decl., Ex. E [Marks Decl., Ex. 1]); the Locks Law Firm's rates range from \$900 to \$550 per hour (Seeger Decl., Ex. D [Locks Decl., Ex. 1]); Levin, Sedran & Berman's rates range from \$1,350 to \$525 per hour (Seeger Decl., Ex. C [Levin Decl., Ex. 1]); and NastLaw's rates range from \$800 to \$560 per hour (Seeger Decl., Ex. F [Nast Decl., Ex. 1]).<sup>35</sup>

The next question is whether these rates are consistent with prevailing rates in this District. *See generally Interfaith Cmty. Org. v. Honeywell Int'l, Inc.*, 426 F.3d 694, 705 (3d Cir. 2005) (district courts in this Circuit must look to "forum rates," save where special expertise of counsel from distant district is shown or when local counsel are unwilling to handle the case). The answer to that is yes.

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<sup>35</sup> The firms' rates are current, not historical, rates. That reflects the Third Circuit's preference, *see Lanni v. New Jersey*, 259 F.3d 146, 149 (3d Cir. 2001) ("When attorney's fees are awarded, the current market rate must be used."), and counterbalances the delay in payment of counsel given the contingent nature of the services rendered. *E.g., In re Unisys Corp. Retiree Med. Benefits ERISA Litig.*, 886 F. Supp. 445, 479 (E.D. Pa. 1995); *In re Schering-Plough Corp. Enhance Sec. Litig.*, No. 08-2177 DMC, 2013 WL 5505744, at \*33 n.28 (D.N.J. Oct. 1, 2013) (citing cases). "[D]istrict [C]ourts in this [C]ircuit do award attorneys' fees based on the current billing rate." *In re Safety Components, Inc. Sec. Litig.*, 166 F. Supp. 2d 72, 103 n.11 (D.N.J. 2001) (internal quotations and citations omitted); *in re Ikon Office Sols., Inc., Secs. Litig.*, 194 F.R.D. 166, 195 (E.D. Pa. 2000) ("Each attorney's hourly rates were appropriately calculated by reference to current rather than historic rates.").

The prevailing market rate is ordinarily reflected in a law firm's normal billing rate. *See In re Avandia Mktg., Sales Practice & Prods. Liab. Litig.*, No. 07-md-01871, 2012 WL 6923367, at \*10 (E.D. Pa. Oct. 19, 2012). "The value of an attorney's time generally is reflected in his normal billing rate." *Moore v. GMAC Mortgages*, No. 07-4296, 2014 WL 12538188, at \*2 (E.D. Pa. Sept. 19, 2014) (internal citation omitted). Because a "reasonable hourly rate" reflects an attorney's experience and expertise, the rates for individual attorneys vary. *Id.*

Whether the rate charged is reasonable is determined by "assessing the experience and skill of the prevailing party's attorneys and by looking at the market rates in the relevant community for lawyers of reasonably comparable skill, experience and reputation." *Chakejian v. Equifax Info. Svcs, LLC*, 275 F.R.D. 201, 217 (E.D. Pa. 2011) (internal citations and quotations omitted). Here, counsel has applied normal billing rates, rates that have been approved in this Circuit. *E.g., In re Viropharma Inc., Sec. Litig.*, No. 12-2714, 2016 WL 312108, at \*18 (E.D. Pa. Jan. 25, 2016) (hourly billing rates of all of plaintiff's counsel ranged from \$610 to \$925 for partners, \$475 to \$750 for of counsels, and \$350 to \$700 for other attorneys); *McDonough v. Toys "R" Us, Inc.*, 80 F. Supp. 3d 626, 657 n.30 (E.D. Pa. 2015) (Seeger Weiss LLP's rates approved); *In re Mercedes Benz Tele Aid Contract Litig.*, No. 07-2720, 2011 WL 4020862, at \*7 (D.N.J. Sept. 9, 2011) (rates of \$500-\$855 per hour for partners and \$370 to \$475 for associates were "comparable to rates the courts have approved in similar cases in other metropolitan areas"); *In re Avandia Mktg., Sales Practices & Prods. Liab. Litig.*, 2012 WL 6923367, at \*10 (E.D. Pa. Oct. 19, 2012) ("According to a 2011 sampling of nationwide billing rates submitted by the Fee Committee, of which this Court takes judicial notice, partners at GSK's Philadelphia-based firm (Pepper Hamilton) bill up to \$825 per hour, and partners at other Philadelphia law firms have similar top hourly rates (\$900 at Cozen O'Connor, \$875 at Duane Morris, \$750 at

Saul Ewing, and \$725 at Fox Rothschild”); *In re Merck & Co., Inc. Vytorin Erisa Litig.*, No. 08-cv-285, 2010 WL 547613, at \*13 (D.N.J. Feb. 9, 2010) (approving Seeger Weiss LLP’s billing rates, which at the time ranged from \$345 - \$775).<sup>36</sup>

## 2. The Requested Award Reflects a Suitable Multiplier

In performing a lodestar cross-check, it is appropriate for the Court to consider the multipliers utilized in comparable cases. *In re Rite Aid*, 396 F.3d at 307 n.17. The Third Circuit has recognized that multipliers “ranging from one to four are frequently awarded in common fund cases when the lodestar method is applied.” *In re Cendant PRIDES*, 243 F.3d at 742 (quoting *In re Prudential*, 148 F.3d at 341). Here, as noted above, Plaintiffs’ Counsel’s combined lodestar is \$40,559,978.60. Given the requested attorneys’ fees component of the award of \$106,817,220.62, the lodestar multiplier in this case is 2.6, which is well within the norm in this Circuit.

### D. Plaintiffs’ Counsel’s Expenses Were Reasonably and Appropriately Incurred, and Are Adequately Documented

Under the common fund doctrine, “a private plaintiff, or plaintiff’s attorney, whose efforts create, discover, increase, or preserve a fund to which others also have a claim, is entitled to recover from the fund the costs of his litigation[.]” *In re Diet Drugs*, 582 F.3d at 540

<sup>36</sup> See also *Moore v. GMAC Mortg.*, No. 07-4296, 2014 WL 12538188, at \*2 (E.D. Pa. Sept. 19, 2014) (finding reasonable rates that “range from \$325 per hour for an associate to \$860 per hour for an experienced bankruptcy partner”); *Lugus IP, LLC v. Volvo Car Corp.*, No. 12-2906, 2015 WL 1399175, at \*6, \*8 (D.N.J. Mar. 26, 2015) (finding rates “between \$274.50 and \$895.50” to be “reasonable given the experience and specialized expertise of the attorneys involved”); *Mirakay v. Dakota Growers Pasta Co.*, No. 13-CV-4429 JAP, 2014 WL 5358987, at \*14 (D.N.J. Oct. 20, 2014) (allowing rates that, “range[d] from \$350.00 to \$850.00 per hour”); *Louisiana Mun. Police Employees Ret. Sys. v. Sealed Air Corp.*, No. 03-CV-4372 DMC, 2009 WL 4730185, at \*9 (D.N.J. Dec. 4, 2009) (allowing hourly rates, “ranging from \$225 to \$830”); *Sullivan v. DB Invs., Inc.*, No. 04-2819 SRC, 2008 WL 8747721, at \*35 (D.N.J. May 22, 2008) (allowing “hourly rates of the attorneys and paralegals . . . which range[d] from \$800 to \$185 per hour”) (emphasis added).

(citations omitted). “[C]ounsel for a class action is entitled to reimbursement of expenses that were adequately documented and reasonably and appropriately incurred in the prosecution of the class action.” *In re Safety Components, Inc. Secs. Litig.*, 166 F. Supp. 2d 72, 108 (D.N.J. 2001) (citing *Abrams v. Liehtolier Inc.*, 50 F.3d 1204, 1225 (3d Cir. 1995)). Here, “[c]ounsel had a strong incentive to conserve their expenses, given that they were incurred with no guarantee of recovery.” *In re Flonase Antitrust Litig.*, 291 F.R.D. 93, 106 (E.D. Pa. 2013).

The supporting declarations of Plaintiffs’ Counsel describe the expenses incurred in connection with this litigation. *See, e.g.*, Seeger Decl. ¶ 96 & Addendum 2; *id.*, Ex. G (Weiss Decl. ¶ 7 & Ex. 2); *id.*, Ex. E (Marks Decl. ¶ 34 & Ex. 2); *id.*, Ex. D (Locks Decl. ¶ 23 & Ex. 2); *id.*, Ex. C (Levin Decl. ¶ 7 & Ex. 2); *id.*, Ex. F (Nast Dec. ¶ 8 & Ex. 2). These expenses are amply documented, and were reasonably incurred in the prosecution and resolution of the litigation. Plaintiffs’ Counsel will briefly highlight major categories of expenditure to assist the Court in its evaluation of this application.

This litigation involved detailed scientific and medical research and calculations. For Plaintiffs’ Counsel, it was absolutely necessary to understand the types of neurocognitive illnesses that would warrant compensation, to determine how many Retired NFL Football Players had suffered from these illnesses in the past, and to forecast how many Retired NFL Football Players would be diagnosed with them in the future. This is especially so given the NFL’s extensive resources and its ability to marshal its own expert analyses.

The case also involved extremely complicated statistical calculations. Incidence rates of the Qualifying Diagnoses had to be calculated several decades out. This also required extensive expert analysis, which is reflected in Plaintiffs’ Counsel’s expenses. Moreover, as detailed above, Plaintiffs’ Counsel formulated and employed an effective public relations strategy, which

kept Class Members informed, counteracted inaccurate information about the litigation and Settlement, and assisted in settlement efforts. Courts routinely allow recovery for expert fees of the sort incurred here. *E.g.*, *In re Viropharma Inc., Sec. Litig.*, No. 12-2714, 2016 WL 312108, at \*18 (E.D. Pa. Jan. 25, 2016) (counsel in a class action are entitled to reimbursement of expenses that were “adequately documented and reasonable and appropriately incurred in the prosecution of the class action”); *In re Flonase Antitrust Litig.*, 291 F.R.D. at 106 (costs of “experts, investigators, [and] accountants”); *Cullen*, 197 F.R.D. at 151 (expenses that were “adequately documented, proper and reasonable” reimbursed).

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Lastly, as noted at the outset of this memorandum, Co-Lead Class Counsel Christopher Seeger respectfully requests that the Court entrust him with the responsibility and discretion for making the ultimate allocation of the fee award among counsel for non-objecting Plaintiffs who performed common benefit work (and incurred common benefit expenses) given that he has had overall charge of this litigation for some time now, including the formulation of case strategy, the spearheading of negotiations with the NFL Parties, and the defense of the Settlement.<sup>37</sup> Seeger Decl. ¶ 99. Courts commonly delegate such allocation authority. *E.g.*, *Milliron v. T-Mobile USA, Inc.*, 423 F. App'x 131, 134 (3d Cir. 2011) (“Generally, a district court may rely on lead counsel to distribute attorneys’ fees among those involved[.]”); *In re Am. Inv’rs Life Ins. Co. Annuity Mktg. & Sales Practices Litig.*, 263 F.R.D. 226, 251 (E.D. Pa. 2009) (conferring “sole discretion” on Co-Lead Counsel to allocate award of fees and expenses); *In re Viropharma Inc. Sec. Litig.*, Civ. No. 12-2714, 2016 WL 304040, at \*4 (E.D. Pa. Jan. 25, 2016) (“Lead

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<sup>37</sup> In the alternative, the Court should allow Mr. Seeger to make a proposed allocation, subject to the Court’s final approval. *See* Seeger Decl. ¶ 99.

Counsel shall allocate the attorneys' fees awarded amongst Plaintiff's Counsel in a manner which it, in good faith, believes reflects the contributions of such counsel to the institution, prosecution and settlement of the Action.”); *In re Fasteners Antitrust Litig.*, No. 08-MD-1912, 2014 WL 296954, at \*10 (E.D. Pa. Jan. 27, 2014) (conferring responsibility on Co-Lead Counsel “for allocating and distributing counsel fees and expenses to be paid to Class Counsel”); *In re Auto. Refinishing Paint Antitrust Litig.*, MDL No. 1426, 2008 WL 63269, at \*7 (E.D. Pa. Jan. 3, 2008) (noting that co-lead counsel had “directed this case from its inception and [we]re best able to assess the weight and merit of each counsel’s contribution”; “allowing Counsel to allocate fees conserves the time and resources of the courts”) (citing *In re Linerboard Antitrust Litig.*, 2004 WL 1221350, at \*18).

As for the fee petitions filed (or to be filed) by counsel for certain objectors, Plaintiffs’ Counsel respectfully propose that the Court direct a segregation or set-aside from the Attorneys’ Fees Qualified Settlement Fund of whatever amount it deems appropriate pending resolution of those petitions, but otherwise permit the allocation and distribution of fees and reimbursement of expenses among counsel non-objector Plaintiffs who performed common benefit work and incurred common benefit expenses to proceed. Seeger Decl. ¶ 100.

**E. The Five Percent Set-Aside Is Necessary to Support Effectuation and Administration of the Settlement**

Anticipating the substantial future efforts that will be necessary for the common benefit of the Class over the coming decades, Section 21.1 of the Settlement provides:

After the Effective Date, Co-Lead Class Counsel may petition the Court to set aside up to five percent (5%) of each Monetary Award and Derivative Claimant Award to facilitate the Settlement program and related efforts of Class Counsel. These set-aside monies shall be held in a separate fund overseen by the Court. Any future petition for a set-aside will describe: (i) the proposed amount; (ii) how the money will be used; and (iii) any other relevant information (for example, the assurance that any “set-

aside” from a Monetary Award or Derivative Claimant Award for a Settlement Class Member represented by his/her individual counsel will reduce the attorney’s fee payable to that counsel by the amount of the “set-aside”). No money will be held back or set aside from any Monetary Award or Derivative Claimant Award without Court approval.

ECF No. 6481-1, at 82.

The Third Circuit has approved the establishment of separate funds in settlements to provide future common benefit fees for attorneys. As the Court of Appeals explained in *In re Diet Drugs*, 582 F.3d at 532, “[t]he MDL and settlement process yielded four potential sources for fees to compensate the PMC and other attorneys who had a hand in creating common benefits for the enormous class of claimants. First . . . the District Court ordered Wyeth to withhold 9% of the payments it made to plaintiffs whose cases were transferred to the MDL and place those funds in the “MDL Fee and Cost Account,” from which Class Counsel would be compensated for providing case-wide services.” *Id.* Furthermore, the district court “provided for the sequestration of 6% of the value of claims in state court cases where the litigation was coordinated with the MDL. That money also went into the MDL Fee and Cost Account. The percentages were to be deducted from the fees due to the individual lawyers for the opt-out claimants who recovered against Wyeth.” *Id.* Here, the holdback from a particular award will cover work done during the time period from the Effective Date of the Settlement to the player’s award date.<sup>38</sup>

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<sup>38</sup> A set-aside of five percent is reasonable, and consistent with holdbacks in MDLs that courts have adopted for the purpose of creating a pool out of which attorneys can be compensated for common benefit work. *E.g.*, *In re Avandia Mktg., Sales Practices & Prods. Liab. Litig.*, MDL No. 1871, 2012 WL 6923367, at \*1 (E.D. Pa. Oct. 19, 2012) (7% of individual settlements paid into common benefit fund); *In re Diet Drugs Prods. Liab. Litig.*, 553 F. Supp. 2d at 457-58, 491-96 (describing 9% federal and 6% state assessments later reduced to 6% and 4%, respectively); *In re Genetically Modified Rice Litig.*, MDL 06-1811, 2010 WL 716190, at \*6 (E.D. Mo. Feb. 24, 2010) (6% to 8% fee assessments, plus additional 3% for costs); *In re St.* (Footnote continued . . .)

As the Court is well aware, the Settlement is to cover a period of sixty-five years. Settlement § 6.10 [ECF No. 6481-1, at 42 (Monetary Award Fund Term)]. Common benefit work in connection with the Settlement’s implementation – such as the lining of BAP physicians; the drafting, submission for this Court’s approval, and dissemination of Supplemental Class Notice; finalization and submission for the Court’s approval of the Settlement Trust Agreement; and registration program preparations has already begun. *See* Section III.M, *supra* Seeger Decl. ¶¶ 107-08; ECF Nos. 7107, 7115, 7118.

Plaintiffs’ Counsel have had (and will have) to engage in a good deal of work to ensure that Class Members timely register in order to qualify for Settlement benefits. These efforts include the finalization and dissemination of Supplemental Class Notice regarding the registration and benefits timetable, finalizing and overseeing the effectuation of registration forms, overseeing the transition of call center operations to the Claims Administrator, and continuing revisions to the Settlement website (including FAQs). Seeger Decl. ¶ 109. Other efforts are and will be expended in connection with the June 6, 2017 launch of the BAP, including the review of applications of BAP Providers and vetting candidates for retention, receiving reports on contracting with Providers in order to establish networks convenient to a majority of players by metropolitan region, and finalizing BAP procedures (including assessment

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*Jude Med., Inc.*, MDL 1396, 2002 WL 1774232, at \*2 (D. Minn. Aug.1, 2002) (6% assessment both for Federal and State cases); *In re Baycol Prods. Litig.*, MDL 1431, 2002 WL 32155266, at \*4 (D. Minn. June 14, 2002) (6% assessment for Federal cases and qualifying State cases); *In re Protegen Sling and Vesica System Prods. Liab. Litig.*, MDL 1387, 2002 WL 31834446, at \*1, \*3 (D. Md. Apr. 12, 2002) (9% assessment for Federal cases and 6% assessment for State cases); *In re Rezulin Prods. Liab. Litig.*, MDL No. 1348, 2002 WL 441342, at \*1 (S.D.N.Y. Mar. 20, 2002) (6% withholding in federal cases, 4% in participating state cases); 4 *Newberg on Class Actions* § 14:9 (“Most [MDL] courts have assessed common benefit fees at about a 4-6% level, generally 4% for a fee and 2% for costs.”); Paul D. Rheingold, *Litigating Mass Tort Cases* § 7:35 (2010) (“[P]ercentages awarded for common funds in recent MDLs . . . were in the 4-6% range.”) (citation omitted).

scheduling and Supplemental Benefits). *Id.* ¶ 110. Still other work has pertained or will pertain to the MAF: the review of applications of MAF Physicians and vetting candidates for retention, finalizing claims forms and processes, and finalizing appeals forms and processes. *Id.* As these BAP Providers and MAF Physicians retire over time, or, for other reasons, become unable or unwilling to continue to serve in those capacities, over the next 65 years, they will have to be replaced, involving additional common benefit work by Plaintiffs' Counsel. *Id.*

In the course of all this, as Supplemental Notice is prepared and registration begins, and continuing over the lengthy period of the Settlement's life, attorneys will continue to spend time and effort to coordinate and work with the Claims Administrator, the BAP Administrator, Lien Resolution Administrator, the Settlement Trustee, and the Court to ensure that Retired NFL Football Players and Derivative Claimants receive their benefits. Plaintiffs' Counsel will also be required, over the next 65 years, to consult with experts to stay abreast of medical developments. *Id.* ¶ 111.

Plaintiffs' Counsel will also have work to perform in connection with the administrative appeals process. They will be called upon to provide assistance for all claimants who have not retained lawyers, and in some instances to assist counsel representing individual Plaintiffs. Co-Lead Class Counsel have standing to appeal as part of the Settlement. Settlement § 9.50 [ECF No. 6481-1, at 51]. The Settlement provides rights to appeal various decisions, including denial of registration, denial of Monetary Awards, and the amount of a Monetary Award. *Id.* Plaintiffs' Counsel will also be called upon to provide assistance for all claimants who have not retained lawyers, and in some instances to assist counsel representing individual plaintiffs. This work will continue over the 65-year life of the Settlement. Seeger Decl. ¶ 112.

In this respect, Plaintiffs' Counsel must retain the Appeals Advisory Panel (composed of five neurologists/board certified neurospecialists) and Appeals Advisory Panel Consultants (three neuropsychologists) by April 7, 2017. *Id.* ¶ 113. This body is charged, at the outset, with reviewing diagnoses made prior to the Effective Date of the Settlement. Settlement § 6.43 [ECF No. 6481-1, at 37-38]. These physicians will be advising the Special Masters and the Court. Seeger Decl. ¶ 113. Thus, this work is critical because it will set the tone for the administration of the Settlement. *Id.* As these physicians retire or for other reasons become unable or unwilling to serve on the Appeals Advisory Panel or as Appeals Advisory Consultants, they will need to be replaced, involving additional common benefit work by Plaintiffs' Counsel. *Id.*

The Settlement requires that the Parties revisit the science every ten years to discuss in good faith possible prospective modifications to the definitions of Qualifying Diagnoses and/or the protocols for making Qualifying Diagnoses, in light of generally accepted advances in medical science. *Id.* § 6.6 [ECF No. 6481-1, at 35]. This too, is anticipated future common benefit work to be performed by Plaintiffs' Counsel.

Plaintiffs' Counsel will also need to establish, review, and conduct ongoing auditing and financial reporting on the BAP and MAF programs. *Id.* § 10.3 [ECF No. 6481-1, at 59-62]. Finally, Plaintiffs' Counsel will need to monitor and ensure the NFL Parties' compliance with the funding and the maintenance of the targeted reserves for the MAF and BAP, as well as to monitor the Settlement Trust and Trustee under Article 23 of the Settlement. Seeger Decl. ¶ 116.

The requested set-aside thus provides a source to facilitate fair and reasonable compensation for these and other necessary services of Plaintiffs' Counsel for the benefit of the Class over the coming years. Although Plaintiffs' Counsel cannot fully or accurately predict the

scope or extent of those necessary services, it is clear that such services will be required to some extent.

Moreover, given the 65-year length of this Settlement, at some point Plaintiffs' Counsel may need to transition the responsibilities for representing the Class and overseeing the implementation of the Settlement to other law firms. Indeed, it is quite possible (if not likely) that this need will rise more than once. The set-aside will also ensure that prospective incoming firms have the financial incentive to undertake these responsibilities by making sure that there is a pool of funds to compensate them for getting up to speed and taking up the mantle.

In accordance with the Settlement, any set-aside from a Monetary Award or Derivative Claimant Award for Class Members represented by their individual counsel will reduce the attorneys' fee payable to that counsel by the amount of the holdback. Seeger Decl. ¶ 103. Should the Court approve the proposed 5% set-aside, Plaintiffs' Counsel will submit, within thirty days of the Court's Order, a detailed plan of administration, including how the funds created from the holdbacks will be pooled and maintained, and how any attorney will apply for compensation for post-Settlement work performed. *Id.* ¶ 119.

#### **F. Incentive Awards for Subclass Representatives**

Finally, Petitioners request Case Contribution Awards (often referred to as incentive or service awards) of \$100,000 for each of the Class Representatives – Messrs. Swinson, Wooden, and Turner (or, where applicable, their estates). These awards will be taken from the \$112,500,000 award requested herein and thus will not increase the NFL's liability for fees, costs, and expenses. *See* Seeger Decl. ¶ 120 n.10; *cf. In re Transpacific Passenger Air Transp. Antitrust Litig.*, No. C 07-05634 CRB, 2015 WL 4776946, at \*2 (N.D. Cal. Aug. 13, 2015) (“Incentive awards . . . typically come from the class fund.”).

There is ample authority in this District and elsewhere for such incentive awards. *E.g.*, *In re Linerboard Antitrust Litig.*, No. 98-5055, 2004 WL 1221350, at \*18 (E.D. Pa. June 2, 2004) (“Like the attorneys in this case, the class representatives have conferred benefits on all other class members and they deserve to be compensated accordingly.”); *Tenuto v. Transworld Sys., Inc.*, No. 99-4228, 2002 WL 188569, at \*5 (E.D. Pa. Jan. 31, 2002) (incentive award appropriate where class representative “actively assisted counsel in the prosecution of this litigation to the benefit of the class”).<sup>39</sup>

For Subclass 1, Plaintiff Swinson served as the original representative. As an integral part of his work as a representative, he met with Subclass 1 counsel Arnold Levin. Seeger Decl. ¶ 121. A retired player who was not diagnosed with neurocognitive impairment, Mr. Swinson had standing to assert the rights of Subclass 1 members. During the negotiations of settlement terms in the summer of 2013, Co-Lead Class Counsel and Mr. Levin conferred with Mr. Swinson concerning the terms of the proposed Settlement. *Id.* Mr. Swinson was aware of and had agreed to the terms of the settlement and he reviewed drafts of the Term Sheet before it was executed. Given Mr. Swinson’s passing, Plaintiffs’ Counsel accordingly request that the proposed incentive award be paid to Mr. Swinson’s estate. *Id.* ¶ 122 n.11.

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<sup>39</sup> See also *Hadix v. Johnson*, 322 F.3d 895, 897 (6th Cir. 2003) (noting that courts make incentive awards “to class representatives for their often extensive involvement with a lawsuit” and that “[n]umerous courts have authorized incentive awards”) (citing cases); *Briggs v. PNC Fin. Servs. Grp., Inc.*, No. 1:15-CV-10447, 2016 WL 7018566, at \*2 (N.D. Ill. Nov. 29, 2016) (“Incentive awards serve the important purpose of compensating plaintiffs for the time and effort expended in assisting the prosecution of the litigation, the risks incurred by becoming and continuing as a litigant, and any other burdens sustained by the plaintiffs.”) (citing cases); *In re Residential Doors Antitrust Litig.*, Nos. 93-3744, 96-2125, 1998 WL 151804, at \*11 (E.D. Pa. Apr. 2, 1998) (incentive awards granted to four class representatives whose actions “resulted in a significant benefit to the class”); *Rodriguez v. Infinite Care, Inc.*, No. 15-1824, 2016 WL 6804430, at \*10 (E.D. Pa. Nov. 17, 2016) (incentive payment awarded where representative plaintiff “devoted time and energy to the litigation, including assisting with discovery and at the mediation”).

After the Term Sheet was announced, and following Mr. Swinson's passing, Plaintiff Wooden became the proposed Subclass 1 representative. ECF Nos. 6423-8 (¶4), 6423-10 (¶ 6). Mr. Wooden played professional football in the NFL from 1996-2004. ECF No. 6423-8 (¶ 1) During his NFL career, he experienced repeated traumatic head impacts, and since his retirement from football he has experienced neurological symptoms, including migraine headaches, sleep problems, concentration issues, and mood swings. *Id.* Mr. Wooden has not been diagnosed with any neurocognitive impairment, but is at increased risk of developing a range of neuromuscular and neurocognitive diseases associated with mild traumatic brain injuries and as alleged in the Complaints, such as dementia, Alzheimer's Disease, Parkinson's Disease, or ALS, as a proximate result of having played professional football in the NFL. *Id.*

On January 24, 2012, Mr. Wooden filed a complaint, through his attorney, Class Counsel Steven Marks of Podhurst Orseck, against the NFL Parties in the Southern District of Florida (*Wooden v. Nat'l Football League*, No. 1:12-cv-20269-JEM). *Id.* ¶ 2. That action was transferred to this MDL on February 23, 2012. Thereafter, on June 7, 2012, a Master Administrative Class Action Complaint for Medical Monitoring was filed on his behalf in the MDL, a complaint whose filing he authorized. *Id.*

Throughout these proceedings, Mr. Wooden followed the litigation closely. *Id.* ¶ 3. He had various meetings, telephone conferences, and email exchanges with Mr. Marks about the status of proceedings, the NFL Parties' preemption motions and the oral argument on the motions, among other things. *Id.*

After meeting with Subclass Counsel Arnold Levin at the latter's offices in Philadelphia, Mr. Wooden agreed to participate as the proposed representative of Subclass 1. *Id.* ¶ 4. Mr. Wooden monitored the progress of settlement negotiations, and he reviewed with counsel drafts

of the settlement agreements and exhibits thereto. *Id.* ¶¶ 5, 7. In addition, he reviewed numerous press articles about the litigation and the settlement. *Id.* ¶¶ 3, 7. Since final approval of the Settlement, Mr. Wooden has remained involved, frequently talking to other Retired NFL Players and family members to provide information about the Settlement. Seeger Decl. ¶ 125.

Subclass 2 was represented by Kevin Turner. This subclass consisted of players who were diagnosed with injuries associated with concussive and sub-concussive head trauma. ECF No. 6423-11 (¶ 5). Mr. Turner played professional football in the NFL as a fullback from 1992-1999. In June 2010, at the age of 41, he was diagnosed with ALS. ECF No. 6423-7 (¶¶ 1-2). As this degenerative disease rapidly progressed, Mr. Turner required around-the-clock care and assistance with even the simplest, most basic daily activities, such as bathing, shaving, and brushing his teeth. Mr. Turner had three young children. *Id.*

On January 20, 2012, Mr. Turner, through his attorney, Class Counsel Steven Marks, filed a complaint against the NFL Parties in the Southern District of Florida (*Jones v. Nat'l Football League*, No. 1:11-cv-24594-JEM). *Id.* ¶ 5. That action was transferred to this MDL on February 14, 2012. *Id.* On July 11, 2012, Mr. Turner filed a Short-Form Complaint against the NFL Parties. *Id.*; ECF No. 1318. In that complaint, he incorporated by reference the allegations of the Master Administrative Long-Form Complaint and specifically alleged that he had sustained repetitive, traumatic sub-concussive or concussive head impacts during NFL games and/or practices, and that he suffered from symptoms of brain injury caused by these head impacts.

Like Mr. Wooden, Mr. Turner followed the litigation closely. ECF No. 6423-7 (¶ 6.) He had numerous meetings, telephone conferences, and email exchanges with Mr. Marks about the status of proceedings, the NFL Parties' preemption motions and the oral argument on same. *Id.*

Beginning in about July 2013, Mr. Marks informed Mr. Turner of the settlement negotiations between the Plaintiffs and the NFL Parties and his possible representation of Subclass 2 members. *See id.*

In August, 2013, Mr. Turner met with Subclass Counsel Dianne Nast at her offices in Philadelphia, regarding his prospective representation of Subclass 2 members in the proposed class action. *Id.* Mr. Marks was present at that meeting, and the three discussed in detail the impending class settlement. After the meeting, counsel determined that Mr. Turner had standing to assert the rights of Subclass 2 members and that he was an adequate representative for them. Mr. Turner monitored the progress of settlement negotiations, and he reviewed drafts of the settlement agreements. *Id.* ¶¶ 7-9. In addition, he reviewed numerous press articles about the Settlement. *Id.* ¶ 7. Mr. Turner passed away on March 24, 2016, shortly before the Third Circuit affirmed this Court's final approval of the Settlement. Seeger Decl. ¶ 129. Plaintiffs' Counsel accordingly request that the proposed Case Contribution Award be paid to Mr. Turner's estate. *Id.* ¶ 129 n.12.

In short, Messrs. Swinson, Wooden, and Turner were actively engaged in this litigation, including the settlement negotiations, and they contributed valuable efforts on behalf of the absent members of their respective Subclasses. Their contributions should be recognized accordingly. *See In re Plastic Tableware Antitrust Litig.*, No. 94-CV-3564, 1995 WL 723175, at \*2 (E.D. Pa. Dec. 4, 1995) ("Payments to class representatives may be . . . treated as a reward for public service and for the conferring of a benefit on the entire class"); *Cullen*, 197 F.R.D. at 145 ("Courts routinely approve incentive awards to compensate named plaintiffs for the services they provide and the risks they incurred during the course of the class action litigation.") (citation and internal quotation marks omitted).

To be sure, the amount of the incentive award requested, \$100,000, is higher than that awarded in typical cases. As the Court is well aware, though, this was no ordinary or routine case. This has been an extremely high-profile litigation, and at times the Class Representatives were subjected to attacks by objectors and in the press. Moreover, the Class Representatives here were much more actively involved in the settlement process and the overall outcome than are class representatives in more routine litigations. In any event, other courts have occasionally rendered high incentive awards. *E.g.*, *King Drug Co. of Florence v. Cephalon, Inc.*, Civ. No. 06-cv-01797-MSP, 2015 WL 12843830 at \*5 (E.D. Pa. Oct. 15, 2015) (\$500,000 collective award for six plaintiffs); *In re Graphite Electrodes Antitrust Litig.*, MDL No. 1244 (E.D. Pa. Order of Sept. 8, 2003) (\$80,000); *Brotherton v. Cleveland*, 141 F. Supp. 2d 907, 914 (S.D. Ohio 2001) (\$50,000). The amount requested for the three Class Representatives here is particularly warranted here, given the historic nature of Settlement, the tremendous work that went into achieving it, the Class Representatives' active involvement (both with their lawyers and their peers), the magnitude of the relief obtained, and the great number of Class Members who stand to benefit.

## V. CONCLUSION

For the foregoing reasons, the Court should grant the instant Petition and (i) award the full \$112.5 million in fees and reimbursement of costs and expenses to Plaintiffs' Counsel that the NFL Parties agreed to separately pay; (ii) entrust to Co-Lead Class Counsel Christopher Seeger the responsibility for allocating the attorneys' fees and costs and expenses award among Plaintiffs' Counsel; (iii) establish a five-percent set-aside from MAF awards to create a fund pool for the purpose of allowing counsel to seek compensation for future work to be performed in the implementation of the Settlement, and (iv) grant Case Contribution Awards of \$100,000.00 to the Subclass Representatives (or, as applicable, their estates).

Date: February 13, 2017

Respectfully submitted,

s/ Christopher A. Seeger  
Christopher A. Seeger  
Seeger Weiss LLP  
77 Water Street  
New York, New York 10005  
[cseeger@seegerweiss.com](mailto:cseeger@seegerweiss.com)  
(T) 212-584-0700  
(F) 212-584-0799

***Co-Lead Class Counsel***

Sol Weiss  
ANAPOL WEISS  
One Logan Square  
130 N. 18th St. Ste. 1600  
Philadelphia, PA 19103  
(T) 215- 735-1130  
(F) 215-735-2024  
[sweiss@anapolweiss.com](mailto:sweiss@anapolweiss.com)

***Co-Lead Class Counsel***

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing was served on all counsel of record via the Court's ECF system on February 13, 2017.

s/ Christopher A. Seeger  
Christopher A. Seeger

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

IN RE: NATIONAL FOOTBALL LEAGUE PLAYERS'  
CONCUSSION INJURY LITIGATION

Kevin Turner and Shawn Wooden, on behalf of themselves  
and others similarly situated,

Plaintiffs,

v.

National Football League and NFL Properties LLC,  
successor-in-interest to NFL Properties, Inc.,

Defendants.

No. 2:12-md-02323-AB

MDL No. 2323

**Hon. Anita B. Brody**

CIVIL ACTION NO: 2:14-cv-  
00029-AB

THIS DOCUMENT RELATES TO:  
ALL ACTIONS

**DECLARATION OF CHRISTOPHER A. SEEGER IN SUPPORT OF  
CO-LEAD CLASS COUNSELS' PETITION FOR AN AWARD OF  
ATTORNEYS' FEES, REIMBURSEMENT OF COSTS AND EXPENSES,  
ADOPTION OF A SET-ASIDE OF FIVE PERCENT OF EACH  
MONETARY AWARD AND DERIVATIVE CLAIMANT AWARD, AND  
CASE CONTRIBUTION AWARDS FOR CLASS REPRESENTATIVES**

Christopher A. Seeger declares, pursuant to 28 U.S.C. § 1746, based upon his personal knowledge, information and belief, the following:

1. I am fully familiar with the matters set forth herein, including the procedural history of this litigation and the class-wide settlement that this Court approved. I submit this Declaration in support of the consolidated petition of Class Counsel for a global award of attorneys' fees and reimbursement of expenses, the adoption of a set-aside of five percent of each monetary award and derivative claimant award, and case contribution (*i.e.*, incentive) awards for the Class Representatives.

**Overview**

2. I was appointed by the Court in *In re National Football League Players' Concussion Injury Litigation*, MDL No. 2323 (E.D. Pa.) on April 25, 2012, to serve as Plaintiffs' Co-Lead Counsel, and as a member of the Plaintiffs' Executive Committee ("PEC") [ECF No. 64]. I was the principal negotiator and architect of the Class Action Settlement dated June 25, 2014 between the Plaintiff Class and the Defendants National Football League and NFL Properties LLC (collectively, the "NFL Parties") [ECF No. 6073-2], which was preliminarily approved on July 7, 2014 [ECF No. 6084, ¶ 3(b)], and thereafter amended on February 13, 2015 [ECF No. 6481-1] (the "Settlement"). Prior to this litigation, I had served as plaintiffs' lead counsel or as a member of the plaintiffs' executive committee or steering committee in dozens of cases. *See* ECF No. 6423-3, ¶¶ 2-4. In particular, I served as lead plaintiffs' negotiator for multiple large settlements, including the *Vioxx* mass personal injury settlement in MDL No. 1657 in the Eastern District of Louisiana, totaling \$4.85 billion; the DePuy Orthopaedics Inc., ASR Hip Implant Products, MDL 2197 in the Northern District of Ohio settlement, totaling nearly \$2.5 billion; and the first two *Zyprexa* mass personal injury settlements in MDL No. 1596 in the Eastern District of New York, which resulted in a total \$1.2 billion payout.

3. The Court granted final approval to the Settlement on April 22, 2015. ECF Nos. 6509, 6510. On December 12, 2016, following years of hard-fought litigation, negotiation, and ultimately, numerous challenges on appeal, the United States Supreme Court denied further review of the Settlement. By its terms, the Settlement became effective on January 7, 2017, the day after the expiration of the time to seek rehearing of the denials of petitions for writ of *certiorari*. *See* Settlement § 2.1(j) [ECF no. 6481-1, at 12-13].

4. Since the inception of this litigation in 2011, Plaintiffs' Counsel vigorously litigated this case, and labored to achieve a groundbreaking settlement that will benefit a class estimated at over 20,000 Retired National Football League ("NFL") Players. Beginning over five years ago, Plaintiffs' Counsel undertook this matter, in the face of long odds and significant risk, on a wholly contingent basis, dedicating their time, money and energy on behalf of Retired NFL Football Players<sup>1</sup> and their families.

5. Following the formation of this multidistrict litigation ("MDL"), the Court appointed the PEC, me, another Plaintiffs' Co-Lead Counsel (Sol Weiss of the firm then known as Anapol Schwartz, and now known as Anapol Weiss), and the Plaintiffs' Steering Committee ("PSC") composed of various counsel for Plaintiffs in the constituent cases in this MDL [ECF No. 72]. All of the attorneys appointed to the PEC and the PSC demonstrated extensive experience in and impressive credentials for representing plaintiffs alleging personal injuries in aggregate litigation, including multidistrict litigation.

6. The groundbreaking global resolution in these proceedings was the result of many months of intense, hard-fought, arm's-length negotiations between the parties, encompassing collectively thousands of hours of professional time with input from medical, actuarial, and other experts.

7. This Settlement establishes a \$75 million Baseline Assessment Program ("BAP") designed to determine the existence and extent of neurocognitive impairment in living Retired NFL Football Players. In the event they are found to suffer from moderate neurocognitive impairment ("Level 1 Neurocognitive Impairment"), they will be entitled to

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<sup>1</sup> I employ the term used in the Settlement. *See* Settlement § 2.1(ff) [ECF No. 6481-1, at 18].

supplemental benefits in the form of medical treatment and/or evaluation, including counseling and pharmaceutical coverage.

8. The Settlement also establishes an *uncapped* Monetary Award Fund (“MAF”) to provide much-needed relief to (i) seriously injured retired players with a “Qualifying Diagnosis” (*see* ECF No. 6481-1, at 17, 106-10) [Settlement § 2(yyy) & Ex. A-1], of Level 1.5 Neurocognitive Impairment (early dementia), Level 2 Neurocognitive Impairment (moderate dementia), Alzheimer’s Disease, Parkinson’s Disease, and/or Amyotrophic Lateral Sclerosis (“ALS”); (ii) the representatives of certain deceased players who received a Qualifying Diagnosis while living; and (iii) the representatives of certain players who died before the date of Final Approval of the Settlement, April 22, 2015, and were diagnosed post-mortem with Chronic Traumatic Encephalopathy (“CTE”); and their families. In order to receive a Monetary Award, Class Members will not be required to prove that their injuries were caused by the NFL Parties, let alone concussions suffered during professional football play.

9. Another Settlement component is a \$10 million Education Fund to promote safety and injury prevention in football players, including youth football players, and to educate Retired NFL Players regarding the NFL’s medical and disability benefits programs and initiatives.

10. Significantly, the Settlement preserves Retired NFL Football Players’ rights to pursue claims for worker’s compensation and any and all medical and disability benefits under any applicable collective bargaining agreement (“CBA”), including the NFL’s Neuro-Cognitive Disability Benefit. Settlement § 18.6 [ECF No. 6481-1, at 79-80]. In addition, the Settlement will ensure that the provision included in Article 65 of the current CBA, Section 2 –

requiring that players execute a release of claims and covenant not to sue in order to be eligible for the NFL's Neuro-Cognitive Disability Benefit – will not be enforced or used against Class Members in connection with the Settlement. *Id.* § 29.1 [ECF No. 6481-1, at 96].

11. This Settlement represents the resolution of more than 5,000 lawsuits in this MDL and thousands of additional Retired NFL Football Players' claims against the NFL Parties for injunctive relief, medical monitoring, and compensation for the long-term health risks of mild traumatic brain injuries and other losses suffered by them, allegedly as a result of the NFL Parties' tortious conduct. Considering the volume of the news reports and associated public attention concerning the Settlement, as well as the state-of-the-art class notice program, the reaction of the Class was extremely favorable. Fewer than one percent of Class Members filed requests for exclusion from the Class and over 12,000 potential Settlement beneficiaries have signed up to receive further notices regarding the Settlement and claims process to date. Since the registration period opened on February 6, 2017, the Settlement Claims Administrator has received over 6,100 registrants.

**Procedural History of the Litigation**

12. This MDL was established on January 31, 2012 when the Judicial Panel on Multidistrict Litigation ("JPML") centralized several actions in this District for coordinated pretrial proceedings, pursuant to 28 U.S.C. § 1407. *See In re Nat'l Football League Players' Concussion Injury Litig.*, 842 F. Supp. 2d 1378 (J.P.M.L. 2012) (MDL No. 2323). The JPML found that these cases "share[d] factual issues arising from allegations against the NFL stemming from injuries sustained while playing professional football, including damages resulting from the permanent long-term effects of concussions while playing professional football in the NFL" and that "centralization under Section 1407 in the Eastern District of

Pennsylvania w[ould] serve the convenience of the parties and witnesses and promote the just and efficient conduct of the litigation.” *Id.* at 1379.

13. At the time of argument before the JPML in January 2012, there were sixteen potentially related actions pending against the NFL Parties. *Id.* at 1378. Soon thereafter, 123 cases were filed directly in the MDL or removed from Pennsylvania state court to this Court, and the JPML transferred an additional 163 cases to the MDL.

14. At the first MDL status conference on April 25, 2012, the Court appointed me as Plaintiffs’ Co-Lead Counsel for the MDL proceedings, and requested that another co-lead counsel from a Philadelphia-based firm also be selected. Case Mgmt. Order (“CMO”) No. 2 [ECF No. 64]. Plaintiffs selected, and the Court confirmed, the appointment of Sol Weiss of Anapol Weiss as Co-Lead Counsel. CMO No. 3 [ECF No. 72].

15. Plaintiffs also created and the Court appointed the PEC and PSC, composed of several of the counsel for Plaintiffs in the cases pending before the Court. ECF Nos. 64, 72. The PEC included counsel who were ultimately also appointed as Class Counsel, Gene Locks and Steven C. Marks, and the PSC included those ultimately also appointed as Subclass Counsel, Arnold Levin and Dianne M. Nast. The appointments of Mr. Weiss and me ultimately changed from Co-Lead Counsel to Co-Lead Class Counsel. ECF No. 6084. The Court confirmed these appointments in the Final Approval of the Settlement on April 22, 2015 [ECF No. 6510].

16. As part of its initial case management orders, the Court determined that the NFL Parties’ threshold federal preemption defense under Section 301 of the Labor Management Relations Act (“LMRA”), 29 U.S.C. § 185, should be addressed before proceeding to the merits of Plaintiffs’ claims. CMO No. 2 [ECF No. 64] at 2-3; CMO No. 4 [ECF No. 98] ¶ 3.

Accordingly, the Court stayed formal discovery. *See* ECF No. 3384. The Court established a schedule for Plaintiffs to file Master Administrative Complaints and for the NFL Parties to brief the threshold legal issue of whether Plaintiffs' claims were preempted by federal labor law. ECF No. 64.

17. Plaintiffs' Counsel researched, drafted, and filed a Master Administrative Long-Form Complaint, ECF No. 83, and a Master Administrative Class Action Complaint for Medical Monitoring, ECF No. 84, on June 7, 2012. Plaintiffs then filed an Amended Master Administrative Long-Form Complaint, ECF No. 2642, on July 17, 2012.

18. Plaintiffs' Counsel conducted extensive research in connection with the filing of these complaints, preparing 50-state surveys on medical monitoring, preemption, tolling, and fraudulent concealment. Plaintiffs' Counsel also closely examined the worker's compensation laws of the 50 states during this time.

19. The NFL Parties filed their motions to dismiss the operative complaints on federal preemption grounds on August 30, 2012, ECF Nos. 3589, 3590. Plaintiffs' Counsel prepared and filed opposition papers to the motions, ECF Nos. 4130-34. The NFL Parties filed reply papers, ECF Nos. 4254-55, and Plaintiffs' sur-replies closed the briefing, ECF Nos. 4589, 4591.

20. Because of the importance of the preemption motions, Plaintiffs' Counsel spent significant time analyzing, researching, drafting, and discussing their opposition to the NFL Parties' motions. Plaintiffs' Counsel also conducted several mooted sessions, which included leading academics and practitioners in the field, to prepare for oral argument. The Court heard oral argument on the motions on April 9, 2013. ECF Nos. 4737-38.

21. On a separate track, mindful of the pending and anticipated actions in this MDL, as well as the pending putative class claims on behalf of all Retired NFL Football Players, Plaintiffs' leadership carefully evaluated the potential to resolve Plaintiffs' claims on a class basis. In doing so, we took into consideration the significance and severity of the alleged injuries, the science issues relative to causation and mild traumatic brain injuries, and our ability to achieve "full value" compensation for serious injuries related to concussions and sub-concussive hits through settlement, without the need for trials and appeals.

22. In light of the fact that so many former players were extremely ill and dying, we weighed the inherent delays and costs involved in protracted litigation, as well as the risks of litigation, including the array of potential defenses of the NFL Parties, particularly preemption, but also statutes of limitations, statutory employer, and assumption of risk, among others,<sup>2</sup> and the difficulties in proving general and specific causation. Given the Court's determination at the outset, even before discovery, to address the threshold question of whether the Plaintiffs' claims were preempted under federal law (CMO No. 2 at 2 [ECF No. 64]), there was a real threat to the viability of Plaintiffs' case. This evaluation involved the substantial abilities, as well as the committed efforts, of Plaintiffs' legal and science teams.

### **Settlement Discussions and Mediation**

23. Accordingly, after thoroughly researching the state of the science regarding injuries associated with concussions and sub-concussive hits, we approached the NFL Parties about the possibility of settlement. The parties thereafter engaged in discussions regarding settlement structures and injury categories. We had demanded that a broad range of additional alleged injuries be compensated in the Settlement. The Defendants held firm in their

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<sup>2</sup> These defenses include both those that the NFL had already asserted or which it advised Class Counsel that it intended to invoke.

willingness to compensate only objectively verifiable and serious injuries, which are supported by the available science. They seemed willing to accept the risk that opt-outs might pursue those additional conditions in litigation outside of the Settlement. Importantly, although not every Retired NFL Player has been diagnosed with a qualifying injury today, all of the Retired Players are eligible to seek a monetary award if and when their symptoms progress to a compensable level and a supplemental monetary award if their condition worsens after that.

24. At the Court's urging, the Parties began to discuss settlement in Jan. 2013, and although Plaintiffs' Counsel worked intensely, progress was slow. In early July 2013, in anticipation of its decision on the preemption motions, the Court "held an informal exploratory telephone conference with lead counsel [and directed the] parties, through their lead counsel, to engage in mediation to determine if consensual resolution [wa]s possible." ECF No. 5128. The Court appointed retired United States District Judge Layn R. Phillips as the mediator, and directed that Judge Phillips report back to the Court on or before September 3, 2013 as to the results of the mediation. *Id.*

25. Co-Lead Counsel formed a negotiating committee, consisting of myself; Messrs. Weiss, Levin, Locks, and Marks; and Ms. Nast (Mr. Levin and Ms. Nast being the respective counsel for the two Subclasses; *see* ¶¶ 121-29, *infra*). ECF Nos. 6423-3 ¶ 27, 6423-10 ¶¶ 5, 9, and 6423-11 ¶¶ 6, 9. Plaintiffs' negotiating team was aware of the ramifications of *Amchem Products, Inc. v. Windsor*, 521 U.S. 591 (1997), and its progeny – namely, the necessity to ensure adequate and unconflicted representation for all Class Members, and the need for the creation of subclasses and separate representation for those with present injuries and those without present injuries. ECF Nos. 6073-4 ¶¶ 7, 11; 6423-3 ¶¶ 11, 12, 29; 6423-6 ¶ 7.

26. The members of Plaintiffs' negotiating team were fully prepared to negotiate with the NFL Parties' lawyers. As further detailed below, Plaintiffs' Counsel thoroughly investigated and analyzed the claims brought in the operative Complaints, retained medical and economic experts, and were well-versed in the relevant medical literature and related issues. Additionally, having completed extensive briefing on the NFL Parties' preemption motions to dismiss, we had a thorough appreciation of the merits of the threshold preemption arguments. *See* ECF No. 6423-3 ¶¶ 19-22, 25, 30, 32.

27. As part of their due diligence and consistent with their responsibilities to the Class and Subclasses, Plaintiffs' Counsel engaged multiple experts in the fields of medicine, namely neurology, neuropsychology, and neuropsychiatry; actuarial science; economics; claims administration; and lien identification and satisfaction to determine, develop, and test an appropriate settlement framework to evaluate and meet the needs of Retired NFL Football Players suffering from or at increased risk for the claimed injuries related to neuromuscular and neurocognitive impairment, and their family members. *See, e.g.*, ECF Nos. 6423-3 ¶¶ 32, 43; 6423-17 ¶¶ 6-9; 6423-18 ¶ 21; 6423-19 ¶¶ 19, 25, 27. The economists and actuaries assisted in modeling the possible disease incidence and adequacy of funding for the Monetary Award levels contained in the Settlement. *See* ECF No. 6423-3 ¶ 30.

28. For nearly two months, the Plaintiffs' negotiating team worked at an intense and grueling pace, expending, collectively, thousands of professional hours and often working around the clock to negotiate a fair and reasonable class settlement on behalf of all Retired NFL Football Players, their Representative Claimants, and Derivative Claimants.<sup>3</sup>

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<sup>3</sup> I employ the latter two terms as used in the Settlement. *See* Settlement §§ 2.1(ee) & (eeee), ECF No. 6481-1, at 12, 18].

29. Starting before mediation began, and expanding and refining their work through the mediation process, Plaintiffs' Counsel expended significant time and effort thoroughly researching the medical and scientific issues implicated by Plaintiffs' claims, including, among others, the science of concussions and mild traumatic brain injuries, the effects of sub-concussive hits, the neurocognitive and neuromuscular injuries and progression of disease associated with such brain injuries, the epidemiology of the Qualifying Diagnoses, and the methods of diagnosis and treatment for the Qualifying Diagnoses. In doing so, and guided by our medical and scientific experts, Plaintiffs' Counsel conducted a comprehensive review of peer-reviewed medical literature to support settlement discussions and negotiations. Plaintiffs' Counsel further researched and investigated the appropriate settlement structures to effectively compensate these diseases.

30. Beyond their work with medical and scientific experts, Plaintiffs' Counsel also worked closely with economic and actuarial experts to hone appropriate incidence rates, compensation structures, and funding models for the Settlement.

31. Plaintiffs' Counsel, as well as Plaintiffs' experts, were greatly aided in their understanding of Retired NFL Football Players' head injuries, and the incidence of neurocognitive ailments, through the creation of the Retired Player database. Analyzing the records of over 2,000 Retired NFL Players, Plaintiffs' Counsel essentially created an epidemiological study of their clients. This database required extensive professional work.

32. The database was vitally important to the entire negotiation process because it enabled Plaintiffs' Counsel to appropriately characterize disease and symptom occurrence across the broader Retired NFL Football Player population. The database also served as a

useful cross-check of the published epidemiology of neurocognitive and neuromuscular diseases reportedly associated with NFL football play.

33. In addition to the vigorous conventional legal work that went into this case, early in the litigation, Plaintiffs' Counsel organized and oversaw a communications plan for the litigation. As the litigation – including the settlement discussions and formal mediation – steadily unfolded, Plaintiffs' Counsel were concerned about the dissemination of incomplete or misleading information to Plaintiffs, the broader player community, and the public at large. Plaintiffs' Counsel thus worked to ensure that all were apprised of the relevant factual, medical, and legal issues encompassed by Plaintiffs' claims and the litigation. Given the broad interest in the litigation and its associated issues, Plaintiffs' Counsel worked regularly, both before and after the Settlement was announced, to provide full and complete information to all interested parties.

34. Judge Phillips actively supervised numerous mediation sessions, presiding over dozens of in-person and telephonic meetings with counsel for both sides, either jointly or in separate groups. He also met with the parties' respective experts, without counsel present, to get answers to questions he had regarding the scientific, actuarial, and financial aspects of the settlement. *See* ECF No. 6073-4 (Phillips Decl.) ¶¶ 2 & 5-7; ECF No. 6423-6 ¶ 4. The mediation process culminated in the execution of a Term Sheet on August 29, 2013.

**Initial Settlement Agreement**

35. That day, the Court announced that “in accordance with the reporting requirements in [its] order of July 8, 2013, the Honorable Layn Phillips, the court-appointed mediator, [had] informed [the Court] that the plaintiffs and the NFL defendants had signed a Term Sheet incorporating the principal terms of a settlement.” ECF No. 5235. In its Order, the

Court reserved judgment on the fairness and adequacy of the settlement pending the Settling Parties' presentation to the Court of the settlement agreement, along with motions for preliminary and, eventually, final approval. *Id.*

36. As the Court noted, during their initial negotiations, the Parties did not discuss fees until after the key terms of the Settlement – including the total size of the original, capped MAF – were publicly announced on the docket. *In re Nat'l Football League Players' Concussion Injury Litig.*, 307 F.R.D. 351, 374 (E.D. Pa. 2015) (“According to [Judge] Phillips, the Parties were careful not to discuss fees until after the Court had announced, on the record, an agreement regarding the total compensation for Class Members.”); *see* Phillips Supp. Decl. ¶¶ 18-19 [ECF No. 6423-6, at 9]; ECF No. 5235.

37. Following the announcement of the August 29, 2013 Term Sheet, the parties proceeded to negotiate the detailed terms of the settlement agreement itself. Plaintiffs' Counsel conducted numerous meetings with the NFL Parties, continued to work with their consultants, and spent significant time researching an appropriate settlement claims process, which would not be overly burdensome for Class Members, and which would include the right to appeal adverse claims determinations. *See* ECF Nos. 6423-3 ¶ 34, 6423-6 ¶¶ 2, 4.

38. On December 16, 2013, pursuant to Fed. R. Civ. P. 53, the Court appointed Perry Golkin to serve as Special Master to assist the Court in evaluating the financial aspects of the proposed settlement in view of its financial complexities.

39. On January 6, 2014 – after over four months of additional and extensive negotiations – Plaintiffs' Counsel researched, briefed, and filed a motion for preliminary approval of a Class Action Settlement incorporating the terms of the August 2013 Term Sheet. ECF No. 5634-5. This motion contained the negotiated settlement agreement, multiple

supporting declarations from Class Counsel, Subclass Counsel, and player representatives, and extensive briefing. This initial settlement agreement limited the funding of the MAF to \$675 million, which the parties and their actuarial and economic experts believed would be sufficient to pay all benefits throughout the 65-year term of the proposed settlement. *See* Class Action Settlement Agreement (ECF No. 5634-2) § 23.1 (Jan. 6, 2014); Report of Analysis Research Planning Corp. to Special Master Perry Golkin (ECF No. 6167) at 33-36; Report of the Segal Group to Special Master Perry Golkin (ECF No. 6168) ¶¶ 19-20.

40. Also on January 6, 2014, Plaintiffs' Counsel filed the *Turner* Complaint on behalf of named Plaintiffs Kevin Turner and Shawn Wooden. ECF No. 5634.

41. On January 14, 2014, the Court denied the motion without prejudice. ECF No. 5657. The Court praised the "commendable effort" of the parties to reach the negotiated class action settlement, but expressed concern as to the adequacy of the proposed \$675 million MAF in light of its 65-year lifespan, the settlement class size of more than 20,000 members, and the potential magnitude of the awards. The Court directed the parties to share the documentation described in their submissions with the Special Master. ECF No 5658.

#### **Further Negotiations and New Agreement**

42. The parties worked intensely from January to June 2014 to provide the Court with the assurance that "all Retired NFL Football Players who ultimately receive a Qualifying Diagnosis or their related claimants will be paid." ECF No. 5657 at 10. The parties and their actuarial and economic experts met separately with Special Master Golkin and with one another to further analyze the data and to determine whether, and if so, in what manner, the settlement could be amended that would be acceptable to the parties while at the same time satisfying the Court's concerns.

43. Notably, Plaintiffs' Counsel refined and tightened definitions of key terms in the settlement, and improved claim procedures to protect against fraud. These changes were the result of significant analysis, coordination, and research, and they required hundreds of attorney hours to accomplish. These further analyses led to an uncapping of the deal and a revised settlement agreement.

44. Under the revised agreement, the NFL Parties were to pay all valid claims for the next 65 years, and the MAF was no longer fixed at \$675 million. At the time of this Court's Final Approval of the Settlement, actuarial projections were that the MAF will pay out some \$900-\$950 million by the end of its 65-year term, with the risk of any additional payment for claims being borne entirely by the NFL Parties.<sup>4</sup> The NFL Parties remained responsible for providing all of the funding for the MAF, BAP, and Education Fund, as well as paying, either directly or through their funding of the MAF or the BAP, for Class Notice costs, class attorneys' fees, and the fees and expenses of the Special Master, the Claims Administrator, and the BAP Administrator and certain fees of the Lien Resolution Administrator.

45. During this additional five-month negotiation, Plaintiffs' Counsel were assisted by Special Master Golkin, numerous medical and scientific experts, and actuaries and economists. Plaintiffs' Counsel modified the settlement documents to reflect these new features and prepared new briefing to support approval of the revised agreement.

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<sup>4</sup> The actuarial model that we developed anticipated certain participation rates for filed and unfiled cases. It also anticipated certain incident rates for the compensable disease categories (*i.e.*, the Qualifying Diagnoses). Specifically, we assumed a 50% participation rate for Class Members who had not filed suit and a 90% participation rate for those who had. If registrations exceed the participation assumption, as may occur given the pre-registrations and registrations to date, the value of the Settlement, given the negotiated uncapped nature of the MAF, will likely exceed prior valuations.

46. On June 25, 2014, Plaintiffs' Counsel filed a motion for preliminary approval of the revised proposed settlement agreement and preliminary class certification. ECF No. 6073. The Court granted preliminary approval of the settlement on July 7, 2014, ECF Nos. 6083-84, and, on July 9, 2014, approved the notice to be disseminated to putative class members, ECF No. 6093.

**Efforts to Keep Class Members Informed**

47. Plaintiffs' Counsel supervised the setup of the informational Settlement Website [www.NFLconcussionsettlement.com](http://www.NFLconcussionsettlement.com), which has provided invaluable information to Class Members and has allowed the Claims Administrator to refine the data in its Class Member database, improving its ability to provide information to the Class.

48. The Settlement Website has been a tremendous source of information for Retired NFL Football Players and family members. The website has received over 180,000 unique visits and provides access to the Settlement Agreement, the Court-approved notices, the Court's Orders and frequently asked questions, among other documents and information. *See* Declaration of Orran R. Brown, Sr., Feb. 8, 2017, at 2 ("Brown Decl."), attached hereto as Exhibit A.

49. The Claims Administrator's other efforts to provide accurate information to Class Members, coordinated with Plaintiffs' Counsel, have been equally successful. The Claims Administrator has received nearly 1,100 written communications and responded those that asked questions about the settlement. The Settlement Call Center has received over 14,000 calls with over 7,200 of these callers speaking directly to live operators for nearly 500 hours. *See* Brown Decl. at 2-3.

50. To date, over 12,000 Class Members and their counsel had signed up for information about the Settlement Program, and provided the Claims Administrator with contact information to receive notification once the Settlement became effective. Thousands more had communicated with the Claims Administrator about the Settlement since it received this Court's Final Approval. *See* Brown Decl. at 3.

51. Starting after the Court granted preliminary approval to the Settlement, and continuing to the present, Co-Lead Class Counsel, as well as other Plaintiffs' Counsel, have devoted hundreds of hours to communicating with Retired NFL Football Players and family members. Co-Lead Class Counsel has conducted multiple seminars and presentations with Retired NFL Football Player groups throughout the country, including presentations at the Super Bowl and the Pro Football Hall of Fame.

52. These sessions, which were very well attended, have educated Retired NFL Football Players about the Settlement's benefits and procedures, and proved to be a valuable and effective means of spreading accurate information about the Settlement. Co-Lead Class Counsel also hosted a series of webinars, with the same goal of increasing awareness of the Settlement. Co-Lead Class Counsel also hosts frequent telephone conference calls with retired players and family members to provide updates on the Settlement.

**The Defense of the Settlement Following Preliminary Approval**

53. Following preliminary approval, Plaintiffs' Counsel had to contend with a wide array of motions and attempted interlocutory appeals by certain objectors. One group of objectors, represented by MoloLamken LLP, filed a petition for interlocutory review with the Third Circuit, arguing that review of the Court's preliminary approval order was appropriate under Federal Rule of Civil Procedure 23(f) because of this Court's provisional certification of

a settlement class. Those objectors protested the fairness of the Settlement and challenged the preliminary class certification. They maintained that Rule 23(f) allowed immediate appellate review even though there had been no final ruling on class certification.

54. Plaintiffs' Counsel filed an opposition to the 23(f) petition and, after requesting a reply brief from the objectors, the Third Circuit heard oral argument on September 10, 2014. The Court of Appeals denied the petition the next day in a one-page order. The Court subsequently issued a written opinion explaining its ruling, *see In re Nat'l Football League Players' Concussion Injury Litig.*, 775 F.3d 570 (3d Cir. 2014). The majority held that the Third Circuit lacked jurisdiction under Rule 23(f) because this Court had "yet to issue 'an order granting or denying class certification.'" *Id.* at 588-89.

55. In addition to this unsuccessful 23(f) attack, six other Class Members, led by Roy Green and represented by three Missouri-based law firms, mounted their own challenge, filing an appeal to the Third Circuit by invoking appellate jurisdiction under 28 U.S.C. § 1292(a)(1), on the basis that this Court's Preliminary Approval Order had enjoined Class Members' prosecution of litigation against the NFL Parties and was therefore an interlocutory order granting an injunction. After the completion of briefing of that appeal, Plaintiffs' Counsel successfully moved to dismiss it as moot because, in the meantime, the appellants had opted out of the settlement class and were hence no longer Class Members subject to any injunction. *See In re Nat'l Football League Players' Concussion Injury Litig.*, No. 14-3520 (3d Cir. June 4, 2015) (Order dismissing appeal).

56. Plaintiffs' Counsel handled a variety of other motions during this time as well, all in an effort to expedite the process and begin implementation of the Settlement. These

included third-party intervention motions seeking access to documents<sup>5</sup>; Class Member bids to take discovery of Class Counsel as to how the Settlement was negotiated or requests to obtain additional information about the Settlement<sup>6</sup>; motions to intervene<sup>7</sup>; motions seeking to extend the opt-out deadline<sup>8</sup>; amicus curiae requests<sup>9</sup>; and a motion to prevent improper communication with Class Members.<sup>10</sup>

57. The Court received all timely objections to the Settlement by October 14, 2014. On November 12, 2014, Plaintiffs' Counsel filed their brief and exhibits in support of final approval, pursuant to Rule 23(e). ECF No. 6423. Plaintiffs' thorough briefing addressed these objections by approximately 200 represented and pro se objectors, and fully described the Settlement. Plaintiffs' Counsel prepared the Class's motion for final approval of the Settlement, as well as the supporting memorandum of law. The preparation of Plaintiffs' final approval motion papers entailed extensive coordination with the Settlement's administrative support providers for their declarations in support of the motion. This included Katherine

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<sup>5</sup> ECF No. 6101 (July 24, 2014) (Am. Mot. to Intervene to Seek Access to Docs. and Inform., filed by Bloomberg L.P., ESPN, Inc.).

<sup>6</sup> ECF No. 6155 (July 31, 2014) (Mot. to Permit Access to Med., Actuarial, and Econ. Info. Used to Support the Settlement Proposal); ECF No. 6169 (Sept. 13, 2014) (Morey Plaintiffs' motion for leave to take "limited discovery").

<sup>7</sup> ECF No. 6131 (Aug. 13, 2014) (Mot. to Intervene, filed by Richard Dent).

<sup>8</sup> ECF No. 6172 (Sept. 19, 2014) (Emergency Mot. to Modify or Amend the July 7, 2014 Order Requiring Opt-Outs on or before Oct. 14, 2014).

<sup>9</sup> ECF No. 6180 (Sept. 30, 2014) (Mot. for Leave to File *Amicus Curiae* Brief in opposition to final approval of the settlement, filed by Brain Injury Ass'n of Am.).

<sup>10</sup> ECF No. 6257 (Oct. 24, 2014) (Motion for Order Prohibiting Improper Communications with the Class by MoloLamken LLP, filed by the undersigned).

Kinsella, for the notice plan; the Garretson Firm, for BAP and lien resolution administration; and BrownGreer, for claims administration.

58. The Court held an all-day Fairness Hearing, pursuant to Rule 23(e)(2), on November 19, 2014. *See* Fairness Hr'g Tr., Nov. 19, 2014 (ECF No. 6463). At the hearing, the Court heard from fourteen counsel for the various objector groups and the settling parties, and from five unrepresented objectors. ECF No. 6463 *passim*. My partner David Buchanan and I made the presentation on behalf of the Settling Plaintiffs.

59. Plaintiffs assembled and developed a top-flight group of experts to assist in developing the Settlement, and the petition for final approval included declarations from them: Drs. Kenneth C. Fischer, Christopher Giza, David A. Hovda, John G. Keilp, and Richard Hamilton – preeminent specialists in, respectively, the fields of neurology (Dr. Fischer), neuropsychiatry (Dr. Giza), neurosurgery (Dr. Hova), neuropsychology (Dr. Keilp), and sports concussions (Dr. Hamilton). *See* ECF Nos. 6423-17 to 6423-20.

60. The work of Plaintiffs' expert Thomas Vasquez provided important guidance in negotiating, modeling, and valuing the settlement. Dr. Vasquez, a Vice President for Analysis Research Planning Corporation, with over 35 years of experience in management consulting for private sector clients, and the development of economic models for governments and industry, assisted in developing a monetary award grid that could be used in valuing claims and modeling the total cost of resolving all pending and future claims by Retired NFL Players. ECF No. 6423-21.

61. Dr. Grant Iverson is a professor at Harvard University's Medical School, in the department of Physical Medicine and Rehabilitation. He is a specialist in neuropsychology and a clinician scientist in the area of mild traumatic brain injury and mental health, and also

worked extensively with Plaintiffs' Counsel on the Settlement. Dr. Iverson leads an internationally-recognized research program in outcome from mild traumatic brain injury in athletes, civilians, military service members, and veterans. Together with Dr. Keilp, Dr. Iverson's assistance was instrumental in designing the BAP testing program.

62. The Court permitted post-hearing briefing to address certain issues and to afford objectors additional time to file a response to Plaintiffs' Counsels' final approval motion papers. *See* ECF Nos. 6444, 6453-56. On December 12, 2014, Plaintiffs' Counsel filed their reply to the objectors' post-hearing submissions. ECF No. 6467.

**Post-Fairness Hearing Amendments to the Settlement**

63. On February 2, 2015, the Court "proposed several changes to the Settlement that would benefit Class Members." ECF No. 6479. These were: (1) providing some "Eligible Season" credit for play in NFL Europe; (2) assurance that despite the \$75 million cap on the BAP, all those timely registering will receive a baseline assessment examination; (3) moving the cutoff date for a "Death with CTE" award from the preliminary settlement approval date to the final approval date; (4) allowing for a waiver of the appeal fee for those showing financial hardship; and (5) providing the opportunity to demonstrate a Qualifying Diagnosis without the required medical documentation in instances where such documentation was destroyed by a *force majeure* type event.

64. After a new round of negotiations, Plaintiffs' Counsel secured agreement on every change that the Court suggested, and on February 13, 2015, submitted a revised Settlement Agreement, which is the operative Settlement that the Court reviewed and is now effective in the wake of the Supreme Court's denial of *certiorari*. ECF No. 6481.

65. Plaintiffs' Counsel also prepared and filed extensive proposed findings of fact and conclusions of law on March 12, 2015. *See* ECF No. 6497.

66. This Court granted final approval to the Settlement (and final class certification) on April 22, 2015. ECF Nos. 6509-10. The Court's published 132-page opinion comprehensively addressed class certification; the fairness, adequacy, and reasonableness of the Settlement; and, of course, the myriad arguments raised by the objectors.

**The Defense of the Settlement Following Final Approval**

67. On May 13, 2015, the first of several notices of appeal from the Court's grant of final approval was filed. ECF No. 6539. Ultimately, objectors filed eleven separate briefs in connection with their appeals, which were briefed in tandem and consolidated for argument and decision by the Third Circuit. After receiving the objectors' briefs and those of the two amici curiae opposed to the Settlement (the Brain Injury Association of America ("BIAA") and Public Citizen), Plaintiffs' Counsel devoted extensive attorney time to analyzing the various briefs and researching and drafting their answering brief. Also, Plaintiffs' Counsel prepared for the Third Circuit oral argument, which was held on November 19, 2015.

68. On April 18, 2016, the Third Circuit issued its opinion unanimously affirming this Court in all respects. *In re Nat'l Football League Players' Concussion Injury Litig.*, 821 F.3d 410 (3d Cir. 2016). Certain objectors then filed petitions for *en banc* rehearing. The petitions were denied on June 1, 2016, and the Third Circuit issued its mandate on June 9, 2016.

69. Following the Third Circuit's denial of *en banc* rehearing, two groups of objectors filed petitions for writ of *certiorari* with the United States Supreme Court. *See Gilchrist v. Nat'l Football League*, No. 16-283 (U.S. filed Aug. 30, 2016); *Armstrong v. Nat'l*

*Football League*, No. 16-413 (U.S. filed Sept. 26, 2016). The same two partisan amici curiae (BIAA and Public Citizen) filed briefs in support of the *certiorari* petitions. Plaintiffs' Counsel prepared and filed their brief in opposition to the petitions on November 4, 2016. On December 12, 2016, the Supreme Court denied the two *certiorari* petitions. *See* 137 S. Ct. 591, 607 (2016).

70. Thus, Plaintiffs' counsel expended a great deal of time, energy, and resources to defend this historic Settlement against challenges filed in this Court, the Third Circuit, and the Supreme Court by what were a small, but nonetheless dogged, band of objectors (and their supporting amici), whose relentless challenges threatened not only to undo the Settlement itself but also to irreversibly wreck any prospect of a class-wide resolution of the Plaintiffs' claims in this MDL. Until the Supreme Court declined review of the last of those misguided challenges, long-awaited relief could not begin flowing to Class Members.

**Fees and Expenses of Plaintiffs' Counsel**

71. In Case Management Order No. 5: Submission of Plaintiffs' Time and Expense Reports and Appointment of Auditor ("CMO5"), ECF No. 3710, the Court defined "Compensable Time Categories" and "Compensable Expense Categories" and set forth the guidelines for time and expense submission.

72. To date, all PSC members have participated actively in funding the coordinated prosecution of Plaintiffs' (and the Class's) claims, by performing work on a priority basis as assigned and authorized by the undersigned, by incurring the necessary and appropriate out-of-pocket travel and administrative costs to do so, and additionally by contributing assessments to a common benefit fund. This fund has been used, *inter alia*, to retain experts for the litigation, including scientific, medical, actuarial, technical, and procedural experts.

73. An ongoing effort has been made to include and involve interested counsel in the common benefit work of the MDL. To date, attorneys from 23 firms have been requested and authorized by the undersigned to perform work for this MDL, and have submitted records of the time and work performed.

74. Section 21.1 of the Settlement provides that Class Counsel “shall be entitled, at an appropriate time to be determined by the Court, to petition the Court on behalf of all entitled attorneys for an award of class attorneys’ fees and reasonable costs.” Provided that the “petition does not seek an award of class attorneys’ fees and reasonable costs exceeding One Hundred and Twelve Million, Five Hundred Thousand United States dollars (U.S. \$112,500,000), the NFL Parties agree not to oppose or object to the petition.” *Id.* [ECF No. 6481-1, at 82]. As stated in earlier submissions to the Court, the Settling Parties did not enter into attorneys’ fee negotiations until after they had agreed upon the Settlement Term Sheet.

75. Pursuant to the procedures outlined in CMO5, attorneys and staff working at my direction and under my supervision collected and reviewed submissions of common benefit time and reimbursable costs and expenses submitted by the PEC, PSC and by other firms to which I had assigned common benefit work.

76. Only time and expenses that inured to the common benefit of the Class, and that advanced the claims resolved in the Settlement, have been included in the time presented, and the costs submitted herein.

77. The final common benefit time submission includes entries from 23 law firms.

78. The total number of common benefit hours associated with the prosecution and resolution of the claims is 50,912.39. This results in a combined lodestar of \$40,559,978.60. The total fees requested – \$106,817,220.62 – represent a 2.6 lodestar multiplier.

79. The range of hourly rates varies considerably given the diversity of lawyers and law firms tasked to perform the common benefit work, including some of the most qualified and experienced lawyers in the country whom the Court appointed to the PEC and the PSC. The hourly billing rates ranged from \$400 to \$1,350 for partners, from \$275 to \$575 for associates, and from \$125 to \$340 for paralegals. These are the customary billing rates of the submitting lawyers and paralegals, reflecting their respective experience. My customary hourly rate, for example, which has been accepted and awarded by federal courts, is \$985 per hour.

80. The aggregate common benefit costs and expenses total is \$5,682,779.38 million.

81. Attached hereto at the noted exhibit references<sup>11</sup> are true and correct copies of the declarations submitted in support of the instant fee petition of the 22 law firms other than Seeger Weiss LLP that have worked for the common benefit of the Class:

Exhibit C: Declaration of Arnold S. Levin (Levin Sedran & Berman)

Exhibit D: Declaration of Gene Locks (Locks Law Firm)

Exhibit E: Declaration of Steven Marks (Podhurst Orseck, P.A.)

Exhibit F: Declaration of Dianne M. Nast (NastLaw LLC)

Exhibit G: Declaration of Sol H. Weiss (Anapol Weiss)

Exhibit H: Declaration of Garrett D. Blanchfield, Jr. (Reinhardt Wendorf & Blanchfield)

Exhibit I: Declaration of William G. Caldes (Spector Roseman Kodroff & Willis, P.C.)

Exhibit J: Declaration of Leonard A. Davis (Herman, Herman & Katz)

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<sup>11</sup> Exhibit Y is a true and correct copy of the article *An Empirical Study of Class Action Settlements*, 7 Journal of Empirical Legal Studies, 811-46 (Dec. 2010), by Professor Brian T. Fitzpatrick.

Exhibit K: Declaration of James R. Dugan, II (The Dugan Law Firm)

Exhibit L: Declaration of Daniel C. Girard (Girard Gibbs LLP)

Exhibit M: Declaration of Thomas V. Girardi (Girardi Keese)

Exhibit N: Declaration of Bruce A. Hagen (Hagen, Roskopf & Earle, LLC)

Exhibit O: Declaration of Samuel Issacharoff

Exhibit P: Declaration of Richard Lewis (Hausfeld LLP)

Exhibit Q: Declaration of Jason E. Luckacevic (Goldberg, Persky & White, P.C.)

Exhibit R: Declaration of Derriel C. McCorvey (McCorvey Law, LLC)

Exhibit S: Declaration of Michael L. McGlamry (Pope McGlamry)

Exhibit T: Declaration of Craig R. Mitnick (Mitnick Law Office, LLC)

Exhibit U: Declaration of David A. Rosen (Rose, Klein & Marias LLP)

Exhibit V: Declaration of Frederick Schenk (Casey, Gerry, Schenk, Francavilla, Blatt & Penfield, LLP)

Exhibit W: Declaration of Anthony Tarricone (Kreindler & Kreindler LLP)

Exhibit X: Declaration of Charles S. Zimmerman (Zimmerman Reed LLP)

**Fees and Expenses – Seeger Weiss LLP**

82. As noted, I was appointed by the Court to serve as Plaintiffs' Co-Lead Counsel at the outset of this MDL. I was later appointed as Co-Lead Class Counsel in connection with the Court's certification of the settlement class and final approval of the Settlement. As a result, my firm has played a critical role in each step of this litigation. As Co-Lead Counsel and Co-Lead Class Counsel, I was personally involved in each of the activities described above in this declaration. Attorneys at my firm – partners, counsel, and associates – also expended significant time and energy in this litigation. To highlight the contributions of my firm, even prior to formal mediation, my Seeger Weiss colleagues and I spent many hours analyzing

Plaintiffs' claims, and the NFL Parties' defenses. We also studied the critical medical and scientific issues of the litigation at that time. The firm examined possible settlement structures, consulted extensively with other Plaintiffs' counsel, and consulted with experts to explore potential settlement options.

83. Seeger Weiss attorneys devoted thousands of hours to initial negotiations, mediation, and drafting of the initial Term Sheet for the Settlement. This involved significant time spent with Plaintiffs' experts in various fields, with other Plaintiffs' Counsel in the mediation process, and in meetings and negotiations with the NFL Parties. Seeger Weiss conducted hundreds of hours of medical research on brain injuries and the progression of brain disease, and hundreds of hours further researching and developing appropriate settlement structures to effectively compensate these diseases. We also worked extremely closely with our experts; hundreds of hours were spent in honing economic and actuarial modeling for the Settlement.

84. Seeger Weiss attorneys conducted a comprehensive review of peer-reviewed medical literature to support settlement discussion and negotiations. We and other Plaintiffs' Counsel studied articles on brain injury, concussions, the effect of sub-concussive hits to the head on the brain, the epidemiology of the Qualifying Diagnoses, and the methods of diagnosis and treatment for the Qualifying Diagnoses, to name several of the categories of articles studied.

85. After the announcement of the Term Sheet, Seeger Weiss attorneys devoted significant amounts of time to preparing the Settlement Agreement, all supporting documents for the Settlement Agreement, and working through long negotiations with the NFL Parties for the many provisions, exhibits, and modifications of this agreement.

86. Seeger Weiss took the leading role in coordinating and preparing all post-Term Sheet briefing, including motions for preliminary and final approval of the Settlement, and responses to the many assorted motions filed by various objectors' counsel after preliminary approval. These briefing assignments required hundreds of hours of attorney time.

87. After the submission of the initial motion for preliminary approval, Seeger Weiss attorneys led the renewed negotiations on behalf of Plaintiffs. The results of these many hours spent with the NFL Parties were the refining of many key terms of the Settlement, the uncapping of the MAF, and the strengthening of anti-fraud provisions for the claims administration process.

88. Seeger Weiss attorneys also had leading roles in preparing briefing, expert declarations, and exhibits for the Rule 23(e)(2) Fairness Hearing, and for the Plaintiffs' presentation in support of the Settlement at the Fairness Hearing, expending hundreds of hours on these crucial projects.

89. The firm conducted extensive coordination with the BAP and Lien Resolution Administrator, as well as the Claims Administrator. Additionally, Seeger Weiss prepared updates for Class Members and fielded phone calls to provide further information on the updates to Class Members.

90. Seeger Weiss played a key role in preparing oppositions for the multiple appeals filed in the case, as well as Supreme Court briefing.

91. The schedule attached hereto as Addendum 1 of this Declaration is a detailed summary indicating the amount of common benefit time spent by the attorneys and professional support staff of my firm who were involved in, and billed fifty or more hours to,

this litigation, and the lodestar calculation for those individuals based on my firm's current billing rates.

92. For personnel who are no longer employed by my firm, the lodestar calculation is based on the billing rates of such personnel in their final year of employment by my firm. The schedule was prepared from contemporaneous daily time records regularly prepared and maintained by my firm. Time expended in connection with the preparation of this application for attorneys' fees and expenses has been excluded.

93. The hourly rates for the attorneys and professional support staff of my firm included in Addendum 1 of this Declaration are the same as the regular rates charged for their services in other contingent matters and have been accepted by other federal courts in other class action cases prosecuted by my firm.

94. The total number of hours expended on the common benefit of this litigation by my firm during the time period is 21,044.06 hours. The total lodestar for my firm for those hours is \$18,124,869.10 consisting of \$17,742,064.30 for attorneys' time and \$382,804.80 for professional support staff time.

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

96. As detailed in Addendum 2 hereto, my firm is seeking reimbursement of a total of \$1,498,690.99 in common benefit expenses incurred in connection with the prosecution of this litigation. These expenses are reflected on the books and records of my firm. These books and records are prepared from expense vouchers, check records, and other source material, and are an accurate record of the expenses incurred.

97. With respect to the standing of my firm to share in an award of fees, costs, and expenses, attached hereto as Addendum 3 is a biography of my firm, including the attorneys in my firm who were principally involved in this litigation.

98. Although Seeger Weiss was retained by a number of Class Members, it is waiving any claim to fees pursuant to its individual retainers and will seek compensation only from a common benefit fee and expense award made by this Court, given that my work and that of my colleagues and employees of the firm, and the expenditures incurred by my firm, were overwhelmingly focused on common benefit efforts.

99. I respectfully request that the Court confer upon me, as Co-Lead Class Counsel, the discretion and responsibility to allocate the overall fee and expense award that the Court ultimately makes among Class Counsel and those counsel for non-objecting Class Members who performed common benefit work and incurred common benefit expenses, inasmuch as I have exercised overall oversight and leadership of this litigation and thus have familiarity with the respective roles and contributions of participating Plaintiffs' Counsel. In the alternative, the Court should permit me to propose an allocation of the award – which I would do in a written report – subject to the Court's final approval of the allocation. As discussed in the accompanying memorandum of law in support of the Petition, this is something that courts typically do in the case of class action common benefit fee and expense awards.

100. With respect to the fee petitions filed (or to be filed) by counsel for the Faneca and Jones Objectors (*see* ECF Nos. 7070, 7116), I respectfully propose that the Court direct a segregation or set-aside from the Attorneys' Fees Qualified Settlement Fund (*see* ¶ 121 n.10, *infra*) of whatever amount it deems appropriate pending resolution of those petitions, but

otherwise permit the allocation and distribution of fees and reimbursement of expenses among non-objectors' counsel.

**Five Percent Set-Aside from Monetary Awards and Derivative Claimant Awards**

101. The Settlement provides that “[a]fter the Effective Date, Co-Lead Class Counsel may petition the Court to set aside up to five percent (5%) of each Monetary Award and Derivative Claimant Award to facilitate the Settlement program and related efforts of Class Counsel. These set-aside monies shall be held in a separate fund overseen by the Court.” Settlement § 21.1 [ECF No. 6481-1, at 82].

102. Pursuant to this section, Petitioners request a five percent holdback or set-aside of each Monetary Award and Derivative Claimant Award.

103. In accordance with the Settlement, for a Class Member represented by individual counsel, any set-aside from a Monetary Award or Derivative Claimant Award will reduce the attorney's fee payable to that counsel by the amount of the set-aside. Settlement § 21.1 [ECF No. 6481-1, at 82].

104. The purpose of the set-aside will be to compensate Plaintiffs' Counsel going forward for common benefit work in the post-Effective Date time frame, so as to ensure the successful operation of the Settlement over the course of its 65-year program life. This is distinct from the \$112.5 million in attorneys' fees and reimbursement of costs and expenses to be paid by the NFL Parties, which fees are designed to compensate Plaintiffs' Counsel for past common benefit work and past costs and expenses.

105. As the Court is aware, although the Settlement is now effective, there will be continuing stewardship of the Settlement by Class Counsel for years – indeed decades – to come.

106. The work on behalf of the Class was far from finished upon the Supreme Court’s rejection of the last judicial challenge to the Settlement. With those challenges out of the way, the Settlement now has to be administered, implemented, and enforced until its benefits have been delivered to all successful Claimants.

107. Even before the Effective Date, since April 2016, the Settling Parties have had regular working calls with Claims Administrator BrownGreer PLC (“BrownGreer”) and Lien Resolution and BAP Administrator Garretson Resolution Group, Inc. (“Garretson”) to review work plans, draft materials, and settlement implementation issues. BrownGreer prepared and after the Effective Date promptly launched the registration process contemplated by Article IV of the Settlement and the network of physicians who will serve as Qualified BAP Providers and Qualified MAF Physicians is being set up. To date, Plaintiffs’ Counsel and the claims and lien resolution administrators have invested significant time and resources to various implementation tasks. ECF No. 6919. *See* Brown Decl.; Declaration of Matthew L. Garretson, dated Jan. 25, 2017, attached hereto as Exhibit B.

108. Post-Effective Date common benefit work began almost immediately. Plaintiffs’ Counsel have had to finalize retention of administrators and special masters; finalize the Settlement Trust Agreement; and prepare conflicts of interest plans (in order to secure the Court’s approval by April 7, 2017).

109. Moreover, Class Counsel have had (and will have) to engage in a good deal of work related to the need to ensure that Class Members timely register in order to qualify for

settlement benefits. These efforts included the finalization and dissemination of Supplemental Class Notice regarding the registration and benefits timetable, finalizing and overseeing the effectuation of registration forms, overseeing the transition of call center operations to the Claims Administrator, and continuing revisions to the Settlement website (including FAQs).

110. Other efforts are and will be expended in connection with the June 6, 2017 launch of the BAP. These include the review of applications of BAP Providers and vetting candidates for retention, receiving reports on contracting with Providers in order to establish networks convenient to a majority of players by metropolitan region, and finalizing BAP procedures (including assessment scheduling and Supplemental Benefits). Still other work has pertained or will pertain to the MAF (whose claims platform for pre-Effective Date Qualifying Diagnoses opens on March 23, 2017; Retired NFL Football Players will contact MAF physicians on their own from the MAF Network that will open on April 7th): the review of applications of MAF Physicians and vetting candidates for retention, finalizing claims forms and processes, and finalizing appeals forms and processes. As these BAP Providers and MAF Physicians retire over time, or, for other reasons, become unable or unwilling to continue to serve in those capacities, over the next 65 years, they will have to be replaced, involving additional common benefit work by Plaintiffs' Counsel.

111. Continuing over the lengthy period of the Settlement's life, attorneys will continue to spend time and effort to coordinate and work with the Claims Administrator, the BAP Administrator, Lien Resolution Administrator, the Settlement Trustee, and the Court to ensure that Retired NFL Football Players and Derivative Claimants receive their benefits. Plaintiffs' Counsel will also be required, over the next 65 years, to consult with experts to stay abreast of medical developments.

112. Plaintiffs' Counsel will also have work to perform in connection with the administrative appeals process. Co-Lead Class Counsel have standing to appeal as part of the Settlement. Settlement § 9.50 [ECF No. 6481-1, at 51]. The Settlement provides rights to appeal various decisions, including denial of registration, denial of Monetary Awards, and the amount of a Monetary Award. *Id.* Plaintiffs' Counsel will also be called upon to provide assistance for all claimants who have not retained lawyers, and in some instances to assist counsel representing individual plaintiffs. This work will continue over the 65-year life of the Settlement.

113. In this respect, Class Counsel must retain the Appeals Advisory Panel (composed of five neurologists/board certified neurospecialists) and Appeals Advisory Panel Consultants (three neuropsychologists) by April 7, 2017. This body is charged, at the outset, with reviewing diagnoses made prior to the Effective Date of the Settlement. *Id.* § 6.43 [ECF No. 6481-1, at 37-38]. These physicians will be advising the Special Masters and the Court. Thus, this work is critical because it will set the tone for the administration of the Settlement. As these physicians retire or for other reasons become unable or unwilling to serve on the Appeals Advisory Panel or as Appeals Advisory Consultants, they will need to be replaced, involving additional common benefit work by Plaintiffs' Counsel.

114. The Settlement requires that the Parties revisit the science every ten years to discuss in good faith possible prospective modifications to the definitions of Qualifying Diagnoses and/or the protocols for making Qualifying Diagnoses, in light of generally accepted advances in medical science. *Id.* § 6.6 [ECF No. 6481-1, at 35]. This too, is anticipated future common benefit work to be performed by Plaintiffs' Counsel.

115. Class Counsel will also need to establish, review, and conduct ongoing auditing and financial reporting on the BAP and MAF programs. *Id.* § 10.3 [ECF No. 6481-1, at 59-62].

116. Finally, Class Counsel will need to monitor and ensure the NFL Parties' compliance with the funding and the maintenance of the targeted reserves for the MAF and BAP, as well as to monitor the Settlement Trust and Trustee under Article 23 of the Settlement.

117. The set-aside thus provides a source to facilitate fair and reasonable compensation for these and other necessary services of Plaintiffs' Counsel for the benefit of the Class over the coming years. Although Class Counsel cannot fully predict the scope or extent of those necessary services, it is clear that such services will be required to some extent.

118. Moreover, given the 65-year length of this Settlement, at some point Class Counsel may need to transition the responsibilities for representing the Class and overseeing the implementation of the Settlement to other law firms. Indeed, it is quite possible (if not likely) that this need will rise more than once. The set-aside will also ensure that prospective incoming firms have the financial incentive to undertake these responsibilities by making sure that there is a pool of funds to compensate them for getting up to speed and taking up the mantle.

119. If the Court approves the proposed 5% set-aside concept, Plaintiffs' Counsel will submit, within thirty days of the Court's Order approving the set-aside, a detailed plan of administration, including how the funds created from the holdbacks will be pooled and maintained, and how any attorney will apply for compensation for post-Settlement work performed. As experience with the Settlement Program unfolds and as applications for compensation are presented, the Court can adjust the set-aside administration protocols.

**Incentive Awards for Class Representatives**

120. Last but not least, Petitioners request that the Court make Case Contribution awards (also commonly known as incentive or service awards) of \$100,000.00 to each of the three representatives of the two Subclasses – Messrs. Corey Swinson, Shawn Wooden, and Kevin Turner.<sup>12</sup> Through their efforts, the Class Representatives have conferred benefits on all other Class Members, and should be compensated accordingly.

121. For Subclass 1, Plaintiff Swinson served as the original representative. As an integral part of his work as representative, he met with Subclass 1 counsel Arnold Levin. A retired player who was not diagnosed with neurocognitive impairment, Mr. Swinson had standing to assert the rights of Subclass 1 members (those not currently diagnosed with injuries associated with concussive and sub-concussive head trauma). During the summer 2013 negotiations, Co-Lead Class Counsel and Mr. Levin conferred with Mr. Swinson concerning the terms of the proposed settlement. Mr. Swinson was aware of and agreed to the terms of the settlement and he reviewed drafts of the Term Sheet before it was executed.

122. After the Term Sheet was announced, and when Mr. Swinson passed away suddenly in September 2013,<sup>13</sup> Plaintiff Shawn Wooden became the proposed Subclass 1 representative. ECF No. 6423-10 ¶ 6. Mr. Wooden played professional football in the NFL from 1996-2004.

123. On January 24, 2012, Mr. Wooden had filed a complaint, through his attorney, Class Counsel Steven C. Marks of Podhurst Orseck, PA, against the NFL Parties in the

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<sup>12</sup> If the Court grants this request, the total sum of \$300,000 in Case Contribution Awards would be paid out of the \$112.5 million Attorneys' Fees Qualified Settlement Fund, *see* Settlement § 21.2 & 23.7 [ECF No. 6481-1, at 82, 90], and will not increase the NFL's obligations.

<sup>13</sup> Given Mr. Swinson's passing, we request that the Case Contribution Award be made to his estate.

Southern District of Florida (*Wooden v. National Football League*, No. 1:12-cv-20269-JEM). *Id.* ¶ 7. That action was transferred to this MDL on February 23, 2012. Thereafter, on June 7, 2012, a Master Administrative Class Action Complaint for Medical Monitoring was filed on his behalf in the MDL. *Id.*

124. Throughout these proceedings, Mr. Wooden has followed the litigation closely. ECF No. 6423-8 ¶ 3. He has had various meetings, telephone conferences and email exchanges with Mr. Marks about the status of proceedings, the NFL Parties' preemption motions, and the oral argument on the motions, among other things. *Id.* In addition, he has reviewed numerous press articles about the litigation and the settlement. *Id.* Since final approval of the Settlement, Mr. Wooden has remained involved, frequently talking to other retired NFL players and family members to provide information about the Settlement.

125. On October 16, 2013, Subclass Counsel Arnold Levin met with Mr. Wooden in his offices in Philadelphia regarding his prospective representation of Subclass 1 Class Members in the proposed settlement class action. *Id.* ¶ 4. Mr. Wooden asked a number of questions regarding the settlement and the proposed class action mechanism by which it would be implemented, and Mr. Levin comprehensively discussed these issues with him. *Id.* He supported the Settlement and agreed to participate as the proposed representative of Subclass 1. *Id.*

126. Subclass 2 was represented by Kevin Turner. This Subclass consisted of players who were diagnosed with injuries associated with concussive and sub-concussive head trauma. ECF No. 6423-7. Mr. Turner played professional football in the NFL as a fullback from 1992-99. In June 2010, at the age of 41, he was diagnosed with ALS. ECF No. 6423-7 ¶¶ 1-2.

127. On January 20, 2012, Mr. Turner, through his attorney, Class Counsel Steven Marks, had filed a complaint against the NFL Parties in the Southern District of Florida (*Jones v. National Football League*, No. 1:11-cv-24594-JEM). That action was transferred to this MDL on February 14, 2012. On July 11, 2012, Mr. Turner filed a Short Form Complaint in the MDL against the NFL Parties.

128. Throughout these proceedings, Mr. Turner followed the litigation closely. ECF No. 6423-7 ¶ 6. He had numerous meetings, telephone conferences, and email exchanges with Mr. Marks about the status of proceedings, the NFL Parties' preemption motions and the oral argument on same. *Id.* Beginning in about July 2013, Mr. Marks informed Mr. Turner of the settlement negotiations between the Plaintiffs and the NFL Parties and discussed his possible representation of Subclass 2 members. *See id.*

129. In August 2013, Subclass Counsel Dianne Nast met with Mr. Turner at Ms. Nast's offices in Philadelphia regarding his potential representation of Subclass 2 members of the proposed settlement class. *Id.* Mr. Marks was present at that meeting, and the three discussed in detail the impending proposed class-wide settlement. After the meeting, counsel determined that Mr. Turner had standing to assert the rights of Subclass 2 members and that he was an adequate representative for them. Following this Court's April, 2015 Final Approval ruling, Mr. Turner continued to actively monitor and discuss the litigation with Class Counsel, even though his physical condition gravely deteriorated on account of the ALS with which he was afflicted. Mr. Turner passed away on March 24, 2016, during the pendency of objectors' Third Circuit appeals.<sup>14</sup>

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<sup>14</sup> Given Mr. Turner's passing, we request that the Case Contribution Award be made to his estate.

130. In short, all three Subclass Representatives were actively involved in this litigation and made valuable contributions to its final outcome far beyond those of representatives of typical certified classes, and their superior contributions on behalf of the many absent Class members should be appropriately recognized.

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

Executed this 13th day of February, 2017.

*s/ Christopher A. Seeger*  
CHRISTOPHER A. SEEGER  
Co-Lead Class Counsel

# **ADDENDUM 1**

**IN RE: NATIONAL FOOTBALL LEAGUE PLAYERS' CONCUSSION INJURY  
LITIGATION**

**No. 12-md-2323-AB**

**SEEGER WEISS LLP**

**LODESTAR REPORT**

**January 31, 2012 through December 28, 2016**

NAME	HOURS	HOURLY RATE	AMOUNT
<b>PARTNERS:</b>			
Christopher A. Seeger	6,955.90	985	\$6,851,561.50
David Buchanan	3,867.10	975	3,770,422.50
Dion Kekatos	722.00	925	714,100.00
Jonathan Shub	133.30	750	99,975.00
Michael L. Rosenberg	180.00	825	148,500.00
Moshe Horn	630.90	850	536,265.00
TerriAnne Benedetto	3,331.54	895	2,981,728.30
<b>OF COUNSEL:</b>			
Christopher M. Van de Kieft	1,532.00	785	\$1,202,620.00
Jim O'Brien	313.60	775	243,040.00
Scott George	1,337.60	795	1,063,392.00
<b>ASSOCIATES:</b>			
Denise Stewart	91.60	600	\$54,960.00
<b>STAFF ATTORNEYS:</b>			
<b>CONTRACT ATTORNEYS:</b>			
Jacob Abbott	151.00	500	\$75,500.00
<b>PARALEGALS:</b>			
Caitlyn Garcia	130.40	215	\$28,036.00
Constance Guistwhite	87.80	215	18,877.00
Corey Madin	50.20	215	10,793.00
Daniel Mora	88.60	295	26,137.00
Keri L. Newman	991.52	215	213,176.80
Lauren Griffith	399.00	215	85,785.00
<b>TOTALS:</b>	<b>21,044.06</b>		<b>\$18,124,869.10</b>

# **ADDENDUM 2**

**IN RE: NATIONAL FOOTBALL LEAGUE PLAYERS' CONCUSSION INJURY  
LITIGATION**

**No. 12-md-2323-AB**

**SEEGER WEISS LLP**

**COST AND EXPENSE REPORT**

**January 31, 2012 through December 28, 2016**

<b>NUMBER</b>	<b>CATEGORY</b>	<b>AMOUNT</b>
1	Assessments	\$500,000.00
2	Commercial Copies	\$12,704.07
3	Computerized Research	\$42,250.30
4	Court Reporters/Transcripts	\$1,576.90
5	Expert Services	\$729,782.98
6	Facsimile	
7	Filing & Service Fees	\$1,777.92
8	In-House Copies	\$8,694.45
9	Long Distance Telephone	\$5,443.60
10	Postage/Express Delivery	\$6,312.10
11	Travel/Meals/Lodging	\$185,732.68
12	Miscellaneous	\$4,415.99
<b>TOTAL EXPENSES</b>		<b>\$1,498,690.99</b>

# **ADDENDUM 3**



NEW YORK, NY  
77 Water Street  
New York, NY 10004  
(212) 584-0700  
(212) 584-0799 fax

NEWARK, NJ  
550 Broad St  
Newark, NJ 07102  
(973) 639-9100  
(973) 639-9393 fax

PHILADELPHIA, PA  
1515 Market St  
Philadelphia, PA 19102  
(215) 564-2300  
(215) 851-8029 fax

[www.seegerweiss.com](http://www.seegerweiss.com)

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## Firm Biography

Founded in 1999, SEEGER WEISS LLP is broadly admired as one of the nation's premier plaintiffs' law firms. The Firm currently numbers approximately 25 attorneys operating out of offices in New York City; Newark, NJ; and Philadelphia, PA, and regularly litigates in state and federal courts throughout the United States. It focuses on mass tort and class action litigation, with particular emphasis in the areas of products liability, pharmaceutical injury, consumer protection, environmental and toxic tort, securities fraud, antitrust, insurance, ERISA, employment, and *qui tam* litigation. The Firm is made up of experienced litigators, including former state and federal prosecutors. Seeger Weiss's reputation for leadership and innovation has resulted in its appointment to numerous plaintiffs' steering and executive committees in a variety of multidistrict litigations throughout the United States, and it regularly serves as court-appointed Liaison Counsel in New York and New Jersey federal and state courts.

The Firm's manifold accomplishments—including favorable jury verdicts for \$47.5 million in *Humeston v. Merck & Co.* (N.J. Super. Ct. Atlantic County); over \$10.5 million in *Kendall v. Hoffman-La Roche, Inc.* (N.J. Super. Ct. Atlantic County); \$11.05 million in *Owens, et al v. ContiGroup Companies, et al* (Mo. Cir. Ct., Jackson County); and \$25.16 million in *McCarrell v. Hoffman-La Roche, Inc.* (N.J. Super. Ct. Atlantic County)—earned it the distinction of being one of only 8 law firms named by the *National Law Journal* to its exclusive "Plaintiffs' Hot List," among numerous awards and recognitions bestowed upon the firm.

Building off its successes in the courtroom and ability to litigate successfully to trial, the Firm has been at the helm of some of the most notable settlements in recent decades, including:

- The settlement in *In re National Football League Players' Concussion Injury Litigation* estimated to be worth \$1 billion which includes a Baseline Assessment Program to evaluate the current cognitive state of retired NFL players and provide immediate treatment and therapies to qualified players, as well as monetary payments

of up to \$5 million to certain qualifying diagnoses over the 65 year term of the settlement.

- The \$14.7 billion settlement in *In re Volkswagen “Clean Diesel” Marketing, Sales Practices and Products Liability Litigation* which combines a massive buyback program, paying pre-scandal buyback pricing to eligible owners, as well as billions of dollars to environmental remediation efforts and green vehicle technology.
- A \$47.5 million jury verdict in the key bellwether Vioxx trial, *Humeston v. Merck & Co.*, which laid the foundation for the eventual \$4.85 billion global settlement covering more than 45,000 personal injury claims for heart attack, sudden cardiac death, and ischemic stroke.
- The \$700 million first-round settlement of over 8,000 Zyprexa claims alleging that Zyprexa caused diabetes and diabetes-related injuries and the subsequent, second-round settlement of \$500 million.

### **Mass Torts and Pharmaceutical Litigation**

During the past 15 years, Seeger Weiss has emerged as one of the premier mass torts firms in the United States, particularly in the area of pharmaceutical torts. The Firm’s expertise in this area has been recognized by courts throughout the U.S. which have appointed the Firm to numerous plaintiffs’ steering committees in a variety of multidistrict litigations, including, among others:

**Vioxx.** Seeger Weiss has served at the helm of the nationwide Vioxx litigation since its inception, playing highly prominent roles in both the federal and New Jersey state court litigations against Merck & Co, the manufacturers of the prescription arthritis drug now thought to lead to an increased risk of heart attack and stroke. On April 8, 2005, the Honorable Eldon E. Fallon, who presides over the Vioxx multidistrict litigation in New Orleans, Louisiana, appointed firm partner, Christopher A. Seeger, as Co-Lead of the Plaintiffs’ Steering Committee. Additionally, partner David R. Buchanan was appointed Co-Liaison counsel in the New Jersey state Vioxx litigation before the Honorable Carol E. Higbee, J.S.C. In a 2005 class certification ruling involving claims brought on behalf of all third-party payors, including health-maintenance organizations, managed-care organizations, employers and unions, challenging Merck’s advertising practices and pricing policies, Judge Higbee recognized Seeger Weiss’s prominence in Vioxx-litigation in noting that “there is probably no other law firm as knowledgeable about Vioxx.”

In 2007, Mr. Seeger served as Lead Co-Counsel in *Humeston v. Merck & Co.* in New Jersey Superior Court, Atlantic County. There, he and other Seeger Weiss partners David R. Buchanan, Moshe Horn and Laurence Nassif obtained a \$47.5 million jury verdict for the

plaintiff for injuries caused by Vioxx—as cited in the “Top 20 Personal Injury Awards of the Year (2007)” published by the *New Jersey Law Journal*.

Only months after achieving that verdict, Mr. Seeger, along with co-counsel on the Vioxx Negotiating Committee, concluded a \$4.85 billion global settlement with Merck, covering more than 45,000 personal injury claims for heart attack, sudden cardiac death, and ischemic stroke. It represents the largest “global” settlement of personal injury claims stemming from a pharmaceutical product in U.S. history.

**Zyprexa.** In 2004, Seeger Weiss partner Christopher Seeger was appointed by the Honorable Jack B. Weinstein of the U.S. District Court for the Eastern District of New York to serve as Liaison Counsel in the multidistrict litigation against Eli Lilly & Co. relating to the anti-psychotic drug Zyprexa. On June 7, 2005, Eli Lilly and Mr. Seeger, on behalf of the Plaintiffs’ Steering Committee, announced a \$700 million settlement of over 8,000 Zyprexa claims alleging that Zyprexa caused diabetes and diabetes-related injuries. Mr. Seeger was one of the chief architects and leading negotiators of this landmark settlement. He also took a leading role in negotiating a second-round settlement of \$500 million between plaintiffs and Eli Lilly.

**Accutane.** In 2005, Seeger Weiss partners Christopher Seeger and Dave Buchanan were jointly named to serve on the Plaintiffs’ Steering Committee in connection with consolidated litigation against New Jersey based Hoffman-LaRoche, Inc., involving the company’s acne medication, Accutane. The mass tort litigation, which came before the Honorable Carole E. Higbee in Atlantic County, involved the consolidation of claims throughout the state of New Jersey alleging severe side effects resulting from the use of Accutane, including birth defects; suicidal impulses among young adults; and inflammatory bowel disease (“IBD”), including Crohn’s disease and ulcerative colitis, a debilitating and life-altering disease with no known cure.

To date, Mr. Buchanan—who, with Seeger Weiss partner Christopher Seeger, served as liaison counsel for the New Jersey coordinated proceedings in the Accutane litigation—has served as co-trial counsel in the three cases tried in New Jersey that involved Accutane-related injuries, all of which resulted in verdicts for the Plaintiff. One, *McCarrell v. Hoffman-La Roche, Inc.*, in New Jersey Superior Court, Atlantic County, resulted in a \$25.16 million verdict for the Plaintiff, an Alabama resident who suffered IBD from using Accutane. Seeger Weiss partner Michael Rosenberg also served on the trial team in that case. Another, *Kendall v. Hoffman-La Roche, Inc.*, in the same court, resulted in a verdict for the plaintiff, a Utah woman who suffered the same ailment from using Accutane, of nearly \$10.6 million. The third, a consolidated trial for *Mace v. Hoffmann LaRoche Inc.*, *Speisman v. Hoffmann LaRoche Inc.*, and *Sager v. Hoffmann LaRoche Inc.*, garnered a \$12.9 million award from the New Jersey jury in November 2008.

**Rezulin.** Seeger Weiss plays a major role in products liability actions against Pfizer and Warner Lambert involving Rezulin, a prescription drug used to treat Type II diabetes. The Firm is a court-appointed member of the Executive Committee in the federal suits coordinated by the Judicial Panel on Multidistrict Litigation (“JPML”) before Judge Lewis A. Kaplan in the U.S. District Court for the Southern District of New York. The Firm is also a member of the New Jersey Rezulin Steering Committee in *In re: Rezulin Litigation*, currently pending before the Superior Court of New Jersey, Middlesex County. The Firm also successfully represented numerous individuals who commenced personal injury damage actions in various courts throughout the country, all of which claims have been resolved through confidential settlement.

Notably, in March 2003, following a six-week jury trial, the Firm achieved a \$2 million verdict against Pfizer on behalf of Concepcion Morgado, a Brooklyn resident who sustained liver injury and was hospitalized for 10 days following her Rezulin use. The case was the first and only Rezulin matter to be tried in New York and represented a watershed result in the nationwide Rezulin litigation.

**Vytorin and Zetia.** Seeger Weiss has taken the lead in Zetia and Vytorin litigation, negotiating a \$41.5 million settlement with Merck & Co., Inc. and Schering-Plough Corporation, which resolved nationwide fraud claims that arose from the sale and marketing of the companies’ co-ventured prescription drugs. Plaintiffs contend that Merck conspired with Schering-Plough in 2003 to combine Zocor—an enormously popular statin cholesterol drug, with Zetia—another widely used non-statin cholesterol drug, under the new name Vytorin. The two companies began marketing Vytorin as more effective in reducing cholesterol than Zetia and Zocor alone, as well as being effective in blocking arterial plaque that can cause heart attack and stroke. The lawsuits allege that the companies have known since 2006 that Vytorin was no more effective than the generic version of Zocor in blocking plaque, despite being effective in lowering LDL, or “bad” cholesterol. In failing to disclose these facts, Merck and Schering-Plough were allegedly able to cause consumers and third-party purchasers to pay significantly higher prices than the cost of equally effective alternatives available on the market.

Founding partners Christopher A. Seeger and Stephen A. Weiss served as Co-Liaison Counsel for the Plaintiffs’ Executive Committee for *In Re Vytorin/Zetia Marketing, Sales Practices and Products Liability Litigation*, the coordinated group of 140 actions against the two pharmaceutical companies, located in Newark before the Honorable Dennis M. Cavanaugh of the United States District Court of New Jersey. Seeger acted as the principal negotiator for the Plaintiffs’ Executive Committee, aided by Weiss and Seeger Weiss partner Diogenes P. Kekatos.

*Noteworthy Current Pharmaceutical Mass Tort Prosecutions*

**Gadolinium.** The Firm is at the forefront of litigation against multiple defendant manufacturers of Gadolinium-based contrast agents (“GBCAs”) used in certain diagnostic imaging procedures. In December 2006 the U. S. Food and Drug Administration (“FDA”) issued a second and stronger Public Health Advisory concerning a link between GBCAs used during Magnetic Resonance Imaging (“MRI”) and Magnetic Resonance Angiography (“MRA”) procedures, and a debilitating and potentially fatal skin disorder known as Nephrogenic Systemic Fibrosis or Nephrogenic Fibrosing Dermopathy (“NSF/NFD”). Since it released its first Public Health Advisory in June 2006, the FDA has been further investigating the apparent relationship between contrast agents containing gadolinium and NSF/NFD. As of December 2006, the FDA had received reports of 90 patients that developed NSF/NFD within 2 days to 18 months after exposure to such contrast agents.

In February 2008, the Judicial Panel on Multidistrict Litigation ordered all federal actions involving personal injuries stemming from Gadolinium-based contrast dyes centralized in the U.S. District Court for the Northern District of Ohio, before the Honorable Dan Aaron Polster, who has appointed Seeger Weiss partner Christopher Seeger to serve on the Plaintiffs’ Steering Committee and Executive Committee in the multidistrict litigation against multiple defendant manufacturers of GBCAs used in MRI and MRA diagnostic imaging procedures. Partner Dave Buchanan serves as court-appointed Federal-State Liaison Counsel for the litigation. Also in 2008, Seeger Weiss partners Christopher Seeger and Dave Buchanan were appointed Liaison Counsel in connection with the consolidated mass tort litigation against manufacturers of GBCAs in New Jersey, before the Honorable Jamie D. Happas of the Superior Court of New Jersey, Middlesex County.

**Fosamax.** In August 2006, the JPML ordered all federal litigation involving Merck & Co.’s prescription medication Fosamax—used in the treatment of osteoporosis but found to have caused a number of adverse effects, in particular, osteonecrosis (death of bone tissue)—centralized in the U.S. District Court for Southern District of New York (Manhattan), before the Honorable John F. Keenan. Seeger Weiss partner Christopher A. Seeger has been appointed Plaintiffs’ Liaison Counsel, and also served on the Executive Committee of the Plaintiffs’ Steering Committee in the multidistrict litigation.

**Mirena.** In April 2013, the JPML ordered all federal litigation involving Bayer’s intrauterine (“IUD”) device marketed under the brand name Mirena—an IUD containing a hormone, levonorgestrel, designed to be implanted in the uterus for as long as five years—centralized in the U.S. District Court for Southern District of New York (in White Plains, New York), before the Honorable Cathy Seibel. Meanwhile, many hundreds of lawsuits in the New Jersey state courts have been centralized before the Honorable Brian R. Martinotti in Bergen

County. The Plaintiffs allege that Bayer failed to warn about the longer-term risks of migration of the Mirena device and perforation of the user's uterus, having warned about the risk of migration and perforation only at the time of device's insertion. Other complications that Bayer failed to warn about include migration and embedment of the device in the uterus. Seeger Weiss partners Diogenes P. Kekatos and David R. Buchanan have been appointed as Plaintiffs' Liaison Counsel in the federal multidistrict and New Jersey state multicounty Mirena litigation, respectively.

**Yaz, Yasmin, and Ocella.** In November 2009, Seeger Weiss partner Christopher A. Seeger was named to the Plaintiff's Steering Committee in the *Yasmin and YAZ (Drospirenone) Marketing, Sales Practices and Products Liability Litigation* (MDL No. 2100) by Judge David R. Herndon, United States District Court, Southern District of Illinois. More than a hundred lawsuits have been filed against Bayer Healthcare, the pharmaceutical giant that produces Yaz and Yasmin. This litigation, which is expected to include hundreds of women asserting severe health complications resulting from taking these birth control pills, was centralized in the Southern District of Illinois in October 2009 by order of the United States Judicial Panel on Multidistrict Litigation.

**Actos.** In November 2012, founding partner Christopher A. Seeger was appointed to the Multidistrict Litigation (MDL) Actos Product Liability Plaintiffs' Steering Committee. In June 2011, a European study found that among a group of 155,000 patients, one fifth of those who developed bladder cancer had been taking the drug Actos. However, the health warnings that accompany the prescription fail to alert users of this risk. The governments of France and Germany have now banned the type-2 diabetes medication, and the FDA has issued warnings to American doctors who prescribe the drug. Takeda Pharmaceutical Co., the makers of Actos and Asia's largest pharmaceutical company, may face up to as many as 10,000 claims.

#### *Other Pharmaceutical and Medical Device Prosecutions*

**Depuy Orthopaedics, Inc ASR Hip Implant Products.** Seeger Weiss partner Christopher A. Seeger was named to the Plaintiffs' Executive Committee in the *In Re: Depuy Orthopaedics, Inc ASR Hip Implant Products* (MDL No. 2197) by Judge David A. Katz, United States District Court, Northern District of Ohio in January 2011. More than a hundred lawsuits have been filed against Johnson & Johnson, the pharmaceutical giant that is also the parent company of Depuy Orthopaedics, Inc. In August 2010, Johnson & Johnson and its medical device subsidiary, DePuy Orthopaedics, recalled two acetyabular cups hip replacement systems because of their high rate of failures, after a study from the National Joint Registry of England and Wales showed that 1 out of every 8 patients (12%-13%) who had the devices had to undergo revision surgery within five years of receiving it. By the time of the recall, more than 93,000 patients worldwide were fitted with an ASR hip implant. Roughly a third of those were patients

in the United States. This litigation was centralized in the North District of Ohio in December 2010 by order of the United States Judicial Panel on Multidistrict Litigation.

**PPA.** Seeger Weiss remains actively involved in litigation against numerous manufacturers of pharmaceutical products containing PPA (phenylpropanolamine), until 2000 an ingredient in virtually every over-the-counter cold medication and many appetite suppressant products. The Firm serves on the Plaintiffs' Steering Committee in the federal suits consolidated by the JPML in the U.S. District Court for the Western District of Washington, and as the court-appointed Liaison Counsel in the New York PPA actions coordinated before Judge Helen Freedman. In 2003, the Firm was one of the lead negotiators of a nationwide settlement agreement with the manufacturers of Dexatrim, a leading over-the-counter appetite suppressant that until 2000 contained PPA. The settlement covers the claims of all individuals who suffered stroke-related injuries resulting from the ingestion of PPA-containing Dexatrim.

**Propulsid.** Seeger Weiss held national leadership positions in pharmaceutical products liability litigation against Johnson & Johnson and Janssen Pharmaceutica, Inc., the manufacturers of Propulsid—a prescription drug used to treat nocturnal heartburn. Seeger Weiss LLP was a member of the court-appointed Plaintiffs' Steering Committees in both the federal litigation, which have been consolidated by the JPML in the Eastern District of Louisiana, and in the statewide consolidated actions in Middlesex County, New Jersey. The Firm served as counsel to numerous individuals who have commenced personal injury damage actions in various courts throughout the country.

**Guidant and Medtronic Heart Device Litigations.** Seeger Weiss served as a court-appointed member of the Plaintiffs' Steering Committee in multidistrict litigation in the U.S. District Court for the District of Minnesota against Medtronic and Guidant involving defective heart defibrillators and pacemakers. The heart devices at issue are surgically implanted in persons who have a type of heart disease that creates the risk of a life-threatening heart arrhythmia (abnormal rhythm). Both Medtronic and Guidant had disclosed defects in certain of their defibrillators that caused the devices to fail without warning. The Firm filed one of the first actions in the U.S. against Guidant on behalf of patients.

**Other Pharmaceutical Products.** In addition to aforementioned pharmaceutical, the Firm serves or has served as counsel in numerous lawsuits in state and federal courts throughout the country brought by individuals who have suffered personal injury or death resulting from the use of various pharmaceutical or medical device products, including **Baycol**, **Celebrex**, **Elidel**, **Ephedra**, **Fen-Phen**, **Kugel Mesh** hernia patches, **Lamisil**, **Neurontin**, **OxyContin**, **Ortho Evra** birth control patches, **Protopic**, **Serevent**, **Serzone**, and **Sporanox**.

## Consumer Litigation

Seeger Weiss LLP has achieved notable recoveries and currently holds leadership roles in many major consumer class action litigations throughout the country. Among the consumer class action litigations in which Seeger Weiss LLP plays or has played a major role are, in alphabetical order:

***Alexander v. Coast Professional Services.*** Seeger Weiss represented federal student loan borrowers who were in default on their student loan payments, but denied federally mandated offers of rehabilitation by Coast Professional Services, one of the private collecting agency under contract with the United States Department of Education. After obtaining class certification, Seeger Weiss negotiated a settlement which provided the maximum statutory damages available to the class under the Fair Debt Collections Practices Act. Scott Alan George was primarily responsible for the litigation

***In re Armstrong World Industries, Inc.:*** \$7 million settlement achieved in the United States Bankruptcy Court for the District of Delaware after transfer. The Firm represented the State of Connecticut, one of numerous property damage claimants which sought injunctive relief and monetary damages resulting from the presence of Armstrong-manufactured asbestos-containing resilient floor tile and sheet vinyl in residences and buildings throughout the United States.

***In re Azek Building Products, Inc. Marketing and Sales Practices Litigation.*** Pending in the District of New Jersey, this litigation seeks relief for purchasers of Azek composite decking, marketed to consumers as a high-end, low-maintenance, and fade-resistant decking. Despite these representations, this expensive decking line contains a design defect which makes it prone to significant fading in outdoor exposure. Rather than replace the defective decking or compensate consumers, the Defendant recommended the application of an expensive after market product, DeckMax, which only temporarily masks the manifestation of the defect and requires a laborious application process. Seeger Weiss is interim co-lead counsel in the case. The parties recently concluded a hard fought discovery process and Plaintiffs are now preparing to file a motion for class certification.

***In re Bridgestone/Firestone, Inc. ATX, ATX II and Wilderness Tires Products Liability Litigation:*** Seeger Weiss represented Firestone tire owners and purchasers of Ford Explorers equipped with certain models of Firestone tires. Plaintiffs sought damages flowing from design defects that resulted in severe, life-threatening accidents. Specifically, the consumer class sought a tire recall, recovery for the cost of tire replacement, and recovery for the diminution in the value of Ford Explorer vehicles resulting from the subject design defects. Following the filing of a number of federal class actions, the litigations were transferred for pre-trial proceedings to the

Federal court in Indianapolis. In those coordinated actions, which the JPML had centralized before the Honorable Sarah Evans Barker of the U.S. District Court for the Southern District of Indiana (Indianapolis), Seeger Weiss served as a member of the Plaintiffs' Law Committee. Following extensive discovery and motion practice, Plaintiffs achieved a favorable nationwide settlement of their class claims.

***In re Caterpillar, Inc., C13 and C15 Engine Products Liability.*** Representing the Plaintiffs in the first filed action in this Multi-District Litigation, Seeger Weiss was among the firms that brought substantial relief to owners of busses and trucks with Caterpillar's C13 and C15 diesel engines. These diesel engines used a defective "Caterpillar Regeneration System," an anti-pollution system that was designed to ensure engine emissions complied with federal regulations, but would fail under normal operating conditions leading the engines to "de-rate" and shut down without warning.

After fully briefing class certification for the first-filed Plaintiffs, the MDL Plaintiffs prevailed against two motions to dismiss, including a motion arguing for federal preemption of all claims. The settlement discussion which quickly followed resulted in a \$60 million common fund class settlement, providing up to \$10,000 per engine (depending on the number of de-ratings) or \$15,000 in proven consequential losses. Approval of this settlement is currently pending.

***Ecker v. Ford:*** The Superior Court of California granted final approval to the class action settlement in this litigation after the Firm obtained contested class certification. The settlement provided full cash reimbursement for qualifying parts and labor for all California owners and lessees of Ford Focus vehicles who experienced premature front brake wear, including reimbursement for brake pads and rotors. The court had earlier appointed the Firm to act as co-lead counsel in the litigation. Seeger Weiss partner Christopher Seeger and Scott Alan George were primarily responsible for the litigation.

***In re: Ford Fusion and C-Max Fuel Economy Litigation.*** Pending in the Southern District of New York, this Multi-District litigation seeks relief for purchasers and lessees of Ford's 2013 CMax and Fusion hybrid cars. As of mid-2012, Ford held a tiny fraction of the hybrid market. But with the 2013 model year, Ford launched a massive and misleading advertising campaign designed to convey to the auto-buying public that two of its new 2013 hybrid models—the all new second generation Fusion Hybrid and the C-MAX—had made a quantum leap in fuel economy and now delivered 47 city, 47 highway and 47 MPG combined. While Ford realized record sales of its new hybrid vehicles, the owners and lessees of these cars realized no better fuel efficiency than earlier models. Seeger Weiss is serving as a member of the Plaintiffs' Steering Committee with Scott Alan George having primary responsibility.

***Lester v. Percudani***: The Firm represented over 170 first-time homeowners in the United States District Court for the Middle District of Pennsylvania who purchased homes at inflated valuations based upon fraudulent appraisals and in violation of federal mortgage lending guidelines. The action includes federal civil RICO and state consumer fraud claims against a group of RICO co-conspirators. In 2008, the district court denied motions for partial summary judgment that had been filed by two of the Defendants (Chase Home Finance LLC and one of its officers), and later denied their motion for reconsideration of that ruling. Following those rulings, the parties entered court-approved mediation, which resulted in a settlement that provided millions of dollars' worth of relief to the aggrieved homeowners, including substantial mortgage rate reductions.

***In re MCI Non-Subscriber Telephone Rates Litigation***: \$88 million class settlement completed in the United States District Court for the Southern District of Illinois following a transfer to that district by the JPML. The settlement resolved claims brought by class members to recover overcharges arising from MCI's improper imposition of non-subscriber rates and surcharges on certain of its customers. Seeger Weiss was a member of the Plaintiffs' Steering Committee and served as Chair of the Discovery Committee.

***In re Mercedes-Benz Emissions Litigation***. In the wake of the Volkswagen "clean diesel" scandal, Seeger Weiss was one of the first firms to first investigate and initiate litigation an action against Mercedes-Benz for its own long-term efforts to cover-up the fact that their own BlueTEC "clean diesel" vehicles pollute far more than regular engines and more than regulations allow. The litigation is pending in the United States District Court for the District of New Jersey where several similar actions have been consolidated. Christopher Seeger and Scott Alan George are primarily responsible for this litigation.

***Pro et al. v. Hertz Equipment Rental Corporation***. This nationwide settlement in the United States District Court for the District of New Jersey provided both substantial monetary and injunctive relief related to Hertz Equipment Rental Corporations' ("Hertz") deceptive charges for Loss and Damage Waivers ("LDW") and Environmental Recovery Fees ("ERF"). Plaintiffs' claimed that Hertz's LDW and Environmental Recovery Fee ("ERF") were unconscionable in that the LDW provided only illusory coverage and that the ERF did not reflect any actual additional fees or expenses related to the protection of the environment. Plaintiffs succeeded in certifying a national class of purchasers before undertaking court-ordered mediation in 2012. Two members of Seeger Weiss, Scott Alan George and Jonathan Shub, were appointed as part of the settlement to serve as Co-lead Counsel. Under the terms of the Settlement, Hertz reimbursed Class members who paid for damages sustained to equipment they rented up to 75% of the amount of the deductible paid during the class period *or* provided partial reimbursement for the total amount of LDW paid during the Class period, offering the choice of

either future rental discounts or cash payment. Hertz also agreed to improve the disclosures it makes about the LDW and ERF programs.

***In Simply Orange Orange Juice Marketing and Sales Practices Litigation.*** Seeger Weiss is co-lead counsel in a pivotal litigation regarding food fraud in connection with the most widely consumed juice in the United States—orange juice, and some of the mostly widely consumed products by the American public—Simply Orange and Minute Maid orange juice products. Unknown to consumers, Coca-Cola, the manufacturer of these juices, adds flavors to the juices, to impart a signature, market-distinguishing taste to the juices and to mask flavor loss that occurs during long term storage of the juice. Coca-Cola adds these flavors to the juices but omits disclosure of them while marketing the juices as 100% Pure Squeezed Orange Juice with no additives. The practice violates the federal standard of identity for pasteurized and from concentrate orange juices as well as state laws prohibiting misleading marketing and advertising. The litigation has been hard fought; the parties’ summary judgment motions were denied last year and the parties are now in the midst of class certification briefing. The case is pending in the Western District of Missouri.

***Sternberg v. Apple Computer, Inc. and Gordon v. Apple Computer, Inc.***: Nationwide settlement completed in California state court. Plaintiffs recovered class-wide damages resulting from Apple’s deceptive advertisements for its iMac and G4 brand computers—specifically the functionality of the DVD playback feature. Seeger Weiss served as co-lead counsel for the classes.

***Taha v. Bucks County.*** The firm served as co-counsel and was appointed Co-class Counsel by the United States Court for the Eastern District of Pennsylvania to represent a class of persons whose privacy rights had been violated by Bucks County Prison. In contravention of Pennsylvania state law, Bucks County Prison began in 2011 to post publicly and freely on the Internet through its “Inmate Look-Up Tool” the intake information and photos of each person who had passed thorough the facility since 1938. Seeger Weiss obtained both certification of a class and summary judgment on liability. Appeal by defendants is currently pending to the Third Circuit.

***Tennille v. The Western Union Company.*** Seeger Weiss served as co-Class Counsel in consolidated nationwide class action suits filed in the U.S. District Court for the District of Colorado, alleging that Western Union, in violation of consumer fraud laws, wrongly failed to inform customers who purchased money transfers if a money transfer failed to go through to the intend recipient. Western Union could then sit on the funds for years, earning income and administrative fees off them while , in many cases, the funds eventually escheated to state governments. Following years of extensive discovery and motion practice, including defeating Western Union’s bid to compel arbitration, the parties reached a settlement, brokered by the

Tenth Circuit's chief mediator. Under the settlement, Western Union agreed to the establishment of a cash fund (valued at over \$135 million at the time of final approval of the settlement) for the return to class members of funds not already escheated to states; the payment of interest to those class members whose wire transfer funds had already escheated to a state government; the formation of a process for assisting class members in securing the return of their funds if they have already escheated; the creation of a 7-1/2 year notice plan, whereby Western Union was required to inform customers within 60 days if their wire transfers are unsuccessful; and the undertaking of robust efforts to update customers' stale contact information. The settlement received final approval from U.S. District Judge John L. Kane in June 2013.

***In re Tropicana Orange Juice Marketing and Sales Practices Litigation.*** The allegations in this case are similar to the *Simply Orange* litigation. As with Coca-Cola, Tropicana Products adds flavors to Tropicana Orange Juice to alter and improve the flavor of stored orange juice with flavors created by fragrance and flavor manufacturers and specifically designed to meet consumer taste preferences. Despite the addition of flavors, Tropicana markets the juice as pure and fails to disclose the addition of flavors to consumers. Seeger Weiss along with co-counsel recently filed a motion for class certification. Along with the motion for class certification, Seeger Weiss filed a motion for appointment as co-lead counsel. The case is pending in the District of New Jersey.

***Truth-in-Lending Act Litigation:*** The Firm served as co-counsel in several dozen proposed nationwide class actions that were filed in 2007 and 2008 in the various federal courts in California against banks and other mortgage lenders, asserting claims under the federal Truth-in-Lending Act ("TILA"), and California consumer fraud statutes and common law. These actions sought recovery of damages as well as equitable relief, including rescission, in connection with highly-deceptive so-called Option Adjustable Rate Mortgage ("ARM") loans. The loan documents given to Option ARM borrowers failed to adequately disclose to borrowers that the initial "teaser" interest rate of 1%-3% would last only 30 days and that, after that time, the minimum payment specified in the payment schedule would be insufficient to cover even monthly interest charges, let alone loan principal. As a result, borrowers who secured these deceptive loans lost equity in their homes and were no longer able to secure the refinancing necessary to get out from under these loans. In several of the lawsuits, the courts sustained the Plaintiffs' claims against the defendant lenders' dispositive motions, and several cases resulted in the certification of classes. A number of the suits culminated in settlements providing cash and/or other relief to borrowers. Seeger Weiss partners Christopher A. Seeger, Jonathan Shub, and Diogenes P. Kekatos all played a substantial role in these hard-fought litigations.

***In re Volkswagen "Clean Diesel" Marketing, Sales Practices and Products Liability Litigation:*** In the largest consumer automotive industry class action settlement in history, Volkswagen ("VW") has agreed to create a funding pool of over \$10 billion, an amount which is

sufficient to allow for buybacks of 100% of the VW and Audi 2.0-liter diesel vehicles in the United States which are equipped with “defeat device” software. This software was designed to allow vehicles to meet emissions standards when undergoing emissions testing, but to bypass emissions controls at all other times and pollute the environment by emitting nitrous oxides at levels up to 40 times higher than when the vehicles are being tested. In addition to the direct monetary benefits to consumers, VW also has agreed to pay \$2.7 billion for environmental remediation and to make a \$2 billion investment in “green” vehicle technology.

The settlements were reached with VW through the efforts of lawyers on behalf of the consumer class, working in conjunction with government lawyers, including those from the Environmental Protection Agency and the Federal Trade Commission. The judge overseeing the Multidistrict litigation centralized in the Northern District of California, the Honorable Charles R. Breyer, pushed the lawyers involved to work diligently and quickly in order to reach the settlements expeditiously (or face a quick trial) in order to meet the ultimate goal of removing the polluting cars from the roads as soon as possible.

Christopher Seeger was appointed by Judge Breyer to serve on the Plaintiffs’ Steering Committee (“PSC”). He worked closely with court-appointed Lead Counsel, Elizabeth Cabraser, spending countless hours poring over settlement documents and in meetings with VW’s lawyers and the government’s lawyers in order to reach a fair settlement. Indeed, at the Status Conference held on May 24, 2016, Judge Breyer even commented that he had been advised by the Settlement Master that all of the lawyers had “devoted substantial efforts, weekends, nights, and days, and perhaps at sacrifice to your family” in order to reach the proposed settlement. David Buchanan was one of the counsel on the PSC leading this effort. In addition, TerriAnne Benedetto, Scott Alan George and others spent significant hours on the case, both on the settlement and litigation tracks.

***In re Vonage Marketing and Sales Practice Litigation:*** Seeger Weiss was co-Lead Counsel in this litigation which culminated in a nationwide settlement in the United States District Court for the District of New Jersey. The lawsuit involved Vonage’s promotional “one month free” and “money back guarantee” offers and application of certain charges (disconnection, cancellation and termination fees, and subscription fees despite requests for cancellation), which allegedly violated the laws of several states. Vonage agreed to pay \$4.75 million to fund the settlement, which offered eligible class members full reimbursements for certain payments made by Vonage subscribers.

***In re Whirlpool Corp. Front-Loading Washer Products Liability Litigation.*** This hard-fought Multi-District Litigation (relating to Whirlpool washers) pending in the Northern District of Ohio running parallel to the *Butler v. Sears Roebuck & Co.* (relating to Kenmore washers) pending in the Northern District of Illinois provided substantial relief to owners of early-year

Whirlpool and Kenmore front-loading washing machines which are prone to develop mold and foul smells in ordinary use. With two members on the Plaintiffs' Steering Committee (Scott Alan George and Jonathan Shub), Seeger Weiss was a leader among the firms that obtained certification of classes in both the Whirlpool and Kenmore litigations and, ultimately a substantial settlement after a bellwether trial of Ohio purchasers. Under the settlement, owners of the front-loading washers can choose among a range of benefits, including reimbursements of up to \$500 for out-of-pocket expenses for repairs or replacements due to mold or odor problems.

## Securities Litigation

Seeger Weiss has emerged as a leading innovator in the realm of securities litigation, with special emphasis on IPO litigation, auction rate securities, securities fraud class action, and, recently, the Bernard Madoff Ponzi scheme. The Firm brought action against some of the largest financial entities in the world, including Goldman Sachs, Morgan Stanley, Credit Suisse, JPMorgan Chase, Bank of America and Merrill Lynch.

### *IPO Litigation*

***In re Initial Public Offering Securities Litigation*** is one of the largest and most significant coordinated securities fraud prosecutions in United States history. In this coordinated action, Seeger Weiss serves on the Plaintiffs' Steering Committee and as Co-Chair of the Plaintiffs' Legal Committee. The litigation consists of 310 class actions involving IPOs marketed between 1998 and 2000. The defendants include 310 individual companies and 55 investment bank underwriters, which includes Wall Street's largest and most well-known investment houses, including Goldman Sachs, Morgan Stanley, and Credit Suisse. The class actions allege that the IPOs were manipulated by the issuers and investment banks to artificially inflate the market price of the securities of those companies by inducing customers to engage in aftermarket "tie-in" agreements in exchange for IPO allocations. The cases further allege that the investment banks extracted significant undisclosed compensation from their customers in exchange for giving them the IPO allocations. The actions are coordinated before Judge Shira A. Scheindlin in the U.S. District Court for the Southern District of New York (Manhattan).

In connection with these actions, the Firm was instrumental in defeating a recusal motion brought by certain of the underwriter-defendants in 2001, and was the principal author of the electronic data preservation protocol that was entered by Judge Scheindlin in the litigation. The Firm has been extensively involved in all phases of the litigation, which recently entered a new phase of class certification proceedings following the U.S. Court of Appeals' 2007 reversal of Judge Scheindlin's certification of six test classes.

### *Auction Rate Securities*

Seeger Weiss is part of a consortium of law firms that have taken a leading role in bringing actions against the broker-dealers involved in the auction rate securities market's collapse. Seeger Weiss has sued UBS, DeutscheBank, Merrill Lynch, Wachovia, TD Ameritrade, Morgan Stanley, JPMorgan Chase, E\*Trade, Raymond James, Wells Fargo, Oppenheimer, Bank of America and Royal Bank of Canada, alleging that they knew, but failed to disclose material facts about the auction rates market and the securities they sold to their investors, including that the securities were not cash alternatives, like money market funds but, rather, were complex, long-term financial instruments with 30-year or longer maturity dates; and that they were only liquid at the time of sale because the broker-dealers were artificially supporting and manipulating the auction market to maintain the appearance of liquidity and stability. Indeed, the broker-dealers simultaneously withdrew their support of the auction rate securities market on the same day in February 2008, resulting in its collapse. One *New York Times* reporter has referred to the collapse of the auction rates market as a "hostage crisis," in which thousands of investors, including senior citizens, have hundreds of billions of dollars in investments that they cannot access despite having been told that they were liquid investments that were as good as cash.

The Honorable Shira A. Scheindlin of the U.S. District Court for the Southern District of New York (Manhattan) has appointed Seeger Weiss to serve as Liaison Counsel in *Waldman v. Wachovia*, No. 08 Civ. 2913 (SAS) (S.D.N.Y.). Seeger Weiss also was appointed as Liaison Counsel in *Chandler v. UBS AG*, No. 08 Civ. 2697 (SAS) (LMM) (S.D.N.Y.); *Humphrys v. TD Ameritrade*, No. 08 Civ. 2912 (PAC) (S.D.N.Y.); and *Ciplet v. JPMorgan Chase & Co.*, 08 Civ. 4580 (RMB) (S.D.N.Y.). Additionally, counsel with whom Seeger Weiss is working have been appointed Lead Counsel in these and several other cases against the broker-dealers.

### *Securities Fraud Class Actions*

The Firm holds leadership roles in a variety of national securities class action litigations. For example, Seeger Weiss LLP served as lead counsel in an action against *ATEC Group, Inc.*, in which the Firm recovered \$1.7 million for the class in the United States District Court for the Eastern District of New York. Additionally, Seeger Weiss LLP serves as lead counsel in an action against *The Miix Group*, a medical malpractice insurance carrier based in New Jersey, and several of its former and current directors and officers which is pending in the District of New Jersey, and chaired the Executive Committee in a derivative action against *Legato Systems, Inc.* in California.

The Firm also represents or has represented shareholders in a variety of securities litigations, including those against *ATEC Group* (E.D.N.Y.); *Axonyx* (S.D.N.Y.); *Bell South* (N.D. Ga.); *Bradley Pharmaceutical* (D.N.J.); *Broadcom Corp.* (C.D. Ca.); *Buca, Inc.* (D. Minn.); *Cryo-Cell International, Inc.* (M.D. Fl.); *eConnect, Inc.* (C.D. Ca.); *FirstEnergy Corp.* (N.D. Ohio); *Friedman, Billings, Ramsey Group* (S.D.N.Y.); *Gander Mountain* (D. Minn.); *Genta* (D.N.J.); officers and directors of *Global Crossing* (C.D. Ca.); *Grand Court Lifestyles, Inc.* (D.N.J.); *Impath* (S.D.N.Y.); *IT Group Securities* (W.D. Pa.); *Mattel, Inc.* (C.D. Ca.); *Matrixx Initiatives* (D. Ariz.); *MBNA* (D. Del.); *MIIX Group* (D.N.J.); *Molson Coors Brewing Company* (D. Del.); *Mutual Benefits Corp.* (S.D. Fla.); *New Era of Networks, Inc.* (M.D.N.C.); *Nuance Communications* (N.D. Ca.); *NVE Corporation* (D. Minn.); *Omnivision Technologies, Inc.* (N.D. Ca.); *Par Pharmaceuticals* (D.N.J.); *Pixelplus, Co.* (S.D.N.Y.); *Procter & Gamble Co.* (S.D. Ohio); *Priceline.com* (D. Conn.); *Purchase Pro* (S.D.N.Y.); *Quintiles Transnational* (D. Colo.); *Read Rite Corporation* (N.D. Ca.); *Sagent Technology* (N.D. Ca.); *Sina Corporation* (S.D.N.Y.); *The Singing Machine, Inc.* (S.D. Fl.); *Terayon, Inc.* (C.D. Ca.); and *Tesoro Petroleum Corp.* (E.D. Tex); *Viisage Technology, Inc.* (D. Mass.), among others.

#### *Madoff Investment Securities Litigation*

Seeger Weiss LLP has moved to the forefront of litigation against Bernard L. Madoff Investment Securities, the engine of Madoff's \$50 billion Ponzi scheme, and has been retained to represent more than \$500 million in claims from defrauded shareholders around the world. Madoff's brand of deception, though similar to a pyramid scheme, proved far more insidious because it relied Madoff's good standing and the fundamental trust the trading community placed in his abilities. Investors were lead to believe that their investments would be handled competently by Madoff and that their returns would be produced through sound investments. Thousands of investors and institutions have been defrauded by Madoff and his firm.

Seeger Weiss, along with co-counsel from Milberg LLP, filed a petition in April 2009 that, if granted, could make Madoff's personal assets available for investors to recover a portion of their investments. The petition was filed soon after Judge Louis Stanton reversed an earlier decision that blocked that option. The SEC and the prosecution maintained that nearly all of Madoff's personal assets were linked to his financial crimes, and personal bankruptcy could delay recovery by victims of his Ponzi scheme, but Judge Stanton disagreed, and reversed the prior holding.

## General Complex Class Action Litigation

Seeger Weiss has long excelled at general complex class action litigation, having achieved major victories in the past and working on several important class action cases in the present, against large agricultural and pharmaceutical corporations.

***Bayer CropScience Rice Contamination MDL.*** The Firm served as a member of the court-appointed Plaintiffs’ Executive Committee in this MDL brought on behalf of national rice-growers who sought to recover damages against Bayer CropScience and numerous parents and affiliates to the value of their rice crops resulting from contamination by LLRICE 601 and LLRICE 604, varieties of long-grain rice that have been genetically modified to produce rice crops resistant to glufosinate—the active ingredient in Liberty<sup>®</sup> Herbicide, another Bayer product. This “glufosinate-tolerant” trait allows growers to spray Liberty<sup>®</sup> herbicide over the entire crop, killing all weeds without risking any damage to the rice crop. Following revelations in August 2006 and again in March 2007 that U.S. rice crops had been found to be contaminated with these varieties (which, at the time, had not been approved for commercial use), the world’s leading importers of American rice, including the European Union, Japan, and South Korea, quickly announced embargoes of U.S. rice, triggering sharp declines in the market price of U.S. rice. The JPML centralized these actions, and others similar, before the Honorable Catherine D. Perry of the U.S. District Court for the Eastern District of Missouri (St. Louis). Following the district court’s denial of class certification, the cases proceeded to completion of discovery and trial. Following multiple bellwether trials before Judge Perry, both resulting in significant victories for the Plaintiffs, the parties entered into a global settlement totaling \$750 million.

***In re “StarLink” Corn Products Litigation.*** Similar to the rice contamination litigation against the Bayer companies, this litigation was centralized by the JPML in the U.S. District Court for the Northern District of Illinois, Eastern Division (Chicago). The U.S. Environmental Protection Agency had licensed “StarLink” brand corn—which had been genetically-modified to create its own insecticidal protein, making it resistant to various corn pests—only for the growing of corn used for animal feed and industrial purposes (such as the growing of corn for manufacturing ethanol), was found to have entered the U.S. food chain. The news swiftly led to Japan and other major overseas buyers of U.S. corn placing embargoes on American corn, and the resulting collapse of the export market for U.S. corn and a sharp decline in the market price of U.S. corn. The Firm was one of four court-appointed co-lead counsel for a class of corn farmers in various corn-belt states against Aventis CropScience USA—the developer of StarLink corn seed (which was later purchased by Bayer AG and became Bayer CropScience, the developer of the genetically-modified rice seeds that are the sources of the rice contamination litigation in which the Firm is currently involved)—and Garst Seed Company, the principal licensee and distributor of the corn seed. In the actions, the corn growers sought damages representing the loss in value of their corn crops due to the improper marketing, handling, and

distribution of StarLink corn. In April 2003, following much discovery and the denial of the Defendants' motion to dismiss the Plaintiffs' claims, U.S. District Judge James B. Moran gave final approval to a \$110 million nationwide settlement of the class claims.

***OxyContin Third-Party Payor Litigation.*** Seeger Weiss has been appointed co-lead counsel in a proposed class action pending in the U.S. District Court for the Southern District of New York (Manhattan) before the Honorable John G. Koeltl. The litigation against the drug's maker, Purdue Pharma LLP, involves the marketing and promotion of OxyContin. In 2007, Purdue pled guilty to federal violations of misbranding of OxyContin, for which it was fined over \$600 million in criminal and civil penalties. The Firm represents insurance providers and other "third-party payors," including self-funded health plans, which have purchased, reimbursed, or otherwise paid for OxyContin for their plan members or participants. The Plaintiffs assert violations of federal RICO and state consumer fraud statutes. Specifically, they allege that, as a result of Defendants' fraudulent over-promotion and off-label promotion of OxyContin, members of the class paid a much higher price, for many more prescriptions, than they would have absent Defendants' fraudulent over-promotion. After discovery, spirited negotiations, and briefing and argument on Purdue's motion to dismiss the complaint, Seeger Weiss secured a \$20 million settlement, which received preliminary approval from the district court in December 2008. A final approval (fairness) hearing is scheduled for May 15, 2009.

### **Environmental and Toxic Tort Litigation**

Seeger Weiss has brought several environmental and toxic tort cases on behalf of homeowners, small landowners and farmers who have suffered from environmental damage and degradation.

***Factory Hog and Poultry Farm Environmental Litigation.*** The Firm was involved in the prosecution of various environmental and common law claims against several of the nation's largest industrial hog and poultry farm operators. These cases, which were filed in various jurisdictions throughout the country, were brought on behalf of riparian property owners and other residents in the vicinity of factory hog and poultry farms who suffered from atmospheric degradation caused by the illegal discharge of harmful toxins and other pollutants contained in the enormous quantities of hog and poultry feces and other wastes produced by the industrial farmer defendants. The Firm served as co-lead counsel in several of these actions. For example, the Firm served as court-appointed co-lead counsel in an action in the state District Court of Mayes County, Oklahoma pertaining to environmental damages to the Grand Lake O'Cherokees caused by the disposal of massive quantities of chicken litter by the operations of various major poultry integrators and their contract growers. In that action, the Firm achieved the certification of two classes of owners of property around the 44,000-acre lake after a three-day hearing by the District Court, and that ruling was only narrowly overturned by the Oklahoma appellate courts

during nearly two and one-half years of appeals. The Firm dismissed these claims following the class decertification.

***Hog Odor Nuisance Litigation.*** In September 2006, following a three-week trial in which Firm partner, Stephen A. Weiss, served as co-lead trial counsel, a state court jury sitting in Jackson County, Missouri returned a \$4.5 million combined verdict against industrial hog producers Premium Standard Farms, Inc. and ContiGroup Companies, Inc. in favor of six neighbors of the Defendants' vast farm operations in northern Missouri. In March 2010, a group of fifteen neighbors brought Premium Standard Farms before the state court again, alleging that the overpowering hog odors had not abated since the original trial. A Jackson County jury awarded the plaintiffs an \$11.05 million verdict. This verdict is the largest monetary award against a hog farm in an odor nuisance case. Following these verdicts, Mr. Weiss served as lead negotiator of a global settlement that successfully resolved approximately 300 related claims against these Defendants on a confidential basis.

***Lead Poisoning Litigation.*** The Firm represented families and property owners living within Tar Creek, one of the nation's most notorious hazardous waste sites, situated within the former Picher Mining Field in Northeast Oklahoma. The site had ranked consistently near the top of EPA's National Priorities List for over a decade. Seeger Weiss pursued two types of cases on behalf of the residents: claims on behalf of seven minor children who have irreversible brain damage as a result of exposure to the lead left behind by the mining companies; and a prospective class of residents whose properties have been devalued and who have been exposed to this toxic mining waste. These claims were successfully resolved through confidential settlements.

***Chinese-Manufactured Drywall.*** Seeger Weiss is currently pursuing action against Chinese manufacturers of contaminated drywall, which is reported to contain high levels of hydrogen sulfides, compounds that when exposed to prolonged heat or humidity, release sulfur gasses resulting in terrible odors, metal corrosion, and physical injuries. Christopher A. Seeger was named to the Plaintiff's Steering Committee in the Chinese-Manufactured Drywall Products Liability Litigation (MDL No. 2047) by Judge Eldon E. Fallon, United States District Court, Eastern District of Louisiana. This litigation, which includes thousands of claimants asserting property damage and personal injury claims, was centralized in the Eastern District of Louisiana in June 2009 by order of the United States Judicial Panel on Multidistrict Litigation.

Mr. Seeger tried the first defective Chinese-manufactured drywall case in the country, resulting in a \$2.6 million verdict for seven Virginia families. Mr. Seeger also tried the second bellwether case, which determined whether manufacturers were responsible for damages the drywall's toxic fumes cause to plumbing, electronics, and appliances, securing a \$164,049 judgment for the Hernandez family.

With those successes, Mr. Seeger was a key part of a negotiating team that obtained a breakthrough settlement to remediate homes affected by Chinese drywall. The agreement was reached with several key defendants including Knauf Plasterboard Tianjin (KPT), builders, drywall suppliers and their insurers, and other Knauf entities, and totaled over \$1 billion in recoveries. Seeger Weiss remains engaged in litigation against the other, key manufacturer of this contaminated drywall as well as its parent corporations.

### **Asbestos Litigation**

Seeger Weiss handles numerous lawsuits seeking compensation for victims of asbestos and mesothelioma and has recovered millions of dollars for mesothelioma victims nationwide. These cases include a \$3.1 million settlement on behalf of an auto mechanic and Navy veteran who was diagnosed with mesothelioma at age 61, and a \$2 million settlement on behalf of an 80-year-old California man who was diagnosed with mesothelioma after having worked on shipyards in California and across the country.

### **Fair Labor Standards Act Litigation**

Seeger Weiss LLP is engaged in a wide variety of Fair Labor Standards Act (“FLSA”) litigation matters representing aggrieved employees in courts throughout the country. The following are examples of such FLSA actions in which the Firm is involved:

Seeger Weiss served as lead counsel in an action—titled *Schaefer-LaRose v. Eli Lilly & Co.*, which was filed in November 2006 and transferred to the U.S. District Court for the Southern District of Indiana—charging that Eli Lilly & Co. had a common practice of refusing to pay overtime compensation to its pharmaceutical representatives—including Sales Representatives, Senior Sales Representatives, Executive Sales Representatives, Senior Executive Sales Representatives, and those with similar job descriptions and duties—in violation of the federal FLSA. The plaintiffs, Lilly employees who promoted or detailed pharmaceutical products to medical professionals, alleged that Lilly unlawfully characterized its employees as exempt in order to deprive them of overtime pay. In February 2008, the court approved Plaintiffs’ motion to conditionally certify the case as a collective action—the FLSA equivalent of a class action. The class consisted of approximately 400 current and former pharmaceutical representatives employed by Lilly across America.

Seeger Weiss was also co-counsel in a similar federal collective action lawsuit charging that Pfizer Inc. had adopted a common practice of refusing to pay overtime compensation to its

pharmaceutical representatives—including Professional Healthcare Representatives, Therapeutic Specialty Representatives, Institutional Healthcare Representatives, Specialty Healthcare Representatives, Specialty Representative, and Sales Representatives—in violation of the FLSA. That action, *Coultrip v. Pfizer Inc.*, was filed in October 2006 in the U.S. District Court for Southern District of New York. In August 2008, that court granted Plaintiffs’ motion to certify the case as a FLSA collective action.

The FLSA litigations against the various drug-makers were extremely hard fought and led to a split among the circuit courts of appeals, with the Seventh Circuit affirming the district court’s grant of summary judgment in favor of Eli Lilly and the Ninth Circuit similarly holding in favor of defendant SmithKline Beecham, while the Second Circuit held in favor of the plaintiffs in a cognate action brought against Novartis. The claims wound their way up to the U.S. Supreme Court, where a sharply-divided Court affirmed the Ninth Circuit in a 5-4 decision in June 2012. Seeger Weiss partner Stephen A. Weiss and Counsel James A. O’Brien III (who argued the plaintiffs’ appeal in the Seventh Circuit) spearheaded the litigation for Seeger Weiss.

### **Pension and ERISA Litigation**

Seeger Weiss has represented thousands of clients whose employers recklessly tampered with their retirement benefits.

***Schol v. Bakery and Confectionary Union and Industry Int’l Pension Fund.*** Seeger Weiss represented eight former union employees of the Entemann’s Bakery in Bay Shore, New York and two from the now-shuttered Keebler Food Co. plant in Denver, in a class action lawsuit filed against the Bakery and Confectionary Union and Industry International Pension Fund. Many of these and other union workers accepted “buy-out” offers from the company as it downsized its personnel in recent years or accepted management positions, based on the understanding and expectation that they would qualify for a full pension under alternative formulas known as Plan G and Plan C, or more commonly the “Golden 80” and “Golden 90” options, respectively, whereby pension plan participants could qualify for a full pension if their age and combined years of service added up to 80 and 90, respectively. But as of July 1, 2010, Pension Plan participants not already eligible for their full pension under the Golden 80 and 90 formulas lost their right to qualify for those pensions if they were no longer in working in covered (unionized) employment. The result of this amendment was that participants could qualify for a full pension only at age 65 and the only early retirement pension available to them was a reduced benefit that was as much as 60% lower than the Golden 80 and 90 pensions. The *Schol* action—the first one of several filed in the country to challenge the pension plan amendment—was filed in the U.S. District Court for the Eastern District of New York and subsequently transferred to the Southern District of New York (in White Plains, New York), where it was consolidated with a similar action, ***Alcantara v. Bakery and Confectionary Union and Industry Int’l Pension Fund.*** In June 2012, Judge Vincent L. Briccetti granted Plaintiffs’ motion for judgment on the pleadings, agreeing with Plaintiffs that the Pension Plan’s 2010 amendment violated ERISA’s prohibition against the cutback of accrued pension benefits.

Judge Briccetti agreed that the pension Plaintiffs had been promised and were earning credits toward was an accrued benefit, and could not be reduced merely because they had not already reached the required number of total credits of age plus years of service before last July 1, 2010. In May 2014, the U.S. Court of Appeals for the Second Circuit affirmed Judge Briccetti's decision in a published opinion, *Alcantara v. Bakery & Confectionery Union & Indus. Int'l Pension Fund Pension Plan*, 751 F.3d 71 (2d Cir. 2014). The victory secured by Seeger Weiss and its co-counsel has benefitted over 540 Pension Plan participants. The case was successfully prosecuted by Seeger Weiss partner Diogenes P. Kekatos .

*In re Delta Air Lines Inc.* Seeger Weiss served as Lead Counsel in a nationwide ERISA multidistrict litigation centralized by the JPML in the federal court in Atlanta, Georgia before the Honorable Julie E. Carnes. The Firm represented active and retired Delta Air Lines pilots challenging various company pension plan amendments and practices that had caused them to forfeit accrued and vested pension benefits. Plaintiffs challenged, among other things, the methodology employed by Delta in calculating and paying lump sums of pension benefits to pilots, the company's retroactive freeze of a benefit formula previously pegged to increases in investment performance, and automatic reductions of pension benefits of married retirees hired before 1972. In September 2005, the federal court in Atlanta granted final approval to a class action settlement providing for payment of \$16 million in cash to certain retired Delta pilots hired before 1972 or their spouses or beneficiaries and 1 million stock purchase warrants to lump sum pension benefits recipients. The settlement represented a significant recovery in light of Delta Air Lines' rapidly-deteriorating financial plight, with the court's final approval coming only days before Delta filed for bankruptcy protection. Seeger Weiss continued to represent Plaintiffs and class members through a number of twists and turns in the bankruptcy proceedings and beyond, and vigorously fought for and, in 2008, secured the complete and final distribution of all settlement proceeds to the class members.

*In re BellSouth Corp. ERISA Litigation.* Seeger Weiss represented tens of thousands of aggrieved BellSouth management employees in a class action suit against the company and the administrators of the employees' 401K plan, in connection with "Enron-like" breaches of fiduciary duty. These claims stemmed from Defendants' failures to advise employees of investment diversification options and their having created a falsely optimistic outlook in Defendant BellSouth's stock as a prudent investment for the plan. Defendants encouraged employees to invest their earnings in company stock at a time when the company was noting positive operating results, artificially-optimistic revenue growth, and other financial indicators that were found to be materially false, including revelations of accounting irregularities and losses from the company's risky venture into the highly-speculative Latin American wireless phone market. In 2006, after considerable motion practice and discovery in the litigation, the federal court in Atlanta, Georgia, which oversaw the litigation, granted final approval to a class action settlement that provides for, among other things, BellSouth to make matching 401K plan contributions to employees for a three-year period in cash rather than company stock; for

employees during that period to have the same investment options for the company's matching contributions as they have for their own contributions; the availability of certain additional investment choices; and during that period a guaranteed minimum percentage for one of the components in the formula used to determine the company's matching contributions.

### **Insurance Litigation**

For over a decade, the Firm has played a pivotal role in many notable insurance market practices class actions brought against members of the life insurance industry. These nationwide suits resulted from alleged misrepresentations made in connection with the sale of certain life insurance products, including "vanishing premium" policies which, due to market-sensitive dividend projections, required customers to pay premiums on a more prolonged basis than originally expected. The Firm has also reviewed annuity claims in the Claims Review Process.

The firm serves on the Plaintiffs' Executive Committee in the multidistrict *Aetna UCR Litigation* (MDL No. 2010), pending before Judge Katherine Hayden in the United District Court for the District of New Jersey. That litigation raises ERISA and other claims against Aetna, Ingenix, and UnitedHealth Group pertaining to reimbursement rates for out-of-network health care services. The insurers were reported to have knowingly created and used flawed data – a rigged database created by Ingenix, which was once the largest provider of healthcare billing information in the country and is now a subsidiary of UnitedHealth Group – to produce reimbursements often far below genuinely usual, customary, and reasonable rates.

In 1995, the firm was appointed as the national Policyowner Representative in *Wilson v. New York Life Insurance Company* sales practices litigation, the first settlement of a nationwide class action relating to the vanishing premium insurance product. *Wilson* involved claims brought by a class of approximately 3.2 million New York Life policyowners who suffered damages as the result of allegedly improper sales practices by the company and its agents, including the alleged failure to properly disclose the market-sensitivity of the company's premium payment projections. As Policyowner Representative, the firm served as the principal advocate on behalf of members of the class who elected to pursue individual claim relief before independent appeal boards.

Following its appointment in the *New York Life* litigation, the firm served as the Attorney Representative in the *In re Prudential Life Insurance Sales Practices Litigation*. In that role, the firm, and others serving under its auspices, represented individual class members in connection with over 53,000 separate claim arbitrations.

In addition to the *New York Life* and *Prudential* matters, the firm has served as the Policyowner Representative, Attorney Representative, or Claim Evaluator in the following

insurance and annuity sales practices class actions: *Ace Seat Cover Company v. The Pacific Life Insurance Co.*; *Benacquisto v. American Express Financial Corporation*; *Duhaime v. John Hancock Mutual Life Ins. Co.*; *Garst v. The Franklin Life Insurance Co.*; *In re General American Life Insurance Co. Sales Practices Litigation*, *In re Great Southern Life Insurance Co. Sales Practices Litigation*; *Grove, et al. v. Principal Mutual Life Insurance Co.*; *Joseph F. Kreidler, et al. v. Western-Southern Life Assurance Co.*; *Lee v. US Life Corp.*; *In re Lutheran Brotherhood Variable Products Co. Sales Practices Litigation*; *Manners and Philip A. Levin v. American General Life Insurance Co.*; *In re Manufacturers Life Insurance Co. Premium Litigation*; *In re Metropolitan Life Insurance Co. Sales Practices Litig.*; *Moody v. American General Life and Accident Insurance Co.*; *In re New England Mutual Life Insurance Company Sales Practices Litigation*; *Roy v. Independent Order of Foresters*; *Murray v. Indianapolis Life Insurance Co.*; *Snell v. Allianz Life Insurance Company of North America*; *In re Sun Life Assurance Company of Canada Insurance Litigation*; *Varacallo, et al. v. Massachusetts Mutual Life Insurance Co.*; and *Wemer v. The Ohio National Life Insurance Co.*

### **Nursing Home Litigation**

Seeger Weiss LLP has served as counsel in over two dozen personal injury and wrongful death actions on behalf of victims of severe nursing home abuses and neglect. These cases, both pending and settled, were litigated in various state courts throughout the country and have earned the Firm a national reputation in the area of nursing home litigation.

### **Personal Injury Litigation**

The Firm maintains a highly-selective docket of matters involving serious personal injury or wrongful death. Unlike many personal injury practices in which attorneys may handle hundreds of slip-and-fall matters at a time, the Firm's philosophy is to allow its attorneys to concentrate on a smaller number of "high-end" catastrophic injury cases, thereby permitting the highest quality of attention and service available in the field.

***In re National Football League Players' Concussion Injury Litig.*** Christopher Seeger served as co-lead counsel to NFL players and lead negotiator in the NFL concussion litigation, multidistrict litigation involving thousands of lawsuits brought by former NFL players that the JPML ordered centralized in the Eastern District of Pennsylvania), in which the players alleged that the League had suppressed information concerning the linkage between repeated head trauma and serious neurological ailments. The litigation has gained significant media attention.

Judge Brody appointed Seeger Weiss founding partner Christopher A. Seeger as Co-Lead counsel for the Plaintiffs, and several other Seeger Weiss partners and other attorneys, including David R. Buchanan and TerriAnne Benedetto, have been actively involved in the litigation. The settlement was achieved after many months of spirited negotiations led by Mr. Seeger, including before a court-appointed mediator.

The settlement will provide an uncapped Monetary Award Fund for 65 years which will pay all valid claims for certain neuro-cognitive impairments, with individual awards of up to \$5 million; \$75 million to fund a Baseline Assessment Program Fund that will offer eligible retired NFL players a baseline neuropsychological and neurological examination to determine the existence and extent of any cognitive deficits, and in the event retired players are found to suffer from moderate cognitive impairments certain supplemental benefits in the form of specified medical treatment and/or evaluation, including, as needed, counseling and pharmaceutical coverage; and a \$10 million Education Fund to fund safety and injury-prevention programs for football players.

The U.S. Court of Appeals rebuffed the effort of a small group of objectors to challenge the preliminary approval determination in an opinion published at 775 F.3d 570. After extensive proceedings, culminating in a final approval hearing in November 2014, Judge Brody approved the settlement in an exhaustive opinion issued in April 2015 (published at 307 F.R.D. 351), agreeing with Seeger Weiss and its co-counsel that the objections to the settlement lodged by a small percentage of class members lacked merit. In May 2016, a U.S. Court of Appeals for the Third Circuit panel unanimously affirmed Judge Brody's final approval determination in a published opinion and denied rehearing *en banc*. And finally, in December 2016, the United States Supreme Court denied a petition for certiorari relating to the settlement. The denial of certiorari removed the final obstacle to implementation of the landmark settlement.

In addition to Christopher Seeger, partners David Buchanan and TerriAnne Benedetto and counsel Scott Alan George are responsible for this litigation.

***Wildcats Bus Crash Litigation.*** In June 2009, Seeger Weiss was lauded for its staunch representation of 11 victims and their families in the Wildcats Bus Accident Case, after the defendants' agreed during trial to accept 100% of the responsibility for the tragic crash. The horrific accident, which resulted in four fatalities and countless other serious injuries, occurred when a Coach Canada bus carrying an "under 21" Canadian female hockey team named the Wildcats veered off of Interstate 390 near Rochester, New York and struck a parked tractor-trailer on the shoulder of the roadway. Led by Christopher Seeger, Moshe Horn and Marc Albert, the Seeger Weiss team took more than 20 depositions, reviewed thousands of pages of documents and retained multiple experts in preparation for the trial in the Supreme Court,

Livingston County. Seeger Weiss represented a total of eleven victims of the accident and their families. In March 2010, a jury awarded \$2.25 million to three of the victims and their families, who were represented by partners Moshe Horn and Marc Albert. Following this verdict, the Firm successfully negotiated a global settlement of \$36 million on behalf of all of the Wildcats bus accident victims.

***Other Personal Injury Matters.*** Partner Christopher A. Seeger represented a six-year-old boy and his family in a medical malpractice action against a hospital for failing to timely diagnose meningitis, which resulted in severe brain damage to the boy. The case settled for \$3.25 million in the Supreme Court of Kings County.

Partners Christopher A. Seeger and Stephen A. Weiss represented the wife and two minor children of a 41-year-old successful technologist who was tragically killed when a boat upon which he was a passenger collided with the Greenport Breakwater, a 1,000 foot long structure constructed of large boulders in Greenport, Long Island. The victim was thrown from the boat upon impact and ultimately drowned. This case was settled for \$2.9 million.

Seeger Weiss secured a \$1.4 million verdict for client Debbie D'Amore in her case against Met Life and American Building Maintenance for serious injuries which she suffered as a result of a fall on July 13, 2004 at the Met Life Building in New York City. Ms. D'Amore was vigorously represented by Christopher Seeger and Marc Albert of Seeger Weiss LLP over the course of the week-long trial held before the Honorable Judge Michael Stallman of the Supreme Court, New York County. The jury deliberated over a two day period and returned with a \$1.4 million verdict, \$1 million of which was awarded for Ms. D'Amore's past pain and suffering, with \$400,000 awarded for future pain and suffering. The jury found defendants Met Life and its cleaning contractor, American Building Maintenance responsible for the fall and the serious injuries which Ms. D'Amore sustained as a result. Ms. D'Amore suffered a tri-malleolar ankle fracture in the fall which required multiple surgeries, including ultimately, an ankle fusion.

### **Antitrust Litigation**

Seeger Weiss LLP has been involved in nationally-prominent antitrust litigation, where it has recently expanded its presence.

*Compact Disc Litigation.* Seeger Weiss was involved in this consumer antitrust litigation, which sought damages against the wholesale sellers of pre-recorded music sold in the form of compact discs. The Plaintiffs alleged that the Defendants had conspired to artificially inflate the retail prices of compact discs in violation of the Sherman Act. The litigation was settled favorably in the United States District Court for the District of Maine, where the litigation had been centralized for coordinated pretrial proceedings by the JPML.

*McDonough v. Toys “R” Us, Inc.* Seeger Weiss represents a proposed class of consumers and smaller retailers of baby and juvenile products against Babies “R” Us (an affiliate of the Toys “R” Us chain) and several manufacturers of baby products, including strollers, bedding, car seats, and other items, in consolidated actions pending in the U.S. District Court for the Eastern District of Pennsylvania (Philadelphia) before the Honorable Anita B. Brody. The Plaintiffs allege that Babies “R” Us conspired with the manufacturers of baby products in a scheme whereby the manufacturers required other retailers to sell their products at prices above those being charged by Babies “R” Us. As a result, Babies “R” Us was able to monopolize the retail market, resulting in consumers being forced to pay more for baby products. The district court denied the Defendants’ motion to dismiss the consolidated complaints. Briefing of Plaintiffs’ motion for class certification has been completed, and a decision from the court is expected shortly.

*Monsanto Genetically-Modified Soybean and Corn Seed Litigation.* The Firm serves as Co-Lead Counsel in *Schoenbaum v. E.I. DuPont de Nemours and Company*, thirteen consolidated proposed class actions against Monsanto Company, E.I. DuPont de Nemours and Company, and Pioneer Hi-Bred International Inc. currently pending before the Honorable E. Richard Webber in the U.S. District Court for the Eastern District of Missouri (St. Louis). These lawsuits, brought on behalf of farmers who purchased genetically-modified Roundup Ready soybean and YieldGard corn seeds, allege violations of federal and state antitrust, state unfair trade practices statutes, and common law claims for unjust enrichment. The claims stem from the defendants’ conspiracy to fix the price of these seeds through the imposition of “technology fees,” ostensibly for the purpose of allowing Monsanto to recoup its research and development costs of those seed products but which, in reality, capitalized on and exploited Monsanto’s development of those seeds in order to monopolize -the market for those seeds and thereby charge and collect premium prices. After extensive briefing, both pre- and post-argument, and an all-day hearing on the Defendants’ motion to dismiss the Plaintiffs’ Master Consolidated Amended Action Complaint, the district court sustained most of Plaintiffs’ claims. Following spirited motion practice, which included discovery disputes and the Plaintiffs’ motion for leave to file an amended complaint in order to, among other things, assert additional claims against Monsanto for misuse of patent, Plaintiffs reached individual settlements with all of the

defendants. The settlements will provide a significant recovery to each of the more than two dozen named Plaintiffs.

*In re Packed Ice Antitrust Litigation.* The Firm represents direct purchasers of packaged ice in a proposed class action brought against the five American and Canadian manufacturers and distributors who possess the dominant share of the \$2.5 billion per year packaged ice industry in North America. The Firm has been appointed Co-Chair of the Class Certification Committee in that litigation. Plaintiffs allege that Defendants have violated the antitrust laws by conspiring to fix prices and allocate market share for packaged ice. The U.S. Justice Department's Antitrust Division commenced an investigation into the packaged ice industry sometime prior to March 2008 and grand jury subpoenas were issued to the Defendants. The cases from around the country have been centralized in the U.S. District Court for the Eastern District of Michigan, and a hearing will be held in March 2009 respecting the selection of Lead Counsel.

*In re Rail Freight Fuel Surcharge Antitrust Litigation.* The Firm represents shipping customers in a proposed class action brought against the country's four major railroads for antitrust violations. The Defendants in this multidistrict litigation, pending in the U.S. District Court for the District of Columbia, are alleged to have conspired to fix the prices of "rail fuel surcharges" above competitive levels, causing the Plaintiffs to pay exorbitant rates for unregulated rail freight transportation services—rates that were unrelated to fuel costs. The district court denied the Defendants' motions to dismiss the direct purchasers' claims and the indirect purchasers' federal antitrust claims. The district court held a two-day hearing on Plaintiffs' motion for class certification in October 2010 and, in June 2012, issued an exhaustive 145-page decision, granting the motion. In August 2013, the D.C. Circuit remanded the case for further proceedings, principally in light of the Supreme Court's then-recent decision in *Comcast Corp. v. Behrend*, 133 S. Ct. 1426 (2013). Further proceedings have been conducted on remand, including additional expert witness discovery and voluminous briefing. The district court will soon hold a multi-day hearing on the class certification motion. Seeger Weiss serves as Co-Chair of the Law and Briefing Committee.

### **Other Commercial Litigation**

In addition to its diverse complex litigation practice, Seeger Weiss LLP is engaged in a wide variety of commercial litigation matters representing individuals and businesses in state and federal courts throughout the country. The following are examples of such commercial actions in which the Firm is involved:

*Automobile Dealership Warranty Litigation:* The Firm represents dozens of franchised automobile dealerships located throughout New York State in separate actions against the "Big Three" automobile manufacturers — Ford, General Motors, and DaimlerChrysler. These actions

are pending in federal court in New York and are based on the manufacturers' failure to comply with the New York State Vehicle & Traffic Law § 465. These actions assert claims that in violation of New York State statute and the franchise agreement that governs the relationship between the dealerships and the factories, the manufacturers have failed to adequately reimburse the dealerships for parts used in performing repairs pursuant to the manufacturers' warranties. In addition to the three federal court actions, the Firm also represents close to a dozen franchised Chrysler dealerships in arbitrations pending before the American Arbitration Associations asserting the same claims.

*Arzoomanian v. British Telecommunications PLC.* The Firm represented a small businessman who had brokered a multi-million dollar global telecommunications deal between two multi-national corporations, British Telecommunications PLC ("BT") and Unilever PLC, and then was cut out of the deal by the companies and refused his fee. In 2004, the Firm successfully overcame BT's motion to dismiss the action on *forum non conveniens* grounds (in which BT argued that the action should not have been brought in the United States). After extensive discovery—both in the United States and overseas—and further motion practice, the case was settled in 2007. This is one of a number of cases that the Firm has handled on behalf of small businesses which have been wronged by behemoth corporations.

*In re ETS Praxis Principles of Learning and Teaching: Grades 7-12 Litigation* is a consolidated national class action on behalf of more than 4,100 prospective teachers as to whom ETS negligently and wrongfully reported failing scores on the Praxis Principles of Learning and Teaching test for grades 7 through 12 (the "PPLT" test) during the period from January 2003 through April 2004. The PPLT is a test that is required in many states in order for teachers to obtain their teaching certification. In December 2004, the various class actions filed around the country were transferred to the Honorable Sarah Vance of the United States District Court for the Eastern District of Louisiana (New Orleans). Judge Vance appointed Seeger Weiss LLP to the position of State Court Litigation Liaison Counsel. This case was settled in 2006 for \$11.1 million.

*HMO Litigation.* The Firm was counsel to individual doctor-members of the Connecticut State Medical Society ("CSMS") and the Medical Society of the State of New York ("MSSNY") in connection with various putative statewide class actions filed in Connecticut and New York state courts, respectively against several national health management organizations (HMOs). The class members sought damages resulting from the defendants' improper, unfair and deceptive practices designed to deny, impede or delay lawful reimbursement to CSMS and MSSNY physicians which rendered necessary healthcare services to members of the HMO managed care plans. The case was successfully resolved.

*VOIP, Inc. v. Google, Inc.* The Firm represents VOIP, Inc. in a trade secrets and breach of contract action filed in New York State Supreme Court in February 2011. The suit claims that Google developed its "Click to Call" feature, which allows users to make Internet phone calls by just clicking on a link, using misappropriated VoIP trade secrets.



## Selected Attorney Biographies

### *Partners*

#### **Christopher A. Seeger**

*Position:* Founding Member Co-Managing Partner.

*Admitted:* New Jersey, 1990; New York, 1991;

U.S. District Court for the Southern District of New York and U.S. District Court for the District of New Jersey, 1991; U.S. District Court for the Eastern District of New York, 2000; U.S. District Court for the District of Colorado, 2011.

*Education:* Hunter College of the City University of New York (B.A., *summa cum laude*, 1987); Benjamin N. Cardozo School of Law (J.D., *magna cum laude*, 1990).

*Honors:* Managing Editor, *Cardozo Law Review*.

*Author:* "The Fixed Price Preemptive Right in the Community Land Trust Lease," 11 *Cardozo Law Review* 471, 1990; "Developing Assisted Living Facilities," *New York Real Estate Law Reporter*, Volume XII, Number 10, August 1998.

*Lecturer:* "The Use of ADR in Class Actions and Mass Torts," New York University School of Continuing and Professional Studies, October 13, 2000.

*Director:* American Friends of Rabin Medical Center, Inc.; Benjamin N. Cardozo School of Law, Yeshiva University, 1999-2000.

*Co-Chair:* Cardozo Law School Alumni Annual Fund, 1998-2000.

*Awards:* Best Lawyers in America, 2006, 2012; New York Super Lawyer, 2006-2013; New Jersey SuperLawyers, 2006-2014; Law Dragon 500, 2007-2013; Best Lawyers, Mass Tort Litigation; Hunter College Hall of Fame, 2007; Cardozo Alumnus of the Year, 2009.

*Member:* The Association of the Bar of the City of New York; New Jersey State Bar Association; Board of Advisors, *New York Real Estate Law Reporter*; Annual Fund Committee, 1999-present; American Bar Association; American Association for Justice, Trail Lawyers for Public Justice; Fellow, American Bar Foundation.

*Practice Areas:* Consumer Fraud, Products Liability, Antitrust; Insurance, Class Actions, Mass Torts.

**Stephen A. Weiss**

*Position:* Founding Member and Co-Managing Partner.

*Admitted:* New York, 1991; U.S. District Courts for the Southern and Eastern Districts of New York, 1991.

*Education:* Brandeis University (B.A., 1986); Benjamin N. Cardozo School of Law (J.D., 1990).

*Honors:* Business Editor, *Cardozo Law Review*, 1989-1990.

*Author:* "Environmental Liability Disclosure Under the Federal Securities Law," *Law Education Institute, Inc.*, 1998; "Liability Issues and Recent Case Law Developments Under CERCLA, New Environmental Issues of Liabilities of Government Agencies & Government Contractors," *Federal Publications, Inc.*, Chapter 4, 1995; "New York Proposes Legislation to Restrict Shareholder Derivative Suits," *Insights*, Vol. 8, No. 3, p. 24, 1994; "Suretyship as Adequate Protection Under Section 361 of the Bankruptcy Code," *Cardozo Law Review*, Vol. 12, p. 285, 1990.

*Director or Officer:* Benjamin N. Cardozo School of Law, Yeshiva University, 2000-present; New York State Trial Lawyers Association, 2012-present; New York State Academy of Trial Lawyers, Vice President, 1<sup>st</sup> Department, 2012-2013.

*Co-Chair:* Cardozo Law School Alumni Annual Fund, 1998-2000.

*Awards:* International Humanitarian Achievement Award, Shaare Zedek Medical Center, 2002; Trial Lawyer of the Year, Finalist, Public Justice Foundation, 2010.

*Member:* American Association for Justice; American Bar Association; Badge of Honor Memorial Foundation, General Counsel, 2008-present.

*Practice Areas:* Complex Litigation, including Antitrust, Consumer, Employment, Environmental, Insurance, Products Liability, Pharmaceutical, Qui Tam and Securities Litigation.

**David R. Buchanan**

*Position:* Member.

*Admitted:* New Jersey, 1993; New York, 1994; U.S. District Court for the District of New Jersey, 1993; U.S. District Court for the Southern District of New York, 1994; U.S. District Court for the Eastern District of New York, 1999.

*Education:* University of Delaware (B.S., 1990); Benjamin N. Cardozo Law School (J.D., *magna cum laude*, 1993)

*Honors:* Samuel Belkin Scholar, 1993; Member, 1991-93, and Administrative Editor, 1992-93, *Cardozo Law Review*.

*Awards:* Best Lawyers in America, 2007, 2012; New York Super Lawyer, 2007; Legal 500; Law Dragon 3000

*Member:* American Bar Association (Litigation, Intellectual Property sections).

*Practice Areas:* Complex and Mass Tort Litigation, including Antitrust, Consumer, Environmental, Insurance, Intellectual Property, Pharmaceutical, Products Liability, and Securities Litigation.

**Diogenes P. Kekatos**

*Position:* Member.

*Admitted:* New York, 1984; U.S. District Courts for the Southern and Eastern Districts of New York, 1984; U.S. Courts of Appeals for the Second, Third, Seventh, Eighth, Ninth, and Tenth Circuits, 1985, 2008-14; U.S. Supreme Court, 1987.

*Education:* Columbia College, Columbia University (B.A., Dean's List all 8 semesters, 1980); Brooklyn Law School (J.D., 1983).

*Honors:* Named to New York *Super Lawyers*, 2013-16; recipient of letters of commendation from the U.S. Court of Appeals Staff Counsels and from Attorney General Janet Reno for outstanding performance and high level of professionalism in appellate mediation, 1999.

*Experience:* Special Assistant U.S. Attorney, 1986-88, and Assistant U.S. Attorney, 1988-2000; Office of the United States Attorney for the Southern District of New York, and Chief, Financial Litigation Unit, 1988-90; and Immigration Unit, 1990-2000. Has argued some 130 appeals and motions in the U.S. Court of Appeals for the Second Circuit, including a successful *en banc* rehearing, with scores of cases resulting in published opinions; and has handled hundreds of appellate mediations.

*Awards:* Executive Office for U.S. Attorneys Director's Award for Superior Performance as an Assistant U.S. Attorney, 1996; Award from U.S. Attorney Mary Jo White for Exceptional Achievement, 1995; and numerous other award nominations.

*Practice Areas:* Class Action and Complex Litigation, Federal Civil Litigation, Federal Appellate Litigation.

**Moshe Horn**

*Position:* Member.

*Admitted:* New York and New Jersey, 1994; U.S. District Courts for the Southern and Eastern Districts of New York.

*Education:* George Washington University (B.A., 1989); Benjamin N. Cardozo School of Law (J.D., 1993).

*Honors:* Member of Championship team in a national Securities Law Moot Court competition at Fordham University, 1993; Winner tri-state trial competition, runner up Best Advocate, 1993.

*Experience:* Assistant District Attorney, New York County, 1993-2002 (where he held numerous supervisory positions and tried 50 jury cases); Senior Associate, Kaye Scholer LLP, 2002-2004. Member of the Firm's trial team that achieved a \$47.5 million verdict for Vioxx-related cardiovascular injury in *Humeston v. Merck & Co.* in 2007 in the New Jersey Superior Court, Atlantic County. Member of the Firm's trial team that achieved a \$1.4 million verdict for Currently an Adjunct Professor of Law at Benjamin N. Cardozo School of Law, teaching "Introduction to Trial Advocacy." Has previously taught "Advanced Trial Advocacy" and "Mass Torts," and served as advisor and coach to the law school's Mock Trial Team.

*Member:* American Bar Association, American Association for Justice, New York State Trial Lawyers Association.

*Practice Areas:* Pharmaceutical and Medical Device Litigation, Personal Injury Litigation, Complex Litigation, Asbestos Litigation, Criminal Defense.

### **Michael L. Rosenberg**

*Position:* Member.

*Admitted:* New Jersey, 1989; U.S. District Court, District of New Jersey, 1989; New York, 1990.

*Education:* Rutgers-Camden School of Law (J.D., 1989), University of Delaware (B.A. 1986).

*Experience:* Has been with the Firm since its 1999 inception. Has negotiated individual settlements on behalf of hundreds of clients injured by pharmaceutical products, including over-the-counter medicines containing PPA and the anti-cholesterol drug Baycol. Played an integral role in the settlement of personal injury claims against the manufacturers of Dexatrim, a PPA-containing weight loss product, on behalf of 500 stroke victims who claimed that their strokes were caused by Dexatrim. The settlement is valued at approximately \$200 million. Serves as a member of the Delaco Trust Advisory Committee tasked with overseeing the administration of the settlement. Was a member of the trial team that won a \$2.6 million verdict for the Plaintiff in *McCarrell v. Hoffman-La Roche, Inc.*, in New Jersey Superior Court, Atlantic County.

*Member:* American Bar Association and American Association for Justice.

*Practice Areas:* Complex and Mass Tort Litigation, including Pharmaceutical, Products Liability and Insurance Litigation.

### **Terrienne Benedetto**

*Position:* Member.

*Admitted:* Pennsylvania, 1990; New Jersey, 1991; U.S. District Courts for the District of New Jersey, 1991; Eastern District of Pennsylvania, 1991; Western District of Wisconsin, 1993; New York Supreme Court, Appellate Division, Third Department, 2009; and New York Superior Court, 2009.

*Education:* Franklin & Marshall College (B.A., 1986); Villanova University (J.D., 1990).

*Honors:* Member of the *Villanova Law Review*; Law Clerk to the Honorable Jacob Kalish of the Commonwealth Court of Pennsylvania, and the Honorable William W. Vogel of the Montgomery County Court of Common Pleas.

*Author:* "Database Technology: A Valuable Tool for Defeating Class Action Certification," published in *Pennsylvania Law Weekly*, Vol. XX, No. 47, November 24, 1997, and *Mealey's Litigation Report: Lead*, Vol. 7, No. 14, April 24, 1998.

*Experience:* At the beginning of her career as a class action litigator, was co-counsel for defendants in *Reilly v. Gould Inc.*, 965 F. Supp. 588 (M.D. Pa. 1997); *Dombrowski v. Gould Electronics Inc.*, 954 F. Supp. 1006 (M.D. Pa. 1996); and *Ascher v. Pennsylvania Insurance*

*Guaranty Association*, 722 A.2d 1078 (Pa. Super. 1998). Thereafter, joined nationally recognized plaintiffs' firms where she represented individuals, small businesses and the Office of the Attorney General for the Commonwealth of Pennsylvania in numerous antitrust and consumer fraud class actions, many resulting multimillion dollar settlements, including *In re Lupron Marketing and Sales Practices Litigation*, MDL No. 1430 (D. Mass.); *In re Pharmaceutical Industry Average Wholesale Price Litigation*, MDL No. 1456 (D. Mass.); *In re Graphite Electrodes Antitrust Litigation*, No. 2:97-CV-4182 (E.D. Pa.); *In re Magnetic Audiotape Antitrust Litigation*, No. 99 Civ. 1580 (S.D.N.Y.); *In re Vitamins Antitrust Litigation*, MDL No. 1285 (D.D.C.); *In re Maltol Antitrust Litigation*, No. 99 Civ. 5931 (S.D.N.Y.); *In re Compact Disc Antitrust Litigation*, MDL No. 1216 (C.D. Cal.); *In re Flat Glass Antitrust Litigation*, MDL No. 1200 (W.D. Pa.); and *In re Carpet Antitrust Litigation*, MDL No. 1075 (N.D. Ga.).

*Member*: Pennsylvania Trial Lawyers Association, Philadelphia Bar Association.

*Practice Areas*: Complex Commercial and Class Action Litigation, including Consumer Protection, Antitrust, Products Liability, and Securities Litigation.

### *Counsel*

#### **James A. O'Brien III**

*Position*: Counsel.

*Admitted*: New York, 2000; Massachusetts, 1988; U.S. District Court, District of Massachusetts, 1991.

*Education*: University of Massachusetts at Amherst (B.A., 1984); New England School of Law (J.D., 1988).

*Experience*: Attorney Advisor, U.S. Department of Labor, 1988-89; Assistant District Counsel, U.S. Immigration and Naturalization Service, 1990; Special Assistant United States Attorney, 1990-2001, Southern District of New York.

*Practice Areas*: Class Action and Complex Litigation, Federal Civil Litigation, Federal Appellate Litigation.

#### **Scott Alan George**

*Position*: Counsel.

*Admitted*: Pennsylvania and New Jersey, 1998; U.S. District Courts for the Eastern District of Pennsylvania and the District of New Jersey, 1998; U.S. Court of Appeals for the Third Circuit, 1998; New York (2010); U.S. District Court for the Northern District Illinois (2012); U.S. District Court for the Eastern District of Michigan (2016).

*Education*: Stevens Institute of Technology (1984); Goddard College (B.A., 1989); Temple University School of Law (J.D., *cum laude*, 1998).

*Author*: Spotlight on Cost-Shifting of E-Discovery, Law 360, Nov 6, 2012 (with Jonathan Shub)

*Experience:* In addition to providing occasional lectures at Temple University and litigation seminar on class actions, he has been in the leadership of many complex cases and class actions, including: *Pro et al. v. Hertz Equipment Rental Corporation*, 06-3830 (D.N.J.) (appointed co-lead for class settlement); *In re Whirlpool Corporation Front Loading Washer Products Liability Litigation*, MDL 2001 (N.D. Oh.) (member of the Plaintiff Steering Committee); *Alexander v. Coast Professional Services*, 2:12-cv-01461 (E.D.Pa.) (appointed co-Class Counsel); *Taha v. Bucks County*, 2:12-cv-06867 (E.D.Pa.) (appointed class counsel); and *In re Ford Fusion and CMax Fuel Economy Litigation*, MDL 2450 (S.D.N.Y) (Plaintiffs Executive Committee). Additionally, he has been a key member in litigation such as: *In re Volkswagen "Clean Diesel" Marketing, Sales Practices and Products Liability Litigation*, MDL 2672 (N.D.Ca.); *In re Caterpillar, Inc., C13 and C15 Engine Products Liability*. MDL 2450 (D.N.J.); *In re National Football League Players' Concussion Injury Litigation*, MDL 2323 (E.D.Pa.); *In re Chinese Manufactured Drywall Products Liability Litigation*, MDL 2047 (E.D.La.); *In re Vonage Marketing and Sales Practices Litigation*, MDL 1862 (D.N.J.),

*Honors:* Member of the Moot Court Honor Society.

*Practice Areas:* Complex and Class Action Litigation.

### **Christopher Van de Kieft**

*Position:* Counsel.

*Admitted:* New York, 2003; U.S. District Courts for the Southern and Eastern Districts of New York, 2005.

*Education:* Johns Hopkins University (B.A., 1990), Benjamin N. Cardozo School of Law (J.D., 2002).

*Honors:* Editor-in-Chief, *Cardozo Law Review*; recipient of Cardozo Law School's prestigious Samuel Belkin Award, awarded each year to one graduating student for "exceptional contribution to the growth and development of the Law School."

*Experience:* Prior to attending law school, served in the U.S. Army from 1990-98, attaining rank of Captain. Prior to joining the Firm was an associate at Fried Frank Harris Shriver & Jacobson.

*Practice Areas:* Pharmaceutical and Medical Device Mass Tort Litigation; Class Action Litigation.

### *Associates*

#### **Parvin K. Aminolroaya**

*Position:* Associate.

*Admitted:* New Jersey, 2008; New York, 2009; U.S. District Court, District of New Jersey, 2008.

*Education:* Fordham University (B.A., 2004, with honors); Benjamin N. Cardozo School of Law (J.D., 2008).

*Honors:* Named to New York Rising Stars *Super Lawyers*, 2014-16; Cardozo Alumni Association Young Leadership Award, 2016; Jacob Burns Medal awarded for outstanding contribution to Moot Court; Benjamin N. Cardozo Writing Award; Editorial Board, Moot Court Honor Society; First Place Oralist Team and First Place Brief, Regional Competition of the New York City Bar Association, National Moot Court Competition, 2007; First Place Brief and Second Place Oralist Team, Fordham Irving Kaufman Securities Moot Court Competition, 2007.

*Member:* Executive Committee, Benjamin N. Cardozo School of Law Alumni Association; Vice-Chair, Benjamin N. Cardozo School of Law Black Asian Latino Alumni Group Association, 2012-2016.

*Practice Areas:* Complex Litigation, including Antitrust, Consumer, Products Liability, Pharmaceutical, and Securities Litigation.

**Asim M. Badaruzzaman**

*Position:* Associate.

*Admitted:* New Jersey, 2010.

*Education:* Rutgers University (B.A., with honors, 2006); Seton Hall University School of Law (J.D., 2009).

*Honors:* Best Brief Author for Appellate Advocacy, 2008; William Paterson Award, New Jersey Lawyer Chapter of the American Constitution Society.

*Experience:* Marketing Contractor at Anadigics, Inc., 2006-2007; Research Assistant to Professor Mark P. Denbeaux, 2007; Legal Intern to Professor Meetal Jaine at the Center for Social Justice at Seton Hall, 2007; Intern at the Civil Litigation Clinic, 2009; Law clerk at Seeger Weiss LLP, 2008; Associate at Seeger Weiss LLP, 2009.

*Member:* American Bar Association, New Jersey State Bar Association.

*Practice Areas:* Pharmaceutical Drug Injury, Medical Device Liability, Mass Tort Litigation.

**Asa R. Danes**

*Position:* Associate.

*Admitted:* New York State, 2004; United States District Courts for the Eastern and Southern Districts of New York, 2006 and Western District of Tennessee, 2009.

*Education:* Oberlin College (B.A., 1994); Brooklyn Law School (J.D., *cum laude*, 2001).

*Honors:* Notes and Comments Editor, *Brooklyn Journal of International Law*.

*Experience:* Associate at Paul, Hastings, Janofsky & Walker LLP; Law Clerk to the Honorable James T. Trimble, Jr. in the United States District Court for the Western District of Louisiana.

*Practice Areas:* Complex personal injury matters; mass tort, consumer fraud and securities class actions; shareholder derivative and corporate governance disputes and other commercial litigation.

**Michael C. Hughes**

*Position:* Associate.

*Admitted:* New Jersey, 2013; U.S. District Court, District of New Jersey, 2013, New York, 2014.

*Education:* Seton Hall University (B.A., 2009); Seton Hall University School of Law (J.D., 2013).

*Experience:* Law Clerk and Contract Attorney at Seeger Weiss, LLP; Legal Extern to Hoboken Mayor Dawn Zimmer and Office of Corporation Counsel; Legal Intern at Meadowlands Hospital Medical Center In-House Counsel; Law Clerk at Blume Donnelly Fried Forte Zerres & Molinari (formerly Blume Goldfaden Berkowitz Donnelly Fried & Forte, P.C.)

*Honors:* Certificate, J.D. Program Health Law Concentration

*Practice Areas:* Pharmaceutical Injury Litigation, Medical Device Litigation, Mass Tort Litigation.

### **James J. Leavy**

*Position:* Associate.

*Admitted:* New Jersey, 2008; U.S. District Court, District of New Jersey, 2008.

*Education:* University of Phoenix (B.A., 2005, with honors 3.89/4.00); Seton Hall University School of Law (J.D., 2008).

*Honors:* Interscholastic Moot Court Board, Member; 2008 Lefkowitz National Moot Court Championships, 3<sup>rd</sup> Place; 2008 Lefkowitz National Moot Court Eastern Regional Champion & Best Brief Award; 2007 BMI Entertainment and Media Law Moot Court Competition, Quarterfinalist.

*Practice Areas:* Mass Torts and Pharmaceutical Product Liability Litigation.

### **Perpetua N. MgBada**

*Position:* Associate.

*Admitted:* New York, 1995; Nigeria 1984.

*Education:* University of Maiduguri, Bornu State (LL.B., 1983); University of Nigeria, Enugu State (LL.M., 1998).

*Experience:* Works on various Mass Torts and Pharmaceutical Product Liability cases, including information management, maintaining spreadsheets, case reviews, all intake related functions, reviewing medical records, preparing settlement enrollment materials, reviewing cases for ineligibility and points, preparing appeals, preparing extraordinary injury claims and uploading relevant documents to the portal, as well as handling client contact.

*Practice Areas:* Mass Torts and Pharmaceutical Product Liability.

**Andrea Mercedes Pi-Sunyer**

*Position:* Associate.

*Admitted:* New York, 1996.

*Education:* Oberlin College (B.A., 1987); Northeastern University School of Law (J.D., 1994).

*Experience:* Processes settlements obtained in the firm's pharmaceutical injury practice; Has worked with hundreds of clients in this process and has guided them through complex issues, including helping them decide whether a structured settlement or a Special Needs Trust is most appropriate for their needs; Has significant experience negotiating with Medicare and Medicaid when clients have obtained relief in pharmaceutical injury cases and works extensively with co-counsel in states throughout the country to obtain court approval for certain settlements involving minors, estates, or guardianships; Has more than one hundred hours of training and practicum in both Basic Mediation Training and Divorce Mediation.

*Practice Areas:* Pharmaceutical Injury Litigation, focusing on settlement effectuation matters involving the Firm's clients.

**Denise K. Stewart**

*Position:* Associate.

*Admitted:* Florida, 1982 (currently inactive); New Jersey, 1990; U.S. District Court for the District of New Jersey, 1990.

*Education:* Monmouth University (B.A., 1972); University of Miami School of Law (J.D., 1982).

*Experience:* Prior to joining the Firm at its inception in 1999, litigated personal injury and professional malpractice cases in Florida. Has been involved in state and federal complex mass tort and multidistrict litigation, including New Jersey litigation against Hoffmann-La Roche relating to gastrointestinal injuries stemming from use of the prescription acne drug Accutane; New Jersey litigation against Ortho-McNeil Pharmaceutical involving strokes, deep vein thromboses, and other thrombotic events related to use of the birth control patch Ortho Evra; and a nationwide settlement involving individuals who suffered strokes caused by use of over-the-counter products containing PPA.

*Practice Areas:* Pharmaceutical Product Liability Litigation.

**David R. Tawil**

*Position:* Associate.

*Admitted:* New Jersey, 2014.

*Education:* New York University (B.A. History, 2007); Tulane University (J.D., 2012).

*Honors:* Senior Notes and Comments Editor, Tulane Journal of International and Comparative Law; Associate Justice, Tulane University Law School's Moot Court Board.

*Author:* Kiobel v. Royal Dutch Petroleum Co.: *The Second Circuit Rejects Corporate Liability Under the Alien Tort Statute* (19 Tul. J. Int'l & Comp. L. 709) and *Implications of PLIVA, Inc. v. Mensing: The Reemergence of Federal Preemption* (unpublished).

*Experience:* Law clerk to the Honorable Jessica R. Mayer, J.S.C., one of New Jersey's three Multicounty Litigation judges; certified trained mediator by the New Jersey Courts.

*Member:* John C. Lifland American Inn of Court.

*Practice Areas:* Drug and Medical Devices.

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

IN RE: NATIONAL FOOTBALL LEAGUE PLAYERS' CONCUSSION INJURY LITIGATION	NO. 12-MD-2323 (AB)  MDL NO. 2323
<b>THIS DOCUMENT RELATES TO:</b>  <b>ALL ACTIONS</b>	Hon. Anita B. Brody

**COMPENDIUM OF EXHIBITS FOR DECLARATION OF CHRISTOPHER A. SEEGER IN SUPPORT OF CO-LEAD CLASS COUNSELS' PETITION FOR AN AWARD OF ATTORNEYS' FEES, REIMBURSEMENT OF COSTS AND EXPENSES, ADOPTION OF A SET-ASIDE OF FIVE PERCENT OF EACH MONETARY AWARD AND DERIVATIVE CLAIMANT AWARD, AND INCENTIVE AWARDS FOR CLASS REPRESENTATIVES**

<u><b>Exhibit Name</b></u>	<u><b>Exhibit</b></u>
Declaration of Orran S. Brown, Sr. on Class Communications, Registrations and Cost Projections ..... <ul style="list-style-type: none"> <li>• Attachment – Claims Administrator Update</li> </ul>	A
Declaration of Matthew L. Garretson .....	B
Declaration of Arnold Levin (Levin Sedran & Berman) ..... <ul style="list-style-type: none"> <li>• Exhibit 1 – Lodestar Report</li> <li>• Exhibit 2 – Cost and Expense Report</li> <li>• Exhibit 3 – Firm Biography</li> </ul>	C
Declaration of Gene Locks (Locks Law Firm) ..... <ul style="list-style-type: none"> <li>• Exhibit 1 – Lodestar Report</li> <li>• Exhibit 2 – Cost &amp; Expense Report</li> <li>• Exhibit 3 – Firm Biography</li> </ul>	D
Declaration of Steven C. Marks (Podhurst Orseck, PA) ..... <ul style="list-style-type: none"> <li>• Exhibit 1 – Lodestar Report</li> <li>• Exhibit 2 – Cost &amp; Expense Report</li> <li>• Exhibit 3 – Firm Biography</li> </ul>	E
Declaration of Dianne M. Nast (NastLaw LLC) ..... <ul style="list-style-type: none"> <li>• Exhibit 1 – Lodestar Report</li> <li>• Exhibit 2 – Cost &amp; Expense Report</li> <li>• Exhibit 3 – Firm Biography</li> </ul>	F

Declaration of Sol H. Weiss (Anapol Weiss) .....G

- Exhibit 1 – Lodestar Report
- Exhibit 2 – Cost & Expense Report
- Exhibit 3 – Firm Biography

Declaration of Garrett D. Blanchfield Jr. (Reinhardt Wendorf & Blanchfield) .....H

- Exhibit 1 – Lodestar Report
- Exhibit 2 – Cost & Expense Report
- Exhibit 3 – Firm Biography

Declaration of William G. Caldes (Spector Roseman Kodroff & Willis, P.C.).....I

- Exhibit 1 – Lodestar Report
- Exhibit 2 – Cost & Expense Report
- Exhibit 3 – Firm Biography

Declaration of Leonard A. Davis (Herman, Herman & Katz) .....J

- Exhibit 1 – Lodestar Report
- Exhibit 2 – Firm Biography

Declaration of James R. Dugan II (The Dugan Law Firm) .....K

- Exhibit 1 – Lodestar Report
- Exhibit 2 – Cost & Expense Report
- Exhibit 3 – Firm Biography

Declaration of Daniel C. Girard (Girard Gibbs LLP).....L

- Exhibit 1 – Lodestar Report
- Exhibit 2 – Cost & Expense Report
- Exhibit 3 – Firm Biography

Declaration of Thomas V. Girardi (Girardi Keese).....M

- Exhibit 1 – Lodestar Report
- Exhibit 2 – Cost & Expense Report
- Exhibit 3 – Firm Biography

Declaration of Bruce A. Hagen (Hagen, Roskopf & Earle, LLC) .....N

- Exhibit 1 – Lodestar Report
- Exhibit 2 – Cost & Expense Report
- Exhibit 3 – Firm Biography

Declaration of Samuel Issacharoff .....O

- Exhibit 1 – Lodestar Report
- Exhibit 2 – Cost & Expense Report
- Exhibit 3 – Declaration of Samuel Issacharoff
- Exhibit 4 – Declaration of Cynthia L. Estlund

Declaration of Richard Lewis (Hausfeld LLP).....	P
• Exhibit 1 – Lodestar Report	
• Exhibit 2 – Cost & Expense Report	
• Exhibit 3 – Firm Biography	
Declaration of Jason E. Luckasevic (Goldberg, Persky & White, P.C.).....	Q
• Exhibit 1 – Lodestar Report	
• Exhibit 2 – Cost & Expense Report	
• Exhibit 3 – Firm Biography	
Declaration of Derriel C. McCorvey (McCorvey Law, LLC).....	R
• Exhibit 1 – Lodestar Report	
• Exhibit 2 – Cost & Expense Report	
• Exhibit 3 – Firm Biography	
Declaration of Mike McGlamry (Pope McGlamry) .....	S
• Exhibit 1 – Lodestar Report	
• Exhibit 2 – Cost & Expense Report	
• Exhibit 3 – Firm Biography	
Declaration of Craig R. Mitnick (Mitnick Law Office, LLC).....	T
• Exhibit 1 – Lodestar Report	
• Exhibit 2 – Cost & Expense Report	
• Exhibit 3 – Firm Biography	
• Exhibit 4 - Letter from Joseph Pisarcik, President and CEO of the NFL Alumni Association; Declaration of the NFLAA Board of Directors; and Letter from Val Butts, wife of Retired player Marion Butts	
Declaration of David A. Rosen (Rose, Klein & Marias LLP).....	U
• Exhibit 1 – Lodestar Report	
• Exhibit 2 – Cost & Expense Report	
• Exhibit 3 – Firm Biography	
Declaration of Frederick Schnek (Casey, Gerry, Schenk LLP).....	V
• Exhibit 1 – Lodestar Report	
• Exhibit 2 – Cost & Expense Report	
• Exhibit 3 – Firm Biography	
Declaration of Anthony Tarricone (Kreindler & Kreindler LLP) .....	W
• Exhibit 1 – Lodestar Report	
• Exhibit 2 – Cost & Expense Report	
• Exhibit 3 – Firm Biography	
Declaration of Charles S. Zimmerman (Zimmerman Reed LLP) .....	X
• Exhibit 1 – Lodestar Report	
• Exhibit 2 – Cost & Expense Report	
• Exhibit 3 – Firm Biography	

Brian T. Fitzpatrick, *An Empirical Study of Class Action Settlements*, 7 Journal  
of Empirical Legal Studies, 811-46 (Dec.2010) .....Y

# **EXHIBIT A**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

IN RE: NATIONAL FOOTBALL LEAGUE  
PLAYERS’ CONCUSSION INJURY  
LITIGATION

---

No. 2:12-md-02323-AB

MDL No. 2323

Hon. Anita B. Brody

THIS DOCUMENT RELATES TO:  
  
ALL ACTIONS

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**DECLARATION OF ORRAN L. BROWN, SR. ON CLASS COMMUNICATIONS,  
REGISTRATIONS AND COST PROJECTIONS**

I, ORRAN L. BROWN, SR., hereby declare and state as follows:

**1. Introduction.** My name is Orran L. Brown, Sr. I am the Chairman and a founding partner of BrownGreer PLC, located at 250 Rocketts Way, Richmond, Virginia 23231 (“BrownGreer”). BrownGreer is the Court-appointed Claims Administrator in connection with the class action settlement that this Court approved on April 22, 2015.

**2. Purpose.** I submit this Declaration to provide information requested by Co-Lead Class Counsel on our communications with the Settlement Class to date, the opening of Registration, and on the possible costs of administration in the Claims Administrator’s role in the implementation of the Settlement Agreement.

**3. NFL Concussion Settlement Website.** Pursuant to Section 4.1 of the Settlement Agreement, and in consultation with the Parties and the Settlement Class Notice Agent, BrownGreer developed a public, informational website, [www.NFLConcussionSettlement.com](http://www.NFLConcussionSettlement.com) (the “Settlement Website”), to provide notice and

additional courtesy information and services to the Settlement Class. The Settlement Website provides notice materials, Court documents, frequently asked questions (“FAQs”), alerts, and a link to register.

**4. Website Visitor Activity.** As of February 6, 2017, the Settlement Website had received 180,982 unique visitors, with representation from all 50 states, as determined by IP Address. There are 8,946 visitors who have used the “Sign Up for Future Information” feature and provided contact information for the Settlement Program to use to reach them, including, among others, Retired NFL Football Players, family members of Retired NFL Football Players, and counsel for Retired NFL Football Players (including those with large client inventories). Tables 1 and 2 in the Attachment to this Declaration present detailed information on website visitor activity and sign ups.

**5. Post Office Box.** As of February 6, 2017, BrownGreer had received 139 letters to a P.O. Box established for Settlement Class Members and others to send general questions about the Settlement Agreement or Settlement Program. We responded to 88 of these letters. We did not respond to the remaining 51 inquiries because they did not pose questions, were requests to update contact information only, or we consolidated multiple letters from one individual into a single response. Along with answering the letters, we also signed up 80 individuals for more information as a result of receiving their letter. Table 3 in the Attachment to this Declaration presents additional information on communications sent to and from BrownGreer as the Claims Administrator.

**6. Claims Administrator Email Inbox.** As of February 6, 2017, BrownGreer had received 1,096 emails to ClaimsAdministrator@NFLConcussionSettlement.com. We responded to 1,037 of these emails. We did not respond to the remaining 59 inquiries

because they did not pose questions, we consolidated multiple emails from an individual into a single response, or we forwarded the questions to the Parties or to Garretson Resolution Group (“GRG”), the Court-appointed Lien and BAP Administrator, as the party more appropriate for handling the inquiry. We also signed up 820 individuals for more information as a result of receiving their email, and added them to the Notice Mailing List.

**7. *Additional Contacts and Sign Ups to Receive More Information.*** We also received 25 emails, letters, and faxes directly to individuals at BrownGreer. We responded to 18 of these communications. We did not respond to the remaining seven because they did not pose questions or we forwarded the questions to GRG as the party more appropriate for handling the inquiry. We received 32 inbound phone calls and made 20 outbound phone calls. As a result of these activities, we signed up 25 individuals for more information.

**8. *Call Center Activity.*** Through February 3, 2017, the Settlement Program’s Call Center, which had been staffed by Heffler Claims Group (“Heffler”), had received 14,423 calls, logging over 837 hours of call time, with 7,297 of these callers speaking with live operators for over 489 hours. Through those communications, individuals have received updates on the status of the litigation and had other questions answered. As a result of these additional calls, we signed up 2,351 individuals for more information, resulting in a total of 12,222 individuals signed up for more information on the program. On February 3 at 8:30 p.m. Eastern Time, pursuant to plan, Heffler transitioned to us the toll-free number for the Settlement Program. Starting on February 6, 2017, callers reached our live agents. Through February 7, 2017, we had received 392 calls, totaling over 43 hours.

**9. *Registration.*** On February 6, 2017, we opened Registration as required by Article IV of the Settlement Agreement. Settlement Class Members and attorneys can now

register for Settlement benefits by visiting the Settlement Website and clicking the “Register Now” button. Settlement Class Members can also register by submitting a hard copy Registration Form that was included in the Settlement Class Supplemental Notice packet mailed on February 6, 2017. Through February 7, 2017, we received 2,729 registrants through the Settlement Website.

**10. *Projected Administrative Costs.*** Class Counsel asked us to project our potential administrative costs of the Claims Administrator over the 65-year life of the Settlement Program. This is very difficult to do before we know how many Settlement Class Members will register with us, how many claims we will receive, how complete they will be, how many outcomes will be appealed, and the quantity of the many other functions we will perform in this program. We can, however, make reasonably informed projections, based on many assumptions, all of which are subject to change. Based on those assumptions and projections, we estimate \$11,925,000 in Claims Administrator costs for the program. This estimate is comprised of projections of three budget categories, based on the draft administrative agreement we are now working to finalize with the Parties:

- (a) Task Costs:** We estimate \$5,805,000 in fees and expenses incurred on functions that are measured by time and not units: (1) \$155,000 for our assistance distributing the Settlement Class Notice and Supplemental Notice; (2) \$1,750,000 for start-up tasks related to the development of the NFL Concussion Settlement website, credentialed web portals and other software applications; establishing a Communication Center; and tracking, reviewing and reporting on Opt Outs, Objections and Opt Out Revocations; and (3) \$3,900,000 for recurring administrative tasks over the 65-year life of the Settlement Program including regular reporting, development of policies, a Frequently Asked Questions Document and operations manual documenting all Claims Administrator policies and procedures; and maintenance of the list of Qualified MAF Physicians eligible to provide Qualifying Diagnoses to Retired NFL Football Players.
- (b) Unit Costs:** \$5,970,000 in unit costs. These costs will depend on volumes, and because our contract will allow for periodic adjustments to these unit costs, they may go up or down, which would affect resulting costs over time. For this Declaration, we

project using starting unit costs, with no adjustments. Our per unit costs projections include: (1) \$500,000 for an assumed volume of 20,000 registrants; (2) \$3,750,000 for an assumed 5,000 Monetary Award claims; (3) \$600,000 for an assumed 2,000 Supplemental Monetary Award claims; (4) \$450,000 for an assumed 4,500 Derivative Claimants; (5) \$595,000 for an assumed 1,000 claims identified for fraud assessment; and (6) \$75,000 for an assumed 2,300 non-medical liens.

**(c) Additional Services:** \$150,000 in additional services. Our contract will provide for additional services outside of the scope of our core services and functions as new and unanticipated issues arise. We base this projection on approximately 1% of our total projected administrative costs.

I Orran L. Brown, Sr., declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the foregoing is true and correct. Executed on this 8<sup>th</sup> day of February, 2017.



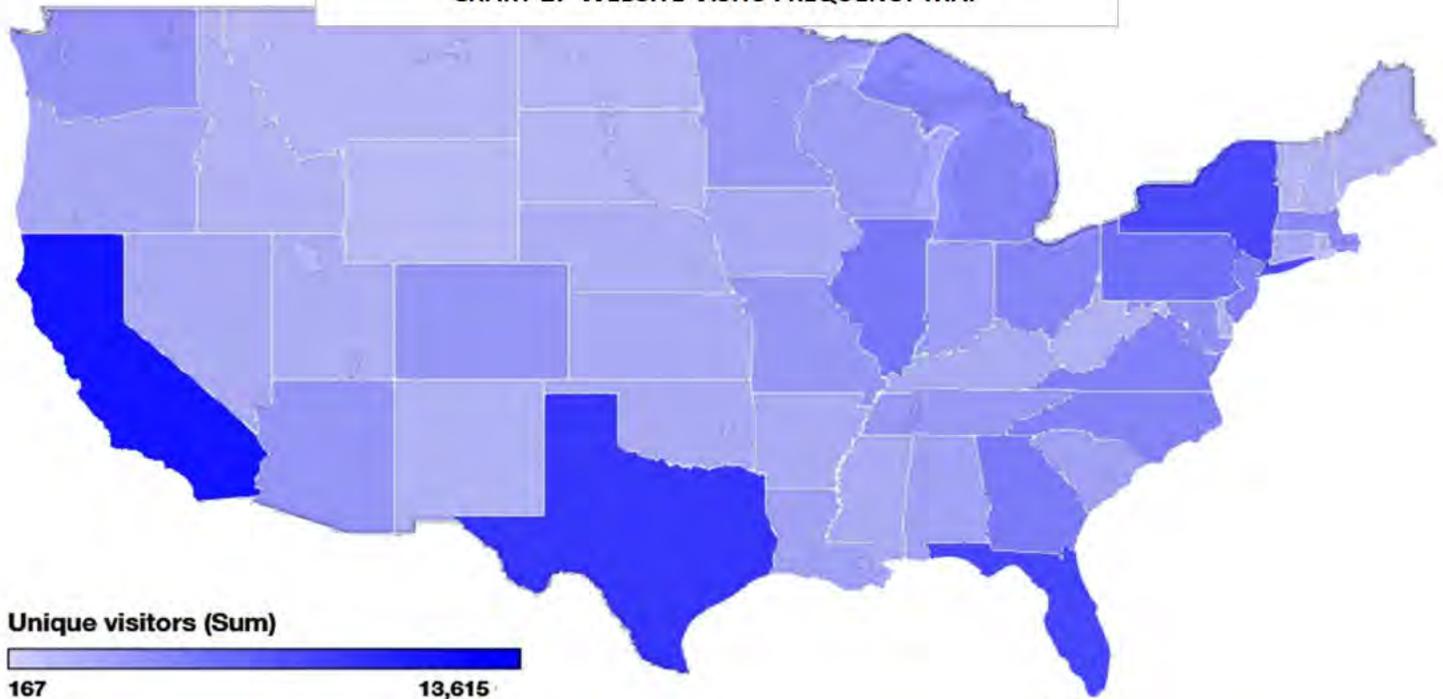
\_\_\_\_\_  
Orran L. Brown, Sr.

**NFL****CONCUSSION SETTLEMENT**IN RE: NATIONAL FOOTBALL LEAGUE PLAYERS' CONCUSSION INJURY LITIGATION  
No. 2:12-md-02323 (E.D. Pa.)

NFL 1002

**CLAIMS ADMINISTRATOR UPDATE**  
(AS OF 2/6/17)

TABLE 1	WEBSITE VISITORS BY STATE					
	Location	Unique Visitors	Visits	Average Actions <sup>1</sup> Per Visit	Average Time (Minutes)	Bounce Rate <sup>2</sup>
1.	California	13,615	14,528	2	2	68.6%
2.	Texas	10,378	11,700	2	3	63.9%
3.	Florida	8,934	9,624	2	2	66.3%
4.	New York	8,530	9,538	2	2	65.7%
5.	Pennsylvania	5,299	5,589	2	2	70.2%
6.	Illinois	4,801	5,039	2	1	72.7%
7.	Georgia	4,699	5,083	2	2	64.4%
8.	New Jersey	4,176	4,403	2	1	71.4%
9.	Virginia	4,080	4,316	2	2	69.4%
10.	North Carolina	3,890	4,152	2	1	72.5%
11.	Michigan	3,831	4,046	2	1	72.3%
12.	Ohio	3,717	3,877	2	1	72.3%
13.	Unknown	51,911	56,556	3	3	65.8%
14.	Other	53,121	57,286	2	2	71.6%
15.	<b>Totals</b>	<b>180,982</b>	<b>195,737</b>	<b>2</b>	<b>2</b>	<b>68.5%</b>

<sup>1</sup> An action occurs anytime the visitor views a new webpage, follows a link or takes any other action on the website.<sup>2</sup> The Bounce Rate is the percentage of visitors who leave website after viewing only one page.**CHART 1: WEBSITE VISITS FREQUENCY MAP**

**NFL****CONCUSSION SETTLEMENT**IN RE: NATIONAL FOOTBALL LEAGUE PLAYERS' CONCUSSION INJURY LITIGATION  
No. 2:12-md-02323 (E.D. Pa.)

NFL 1002

**CLAIMS ADMINISTRATOR UPDATE**  
(AS OF 2/6/17)**SIGN-UPS FOR FUTURE INFORMATION**

TABLE 2	Sign-Up Method	Retired Player	Authorized Rep	Attorney for Player or Family	Family Member	Other/Unknown	Total
1.	Website	5,786	440	353	1,594	773	8,946
2.	Call Center	1,310	18	20	778	225	2,351
3.	P.O. Box	40	1	18	12	9	80
4.	CA Inbox	207	11	349	86	167	820
5.	Other	3	0	3	5	14	25
6.	<b>Totals</b>	<b>7,346</b>	<b>470</b>	<b>743</b>	<b>2,475</b>	<b>1,188</b>	<b>12,222</b>

**CHART 2: MONTHLY INFORMATIONAL SIGN-UPS****CLAIMANT CORRESPONDENCE AND CLAIMS ADMINISTRATOR RESPONSES**

TABLE 3	Representation Status	Letters / Emails / Phone Calls / Faxes Received	Responses Sent	Response Not Required
1.	Pro Se or Unknown	638	577	61
2.	Represented	654	586	68
3.	<b>Totals</b>	<b>1,292</b>	<b>1,163</b>	<b>129</b>

**OPT-OUT SUMMARY**

TABLE 4	Settlement Class Member Type	Total Received	Revocation Requests Granted	Net Opt-Outs
<b>A. Timely Opt Out Requests Containing All Information Required by Section 14.2(a) or Otherwise Approved by the Court</b>				
1.	Retired NFL Football Players	184	42	142
2.	Relatives of a Retired NFL Football Player	23	4	19
3.	<b>Totals</b>	<b>207</b>	<b>46</b>	<b>161</b>
<b>B. Opt Out Requests That Were Untimely and/or Did Not Contain All Information Required by Section 14.2(a)</b>				
4.	Retired NFL Football Players	27		
5.	Relatives of a Retired NFL Football Player	1		
6.	<b>Totals</b>	<b>28</b>		
7.	<b>Grand Totals</b>	<b>235</b>	<b>46</b>	<b>161</b>

# **EXHIBIT B**

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

**In Re: National Football League Players’  
Concussion Injury Litigation**

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**No. 2:12-md-02323-AB**

**MDL NO. 2323**

**HONORABLE ANITA B.  
BRODY**

**Civ. Action No. 14-00029-AB**

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**DECLARATION OF MATTHEW L. GARRETSON**

I, Matthew L. Garretson, hereby declare as follows:

1. I am an adult over twenty-one years of age and am competent to testify to all matters contained herein. I am the Founder and Chief Executive Officer of The Garretson Resolution Group, Inc. (“GRG”) and am an attorney licensed to practice law in the State of Ohio. I have personal knowledge of the facts set forth herein and if called and sworn as a witness, I could and would testify competently thereto.

**BACKGROUND**

2. On May 8, 2015, this Court entered its Amended Final Order and Judgment in this action. In the order, the Court certified the Settlement Class and Subclasses under Federal Rule of Civil Procedure 23 and approved the Settlement Agreement. (ECF No. 6534 ¶¶ 2, 7.) It also ordered the Parties “to implement each and every obligation set forth in the Settlement Agreement in accordance with the terms and provisions of the Settlement Agreement” (*id.* ¶ 9) and, to further the implementation of the Settlement Agreement, confirmed, among other things, the appointment of GRG as the Lien Resolution Administrator (*id.* ¶ 13).

3. GRG is a pioneer in the development of healthcare lien resolution programs in mass torts and class actions, and its programs have become the model for managing thousands of claims fairly, uniformly, and in a cost-effective fashion. GRG has established relationships with a myriad of federal, state, private, and statutory lien holders and is able to leverage large volumes of claims, standardized procedures, subject matter expertise, and proprietary technology to achieve fair repayment amounts while also meeting statutory obligations and ensuring that class members' future benefits are protected.

4. In recognition of the value GRG's lien resolution programs deliver to settling claimants, GRG has been recommended by settling parties, and has been appointed by federal judges, to serve as Lien Resolution Administrator in numerous personal injury settlements, including, among others, the Vioxx, Avandia, Medtronic, Guidant, and Zyprexa multidistrict litigation settlements. *See, e.g., In re: Vioxx Prod Liab. Litig.*, Case No. 2:05-md-1657, ECF No. 62787 at 2 (E.D. La. Apr. 1, 2011); *In re Avandia Marketing, Sales Prac., and Prod. Liab. Litig.*, Case No. 2:07-md-1871, ECF No. 690 (E.D. Pa. June 11, 2010); *In re: Medtronic, Inc. Implantable Defibrillators Prod. Liab. Litig.*, 0:05-md-1726, ECF No. 744 (D. Minn. Feb. 27, 2008); *In re: Guidant Corp. Implantable Defibrillators Prod. Liab. Litig.*, Case No. 0:05-md-1708, ECF No. 2526 (D. Minn. Dec. 17, 2007); *In re Zyprexa Prod. Liab. Litig.*, Case No. 1:04-md-1596, ECF No. 746 (E.D.N.Y Sept. 11, 2006). As Judge Jack B. Weinstein noted of GRG's work in *In re Zyprexa*, "The settlement techniques utilized in the instant litigation may provide a model for handling Medicare and Medicaid in future mass actions on a uniform, national basis." *In re Zyprexa*, Case No. 1:04-md-1596, ECF No. 746 at 12 (Weinstein, J.). GRG is bringing the same techniques and expertise to bear in discharging its responsibility as the Lien Resolution Administrator and in doing so will confer significant benefits upon Settlement Class Members.

## **HEALTHCARE LIEN RESOLUTION ACTIVITIES**

### **Settlement Class Members' Obligation to Reimburse Their Insurers**

5. Ensuring proper verification and resolution of healthcare Liens is a critical component of nearly all personal injury settlements. Depending on the type of insurance the claimant has, the claimant may be obligated under federal or state law or the terms of a private health insurance plan to repay his insurer from his settlement proceeds if the insurer paid for or provided medical treatment related to the injury for which the class member is being compensated. With the complexity and nuances of resolving these obligations growing at an exponential rate, ensuring compliance and achieving favorable results has become increasingly difficult in recent years. Moreover, failing to correctly address healthcare Lien obligations can have serious consequences for the claimant. The claimant could incur interest on his repayment obligation, he could be sued directly by the lienholder, and he could have his future healthcare coverage denied. Properly resolving healthcare Liens is therefore of vital importance.

6. This imperative applies with full force here. The medical treatment commonly associated with the Qualifying Diagnoses is likely to result in substantial Liens and reimbursement claims from healthcare insurers such as Medicare, Medicaid, and other governmental and private insurers. Failing to address these Liens could result in accrued interest and lawsuits that could materially deplete the Monetary Awards and Derivative Claimant Awards of the Settlement Class Members. Furthermore, given the nature of the conditions at issue in this settlement, the Retired NFL Football Players are likely to incur significant future healthcare costs, making it critical that their future healthcare coverage is preserved. Ensuring that the Settlement Class Members' Liens are properly resolved is necessary to prevent these adverse consequences.

7. GRG's work as the Lien Resolution Administrator will do just that. GRG has full scope subject matter expertise, established relationships with federal, state, private, and statutory lienholders, strict audit procedures and information technology systems capable of tracking claims across various Lien types, and medical claims specialists with in-depth billing and coding experience. By leveraging these resources for the Settlement Class Members, GRG will be able to maximize Settlement Class Members' net recovery, accelerate the resolution timeframes, and ensure their future healthcare benefits are preserved.

**GRG's Responsibilities as the Lien Resolution Administrator**

8. The Settlement Agreement charges GRG, as the Lien Resolution Administrator, with the following responsibilities, among others:

- a. "administer[ing] the process for the identification and satisfaction of all applicable Liens, as set forth in Section 11.3" (ECF No. 6481-1, Settlement Agreement § 11.1(b)), which includes:
  - i. fulfilling all state and federal reporting obligations (*id.* § 11.3(c)(iii)),
  - ii. "[s]atisfy[ing] Lien amounts owed to a Governmental Payor or, to the extent identified by the Class Member pursuant to Section 11.3(a), Medicare Part C or Part D Program sponsor for medical items, services, and/or prescription drugs" (*id.* § 11.3(c)(iv)), and
  - iii. "[t]ransmit[ting] all information received from any Governmental Payor or Medicare Part C or Part D Program sponsor pursuant to such authorizations (i) to the NFL Parties, Claims Administrator, and/or Special Master solely for purposes of verifying compliance with the MSP Laws or other similar reporting obligations and for verifying satisfaction and full discharge of all such Liens" (*id.* § 11.3(c)(v)).

9. As set forth below, GRG has made significant progress in fulfilling its duties and responsibilities under the Settlement Agreement for the benefit of Settlement Class Members. GRG has already reached agreements with CMS that establish defined parameters for satisfying

and discharging CMS' Medicare Part A and/or Part B fee-for-service Medicare Secondary Payer ("MSP") recovery claims, protect Retired NFL Football Players' future Medicare benefits, and ensure equitable repayment amounts. In addition, GRG is making great strides in establishing uniform and efficient processes to identify and resolve healthcare Liens and reimbursement claims that may be associated with a Settlement Class Member's settlement award through coordination with other entities, such as the individual state Medicaid agencies and other healthcare payors and providers. As explained in more detail below, GRG anticipates that its efforts will result in meaningful reductions in the amounts the Settlement Class Members will have to pay to satisfy the Liens these entities may assert against the Settlement Class Members' Monetary Awards and Derivative Claimant Awards.

#### **Medicare Part A & Part B Resolution**

10. With respect to Medicare Part A and Part B, the Settlement Agreement provides, among other things, that the Lien Resolution Administrator shall undertake to obtain an agreement in writing with CMS that "[e]stablishes a global repayment amount per Qualifying Diagnosis and/or for all or certain Qualifying Diagnoses for Settlement Class Members who are or were beneficiaries of the Medicare Program, or, alternatively, otherwise sets forth a conditional payment resolution process." (*Id.* § 11.3(c)(ii)(1).) To this end, GRG has obtained CMS' agreement to globally resolve its Medicare Part A and/or Part B fee-for-service MSP recovery claims for some Qualifying Diagnoses, to individually resolve those claims for the rest of the Qualifying Diagnoses, and to not assert a recovery claim against the BAP Fund or the Education Fund.

11. More specifically, CMS has agreed to a global resolution methodology and associated fixed global repayment values to satisfy Medicare's Part A and/or Part B fee-for-

service MSP recovery claims associated with Medicare-entitled Settlement Class Members who receive Monetary Awards for a Qualifying Diagnosis of Level 1.5 Neurocognitive Impairment and/or Level 2 Neurocognitive Impairment, which are expected to be the most frequent Qualifying Diagnoses. The global repayment values are based on the clinical guidelines for the routine standard of care associated with the applicable Qualifying Diagnosis. Global resolution programs are proven to deliver numerous practical benefits to Settlement Class Members. These benefits include, among others, (1) ensuring similarly situated Settlement Class Members achieve similar outcomes and fair repayment amounts, (2) ensuring compliance with federal Medicare statutes and regulations, (3) avoiding disbursement delays normally associated with pulling and auditing Medicare's conditional payments on a case-by-case basis, and (4) ensuring that Medicare will not deny Settlement Class Members coverage for any future medical expenses they might incur in connection with the relevant Qualifying Diagnoses.

12. With respect to Medicare-entitled Settlement Class Members who receive a Monetary Award in connection with a Qualifying Diagnosis of Alzheimer's Disease, Parkinson's disease, Death with Chronic Traumatic Encephalopathy, or Amyotrophic Lateral Sclerosis (also known as Lou Gehrig's Disease), CMS has agreed to resolve its MSP recovery claims through an individual expenditure-based process. Under this process, GRG will secure claims from the Medicare Program on an individual basis to identify the exact amounts the Medicare Program has paid on behalf of a Settlement Class Member. GRG will then audit each claim to ensure that only medical expenses related to the compensable injury from the date of injury through the date of settlement are included in the repayment obligation. In an effort to optimize the outcome for Settlement Class Members whose Medicare reimbursement obligations GRG will resolve through this expenditure-based process, GRG has established procedures designed to reduce time

delays to the extent possible and to ensure a detailed review of all cases to achieve reductions where appropriate.

13. Finally, GRG has secured CMS' agreement to not assert an MSP recovery claim in connection with Monetary Awards of Retired NFL Football Players where the Retired NFL Football Player's last Eligible Season ended prior to December 5, 1980.<sup>1</sup> CMS has further agreed to not separately assert an MSP recovery claim against Medicare-entitled Derivative Claimants who receive a Derivative Claimant Award as long as the amount of the Derivative Claimant Award is still included in the gross Monetary Award amount for purposes of resolving CMS' MSP recovery claim for the associated Retired NFL Football Player.

#### **Medicaid Resolution**

14. With respect to state Medicaid reimbursement obligations, GRG has reached standard protocol agreements with forty-five of the fifty-two state Medicaid agencies to resolve their Medicaid recovery claims through an expenditure-based review process with terms designed to deliver significant advantages to Settlement Class Members that will maximize Settlement Class Members' net recovery. GRG's standard protocol agreements include a term providing that the amount of each Medicaid agency's recovery claim against a Settlement Class Member will not exceed a specified percentage of the Settlement Class Member's gross settlement award (the "Holdback Amount"). In addition, GRG's protocol agreements include a term providing that each Medicaid agency will automatically reduce the agency's final recovery claim by a specified percentage (the "Offset").

15. Pursuant to its protocol agreement, GRG will first verify whether a Settlement Class Member was a beneficiary of the Medicaid Program in a given state. If the Settlement Class Member was not a beneficiary of that state's Medicaid Program, GRG will inform the

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<sup>1</sup> This determination was made in consideration of CMS' August 19, 2014 policy memo.

Claims Administrator that no amount needs to be withheld from the Settlement Class Member's gross settlement award to satisfy a reimbursement obligation to that state's Medicaid agency. If the Settlement Class Member was a beneficiary, then GRG will ask the Claims Administrator to withhold the Holdback Amount. Since the Holdback Amount is the maximum amount a Medicaid agency can recover, funds in excess of the Holdback Amount can be disbursed to the Settlement Class Member (subject to holdback amounts established for other Lien types, if applicable to the Settlement Class Member) before the Medicaid lien resolution process is finished, allowing the Settlement Class Member to receive his or her funds earlier than he or she would if GRG's protocol agreement were not in place.

16. For those Settlement Class Members who received Medicaid benefits, the Medicaid agency will provide GRG with the itemized claims for which the Medicaid agency is seeking repayment. GRG will then conduct an audit of those claims to ensure that only medical expenses related to the applicable Qualifying Diagnosis or Qualifying Diagnoses are included in the Medicaid agency's recovery claim. Once a final claim amount is established, GRG will apply the Offset to that amount and will compare the result with the Holdback Amount. A Settlement Class Member's final reimbursement amount will be the lesser of the Holdback Amount or the final claim amount after applying the Offset. GRG will facilitate the satisfaction of the Medicaid agency's interest by ensuring that payment of the final reimbursement amount for the Settlement Class Member is made from the Settlement Class Member's gross settlement award.

17. Finally, GRG is pursuing agreements from each of the state Medicaid agencies to not assert a recovery claim against Derivative Claimant Awards. GRG has secured an agreement with some states and is continuing its discussions with the others.

**Allocation of Lien Resolution Administrator's Fees**

18. As an additional benefit to Settlement Class Members in the current matter, the Lien Resolution Administrator's per-claimant fee for verifying which Settlement Class Members are or were entitled to benefits under the Medicare Program and/or Medicaid Program will be paid by the NFL Parties out of the Monetary Award Fund rather than by the Settlement Class Members out of their Monetary Awards and Derivative Claimant Awards. For these verification services to the Settlement Class, the Lien Resolution Administrator will be paid \$100.00 from the Monetary Award Fund for each Settlement Class Member, with a maximum payment of \$300,000 over the life of the Settlement.

THE DECLARANT SAYS NOTHING FURTHER.

I, Matthew L. Garretson, declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the foregoing is true and correct.

Executed on this 25th day of January, 2017.

  
Matthew L. Garretson

# EXHIBIT C

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

IN RE: NATIONAL FOOTBALL  
LEAGUE PLAYERS' CONCUSSION  
INJURY LITIGATION

No. 2:12-md-02323-AB

MDL No. 2323

**Hon. Anita B. Brody**

Kevin Turner and Shawn Wooden,  
*on behalf of themselves and  
others similarly situated,*

Civ. Action No. 14-00029-AB

Plaintiffs,

v.

National Football League and  
NFL Properties LLC,  
successor-in-interest to  
NFL Properties, Inc.,

Defendants.

THIS DOCUMENT RELATES TO:  
ALL ACTIONS

**DECLARATION OF LEVIN SEDRAN & BERMAN IN SUPPORT OF CO-LEAD CLASS  
COUNSEL'S PETITION FOR AN AWARD OF ATTORNEY'S FEES AND  
REIMBURSEMENT OF COSTS AND EXPENSES**

Arnold Levin declares as follows pursuant to 28 U.S.C. § 1746:

1. I am a Senior Partner of the law firm of Levin Sedran & Berman ("LSB").<sup>1</sup> I was appointed by the Court to serve on the Plaintiffs' Steering Committee ("PSC") and as Subclass Counsel for Subclass 1 class members. I submit this declaration in support of Co-Lead Class Counsel's Petition for an Award of Attorney's Fees and Reimbursement of Costs and Expenses in connection with and for services rendered and expenses incurred for the common benefit of

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<sup>1</sup> On December 19, 2016, the law firm of Levin, Fishbein, Sedran & Berman changed its name to Levin Sedran & Berman.

the Settlement Class in the above-captioned multidistrict litigation (“Action”) from the inception of the litigation through July 15, 2016, as well as for the payment of expenses incurred therewith. I have personal knowledge of the matters set forth in this declaration and, if called upon, I could and would testify competently thereto.

2. Our firm’s role and services in the common benefit litigation against Defendants National Football League and NFL Properties LLC (together “the NFL Parties”), as directed by Plaintiffs’ Co-Lead Counsel, include the following:

a. At the inception of the litigation in February 2012, I met with Co-Lead Counsel Chris Seeger and other Plaintiffs’ leadership counsel regarding the organization of the Action and jurisdictional issues. I participated in all PSC meetings and several Plaintiffs’ Executive Committee meetings, as requested by Mr. Seeger.

b. Our firm’s attorneys conducted initial research on a number of topics including medical monitoring (50 state survey), tolling, preemption, and fraudulent concealment. LSB prepared a master class action complaint, medical monitoring complaint and tolling agreement, and we worked on preemption briefing.

c. Beginning in June 2012, at the request of Co-Lead Counsel Chris Seeger, my former partner Michael D. Fishbein<sup>2</sup> met with medical experts regarding brain injuries, a medical monitoring program, and potential settlement.

d. Beginning in or about March 2013, my partner Frederick S. Longer and I worked with Plaintiffs’ Co-Lead Counsel to prepare for oral argument on the NFL Parties’ preemption motion. I also analyzed the collective bargaining benefits of the NFL players.

e. Beginning in April 2013, at the request of Mr. Seeger, I began working on a structure for a potential settlement with the NFL Parties. I reviewed and analyzed relevant

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<sup>2</sup> Mr. Fishbein resigned from our firm as of June 30, 2016, due to health reasons.

medical literature and studies and analyzed medical monitoring programs based on my extensive experience as Co-Lead and Class Counsel in the *Diet Drugs* Litigation. I travelled numerous times to New York and Washington, D.C. with my partner Mr. Fishbein to participate in preliminary settlement meetings with Plaintiffs' Co-Lead Counsel and counsel for the NFL Parties. We also met with Co-Lead Counsel in Philadelphia to work on settlement issues and a draft Term Sheet, including class and subclass definitions, an injury grid, baseline testing protocols and a baseline assessment program, reduction factors, injury definitions and criteria, medical experts, actuarial calculations, settlement funding, fraud prevention mechanisms, settlement administrators, and lien administrators.

f. Beginning in July 2013, Mr. Seeger invited me to participate in settlement negotiations with the NFL Parties as counsel for a proposed subclass ("Subclass 1") of retired players who were not diagnosed with injuries associated with concussive and sub-concussive head trauma but were at increased risk of developing a range of neuromuscular and neurocognitive diseases associated with mild traumatic brain injuries.

g. Pursuant to Co-Lead Counsel's direction, my partner Sandra L. Duggan and I assisted with the negotiations of a Settlement Term Sheet. Ms. Duggan and I participated in numerous in-person negotiation sessions in New York with counsel for the NFL Parties, which were mediated by Ret. Judge Layn R. Phillips, and we worked virtually full-time, sometimes around the clock, on the settlement. We worked closely with Mr. Seeger and other attorneys at Seeger Weiss, including David Buchanan, TerriAnne Benedetto, Scott George, and Chris Van de Kieft. We also coordinated with Dianne Nast, the proposed Subclass Counsel for Subclass 2 class members. After the Term Sheet was signed by all parties at the end of August 2013, Ms. Duggan and I continued to work with Mr. Seeger and his firm virtually full-time to

draft a settlement agreement. We met with Co-Lead Counsel and counsel for the NFL Parties in New York many times and also participated in negotiation sessions over the telephone. We were involved in meetings with various proposed settlement administrators and class notice specialists.

h. After the principal terms of the settlement were reached, LSB partners Arnold Levin, Sandra Duggan, and Fred Longer, along with additional attorneys from our firm, assisted Seeger Weiss with preparation of preliminary settlement approval and class certification papers, a new class complaint, a proposed short-form and long-form class notice, a notice plan, a list of Frequently Asked Questions, and a settlement website. We also conducted research on assumption of risk, statutes of limitation, prescription defenses, statutory employer defense, proximate causation, and subclassing issues.

i. LSB assisted Mr. Seeger and his firm with extensive briefing in opposition to objections to the settlement, motions to intervene, and motions to remand.

j. After the Court appointed Special Master Perry Golkin to assess certain financial aspects of the settlement, Ms. Duggan and I met with him over the phone and she met with him in New York at his office in December 2013, at Co-Lead Counsel's direction.

k. Through the spring and early summer of 2014, Ms. Duggan and I worked with Mr. Seeger, Mr. Buchanan, and other attorneys from Seeger Weiss to renegotiate a number of settlement provisions, including an uncapped settlement fund, injury criteria, security, and proofs of claim. We worked on revised preliminary settlement approval and class certification papers, publication class notices, a media plan, a chart of settlement required tasks, and we also helped with briefing in response to settlement objections, motions to lift stays, motions to intervene, and motions for settlement discovery.

l. In July 2014, LSB assisted Co-Lead Counsel with opposing a Rule 23(f) appeal to the Third Circuit Court of Appeals. We also met with Co-Lead Counsel and Professor Sam Issacharoff in New York and Philadelphia to assist in preparations for oral argument in September 2014.

m. After the Rule 23(f) appeal was unsuccessful, LSB helped Mr. Seeger and his firm prepare papers for final approval of the settlement, including declarations of Mr. Seeger as Plaintiffs' Co-Lead Counsel and Counsel for Subclass 1 and Subclass 2, and a declaration of Ret. Judge Layn Phillips. We also assisted Co-Lead Counsel with preparations for the Fairness Hearing in November 2014 and with additional briefing related to settlement objections and motions to extend the opt-out period. Following the Fairness Hearing, Ms. Duggan and I assisted Seeger Weiss with preparation of joint proposed Findings of Fact and Conclusions of Law and an Executive Summary of the settlement. We also helped with post-Hearing briefing in support of approval of the settlement and certification of the settlement class and subclasses.

n. Following final approval of the settlement by the District Court in April 2015, LSB assisted Seeger Weiss with research, briefing and oral argument in opposition to appeals to the Third Circuit from objectors to the settlement.

o. Following the Third Circuit's affirmance of the District Court's approval of the settlement, LSB provided comments on the brief in opposition to certain objectors' petitions for writs of certiorari.

p. As an integral part of my representation of Subclass 1 members, I met with proposed Subclass 1 representative Retired NFL Football Player Corey J. Swinson. Sadly, Mr. Swinson passed away suddenly and unexpectedly on September 10, 2013. During the negotiations of settlement terms in the summer of 2013, Co-Lead Class Counsel Chris Seeger

and I conferred with Mr. Swinson concerning the terms of the proposed Settlement. Prior to his death, I met with Mr. Swinson.

q. Following Mr. Swinson's death, Plaintiff Shawn Wooden became the proposed and eventually appointed Subclass 1 representative. I met with Mr. Wooden in my office in Philadelphia regarding his representation of Subclass 1 Class Members in the proposed class action. My partner Daniel Levin attended the meeting as well. I determined that Mr. Wooden had standing to assert the rights of Subclass 1 members and he was an adequate representative for the undiagnosed players who are at increased risk for developing a Qualifying Diagnosis during their lifetime.

r. After the Court appointed me as Subclass Counsel for Subclass 1 members, from time to time my office received inquiries from Subclass 1 class members seeking information about the settlement. My partners Mr. Longer and Ms. Duggan fielded those questions. These were not clients of the firm and, for that reason, the services we provided should be considered for the common benefit.

3. The schedule attached hereto as Exhibit 1 is a detailed summary indicating the amount of common benefit time spent by the attorneys and professional support staff of my firm who were involved in, and billed fifty or more hours to, this Action, and the lodestar calculation for those individuals based on my firm's current billing rates. For personnel who are no longer employed by my firm, the lodestar calculation is based on the billing rates of such personnel in their final year of employment by my firm. The schedule was prepared from contemporaneous daily time records regularly prepared and maintained by my firm. Time expended in preparing this application for attorney's fees and expenses has been excluded.

4. The hourly rates for the attorneys and professional support staff of my firm included in Exhibit 1 are the same as the regular rates charged for their services in other contingent matters and have been accepted by other federal courts in other class action cases prosecuted by my firm.

5. The total number of hours expended on the common benefit of this Action by my firm during the time period is 5021.25 hours. The total lodestar for my firm for those hours is \$6,031,806.25, consisting of \$6,002,331.25 for attorneys' time and \$29,475.00 for professional support staff time.

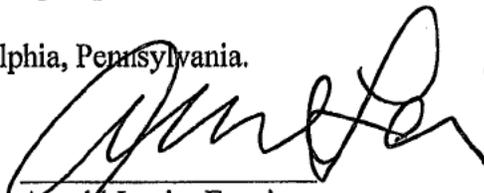
6. My firm's lodestar figures are based solely upon my firm's billing rates, which rates do not include charges for expense items. Expense items are billed separately and such charges are not duplicated in my firm's billing rates.

7. As detailed in Exhibit 2 hereto, my firm is seeking reimbursement of a total of \$519,893.97 in common benefit expenses incurred in connection with the prosecution of this Action. These expenses are reflected on the books and records of my firm. These books and records are prepared from expense vouchers, check records, and other source material, and are an accurate record of the expenses incurred.

8. With respect to the standing of my firm to share in an award of fees, costs, and expenses, attached hereto as Exhibit 3 is a biography of my firm, including the attorneys in my firm who were principally involved in this Action.

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

Executed on December 28, 2016 at Philadelphia, Pennsylvania.



Arnold Levin, Esquire

# **EXHIBIT 1**

## IN RE: NATIONAL FOOTBALL LEAGUE PLAYERS' CONCUSSION INJURY LITIGATION

No. 12-md-2323-AB

LEVIN SEDRAN &amp; BERMAN

LODESTAR REPORT

Inception through July 15, 2016

NAME	HOURS	HOURLY RATE	AMOUNT
<b>PARTNERS:</b>			
Arnold Levin	1444.75	\$1350	\$1,950,412.50
Michael D. Fishbein	180.25	\$1250	\$225,312.50
Laurence S. Berman	20.50	\$1200	\$24,600.00
Fred S. Longer	694.75	\$1200	\$833,700.00
Sandra Duggan	2053.50	\$1200	\$2,464,200.00
Daniel C. Levin	402.00	\$975	\$391,950.00
Charles E. Schaffer	19.75	\$975	\$19,256.25
<b>PARTNER TOTAL</b>	<b>4815.50</b>		<b>\$5,909,431.25</b>
<b>ASSOCIATES:</b>			
Matthew Gaughan	38.00	\$850	\$32,300.00
Brian Fox	87.50	\$525	\$45,937.50
<b>ASSOCIATES TOTAL</b>	<b>125.50</b>		<b>\$78,237.50</b>
<b>CONTRACT ATTORNEY TOTAL</b>			
David P. McLafferty	17.25	\$850	\$14,662.50
<b>CONTRACT ATTORNEY</b>	<b>17.25</b>		<b>\$14,662.50</b>
<b>PARALEGALS:</b>			
Thomas Shrack	45.00	\$475	\$21,375.00
Marion Hutson	9.00	\$450	\$4,050.00
Monica Lord	9.00	\$450	\$4,050.00
<b>PARALEGAL TOTAL</b>	<b>63.00</b>		<b>\$29,475.00</b>
<b>TOTALS:</b>	<b>5021.25</b>		<b>\$6,031,806.25</b>

# **EXHIBIT 2**

**IN RE: NATIONAL FOOTBALL LEAGUE PLAYERS' CONCUSSION INJURY  
LITIGATION**

**No. 12-md-2323-AB**

**LEVIN SEDRAN & BERMAN**

**COST AND EXPENSE REPORT**

**Inception through July 15, 2016**

<b>NUMBER</b>	<b>CATEGORY</b>	<b>AMOUNT</b>
1	Assessments	\$425,000.00
2	Commercial Copies	\$520.45
3	Computerized Research	\$33,372.31
4	Court Reporters/Transcripts	\$0.00
5	Expert Services	\$0.00
6	Facsimile	\$236.00
7	Filing & Service Fees	\$700.00
8	In-House Copies	\$11,584.60
9	Long Distance Telephone	\$374.05
10	Postage/Express Delivery	\$364.09
11	Travel/Meals/Lodging	\$47,617.23
12	Miscellaneous - supplies	\$125.24
<b>TOTAL EXPENSES</b>		<b>\$519,893.97</b>

# **EXHIBIT 3**

## **LEVIN SEDRAN & BERMAN**

### **FIRM BIOGRAPHY**

The law firm of Levin Sedran & Berman (formerly known as Levin, Fishbein, Sedran & Berman, and before that, Levin & Fishbein) was established on August 17, 1981. Earlier, the founding partners of Levin, Fishbein, Sedran & Berman, Messrs. Arnold Levin and Michael D. Fishbein, were with the law firm of Adler, Barish, Levin & Creskoff, a Philadelphia firm specializing in litigation. Arnold Levin was a senior partner in that firm and Michael D. Fishbein was an associate. Laurence S. Berman was also an associate in that firm.

The curricula vitae of the attorneys are as follows:

(a) **ARNOLD LEVIN**, a member of the firm, graduated from Temple University, B.S., in 1961, with Honors and Temple Law School, LLB, in 1964. He was Articles Editor of the Temple Law Quarterly. He served as a Captain in the United States Army (MPC). He is a member of the Philadelphia, Pennsylvania, American and International Bar Associations. He is a member of the Philadelphia Trial Lawyers Association, Pennsylvania Trial Lawyers Association and the Association of Trial Lawyers of America. He is admitted to the Supreme Court of Pennsylvania, United States District Court for the Eastern District of Pennsylvania, United States District Court for the Middle District of Pennsylvania, the Third, Fourth, Fifth, Sixth, Seventh, Tenth and Eleventh Circuit Courts of Appeals and the United States Supreme Court. He has appeared pro hac vice in various federal and state courts throughout the United States. He has lectured on class actions, environmental, antitrust and tort litigation for the Pennsylvania Bar Institute, the Philadelphia Trial Lawyers Association, the Pennsylvania Trial Lawyers Association, The Association of Trial Lawyers of America, The Belli Seminars, the Philadelphia Bar Association, American Bar Association, the New York Law Journal Press, and the ABA-ALI London Presentations.

Mr. Levin is a past Chairman of the Commercial Litigation Section of the Association of Trial Lawyers of America, and is co-chairman of the Antitrust Section of the Pennsylvania Trial Lawyers Association. He is a member of the Pennsylvania Trial Lawyers Consultation Committee, Class Action Section, a fellow of the Roscoe Pound Foundation and past Vice-Chairman of the Maritime Insurance Law Committee of the American Bar Association. He is also a fellow of the International Society of Barristers,

and chosen by his peers to be listed in Best Lawyers of America. He has been recognized as one of 500 leading lawyers in America by Lawdragon and The Legal 500 USA. U.S. News and World Report has designated Levin, Fishbein, Sedran & Berman as one of the top 22 national plaintiffs' firms in mass torts and complex litigation. In addition, he has been further recognized as one of the top 100 trial lawyers by The National Trial Lawyers Association. He was also named to the National Law Journal's Inaugural List of America's Elite Trial Lawyers. He also has an "av" rating in Martindale-Hubbell and is listed in Martindale-Hubbell's Register of Preeminent Lawyers.

Mr. Levin was on the Executive Committee as well as various other committees and Lead Trial Counsel in the case of *In re Asbestos School Litigation*, Master File No. 83-0268 (E.D. Pa.), which was certified as a nationwide class action on behalf of all school districts. Mr. Levin was also on the Plaintiffs' Steering Committee in *In re Copley Pharmaceutical, Inc., "Albuterol" Products Liability Litigation*, MDL 1013 (D. Wyoming); *In re Norplant Contraceptive Products Liability Litigation*, MDL 1038 (E.D. Tex.); and *In re Telectronics Pacing Systems, Inc., Accufix Atrial "J" Lead Products Liability Litigation*, MDL 1057 (S.D. Ohio).

Mr. Levin was appointed by the Honorable Sam J. Pointer as a member of the Plaintiffs' Steering Committee in the *Silicone Gel Breast Implants Products Liability Litigation*, Master File No. CV-92-P-10000-S, MDL 926 (N.D. Ala.). The Honorable Louis L. Bechtle appointed Mr. Levin as Co-Lead Counsel of the Plaintiffs' Legal Committee and Liaison Counsel in *In re Orthopedic Bone Screw Products Liability Litigation*, MDL 1014 (E.D. Pa.). Mr. Levin also served as Co-Chair of the Plaintiffs' Management Committee, Liaison Counsel, and Class Counsel in *In re Diet Drugs Litigation*, MDL 1203 (E.D. Pa.). He was also a member of a four lawyer Executive Committee in *In re Rezulin Products Liability Litigation*, MDL No. 1348 (S.D.N.Y.) and is a member of a seven person Steering Committee in *In re Propulsid Products Liability Litigation*, MDL No. 1355 (E.D. La.). He was Chair of the State Liaison Committee in *In re Phenylpropanolamine (PPA) Products Liability Litigation*, MDL 1407 (W.D. Wash.); and is a member of the Plaintiffs' Steering Committee and Plaintiffs' Negotiating Committee in *In re Vioxx Products Liability Litigation*, MDL No. 1657 (E.D. La.) and the Court approved Medical Monitoring Committee in *In re Human Tissue Products Liability Litigation*, MDL No. 1763 (D.N.J.).

He is currently Plaintiffs' Lead Counsel, Class Counsel and Co-Chair of the Fee Committee in *In re Chinese-Manufactured Drywall Product Liability Litigation*, MDL No. 2047 (E.D. La.). He was Plaintiffs' Liaison Counsel in *In re CertainTeed Corp. Roofing Shingles Products Liability Litigation*, MDL No. 1817 (E.D. Pa.). He is a member of the Plaintiffs' Steering Committee in *In re National Football League Players' Concussion Litigation*, MDL No. 2323 (E.D. Pa.) and was appointed as Subclass Counsel for Subclass 1 in the NFL Concussion Class Action Settlement. Mr. Levin is a member of the Plaintiffs' Steering Committee in *In re Pool Products Distribution Market Antitrust Litigation*, MDL 2328); *In re Testosterone Replacement Therapy Products Liability Litigation*, MDL 2545 (N.D. Ill.); *In re Zoloft (Sertraline Hydrochloride) Products Liability Litigation*, MDL 2342 (E.D. Pa.); and *In re Yasmin and Yaz Marketing, Sales Practices and Relevant Products Liability Litigation*, MDL 2100 (S.D. Ill.). He is a member of Plaintiffs' Executive Committee in *In re Fresenius Granuflo/Naturalyte Dialysate Products Liability Litigation*, MDL 2428 (D. Mass). Mr. Levin was appointed by the Honorable Carl J. Barbier to serve as Special Counsel to the Plaintiffs' Fee and Cost Committee in the BP Oil Spill Litigation, *In re Oil Spill by the Oil Rig "Deepwater Horizon" in the Gulf of Mexico, on April 20, 2010*, MDL 2179 (E.D. La.).

Mr. Levin was also a member of the Trial and Discovery Committees in the *Exxon Valdez Oil Spill Litigation*, No. 89-095 (D. Alaska) In addition, Mr. Levin was Lead Counsel in the prosecution of individual fishing permit holders, native corporations, native villages, native claims and business claims.

(b) **MICHAEL D. FISHBEIN**, a retired member of the firm as of June 30, 2016, is a graduate of Brown University (B.A., 1974). He graduated from Villanova University Law School with Honors, receiving a degree of Juris Doctor in 1977. Mr. Fishbein was a member of the Villanova Law Review and is a member of the Villanova University Law School Chapter of the Order of Coif. He is admitted to practice before the Pennsylvania Supreme Court, the United States District Court for the Eastern District of Pennsylvania, and the Third Circuit Court of Appeals. Mr. Fishbein was extensively involved in the prosecution of a variety of commercial class actions. He was Class Counsel in *In re Diet Drugs Litigation*, MDL 1203, and the principal architect of the seminal National Diet Drugs Settlement Agreement. He was also a member of the Plaintiffs' Steering Committee in *In re Phenylpropanolamine*

(PPA) *Products Liability Litigation*, MDL 1407 (W.D. Wash.).

(c) **HOWARD J. SEDRAN**, a member of the firm, graduated cum laude from the University of Miami School of Law in 1976. He was a law clerk to United States District Court Judge, C. Clyde Atkins, of the Southern District of Florida from 1976-1977. He is a member of the Florida, District of Columbia and Pennsylvania bars and is admitted to practice in various federal district and appellate courts. From 1977 to 1981, he was an associate at the Washington, D.C. firm of Howrey & Simon which specializes in antitrust and complex litigation. During that period he worked on the following antitrust class actions: *In re Uranium Antitrust Litigation*; *In re Fine Paper Antitrust Litigation*; *Bogosian v. Gulf Oil Corporation*; *FTC v. Exxon, et al.*; and *In re Petroleum Products Antitrust Litigation*.

In 1982, Mr. Sedran joined the firm and has continued to practice in the areas of environmental, securities, antitrust and other complex litigation. Mr. Sedran also has extensive trial experience. In the area of environmental law, Mr. Sedran was responsible for the first certified “Superfund” class action.

As a result of his work in an environmental case in Missouri, Mr. Sedran was nominated to receive the Missouri Bar Foundation’s outstanding young trial lawyer’s award, the Lon Hocker Award.

Mr. Sedran has also actively participated in the following actions: *In re Dun & Bradstreet Credit Services Customer Litigation*, Civil Action Nos. C-1-89-026, C-1-89-051, 89-2245, 89-3994, 89-408 (S.D. Ohio); *Raymond F. Wehner, et al. v. Syntex Corporation and Syntex (U.S.A.) Inc.*, No. C-85-20383(SW) (N.D. Cal.); *Harold A. Andre, et al. v. Syntex Agribusiness, Inc., et al.*, Cause No. 832-05432 (Cir. Ct. of St. Louis, Mo.); *In re Petro-Lewis Securities Litigation*, No. 84-C-326 (D. Colo.); *In re North Atlantic Air Travel Antitrust Litigation*, No. 84-1013 (D.D.C.); *Jaroslawicz v. Engelhard Corp.*, No. 84-3641 (D. N.J.); *Gentry v. C & D Oil Co.*, 102 F.R.D. 490 (W.D. Ark. 1984); *In re EPIC Limited Partnership Securities Litigation*, Nos. 85-5036, 85-5059 (E.D. Pa.); *Rowther v. Merrill Lynch, et al.*, No. 85-Civ-3146 (S.D.N.Y.); *In re Hops Antitrust Litigation*, No. 84-4112 (E.D. Pa.); *In re Rope Antitrust Litigation*, No. 85-0218 (M.D. Pa.); *In re Asbestos School Litigation*, No. 83-0268 (E.D. Pa.); *In re Catfish Antitrust Litigation*, MDL 928 (Plaintiffs’ Executive Committee); *In re Carbon Dioxide Antitrust Litigation*, MDL 940 (N.D. Miss.) (Plaintiffs’ Executive Committee); *In re Alcolac, Inc. Litigation*, No. CV490-261 (Marshall, Mo.); *In re Clozapine Antitrust Litigation*,

MDL 874 (N.D. Ill.) (Co-Lead Counsel); *In re Infant Formula Antitrust Litigation*, MDL 878 (N.D. Fla.); *Cumberland Farms, Inc. v. Browning-Ferris Industries, Inc.*, Civil Action No. 87-3713 (E.D. Pa.); *In re Airlines Antitrust Litigation*, MDL 861 (N.D. Ga.); *Lazy Oil, Inc. et al. v. Witco Corporation, et al.*, C.A. No. 94-110E (W.D. Pa.) (Plaintiffs' Co-Lead Counsel); *In re Nasdaq Market-Makers Antitrust Litigation*, MDL 1023 (S.D.N.Y.) (Co-Chair Discovery); and *In re Travel Agency Commission Antitrust Litigation*, Master File No. 4-95-107 (D. Minn.) (Co-Chair Discovery); *Erie Forge and Steel, Inc. v. Cyprus Minerals Co.*, C.A. No. 94-0404 (W.D. Pa.) (Plaintiffs' Executive Committee); *In re Commercial Explosives Antitrust Litigation*, MDL 1093 (Plaintiffs' Co-Lead Counsel); *In re Brand Name Prescription Drug Antitrust Litigation*, MDL 997; *In re High Fructose Corn Syrup Antitrust Litigation*, MDL 1087; *In re Carpet Antitrust Litigation*, MDL 1075; *In re Graphite Electrodes Antitrust Litigation*, C.A. No. 97-CV-4182 (E.D. Pa.) (Plaintiffs' Co-Lead Counsel); *In re Flat Glass Antitrust Litigation*, MDL 1200 (Discovery Co-Chair); *In re Commercial Tissue Products Antitrust Litigation*, MDL 1189; *In re Thermal Fax Antitrust Litigation*, C.A. No. 96-C-0959 (E.D. Wisc.); *In re Lysine Indirect Purchaser Antitrust Litigation*, (D. Minn.); *In re Citric Acid Indirect Purchaser Antitrust Litigation*, C.A. No. 96-CV-009729 (Cir. Ct. Wisc.). Most recently, Mr. Sedran serves as one of the court-appointed Co-Lead Counsel in *In re Air Cargo Shipping Services Antitrust Litigation*, MDL No. 1775 (E.D. N.Y.).

In *Lazy Oil Co. v. Witco Corp., et al., supra*, the District Court made the following comments concerning the work of Co-Lead Counsel:

[t]he Court notes that the class was represented by very competent attorneys of national repute as specialists in the area of complex litigation. As such Class Counsel brought considerable resources to the Plaintiffs' cause. The Court has had the opportunity to observe Class counsel first-hand during the course of this litigation and finds that these attorneys provided excellent representation to the Class. The Court specifically notes that, at every phase of this litigation, Class Counsel demonstrated professionalism, preparedness and diligence in pursuing their cause.

(d) **LAURENCE S. BERMAN**, a member of the firm, was born in Philadelphia, Pennsylvania on January 17, 1953. He was admitted to the bar in 1977. He is admitted to practice before the U.S. Courts of Appeals for the Third, Fourth and Seventh Circuits; the U.S. District Court, Eastern District of Pennsylvania; and the Bar of Pennsylvania. He is a graduate of Temple University (B.B.A., magna cum laude, 1974, J.D. 1977). He is a member of the Beta Gamma Sigma Honor Society. Mr. Berman was the law clerk to the Honorable Charles R. Weiner, U.S. District Court for the Eastern District of Pennsylvania 1978-1980. Member: Philadelphia, Pennsylvania and American Bar Associations. In 1982, Mr. Berman joined the law firm of Levin & Fishbein as an associate and became a partner in 1985 when the firm name was changed to Levin, Fishbein, Sedran & Berman.

Mr. Berman has had extensive experience in litigating and managing complex litigation. In the early 1980's he became a member of the discovery, law and trial committees of *In re: Asbestos School Litigation*, Master File No. 83-0268 (E.D. Pa.). As a member of those committees, he drafted discovery and legal briefs that lead to the successful resolution of the case on behalf of a nationwide class of schools seeking recovery of damages for the costs and expenses they were required to expend to assess the presence of asbestos in school buildings and to remediate under newly enacted rules and regulations of the Environmental Protection Agency, promulgated in the 1970's. In connection with that litigation, he was one of the architects of approaching class certification issues for a nationwide class by the use of a "50" state analysis of the law, in order to demonstrate the similarity of laws and therefore the manageability of a nationwide class action. The "50" state approach has been followed in other cases.

During the early stages of his career, he litigated numerous environmental class/mass tort cases to successful conclusions. He successfully litigated a lead contamination case for the residents of a community in the Port Richmond area of Philadelphia, where he drafted the legal briefs and presented the oral argument to obtain class certification of a property damage and medical monitoring class against NL Industries and Anzon. That litigation produced a multi-million-dollar recovery for the residents in the class area. *Ursula Stiglich Wagner, et al. v. Anzon, Inc., et al.*, No. 4420, June Term, 1987 (C.C.P. Phila. Cty.)

Similarly, he represented homeowners located near Ashland, Kentucky for environmental pollution

damage. This case involved representing approximately 700 individual clients for personal injury and medical monitoring relief that also resulted in a multi-million-dollar recovery for his clients.

Beginning in the 1990's Mr. Berman began his representation of victims of the Three Mile Island accident. The firm represented approximately 2,000 plaintiffs in that matter, and Mr. Berman was responsible for the legal briefing and experts in the case, along with addressing *Daubert* issues. The presiding Court (Middle District of Pennsylvania) determined to conduct extensive *Daubert* hearings in Three Mile Island, resulting in approximately ten full weeks of in court live hearings, and thousands of pages of legal briefing. Ultimately the trial court determined that several of the expert witnesses offered by the plaintiffs did not meet the *Daubert* requirements, and an appeal was taken to the Third Circuit Court of Appeals, where Mr. Berman both briefed and argued the issues. The Third Circuit affirmed parts of the decision and remanded for further proceedings by the trial court. His representation of clients in the Three Mile Island litigation spanned well over a decade.

In 1989, Mr. Berman represented approximately 1,000 plaintiffs who suffered damages as a result of the Exxon Valdez oil spill. In that role, he managed the claims of each of his firm's clients and worked in the development of their expert evidence and claim materials. As a subset of that litigation, he handled the claims of the Native Opt-Out Settlement Class. This representation also spanned well over a decade.

Mr. Berman began his role in litigating *In re Diet Drugs*, MDL 1203 (E.D. Pa.) in 1997 at the outset of that litigation. The *Diet Drugs* case is still active to this date. Mr. Berman's firm was appointed as Co-Lead Counsel, Co-Class Counsel and Liaison Counsel. The massive size of the *Diet Drugs* case required the commitment of three of the named partners to the case, Arnold Levin, Michael Fishbein and Mr. Berman, as well as a substantial commitment by partner Fred Longer. While Messrs. Levin and Fishbein were formally named as Co-Class counsel to the case, Mr. Berman had a *de facto* role as Co-Class Counsel and Co-Lead counsel for the case. Mr. Berman briefed many legal issues, argued issues in court, participated in discovery, appeared frequently before the Special Discovery Master, helped negotiate the settlement(s) and helped in the management of the oversight of both the AHP Settlement Trust that was created to oversee the Settlement and the Seventh Amendment Fund Administrator that was created to oversee the Seventh Amendment aspect of the Settlement. He also managed the claims of the

firm's individual clients.

Although the *Diet Drugs* case remains active today, and still occupies some of Mr. Berman's time, over the recent years he became active in various other pharmaceutical cases. In particular, beginning in about 2010, he became active in *In re Yaz/Yasmin/Ocella*, MDL 2100 (S. D. Ill.) where he was appointed as a member of the discovery and legal briefing committees. Mr. Berman worked with his partner Michael Weinkowitz as Co-Liaison Counsel in the parallel state court litigation pending in the Court of Common Pleas of Philadelphia.

As the *Yaz* case began to wind down, Mr. Berman became active in litigation Tylenol cases where he was appointed and remains currently Plaintiffs' Co-Lead and Liaison Counsel. *In re Tylenol*, MDL 2436, (E.D. Pa.). As Plaintiffs' Co-Lead and Liaison Counsel, Mr. Berman has appeared in Court for the Plaintiffs at virtually all of the monthly status conferences, drafted numerous briefs, engaged in discovery, drafted numerous case management orders that were entered by the Court, argued motions and otherwise managed the case on behalf of the Plaintiffs.

Mr. Berman is also a *de facto* member of the executive committee of *In re Granuflo*, MDL MDL2428 (D. Mass.). Mr. Berman's partner Arnold Levin was formally appointed to that case's Executive Committee for the Plaintiffs and Mr. Berman was appointed as a Co-Chair of the law and briefing committee. He has acted as a *de facto* member of the Executive Committee for the firm. In his role on the Law and Briefing Committee, he drafted numerous briefs for the case, including *Daubert* briefs, drafted various case management orders that were entered by the Court, and assisted in the negotiation of the global settlement including the drafting of the settlement documents and the allocation plan.

In *In re Fosamax*, MDL 2243 (D.N.J.), Mr. Berman spearheaded the plaintiffs' position relating to privilege log issues as well as preemption and *in limine* issues raised in the bellwether case. Most recently, Mr. Berman was appointed to the Plaintiffs' Steering Committee by the Honorable Freda L. Wolfson in *In re Johnson & Johnson Talcum Powder Products*, MDL 2738 (D. N.J.).

Mr. Berman has lectured about mass tort matters. He lectured about the Tylenol case at several seminars and is a member of the American Association of Justice (AAJ) litigation group for the case. He is also a member of various other AAJ litigation groups involving pharmaceutical products. Mr. Berman

has been a frequent speaker for the Pennsylvania Bar Institute, Mealy's Publications and Harris Martin. His lectures have been accredited for providing CLE credit to the attendees. Mr. Berman has an A.V. Peer Review rating by Martindale-Hubbell, and is an AAJ National College of Advocacy Advocate. He is also a member of The National Trial Lawyers, as well as a member of the American, Pennsylvania and Philadelphia Bar Associations and has been recognized as a Super Lawyer. His published works include "Class Actions in State and Federal Courts," Pennsylvania Bar Institute (Continuing Legal Education), November, 1997; "New Pennsylvania Rule of Civil Procedure 207.1," Pennsylvania Bar Institute (Continuing Legal Education), November, 2001, and membership on the Board of Editors, "Fen-Phen Litigation Strategist," Leader Publications, (1998).

(e) **FREDERICK S. LONGER**, specializes in representing individuals who have been harmed by dangerous drugs, medical devices, other defective products and antitrust violations. Mr. Longer has extensive experience in prosecuting individual, complex and class action litigations in both state and federal courts across the country. Mr. Longer has been involved in the resolution of several of the largest settlements involving personal injuries including the \$6.75 billion settlement involving Diet Drugs and the \$4.85 billion settlement involving Vioxx. Mr. Longer was a member of the negotiating counsel responsible for the settlements in the *Chinese Drywall* litigation involving various suppliers and manufacturers of Chinese Drywall valued in excess of \$1 billion. Mr. Longer has a wealth of experience in mass torts and has frequently been the chairman or member of the Law and Briefing Committee in numerous multi-district litigations in *In re Propulsid Products Liability Litigation*, MDL No. 1355 (E.D. La.); *In re Rezulin Products Liability Litigation*, MDL No. 1348 (S.D.N.Y.); *In re Vioxx Products Liability Litigation*, MDL 1657 (E.D. La.); *In re Orthopedic Bone Screw Products Liability Litigation*, MDL 1014 (E.D. Pa.); and *In re Diet Drug Litigation*, MDL 1203 (E.D. Pa.). He is a court-appointed member of the Plaintiffs' Steering Committee in *In re Mirena Products Liability Litigation*, MDL 2434 (S.D.N.Y.) and *In re Xarelto Products Liability Litigation*, MDL No. 2592 (E.D. La.). Mr. Longer also assisted Co-Lead Counsel and Subclass Counsel with negotiating the class settlement in *In re National Football League Players' Concussion Litigation*, MDL No. 2323 (E.D. Pa.).

Mr. Longer has substantial trial experience and is one of the few counsel in the country to have a

client's claim involving Baycol tried to verdict in Philadelphia County Court of Common Pleas.

Mr. Longer, originally from Philadelphia, Pennsylvania, completed his undergraduate work at Carnegie Mellon University. He then attended the University Pittsburgh School of Law and was a Notes and Comments Editor for the University of Pittsburgh Law Review. Mr. Longer practiced for 3 years in Allegheny County with the law firm of Berger, Kapatán, Malakoff & Myers on complex litigation and civil rights matters, including *Kelly v. County of Allegheny*, No. 6D 84-17962 (C.P. Allegheny County, PA). Thereafter, Mr. Longer joined the firm and is now a member in the firm.

Mr. Longer is a frequent lecturer and has presented numerous seminars on various legal topics for professional groups. Some of Mr. Longer's speaking engagements include: *Plaintiff Only Consumer Warranty Class Action Litigation Seminar*, American Association for Justice Education and the National Association of Consumer Advocate (June 3-4, 2014); *"No Injury" and "Overbroad" Class Actions After Comcast, Glazer and Butler: Implications for Certification-Navigating Complex Issues of Overbreadth and Damages in Consumer Product Cases*, Strafford Webinar (April 1, 2014); *Service of Process in China*, ABA Annual Conference (April 18-20, 2012); *Chinese Drywall Litigation Conference*, Harris Martin (October 20-21, 2011); *Current Issues in Multi-district Litigation Practice*, Harris Martin (September 26, 2011); *FDA Preemption: Is this the end?*, Mass Torts Made Perfect (May 2008). He has authored several articles including, *The Federal Judiciary's Super Magnet*, TRIAL (July 2009). He also contributed to Herbert J. Stern & Stephen A. Saltzburg, TRYING CASES TO WIN: ANATOMY OF A TRIAL (Aspen 1999).

Mr. Longer is a member of the American Bar Association, American Association for Justice, Pennsylvania and Philadelphia Association for Justice, the Pennsylvania Bar Association and the Philadelphia Bar Association. He is an active member of the Historical Society for the Eastern District of Pennsylvania. He is admitted to practice before the Supreme Court of Pennsylvania and the Supreme Court of New Jersey, the United States Supreme Court; the United States Courts of Appeals for the Second, Third, Fourth, Fifth, Seventh and Ninth Circuits, and the United States District Courts for the Western and Eastern Districts of Pennsylvania, United States District Court Northern District of New York; United States District Court for the Western District of New York; United States District Court of

New Jersey; United States District Court for District of Arizona; and the United States District Court District of Nebraska.

Mr. Longer has received Martindale-Hubbell's highest rating (AV) as a pre-eminent lawyer for his legal ability and ethical standards. He has also been recognized by his peers as a Super Lawyer since 2008.

(f) **SANDRA L. DUGGAN**, is Of-Counsel to the firm. She received her J.D. degree in 1985 from Columbia Law School and a B.A. from Washington University in St. Louis, where she was Phi Beta Kappa. Since 1989, Ms. Duggan has focused her practice on class action and multidistrict litigation. She was a named partner in the firm of Kronfeld Newberg & Duggan prior to joining Levin Sedran & Berman. She has served as a member of the Plaintiffs' Executive Committee in the national asbestos property damage class action, *Prince George Center, Inc. v. U.S. Gypsum, et al.* (C.C.P. Phila.), and she is counsel for class plaintiffs in the Title IX discrimination suit, *Cohen v. Brown University, et al.*, (D.R.I.). Ms. Duggan's former firm was Co-Lead Counsel in *In re School Asbestos Litigation*, (E.D. Pa.) and she participated in the Asbestos Claimants Committees in Celotex and National Gypsum Chapter 11 bankruptcies. She has also worked on the *In re EXXON VALDEZ* litigation and other securities fraud, shareholder and property damage class actions in federal and state courts. Ms. Duggan has worked with Levin Sedran & Berman extensively in *In re Orthopedic Bone Screw Products Liability Litigation*, MDL 1014 (E.D. Pa.); *In re Diet Drugs Litigation*, MDL 1203 (E.D. Pa.); *In re Chinese-Manufactured Drywall Products Liability Litigation*, MDL 2047 (E.D. La.); *In re VIOXX Products Liability Litigation*, MDL 1657 (E.D. La.), and she assisted Co-Lead Counsel and Subclass Counsel with negotiating the class settlement in *In re National Football League Players' Concussion Litigation*, MDL No. 2323 (E.D. Pa.). In July 2015, Ms. Duggan and Mr. Levin were appointed by the Honorable Carl J. Barbier to serve as Special Counsel to the Plaintiffs' Fee and Cost Committee in the BP Oil Spill Litigation, *In re Oil Spill by the Oil Rig "Deepwater Horizon" in the Gulf of Mexico, on April 20, 2010*, MDL 2179 (E.D. La.).

Ms. Duggan served as a class action expert in *In re "Non-Filing" Insurance Fee Litigation*, MDL 1130 (M.D. Ala.). She was a contributing author and editor of the Third Edition of Herbert

Newberg, *Newberg On Class Actions*, (3d ed. 1992) and she earned a Public Justice Achievement Award in July, 1999 from Public Justice for her work on the Brown University Title IX Litigation.

(g) **DANIEL C. LEVIN**, a member of the firm, was born in Philadelphia, Pennsylvania. He received his undergraduate degree from the University of Pittsburgh (B.A. 1994) and his law degree from Oklahoma City University (J.D. 1997). He is a member of Phi Delta Phi. He serves on the Board of Directors for the Philadelphia Trial Lawyers Association. He is also member of the Pennsylvania Bar Association; Pennsylvania Trial Lawyers Association, and the Association of Trial Attorneys of America. He is admitted to practice before the Supreme Court of Pennsylvania; the United States District Court for The Eastern District of Pennsylvania, and the United States Court of Appeals for the Second and Third Circuits. Mr. Levin has been part of the litigation team in *In re Orthopedic Bone Screw Products Liability Litigation*, MDL 1014 (E.D. Pa.); *In re Diet Drugs Litigation*, MDL 1203 (E.D. Pa.); *Galanti v. The Goodyear Tire and Rubber Co.*, Civil Action No: 03-209; *Muscara v. Nationwide*, October Term 2000, Civil Action No. 001557, Philadelphia County; and *Wong v. First Union*, May Term 2003, Civil Action No. 001173, Philadelphia County, *Harry Delandro, et al v. County of Allegheny, et al*, Civil Action No. 2:06-CV-927; *Nakisha Boone, et al v. City of Philadelphia, et al*, Civil Action No. 05-CV-1851; *Mary Gwiazdowski v. County of Chester*, No. 08-4463 (E.D.Pa.); *Helmer, et al. v. the Goodyear Tire & Rubber Co.*, D. Co. Civil Action No. 1:12-00685-RBJ; *Cobb v. BSH Home Appliance Corporation, et al*, C.D. Cal. Case No. SACV10-711 DOC (ANx) and *In Re Human Tissue Products Liability Litigation*, MDL 1763 (D.N.J.).

Mr. Levin was lead counsel in *Joseph Meneghin v. Exxon Mobil Corporation, et al.*, Superior Court of New Jersey, Docket No. OCN-L-002696-07; *Johnson, et al. v. Walsh, et al*, PCCP April Term, 2008, No. 2012; *Kowa, et al. v. The Auto Club Group*, N.D.Ill. Case No. 1:11-cv-07476. Mr. Levin is currently lead counsel in *Ortiz v. Complete Healthcare Resources, Inc., et al*, Montgomery CCP No. 12-12609; *Gordon v. Maxim Healthcare Services, Inc.*, E.D. Pa. Civil Action No. 2:13-cv-07175 and *Shafir v. Continuum Health Partners, Inc.*

Daniel Levin is recognized by his peers as a Super Lawyer.

(h) **CHARLES E. SCHAFFER**, a member of the firm, born in Philadelphia, Pennsylvania, is a graduate of Villanova University, (B.S., *Magna Cum Laude*, 1989) and Widener University School of Law (J.D. 1995) and Temple University School of Law (LL.M. in Trial Advocacy, 1998). He is admitted to practice before the Supreme Court of Pennsylvania, the Supreme Court of New Jersey, the United States District Court for the Eastern District of Pennsylvania, the United States District Court for the Western District of Pennsylvania and the Third Circuit Court of Appeals. He is also a member of the American Bar Association, Association of Trial Attorneys of America, Pennsylvania Association for Justice, Philadelphia Trial Lawyers Association, and the National Trial Lawyers Association.

Mr. Schaffer has participated in, *inter alia*, the following actions: *Davis v. SOH Distribution Company, Inc.*, Case No. 09-CV-237 (M.D. Pa.) (Plaintiffs' Co-Lead Counsel); *In re CertainTeed Corporation Roofing Shingles Products Liability Litigation*, MDL No. 1817 (E.D. Pa.) (Plaintiffs' Discovery and Settlement Committees); *Gwaizdowski v. County of Chester*, Civil Action No. 08-CV-4463 (E.D. Pa. 2012); *Meneghin, v. The Exxon Mobile Corporation, et al.*, Civil Action No. OCN-002697-07 (Superior Court, Ocean County, NJ 2012) (Plaintiffs' Co-lead Counsel); *Gulbankian et al. v. MW Manufacturers, Inc.*, Case No. 1:10-cv-10392-RWZ (D.C. Mass.) (Plaintiffs' Discovery and Settlement Committees); *Eliason, et al. v. Gentek Building Products, Inc., et al.*, Case No. 1:10-cv-2093 (N.D. Ohio) (Plaintiffs' Executive Committee); *Smith, et al. v. Volkswagon Group of America, Inc.*, Case No. 3:13-cv-00370-SMY-PMF (S.D. Ill.) (Plaintiffs' Discovery and Settlement Committees); *Melillo, et al. v. Building Products of Canada Corp.*, Civil Action No. 1:12-CV-00016-JGM (D. Vt. Dec. 2012); *Vought, et al., v. Bank of America, et al.*, Civil Action No. 10-CV-2052 (C.D. Ill. 2013) (Plaintiffs' Discovery and Settlement Committees); *In re Navistar Diesel Engine Products Liability Litigation*, MDL No. 2223 (N.D. Ill.) (Plaintiffs' Steering Committee); *United Desert Charities, et al. v. Sloan Valve, et al.*, Case No. 12-cv-06878 (C.D. Ca.) (Plaintiffs' Executive Committee); *Kowa, et. el. v. The Auto Club Group AKA AAA Chicago*, Case No. 1:11-cv-07476 (N.D. Ill.); *In re Chinese-Manufactured Drywall Product Liability Litigation*, MDL 2047 (E.D. La.); *In re Vioxx Products Liability Litigation*, MDL 1657 (E.D. La.); *In re Orthopedic Bone Screw Products Liability Litigation*, MDL 1014 (E.D. Pa.); *In re Diet Drugs Litigation*, MDL 1203 (E.D. Pa.); *In re: CertainTeed Fiber*

*Cement Siding Litigation*, MDL 2270 (E.D. Pa. 2014) (Plaintiffs' Discovery and Settlement Committees) and *In re JP Mortgage Modification Litigation*, MDL 2290 (D. Mass.) (Plaintiffs' Co-Lead Counsel).

Currently, Mr. Schaffer is serving as lead counsel in *In re IKO Roofing Products Liability Litigation*, MDL 2104 (C.D. Ill.), a member of Plaintiffs' Steering Committee in *In re Pella Corporation Architect And Designer Series Windows Marketing Sales Practices and Product Liability Litigation*, MDL 2514 (D.S.C.); a member of the Plaintiffs' Executive Committee in *In re Azek Decking Sales Practices Litigation*, Civil Action No. 12-6627 (KM)(MCA)(D.NJ.), a member of the Plaintiffs' Executive Committee in *In re Citimortgage, Inc. Home Affordable Modification ("HAMP")*, MDL 2274 (C.D. Cal.); a member of the Plaintiffs' Executive Committee in *In re Carrier IQ Consumer Privacy Litigation*, MDL 2330 (N.D. Cal.); a member of the Plaintiffs' Executive Committee *In re Dial Complete Marketing and Sales Practices Litigation*; MDL 2263 (D.N.H.); a member of Plaintiffs' Executive Committee in *In re Emerson Electric Co. Wet/Dry Vac Marketing and Sales Litigation*, MDL 2382 (E.D. Miss.); a member of the Plaintiffs' Executive Committee *In re Colgate Palmolive Soft Soap Antibacterial Hand Soap Marketing and Sales Practice Litigation*, (D.N.H.); a member of the Plaintiffs' Executive Committee *In re HardiePlank Fiber Cement Siding Litigation*, MDL 2359 (D. Minn.) and is actively participating in a number of other class actions and mass tort actions across the United States in leadership positions.

In recognition of his accomplishments, Mr. Schaffer has achieved and maintained an AV Martindale-Hubbell rating. Mr. Schaffer speaks nationally on a multitude of topics relating to class actions and complex litigation.

(i) **AUSTIN B. COHEN**, a member of the firm, is a graduate of the University of Pennsylvania (B.A., 1990) and a graduate of the University of Pittsburgh School of Law (J.D., cum laude, 1996) where he served on the Journal of Law and Commerce as an assistant and executive editor. He has authored an article titled "Why Subsequent Remedial Modifications Should Be Inadmissible in Pennsylvania Products Liability Actions," which was published in the Pennsylvania Bar Association Quarterly. He is a member of the Pennsylvania and New Jersey bars, and is a member of the Pennsylvania and American Bar Associations.

(j) **MICHAEL M. WEINKOWITZ**, a member of the firm, born Wilmington, Delaware, June 11, 1969; admitted to bar 1995, Pennsylvania and New Jersey, U.S. District Courts, Eastern District of Pennsylvania, District of New Jersey; U.S. Court of Appeals, Third Circuit. Education: West Virginia University (B.A., magna cum laude, 1991); Temple University (J.D., cum laude, 1995); Member, Temple International & Comparative Law Journal, 1994-95; American Jurisprudence Award for Legal Writing.

(k) **MATTHEW C. GAUGHAN**, born in Boston, Massachusetts, is a graduate of the University of Massachusetts at Amherst, (B.B.A., 2000) and Villanova University School of Law (J.D., *Cum Laude*, 2003). He is admitted to practice in the States of New Jersey, New York and Pennsylvania. He is also admitted to practice before the United States District Court for the Eastern District of Pennsylvania and the United States District Court for the District of New Jersey. Mr. Gaughan has extensive involvement in products liability and commercial litigation cases.

(l) **KEITH J. VERRIER**, is a graduate of Temple University School of Law (J.D., magna cum laude, 2000), where he was a member of the Law Review, and the University of Rhode Island (B.S., 1992). After law school, he was a law clerk for the Honorable Herbert J. Hutton in the United States District Court for the Eastern District of Pennsylvania. Mr. Verrier has experience litigating a wide range of commercial disputes with an emphasis on litigating and counseling clients on antitrust matters. He currently spends the majority of his time litigating antitrust class actions, predominantly those seeking overcharge damages on behalf of direct purchasers of products under both Section 1 and Section 2 of the Sherman Act. He is admitted to practice in the Commonwealth of Pennsylvania and the State of New Jersey as well as in the United States Court of Appeals for the Third Circuit, the United States District Court for the Eastern District of Pennsylvania and the United States District Court for the District of New Jersey. He is a member of the American Bar Association.

(m) **LUKE T. PEPPER**, is a graduate of King's College (B.A. 1997) and the Temple University School of Law (J.D. 2000). While in law school, Mr. Pepper served as an intern for United States Magistrate Judge Peter Scuderi. He is admitted to the Pennsylvania Supreme Court, and the U.S. District Court for the Eastern District of Pennsylvania, U.S. Court of Appeals, Third Circuit, and United States Court of Appeals for the Armed Forces. He is a member of the Pennsylvania and American Association

of Justice. He served as claimant and attorney liaison for Class Counsel MDL 1203 *In re Diet Drugs*, (E.D. Pa.). His responsibilities included assisting claimants with the adjudication of their claims and resolution of settlement issues. In addition, Mr. Pepper is part of the litigation teams *In re Pradaxa (Dabigatran Etexilate) Products Liability Litigation*, MDL 2385 (S.D. Ill.), *In re: Yasmin and YAZ (Drospirenone) Marketing, Sales Practices and Products Liability Litigation*, MDL 2100 (S.D. Ill.); *Municipal Derivatives* MDL 1950 (S.D.N.Y.); *Tylenol (Acetaminophen) Marketing, Sales Practices and Products Liability Litigation* MDL 2436 (E.D. Pa.); *Pool Products Distribution Market Antitrust Litigation*, MDL 2328 (E.D. La.).

(n) **NICOLA F. SERIANNI**, is a graduate of The Johns Hopkins University (B.A. International Relations, 2000) and Widener University School of Law (J.D., 2006). While in law school, Ms. Serianni served as an intern for Pennsylvania Superior Court Judge Susan Peikes Gantman, and upon graduation continued to work in the Superior Court of Pennsylvania for Judges Richard B. Klein (Ret.) and Anne E. Lazarus. Ms. Serianni is admitted to practice in the Commonwealth of Pennsylvania, the State of New Jersey as well as in the United States District Court for the Eastern District of Pennsylvania. Ms. Serianni works extensively on products liability and class action litigation cases.

#### **SUCCESSFULLY LITIGATED CLASS CASES**

Levin Sedran & Berman's extensive class action practice includes many areas of law, including: Securities, ERISA, Antitrust, Environmental and Consumer Protection. The firm also maintains a practice in personal injury, products liability, and admiralty cases.

The firm has successfully litigated the following class action cases: *James J. and Linda J. Holmes, et al. v. Penn Security Bank and Trust Co., et al.*, U.S.D.C., Middle District of Pennsylvania Civil Action No. 80-0747; *In re Glassine & Greaseproof Antitrust Litigation*, MDL 475, U.S.D.C., Eastern District of Pennsylvania; *In re First Pennsylvania Securities Litigation*, Master File No. 80-1643, U.S.D.C., Eastern District of Pennsylvania; *In re Caesars World Shareholder Litigation*, Master File No. MDL 496 (J.P. MDL); *In re Standard Screws Antitrust Litigation*, Master File No. MDL 443, U.S.D.C., Eastern District of Pennsylvania; *In re Electric Weld Steel Tubing Antitrust Litigation - II*,

Master File No. 83-0163, U.S.D.C., Eastern District of Pennsylvania; *Leroy G. Meshel, et al. v. Nutri-Systems, Inc., et al.*, U.S.D.C., Eastern District of Pennsylvania, Civil Action No. 83-1440; *In re Corrugated Container Antitrust Litigation*, U.S.D.C., Southern District of Texas, Houston Division, MDL 310; *In re Three Mile Island Litigation*, U.S.D.C., Middle District of Pennsylvania, Civil Action No. 79-0432; *Township of Susquehanna, et al. v. GPU, et al.*, U.S.D.C., Middle District of Pennsylvania, Civil Action No. 81-0437 (a Three Mile Island case); *Donald A. Stibitz, et al. v. General Public Utilities Corporation, et al.*, No. 654 S 1985 (C.P. Dauphin County, Pa.) (a Three Mile Island case); *Raymond F. Wehner, et al. v. Syntex Corporation and Syntex (U.S.A.) Inc.*, No. C-85-20383(SW) (N.D. Cal.) (first Superfund Class Action ever certified); *In re Dun & Bradstreet Credit Services Customer Litigation*, U.S.D.C., Southern District of Ohio, Civil Action Nos. C-1-89-026, 89-051, 89-2245, 89-3994, 89-408; *Malcolm Weiss v. York Hospital, et al.*, U.S.D.C., Middle District of Pennsylvania, Civil Action No. 80-0134; *In re Ramada Inns Securities Litigation*, U.S.D.C., District of Delaware, Master File No. 81-456; *In re Playboy Securities Litigation*, Court of Chancery, State of Delaware, New Castle County, Civil Action No. 6806 and 6872; *In re Oak Industries Securities Litigation*, U.S.D.C., Southern District of California, Master File No. 83-0537-G(M); *Dixie Brewing Co., Inc., et al. v. John Barth, et al.*, U.S.D.C., Eastern District of Pennsylvania, Civil Action No. 84-4112; *In re Warner Communications Securities Litigation*, U.S.D.C., Southern District of New York, Civil Action No. 82-CV-8288; *In re Baldwin United Corporation Litigation*, U.S.D.C., Southern District of New York, MDL No. 581; *Zucker Associates, Inc., et al. v. William C. Tallman, et al. and Public Service Company of New Hampshire*, U.S.D.C., District of New Hampshire, Civil Action No. C86-52-D; *In re Shopping Carts Antitrust Litigation*, MDL 451, Southern District of New York; *Charal v. Andes, et al.*, C.A. No. 77-1725; *Hubner v. Andes, et al.*, C.A. No. 78-1610 U.S.D.C., Eastern District of Pennsylvania; *In re Petro-Lewis Securities Litigation*, 84-C-326, U.S.D.C., District of Colorado; *Gentry v. C & D Oil Co.*, 102 F.R.D. 490 (W.D. Ark. 1984); *In re Hops Antitrust Litigation*, C.A. No. 84-4112, U.S.D.C., Eastern District of Pennsylvania; *In re North Atlantic Air Travel Antitrust Litigation*, No. 84-1013, U.S.D.C., District of Columbia; *Continental/Midlantic Securities Litigation*, No. 86-6872, U.S.D.C., Eastern District of Pennsylvania; *In re Fiddler's Woods*

*Bondholders Litigation*, Civil Action No. 83-2340 (E.D. Pa.) (Newcomer, J.); *Fisher Brothers v. Cambridge-Lee Industries, Inc , et al.*, Civil Action No. 82-4941, U.S.D.C., Eastern District of Pennsylvania; *Silver Diversified Ventures Limited Money Purchase Pension Plan v. Barrow, et al.*, C.A. No. B-86-1520-CA (E.D. Tex.) (*Gulf States Utilities Securities Litigation*); *In re First Jersey Securities Litigation*, C.A. No. 85-6059 (E.D. Pa.); *In re Crocker Shareholder Litigation*, Cons. C.A. No. 7405, Court of Chancery, State of Delaware, New Castle County; *Mario Zacharjasz, et al. v. The Lomas and Nettleton Co.*, Civil Action No. 87-4303, U.S.D.C., Eastern District of Pennsylvania; *In re People Express Securities Litigation*, Civil Action No. 86-2497, U.S.D.C., District of New Jersey; *In re Duquesne Light Shareholder Litigation*, Master File No. 86-1046 U.S.D.C., Western District of Pennsylvania (Ziegler, J.); *In re Western Union Securities Litigation*, Master File No. 84-5092 (JFG), U.S.D.C., District of New Jersey; *In re TSO Financial Litigation*, Civil Action No. 87-7903, U.S.D.C., Eastern District of Pennsylvania; *Kallus v. General Host*, Civil Action No. B-87-160, U.S.D.C., District of Connecticut; *Staub, et al. v. Outdoor World Corp.*, C.P. Lancaster County, No. 2872-1984; *Jaroslawicz, et al. v. Englehard Corp.*, U.S.D.C., District of New Jersey, Civil Action No. 84-3641F; *In re Boardwalk Marketplace Securities Litigation*, U.S.D.C., District of Connecticut, MDL 712 (WWE); *In re Goldome Securities Litigation*, U.S.D.C., Southern District of New York, Civil Action No. 88-Civ-4765; *In re Ashland Oil Spill Litigation*, U.S.D.C., Western District of Pennsylvania, Master File No. M-14670; *Rosenfeld, et al. v. Collins & Aikman Corp.*, U.S.D.C., Eastern District of Pennsylvania, Civil Action No. 87-2529; *Gross, et al. v. The Hertz Corporation*, U.S.D.C., Eastern District of Pennsylvania, Master File, No. 88-661; *In re Collision Near Chase, Maryland on January 4, 1987 Litigation*, U.S.D.C., District of Maryland, MDL 728; *In re Texas International Securities Litigation*, U.S.D.C., Western District of Oklahoma, MDL No. 604, 84 Civ. 366-R; *In re Chain Link Fence Antitrust Litigation*, U.S.D.C., District of Maryland, Master File No. CLF-1; *In re Winchell's Donut House, L.P. Securities Litigation*, Court of Chancery of the State of Delaware, New Castle County, Consolidated Civil Action No. 9478; *Bruce D. Desfor, et al. v. National Housing Ministries, et al.*, U.S.D.C., Eastern District of Pennsylvania, Civil Action No. 84-1562; *Cumberland Farms, Inc., et al. v. Browning-Ferris Industries, Inc., et al.*, U.S.D.C., Eastern District of Pennsylvania, Master File

No. 87-3717; *In re SmithKline Beckman Corp. Securities Litigation*, U.S.D.C., Eastern District of Pennsylvania, Master File No. 88-7474; *In re SmithKline Beecham Shareholders Litigation*, Court of Common Pleas, Phila. County, Master File No. 2303; *In re First Fidelity Bancorporation Securities Litigation*, U.S.D.C., District of New Jersey, Civil Action No. 88-5297 (HLS); *In re Qintex Securities Litigation*, U.S.D.C., Central District of California, Master File No. CV-89-6182; *In re Sunrise Securities Litigation*, U.S.D.C., Eastern District of Pennsylvania, MDL 655; *David Stein, et al. v. James C. Marshall, et al.*, U.S.D.C., District of Arizona, No. Civ. 89-66 (PHX-CAM); *Residential Resources Securities Litigation*, Case No. 89-0066 (D. Ariz.); *In re Home Shopping Network Securities Litigation -- Action I (Consolidated Actions)*, Case No. 87-428-CIV-T-13A (M.D. Fla.); *In re Kay Jewelers Securities Litigation*, Civ. Action Nos. 90-1663-A through 90-1667-A (E.D. Va.); *In re Rohm & Haas Litigation*, Master File Civil Action No. 89-2724 (Coordinated) (E.D. Pa.); *In re O'Brien Energy Securities Litigation*, Master File No. 89-8089 (E.D. Pa.); *In re Richard J. Dennis & Co. Litigation*, Master File No. 88-Civ-8928 (MP) (S.D. N.Y.); *In re Mack Trucks Securities Litigation*, Consolidated Master File No. 90-4467 (E.D. Pa.); *In re Digital Sound Corp., Securities Litigation*, Master File No. 90-3533-MRP (BX) (C.D. Cal.); *In re Philips N.V. Securities Litigation*, Master File No. 90-Civ.-3044 (RPP) (S.D.N.Y.); *In re Frank B. Hall & Co., Inc. Securities Litigation*, Master File No. 86-Civ.-2698 (CLB) (S.D.N.Y.); *In re Genentech, Inc. Securities Litigation*, Master File No. C-88-4038-DLJ (N.D. Cal.); *Richard Friedman, et al. v. Northville Industries Corp.*, Supreme Court of New York, Suffolk County, No. 88-2085; *Benjamin Fishbein, et al. v. Resorts International, Inc., et al.*, No. 89 Civ.6043(MGC) (S.D.N.Y.); *In re Avon Products, Inc. Securities Litigation*, No. 89 Civ. 6216 (MEL) (S.D.N.Y.); *In re Chase Manhattan Securities Litigation*, Master File No. 90 Civ. 6092 (LJF) (S.D.N.Y.); *In re FPL Group Consolidated Litigation*; Case No. 90-8461 Civ. Nesbitt (S.D. Fla.); *Daniel Hwang, et al v. Smith Corona Corp., et al*, Consolidated No. B89-450 (TFGD) (D. Ct.); *In re Lomas Financial Corp. Securities Litigation*, C.A. No. CA-3-89-1962-G (N.D. Tex.); *In re Tonka Corp. Securities Litigation*, Consolidated Civil Action No. 4-90-2 (D. Minnesota); *In re Unisys Securities Litigation*, Master File No. 89-1179 (E.D. Pa.); *In re Alcolac Inc. Litigation*, Master File No. CV490-261 (Cir. Ct. Saline Cty. Marshall, Missouri); *In re Clozapine Antitrust Litigation*,

Case No. MDL874 (N.D. Ill.); *In re Jiffy Lube Securities Litigation*, C.A. No. JHY-89-1939 (D. Md.); *In re Beverly Enterprises Securities Litigation*, Master File No. CV-88-01189 RSWL (Tex.) [Central District CA]; *In re Kenbee Limited Partnerships Litigation*, CV-91-2174 (GEB) (D.N.J.); *Greentree v. Procter & Gamble Co.*, C.A. No. 6309, April Term 1991 (C.C.P. Phila. Cty.); *Moise Katz, et al v. Donald A. Pels, et al and Lin Broadcasting Corp.*, No. 90 Civ. 7787 (KTD) (S.D.N.Y.); *In re Airlines Antitrust Litigation*, MDL No. 861 (N.D. GA.); *Fulton, Mehring & Hauser Co., Inc., et al. v. The Stanley Works, et al.*, No. 90-0987-C(5) (E.D. Mo.); *In re Mortgage Realty Trust Securities Litigation*, Master File No. 90-1848 (E.D. Pa.); *Benjamin and Colby, et al. v. Bankeast Corp., et al.*, C.A. No. C-90-38-D (D.N.H.); *In re Royce Laboratories, Inc. Securities Litigation*, Master File Case No. 92-0923-Civ-Moore (S.D. Fla.); *In re United Telecommunications, Inc. Securities Litigation*, Case No. 90-2251-0 (D. Kan.); *In re U.S. Bioscience Securities Litigation*, C.A. No. 92-678 (E.D. Pa.); *In re Bolar Pharmaceutical Co., Inc. Securities Litigation*, C.A. No. 89 Civ. 17 (E.D. N.Y.); *In re PNC Securities Litigation*, C.A. No. 90-592 (W.D. Pa.); *Raymond Snyder, et al. v. Oneok, Inc., et al.*, C.A. No. 88-C-1500-E (N.D. Okla.); *In re Public Service Company of New Mexico*, Case No. 91-0536M (S.D. Cal.); *In re First Republicbank Securities Litigation*, C.A. No. CA3-88-0641-H (N.D. Tex, Dallas Division); and *In re First Executive Corp. Securities Litigation*, Master File No. CV-89-7135 DT (C.D. Calif.).

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Several courts have favorably commented on the quality of work performed by Arnold Levin, Levin, Fishbein, Sedran & Berman, and Mr. Levin's former firm, Adler, Barish, Levin & Creskoff.

Judge Rambo of the United States District Court for the Middle District of Pennsylvania has favorably acknowledged the quality of work of the law firm in her opinion in *In re Three Mile Island Litigation*, 557 F. Supp. 96 (M.D. Pa. 1982). In that case, the firm was a member of the Executive Committee charged with overall responsibility for the management of the litigation. Notably, the relief obtained included the establishment of a medical monitoring fund for the class. *See also, Township of Susquehanna, et al. v. GPU, et al.*, U.S.D.C., Middle District of Pennsylvania, Civil Action No. 81-0437.

In certifying the class in *Weiss v. York Hospital*, Judge Muir found that “plaintiff’s counsel are experienced in the conduct of complex litigation, class actions, and the prosecution of antitrust matters.” *Weiss v. York Hospital*, No. 80-0134, Opinion and Order of May 28, 1981 at 4 (M.D. Pa. Mar. 1981). See also, *Weiss v. York Hospital*, 628 F. Supp. 1392 (M.D. Pa. 1986). Judge Muir, in certifying a class for settlement purposes, found plaintiff’s attorneys to be adequate representatives in *In re Anthracite Coal Antitrust Litigation*, Nos. 76-1500, 77-699, 77-1049 and found in the decision that “the quality of the work performed by Mr. Levin and by the attorneys from Adler-Barish [a predecessor to Levin, Fishbein, Sedran & Berman] who assisted him -- as exhibited both in the courtroom and in the papers filed -- has been at a high level.” *In re Anthracite Coal Antitrust Litigation*, (M.D. Pa., Jan. 1979). Judge Muir also approved of class counsel in the certification decision of *Holmes, et al. v. Penn Security and Trust Co., et al.*, No. 80-0747. Chief Judge Nealon found plaintiffs’ counsel to satisfy the requirement of adequate representation in certifying a class in *Beck v. The Athens Building & Loan Assn.*, No. 73-605 at 2 (D. Pa. Mar. 22, 1979). Judge Nealon’s opinion relied exclusively on the Court’s Opinion in *Sommers v. Abraham Lincoln Savings & Loan Assn.*, 66 F.R.D. 581, 589 (E.D. Pa. 1975), which found that “there is no question that plaintiffs’ counsel is experienced in the conduct of a class action....”

Judge Bechtle in the *Consumer Bags Antitrust Litigation*, Civil Action No. 77-1516 (E.D. Pa.), wherein Arnold Levin was lead counsel for the consumer class, stated with respect to petitioner:

Each of the firms and the individual lawyers in this case have extensive experience in large, complex antitrust and securities litigation.

Furthermore, the Court notes that the quality of the legal services rendered was of the highest caliber.

In *Gentry v. C&D Oil Company*, 102 F.R.D. 490 (W.D. Ark. 1984), the Court described counsel as “experienced and clearly able to conduct the litigation.”

In *Jaroslawicz v. Engelhard Corp.*, No. 84-3641 (D.N.J.), in which this firm played a major role, the Court praised plaintiffs’ counsel for their excellent work and the result achieved.

In *In re Orthopedic Bone Screw Products Liability Litigation*, 2000 WL 1622741, \*7 (E.D. Pa. 2000), the Court lauded Levin, Fishbein, Sedran & Berman counsel as follows: “The court also finds

that the standing and expertise of counsel for [plaintiffs] is noteworthy. First, class counsel is of high caliber and most PLC members have extensive national experience in similar class action litigation.”

In *In re Diet Drugs (Phentermine, Fenfluramine, Dexfenfluramine) Products Liability Litigation*, MDL 1203, the Court commented on Levin, Fishbein, Sedran & Berman’s efforts regarding the creation of the largest nationwide personal injury settlement to date as a “remarkable contribution”. PTO No. 2622 (E.D. Pa. Oct. 3, 2002).

The firm has played a major role in most pharmaceutical litigation in the last 20 years. The firm is listed by Martindale-Hubbell in the Bar Register of Preeminent Lawyers.

# **EXHIBIT D**

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

IN RE: NATIONAL FOOTBALL  
LEAGUE PLAYERS' CONCUSSION  
INJURY LITIGATION

No. 2:12-md-02323-AB

MDL No. 2323

Hon. Anita B. Brody

Kevin Turner and Shawn Wooden,  
*on behalf of themselves and  
others similarly situated,*

Civ. Action No. 14-00029-AB

Plaintiffs,

v.

National Football League and  
NFL Properties LLC,  
successor-in-interest to  
NFL Properties, Inc.,

Defendants.

THIS DOCUMENT RELATES TO:  
ALL ACTIONS

**DECLARATION OF GENE LOCKS, ESQUIRE IN SUPPORT OF CO-LEAD CLASS  
COUNSEL'S PETITION FOR AN AWARD OF ATTORNEY'S FEES AND  
REIMBURSEMENT OF COSTS AND EXPENSES**

I, Gene Locks, Esquire, declare as follows pursuant to 28 U.S.C. § 1746:

1. I am a partner in the law firm known as the Locks Law Firm "(LLF)", located in Philadelphia, Pennsylvania. As one of four Class Counsel, I submit this declaration in support of Co-Lead Class Counsel's Petition for an Award of Attorney's Fees and Reimbursement of Costs and Expenses in connection with and for services rendered and expenses incurred for the common benefit of the Settlement Class in the above-captioned multidistrict litigation ("Action") from the inception of the above-captioned litigation through June 30, 2016, as well as for the

payment of expenses incurred therewith. I have personal knowledge of the matters set forth in this declaration and, if called upon, I could and would testify competently thereto.

2. LLF was involved at the inception of these cases both when the initial complaints were filed on behalf of multiple players.

3. By January 2012, LLF represented approximately 200 retired players, most of whom had filed personal injury complaints against the NFL parties ("NFL") in various courts around the country, including this Court. That number expanded through the time-period of 2012 to approximately 1400 players.

4. LLF took a leadership role at the outset in early 2012, attended the first organizational meeting of plaintiffs' counsel and helped organize the Plaintiffs Steering and Executive Committees, which the Court appointed.

5. LLF took a leading role in researching and developing the case on a class-wide basis from both a medical and legal standpoint LLF took the lead in retaining both legal and medical experts: Professor Tobias Barrington Wolff of the University of Pennsylvania Law School, an expert on Rule 23, to advise on all legal issues, and Donald H. Silberberg, M.D., Chair Emeritas of the Department of Neurology of the University of Pennsylvania to advise on all medical issues. Both were instrumental in providing guidance on the substance of the Personal Injury Master Complaint and the Medical Monitoring Class Action Complaint.

6. LLF partner David Langfitt researched and drafted, along with two other Executive Committee members, the Personal Injury Master Complaint, which was filed pursuant to an Order of this Court in early summer 2012. The Medical Monitoring Class Action Complaint was modeled off the Master Personal Injury Complaint.

7. Those Complaints were the foundation of the current case, gained nationwide publicity for the cause, and focused the plaintiffs and defendants on a central pleading.

8. By the time this Court appointed two members of LLF (I, Gene Locks, and David Langfitt) as members of the Plaintiffs Executive Committee in the spring of 2012, LLF represented approximately 1000 retired players, all of whom had filed, or were in the process of filing, personal injury cases against the NFL.

9. LLF was directly involved in the drafting of opposition papers and the hearing related to the NFL's Motion to Dismiss on the grounds of pre-emption.

10. By agreement of Co-Lead Counsel, I, Gene Locks, was appointed within the Executive Committee as Settlement Counsel for settlement discussions ordered by the Court.

11. I directly participated in settlement discussions ordered by the Court while the NFL's Motion to Dismiss was pending. During those discussions, LLF prepared a substantial injury database – primarily involving the clients represented by Class Counsel and particularly clients represented by LLF – that Plaintiffs' counsel used to convey to the NFL the nature of the diseases and injuries sustained by the retired players. The parties used the database to develop a framework for settlement.

12. During those discussions, I substantially relied on the advice and counsel of my partners and, in part, Professor Wolff and Dr. Silberberg, in formulating a term sheet that was legally and scientifically supportable, was based on the best factual evidence of injury and causation that we had at that time, and was consistent with a reasonable compromise.

13. At all times, the compromise and accord was designed to settle the matter efficiently and reasonably, bearing in mind that further risks of litigation were unpredictable and

presented the unwanted possibility of many years, possibly decades, of litigation and appeals while retired players died and families disintegrated.

14. At all times, we within the Plaintiffs settlement leadership, now Class Counsel, understood that the Court desired a reasonable and effective settlement structure, and we strived to provide that.

15. Once the Plaintiffs and NFL reached a term sheet in August of 2013, LLF's role changed and became critical to making sure the vast LLF client base and their retired player friends and families understood the basis of the term sheet, the purpose of the accord and compromise, and the role of the Court in protecting the absent class members.

16. Throughout 2013 and 2014, LLF explained to every class member and family member who inquired (many of whom were not clients of LLF) how the settlement structure effected each player and family, the value of the compromise and accord for the class, together with the long-term risks of further litigation, and the fiduciary role of the Court with respect to the absent class members.

17. Very few retired players with whom LLF communicated either objected or opted-out of the Settlement Agreement. LLF's leadership in that regard created a ripple effect in the retired player community, which overwhelmingly accepted the compromise and accord as reasonable under all of the complex circumstances of this case.

18. LLF also was instrumental in interacting with a very large number of neurologists and neuropsychologists throughout the nation, a collateral benefit of which was their recruitment into and future participation in the BAP and MAF programs for the benefit of the class members (the vast majority of retired players).

19. The schedule attached hereto as Exhibit 1 is a detailed summary indicating the amount of common benefit time spent by LLF attorneys and professional support staff of my firm who were involved in, and billed fifty or more hours to, this Action, and the lodestar calculation for those individuals based on LLF's current billing rates. The schedule was prepared from contemporaneous daily time records regularly prepared and maintained by my firm. Time expended in preparing this application for attorney's fees and expenses has been excluded.

20. The hourly rates for the attorneys and professional support staff of my firm included in Exhibit 1 are the same as the regular rates charged for their services in other legal matters.

21. The total number of hours expended on the common benefit of this Action by my firm during the time period is 4243 hours. The total lodestar for my firm for those hours is \$3,084,500, all of which is for attorneys' time.

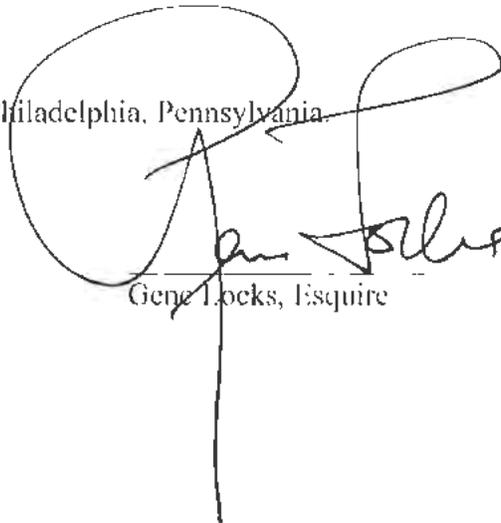
22. My firm's lodestar figures are based solely upon my firm's billing rates, which rates do not include charges for expense items. Expense items are billed separately and such charges are not duplicated in my firm's billing rates.

23. As detailed in Exhibit 2 hereto, my firm is seeking reimbursement of a total of \$639,160 in common benefit expenses incurred in connection with the prosecution of this Action. These expenses are reflected on the books and records of my firm. These books and records are prepared from expense vouchers, check records, and other source material, and are an accurate record of the expenses incurred.

24. With respect to the standing of my firm to share in an award of fees, costs, and expenses, attached hereto as Exhibit 3 is a biography of my firm, including the attorneys in my firm who were principally involved in this Action.

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

Executed on January 10, 2017 in Philadelphia, Pennsylvania.



Gene Locks, Esquire

# **EXHIBIT 1**

**IN RE: NATIONAL FOOTBALL LEAGUE PLAYERS' CONCUSSION INJURY  
LITIGATION**

**No. 12-md-2323-AB**

**LOCKS LAW FIRM  
610 Walnut Street, Suite 720E  
Philadelphia, PA 19106  
215-893-3423**

**LODESTAR REPORT**

**Inception through July 15, 2016**

<b>NAME</b>	<b>HOURS</b>	<b>HOURLY RATE</b>	<b>AMOUNT</b>
<b>PARTNERS:</b>			
<b>Gene Locks</b>	1284	\$900	\$1,155,000
<b>David D. Langfitt</b>	2691	\$650	\$1,749,150
<b>Michael B. Leh</b>	93	\$700	\$65,100
<b>Jonathan Miller</b>	175	\$550	\$96,250
<b>STAFF ATTORNEYS:</b>			
<b>None</b>			
<b>CONTRACT ATTORNEYS:</b>			
<b>None</b>			
<b>PARALEGALS:</b>			
<b>None</b>			
<b>TOTALS:</b>	4243		\$3,084,500

# **EXHIBIT 2**

**IN RE: NATIONAL FOOTBALL LEAGUE PLAYERS' CONCUSSION INJURY  
LITIGATION**

**No. 12-md-2323-AB**

**LOCKS LAW FIRM  
610 Walnut Street, Suite 720E  
Philadelphia, PA 19106  
215-893-3423**

**COST AND EXPENSE REPORT**

**Inception through June 30, 2016**

<b>NUMBER</b>	<b>CATEGORY</b>	<b>AMOUNT</b>
1	Assessments	\$550,000
2	Commercial Copies	
3	Computerized Research	
4	Court Reporters/Transcripts	
5	Expert Services	\$70,150
6	Facsimile	
7	Filing & Service Fees	
8	In-House Copies	
9	Long Distance Telephone	
10	Postage/Express Delivery	
11	Travel/Meals/Lodging	\$19,010
12	Miscellaneous	
<b>TOTAL EXPENSES</b>		<b>\$639,160</b>

# **EXHIBIT 3**



## About Us

Michael Leh - Locks Law Firm - Meet the Firm



One of the most prominent personal injury law firms in the tri-state region, the Locks Law Firm is steadfastly committed to protecting the rights of seriously injured victims

With a focus on mass tort and complex personal injury cases, our firm has the resources to handle any case--whether simple or complex--while still providing individual attention to each and every client. Our experienced lawyers have the knowledge to guide you throughout the legal process to achieve the best possible resolution of your case.

## Who We Are

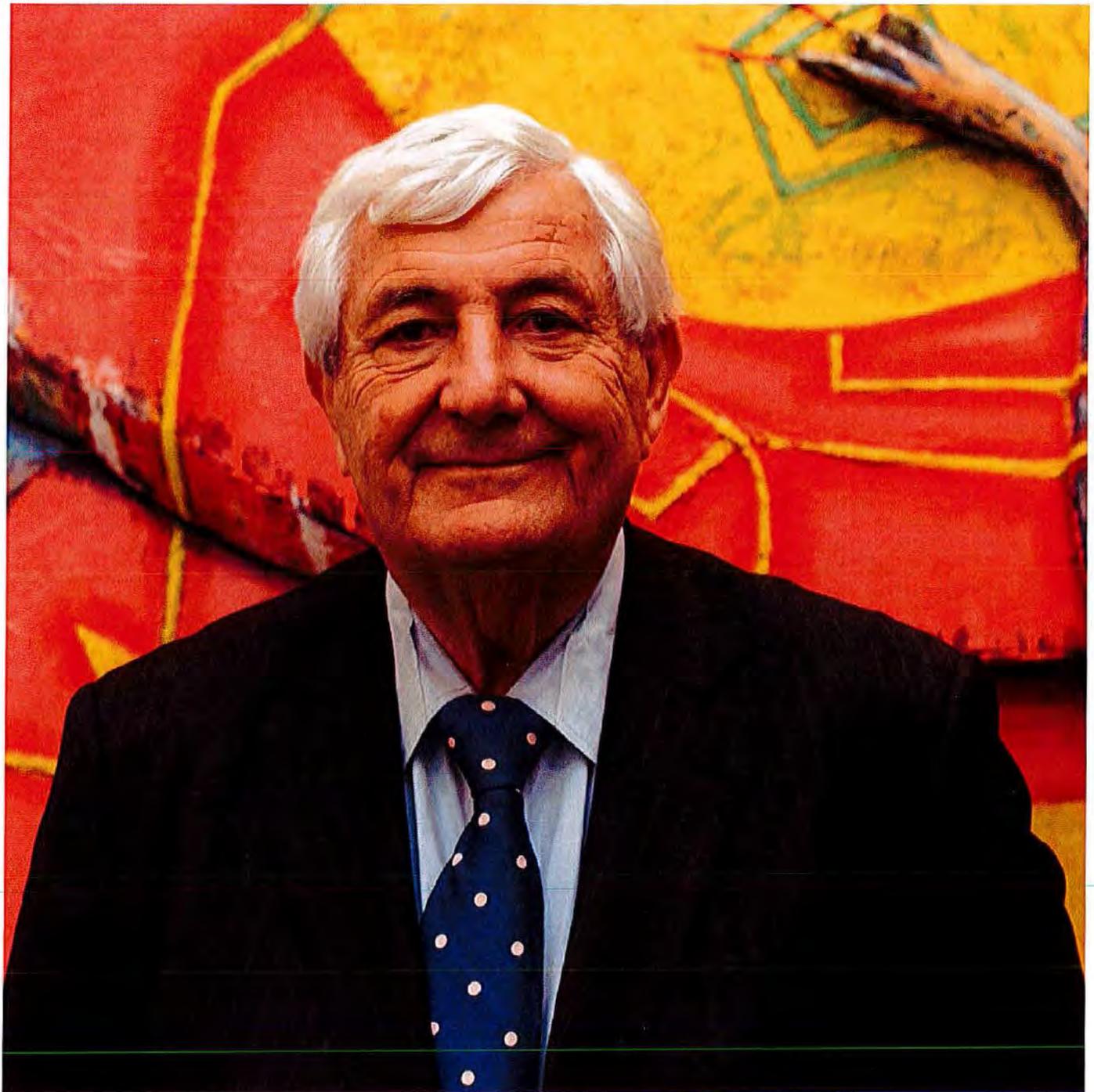
Founded by Gene Locks, the firm first distinguished itself as a leader in the development of strategies for asbestos litigation (/practice-areas/environmental-and-toxic-torts/asbestos-mesothelioma/mesothelioma-litigation-information/), successfully representing thousands of workplace exposure (/practice-areas/environmental-and-toxic-torts/workplace-exposure/) victims. Today our Pennsylvania, New Jersey, and New York personal injury lawyers are nationally and internationally prominent in numerous fields and are frequently successful in dangerous pharmaceutical (/practice-areas/dangerous-pharmaceuticals/), complex personal injury (/personal-injury/), and consumer class-action litigation (/practice-areas/consumer-class-actions/).

## What We Do

At Locks Law Firm (/), our experienced personal injury lawyers are committed to protecting the rights of individuals and families who suffered as a result of the negligent or reckless conduct of another. We assist victims throughout Pennsylvania, New Jersey, and New York and travel to other states as needed. We **do not** represent insurance companies. The goal of our personal injury lawyers (/team/) is to promote the development of a safer society by seeking jury verdicts that take the profit out of negligent conduct and the manufacture of defective products (/practice-areas/defective-products/).

We practice law with the highest professional integrity. We thoroughly investigate and emphasize the merits of each case we handle and present them in the most organized and effective manner to insurance adjusters, opposing attorneys, and jurors. Each of our personal injury lawyers has extensive courtroom experience and our attorneys are assisted by a team of more than one hundred professionals with backgrounds in insurance, law enforcement, engineering, accident reconstruction, economic assessment, and investigation. If you have been injured and are in need of dedicated, trustworthy representation, contact our Philadelphia, New York, and New Jersey personal injury lawyers (/contact/).

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(<http://www.lockslaw.com/>)



**Gene Locks, Partner**

 (215) 893-3434 (tel:+12158933434)

 (215) 893-3444

 [glocks@lockslaw.com](mailto:glocks@lockslaw.com) (mailto:glocks@lockslaw.com)

 The Curtis Center  
Suite 720 East  
601 Walnut Street

## Background and Experience

Gene Locks is married to Sueyun Pyo Locks and the proud father of six daughters. He resides in Philadelphia, Pennsylvania and Fisher Island, Florida.

Gene is the founding and managing partner of Locks Law Firm, a prominent national environmental, litigation, and consumer-oriented law firm formed in 1966, with offices in Philadelphia, New York and New Jersey. He is a graduate of Princeton University, and received his Doctor of Laws degree from Columbia University. He is admitted to practice law in Pennsylvania, New Jersey, New York, as well as many federal courts in the United States.

The Locks Law Firm was founded by Gene Locks, who established the Firm in Philadelphia, New York and New Jersey after more than 40 years of practice. Since then, the firm has grown into a prominent national environmental, personal injury, consumer-oriented, and complex litigation law firm.

Gene was born and raised in the Philadelphia area and is the product of the Philadelphia public school system. He has dedicated his life to representing the people of Philadelphia and beyond, who have been used and abused by the legal system. He obtains justice for the working people of the world and focuses his work exclusively on helping individuals, not corporations, obtain justice through the legal system. He is an innovator, creator, and a pioneer. Gene Locks is a true people's lawyer.

Gene was a pioneer in asbestos personal injury litigation ([/practice-areas/environmental-and-toxic-torts/asbestos-mesothelioma/asbestosis/](#)), having handled such cases and obtaining precedential verdicts in decisions in Pennsylvania, New Jersey, New York and Virginia, since 1974. Asbestos litigation has since become the largest mass tort in the United States. Gene and the personal injury attorneys at Locks Law Firm have represented in excess of 16,000 personal injury victims in more than 20 different states. Gene is co-counsel and acts in a pro hac vice capacity in both federal and state courts across the country. Gene has tried hundreds of these complex product liability ([/practice-areas/defective-products/](#)) matters. He has participated directly and as amicus in numerous appeals resulting in precedent-setting opinions in many states that have become landmark decisions on a wide spectrum of issues.

Thanks to his litigation experience, negotiating reputation and his ability to persevere and sustain lengthy litigation, Gene was appointed by the Honorable Jack B. Weinstein of the Eastern District of New York to the Management Committee of the Agent Orange Litigation, MDL 381. He directed the liability and medical aspects of the Agent Orange cases and was co-chair of the negotiating committee which, at the time, resulted in the largest class action settlement of a personal injury class of victims.

After negotiating the Agent Orange settlement, Gene became involved in other major toxic tort litigation ([/practice-areas/environmental-and-toxic-torts/](#)) primarily involving environmental and occupational exposure to hazardous substances. This led, in the early 1990s, to his being named as lead counsel in the nationally

coordinated asbestos cases. He ultimately became class counsel in a case in which an innovative and creative solution to many major asbestos litigation problems was developed. The principles developed and negotiated have become a model for recent national asbestos resolutions.

Gene served as co-lead counsel in the Asbestos Personal Injury Litigation, MDL 875 in Philadelphia for many years. He became the Chairman and Director of the Board of UNR Industries, Inc. and director of Celotex Corporation and Raytech Corporation, reorganized multi-million dollar former asbestos companies which have paid millions of dollars in benefits to hundreds of thousands of asbestos victims. Gene was chief negotiator representing victims in almost all the 20th century bankruptcy re-organizations. Gene and the attorneys of Locks Law Firm have also represented numerous school districts and other entities across the nation in property damage cases arising from asbestos exposure.

In the late 1990s, Gene and Locks Law Firm attorneys filed class actions in the Diet Drug (Fen-Phen®) Litigation in New York, Pennsylvania and New Jersey. Gene was co-lead negotiator in that litigation which culminated in a 3.75 billion dollar settlement of those claims (in Brown v. American Home Products Corp, MDL 1203).

Gene, a former quarterback in college and high school, is a man who plays to win. He chooses to represent those with just positions who deserve to win against the abuses created by large global companies. Nationally and internationally, he and the firm fight to right the injustices of corporate misbehavior by helping individuals to obtain their fair day in court. A born leader, Gene is known for creating winning teams that bring people justice.

## Business Activities

- Chairman**, UNR Industries, Inc. (NASDAQ), 1991 - 1999
- Director**, UNR Industries, Inc., 1989 - 2002
- Director**, Celotex Corporation, 1997 - 2001
- Chairman**, APEX Teletech Resources, Inc., 1996 - 1997
- President**, Locks Investments, Ltd., 1990 - Present
- Director**, Raytech Industries, Inc. (NASDAQ), 2001 - 2009

## Personal Activities

- Chairman, Board of Managers - The Philadelphia Foundation**, one of the largest community foundation in a U.S. city, 1999 - Present,
- Board of Managers - The Philadelphia Liberty Medal**, 2005
- Advisory Board Chairman Fund for Children** - 2006
- Trustee and Chairman**, Asbestos Victims Special Fund Trust, 1988 - 1996
- Board Member - Oceanside Five Condominium Association** - 2006 - Present

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## Outside the Office

Gene Locks is married to Sueyun Pyo Locks and the proud father of six daughters. He resides in Philadelphia, Pennsylvania and Fisher Island, Florida. Although his first love is the Princeton Tigers, during baseball season, he can often be found cheering on the St. Louis Cardinals.

## Blog Posts

APPEALS DENIED - NFL CONCUSSION SETTLEMENT FINAL (<http://www.lockslaw.com/blog/2016/12/12/appeals-denied-nfl-concussion-settlement-final/>)

NFL Concussion Appeal Filed with U.S. Supreme Court Means More Delays

(<http://www.lockslaw.com/blog/2016/09/02/nfl-concussion-appeal-filed-with-u-s-supreme-court-means-more-delays/>)

Legendary All-Pro Football Player Bubba Smith the Latest to be Diagnosed with CTE

(<http://www.lockslaw.com/blog/2016/05/27/legendary-football-player-bubba-smith-the-latest-to-be-diagnosed-with-cte/>)

A Message From The Locks Law Firm - Proposed NFL Concussion Litigation Settlement

(<http://www.lockslaw.com/blog/2013/08/29/a-message-from-the-locks-law-firm-proposed-nfl-concussion-litigation-settlement/>)



## Practice Areas

Asbestos Exposure (</practice-areas/environmental-and-toxic-torts/asbestos-mesothelioma/>)

Toxic Torts (</practice-areas/environmental-and-toxic-torts/>)

Dangerous Pharmaceuticals (</practice-areas/dangerous-pharmaceuticals/>)

Product Liability (</practice-areas/consumer-class-actions/>)

Environmental Litigation (</practice-areas/environmental-and-toxic-torts/>)

Professional Negligence

## Admitted to Practice

Pennsylvania, New York, New Jersey, District of Columbia as well as many federal courts in the United States

## Education

Columbia University School of Law, J.D. 1962

Princeton University, B.A. 1959

## Professional Affiliations

American Association for Justice

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## Board Affiliations and Appointments

Lead counsel in numerous major national litigation matters and either chairman or member of numerous Chapter 11 reorganization committees involving large manufacturing companies and lead or class counsel in major national class action proceedings.

### **Co-Lead Class Counsel of Brown, et al. v. American Home Products Corporation**

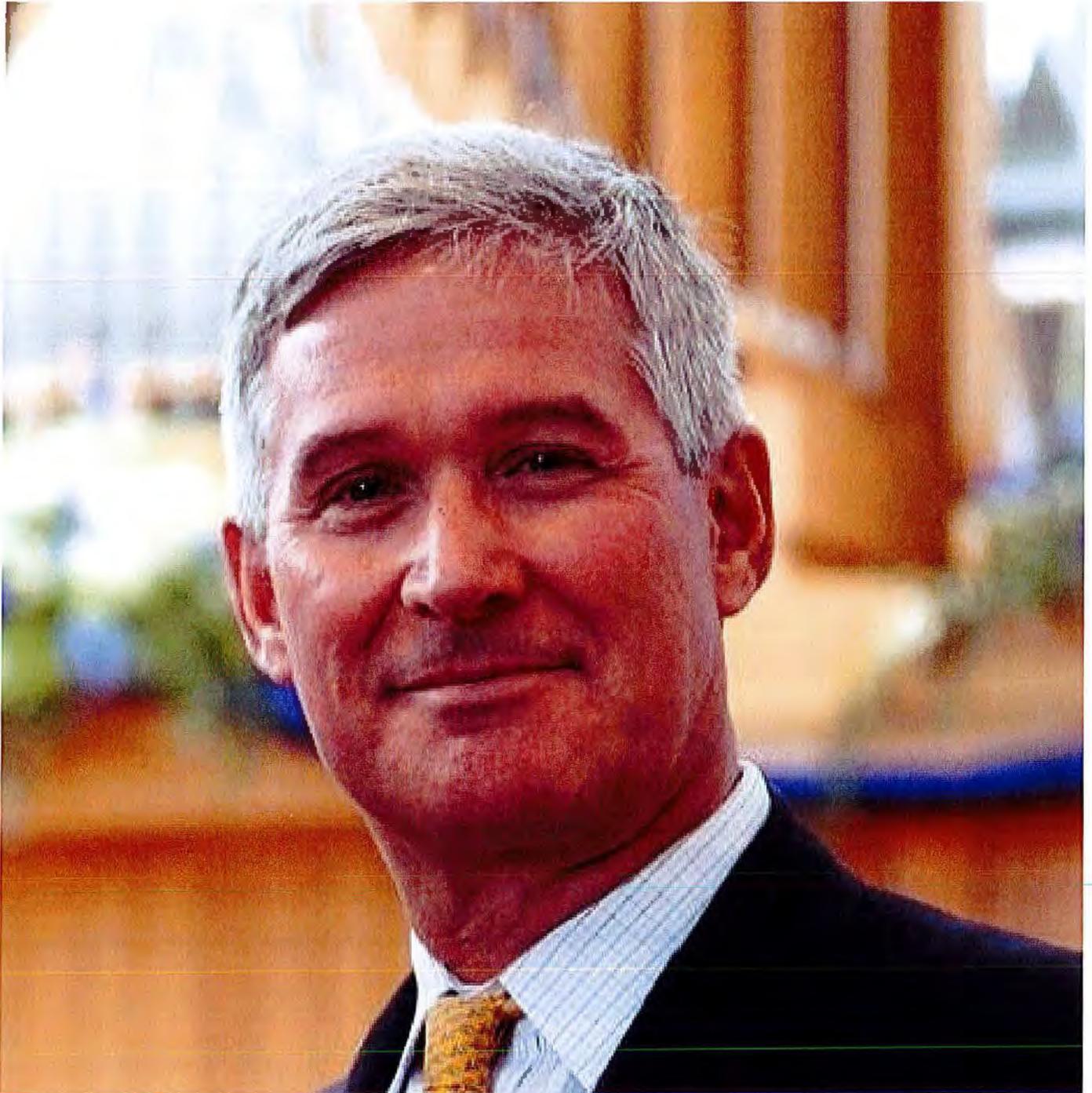
Diet Drug Class Action and Civil Action No. 99-20593, 1999-present

### **Co-Lead Class Counsel of Georgine, et al. v. Amchem Products, et al**

Asbestos Victim Class Action and Civil Action No.9.-CV-0215, 1992-1997



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(<http://www.lockslaw.com/>)



**David D. Langfitt, Partner**

 (215) 893-3423 (tel:+12158933423)

 (215) 893-3444

 dlangfitt@lockslaw.com (mailto:dlangfitt@lockslaw.com)

 The Curtis Center  
Suite 720 East  
601 Walnut Street

## Background and Experience

David Langfitt has practiced complex commercial litigation for more than twenty-three years and specializes in litigation and trials involving numerous parties, claims, and courts, both state and federal. He has litigated a wide variety of complex cases involving mass tort claims, the federal securities laws, professional liability, merger agreements, pre-packaged bankruptcy plans, fraud, breach of fiduciary duty, and infringement of patents and copyrights.

Mr. Langfitt is on the Court-appointed Plaintiffs' Executive Committee in the NFL Concussion Litigation. He is among the leaders of that ongoing litigation in which the Locks Law Firm represents more than 1600 former players against the NFL for latent and existing brain injury. He has also been lead counsel in the Artelon Spacer Litigation, a medical device mass tort in the Philadelphia Court of Common Pleas.

At the same time, he serves as nationwide patent litigation counsel to Q.I. Press Controls, an international technology company based in Holland. He has represented QI in multiple cases in courts throughout the United States that have involved patent infringement disputes and disputes that arose out of patent re-examinations within the U.S. Patent and Trademark office. Representative opinions can be found at *Quad/Tech v. QI Press Controls, et al.*, 701 F. Supp. 2d 644 (E.D. Pa. 2010), *aff'd*, 2011 U.S. App. LEXIS 5729 (Fed. Cir. 2011) and *QI Press Controls v. Lee*, 752 F.3d 1371 (Fed. Cir. 2014).

Prior to joining the Locks Law Firm, Mr. Langfitt was a partner at Montgomery, McCracken, Walker & Rhoads LLP in Philadelphia from 1999 to 2010. During that time period, Mr. Langfitt represented Federal Receiver David H. Marion, appointed at the request of SEC to recover, oversee, and distribute to more than one thousand defrauded investors the assets of a Ponzi Scheme operated through Bentley Financial Services, Inc. of Paoli, PA. The Bentley Scheme was the largest Ponzi Scheme in the United States when it was discovered in 2001. Eleven years of experience includes:

Recovered approximately \$360,000,000 for the benefit of defrauded investors, which is approximately ninety-three percent of the investors' principal.

Filed and litigated multiple complaints against banks and others for aiding and abetting and conspiring with the Ponzi Scheme.

Investigated and pursued off-shore assets in Caribbean and South Pacific nations.

Operated Receivership as business entity that successfully marshaled assets, conducted litigation, distributed recovered assets, and regularly communicated through a public website with more than one thousand defrauded investors regarding claims, distribution, and litigation process.

Mr. Langfitt also has extensive experience litigating in the bankruptcy courts and has represented creditors in *In Re: Bondex* (U.S. District Court, District of Delaware), *In Re: Combustion Engineering* (U.S. District Court, District of Delaware), and *In Re: Nutraquest* (U.S. District Court, District of New Jersey).

Mr. Langfitt also served as lead litigation counsel to Celotex Corporation in (a) 551 wrongful death and personal injury cases brought in connection with 2003 fire at The Station nightclub in West Warwick, Rhode Island; (b) personal injury cases brought in connection with manufacturing plants in multiple states; (c) in negotiations with USEPA regarding environmental regulations, control equipment, and clean air act issues; and (d) contract litigation over the sale of manufacturing plants nationwide.

While an associate at Montgomery McCracken, Mr. Langfitt was *Habeas Corpus* counsel to a former death row inmate and succeeded in overturning the petitioner's conviction for first degree murder in *Smith v. Horn*, 120 F.3d 400 (3d Cir. 1997).

## Personal

Trustee, Philadelphia Museum of Art  
Trustee, The Episcopal Academy  
Board of Directors, Episcopal Community Services  
Board of Directors, Lankenau Institute for Medical Research  
Former Chair, Philadelphia Mural Arts Program

## Outside the Office

Mr. Langfitt is married with three children. Prior to becoming a lawyer, he was professional painter living and working in New York City. Some of his work is owned by the School of American Ballet, The United States Federal Courts, The University of Pennsylvania, and The College of Physicians of Philadelphia.

## Blog Posts

Locks Attorney David Langfitt Talks Youth Sports and the Law (<http://www.lockslaw.com/blog/2016/05/24/locks-attorney-david-langfitt/>)

Buyer Beware: Switching Counsel is at an All-Time High in the NFL Concussion Litigation (<http://www.lockslaw.com/blog/2016/02/08/buyer-beware-switching-counsel-is-at-an-all-time-high-in-the-nfl-concussion-litigation-2/>)

Legendary N.F.L. Player Ken Stabler Diagnosed with C.T.E. (<http://www.lockslaw.com/blog/2016/02/03/legendary-n-f-l-player-ken-stabler-diagnosed-with-c-t-e/>)

LLF Attorney David Langfitt Interviewed about Youth Sports (<http://www.lockslaw.com/blog/2015/12/14/llf-attorney-david-langfitt-interviewed-about-youth-sports/>)

Third Circuit Sets Date for Oral Argument in NFL Concussion case (<http://www.lockslaw.com/blog/2015/09/11/third-circuit-sets-date-for-oral-argument-in-nfl-concussion-case/>)





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(<http://www.lockslaw.com/>)



Michael B. Leh, Partner

 (215) 893-3410 (tel:+12158933410)

 (215) 893-3444

 mleh@lockslaw.com (mailto:mleh@lockslaw.com)

 The Curtis Center  
Suite 720 East  
601 Walnut Street

## Background and Experience

Michael Leh has been Managing Partner of the Locks Law Firm since 2003 and is a member of the firm's Management Committee. He joined the firm as a law clerk while attending evening division law school in 1983. Mr. Leh specializes in mass torts and other complex litigation. He is a member of the bars of Pennsylvania and New Jersey and has tried cases in state and federal courts throughout the country. His verdicts in *Coyne vs. Celotex Corp., et. al.* and *McCoubry vs. Celotex Corp., et al.* were the largest verdicts in the United States in 1988, totaling over \$150 million. He has tried over 100 jury and bench trials and has obtained numerous other seven-figure verdicts.

Mr. Leh has represented plaintiffs in asbestos litigation, numerous pharmaceutical and medical device litigations, environmental cases, occupational benzene cases, and other complex litigations, including the NFL Concussion Litigation. He has written and spoken on various topics related to complex personal injury cases and has been featured in a number of national publications.

## Outside the Office

When not dealing with his job or his five children and his grandchildren, Michael most enjoys nature, whether hiking, kayaking, or just sitting and silently appreciating his surroundings.

## Blog Posts

Justice is Near for South African Gold Miners (<http://www.lockslaw.com/blog/2016/06/22/justice-is-near-for-south-african-gold-miners/>)

We Will Always Need Lawyers as Victims Will Always Need Justice

(<http://www.lockslaw.com/blog/2016/05/16/we-will-always-need-lawyers-as-victims-will-always-need-justice/>)

Key Asbestos Decision Expected (<http://www.lockslaw.com/blog/2016/04/21/1415/>)

Amtrak Crash Kills Two, Leaves Dozens Injured (<http://www.lockslaw.com/blog/2016/04/04/amtrak-crash-kills-two-leaves-dozens-injured/>)

Defending the Right to Class Action Lawsuits (<http://www.lockslaw.com/blog/2015/12/11/defending-the-right-to-class-action-lawsuits/>)



## Practice Areas

Toxic Torts (/practice-areas/environmental-and-toxic-torts/)  
Asbestos Exposure (/practice-areas/environmental-and-toxic-torts/asbestos-mesothelioma/)  
Dangerous Pharmaceuticals (/practice-areas/dangerous-pharmaceuticals/)  
Chemical Exposure (/practice-areas/environmental-and-toxic-torts/chemical-exposure/)  
Environmental Litigation (/practice-areas/environmental-and-toxic-torts/)  
Complex Personal Injury

## Admitted to Practice

Pennsylvania (1985)  
New Jersey (1985)  
US District Court, Eastern District of Pennsylvania  
US District Court, Middle District of Pennsylvania  
US District Court, New Jersey  
US Court of Appeals, Third Circuit

## Education

Bachelor of Arts Temple University, 1979 (cum laude)  
Juris Doctor, Temple University School of Law, 1985

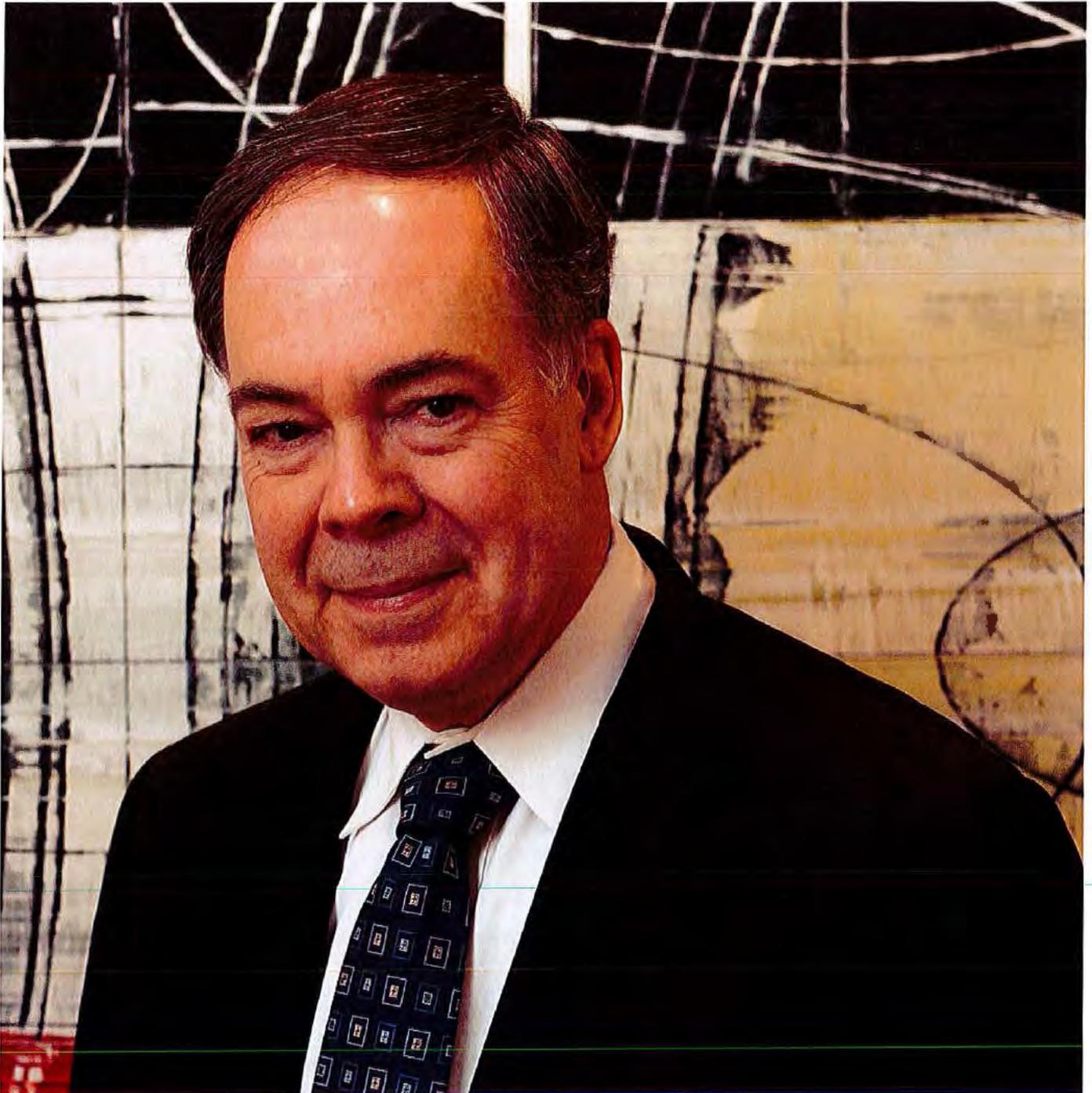
## Professional Affiliations

American Association for Justice  
American Bar Association  
Pennsylvania Bar Association  
Pennsylvania Association for Justice  
Philadelphia Association for Justice

Do I have a case? Free Case Evaluation



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(<http://www.lockslaw.com/>)



**Jonathan W. Miller, Partner**

 (215) 893-3405 (tel:+12158933405)

 (215) 893-3444

 jmill@lockslaw.com (mailto:jmill@lockslaw.com)

 The Curtis Center  
Suite 720 East  
601 Walnut Street

## Background and Experience

Jonathan Miller is a partner who specializes in appellate practice and complex litigation. He has written and argued appellate briefs in the Pennsylvania and New Jersey appellate courts as well as the United States Courts of Appeals for the Third and Ninth Circuits. He has participated in appeals that changed the law. A significant victory was as an amicus curiae on behalf of the New Jersey Association for Justice in *Nicastro v. McIntyre Machinery America, Ltd.*, 201 N.J. 48, 987 A.2d 575 (2010), in which the New Jersey Supreme Court adopted his argument that the realities of globalization should be considered in applying the stream of commerce theory of personal jurisdiction. The *Nicastro* case subsequently went to the US Supreme Court, where Mr. Miller was the lead author of an amicus brief on behalf of the American Association for Justice.

Another case stopped the retroactive application of law that barred claims of increased risk and fear of asbestos-related cancer. See *Cleveland v. Johns-Manville Corp.*, 547 Pa. 402, 690 A.2d 1146 (1997). Another addressed the novel issue in New Jersey of apportionment of damages for lung cancer between asbestos exposure and cigarette smoking. See *Dafler v. Raymark Industries, Inc.*, 259 N.J. Super. 17, 611 A.2d 136 (App. Div. 1992), affirmed, 132 N.J. 96, 622 A.2d 1305 (1993) (per curiam). He submitted amicus curiae briefs on the issues of set-offs in strict liability verdicts, see *Baker v. AC&S, Inc.*, 562 Pa. 290, 755 A.2d 664 (2000), and of costs on behalf of the Pennsylvania Association for Justice in the landmark Paoli Railroad Yard PCB Litigation cases. See *In re: Paoli Railroad Yard PCB Litigation*, 221 F.3d 449, 465-66 & n.8 (3rd Cir. 2000). He was in charge of appellate briefing and argument on the issue of forum non conveniens on behalf of all United Kingdom residents who filed suit in New Jersey state court for injuries caused by *Vioxx*. See *In re Vioxx Litigation*, 395 N.J. Super. 358, 928 A.2d 935 (App. Div.), certif. denied, 193 N.J. 221, 936 A.2d 968 (2007).

He was Chief of Appeals in the Defender Association of Philadelphia prior to joining Locks Law Firm. As an assistant public defender, one of his cases established Pennsylvania law on the withdrawal of guilty pleas. See *Com. v. Forbes*, 450 Pa. 185, 299 A.2d 268 (1973). Another won a complicated question of federal-state immunity, see *Com. v. Fattizzo*, 223 Pa. Super. 378, 299 A.2d 22 (1972).

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## Complex Litigation

Mr. Miller has extensive experience in complex litigation of all types, including class actions. In Hazleton, PA, service stations leaked gasoline from their underground storage tanks, polluting a residential area, sickening or killing over a dozen of the neighbors and lowering the value of 400 homes. From 2000 to 2010, he was the partner in charge of day to day prosecution of the Hazleton environmental lawsuits involving 1100 neighbors as plaintiffs against four major oil companies and over a dozen additional defendants. He has previously litigated asbestos property damage and personal injury cases in Denver, Chicago, New York and Kentucky, in addition to medical

device and breach of contract cases in Philadelphia. He litigated over a thousand criminal cases as an assistant public defender where, in addition to being Chief of Appeals, he was Chief of Motions and Juvenile and an assistant federal defender. Mr. Miller also litigated a medical negligence case in Wilkes-Barre, PA in 2015.

He has participated in major asbestos bankruptcies. In a rare honor, he was accepted in the Celotex bankruptcy as an expert witness on the subject of asbestos property damage. He has participated in ground-breaking asbestos class action and bankruptcy settlements, including Amchem, Diet Drugs, and Celotex.

## Outside the Office

Jonathan served the poor as a Philadelphia public defender for 15 years. He likes to read, listen to classical music and serve his church.

## Blog Posts

Recent Positive Developments in Mesothelioma Lawsuits (<http://www.lockslaw.com/blog/2016/11/29/good-news-for-mesothelioma-victims/>)

Videos show what happened, but can police refuse to produce them?

(<http://www.lockslaw.com/blog/2016/11/23/videos-show-what-happened-but-can-police-refuse-to-produce-them/>)

Tulsa, Oklahoma and the Right to Know Law (<http://www.lockslaw.com/blog/2016/09/21/tulsa-oklahoma-and-the-right-to-know-law/>)

The Pennsylvania Right to Know Law is a Great Tool (<http://www.lockslaw.com/blog/2016/08/24/the-pennsylvania-right-to-know-law-is-a-great-tool/>)

Videos Are Powerful, and Police Dash Cam Videos Are Discoverable

(<http://www.lockslaw.com/blog/2016/07/08/videos-are-powerful-and-police-dash-cam-videos-are-discoverable/>)

## Practice Areas

Toxic Torts (</practice-areas/environmental-and-toxic-torts/>)

Complex Litigation

Class Actions (</practice-areas/consumer-class-actions/>)

Trial Practice

Appellate Practice (</practice-areas/other-practice-areas/appeals-appellate-work/>)

## Admitted to Practice

Pennsylvania (1970);

U.S. District Court, Eastern District of Pennsylvania (1971);

U.S. Court of Appeals, Third Circuit (1972);

U.S. Supreme Court (1986);

U.S. District Court, Middle District of Pennsylvania (1986);

New Jersey (1987);

U.S. District Court, District of New Jersey (1986);

U.S. Court of Appeals, Tenth Circuit (1988);

New York Supreme Court, Third Department (1997);

U.S. Court of Appeals, Ninth Circuit (2011);



# **EXHIBIT E**

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

IN RE: NATIONAL FOOTBALL  
LEAGUE PLAYERS' CONCUSSION  
INJURY LITIGATION

No. 2:12-md-02323-AB

MDL No. 2323

**Hon. Anita B. Brody**

Kevin Turner and Shawn Wooden,  
*on behalf of themselves and  
others similarly situated,*

Civ. Action No. 14-00029-AB

Plaintiffs,

v.

National Football League and  
NFL Properties LLC,  
successor-in-interest to  
NFL Properties, Inc.,

Defendants.

THIS DOCUMENT RELATES TO:  
ALL ACTIONS

**DECLARATION OF STEVEN C. MARKS IN SUPPORT OF CO-LEAD CLASS  
COUNSEL'S PETITION FOR AN AWARD OF ATTORNEY'S FEES AND  
REIMBURSEMENT OF COSTS AND EXPENSES**

STEVEN C. MARKS declares as follows pursuant to 28 U.S.C. § 1746:

1. I am a Partner of the law firm of Podhurst Orseck, P.A. I submit this declaration in support of Co-Lead Class Counsel's Petition for an Award of Attorney's Fees and Reimbursement of Costs and Expenses in connection with and for services rendered and expenses incurred for the common benefit of the Settlement Class in the above-captioned multidistrict litigation ("Action") from the inception of the litigation through July 15, 2016, as well as for the payment of expenses incurred therewith. I have personal knowledge of the

matters set forth in this declaration and, if called upon, I could and would testify competently thereto.

2. This multi-district litigation has its roots in the independent efforts of multiple law firms, including my own, in 2011 to investigate the epidemic of traumatic brain injury among retired NFL players. My firm began investigating the possibility of a suit against the NFL in the Summer of 2011, after receiving inquiries on behalf of several former players. After investigating the history of the NFL's handling of the problem and researching the law applicable to potential claims and likely defenses, our firm make the commitment to devote the considerable resources of personnel, time, and funds that would be necessary to take on the goliath of the NFL on an issue of vital importance to its business.

3. We were formally retained by a number of former players in October 2011. After performing additional research and consulting experts in the field of neurology, we prepared and on December 22, 2011, filed a complaint on behalf of our initial clients in federal court in Miami, Florida. That case is captioned *Jones v. National Football League*, Case No. 11-cv-25494 (S.D. Fla.).

4. Largely as a result of that filing, my partners and I were thereafter contacted and ultimately retained by dozens of additional former players who also wished to assert claims against the NFL. Notably, on January 18, 2012, we were retained by Kevin Turner, a former NFL veteran player who had recently been diagnosed with ALS. We amended the *Jones* complaint on January 20, 2012 to include additional clients as plaintiffs.

5. As other attorneys across the country began filing similar lawsuits, the NFL sought to centralize the litigation and filed a petition with the Judicial Panel on Multidistrict Litigation ("JPML"). The petition was set for hearing on the JPML's January 25, 2012 sitting,

which happened to be in Miami. My firm, which is located in Miami, arranged and hosted an organizational meeting of lawyers who had filed cases against the NFL in advance of, and after, the JPML hearing. The purpose and result of the meeting was to facilitate tentative agreements on coordination and leadership among the majority of counsel representing former players. My firm shared with the assembled counsel its legal research and strategy, including a substantive memorandum containing our research on the NFL's primary defense of preemption under the Labor Management Relations Act ("LMRA").

6. Following the decision of the JPML to consolidate the proceedings in the United States District Court for the Eastern District of Pennsylvania (Brody, J.), our firm continued to play a lead role with respect to the voluntary organization of leadership among plaintiffs' counsel. We, along with other counsel, jointly filed motions proposing various positions and a structure of leadership, which this Court largely adopted with some minor modification.

7. Thereafter, we participated with Co-lead counsel regarding a proposed case management order. From that point on, we were one of very few firms who moved the case along which ultimately led to this historic settlement. My partner, Ricardo M. Martinez-Cid, and I were appointed to the Plaintiffs' Executive Committee and my partner Stephen F. Rosenthal was designated by Co-Lead Counsel to serve as one of the Co-Chairs of the Legal and Briefing Committee.

8. At the outset of the MDL, Mr. Rosenthal played an important role for the Plaintiffs' team. Between January and July 2012, the Legal and Briefing Committee prepared the Joint Prosecution Agreement, drafted the master complaints (ECF Nos. 83, 84, 2642), developed and implemented a strategy to protect existing plaintiffs and future plaintiffs from statute-of-limitations defenses, and coordinated the filing of short-form complaints by all

plaintiffs. Subsequently, Mr. Rosenthal performed substantial work in researching, drafting, and editing the response to the NFL Defendants' motion to dismiss on LMRA preemption grounds. He also participated in a moot argument for David Frederick, who handled the oral argument for the Plaintiffs on the pivotal motion to dismiss based on LMRA preemption.

9. During this same period, Mr. Martinez-Cid played an active role in the preparation for coordinated discovery efforts. As Co-Chair of the Discovery and Document Repository Committee, he coordinated efforts to obtain access to former players' records from the NFL, helped craft the plaintiffs' discovery plan, and along with his Co-Chairs, prepared discovery requests to be sent to the NFL.

10. In my capacity as Co-Chair of the Communications and Ethics Committee, I was able to help lay the groundwork for the favorable outcome in this case by developing a communications and media plan that would place unrelenting pressure on the NFL by shedding light on its actionable practices. I was instrumental in this effect, which included educating former players and the public regarding the issues of this litigation and creating awareness of the risks of playing football that had been actively concealed by the NFL. I worked along with an outside consultant which the PEC/PSC engaged on messaging, talking points, media strategies and OpEds to reinforce the significance of this litigation and the risks involved at all levels. Many of our players, including in particular Kevin Turner, wanted to make sure there was public awareness of this problem. To that end, I am very proud of the work we accomplished together not only to advance the class but also to force changes at all levels of contact sports to make player participation safer. I daresay there are very few parents or coaches now who are not aware of the risks of concussions or repetitive head trauma. I am also very proud that I played a major role as to this issue.

11. I was also tasked with identifying players who could serve as spokespersons for the proposed class. This process involved going through medical records of hundreds of players and interviewing them to determine how well they would perform with the media. I ultimately identified many of the players who served in this capacity. The two main spokespersons were our clients, Kevin Turner and Shawn Wooden.

12. I traveled extensively with the class representatives and organized, along with outside consultants, countless interviews and media events.

13. I traveled to New York and Philadelphia on multiple occasions with Kevin Turner and Shawn Wooden and assisted with the preparation of talking points and primed them for questioning. Along with the two class representatives, I also did this with many other players, and their loved ones, including Herb Orvis, Chie Smith, and others. I also spearheaded identifying suitable players and in the preparation of the "Day in the Life" video that was prepared for potential use at the Final Fairness hearing. That professionally prepared video showed firsthand the devastating effects of multiple head trauma in the daily lives of these former players. My partners also assisted with some of these tasks, which formed part of the coordinated communications and media plan.

14. Our associate, Matthew Weinshall, assisted with the legal research on myriad issues bearing on our firm's participation in the case. Mr. Weinshall actively participated in virtually all aspects of the case by assisting me throughout with my many responsibilities, as detailed further below.

15. In addition to my continuing duties as Co-Chair of the Communications and Ethics Committee, I also served as one of four members of the Class Settlement Committee.

16. In September of 2012, Co-Lead Counsel were presented with an opportunity to engage in settlement discussions with the NFL. Thereupon, the PEC created a Class Settlement Committee, consisting of the two Co-Leads, myself, and Gene Locks. I respectfully believe that I played an important role in obtaining the settlement with the NFL. For example, I wrote the original Memorandum of Understanding (“MOU”) which set out the basic framework of the settlement that this Court ultimately approved. In fact, the various categories and compensation amounts that I originally proposed were accepted by the NFL and approved by this Court. So too were the deductions for age and years played, which in large part derived from my firm’s proposal. In addition, I drafted the original structure for the Baseline Assessment Program and medical treatment benefits program which, in large part, was also accepted by the NFL and ultimately approved by this Court.

17. After the initial draft of the MOU, it became apparent that we needed to engage various experts to ascertain the cost of these programs and the amount of money that would be necessary to assure that all former players could partake in these benefits. We also needed to engage experts in various medical disciplines regarding the means of diagnosing the players.

18. In this regard, I played almost an exclusive role working with the actuarial experts for months in order to determine how many players would likely suffer from one or more of the eligible disease groups. This analysis required review of literally hundreds of players’ medical records, which I and my firm undertook, to develop reliable estimates of incident rates. We also needed to analyze the age of the population of players to determine the incident rate and age upon which they would likely receive a diagnosis. This work not only required a great deal of time evaluating player histories and extensive medical records but also reviewing historical and demographic information as to the likelihood that a player who actually had a compensable

condition would actually submit a claim. Additionally, I participated in meetings with expert, Grant L. Iverson, Ph.D., to develop the testing protocols and DSM injury definitions that would ultimately become part of the settlement agreement which this Court approved. This extensive review process had the additional benefit of revealing that many of the former players whose records we analyzed may actually have a compensable condition but had not yet received a diagnosis.

19. Although this process was complicated and time-intensive, we were nevertheless able to develop various charts with a number of assumptions to start pricing out the cost of the compensation part of the settlement.

20. The work with respect to the medical-benefit program side of the settlement was no less complex. It involved researching the geographical location of the former player population to determine whether proper care was in close proximity to their homes and the expected cost of that care. It required research as to the available medical facilities and the specialists that would be needed to provide proper diagnosis and, if needed, follow-up medical care.

21. After reaching a point where the Settlement Committee felt comfortable with its initial proposal, my colleagues on the Committee and I participated in face-to-face negotiations with the NFL. As a condition of these face-to-face discussions, the NFL required strict confidentiality which, of course, we took seriously and never breached.

22. During the negotiation process, I, along with my associate, Mr. Weinshall, reviewed drafts of various proposals, and continued to provide background research and comment as to the terms the settlement agreement which the Court ultimately approved.

23. Early in the settlement process it became apparent to the Committee that we would need class representatives to serve in what was determined to be two subclasses: symptomatic former players and asymptomatic former players. I was tasked with vetting the background and medical records of hundreds of former players to identify suitable class representatives. This task entailed investigating their backgrounds, interviewing family and friends, and conducting detailed research into their playing histories to make sure that they were adequate and proper class representatives.

24. As the Court is aware, the two class representatives whom the Committee selected were Kevin Turner, for the symptomatic class, and Shawn Wooden for the asymptomatic class. Both of these class representatives happened to be my firm's clients. Each served in his role with great effectiveness, poise, and distinction. In fact, there was never a serious question raised as to the adequacy of these class representatives. This fact demonstrates the extensive amount and quality of the work my firm did in identifying and getting those two star individuals to serve in those vitally important roles in this litigation.

25. After many months of negotiations, while the media was pounding the NFL on a daily basis with criticism for its handling of the concussion crisis, we reached a point where we came very close to a deal with the NFL. However, for a number reasons, we seemed to stall until the Court ultimately appointed Layne Phillips as Mediator, who took control of the discussions. Judge Phillips was brilliant, and over the next few months, he played a critical role in bridging what seemed to be an insurmountable gap between the parties.

26. After agreeing upon the material terms of a deal, a great number of details needed to be accomplished by both sides. The work on the actuarial side needed to be finalized, and experts needed to be retained to review and explain the key terms of the deal. Again, I played

the leading role in interfacing with the actuarial experts. As the Court is well aware, since it was instrumental in improving the settlement agreement by pushing for a virtually unprecedented uncapped fund, the issue of actuarial support became less important. Nevertheless, this work needed to be done to explain the basis for the settlement terms that had been proposed.

27. In addition, to support the medical aspects of the proposed settlement, medical experts needed to be retained. As the court may recall, two of those experts were Drs. Richard Hamilton and Kenneth Fisher, both of whom the Court quoted in its final order approving the settlement. I researched countless possible experts to serve as experts in the fields of Neurology and Neuro-psychology. I interviewed these physicians, who I came to know from prior cases, to ascertain if they were not only competent in these specific areas but were also willing to serve in an expert capacity. I explained in detail the terms of the proposed settlement agreement and all of the issues involved in the case. My time records probably do not fairly capture the amount of time I spent on this aspect of the settlement-approval process. The fact that the Court quoted their declarations in the final approval order evidences the quality of and value that their expert opinions brought to the case.

28. After the Court's final approval of the settlement, during the lengthy appellate process, Messrs. Rosenthal and Weinshall were periodically called upon to review, comment upon, and edit drafts of Class Counsel's appellate briefs, both in the Third Circuit and the United States Supreme Court.

29. The schedule attached hereto as Exhibit 1 is a detailed summary indicating the amount of common-benefit time spent by the attorneys and professional support staff at my firm who participated in, and billed at least fifty (50) hours for work done in, this Action, as well as the lodestar calculation for those individuals based on my firm's current billing rates. For

personnel who are no longer employed by my firm, the lodestar calculation is based on the billing rates of such personnel in their final year of employment by my firm. The schedule was prepared from contemporaneous daily time records regularly prepared and maintained by my firm. We have excluded from that schedule the time expended in preparing this application for attorney's fees and expenses.

30. The hourly rates for the attorneys and professional support staff of my firm included in Exhibit 1 are the same as they charge for non-contingent work that is paid on an hourly basis. And the rates are comparable to those of attorneys with similar experience and reputations in the relevant legal market. Our rates have been accepted by other federal courts in class action cases prosecuted by my firm.

31. The total number of hours expended on the common benefit of this Action by my firm during the time period is 4,510.8 hours. The total lodestar for my firm for those ours is \$3,005,744.50, consisting of \$2,660,476.50 for attorneys' time and \$345,268.00 for professional support staff time.

32. We hereby voluntarily withdraw the following 9 hours which were previously reported. These hours are not included in the total number of hours stated in paragraph 31, above.

<b>Timekeeper</b>	<b>Date</b>	<b>Task/Expense - Description</b>	<b>Amount</b>
Lauren Littleton Barrington	4/10/12	Draft state court complaint	1.5
Lauren Littleton Barrington	4/11/12	Draft state court complaint and new federal laws	2.5
Lauren Littleton Barrington	4/16/12	Meeting with SFR, re: state and federal complaints. Draft state court complaint	1

Lauren Littleton Barrington	4/18/12	Draft federal court complaint for new clients. Meeting with SFR re: same	4
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33. My firm's lodestar figures are based solely upon my firm's billing rates, which rates do not include charges for expense items. Expense items are billed separately and such charges are not duplicated in my firm's billing rates.

34. As detailed in Exhibit 2 hereto, my firm is seeking reimbursement of a total of \$771,127.79 in common-benefit expenses incurred in connection with the prosecution of this Action. These expenses are reflected on the books and records of my firm. These books and records are prepared from expense vouchers, check records, and other source material, and are an accurate record of the expenses incurred.

35. We hereby voluntarily withdraw reimbursement for the following \$3,367.64 expenses which were previously reported. These expenses are not included in the total number of expenses stated in paragraph 34, above.

Timekeeper	Date		Amount
	2/16/12	E97065- La Loggia/2-2-12- Lunch Meeting RAR/BRS	\$126.16
	2/16/12	E97065- La Loggia/2-8-12 Lunch Meeting SFR	\$20.36
S. Rosenthal	3/14/12	EA2994-S.Rosenthal-1/20/12	\$12.82
Steven Marks	6/26/12	EE8440- S.Marks NY 6-12	\$493.30
Steven Marks	6/26/12	EE8440- S.Marks NY 6-12	\$1,149.60
Steven Marks	6/28/12	EE8440- S.Marks NY 6-7-12	\$703.80
S. Rosenthal	7/18/12	EE7448-SFR/NY/7-5-12	\$861.60

		TOTAL	\$3,367.64
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36. With respect to the standing of my firm to share in an award of fees, costs, and expenses, attached hereto as Exhibit 3 is a biography of my firm, including the attorneys in my firm who were principally involved in this Action.

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

Executed on January 10th, 2017, at Miami, Florida.



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Steven C. Marks, Esq.  
Fla. Bar No. 516414  
PODHURST ORSECK, P.A.  
SunTrust International Center  
One S.E. 3<sup>rd</sup> Avenue, Suite 2700  
Miami, Florida 33131  
(305) 358-2800 / Fax (305) 358-2382  
Email: [smarks@podhurst.com](mailto:smarks@podhurst.com)

# **EXHIBIT 1**

**IN RE: NATIONAL FOOTBALL LEAGUE PLAYERS' CONCUSSION INJURY  
LITIGATION**

**No. 12-md-2323-AB**

**PODHURST ORSECK, P.A.**

**LODESTAR REPORT**

**Inception through July 15, 2016**

<b>NAME</b>	<b>HOURS</b>	<b>HOURLY RATE</b>	<b>AMOUNT</b>
<b>PARTNERS:</b>			
<b>Steven C. Marks</b>	2267.2	\$895.00	\$2,029,144.00
<b>Stephen F. Rosenthal</b>	398.4	\$695.00	\$282,795.50
<b>Ricardo Martinez-Cid</b>	109.5	\$695.00	\$76,102.50
<b>ASSOCIATES:</b>			
<b>Matthew P. Weinshall</b>	483.20	\$495.00	\$239,184.00
<b>STAFF ATTORNEYS:</b>			
<b>Lauren M. Barrington</b>	82.10	\$405.00	\$33,250.50
<b>PARALEGALS:</b>			
<b>Gina Palacio, FRCP</b>	1049.3	\$295.00	\$309,543.50
<b>LAW CLERKS:</b>			
<b>Brad Sohn</b>	121.10	\$295.00	\$35,724.50
<b>TOTALS:</b>	4510.8		\$3,005,744.50

# **EXHIBIT 2**

**IN RE: NATIONAL FOOTBALL LEAGUE PLAYERS' CONCUSSION INJURY  
LITIGATION**

**No. 12-md-2323-AB**

**PODHURST ORSECK P.A.**

**COST AND EXPENSE REPORT**

**Inception through July 15, 2016**

<b>NUMBER</b>	<b>CATEGORY</b>	<b>AMOUNT</b>
1	Assessments	625,000.00
2	Commercial Copies	0
3	Computerized Research	21,246.88
4	Court Reporters/Transcripts	0
5	Expert Services	1,000.00
6	Facsimile	7.75
7	Filing & Service Fees	0
8	In-House Copies	1,732.10
9	Long Distance Telephone	2,095.77
10	Postage/Express Delivery	2,121.33
11	Travel/Meals/Lodging	77,005.28
12	Miscellaneous	40,918.68
<b>TOTAL EXPENSES</b>		<b>771,127.79</b>

# **EXHIBIT 3**

**PODHURST ORSECK, P.A.**

**MIAMI, FLORIDA**

## FIRM PROFILE

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### PRINCIPAL PRACTICE AREAS

*Personal Injury and Wrongful Death Litigation*

*Aviation Litigation*

*Class Action*

*Commercial Litigation*

*General Tort Practice Concentrating in*

*Automobile Negligence, Product Liability and Medical Malpractice  
Litigation*

*Criminal Litigation*

*Appellate Practice*

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## ABOUT THE FIRM

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Podhurst Orseck continues a legal practice, established in 1967, concentrating exclusively in trial and appellate litigation. The firm is dedicated to offering the highest caliber legal representation in both federal and state trial and appellate courts. The firm's general tort practice places a major emphasis upon aviation, automobile, products liability and medical malpractice litigation. In addition, the firm has a substantial practice in commercial and criminal litigation, as well as complex commercial tort litigation and class actions. From its inception, the firm has also cultivated an appellate practice, handling appeals of not only the firm's own trial lawyers, but also of other lawyers throughout the State of Florida, in the various state and federal appellate courts. The firm's practice serves clients and corporations throughout the United States, and in several foreign countries. Our firm has consistently received an AV-Rating from Martindale-Hubbell Law Directory, the highest possible rating, based on legal ability and general ethical standards.

## STEVEN C. MARKS

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*Personal Injury and Wrongful Death Litigation*  
*Class Actions*  
*Product Liability*  
*Aviation Litigation*  
*Commercial Litigation*

**S**teven C. Marks holds a BA from the University of Florida (cum laude) and a JD from the University of Miami (cum laude), where he was editor-in-chief of the Law Review. He is an alumni editorial-board member of the University of Miami Law Review. Steve is admitted to the Florida Bar. He is a member of the Bar and Gavel Law Society and the Order of the Coif, and is on the Board of Directors of the University of Miami Law School Alumni Association (2003 to 2006). Steve is also an inaugural member of the University of Miami Law School Dean's Council and a member of the University of Miami Law Review Alumni Advisory Board.

He is a member of the Dade County Bar Association, American Bar Association (Aviation & Space Law Committee, Program Planning Committee for National Institute on Aviation Litigation, editorial board member, Torts and Insurance Practice Section and Tort and Insurance Law Journal Committee, and The Brief); The Florida Bar; Academy of Florida Trial Lawyers; The Association of Trial Lawyers of America (Aviation Law Section, Aviation Section); Dade County Trial Lawyers; Lawyer-Pilots Bar Association; American Board of Trial Advocates (Miami Chapter); Fellow, Litigation Counsel of America, Trial Lawyers Honorary Society, and the Inns of Court.

Steve was recently appointed to the Legal Advisory Committee for the International Civil Aeronautical Organization.

He is listed in Florida Trend's "Florida Legal Elite," (2009, 2013); Florida Super Lawyers, 2006-2016; Lawdragon 500 Leading Litigators "New Star" 2006 and 2007; South Florida Legal Guide, Top Lawyers, 2007-2016; The Expert Guide to the World's Leading Aviation Lawyers, 2008-2016; Best Lawyers in America 2007-2016; Chamber's USA's Guide to Leading Lawyers for Business (2008-2010, 2014-2015) and named in the Daily Business Review's Most Effective Lawyers 2010.

Steve focuses on personal injury and wrongful death litigation, product liability, aviation litigation, commercial litigation, class actions, medical malpractice, premise liability, and admiralty.

He has acted as lead counsel, appointed court counsel and/or counsel representing victims in a number of commercial class actions and major airline crashes, including: NFL Concussion Litigation Executive Committee Member and co-lead settlement class counsel, 2014; acting as lead Plaintiffs' counsel in the American Airlines Flight 331, crash in Jamaica, 2010; acting as co-lead trial counsel for the California State Court plaintiffs' after a Silk Air crash between Jakarta and Singapore in 1997; acting as lead liaison counsel for the State Court and Federal multi-district litigation (MDL) plaintiffs' steering committees over the ValuJet Flt.

592 crash, Everglades, 1996, and acting as a member of the MDL plaintiff's steering committee for the Arrow Air military charter crash, Newfoundland, 1985.

General and major commercial airline crashes he has handled include: Metrojet Flt. 9268, from Egypt, en route to Saint Petersburg, Russian, 2015; Germanwings Flt. 9525, from Barcelona, Spain to Dusseldorf, Germany; 2015; Malaysian Airlines, Flt. MH370, from Kuala Lumpur to Beijing, 2014; Gulfstream IV, crash on take-off, Bedford, Massachusetts, 2014; IBC Airways, La Alianza, Puerto Rico, 2013; Dana Air, Flt. 992, Abuja, Nigeria, 2012; Central American Airways Flight 731, Tegucigalpa, Honduras, 2011; Conviasa Airlines, Flt. 2350, Bolivar, Venezuela, 2010; Aires Airlines Flt. 8250, San Andres Island, Colombia, 2010; Ethiopian Airlines Flt. 409, Mediterranean Sea, 2010; American Airlines Flt. 331, Kingston, Jamaica, 2009; Air France Flt. 447, Atlantic Ocean, 2009; Colgan Air – Continental, Flt. 3407, Buffalo, New York, 2009; Aeroflot-Nord, Flt. 821, Perm Airport, Russia, 2008; SpanAir, Flt. 5022, Barajas Airport, Spain, 2008; TACA Airlines, Flt. 390, Tegucigalpa, Honduras, 2008; Santa Barbara Airlines, S.A., Flt. 518, near Merida, Venezuela (2008); TAM Airlines, Flt. 3054, Congonhas Airport, Sao Paulo, Brazil, 2007; Comair, Flt. 5191, crash on takeoff from Lexington, Kentucky, 2006; Sibir Airlines Flt. 778 from Moscow Russia, 2006; GOL Airlines, Flt. 1907, mid-air collision in the Amazon, Brazil (2006); Chalk's Ocean Airways Flt. 101 air disaster, Miami, FL, 2005; Helios Airways air disaster near Cyprus, 2005; Tropical Air, LET 410, Cap Haitian, Haiti, 2003; mid-air collision over German airspace involving Bashkirian Airlines Flt. 2937 and DHL Flt. 611, 2002; American Airlines, Flt. 587, crash in Belle Harbor, Queens, N.Y., 2001; Papillon Airways, Inc. Eurocopter AS350-B2 helicopter in the Grand Canyon, AZ, 2001; Scandinavian Airlines at Linate Airport, Milan, Italy, 2001; Air France Concorde tragedy 2000; Bell Helicopter BH 407 in Brazil, 1999; Cubana Air, Flt. 3010, YAK-42, Valencia, Venezuela, 1999; TAESA Airlines Flt. 725 from Uruapan, Michoacán, Mexico, 1999; Hot Air Expeditions, near Cave Creek, AZ, 1999; Occidental Petroleum's chartered Boeing 737 in Peru's northern jungle, 1998; American Airlines, Flt. 1420, Little Rock, Arkansas, 1999; TAME Flight 422 near Bogota, Colombia, 1998; Swissair, Flt. 111, Atlantic Ocean near Halifax, Nova Scotia, 1998; Silk Air, Flt. MI185, Palembang, Indonesia, 1997; Fine Air, Flt. 101, Miami, FL, 1997; Bell 407 helicopter in the Andros Islands, 1996; Millon Air Flt. 406 en route to Miami, Florida from Manta, Ecuador, 1996; ValuJet, Flt. 592, Florida Everglades, 1996; Aero-Peru Flt. 603 en route to Santiago, Chile from Lima, Peru, 1996; Aviation Development Corp. Airlines, Nigeria, 1996; Tarom Airlines, Flt. R0371, Bucharest, Romania, 1995; El Al cargo, Amsterdam, Holland, 1992; Surinam Airways Flt. PY764 in Paramaribo, Surinam, 1989; Grand Canyon Airlines, Grand Canyon National Park Airport, AZ, 1989; and Independent Air Flt. 1851, Bergamo, Italy, 1989 and Arrow Air Flight 1285, Gander, Canada.

He also acts as lead trial counsel for countless victims of general aviation and military accidents, many involving foreign claimants, ranging from air balloons, flight training, ground school, air ambulances, banner planes, aerobatics, helicopters, and propeller, turbo-prop and jet-powered aircraft, including, but not limited to, Cessnas, Cirrus, Beechcraft, Pipers, Bellancas, Lear Jets, Citation Jets, Bell Helicopters, Sikorsky Helicopters, Robinson Helicopters, Aerospatiale Helicopters and countless

other aviation manufacturers, operators, maintenance facilities and private & public air traffic control centers.

In addition to his aviation, general personal injury and wrongful death practice, he also counsels foreign governments, including the Russian Federation, the Republic of Venezuela, Ecuador, Belize, Honduras and numerous Brazilian states.

Among his many speaking engagements have been:

- An Introduction to the Foreign Sovereign Immunities Act,” invited guest lecturer, Embry-Riddle 2001. Also an invited lecturer on the Embry-Riddle Aviation Program 2006;
- “Recent Developments in Aviation Law,” ABA Litigation in Aviation Seminar 1991 (co-author);
- Masters of the Courtroom Seminar, Dade County Trial Lawyers, 2002 and the Dade County Trial Masters Program, 2002-2003;
- Forum Non-Conveniens panel member and co-chair, ABA Aviation & Space Law Convention Tort Trial and Insurance Practice Section Conference 2003;
- ABA Panel on Forum Non-Conveniens, “An Update of Recent Decisions and An Analysis of the Legal Criteria,” 2003;
- Discovery in Aviation cases, ABA Conference, Washington DC 2004, invited lecturer;
- ATLA Aviation Section Program, Chicago, Program Chair;
- Miami-Dade County Bar Association Young Lawyer Section’s First Annual “SuperLawyer Mock Trial Demonstration Seminar 2006”;
- “A Discussion on the Basics of Litigating the Foreign Crash”, ABA Aviation & Space Law Convention 2006;
- ABA Conference, Washington, D.C., October 2007 session on Aviation and Space Law Litigation, lectured on “Foreign Accidents--U.S. Defendants Frequently Argue Forum Non-Conveniens Motions; How are they Doing?”;
- National Association of Legal Investigators, Inc., Mid-Winter Conference, Ft. Lauderdale, FL, January 2008;
- Embry Riddle Aeronautical University’s 19<sup>th</sup> Annual Aviation Law and Insurance Symposium, lectured on “Handling Foreign Crash Litigation in the U.S. and Abroad”;
- American Association for Justice, Annual Convention in Philadelphia, lectured on “The Fundamentals of Obtaining a Just or Full Compensation Aviation Jury Verdict”, July 2008;
- Speaker at the Conference of the International Bar Association, Vancouver, Canada, October 2010;
- McGill Conference on International Aviation Liability and Insurance, Moot Court Panels, Legal Argument, Forum non-conveniens and Mediation, Montreal, Canada, May 2011.

- 5th Annual McGill Conference on International Aviation Liability and Insurance, Moot Court Panels, Legal Argument, Forum non-conveniens and Mediation, Montreal, Canada, October 2013.
- Florida Justice Association, Workhorse Seminar; Into the Wild Blue Yonder: Exploring New Frontiers in Aviation Litigation, February 2014
- FIU Law Legal Seminar (LATAM) December 3, 2014
- Embry Riddle Aeronautical University / Aviation Law & Insurance Symposium in Orlando - January 28-30, 2015
- FIU Aviation and Space Law Symposium in Miami - February 20, 2015
- 8th Annual McGill Conference on Aviation Liability and Insurance Conference, Complexity of International Aviation Litigation Against Multiple Tortfeasors, April 17-18, 2015
- 21st Annual ABA Conference, Annual National Institute on Aviation Litigation, New York City, June 4, 2015
- South Florida Trial Bar - Superstars Mock Trial and Expert Jury Selection, February 12, 2016
- December 2, 2016, Panelist at Miami Law Class Action & Complex Litigation Forum on the discussion of Settlement and Resolution of Class Action litigation, discussing mediation, confirmation discovery, objectors, attorneys' fees and notice issues.

Steve has made several guest appearances on CNN News, Wall Street Live News and CBC Sky News. Steve is also the co-author, "Recent Developments in Aviation Law," ABA Litigation in Aviation Seminar, 1991. Author, "The Admissibility and Use of Demonstrative Aids," ABA, The Brief Tort Trial & Insurance Practice Section, Vol. 32, No. 4, Summer 2003; "Handling Foreign Aviation Cases in the United States"; ABA Publication entitled "Litigating the Aviation Case from Pre-trial to Closing Argument," Third Edition, 2008. Author, "The Admissibility and Use of Demonstrative Aids," ABA, The Brief (2003); and "Handling Foreign Aviation Cases in the United States", ABA Publication entitled "Litigating the Aviation Case from Pre-trial to Closing Argument", Third Edition, 2008.

## STEPHEN F. ROSENTHAL

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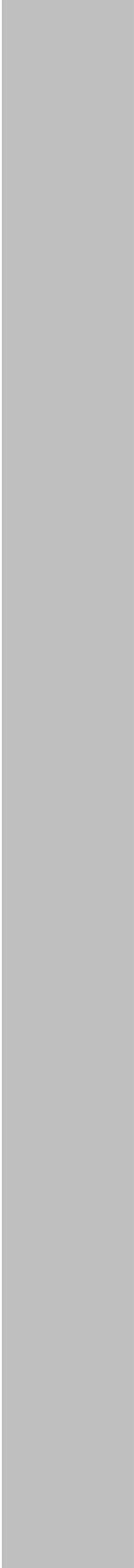
*Appellate Practice*  
*Personal Injury and Wrongful Death Litigation*  
*Class Actions*  
*Aviation Litigation*  
*Product Liability*  
*Commercial Litigation*  
*Constitutional and Election Law*

**S**tephen focuses on complex litigation and appeals. He has tried cases to verdict in state and federal courts and has argued nearly 40 appeals in state and federal appellate courts across the country. His practice spans class actions, aviation accidents, personal injury, commercial disputes, professional malpractice, and whistle blower claims.

His abilities have been recognized in numerous publications. Benchmark Appellate has observed that Stephen "possesses the rare skill set allowing him to excel at both trial and appellate litigation." Other national publications have praised his "sharp intellect" and "extremely creative legal analysis skills," listing him among the best lawyers in the country in the categories of appellate and personal injury litigation. Stephen is also an experienced hand at election litigation. He was appointed by the President's re-election campaign to serve as State Counsel for Florida, a general counsel-like position where he developed legal strategy and oversaw 4,500 volunteer lawyers in voter-protection efforts. He played a similar role in the 2010 gubernatorial and 2008 presidential elections. He has advised numerous candidates on legal issues affecting campaigns.

He joined the firm in 2001 and has been a partner since 2005. Prior to entering private practice, he worked at the Department of Justice in Washington, defending federal programs and agencies. He had the honor of serving as a law clerk to Judges Rosemary Barkett on the U.S. Court of Appeals for the Eleventh Circuit and Mark Wolf of the U.S. District Court for the District of Massachusetts. He is a graduate of Harvard Law School (J.D., cum laude, 1996) and of Harvard College (A.B., magna cum laude, 1992), and spent the year after college in England as a Rotary Foundation Ambassadorial Scholar.

He was appointed in 2009 by the judges of the -U.S. Court of Appeals for the Eleventh Circuit as one of six lawyers in Florida on its Lawyers Advisory Committee. Stephen is an active member of his community. He serves on the Steering Committee of the fund-raising arm of Legal Services of Greater Miami, Inc., is active in leadership at Temple Judea of Coral Gables, and has previously served as Chairman of the Board of the American Constitution Society, South Florida Chapter, and was on the Board of Directors of the Florida Justice Association. He is a member of the Leadership Florida Class of 2007.



He has lectured on a wide range of topics, including appellate practice, class action law, Florida's Unfair and Deceptive Trade Practices Act, attorney's fees in wrongful death cases, and the treatment of worker's compensation liens in wrongful death cases, and has published work on the law of religious freedom under the First Amendment. He speaks Spanish and has previously worked in Spain and Central America.

## **RICARDO M. MARTINEZ-CID**

*Personal Injury and Wrongful Death Litigation*

*Product Liability*

*Aviation Litigation*

*Commercial Litigation*

**R**icardo M. Martinez-Cid is a partner at Podhurst Orseck, P.A., in Miami. He earned his undergraduate degree in only three years at the University of Miami (B.A. cum laude 1997) and his Juris Doctorate at Yale Law School (J.D. 2000) where he was the William S. Beinecke Scholar. While a law student, Ricardo was a director at Yale's renowned clinical program. He served on the Board of Directors of the Latino Law Students Association, and was an editor of the Yale Journal of International Law. Before joining the firm, Ricardo served as a law clerk to the Honorable James Lawrence King on the United States District Court for the Southern District of Florida. He joined the firm in 2002 and was named a partner in 2005.

Ricardo is an accomplished trial lawyer, having obtained multi-million dollar verdicts on behalf of his clients in both federal and state courts. He has been named "Legal Elite" by Florida Trend Magazine, "Top Lawyer" by both Expert Guides and the South Florida Legal Guide, and is listed in The Best Lawyers in America. According to the National Law Journal, his verdict of over 195 million dollars in the Fondo Vision matter was one of the ten largest jury verdicts of 2010. On multiple years, The Daily Business Review has recognized him at its Most Effective Lawyers' event.

Although Ricardo handles select commercial matters, much of his practice involves personal injury, wrongful death, and product liability cases with a focus on mass torts and aviation litigation. He is experienced in Multi-District Litigation and currently serves on the Plaintiffs' Executive Committee for the NFL Concussion Litigation.

Ricardo is Board Certified in Aviation Law, thereby accrediting him as an expert within the field of practice. According to the Florida Bar, certification is its highest level of evaluation of competency and experience within an area of law, as well as professionalism and ethics in practice. In addition to handling general aviation cases involving fixed-wing and rotary aircraft, Ricardo regularly represents victims of commercial aviation disasters. He has been appointed lead counsel or otherwise taken a leadership role in many of these cases, including American Airlines Flight 331, Jamaica (2009); SpanAir Flight 5022, Spain (2008); TACA Airlines, Flight 390, Honduras (2008); Santa Barbara Airlines, S.A., Flight 518, Venezuela (2008); TAM Airlines, Flight 3054, Brazil (2007); GOL Flight 1906, Brazil (2006); Comair Flight 5191, Lexington, Kentucky (2006); Chalk's Ocean Airways Flight 101, Miami Beach, Florida (2005); Helios Airways Flight 2U522, Cyprus (2005); Tropical Air Flight 1301, Haiti (2003); Scandinavian Airlines Flight 686, Milan, Italy (2001); TAESA Airlines Flight 725, Mexico (1999); and Silk Air Flight MI 185, between Jakarta and Singapore (1997).

Ricardo was appointed by the Florida Supreme Court to serve on the Standing Committee on Fairness and Diversity and by the Chief Justice to serve on his Pro Bono Advisory Committee. He is Co-Chair of the Aviation and Space Law Committee of the American Bar Association, a Past Chair of the Aviation Law Section of the American Association for Justice, the Immediate Past President of the Cuban American Bar Association, and he serves on the Board of Governors of the American Association of Justice and of the Florida Justice Association.

Ricardo has authored and published work for the American Bar Association, Westlaw Journal, and the American Association for Justice. He is a frequent lecturer on aviation law and general trial tactics. The many venues he has been invited to speak at include American Bar Association programs in New York and Washington, D.C.; the Southern Methodist University Air Law Symposium in Dallas; the PEOPIL/McGill University Conference on Aviation Law and Insurance in Amsterdam; the Embry-Riddle University Aviation Law and Insurance Symposium in Orlando, and AviCon Conferences in London and New York City. He has also served on the faculty of the Al J. Cone Trial Advocacy Institute.

He is fluent in English, Spanish and Portuguese.

**MATTHEW P. WEINSHALL**

**M**atthew is an honors graduate of Harvard College (A.B. cum laude 2002) and of the University of Miami School of Law (J.D. summa cum laude 2010), where he was an editor of the University of Miami Law Review. Prior to law school, Matt worked as an equities trader for three years and as a foreign exchange trader for two years. After law school, Matt served as a law clerk to Judge Rosemary Barkett of the U.S. Court of Appeals for the Eleventh Circuit.

Matt is admitted to the Florida Bar and focuses his practice on complex commercial litigation and class actions.

# **EXHIBIT F**

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

IN RE: NATIONAL FOOTBALL  
LEAGUE PLAYERS' CONCUSSION  
INJURY LITIGATION

Kevin Turner and Shawn Wooden,  
*on behalf of themselves and  
others similarly situated,*

Plaintiffs,

v.

National Football League and  
NFL Properties LLC,  
successor-in-interest to  
NFL Properties, Inc.,

Defendants.

THIS DOCUMENT RELATES TO:  
ALL ACTIONS

No. 2:12-md-02323-AB

MDL No. 2323

**Hon. Anita B. Brody**

Civ. Action No. 14-00029-AB

**DECLARATION OF DIANNE M. NAST IN SUPPORT OF CO-LEAD CLASS  
COUNSEL'S PETITION FOR AN AWARD OF ATTORNEY'S FEES AND  
REIMBURSEMENT OF COSTS AND EXPENSES**

Dianne M. Nast declares as follows pursuant to 28 U.S.C. § 1746:

1. I am the founder of the law firm of NastLaw LLC. I submit this declaration in support of Co-Lead Class Counsel's Petition for an Award of Attorney's Fees and Reimbursement of Costs and Expenses in connection with and for services rendered and expenses incurred for the common benefit of the Settlement Class in the above-captioned multidistrict litigation ("Action") from the inception of the litigation through July 15, 2016, as well as for the payment of expenses incurred therewith. I have personal knowledge of the

matters set forth in this declaration and, if called upon, I could and would testify competently thereto.

2. In the beginning of 2012 when this case was filed, the predecessor law firm, RodaNast, P.C., employed the attorneys who worked on this case. At the end of 2012, NastLaw LLC was formed, and all of the RodaNast, P.C. attorneys who worked on this case are and have been employed by NastLaw LLC since that time. RodaNast, P.C. is no longer operating. All time and expenses reported in this Declaration include NastLaw LLC and RodaNast, P.C. time, and are described as time and expenses of “this firm.”

3. As a member of the Plaintiffs’ Steering Committee (“PSC”) and Court-appointed Class Counsel, this firm has been involved in many aspects of this litigation. During the course of this litigation, this firm has been involved in the following types of activities, as directed by Co-Lead Counsel:

- Negotiation of settlement terms, including editing and commenting on the Settlement Agreement and attendance at multiple settlement meetings with Defendants;
- Served as Class Counsel for Subclass 2;
- Attendance at court status conferences, oral arguments and hearings at both the District Court and Appellate Court levels, and participation in preparation and practice sessions leading up to those hearings;
- Researching and editing the Class Action Complaint;
- Extensive legal research into the viability of medical monitoring claims;
- Drafting and editing of the Protective Order, ESI Protocol and Deposition Protocol;
- Researching and editing the opposition to Defendants’ Motion to Dismiss the Class Action Complaint, focusing on preemption issues;
- Drafting and administering Case Management Order No. 5 re: Submission of Plaintiffs’ Time and Expense Reports, including quarterly collection of reports;

- Researching editing the Motion for Preliminary Approval;
- Negotiation of additional settlement terms in light of the District Court's concerns about the initial Settlement Agreement;
- Researching and editing the Motion for Final Approval, including legal research responding to the concerns of objectors;
- Editing the Rule 23(f) appeal filed after preliminary approval was granted;
- Researching and editing the appellate briefs filed with the Third Circuit after various objectors appealed the grant of final approval to the settlement;
- Researching and editing the opposition to the petitions for certiorari filed by various objectors;
- Researched and drafted correspondence addressing the death of class representative Kevin Turner and its impact on the appellate proceedings; and
- Responded to numerous questions and concerns of class members about the settlement, the status of the court proceedings and the pendency of the various appeals.

4. The schedule attached hereto as Exhibit 1 is a detailed summary indicating the amount of common benefit time spent by the attorneys and professional support staff of this firm who were involved in, and billed fifty or more hours to, this Action, and the lodestar calculation for those individuals based on this firm's current billing rates. For personnel who are no longer employed by this firm, the lodestar calculation is based on the billing rates of such personnel in their final year of employment by this firm. The schedule was prepared from contemporaneous daily time records regularly prepared and maintained by this firm. Time expended in preparing this application for attorney's fees and expenses has been excluded.

5. The hourly rates for the attorneys and professional support staff of this firm included in Exhibit 1 are the same as the regular rates charged for their services in other contingent matters and have been accepted by other federal courts in other class action cases prosecuted by this firm.

6. The total number of hours expended on the common benefit of this Action by this firm during the time period is 1,211.75 hours. The total lodestar for this firm for those hours is \$765,060.25, consisting of \$721,884.00 for attorneys' time and \$43,176.25 for professional support staff time.

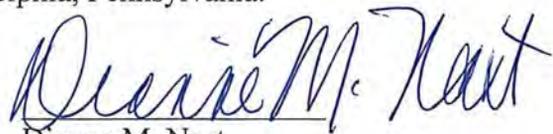
7. This firm's lodestar figures are based solely upon this firm's billing rates, which rates do not include charges for expense items. Expense items are billed separately and such charges are not duplicated in this firm's billing rates.

8. As detailed in Exhibit 2 hereto, this firm is seeking reimbursement of a total of \$117,138.64 in common benefit expenses incurred in connection with the prosecution of this Action. These expenses are reflected on the books and records of this firm. These books and records are prepared from expense vouchers, check records, and other source material, and are an accurate record of the expenses incurred.

9. With respect to the standing of this firm to share in an award of fees, costs, and expenses, attached hereto as Exhibit 3 is a biography of this firm, including the attorneys in my firm who were principally involved in this Action.

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

Executed on December 28, 2016, at Philadelphia, Pennsylvania.

  
Dianne M. Nast

# **EXHIBIT 1**

**IN RE: NATIONAL FOOTBALL LEAGUE PLAYERS' CONCUSSION INJURY  
LITIGATION**

**No. 12-md-2323-AB**

**NASTLAW LLC  
(including RodaNast, P.C.)**

**LODESTAR REPORT**

**Inception through July 15, 2016**

<b>NAME</b>	<b>HOURS</b>	<b>HOURLY RATE</b>	<b>AMOUNT</b>
<b>PARTNERS:</b>			
<b>Dianne M. Nast</b>	688.9	\$800	\$551,120.00
<b>ASSOCIATES:</b>			
<b>Daniel N. Gallucci</b>	64.8	\$575	\$37,260.00
<b>Erin C. Burns</b>	238.4	\$560	\$133,504.00
<b>PARALEGALS:</b>			
<b>Michael D. Ford</b>	79.0	\$215	\$16,985.00
<b>Emily C. Bell</b>	86.1	\$225	\$19,372.50
<b>Diane Brown</b>	54.55	\$125	\$6,818.75
<b>TOTALS:</b>	1211.75		\$765,060.25

# **EXHIBIT 2**

**IN RE: NATIONAL FOOTBALL LEAGUE PLAYERS' CONCUSSION INJURY  
LITIGATION**

**No. 12-md-2323-AB**

**NASTLAW LLC  
(including RodaNast, P.C.)**

**COST AND EXPENSE REPORT**

**Inception through July 15, 2016**

<b>NUMBER</b>	<b>CATEGORY</b>	<b>AMOUNT</b>
1	Assessments	\$100,000.00
2	Commercial Copies	\$0.00
3	Computerized Research	\$3,483.27
4	Court Reporters/Transcripts	\$0.00
5	Expert Services	\$0.00
6	Facsimile	\$87.10
7	Filing & Service Fees	\$0.00
8	In-House Copies	\$1,706.05
9	Long Distance Telephone	\$2.11
10	Postage/Express Delivery	\$290.38
11	Travel/Meals/Lodging	\$11,569.73
12	Miscellaneous	\$0.00
<b>TOTAL EXPENSES</b>		<b>\$117,138.64</b>

# **EXHIBIT 3**

NastLaw LLC  
1101 Market Street  
Suite 2801  
Philadelphia, Pennsylvania 19107  
(215) 923-9300  
(215) 923-9302 (facsimile)  
[www.nastlaw.com](http://www.nastlaw.com)

### **FIRM BIOGRAPHY**

Led by Dianne M. Nast, NastLaw attorneys combine over 90 years of complex civil litigation experience. We provide our clients with experienced, confident representation to guide them in the most difficult cases.

Our Firm's focus is on complex civil litigation, including pharmaceutical litigation and antitrust litigation. Firm founder, Dianne Nast, brings decades of complex litigation experience to the firm.

### **ATTORNEYS**

**Dianne M. Nast** is a *magna cum laude* graduate of Rutgers University School of Law. From 1976 to 1995, she was a shareholder with the Philadelphia law firm of Kohn, Nast & Graf, P.C. (now Kohn, Swift & Graf, P.C.) and then a senior shareholder at RodaNast, P.C. from 1995 to 2012.

Ms. Nast holds an AV Martindale-Hubbell rating, and has been selected to be listed in *The Best Lawyers in America*, included in each edition since 2003. The *National Law Journal* has selected Ms. Nast as one of the nation's top fifty women litigators. Ms. Nast was also selected by *Philadelphia Magazine* as one of Philadelphia's Best Complex Litigation Lawyers. She has been named as one of Pennsylvania's Top Fifty Women Lawyers. She appears in numerous *Who's Who* publications.

In April, 2015, the American Bar Association Tort and Trial Practice Section awarded Ms. Nast its Pursuit of Justice Award. In June, 2016, Ms. Nast was selected by The Legal Intelligencer, Pennsylvania's leading legal newspaper, covering legal developments statewide and nationally, to receive its Life Time Achievement Award, honoring Ms. Nast's accomplishments and innovations during her continuing legal career.

Ms. Nast was appointed in 1998 by then Chief Justice William H. Rehnquist to a

five-year term as Chair of the Board of Directors of the Federal Judicial Center Foundation. She served as a Director of the Federal Judicial Center Foundation for eleven years, from 1991 until 2002.

Judge Edward Becker, then Chief Judge of the United States Court of Appeals for the Third Circuit, appointed Ms. Nast to serve as a member of the fifteen-member Third Circuit Task Force on Selection of Class Counsel. The Task Force issued a report, *Selection of Class Counsel*, 208 F.R.D. 340 (2002), cited over 100 times in court opinions. She was selected by The American Law Institute to serve on the ALI's Principles of the Law of Aggregate Litigation.

Ms. Nast chaired the Lawyers Advisory Committee for the United States Court of Appeals for the Third Circuit and on that Committee. She served for eight years on the Third Circuit's Committee on Revision of Judicial Conduct Rules of the Judicial Council and on the Judicial Conference Long Range Planning Committee.

Ms. Nast has served as Lawyer Chair of the Judicial Conference of the United States Court of Appeals for the Third Circuit. She is a member of the Historical Society of the Third Circuit, and chaired the Circuit's Centennial Celebration.

She was appointed by the late Chief Judge Alfred L. Luongo to Chair the Eastern District of Pennsylvania's Lawyers Advisory Committee, and served for four years in that position. She served for three years as President of The Historical Society for the United States District Court for the Eastern District of Pennsylvania and as Editor of the Society's Annual Historical Calendar.

She is a member of the American Bar Association Litigation Section, where she has served on the Task Force on State Justice Initiatives, the Task Force on the State of the Justice System and the Task Force on Strategic Planning. She served a three-year term on the Section's Council, served as a Section Division Director, and co-chaired the Section's Antitrust Committee. On May 12, 2015, Ms. Nast received the Pursuit of Justice Award from the American Bar Association Tort, Trial and Insurance Practice section. She served as a Delegate to the American Bar Association House of Delegates and the Pennsylvania Bar Association House of Delegates. She served as a member of the Philadelphia Bar Association Board of Governors. She is a member of the Public Justice Foundation.

She served six years as a Director on the Board of the Public Defender's Office of Philadelphia. Ms. Nast was selected as one of a small group of Philadelphia attorneys to

be appointed Judge Pro Tempore, serving as presiding Judge in major civil jury cases in the Court of Common Pleas.

Ms. Nast is member of the Disciplinary Committee of the Supreme Court of Pennsylvania. She is a Fellow of the American Bar Foundation. Ms. Nast is a member of the American Law Institute, is a member of the Board of Directors of the Sedona Conference, a member of the American Antitrust Institute and the Public Justice Foundation.

**Michele S. Burkholder** graduated with Distinction from the Pennsylvania State University with dual degrees in Journalism and Sociology, and received her Juris Doctorate, *cum laude*, from the Dickinson School of Law, and was a member of the Woolsack Honor Society. She was Vice-President of the International Law Society and a member of Amnesty International. Ms. Burkholder served as a law clerk to the Honorable Ronald E. Vican, President Judge of Monroe County, Pennsylvania.

Ms. Burkholder is court-appointed Plaintiffs' Liaison Counsel in *Darvocet, Darvon and Propoxyphene Products Liability Litigation*, MDL No. 2226 (E.D. Ky.).

**Daniel N. Gallucci** received his Bachelor of Arts in History from Gettysburg College and his Juris Doctorate from the Dickinson School of Law of the Pennsylvania State University, where he was a member of the Woolsack Honor Society and the National Trial Moot Court Team. He was Articles Editor of *The Dickinson Law Review* and received the Best Case Note Award in the 1996-97 Law Review Competition. He also received the Conrad A. and Rocco C. Falvello Memorial Award for Diligence and Progress and was named to the Order of Barristers for Excellence in Courtroom Advocacy.

He was a law clerk to the Honorable Michael A. Georgelis, President Judge of the Court of Common Pleas of Lancaster County.

Mr. Gallucci has tried jury cases involving medical malpractice and wrongful death, and won the third largest jury verdict in the history of Lancaster County, Pennsylvania.

Mr. Gallucci served as Co-Lead Counsel in the *Heparin Products Liability Litigation*, MDL No. 1953 (N.D. Ohio) and was appointed as Co-Liaison Counsel for the Pennsylvania Plaintiffs in the *YAZ Products Liability Litigation* (Phila. C.C.P.). Most recently, he was appointed as Co-Liaison Counsel by The Honorable Arnold L. New in

the *Xarelto Products Liability Litigation*, January Term, 2015, No. 2349 (Phila. C.C.P.), and a member of the State Liaison Committee by the Honorable Eldon E. Fallon in the *Xarelto (Rivaroxaran) Products Liability Litigation* (MDL No. 2592 (E.D. La.)).

Additionally, he serves on the Science and Case-Specific Committees in *Zoloft (Serataline Hydrochloride) Products Liability Litigation*, MDL No. 2342 (E.D. Pa.).

**Erin C. Burns** received her Bachelor of Arts from the University of Delaware and her Juris Doctorate from the Villanova University School of Law. She is a member of Psi Chi and served as a staff writer and Symposium Editor on *The Villanova Environmental Law Journal*.

Ms. Burns served as a law clerk to the Honorable Louis J. Farina, Lancaster County Court of Common Pleas and was an associate at RodaNast, P.C. from 2004 until 2012.

She served as the Vice-Chairperson of the Young Lawyers Section of the Lancaster Bar Association in 2004 and the Chairperson of that Section in 2005. Also in 2005, she sat on the Board of Directors of the Lancaster Bar Association. In March of 2005, Ms. Burns received the President's Award from the Lancaster Bar Association for development and implementation of a Habitat for Humanity community service day for the Young Lawyers Section.

She also served as a Leader of the Law Explorers Program through Learning for Life, a program for youth interested in careers in the law from 2004 through 2006.

She was recognized in Who's Who of American Women in 2006 and by Strathmore's Who's Who in 2007 and is a member of the National Association of Professional Women.

In 2012, Ms. Burns was a featured panelist for the *Legal Intelligencer's* first annual Litigation Summit, where she spoke about the taxation of costs under 28 U.S.C. §1920 for e-discovery expenses.

She is a member of the Law & Briefing Committee for *In re Zoloft (Serataline Hydrochloride) Products Liability Litigation*, MDL No. 2342 (E.D. Pa.) and was part of the deposition team for *Shane Group, Inc., et al. v. Blue Cross Blue Shield of Michigan*, Case No. 2:10-cv-14360-DPH-MKM (E.D. Mich.). Ms. Burns served as one of three Mediation Counsel in *In re Skelaxin Antitrust Litigation*, MDL No. 2343 (E.D. Tenn.).

**Joanne E. Matusko** received her Bachelor of Science from Beaver College and her Juris Doctorate from the Widener University School of Law. While at Widener, Ms. Matusko was a member of the Moot Court team. She also holds an MBA degree from Lebanon Valley College and an Associate's degree in medical technology.

Additionally, Ms. Matusko is a member of the Clinical Laboratory Management Association and of the American Society of Clinical Pathologists.

She worked as Director of Laboratory Services at a local hospital and was an Adjunct Instructor of Laboratory Sciences at Thomas Jefferson University College of Allied Health Professions. She is currently an Adjunct Professor at Central Penn College and Harrisburg Area Community College teaching business, legal, and healthcare classes.

Ms. Matusko received a Prominent listing on Martindale-Hubbell in June 2011 and was selected by *Super Lawyers* as a Rising Star lawyer in 2010 and 2013 and as a Super Lawyer in 2014 and 2015.

Ms. Matusko served as a member of the Trial Committee in *Yaz, Yasmin, Ocella Gianvi Product Liability Litigation*, September Term 2009, No. 1307 (Phila. C.C.P.). Additionally, she serves on the Case-Specific Committees in *Zoloft (Sertraline Hydrochloride) Products Liability Litigation*, MDL No. 2342 (E.D. Pa.), and *Xarelto Products Liability Litigation*, January Term, 2015, No. 2349 (Phila. C.C.P.).

**Matthew A. Reid** graduated from Ursinus College with a Bachelor of Arts in International Business and received the dual degree of Juris Doctorate and Masters of Business Administration from Widener School of Law in Wilmington, Delaware. He also holds an Honors Certificate in Business Organizations Law.

Mr. Reid is a member of the Pennsylvania BAR Association and the Philadelphia Trial Lawyers Association. His practice includes both antitrust and mass tort complex litigation.

**Joseph N. Roda** received his Juris Doctorate from the University of Pennsylvania, and his undergraduate degree from Brown University. He is an experienced brief writer who also brings a strong mathematical background to Nastlaw LLC.

Mr. Roda's practice at Nastlaw involves both antitrust and mass tort complex litigation. He has helped pursue automobile defect cases against a number of major auto manufacturers and has significant defective drug litigation experience. Mr. Roda has

worked on recent lawsuits involving a number of defective drugs, including Yaz birth control, Zoloft, Fosamax, Xarelto, Testosterone, Talcum Powder, and Proton Pump Inhibitors. He has assisted with the administration of several major settlements and recently helped to obtain class certification and settlement in a major hospital data breach litigation.

In addition to his work in Pennsylvania and New Jersey, Mr. Roda is a member of the California State Bar. He works with the Orange County Bar Association Pro Bono Committee and is a review committee member for the OCBA Lawyer Referral and Information Service. He has spent hundreds of hours helping to plan and execute fundraising events for the Orange County Public Law Center, which provides pro bono legal assistance to local residents.

**Michael S. Tarringer** received his Juris Doctorate from Villanova University School of Law, where he was one of the student-founders of the Family Law Society. Mr. Tarringer also holds a Bachelor of Science in Marketing from Philadelphia University, where he graduated summa cum laude and received the American Marketing award, the Sara Tyler Wister Prize and membership in the Delta Mu Delta Business Honor Society.

Mr. Tarringer has over 15 years of class action experience, and he has concentrated his law practice in the fields of Antitrust, Consumer Protection, Products Liability, and Pharmaceutical litigation.

Prior to joining NastLaw, Mr. Tarringer served as a Federal Judicial Law Clerk to the Honorable Robert F. Kelly, in the United States District Court for the Eastern District of Pennsylvania. In addition, Mr. Tarringer served in key litigation roles in *In re Kaiser Group Int'l*, Case No. 00-2263 (Bankr. D. Del.). *See* 326 B.R. 265 (D. Del. 2005) and 278 B.R. 58 (Bankr. D. Del. 2002); and *Walter Cwietniewicz, d/b/a Ellis Pharmacy, et al v. Aetna U.S. Healthcare*, June Term, 1998, No. 423 (Pa. Comm. Pl., Phila. Cty.). Mr. Tarringer also served on the Plaintiffs' Legal Committee in the Orthopedic Bone Screw Products Liability Litigation.

## CASES

NastLaw LLC has an extensive product liability and personal injury practice focusing on antitrust matters, in addition to its class action practice focusing on pharmaceutical products liability matters. An exemplar listing, in alphabetical order, of some of the class actions in which Ms. Nast has served as Lead Counsel or Executive Committee Member includes the following:

*Actos (Pioglitzaone) Products Liability Litigation*, MDL No. 2299 (W.D. La.), before The Honorable Rebecca F. Doherty.

*Augmentin Antitrust Litigation (SAJ Distributors, Inc. and Stephen L. LaFrance Holdings, Inc. v. SmithKline Beecham Corp., d/b/a GlaxoSmithKline*, Civil Action No. 04-CV-23 (E.D. Va.)), before The Honorable Henry C. Morgan, Jr.

*Avandia Marketing, Sales Practices and Products Liability Litigation*, MDL No. 1871 (E.D. Pa.), before The Honorable Cynthia M. Rufe.

*Castano Tobacco Litigation*, Civil Action No. 94-1044 (E.D. La.), before The Honorable Okla Jones II.

*Chocolate Confectionery Antitrust Litigation*, MDL No. 1935 (M.D. Pa.), before The Honorable Christopher C. Conner.

*Children's' Ibuprofen Oral Suspension Antitrust Litigation*, Misc. No. 04mc0535 (D.D.C.), before The Honorable Ellen S. Huvelle.

*Darvocet, Darvon and Propoxyphene Products Liability Litigation*, MDL No. 2226 (E.D. Ky.), before The Honorable Danny C. Reeves.

*Diet Drug Product Liability Litigation*, MDL No. 1203 (E.D. Pa.), before The Honorable Harvey Bartle III.

*Digoxin and Doxycycline Antitrust Litigation*, MDL No. 2724 (E.D. Pa.), before The Honorable Cynthia M. Rufe.

*Effexor XR Antitrust Litigation*, Civil Action No. 11-5479 (D. N.J.), before The Honorable Peter J. Sheridan.

*General Motors LLC Ignition Switch Litigation*, MDL No. 2543 (S.D.N.Y.), before The Honorable Jesse M. Furman.

*Heparin Products Liability Litigation*, MDL No. 1953 (N.D. Ohio), before The Honorable James G. Carr.

*Hypodermics Products Antitrust Litigation*, MDL No. 1730 (D.N.J.), before The Honorable Jose L. Linares.

*Lipitor (Atorvastatin Calcium) Marketing, Sales Practices and Products Liability Litigation*, MDL No. 2502 (D. S.C.), before The Honorable Richard Mark Gergel.

*Medtronic, Inc. Implantable Defibrillators Products Liability Litigation*, MDL No. 1726 (D. Minn.), before The Honorable James M. Rosenbaum.

*Medtronic, Inc. Sprint Fidelis Leads Products Liability Litigation*, MDL No. 1905 (D. Minn.), before The Honorable Richard H. Kyle.

*Mirena IUD Products Liability Litigation*, MDL No. 2434 (S.D. N.Y.), before The Honorable Cathy Seibel.

*Modafinil Antitrust Litigation*, Civil Action No. 06-CV-1797, (E.D. Pa.), before The Honorable R. Barclay Surrick and, subsequently, The Honorable Mitchell S. Goldberg.

*National Football League Players' Concussion Injury Litigation*, MDL No. 2323 (E.D. Pa.), before The Honorable Anita B. Brody.

*Nifedipine Antitrust Litigation*, MDL No. 1515 (D.D.C.), before The Honorable Richard J. Leon.

*Ovcon Antitrust Litigation (SAJ Distributors, Inc., et al. v. Warner Chilcott Holdings Company III, Ltd., et al., Civil Action No. 1:05cv02459 (D. D.C.))*, before The Honorable Colleen Kollar-Kotelly.

*Paxil Antitrust Litigation (Nichols, et al. v. SmithKline Beecham Corp., Civil Action No. 00-6222 (E.D. Pa.))*, before The Honorable John R. Padova.

*Pelvic Repair Systems (S.D. W.V.)*, before The Honorable Joseph R. Goodwin, including *Ethicon, Inc.* MDL No. 2327, *Boston Scientific Corp.*, MDL No. 2326 and *American Medical Systems, Inc.* MDL No. 2325.

*Serzone Products Liability Litigation*, MDL No. 1477 (S.D. W.Va.), before The Honorable Joseph R. Goodwin.

*Testosterone Replacement Therapy Products Liability Litigation*, MDL No. 2545 (N.D. Ill.), before The Honorable Matthew F. Kennelly.

*Tylenol (Acetaminophen) Marketing, Sales Practices and Products Liability Litigation*, MDL No. 2436 (E.D. Pa.), before The Honorable Lawrence F. Stengel.

*Wellbutrin SR Antitrust Litigation (SAJ Distributors, Inc., et al. v. Smithkline Beecham Corp., Civil Action No. 04-5525 (E.D. Pa.))*, before The Honorable Bruce W. Kauffman and, subsequently, The Honorable Lawrence F. Stengel.

*Wellbutrin XL Antitrust Litigation*, Civil Action No. 08-2431 (E.D. Pa.), before The Honorable Mary A. McLaughlin.

*Xarelto (Rivaroxaban) Products Liability Litigation*, MDL No. 2592 (E.D. La.) before The Honorable Eldon E. Fallon.

*Xarelto Products Liability Litigation*, January Term, 2015, No. 2349 (Phila. C.C.P.) before The Honorable Arnold L. New.

*Yasmin and Yaz (Drospirenone) Marketing Sales Practices and Products Liability Litigation* MDL No. 2100 (S.D. Ill.), before The Honorable David R. Herndon.

*Yaz, Yasmin, Ocella Gianvi Product Liability Litigation*, September Term 2009, No. 1307 (Phila. C.C.P.), before The Honorable Sandra Mazer Moss.

*Zoloft (Sertraline Hydrochloride) Products Liability Litigation*, MDL No. 2342 (E.D. Pa.), before The Honorable Cynthia M. Rufe.

# EXHIBIT G

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

IN RE: NATIONAL FOOTBALL  
LEAGUE PLAYERS' CONCUSSION  
INJURY LITIGATION

No. 2:12-md-02323-AB

MDL No. 2323

**Hon. Anita B. Brody**

Kevin Turner and Shawn Wooden,  
*on behalf of themselves and  
others similarly situated,*

Civ. Action No. 14-00029-AB

Plaintiffs,

v.

National Football League and  
NFL Properties LLC,  
successor-in-interest to  
NFL Properties, Inc.,

Defendants.

THIS DOCUMENT RELATES TO:  
ALL ACTIONS

**DECLARATION OF SOL H. WEISS, ESQUIRE IN SUPPORT OF CO-LEAD CLASS  
COUNSEL'S PETITION FOR AN AWARD OF ATTORNEY'S FEES AND  
REIMBURSEMENT OF COSTS AND EXPENSES**

Sol H. Weiss, Esquire declares as follows pursuant to 28 U.S.C. § 1746:

1. I am President of Anapol Weiss. I submit this declaration in support of Co-Lead Class Counsel's Petition for an Award of Attorney's Fees and Reimbursement of Costs and Expenses in connection with and for services rendered and expenses incurred for the common benefit of the Settlement Class in the above-captioned multidistrict litigation ("Action") from the inception of January 27, 2012 through July 15, 2016, as well as for the payment of expenses

incurred therewith. I have personal knowledge of the matters set forth in this declaration and, if called upon, I could and would testify competently thereto.

2. Sol H. Weiss, Esquire of Anapol Weiss was appointed as Co-Lead Counsel by the Court for this litigation. I contributed to the organization of the Plaintiffs' Steering Committee (PSC) and Plaintiffs' Executive Committee (PEC). I organized meetings and initiated communication (conference calls and emails) among PSC and PEC members. I was instrumental in creating and participated in the Public Relations and Legal Committees. On public relations, I interviewed and retained the PR Firm. I helped shape the PR campaign that featured retired players and their families rather than lawyers. Within six months, the initial public perception that football players make a lot of money and should not sue the NFL changed. In an ESPN Poll, 70% of respondents believed retired players were justified in filing lawsuits for closed head injuries. Public opinion in support of retired players was a factor that added pressure and leverage in forcing the NFL to eventually settle the case. I prepared and revised Tolling Agreements which assisted 5,000 players to file suit against the NFL. I participated in live conferences and telephonic conferences with the Honorable Anita Brody of the United States District Court for the Eastern District of Pennsylvania on a broad range of issues. I was instrumental in engaging David Frederick on the seminal pretrial issue - preemption. I worked with Mr. Frederick throughout the preemption issue, including mock oral arguments. I attended many settlement meetings and mediations with the NFL. I, along with David Buchanan and Larry Coben, negotiated the eventual battery of tests used for the Baseline Assessment Program. This included the scoring protocols. I met with plaintiffs' neuropsychological experts as well as the NFL's experts. I reviewed and suggested changes to each draft of the various Settlement

Agreements. I, along with Larry Coben, met with and prepared scientists and physicians who submitted Declarations on CTE issues and neurocognitive disorders.

Larry E. Coben of Anapol Weiss was appointed to the Executive Committee. Mr. Coben retained a number of well credentialed scientists and doctors who consulted with plaintiffs' counsel on causation issues and liability. Mr. Coben spent considerable time meeting with and preparing experts who submitted extensive Declarations. Mr. Coben retained Grant Iverson, a leading neuropsychologist who provided invaluable guidance on the use of neuropsychological tests to measure neurocognitive losses.

3. The schedule attached hereto as Exhibit 1 is a detailed summary indicating the amount of common benefit time spent by the attorneys and professional support staff of my firm who were involved in, and billed fifty or more hours to, this Action, and the lodestar calculation for those individuals based on my firm's current billing rates. For personnel who are no longer employed by my firm, the lodestar calculation is based on the billing rates of such personnel in their final year of employment by my firm. The schedule was prepared from contemporaneous daily time records regularly prepared and maintained by my firm. Time expended in preparing this application for attorney's fees and expenses has been excluded.

4. The hourly rates for the attorneys and professional support staff of my firm included in Exhibit 1 are the same as the regular rates charged for their services in other contingent matters.

5. The total number of hours expended on the common benefit of this Action by my firm during the time period is 4,241.22 hours. The total lodestar for my firm for those hours is \$1,857,436.00, consisting of \$1,533,140.00 for attorneys' time and \$324,296.00 for professional support staff time.

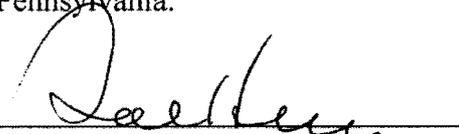
6. My firm's lodestar figures are based solely upon my firm's billing rates, which rates do not include charges for expense items. Expense items are billed separately and such charges are not duplicated in my firm's billing rates.

7. As detailed in Exhibit 2 hereto, my firm is seeking reimbursement of a total of \$1,031,971.55 in common benefit expenses incurred in connection with the prosecution of this Action. These expenses are reflected on the books and records of my firm. These books and records are prepared from expense vouchers, check records, and other source material, and are an accurate record of the expenses incurred.

8. With respect to the standing of my firm to share in an award of fees, costs, and expenses, attached hereto as Exhibit 3 is a biography of my firm, including the attorneys in my firm who were principally involved in this Action.

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

Executed on January 5, 2017, at Philadelphia, Pennsylvania.

  
\_\_\_\_\_  
SOL H. WEISS, ESQUIRE

# **EXHIBIT 1**

**IN RE: NATIONAL FOOTBALL LEAGUE PLAYERS' CONCUSSION INJURY  
LITIGATION**

**No. 12-md-2323-AB**

**ANAPOL WEISS**

**LODESTAR REPORT**

**Inception through July 15, 2016**

<b>NAME</b>	<b>HOURS</b>	<b>HOURLY RATE</b>	<b>AMOUNT</b>
<b>PARTNERS:</b>			
<b>Sol H. Weiss</b>	1,420.30	\$650.00	\$923,195.00
<b>Lawrence E. Coben</b>	916.80	\$650.00	\$595,920.00
<b>ASSOCIATES:</b>			
<b>Julie P. Thompson</b>	51.00	\$275.00	\$14,025.00
<b>STAFF ATTORNEYS:</b>			
<b>CONTRACT ATTORNEYS:</b>			
<b>IT</b>			
<b>Ann Marie Hinkel</b>	1,137.00	\$175.00	\$198,975.00
<b>PARALEGALS:</b>			
<b>Ted Pepin</b>	81.15	\$175.00	\$14,201.25
<b>Maria Borrajo</b>	64.32	\$175.00	\$11,256.00
<b>Dillon Fisher-Ives</b>	89.75	\$175.00	\$15,706.25
<b>Bonnie Bozarth</b>	480.90	\$175.00	\$84,157.50
<b>TOTALS:</b>	4,241.22		\$1,857,436.00

# **EXHIBIT 2**

**IN RE: NATIONAL FOOTBALL LEAGUE PLAYERS' CONCUSSION INJURY  
LITIGATION**

**No. 12-md-2323-AB**

**ANAPOL WEISS**

**COST AND EXPENSE REPORT**

**Inception through July 15, 2016**

<b>NUMBER</b>	<b>CATEGORY</b>	<b>AMOUNT</b>
1	Assessments	530,000.00
2	Commercial Copies	233.25
3	Computerized Research	440.24
4	Court Reporters/Transcripts	261.15
5	Expert Services	372,140.51
6	Facsimile	17.00
7	Filing & Service Fees	52.22
8	In-House Copies	3,298.00
9	Long Distance Telephone	9,878.26
10	Postage/Express Delivery	448.81
11	Travel/Meals/Lodging	114,299.19
12	Miscellaneous	902.92
<b>TOTAL EXPENSES</b>		<b>1,031,971.55</b>

# **EXHIBIT 3**

# Sol H. Weiss, Esquire

---

Sol H. Weiss is a shareholder of Anapol Weiss. He concentrates his practice in complex civil litigation including class actions and pharmaceutical cases, medical and other professional malpractice, securities litigation and products liability matters.



## Leadership Roles

Sol has played crucial roles in national lawsuits including the National Football League Players' Concussion Injury Litigation, in which he serves as Co-Lead Counsel.

Mr. Weiss is among Lead Class Counsel in the Kids for Cash civil rights litigation and has negotiated combined settlements of \$27.75 million for the juvenile victims. He has also been appointed as Liaison Counsel in numerous state court mass tort consolidated litigations.

Mr. Weiss has served in various positions for the Pennsylvania Association for Justice and was a member of the Board of the Philadelphia Trial Lawyers Association. He served on the Executive Committee of the American Association of Justice (AAJ) for five years and still serves on its Board of Governors.

Sol has served in various positions for the Pennsylvania Association for Justice and was a member of the Board of the Philadelphia Trial Lawyers Association. He is also a past President of the Eastern Pennsylvania Chapter of the American Board of Trial Advocates.

Sol is an active member of the Board of Consultors of the Villanova University School of Law. He also served as Director of the Linda Creed Breast Cancer Foundation.

## Professional Recognition

Sol was voted 2014 Lawyer of the Year in the category of Mass Tort and Class Action Litigation by Philadelphia's Best Lawyers®. He has been selected for inclusion in The Best Lawyers in America® every year since 2006, and he was featured on the cover of the 2011 edition of Philadelphia's Best Lawyers®.

Mr. Weiss has been named among the Top 100 Pennsylvania Lawyers and Top 100 Philadelphia Lawyers by Super Lawyers every year since 2010, and he has been included in Pennsylvania Super Lawyers® since 2004.

In 2009, Sol received the AAJ Harry M. Philo award as the Association's outstanding trial lawyer for his work on limiting Federal Preemption. He also received the prestigious David S. Shrager President's Award in 2011 for extraordinary service to the Association.

In 2016, Sol received the Lifetime Achievement Award presented by The Legal Intelligencer. This award honors attorneys who have helped shape the law in Pennsylvania and who have had a distinct impact on the legal profession in Pennsylvania.

In 2016, Sol was also welcomed as a member of The Fellows of the American Bar Association. This organization's mission is to serve the legal profession and the public through groundbreaking research, publications and programs that advance justice, the understanding of law and its impact on society.

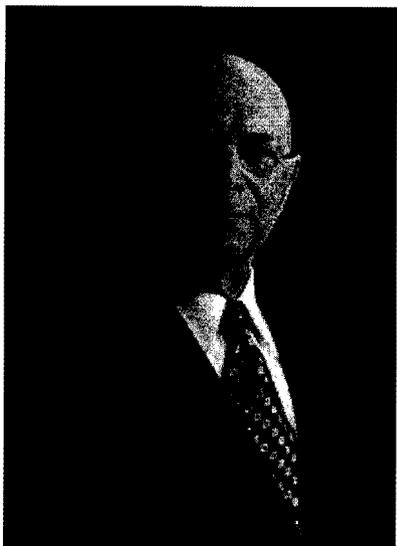
## **Education and Background**

Mr. Weiss earned his bachelor's degree from the Pennsylvania State University in 1968, and he earned his law degree from Villanova University School of Law in 1972. He is licensed to practice in Pennsylvania and is specially admitted to practice in other states.

## **Lectures and Publications**

Sol frequently lectures about class actions, pharmaceutical liability, civil litigation issues, trial skills and technology in the courtroom.

# Larry E. Coben



## **Bar Admissions**

State Bar of Arizona and Federal District Court - 1994

State Bar of Pennsylvania, U.S. District Court and Court of Appeals, Third Circuit. - 1973

U.S. Supreme Court, the 1st, 4th, 5th, 10th, and 11th U.S. Circuit Courts of Appeal, and *Pro Hac Vice* in State courts such as: Texas, Mississippi, Massachusetts, Arizona, Illinois, Tennessee, Vermont, New Mexico, Florida, Delaware, Georgia, Ohio, Hawaii, Maine, New York, Nevada, Virginia, Michigan and Utah

## **Education**

Cumberland School of Law of Samford University - J.D., cum laude (1973)

Athens College - B.A. (1968)

## **Professional Memberships and Associations**

Attorneys Information Exchange Group—Chief Legal Officer

Pennsylvania DOT Autonomous Vehicle Task Force

Arizona State Bar Association

Maricopa County Bar Association

#### American Bar Association

- Member Publications Editorial Board (1999 - Present)
- Vice Chair Trial Techniques Committee (1995-98)
- Vice Chair of Tort and Insurance Practice Section (1996-97)
- Vice Chair Medicine and Law
- CLE Board
- Emerging Issues Committee (1994-95)
- Committee on Solo and Small Firm Practitioners (1994-95)

Policy Committee of the Institute for Injury Reduction - Chairman (1991-93)

Pennsylvania Trial Lawyers Association

Arizona Trial Lawyers Association - Board of Directors (1999-Present)

Western Trial Lawyers Association - Board of Directors (2002-Present)

The Association of Trial Lawyers of America

Attorneys Information Exchange Group (AIEG) on Crashworthiness

- Founding member
- Executive Committee member

American National Standards Institute Z90 Committee

- Chairman of Labeling Sub-Committee (1988-94)

Society of Automotive Engineers (1997-Present)

Institute for Injury Reduction (IIR)

- Founding member
- Chairman of the Board (1988-91)

Tort and Insurance Law Journal for Medicine and Law Committee (1988-89)

Medico-Legal Committee of Pennsylvania Bar Association (1987-88)

Observer to the Drafting Committee on a Uniform Interstate Depositions and Discovery of Documents Act.

#### **Noteworthy Cases as Lead Counsel**

*Pursell v. Volkswagen*, Court of Common Pleas, Bucks County Pennsylvania., February 2008. [\$10.2 million dollar verdict against Volkswagen in a products liability case for a design defect - lack of an anti-submarining ramp for the rear center seated occupant].

*Harris v. Ford Motor Company*, N.J. Super. Ct., September 2002. [\$8.8 million dollar verdict against an auto manufacturer for an injured person in a products liability case stemming from a roll over accident].

*Walker v. Schutt Sports Sales Group*, Gayson Ct., April 2000. [Largest known verdict (\$12 million dollars) against a football helmet company - without any setoff - regarding spinal cord injury.]

*Buongiovanni v. General Motors Corporation*, Pa. Ct. Common Pleas, 1998. [At the time, it was the largest verdict for an injured person in a products liability case in the State of Pennsylvania.]

*Yarusso v. Bell Helmets*, Delaware Super. Ct., 1998. [First known verdict against motorcycle helmet manufacturer regarding helmet shock attenuation design and spinal cord injury.]

*Munro v. Galati and General Motors Corporation*, Arizona Supreme Court - No Federal Preemption of "No Air Bag Claim" (938P.2d 1114 (1997)).

*Peisino v. Riddell Corporation*, Delaware Super. Ct., 1992. [First known verdict in the nation for a football player who suffered a spinal cord injury due to helmet design/shock attenuation.]

*Easterling v. NFL*, E.D. Pa. 2011. [First National Class Action for Concussion related neuro-cognitive disabilities filed against the NFL. Member of the Plaintiffs' Steering Committee and co-director of legal and expert analysis committees.]

### **Textbooks**

Crashworthiness Litigation 2d, American Association for Justice (AAJ), 2008.

Crashworthiness Litigation, ATLA Press, 1998.

Products Liability Litigation: Product Studies - Chapters on Crashworthiness, Frontal; Restraint Systems, Seat Belts; Litigation and Preemption. Clark, Boardman and Callaghan, 1996.

Pennsylvania Products Liability Guide. Bisel, February 1993.

Crashworthiness, ATLA Anthology Series, 1989.

Automobile Crashworthiness - Side Impact Accident, American Jurisprudence Proof of Facts 3d Series, 1989.

### **Articles Published**

*Autonomous Vehicles—Collision Avoidance Technology: Making It Easier and Safer: How Should The Civil Justice System Respond?*, Legal Intelligencer, Philadelphia, PA, 2016

*Autonomous Vehicles: Where Morality Meets Machinery*, Legal Intelligencer, Philadelphia, PA, Sept. 2016.

*Product Defects: Selling Products Without Optional Safety Equipment*, Legal Intelligencer, June, 2016, Philadelphia, Pa.

*Pennsylvania Products Liability: Instructing the Jury*, Philadelphia Trial Lawyers Association VERDICT, Special Edition, January 2015.

*Pennsylvania Products Liability: Tincher v. Omega Flex, Inc., Back to the Future—Where are We Now and Where Will We Go? Parts I and II*, Legal Intelligencer Philadelphia, Pa. December 2014 and January 2015.

*Highway Design and Maintenance Hazards*, AIEG Voice, Winter 2014

*Pennsylvania's Approach to Joint and Several Liability: Statutory Changes and How They Affect Liability of Multiple Defendants*, Legal Intelligencer, Philadelphia, Pa., August 2014

*Liability for Failing to Properly Recall a Defective Product*, Legal Intelligencer, June 2014

*Litigating Professional Malpractice*, Arizona Advocate, April 2014

*Concussion in Sports: Identification and Treatment*, AAJ publication 2014

*Ethics for Trial Lawyers: Where do Ethics Begin and End? What About Full Disclosure?* AIEG publication January 2014

*Seatbelts and Buses: Together or Not?* AAJ publication, December 2013

*Football Helmets, Why Are There so Many Head Injuries in Football? Can Helmets Protect Against Concussion and Brain Injury?* Legal Intelligencer, Philadelphia Pa., Fall 2013

*What is the Fairest and Fullest Method of Evaluation Future Economic Losses?* Arizona Advocate, Fall 2012 and Legal Intelligencer, Philadelphia, Pa. December 2012

*Arizona Consumers and Business Leaders Alike Should Consider Effective Ways to Obtain Justice Vis-à-vis Class Action Litigation*, Arizona Advocate, May 2012

*Who Should Prevail In the Battle Over the Right to Alter The Face of Tort Liability: the Courts or The Legislature?* The Legal Intelligencer, Philadelphia, PA, January 2012

*Rollover Accidents: Why Motor Vehicles Rollover and Why Motorists Suffer Catastrophic Injury?* Legal Intelligencer, Philadelphia, Pa., Fall 2011

*Expert Testimony: Arizona's New Rule—Trial Judges, Gatekeeper or Executioner*, Fall 2011

*Recreational Helmets: Design Defects Producing Head and Neck Injuries*, AIEG Summer 2011

*Should a Product Manufacturer Be Held Liable for Failing to Recall a Product Learned to be Defective?* Arizona Advocate, Fall 2010

*Why Motor Vehicle Design Choices Remain a Primary Cause of Catastrophic Injury and Fatality*, Legal Intelligencer Philadelphia, PA, August 2010

*In Personal Injury Cases, Instructing Juries On Loss of Life's Pleasures: IT'S THE RIGHT THING TO DO*, AzTLA Advocate, March 2008.

*Evidentiary and Substantive Issues in Products Liability Cases*, AzTLA Advocate, April 2007.

*Instructing Juries on Loss of Life's Pleasures; It's the Right Thing To Do*, Arizona Attorney, April 2006.

*Debunking the Malibu Myth and How to Try a Roof Crush Case and Win*, Western Trial Lawyers, June 2005.

*Contingency Fees: If It's Not Broken, Why Fix It?*, Arizona Attorney, August 2004.

*Conspiracy of Silence: Hidden Seat Back Hazards*, TRIAL, March 2004.

*If a Product is Defective, Why Must it Also Be "Unreasonably Dangerous?"*, AzTLA Advocate, March 2004  
*Defeating the Federal Preemption Defense in Product Liability Cases*, American Association for Justice, Spring 2007..

*On-Road Rollover Hazards: Why Do Vehicles Roll Over?*, AzTLA Advocate, January 2004.

*Children in Seat Belts in Crashes*, AzTLA Advocate, May 2003.

*Helmet Protection: Why Not More?*, Proceedings of the 2002 SAE Motorsports Engineering Conference and Exhibition (pg. 649-653), December 2002.

*Why are Americans at Grave Risk of Catastrophic Injury in Rollover Accidents?*, Andrews Automotive Litigation Reporter, December 2002.

*I Was Wearing My Seat Belt - Honestly! How to Prove That Your Client was Belted*, AzTLA Advocate, September 2002.

*A Products Liability Defendant Cannot Obtain Apportionment of Fault When the Only Other 'Party At Fault' is the Product*, AzTLA Advocate, May 2002.

*What is the Fairest and Fullest Method of Evaluating Future Economic Losses in Personal Injury and Wrongful Death Actions in Arizona?* AzTLA Advocate, December 2001.

*The Anatomy of a Frontal Crashworthiness Case*, AzTLA Advocate, September 2001. *The Anatomy of a Frontal Crashworthiness Case*, Andrews Automotive Litigation Reporter, August 2001.

*What is Products Liability in the New Millennium?* AzTLA Advocate, April 2001.

*Accident Analysis of Air Bag Induced Injuries/Fatalities*, AzTLA Advocate, September 2000.

*Competing Tort Law Forums: Courts vs. Legislatures*, AzTLA Advocate, September 2000.

*The Air Bag Preemption War*, ATLA Trial Magazine, September 2000.

*Protecting Litigation Support Materials From Discovery*, ATLA Trial Magazine, July 2000.

*Large Trucks, Danger on the Road*, AzTLA Advocate, June 2000.

*Should A Product Manufacturer Be Held Liable For Failing To Recall A Defective Product Learned To Be Defective?* AzTLA Advocate, February 2000.

*One-way Protective Orders in PL Litigation Unfair*, Maricopa Lawyer, November 1999.

*Rollover Accidents: Why Vehicles Rollover and Why Motorists Suffer Catastrophic Injury*, AzTLA Advocate, August 1999.

*Contesting the Use of Statistical Accident Data to Defend Crashworthiness Claims*, ATLA The Products Liability Law Reporter, Volume 18, Number 6, July 1999.

*Admissibility of Evidence of Other Similar Incidents in Products Liability Cases*, AzTLA Advocate, February 1999.

*Enhanced Injuries: Apportionment or Not*, AzTLA Advocate, April 1998.

*Seat Safety: The Impact of Unsafe Design*, TRIAL, February 1998.

*Frontal Crashworthiness Concepts*, ATLA 1997 Annual Convention, Attorneys' Information Exchange Group Program.

*The Risk of Air Bag Systems*, ATLA 1997 Annual Convention, Products Liability Section Program.

*The Arizona Supreme Court Rejects Federal Preemption of Non-Airbag Crashworthiness Claims*, AzTLA Advocate, June 1997.

*The Risks and Benefits of Air Bag Systems: Are they Needlessly Killing and Injuring Motorists?*, SAE International Congress and Exposition, 1997.

*Hazardous Bedding for Children: Who is Responsible?*, AzTLA Advocate, April 1997.

*Federal Preemption: Victims Prevail in No-Air Bag Cases*, AzTLA Advocate, September 1996.

*The Daubert Decision: Gatekeeper or Executioner?*, TRIAL, August 1996.

*The Non-Relevancy of Statistics in a Products Liability Case*, AzTLA Advocate, July 1996.

*Pre-Trial Discovery: The Relevancy of the Design, Manufacture, and Testing of Other Vehicle Models and Other Accidents*, WTLA Western Chronicle, Winter 1996.

*Pre-Trial Discovery: The Relevancy of the Design, Manufacture, and Testing of Other Vehicle Models and Other Accidents*, AzTLA Advocate, December 1995.

*Children in Seat Belts in Crashes*, WTLA Western Chronicle, Fall 1995.

*Where Does Myrick Lead Us?*, TRIAL, September 1995.

*Victory in An Unsafe Seat Belt Case*, WTLA Western Chronicle, Spring 1995.

*The Analysis and Presentation of a Restraint System Case*, Products Liability Advisory, May 1995.

*Victory in a No Air Bag Case*, TRIAL, April 1995.

*Warnings in a Changing Marketplace: Why Wasn't I Told?*, ATLA Products Liability Law Reporter, February 1995.

*Representing Catastrophically Injured (Brain and Spinal Cord Injury) Victims*, WTLA Western Chronicle, Fall 1994.

*Rollover Accidents: Why Motor Vehicles Rollover and Why Motorists Suffer Catastrophic Injury in Rollover*, AzTLA Advocate, July 1994.

*Federal Preemption of Motor Vehicle Design Claims: It Does Not Exist*, WTLA Western Chronicle, June 1994.

*Pre-Trial Discovery Issues: Document Production by Compilation in a Reading Room*, Maricopa Lawyer, March 1994.

*Investigation Automotive Accidents*, TRIAL, March 1994.

*Evaluating Crashworthiness*, AZTLA Advocate, January 1994.

*The Use of Protective Orders*, The Legal Intelligencer, Volume 209, No. 13, Pg. 7, July 1993.

*Pre-trial Discovery Issues: Document Production By Compilation in a Reading Room*, Products Liability Law Journal, May 1993.

*Seat Belt Litigation*, TRIAL (add'l authors - James Gilbert and Donald Slavik), February 1993.

*The Tide Has Turned: Federal Preemption Cannot Defeat Motor Vehicle Design Claims -- Such As Air Bags and Passive Belt Actions*, TRIAL, January 1993.

*Litigating Corporate Discovery Objections on the Basis of Attorney-Client Privilege*, Products Liability Law Journal, volume 4, November 1992.

*Beware of Secrecy Agreements: A New Judicial Approach is Required*, Products Liability Law Journal, August 1992.

*Overcoming Objections to Discovery: Countering Attorney-Client and Work Product Arguments*, TRIAL, July 1992.

*Secrecy Agreements: A Cover-Up of Public Hazards*, The Legal Intelligencer, Volume 206, No. 108, Pg. 8, June 1992.

*Beware of Secrecy Agreements: New Judicial Approach to Protect the Public*, The Legal Intelligencer, Volume 206, No. 96, Pg. 4, May 1992.

*Should The Auto Industry Escape Responsibility For Its Refusal To Install Passive Restraints By Relying Upon Federal Preemption?*, Products Liability Law Journal, August 1991.

*Litigation of Professional Malpractice*, The Legal Intelligencer, August 13, 1991.

*Safety Hazards: Automatic Seat Belts And Lap Belts*, TRIAL, July 1991.

*Cross-Examination Of Witnesses*; Reviewed by Larry E. Coben, TRIAL, July 1990. *Seat Belts: A History of Neglect*, The Legal Intelligencer, Volume 203, No. 5, Pg. 6, July 1990.

*Should Motor Vehicle Manufacturers Be Responsible For Drunk Drivers?*, Products Liability Law Journal, vol.1, no. 4, January 1990.

*Seat Belts: The Automotive Industry's Defense To Poorly Designed Vehicles*, Products Liability Law Journal, vol. 1, no. 2, June 1989.

*Medicine And Law: Recent Developments*, Tort and Insurance Law Journal, Winter 1989.

*Sports Helmets: More Harm Than Protection?*, TRIAL, March 1989.

*Seat Belts: The Automobile Industry's Defense To Poorly Designed Vehicles*, Automotive Litigation Reporter, October 1988.

*Evaluating Crashworthiness: The Clues Are In The Wreckage*, TRIAL, February 1988.

*Federalism In Products Liability*, TRIAL, November 1987.

*Strict Liability, Burden Of Proof And Social Issues Of Risk Utility*, Pennsylvania Law Journal-Reporter, May 1987.

*Products Liability: Technical And Legal Implications - Part II - A Product's Manufacture And Use*, Standardization News, September 1986.

*Protective Orders In Product Liability Cases: The Gag Rule*, TRIAL, August 1986.

*It's Time To Reassess Discovery Rules*, Pennsylvania Law Journal, June 1986.

*Building A Crashworthy Car*, TRIAL, July 1985.

*A Good Beginning*, Pennsylvania Law Journal, January 1985.

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*Motorcycle Helmets: The Difference -- Sometimes -- Between Life and Death*, TRIAL, November 1983.

*The Seat Belt Defense*, The Pennsylvania Lawyer, March/April 1980.

*Law Focus . . . Expert's Role Affected By New Discovery Rules*, The Pennsylvania Lawyer, October 1979.

*New Discovery Rules Go Into Effect In State*, The Pennsylvania Lawyer, April 1979.

#### **Amicus Brief Author**

*Stewart v. Toyota Motor Corporation* – California Court of Appeals, Second District, Division 3, March 2011.

*Williamson v. Mazda Motor of America, Inc.* – U.S. Supreme Court, July 2010.

*Hernandez-Gomez v. Volkswagen Of America* - Arizona Supreme Court, 2001.

*Geier v. Honda Motor Co. of America* - U.S. Supreme Court, 1999.

*Drattel v. Toyota Motor Corporation* - New York Court of Appeals, 1998.

*Zuern v. Ford Motor Company* - Arizona Supreme Court, 1997.

*Tibbetts v. Ford Motor Company* - New Hampshire Supreme

Court *Nagaraj v. American Honda Motor Company* - Superior Court of Pennsylvania

*Maurice Cox v. Chrysler Corporation* - Supreme Court - South Carolina

*Neilsen v. Porsche* - United States Ninth Circuit Court of Appeals

*Myrick v. Freightliner Corporation* - Eleventh Circuit and U.S. Supreme

Court *Lindsey v. Navistar International Transportation* - Eleventh Circuit

*Wayne Richart v. Ford Motor Company* - Tenth Circuit

*Barbara Ritt v. G.M.* - Seventh Circuit

*Patricia Wood v. G.M.* - First Circuit

*James Doty v. Ford Motor Co.*, District of Columbia

Circuit *Alexander Evers v. G.M.* - Eleventh Circuit

### **Presentation and Seminars**

“What Trial Lawyers Should Know About Automotive Product Liability” American Association for Justice Seminar, Austin, Texas, January 11, 2016

“Hot Topics at Year-End”, Legal Intelligencer Seminar, Philadelphia, Pennsylvania, December 2, 2015

“Helmets”, AIEG 2015 Spring Seminar, San Diego, California, April 9, 2015

“Fighting Protective (Gag) Orders: You Must Share and Fight to Keep the Data”, AIEG 2015 Spring Seminar, San Diego, California, April 9, 2015

“What’s on the Horizon: Emerging Litigation Theories and Themes”, AIEG 2015 Spring Seminar, San Diego, California, April 10, 2015

“Evidence of Defect and Effectiveness of Alternative Design in ESC Case: An Experimental Method”, AIEG 2015 Spring Seminar, San Diego, California, April 9, 2015

“Plaintiff-Only Hot Topics and Trends in Litigation”, American Association for Justice Seminar, Miami Beach, Florida, January 28, 2015

“Products Liability in Pennsylvania: Back to the Future-The Supreme Court Changes the Standard of Care-What’s it Mean?” Legal Intelligencer Seminar, Philadelphia, Pennsylvania, December 16, 2014

“Takata Air Bag Recall”, American Association for Justice Seminar, New York, New York, December 11, 2014

“Practical Tips for Trial Performance”, Handling a Case from A to Z Seminar, Legal Intelligencer, Philadelphia, Pennsylvania, November 20, 2014

“Product Liability”, Show Me the Case Seminar, Legal Intelligencer, Doylestown, Pennsylvania, June 10, 2014

“Using the Rules of Professional Conduct as a Weapon to Compel Pre-Trial Discovery”, AIEG 2014 Spring Conference, Boston, Massachusetts, April 24, 2014

“Looking Beneath the Surface: Identifying Causes of Action”, Legal Intelligencer Seminar, Philadelphia, Pennsylvania, December 11, 2013

“Over the Top Settlements” Pennsylvania Bar Institute Seminar, Philadelphia, Pennsylvania, November 7, 2013

“Cargo Retention and Loading Claims”, AIEG 2013 Fall Conference, Scottsdale Arizona, October 10, 2013

“The Business of Personal Injury Law”, Legal Intelligencer Seminar, Philadelphia, Pennsylvania, September 11, 2013

“Injury Mechanics and Long Term Treatment of Concussions and Brain Injury”, Arizona Association for Justice/Arizona Trial Lawyers Association, Phoenix, Arizona, March 22, 2013

“Daubert: Ins, Outs and How-Tos”, Arizona Association for Justice/Arizona Trial Lawyers Association, Phoenix, Arizona, October 11, 2012

“Preemption—The Demise of FMVSS”, AIEG 2011 Seminar, Austin, Texas.

“Roof Strength and Pre-tensioner Seat Belt Protection”, AIEG 2007 Seminar, New York, NY, October 2007.

“Auto Focus”, AIEG 2007 Seminar, Chicago, Illinois, April 19-21, 2007.

“The Anatomy of a Trial for New Lawyers”, Lorman Education Services, Phoenix, Arizona, April 21, 2006.

"Earn & Collect Your Fees Ethically", State Bar of Arizona, Phoenix, Arizona, March 27, 2006.

"Cars, Trains - But No Planes", Arizona Trial Lawyers Association, Phoenix Arizona, March 18, 2005.

"Auto Focus", AIEG 2004 Seminar, Santa Fe, New Mexico, October 27-30, 2004.

"Experts Only as Good as The Lawyers Who Prepare Them", Arizona Trial Lawyers Association, Phoenix, Arizona, October 15, 2004.

"Hold Me Back! Restraint Systems: The Dynamic State of Vehicle Safety & Their Impact on Litigation", Maricopa County Bar Association Seminar, Phoenix, Arizona, May 26, 2004.

"Products Liability", Lorman Education Services, Phoenix, Arizona, May 25, 2004.

"Identifying Product Liability Cases in Auto Litigation", Arizona Trial Lawyers Association, Auto Litigation/Arbitration/Mediation Program, Phoenix, Arizona, March 19, 2004.

"Rollovers, Crashworthiness, Etc.," AzTLA seminar: "On the Road Again", Phoenix, Arizona, November 14, 2003.

"AIEG Under Attack," AIEG 2003 Auto Focus seminar, Santa Monica, California, October 24, 2003.

"Air Bag Discovery," AIEG 2002 Air Bag Summit V, Kansas City, Missouri, May 16-17, 2002.

"Wrongful Death & Survivorship - Law & Proof of Wrongful Death & Survivorship Damages," Arizona Trial Lawyers Association Damages Seminar, Phoenix, Arizona, March 22, 2002.

"How to Present and Attack Accident Reconstruction Simulations: Advice and Demonstration," (presented in conjunction with Thomas M. Klein of Bowman & Brooke, LLP, and Stephen M. Werner, Ph.D., P.E., of Exponent), ABA's Emerging Issues in Motor Vehicle Product Liability Litigation, Phoenix, Arizona, March 21-22, 2002.

"Networking on the Internet - Sharing Information While Maintaining Confidentiality and Work Product Privileges," ATLA 2001 Annual Convention, July 14-18, 2001.

"Recreational Helmets - Bicycle and Football: Design Defects Producing Head and Neck Injuries," ATLA 2001 Annual Convention, July 14-18, 2001.

"Work Product," AIEG Spring Seminar, Denver, Colorado, March 30-April 1, 2001.

"Recreational Helmets—Design Defects Producing Head and Neck Injuries," Texas Trial Lawyers Association, Products Liability Seminar, February 2001.

"Crashworthiness: Identifying and Pursuing Safety Issues in Litigation," AzTLA, Learned Luncheon Series, March 13, 2000.

"Competing Tort Law Forums: Courts vs. Legislature," ABA Section of Litigation, Products Liability Committee, Mid-year Meeting, February 3, 2000.

"From Classroom To Courtroom: Trial Techniques For the New Lawyer," ATLA sponsored seminar at Arizona State University College of Law, October 1999.

"Proof of Seat Belt Usage" and "Proof of Other Similar Incidents," AIEG Auto Focus Seminar, Scottsdale, Arizona, September 1999.

"Introduction to Crashworthiness," ATLA, AIEG Presentation at Annual ATLA Convention, July 1999.

"Trying The Airbag Case in 1999," ABA Emerging Issues in Motor Vehicle Product Liability Litigation, April 1999.

"Expert Selection/Cost Management," AzTLA Products Liability Seminar, 1998.

"Factual and Technical Discovery," AzTLA Products Liability Seminar, 1998.

"Ethics for Trial Lawyers: Where do Ethics Begin and End? What About Full Disclosure?," AzTLA Ethics for Personal Injury Lawyers, 1998.

"Seat Back and Rollover Accidents and Vehicle Defects," AIEG Spring Convention, 1998.

"Airbag Induced Injuries," ABA Spring Auto Focus Seminar, 1998.

"Air Bag Safety Issues and Frontal Crash Protection," ATLA Annual Convention, 1997.

"Use of Demonstrative Evidence," Trial, Tactics, Tips & Techniques, Pennsylvania Bar Institute, 1997.

"Hazardous Bedding for Children: Who Is Responsible?," Western Chronicle, S 1997.

"Rollover Accidents: Why Motor Vehicles Rollover and Why Motorists Suffer Catastrophic Injury in Rollover," Products Liability Section Newsletter, Vol. II, No. 1, Winter 1997.

"What Has *Daubert* Done to Us? — Or 'Where Has All the Evidence Gone?'," Andrews Automotive Litigation Reporter, August 5, 1997.

"The Risks and Benefits of Air Bag Systems: Are They Needlessly Killing and Injuring Motorists?," SAE International Congress and Exposition, 1997.

"Plaintiff's Perspective of Ethics and The Trial Attorney," AzTLA 1997.

"Auto Focus 1996," Chair - Attorneys Information and Exchange Group, October 1996.

"Automotive Litigation 1996: Defect, Discovery, Decision," Andrews Automotive Litigation Conference, September 1996.

"Investigation and Preparation of a Seatbelt Defect Case," ATLA Jazzfest Seminar, May 1996.

"Latest Trends in Motor Vehicle Design/Crashworthiness Litigation," AIEG Spring Seminar, May 1996.

"Seat Belt Performance in a Rollover Accident and Roof Crush," ABA Emerging Issues in Motor Vehicle Product Liability Litigation, March 1996.

"Proving and Disproving Enhanced Injury," Western Trial Lawyers Association - Auto Crashworthiness Seminar, October 1995.

"Roll the Dice with the Stars of Trial Advocacy," New Mexico Trial Lawyers Association, Las Vegas, Nevada, June 1995.

"Should Vehicle Manufacturers be Immune from Liability Because of Their Compliance with Federal Motor Vehicle Safety Standards? The Preemption Saga Revisited," ABA Emerging Issues in Motor Vehicle Product Liability Litigation, March 1995.

"Theme Development—Initial Presentation and Follow-up through trial," AIEG Spring Seminar, March 1995.

"Litigation Forecast: What the Future Holds for Your Firm," Legal World Seminar's Trans-Panama Canal Air/Sea Cruise, November 1994.

AIEG Auto Focus Automotive Products Liability Seminar, Tempe, Arizona, October 1994.

"Crashworthiness and Proof of Cause: Mechanisms of Injury," Annual Jazzfest Seminar: Crashworthiness and Other Products Liability Issues in Vehicle Litigation, New Orleans, LA, April 1994.

"Crashworthiness," Pennsylvania Bar Institute (PBI), Pennsylvania, April 1994.

"Frontal Crashworthiness and Roll Over Accidents," MTLA Products Liability Seminar, Jackson, Mississippi, March 1994.

"Child Car Seat Safety: Improper Restraint—Design Parameters and Instructional Liability Issues: (1) History of Child Restraints, and (2) Techniques to Enhance Recovery in Catastrophic Head Injury Cases," 1994 National Conference On Products Liability Law, Chicago, Illinois, March 1994.

"My Airbag Hurt Me—Injuries from Airbag Deployment," Emerging Issues in Motor Vehicle Product Liability Litigation, Phoenix, Arizona March 1994.

"Products Liability Update," Super Seminar on Personal Injury, Products Liability and Medical Negligence, National College of Advocacy, Tucson, Arizona, February 1994.

"Motor Vehicle Crashworthiness Frontal Collision Safety Issues," AIEG Auto Focus, Automotive Products Liability Seminar, Scottsdale, Arizona, October 1993.

"Litigation Issues Related to German Manufacturers," AIEG Adult Toys VI Seminar, Atlanta, Georgia, May 1993.

"Restraint System Litigation: Seat Belts, Air Bags, Seatback and Other Interior Design Product Defects," Arizona Trial Lawyers of America Automobile Crash Litigation Seminar, Phoenix, Arizona, April 1993.

"Legal and Factual Issues in Passive Restraint Litigation," ABA Third Annual National Institute on Emerging Issues in Automotive Litigation, Phoenix, Arizona, April 1993.

"Crashworthiness/Seat Belt Litigation," Kentucky Academy of Trial Attorneys Collision Dynamics Seminar, Louisville, Kentucky, March 1993.

"Litigation Issues Related to Passive Seat Belt Design Claims," ATLA Winter Convention - Litigation At Sunrise, Acapulco, Mexico, January 1993.

"Combating the Paper Explosion: Effective Document Control," ATLA Winter Convention, Acapulco, Mexico, January 1993.

"Pre-Trial Discovery Issues: Document Production By Compilation In A Reading Room," AIEG Rear Seat Lap Belts, Atlanta, Georgia, January 1993.

"Issues Of Federal Preemption In Automotive Litigation," for AIEG/Auto Focus 1992 Seminar, California, September 1992.

"Automobile Passenger Restraints Which Don't," ATLA Annual Convention, Washington, D.C., July 1992.

"Recreational Helmets—Design Defects Producing Head And Neck Injuries" and "Litigation Issues Related To Passive Seat Belt Design Claims," AIEG Adult/Toy Seminar, Dallas, Texas, April 1992.

"Emerging Issues In Automobile Product Liability Litigation," American Bar Association Seminar, Phoenix, Arizona, April 1992.

"Restraint System Litigation: Seat Belts, Air Bags, Seat Back And Other Interior Design Product Defects," Arizona Trial Lawyers Association Seminar on Automotive Crash Litigation, February 1992.

"Identifying The Crashworthiness Case," Pennsylvania Bar Institute Seminar, Pittsburgh, Pennsylvania, December 1991 and Philadelphia, Pennsylvania, January 1992.

"Design Defects In Safety Equipment: Air Bags, Passenger Restraint Systems and Child Seat," ATLA Seminar, Washington, D.C., October 1991.

"Handling The Seat Belt Case," ATLA Convention, Toronto, Canada, July 1991.

"Litigation Issues In Automobile Rear Seat Lap Belt Cases," Pennsylvania Trial Lawyers Association Annual Convention, Pittsburgh, Pennsylvania, July 1991.

"Handling the Seat Belt Case," ATLA Annual Convention, Toronto, Canada, July 1991.

"Crashworthiness and Vehicle Defects," 1991 Kentucky Bar Association Annual Convention, Louisville, Kentucky, June 1991.

"Use of Occupant Kinematics Simulation at Trial" and "Occupant Restraint and Protection/Automobile Product Liability Litigation," AIEG Adult Toys Seminar, Denver, Colorado, April 1991.

"Survey of Pertinent Passenger Restraint Regulations and Their Impact on Automobile Product Liability Litigation," ABA National Institute Seminar, Phoenix, Arizona, March 1991.

"Occupant Kinematics And Injury Mechanism In Motor Vehicle Crashes," Attorneys Information Exchange Group - Auto Focus '90 Seminar, September 1990.

"War Games: Or How To Prepare For And Depose Expert Witnesses In Seat Belt Defense Cases," ATLA Second Annual Workhorse Seminar, September 1990.

"Side Impact/Crashworthiness," Auto Focus 1989, Automotive Product Liability Seminar, AIEG CLE Program for 1989.

"Seat Belts That Kill And Maim And Shouldn't: Problems and Solutions." ATLA Workhorse Seminar, Chicago, September 1989.

"Seat Belt Safety: NHTSA Oversight," Testimony Before the U.S. House of Representatives Gov't Activities and Transportation Subcommittee, June 23, 1988.

[The Dangers of Rear Seat Lap Belts.] "Products Liability," Pennsylvania Bar Institute, 1988.

"Automotive Design Seminar," Pennsylvania Bar Institute, 1988.

"Passive Restraint Litigation," The American Trial Association, AIEG Seminar, October 1985.

"Initial Case Work-Up: Plaintiff," The Philadelphia Bar Association, Personal Injury Practice Seminar, April 25, 1984.

"Discovery," Pennsylvania Trial Lawyers Association Products Liability Seminar, February 25, 1984.

"Discovery And Use Of Experts In Products Cases," Pennsylvania Trial Lawyers Association Annual Convention, 1983.

### **Teaching Activities**

Arizona State University Sandra Day O'Connor College of Law, guest speaker "Analysis and Trial of a Products Liability Case", November 2015

Arizona State University Sandra Day O'Connor College of Law, guest speaker "Products Liability", 2008-2009.

Graduate course at the Engineering School of the University of Pennsylvania, entitled "Engineering In Litigation," 1989-90.

# **EXHIBIT H**

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

IN RE: NATIONAL FOOTBALL  
LEAGUE PLAYERS' CONCUSSION  
INJURY LITIGATION

Kevin Turner and Shawn Wooden,  
*on behalf of themselves and  
others similarly situated,*

Plaintiffs,

v.

National Football League and  
NFL Properties LLC,  
successor-in-interest to  
NFL Properties, Inc.,

Defendants.

THIS DOCUMENT RELATES TO:  
ALL ACTIONS

No. 2:12-md-02323-AB

MDL No. 2323

**Hon. Anita B. Brody**

Civ. Action No. 14-00029-AB

**DECLARATION OF GARRETT D. BLANCHFIELD JR. IN SUPPORT OF CO-LEAD  
CLASS COUNSEL'S PETITION FOR AN AWARD OF ATTORNEY'S FEES AND  
REIMBURSEMENT OF COSTS AND EXPENSES**

Garrett D. Blanchfield, Jr. declares as follows pursuant to 28 U.S.C. § 1746:

1. I am a Partner of the law firm of Reinhardt Wendorf & Blanchfield. I submit this declaration in support of Co-Lead Class Counsel's Petition for an Award of Attorney's Fees and Reimbursement of Costs and Expenses in connection with and for services rendered and expenses incurred for the common benefit of the Settlement Class in the above-captioned multidistrict litigation ("Action") from the inception of the litigation through July 15, 2016, as well as for the payment of expenses incurred therewith. I have personal knowledge of the

matters set forth in this declaration and, if called upon, I could and would testify competently thereto.

2. My firm attended the meeting of all Plaintiff's counsel on February 21-22, 2012 at the request of Co-Lead Counsel. Following that meeting, Garrett Blanchfield, a partner at this firm, was appointed to the Third Party Discovery Issues Committee and the Privilege Committee.

3. The schedule attached hereto as Exhibit 1 is a detailed summary indicating the amount of common benefit time spent by the attorneys and professional support staff of my firm who were involved in this Action, and the lodestar calculation for those individuals based on my firm's current billing rates. For personnel who are no longer employed by my firm, the lodestar calculation is based on the billing rates of such personnel in their final year of employment by my firm. The schedule was prepared from contemporaneous daily time records regularly prepared and maintained by my firm. Time expended in preparing this application for attorney's fees and expenses has been excluded.

4. The hourly rates for the attorneys and professional support staff of my firm included in Exhibit 1 are the same as the regular rates charged for their services in other contingent matters and have been accepted by other federal courts in other class action cases prosecuted by my firm.

5. The total number of hours expended on the common benefit of this Action by my firm during the time period is 23.10 hours. The total lodestar for my firm for those hours is \$14,899.50, consisting of \$14,899.50 for attorneys' time and \$0 for professional support staff time.

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

7. As detailed in Exhibit 2 hereto, my firm is seeking reimbursement of a total of \$1,480.57 in common benefit expenses incurred in connection with the prosecution of this Action. These expenses are reflected on the books and records of my firm. These books and records are prepared from expense vouchers, check records, and other source material, and are an accurate record of the expenses incurred.

8. With respect to the standing of my firm to share in an award of fees, costs, and expenses, attached hereto as Exhibit 3 is a biography of my firm, including the attorneys in my firm who were principally involved in this Action.

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

Executed on December 28, 2016, at St. Paul, MN.

  
Garrett D. Blanchfield, Jr.

4838-3930-6047, v. 1

# **EXHIBIT 1**

**IN RE: NATIONAL FOOTBALL LEAGUE PLAYERS' CONCUSSION INJURY  
LITIGATION**

**No. 12-md-2323-AB**

**REINHARDT WENDORF & BLANCHFIELD**

**LODESTAR REPORT**

**Inception through July 15, 2016**

<b>NAME</b>	<b>HOURS</b>	<b>HOURLY RATE</b>	<b>AMOUNT</b>
<b>PARTNERS:</b>			
<b>Blanchfield, Garrett</b>	23.10	645.00	\$14,899.50
<b>ASSOCIATES:</b>			
<b>STAFF ATTORNEYS:</b>			
<b>CONTRACT ATTORNEYS:</b>			
<b>PARALEGALS:</b>			
<b>TOTALS:</b>	23.10		\$14,899.50

# **EXHIBIT 2**

**IN RE: NATIONAL FOOTBALL LEAGUE PLAYERS' CONCUSSION INJURY  
LITIGATION**

**No. 12-md-2323-AB**

**REINHARDT WENDORF & BLANCHFIELD**

**COST AND EXPENSE REPORT**

**Inception through July 15, 2016**

<b>NUMBER</b>	<b>CATEGORY</b>	<b>AMOUNT</b>
1	Assessments	
2	Commercial Copies	
3	Computerized Research	
4	Court Reporters/Transcripts	
5	Expert Services	
6	Facsimile	
7	Filing & Service Fees	
8	In-House Copies	
9	Long Distance Telephone	
10	Postage/Express Delivery	
11	Travel/Meals/Lodging	1480.57
12	Miscellaneous	
<b>TOTAL EXPENSES</b>		<b>1480.57</b>

# **EXHIBIT 3**



***Reinhardt, Wendorf & Blanchfield***  
***Attorneys at Law***

E-1250 FIRST NATIONAL BANK BUILDING  
332 MINNESOTA STREET  
SAINT PAUL, MINNESOTA 55101

## **FIRM PROFILE**

The law firm of Reinhardt Wendorf & Blanchfield was founded in March, 2003 by Mark Reinhardt, Mark Wendorf and Garrett Blanchfield, and is the successor firm of Reinhardt & Anderson, a nationally known class action firm. The firm focuses its practice on representing plaintiffs in class action litigation. The philosophy of the firm encompasses the values of hard work, ingenuity, integrity, pride in a quality product and successful result.

Reinhardt Wendorf & Blanchfield zealously represents plaintiff classes in actions involving violations of state and federal antitrust, securities, consumer protection and racketeering laws. Our attorneys have successfully confronted some of the world's biggest corporations, challenged their questionable practices and recovered billions of dollars in the cases in which we have been involved. The firm's reputation for excellence has been recognized in courtrooms across America.

## **ANTITRUST LITIGATION**

Reinhardt Wendorf & Blanchfield is committed to vigorously prosecuting price fixing and anti-competitive, unlawful business practices on behalf of its clients. The firm's antitrust attorneys have the experience and the economic and legal background necessary to help consumers and businesses injured by anti-competitive conduct. Our attorneys have successfully litigated major antitrust cases in state and federal courts throughout the United States at both the

trial court and appellate levels. Some of the antitrust cases in which the firm has played a significant role are:

**In re Aftermarket Filters Antitrust Litigation**, *Court File No. 08-cv-4883 (N. D. Ill.)*. Reinhardt Wendorf & Blanchfield is class counsel and participated in significant document review in this antitrust case alleging a conspiracy to fix the prices and allocate customers for aftermarket air, oil, fuel and transmission filters in violation of §1 of the Sherman Act. Counsel recovered \$18,000,000 on behalf of the plaintiff class.

**In Re: ACTOS End-Payor Antitrust Litigation**, *Court File No. 13-cv-09244 (SDNY)*. Reinhardt Wendorf & Blanchfield is class counsel in the antitrust case alleging defendants engaged in an anticompetitive scheme to allocate and unreasonably delay competition in the market for the prescription drugs ACTOS and ACTOSplus.

**In Re: Aggrenox Antitrust Litigation**, *Court File No. 14-md-2516-SRU (D. Conn.)*. Reinhardt Wendorf & Blanchfield is class counsel in this antitrust case alleging defendants participated in an anti-competitive scheme to delay generic competition for Aggrenox, including a “pay-for-delay” settlement to delay entry of a generic version of the drug.

**In re Air Cargo Shipping Services Antitrust Litigation**, *Court File No. 06-md-01775-JG-VVP (EDNY)*. Reinhardt Wendorf & Blanchfield is class counsel and participated in document review in this class action alleging antitrust violations in the air cargo shipping services market. More than \$848 million has been recovered on behalf of the plaintiff class.

**In Re: Aluminum Warehousing Antitrust Litigation**, *Court File No. 13-md-2841 (SDNY)*. The firm is class counsel in this antitrust case alleging a conspiracy to increase aluminum stockpiles and load-out delays in order to inflate the Platts Midwest Premium, a key component of aluminum contracts, and thereby drive up aluminum prices.

**In re American Express Anti-Steering Rules Antitrust Litigation (II)** *Court File No. 11-MD-02221(EDNY)*. Reinhardt Wendorf & Blanchfield was co-lead counsel and is a member of the Executive Committee in this massive merchant antitrust case alleging claims of monopolization.

**In re American Express Consolidated Merchants Litigation**, *Court File No. 04-CV-00366 (SDNY)*. Reinhardt Wendorf & Blanchfield is co-lead counsel in this massive merchants antitrust tying case claims. This case was heard in the United States Supreme Court *sub nom*, American Express Company, et al. v. Italian Colors Restaurant, et al., 133 S Ct. 2304 (June 20, 2013).

**In re Aspartame Antitrust Litigation**, *Court File No. 06-1732-LDD (E. D. Pa.)*. Reinhardt Wendorf & Blanchfield was class counsel in this antitrust case alleging price fixing in the sweeteners industry.

**In re ATM Fee Antitrust Litigation**, *Court File No. 04-cv-02676-CRB (N. D. Calif.)*. Reinhardt Wendorf & Blanchfield is class counsel and participated in significant discovery in this antitrust case relating to bank fees for ATM card usage.

**In Re: Automotive Parts Antitrust Litigation**, *Court File No. 12-md-02311 (E.D. Mich.)* Reinhardt Wendorf & Blanchfield serves as class counsel in this massive antitrust case alleging defendants engaged in a decade-long conspiracy to unlawfully fix and artificially raise the price of many automotive parts resulting in increased prices to both automotive manufacturers and consumers.

**In re Blood Reagents Antitrust Litigation**, *Court File No. 09-md-2081(E. D. Pa.)* Reinhardt Wendorf & Blanchfield serves as class counsel in this class action alleging a conspiracy to artificially fix, raise and/or stabilize the price of Blood Reagents in the United States.

**In Re: Blue Cross Blue Shield Antitrust Litigation**, *Court File No. 13-cv-20000 (N.D. Ala.)*. Reinhardt Wendorf & Blanchfield represents a class of subscribers alleging defendants engaged in a conspiracy to allocate markets in order to establish and maintain monopoly power throughout the regions in which they operate in violation of the Sherman Act.

**Boland v. Consolidated Multiple Listing Service, Inc. et al.**, *Court File No. 09-cv-1974-SB, District of South Carolina*. Reinhardt Wendorf & Blanchfield serves as class counsel in this case alleging unlawful restraint of competition among real estate brokerages in violation of federal antitrust laws.

**In re: Brand Name Prescription Drugs Antitrust Litigation**, *Court File No. 94-C-897, Northern District of Illinois*. The firm performed substantial work including serving as a member of the trial team, representing the class in this prescription drug antitrust price fixing case that recovered over \$700 million in settlements on behalf of the plaintiff class.

**In re Bromine Antitrust Litigation**, *Court File No. IP 99-9310-C-B/S, Southern District of Indiana*. Mark Reinhardt served as lead counsel in this multi-district antitrust class action alleging a nationwide conspiracy to fix the prices of certain bromine products. The plaintiff class recovered nearly \$10,000,000 in cash and product vouchers.

**Chicago Ingredients, Inc. v. Archer Daniels and Midland Company, Inc., Ajinomoto U.S.A., Inc., Ajinomoto Co., Inc., Chiel Foods and Chemicals, Inc., Miwon Co, Ltd., Takeda Chemical Industries, Ltd., Takeda U.S.A., Inc., and Tong Hai Fermentation Industrial Corp.**, *Master File No. CV-00-0384, District of Minnesota*. Reinhardt Wendorf & Blanchfield was class counsel in this multi-district antitrust class action.

**In re Carbon Black Antitrust Litigation**, MDL Docket No. 1543. The firm served as class counsel in this national antitrust class action alleging violations of federal antitrust laws.

**In re: Carbon Dioxide Industry Antitrust Litigation**, *Court File No. MDL 940, Middle District of Florida*) Our attorneys and paralegals performed substantial work representing the class in this antitrust case alleging that the major manufacturers of bulk liquid carbon dioxide engaged in a horizontal agreement to fix prices. The plaintiff class recovered \$53 million in settlements along with significant therapeutic relief.

**In Re: Cathode Ray Tube (CRT) Antitrust Litigation**, *Master File No. 3:07-cv-05944-SC, MDL No. 1917, Northern District of California*. Reinhardt Wendorf & Blanchfield is class counsel in this antitrust case alleging a national conspiracy to fix the price of, cathode-ray tubes ("CRTs") and products containing CRTs. Over \$149,000,000 in settlements was obtained on behalf of the plaintiff class.

**CC1 Limited Partnership, et al v. Horizon Lines, Inc., et al**, *Court File No. 08-cv-01467-DRD, U.S. District Court, District of Puerto Rico*. Reinhardt Wendorf & Blanchfield is class counsel in this antitrust case alleging a conspiracy to suppress and eliminate competition in the market for coastal water freight transportation services between the United States and Puerto Rico. Class counsel negotiated \$52,250,000 in settlements on behalf of the plaintiff class.

**In re Chocolate Confectionary Antitrust Litigation**, *Court File No. MDL 1935, Middle District of Pennsylvania*. Reinhardt Wendorf & Blanchfield is class counsel in this antitrust case alleging a conspiracy to fix the prices of chocolate in the worldwide chocolate market.

**In re Cigarette Antitrust Litigation**, *Court File No. 1:00-CV-0447-JOF, Northern District of Georgia*. Reinhardt Wendorf & Blanchfield served on the expert witness committee in this nationwide antitrust case against the major manufacturers of cigarettes.

**In re Commercial Tissue Products Antitrust Litigation**, *MDL No. 1189, U.S. District Court, District of Florida*. The firm was on the executive committee and participated in extensive discovery in this national antitrust case alleging price fixing in the paper products industry. The plaintiff class recovered in excess of \$40,000,000 in settlements.

**Kirk Dahl et al., v. Bain Capital Partners LLC, et al.**, *Court File No. 07-cv-12388, District of Massachusetts*. Reinhardt Wendorf & Blanchfield is class counsel in this antitrust case alleging a conspiracy among some of the world's largest private equity firms to not compete when bidding on large leveraged buy-outs. The plaintiff class recovered in excess of \$590 million in settlements.

**In re Delta/Airtran Baggage Fee Antitrust Litigation**, *Court File No. 09-md-2089, Northern District of Georgia*. Reinhardt Wendorf & Blanchfield serves as class counsel

in this class action alleging violations of the federal antitrust laws related to the baggage fees charged by airlines.

**In Re: Domestic Air Transportation Antitrust Litig.**, MDL File No. 861, Northern District of Georgia. The firm served as class counsel in this class action alleging violations of federal antitrust laws related to airfare pricing. Counsel negotiated settlements totaling \$458,000,000 on behalf of the plaintiff class.

**In re: Domestic Drywall Antitrust Litigation**, Court File No. 13-md-2437-MMB, Eastern District of Pennsylvania. Reinhardt Wendorf & Blanchfield is class counsel in this antitrust case alleging manufacturers conspired to fix, raise, stabilize and maintain the prices of gypsum board in violation of Federal Antitrust laws.

**In re DRAM Antitrust Litigation**, Court File No. MDL 1486, Central District of California. Reinhardt Wendorf & Blanchfield served as class counsel and participated in extensive discovery in this antitrust case alleging a national conspiracy to fix the price of D-RAM, a type of computer chip. Counsel negotiated settlements in the amount of \$325,997,000 on behalf of the plaintiff class.

**Matthew Edwards v. National Milk Producers Federation et. al.**, 11-cv-4766-JSW, Northern District of California. Reinhardt Wendorf & Blanchfield represents one of the named plaintiffs in this antitrust case alleging a conspiracy to limit the production of raw farm milk in violation of Federal Antitrust laws.

**In re: European Rail Pass Antitrust Litigation**, Civil File No. 00-Civ.691-1(WCC), Southern District of New York. Reinhardt Wendorf & Blanchfield served as lead counsel in this antitrust class action alleging price fixing of the commission paid to travel agents selling passes for European rail travel. The plaintiff class recovered \$375,000 in cash and \$888,000 in rail passes from two defendants who, in the wake of downturns in the travel industry, faced serious financial difficulties and potential bankruptcy.

**Expressions Hair Design v. Schneiderman**, Court File No. 13-cv-3775-JSR (SDNY). Reinhardt Wendorf & Blanchfield is class counsel in this case alleging the New York no-surge law, N.Y. Gen. Bus. Law § 518, violates the First Amendment to the U.S. Constitution, is unconstitutionally vague, and is preempted by federal antitrust law.

**In re Fasteners Antitrust Litigation**, Court File No. MDL 1912, Eastern District of Pennsylvania. Reinhardt Wendorf & Blanchfield was class counsel in this antitrust case alleging a national conspiracy to fix the price of fasteners, zippers, snaps, hooks & eyes, rivets, eyelets and similar fastening devices. Counsel recovered \$17,550,000 in settlements for the plaintiff class.

**In re Flash Memory Antitrust Litigation**, Master File No. 07-0086 SBA, MDL 1852, Northern District of California. Reinhardt Wendorf & Blanchfield was class counsel in this indirect purchaser antitrust class action alleging a national conspiracy to fix the price of flash memory chips which were used in a variety of applications, including, memory

cards, USB storage devices, digital audio devices, mobile wireless technology, game consoles and personal computers.

**In re Flat Glass Antitrust Litigation (II)**, *Court File No. MDL No. 1942*, Reinhardt Wendorf & Blanchfield was class counsel and worked extensively with the economic experts in this antitrust case alleging a national conspiracy to fix the prices of Construction Flat Glass. Over \$22.3 million in settlements was recovered on behalf of the plaintiff class.

**In re Flat Glass Antitrust Litigation**, *MDL 1200, Western District of Pennsylvania*. Reinhardt Wendorf & Blanchfield was on the executive committee of this antitrust case alleging a horizontal price fixing conspiracy. Class counsel recovered \$61.7 million in settlements on behalf of the class.

**Fond du Lac Bumper Exchange, Inc., et al. v. Jui Li Enterprise Co., et al**, *Court File No. 09-cv-00852 (E.D. Wis.)* The firm serves as class counsel in this national class action alleging a conspiracy to fix the price of aftermarket auto sheet metal parts in violation of Federal antitrust laws.

**In re Graphics Processing Units Antitrust Litigation**, *Court File No. 07-cv-01826-WHA, (N. D. Cal.)*. Reinhardt Wendorf & Blanchfield was class counsel in this indirect purchaser class action alleging violation of federal antitrust laws related to Graphics Processing Units and Cards.

**In re High Fructose Corn Syrup Antitrust Litigation**, *Master File No. 95-1477, MDL No. 1087, District of Illinois*. Reinhardt Wendorf & Blanchfield was class counsel and participated in extensive discovery in this national antitrust case alleging horizontal price fixing by the major manufacturers of high fructose corn syrup. \$431,000,000 in settlement were recovered on behalf of the plaintiff class.

**In re High Pressure Laminates**, *Court File No. 00-MD-1368 (CLB), Southern District of New York*. Reinhardt Wendorf & Blanchfield was class counsel in this antitrust case alleging price fixing in the high pressure laminate industry. The plaintiff class recovered \$9.5 million in settlements.

**In re Hydrogen Peroxide Antitrust Litigation** *Court File No. 05-1339, MDL 1682, Eastern District of Pennsylvania*. Reinhardt Wendorf & Blanchfield was class counsel in this antitrust case alleging price fixing in the manufacture and sale of Hydrogen Peroxide and its downstream products sodium perborate & sodium per carbonate. Counsel obtained over \$87.3 million in settlements from four defendants on behalf of the plaintiff class.

**In re: Industrial Silicon Antitrust Litigation**, *Civil File No. 95-2104, Western District of Pennsylvania*. The firm served as co-lead and trial counsel in this antitrust price fixing case that recovered \$22.5 million in settlements from six defendants on behalf of the plaintiff class.

**In re International Air Transportation Surcharge Antitrust Litigation**, *Court File No. 06-cv-01793-CRB, Northern District of California.* Reinhardt Wendorf & Blanchfield was class counsel in this class action alleging antitrust violations related to fuel surcharges in the air transportation industry. Counsel obtained \$59,007,273 in settlements on behalf the class of U.S. Ticket purchasers and £48,339,176 on behalf U.K. ticket purchasers.

**In re K-Dur Antitrust Litigation**, *Civil File No. 01-1652 (JAG), District of New Jersey.* Reinhardt Wendorf & Blanchfield was class counsel and participated in discovery in this antitrust market allocation class action alleging unlawful agreements between Schering-Plough Corporation, Upsher-Smith Laboratories and American Home Products Corporation related to extended-release potassium chloride tablets and capsules.

**Kleen Products, LLC, et al v. Packaging Corporation of America, et al.**, *Court File No. 10-cv-5711, Northern District of Illinois* Reinhardt Wendorf & Blanchfield serves as class counsel participating in extensive discovery projects in this pending class action alleging violation of federal antitrust laws.

**In Re: Lidoderm Antitrust Litigation**, *Court File No. 14-md-02521 (N.D. Cal.).* The firm is class counsel in this class action alleging defendants engaged in an anticompetitive scheme to delay availability of a generic version of the lidocaine patch Lidoderm.

**In re Linen Services Antitrust Litigation**, *Court File No. 03-cv-7823-GEL, Southern District of New York.* Reinhardt Wendorf & Blanchfield was class counsel in this antitrust case alleging price fixing in the linen services industry. Counsel negotiated settlements in the amount of \$6.3 million in cash and \$2.9 million in vouchers on behalf of the plaintiff class.

**In re Linerboard Antitrust Litigation**, *Court File No. 99-CV-2549, Eastern District of Pennsylvania.* Reinhardt Wendorf & Blanchfield served on the expert witness committee and participated in extensive discovery in this antitrust class action alleging the manufacturers of corrugated linerboard conspired to fix prices on a nationwide level. The Plaintiff class recovered over \$200 million in settlements.

**In Re: Lithium Ion Batteries Antitrust Litigation**, *Court File No. 13-md-02420-YGR (N.D. Cal.).* The firm is class counsel in this antitrust class action alleging the Manufacturers of Lithium Ion Batteries engaged in a conspiracy to unlawfully fix and artificially raise the prices of Lithium Ion Rechargeable Batteries in violation of federal antitrust laws.

**Marcus Corporation v. American Express**, *Court File No. 04-05432, Southern District of New York.* Reinhardt Wendorf & Blanchfield is co-lead counsel in this pending anti-trust case challenging the tying of credit cards to charge cards.

**McDonough, et al v. Toys "R" Us, Inc., et al**, *Court File No. 06-cv-0242-AB, Eastern District of Pennsylvania*. The firm is class counsel and participated in substantial discovery in this pending class action alleging antitrust violations in the baby products market. Settlements totaling \$35.5 have been obtained on behalf of the plaintiff class.

**In Re: Medical X-Ray Film Antitrust Litigation**, *Court File No. CV-93-5904 (CPS), Eastern District of New York*. The firm was on the executive committee in this national class action alleging price fixing in the medical x-ray film industry. The Plaintiff class recovered \$39,360,000 in settlements.

**In re Milk Products Antitrust Litigation**, *Master File No. 3-96-458, District of Minnesota*. The firm was on the steering committee of this Minnesota antitrust case alleging a regional conspiracy to fix the price of milk.

**In re Monosodium Glutamate Antitrust Litigation**, *Master File No.00-1328 PAM/JGL, District of Minnesota*. Reinhardt Wendorf & Blanchfield participated in extensive document review in the antitrust case against the producers of MSG. The plaintiff class recovered \$123,400,000 in settlements.

**In re NASDAQ Market Makers Antitrust Litigation**, *Court File No. 94 Civ. 3996 RWS, Southern District of New York*. The firm performed substantial work representing the class in this case alleging market manipulation by the market makers in the National Association of Securities Dealers. Over \$1 billion in settlements was recovered on behalf of the plaintiff class.

**In re NCAA Student-Athlete Name and Likeness Licensing Litigation**, *Court File No. 09-cv-1967, Northern District of California*. Reinhardt Wendorf & Blanchfield serves as class counsel and represents one of the named plaintiffs in this class action alleging *per se* violations of federal antitrust laws by engaging in a price-fixing conspiracy and a group boycott/refusal to deal that has unlawfully foreclosed class members from receiving compensation in connection with commercial exploitation of their images following their conclusion of intercollegiate athletic competition. A \$40 million settlement was reached with two of the defendants. A trial against the remaining defendant resulted in the Court finding that the NCAA's rules prohibiting compensation for likeness use was an antitrust violation and issued a permanent injunction against those rules.

**In Re: National Football League's "Sunday Ticket" Antitrust Litigation**, *MDL No. 2668 (C.D. Cal.)*. The Firm is class counsel in this case filed on behalf of bars and restaurants alleging defendants colluded to charge supra-competitive prices for out of market NFL games via DirecTV's NFL Sunday Ticket package.

**In Re: Niaspan Antitrust Litigation**, *Court File No. 13-md-2460 (E.D. Penn.)*. Reinhardt Wendorf & Blanchfield is class counsel in this antitrust case alleging defendants engaged in a multifaceted anticompetitive scheme to exclude competition by

preventing, suppressing and delaying entry of generic versions from the market for the prescription drug Niaspan.

**In re Online DVD Rental Antitrust Litigation**, *Court File No. 09-md-2029, Northern District of California*. Reinhardt Wendorf & Blanchfield serves as class counsel and has participated in extensive discovery in this class action alleging monopolization and illegal restraint of trade in the on-line DVD rental market. Class counsel has negotiated a settlement of \$27,250,000 from one of the defendants. Litigation continues against the remaining defendant.

**In re Optical Disk Drive Products Antitrust Litigation**, *Court File No. 10-md-2143, Northern District of California*. Reinhardt Wendorf & Blanchfield served as class counsel in this class action alleging violation of federal antitrust laws in the optical disk drive market. Counsel negotiated settlement totaling \$37,750,000 on behalf of the plaintiff class.

**In re OSB Antitrust Litigation**, *Master File No. 06-CV-00826 (PSD), Eastern District of Pennsylvania*. Reinhardt Wendorf & Blanchfield was class counsel in this antitrust case alleging a conspiracy to fix the price of OSB board. RWB worked with the experts, participated in extensive discovery and was in charge of the discovery efforts against one of the defendants. The plaintiff class recovered over \$120,000,000 in settlements.

**In Re: Packaged Ice Antitrust Litigation**, *Court File No. MDL 1952*. Reinhardt Wendorf & Blanchfield is class counsel and represented one of the named plaintiffs in this antitrust case alleging a national conspiracy to fix the price of packaged ice. The defendants in this case declared bankruptcy, however, counsel was able to negotiate a settlement of \$700,000 with Reddy Ice.

**In re Payment Card Interchange Fee and Merchant Discount Antitrust Litigation**, *MDL 05-1720 (JG)(JO), Eastern District of New York*. RWB is co-lead counsel of a subset of allegations against Visa and MasterCard and is participating in extensive discovery in this massive anti-trust case against the issuers of credit cards. Counsel recovered in excess of \$6 billion in settlement on behalf of the plaintiff class.

**Performance Labs, Inc., et al. v. American Express Co., et al.**, *Case No. 06-cv-2974 (SWK), Southern District of New York*. Reinhardt Wendorf & Blanchfield is co-lead counsel in this case alleging that the restrictions placed on merchants by American Express are antitrust violations.

**In re Photochromic Lens Antitrust Litigation**, *Court File No. 10-md-2173, Middle District of Florida*. Reinhardt Wendorf & Blanchfield serves as class counsel in this class action alleging violation of federal antitrust laws.

**In re Plastic Cutlery Antitrust Litigation**, *Master File No. 96-728, Eastern District of Pennsylvania*. The firm was co-lead counsel in this national antitrust case alleging the

major manufacturers of plastic cutlery engaged in a horizontal agreement to fix prices. The Plaintiff class recovered over \$1.1 million in settlements.

**In Re: Plastic Tableware Antitrust Litigation**, *Master File No. 94-CV-3564 (United States District Court, Eastern District of Pennsylvania)* The firm was co-lead counsel in this national antitrust case alleging the major manufacturers of injection molded plasticware engaged in a horizontal agreement to fix prices. Plaintiff class recovered \$9 million in settlements.

**In re Polypropylene Carpet Antitrust Litigation**, *Master File No. 4:95-CV-193-HLM, MDL Docket No. 1075 (N. D. GA)*. The firm was on the executive committee and participated in extensive discovery in this national antitrust case alleging price fixing of polypropylene carpet. The plaintiff class recovered over \$7 million in settlements.

**In re Polyurethane Foam Antitrust Litigation**, *Court File No. 10-md-2196 (JZ), Northern District of Ohio*. Reinhardt Wendorf & Blanchfield serves as class counsel in this antitrust class action alleging violation of federal antitrust laws. The plaintiff class recovered over \$275,500,000 in settlements.

**In re Pool Product Distribution Market Antitrust Litigation**, *Court File No. 12-md-02328-SSV, (E.D. La)* The firm serves as class counsel in this national antitrust class alleging the Defendants entered into agreements and attempted to monopolize the market for Pool Products in violation of antitrust laws. Counsel negotiated settlements totaling \$15,950,000 on behalf of class plaintiffs.

**In re: Potash Antitrust Litigation**, *Court File No. 3-93-197, District of Minnesota*. The firm served a co-lead counsel in this national antitrust class action alleging the major producers of potash conspired to artificially inflate prices.

**In re Pressure Sensitive Labelstock Antitrust Litigation**, *Court File No. 03-MDL-1556 (M. D. Pa.)*. Reinhardt Wendorf & Blanchfield was class counsel and participated discovery in this antitrust case alleging price fixing in the pressure sensitive label industry. Settlements of \$46.5 million have been recovered on behalf of the plaintiff class.

**In re Publication Paper Litigation**, *Court File No. 3:04-MD-1631, District of Connecticut*. Reinhardt Wendorf & Blanchfield is class counsel in this nationwide antitrust case alleging price fixing of coated and uncoated magazine paper.

**In Re: Puerto Rican Cabotage Antitrust Litigation**, *Court File No. 08-md-1960 (D. PR)*. Reinhardt Wendorf & Blanchfield was class counsel in this antitrust case alleging Jones Act shipping companies engaged in a conspiracy to fix prices for ocean shipping services between the United States and Puerto Rico.

**In re Refrigerant Compressors Antitrust Litigation**, *Court File No. 02-md-02042, Eastern District of Michigan*. Reinhardt Wendorf & Blanchfield serves as class counsel in this pending class action alleging a conspiracy to fix, raise, maintain and/or stabilize prices of, and allocate the worldwide market for, hermetically sealed refrigerant compressors. The plaintiff class recovered \$48.4 million in settlements.

**In re Rubber Chemicals Antitrust Litigation**, *Court File No. 02-19278, Hennepin County District Court*). Reinhardt Wendorf & Blanchfield served on the discovery and expert witness committees in this indirect purchaser antitrust class action, and served as lead counsel for the Minnesota case. As lead counsel, Garrett Blanchfield obtained a unanimous reversal of defendants' motion to dismiss from the Minnesota Supreme Court. *Lorix v. Crompton Corp., et al*, 734 N.W.2d 619 (Minn. 2007). The plaintiff class recovered \$3,798,225 in settlements.

**Seiver et al. v. Time Warner**, *Court File No. 03-CV-7747, Southern District of New York*. Reinhardt Wendorf & Blanchfield was co-lead counsel in this antitrust class action alleging Time Warner entered into illegal tying arrangements which required its subscribers to lease unwanted cable modems as part of their subscription fee for cable modem high-speed internet access.

**In re Static Random Access Memory (SRAM) Antitrust Litigation**, *Court File No. 07-cv-01819-CW, Northern District of California*. The firm was class counsel in this class action case alleging a national conspiracy to fix the price of SRAM, a type of computer chip. Over \$76 million in settlements has been recovered on behalf of the plaintiff class.

**In Re: Steel Antitrust Litigation**, *Court File No. 08-cv-5214 (N.D. Ill.)*. The firm is class counsel in this antitrust case alleging defendants engaged in a scheme to artificially restrict the supply of steel products in the United States, thereby allowing defendants to charge supra-competitive prices. Settlements in excess of \$163,000,000 have been negotiated on behalf of the plaintiff class with three defendants remaining in the case.

**In Re: TFT-LCD (Flat Panel) Antitrust Litigation**, *Court File No. M: 07-1827 SI, MDL No. 1827, Northern District of California*. Reinhardt Wendorf & Blanchfield is class counsel and is participating in extensive discovery in this pending antitrust case alleging a national conspiracy to inflate and stabilize the prices of Thin-Film Transistor Liquid Crystal Displays. Almost \$1.1 billion was recovered on behalf of the plaintiff class.

**In re Transpacific Passenger Air Transportation Antitrust Litigation**, *Court File No. 07-cv-5634, Northern District of California*. Reinhardt Wendorf & Blanchfield serves as class counsel in this class action alleging a long-running international conspiracy to fix the prices of trans-Pacific air passenger transportation and the fuel surcharges on this transportation. \$39,502,000 has been recovered on behalf of the plaintiff class.

**In Re: Treasury Securities Auction Antitrust Litigation**, MDL No. 2673 (SDNY). The firm is class counsel in this class action alleging defendants engaged in a scheme to manipulate the market for U.S. Treasury bills, notes and bonds in violation of federal antitrust laws.

**Universal Delaware, Inc., d/b/a Gap Truck Stop v. ComData Corporation**, Court File No. 07-cv-1078-JKG-HSP, Eastern District of Pennsylvania. Reinhardt Wendorf & Blanchfield was class counsel and participated in discovery in this class action case alleging anti-competitive conduct related to transaction fees on Comdata Proprietary Card Transactions. Defendants collectively agreed to pay \$130,000,000 in cash settlements.

**In re Urethane Antitrust Litigation**, Court File No. 04-1616, District of Kansas. Reinhardt Wendorf & Blanchfield represents the class in this ongoing antitrust class action alleging price fixing in the sale of urethane and urethane chemicals. More than \$1.144 billion was recovered on behalf of the plaintiff class.

**In Re: Vehicle Carrier Services Antitrust Litigation**, Court File No. 13-cv-3306 (D. NJ). The firm is class counsel in this antitrust case alleging the providers of vehicle carrier services engaged in a multi-year conspiracy to fix, raise, maintain and/or stabilize prices, and allocate the market and customers in the United States.

**In re Vitamins Antitrust Litigation**, Court File No. 99-197 (TFH), District of Columbia. Reinhardt Wendorf & Blanchfield was class counsel and participated in extensive discovery in this national antitrust case alleging price fixing in the bulk vitamins industry. This case recovered over \$1 billion in settlements from several of the defendants.

## SECURITIES CLASS ACTION LITIGATION

The attorneys of Reinhardt Wendorf & Blanchfield are well-known for their class action securities litigation practice. The firm has represented classes of shareholders throughout the country, recovering millions of dollars for defrauded shareholders. Reinhardt Wendorf & Blanchfield aggressively pursues these cases on behalf of shareholders and other victims injured by corporate fraud, misrepresentation, breaches of fiduciary duty, and other financial wrongdoings. Some of the securities cases in which the firm played a significant role are:

**In Re: ADC Telecommunications, Inc. Shareholder Litigation**, *Court File No. 27-cv-10-17053 (Henn. Cty. District Court)*. Reinhardt Wendorf & Blanchfield was class counsel in this derivative case in which the Defendants agreed to make disclosures related to the acquisition.

**Bruce Bosshart et. al v. Manugistics Group, Inc.**, *File No. 98-CV-1504, District of Minnesota*. The firm served as co-lead counsel in this securities fraud class action that recovered \$2 million on behalf of the plaintiff class.

**In Re: Caribou Coffee, Inc. Shareholder Litigation**, *Court File No. 27-cv-12-24893 (Henn. Cty. District Court)*. Reinhardt Wendorf & Blanchfield served as local counsel in this shareholder litigation alleging breach of fiduciary duty related to the decision by the Caribou Board of Directors to sell the company to Joh A. Benckiser Group. As a result of this litigation, Defendants agreed to make additional disclosures about the transaction.

**In re Ceridian Corporation** *Civil File No. 04-CV-03704-MJD-JGL, District of Minnesota*. Reinhardt Wendorf & Blanchfield was liaison counsel in this securities fraud class action.

**Unger v. Chronomed, Inc. et al** *Civil Action No.: MC 04-12272, Hennepin County*. Reinhardt Wendorf & Blanchfield was liaison counsel in this Minnesota securities fraud class action.

**In Re Computer Learning Centers Securities Litigation**, *File No. 98-859-A, Eastern District of Virginia*. The firm was co-lead counsel in the securities class action alleging violation of federal securities laws. Class counsel recovered over \$7.5 million in cash and stock on behalf of the plaintiff class.

**Craig Anderson, et. al. v. EFTC Corporation, et al**, *File No. No. 98-CV-962, District of Colorado*. The firm served as co-lead counsel in the securities class action that recovered \$6 million on behalf of the plaintiff class.

**Don Blakstad et al v. Net Perceptions, Inc. et al.** *Master File No. 03-17820 District of Minn.* The firm served as class counsel in this securities fraud class action.

**In re Engineering Animation Securities Litigation,** *Court File No. 4-99-CV-10117, Central District of Iowa.* The firm served as class counsel in this securities fraud class action that recovered \$7.5 million on behalf of the plaintiff class.

**In Re: FSI International, Inc. Shareholder Litigation,** *Court File No. 10-cv-12-1118 (Carver Cty. District Court).* Reinhardt Wendorf & Blanchfield served as local counsel in this shareholder class action alleging breach of fiduciary duty related to the acquisition of FSI by Tokyo Electron Limited.

**In re Future Health Care Securities Litig.,** *File No. C-9-95-180, Southern District of Ohio.* Reinhardt Wendorf & Blanchfield served as class counsel in this securities class action that recovered \$5.75 million in settlements on behalf of the plaintiff class.

**In re Gander Mountain Securities Class Action,** *Court File No. 05-CV-0183 DWF/JSM, District of Minnesota.* Reinhardt Wendorf & Blanchfield served as class counsel in this securities fraud class action.

**Greenblatt v. Nash-Finch Company et al.,** *Court File No. 27-cv-13-13710 (Henn. Cty. District Court).* Reinhardt Wendorf & Blanchfield was local counsel in this shareholder case alleging breach of fiduciary duty related to the merger of Nash-Finch with SS Delaware, Inc. As a result of this case, the defendants agreed to make additional disclosures related to the transaction.

**Scott Halliday, et al. v. Lawson Software,** *Court File No. 62-cv-3669, Ramsey County.* Reinhardt Wendorf & Blanchfield served as liaison counsel in this Minnesota direct shareholder class action for breach of fiduciary duty related to the takeover of Lawson Software by CGC Software Holdings. As a result of this case, the defendants agreed to make additional disclosures to shareholders.

**Hennepin County 1986 Recycling Bond Litigation,** *Master File CT 92-22272, Hennepin County.* Reinhardt Wendorf & Blanchfield was class counsel and served on the executive committee in this Minnesota class action representing bondholders who alleged improper redemption. The plaintiff class recovered over \$10.6 million in settlements.

**IBEW Local 98 Pension Fund v. Best Buy Co., Inc.,** *Court File No. 11-429 (D. Minn.).* Reinhardt Wendorf & Blanchfield was plaintiffs' counsel in this class action alleging violations of the Securities Exchange Act of 1934.

**In re Imperial Credit Industries, Inc., Securities Litigation,** *Case No. CV 98-8842 SVW, Central District of California.* Reinhardt Wendorf & Blanchfield served as co-lead counsel in this securities fraud class action.

**International Union of Operating Engineers, Local 132 Pension Plan v. International Multifoods Corp., et al.** *Case No. CV 04-1361, Hennepin County.* Reinhardt Wendorf & Blanchfield served as liaison counsel in this securities class action alleging breach of fiduciary duty related to the merger between International Multifoods Corp. (IMC) and Smucker. As a result of this class action, IMC agreed to include additional information in the Registration Statement related to the merger.

**Jones v. Sherman Black, et al.**, *Court File No. 27-cv-10-2804 (Henn. Cty. District Court).* Reinhardt Wendorf & Blanchfield was class counsel in this shareholder action alleging breach of fiduciary duty. This case was consolidated with the In Re: Compellant Technologies, Inc. Shareholder Litigation in Delaware Chancery Court where counsel were able to negotiate additional disclosures and amendments to the merger agreement between Dell and Compellant.

**Jim Pierce, et al. v. Americredit Corp., et al.**, *Master File No. 4:03-CV-026-Y, Northern District of Texas.* Reinhardt Wendorf & Blanchfield served as class counsel in this securities fraud class action.

**Joshua Teitelbaum v. Rural Cellular Corporation, et al.**, *Court File No.: 21-CV-07-1145, Douglas County.* Reinhardt Wendorf & Blanchfield was liaison counsel in this Minnesota stockholder class action alleging breach of fiduciary duty related to the sale of Rural Cellular Corporation to Verizon Communications. As a result of this litigation, Defendants agreed to make additional significant disclosures about the transaction.

**Kirk Dahl, et al. v. Charles Schwab & Co., Inc.**, 524 N.W.2d 746 (Minn. 1994) Reinhardt Wendorf & Blanchfield was co-lead counsel in this class action alleging violations of stockbroker fiduciary duty.

**In Re: Lakes Entertainment Shareholder Litigation**, *Court File No. 27-cv-15-1990 (Henn. Cty. District Court).* Reinhardt Wendorf & Blanchfield was local counsel in this shareholder class action alleging breach of fiduciary duty.

**Long v. Eschelon Telecom, Inc. et al.** *Court File No.: 27-cv-07-6687, Hennepin County.* Reinhardt Wendorf & Blanchfield was liaison counsel in this Minnesota securities class action alleging self-dealing and breach of fiduciary duty. As a result of this case, the defendants agreed to make additional disclosures to shareholders.

**Lusk v. Life Time Fitness, Inc.**, *Court File No. 15-cv-01911 (D. Minn.).* The Firm serves as local counsel in this class action alleging violations of the Securities Exchange Act of 1934 related to the buyout of Lifetime Fitness by a consortium of investors that included Life Time's founder and CEO.

**In re Metris Securities Litigation**, *Court File No. 02-3677, District of Minnesota.* Reinhardt Wendorf & Blanchfield served as liaison counsel in this securities fraud class action that settled for \$7,500,000.

**In re Nash Finch Securities Litigation**, Court File No. 05-02934 ADM-AJB, District of Minnesota. Reinhardt Wendorf & Blanchfield was liaison counsel in this class action alleging violations of the Securities Exchange Act of 1934. The plaintiff class received \$6,750,000 in settlements.

**In re Navarre Corp. Securities Litig.**, Court File No.: 05-1151-PAM-RLE, District of Minnesota. Reinhardt Wendorf & Blanchfield was liaison class counsel in this securities fraud class action that recovered \$4,000,000 on behalf of the class plaintiffs.

**In re Pemstar Securities Litigation**, Court File No.02-1821, District of Minnesota. Reinhardt Wendorf & Blanchfield served as liaison class counsel in this securities fraud class action that settled for \$12,000,000.

**In re Piper Funds, Inc. Institutional Government Income Portfolio Litigation**, Court File No. 3-94-587, District of Minnesota. The firm performed substantial work representing the class in this national class action alleging violation of federal securities laws. Settlements totaling \$70 million were recovered on behalf of the plaintiff class.

**Police Pension Fund of Peoria v. Capella Education Company**, Court File No. 10-cv-04474 (D. Minn.). The firm was counsel for the plaintiff class in this securities fraud case alleging defendants made false statement and failed to disclose adverse facts known to them about Capella which caused class members to pay inflated prices for Capella common stock and suffer economic loss when the adverse facts became known in the market.

**In re Powerwave Technologies Inc. Securities Litigation**, Court File No. SACV-98-605-GLT (Eex), Central District of California. The firm served as co-lead counsel in this national securities class action that recovered \$3 million on behalf of the plaintiff class.

**In re Putnam Mutual Funds Investment Litigation**, MDL Docket No. 1590. Reinhardt Wendorf & Blanchfield served as class counsel in this mutual fund timing class action which recovered \$3,225,500 in settlements for the plaintiff class.

**Reinhardt et al. v. Strong, et al**, Court File No. 03-CV-7438(PKC) Southern District of New York. Reinhardt Wendorf & Blanchfield served as class counsel in this mutual fund timing class action. \$13,678,500 in settlements was recovered on behalf of the plaintiff class.

**In re Retek Securities Litigation**, Court File No. 02-CV-4209, District of Minnesota. Reinhardt Wendorf & Blanchfield served as class counsel in this securities fraud class action.

**In Re: Rochester Medical Corp. Shareholder Litigation**, Court File No. 55-cv-13-6107 (Olmstad Cty. District Court). Reinhardt Wendorf & Blanchfield Served as local

counsel in this shareholder action alleging breach of fiduciary duty related to the sale of Rochester Medical Corp. to C.R. Bard, Inc. As a result of this case, the defendants agreed to make certain supplemental disclosures regarding material information concerning the merger to ensure shareholders were fully informed.

**Rowe v. St. Paul Travelers Companies, Inc.**, *Court File No. 04-cv-4576-JRT-FLN, District of Minnesota*. Reinhardt Wendorf & Blanchfield was liaison counsel in this derivative case which resulted in changes to the company's Corporate Governance Policy.

**In re Rural Cellular Litigation**, *Court File No. 03-CV-121, District of Minnesota*. Reinhardt Wendorf & Blanchfield served as liaison counsel in this securities fraud class action.

**Sailors v. Northern States Power Co.**, *Court File No. CV 3-91-479, District of Minnesota*. The firm served as co-lead counsel in this securities fraud class action.

**In Re: SHFL Entertainment, Inc.**, *Court File No. 27-cv-13-13529 (Henn. Cty. District Court)*. Reinhardt Wendorf & Blanchfield served as local counsel in this shareholder action alleging breach of fiduciary duty related to the acquisition of SHFL by Bally Technologies. As a result of this case, the defendants agreed to make additional material supplemental disclosures related to the transaction.

**In Re the Sportsman's Guide, Inc. Litigation**, *Court File No. 19-C6-06-7903, Dakota County*. Reinhardt Wendorf & Blanchfield was liaison counsel in this securities class action alleging breach of fiduciary duty related to the acquisition of Sportsman's Guide, Inc. by Redcats USA, Inc. As a result of this litigation, Defendants agreed to make significant disclosures about the transaction.

**In re St. Paul Companies Securities Litigation**, *Court File No. 02-3825, District of Minnesota*. Reinhardt Wendorf & Blanchfield served as co-liaison counsel in this securities fraud class action. Over \$4,000,000 in settlements was recovered on behalf of the plaintiff class.

**In re Stellent, Inc. Securities Litigation**, *Master File No. CV-03-4384 RHK/AJB, District of Minnesota*. Reinhardt Wendorf & Blanchfield served as liaison counsel in this securities fraud class action that recovered \$12,000,000 for the Plaintiff class.

**In re SuperValu Securities Litigation**, *Court File No. 02-CBV-1738, District of Minnesota*. Reinhardt Wendorf & Blanchfield served as co-liaison counsel in this securities fraud class action. Over \$6,000,000 in settlements was recovered on behalf of the plaintiff class.

**Svenningson v. Piper, Jaffray and Hopwood, et al.**, *File No. 3-85-921, District of Minnesota*. The firm was co-lead counsel in this securities class action alleging failure to perform due diligence. Plaintiff class recovered \$4,000,000 in settlements.

**In Re: Synovis Life Technologies, Inc. Shareholder Litigation**, Court File No. 62-cv-11-10039 (Ramsey Cty. District Court). Reinhardt Wendorf & Blanchfield served as local counsel in this class action alleging breach of fiduciary duty. A settlement was reached in which defendants agreed to make certain additional material disclosures related to the merger with Baxter International, Inc.

**In re Transcript International Securities Litigation**, Master File No. 4:98-CV-3099, District of Nebraska. Reinhardt Wendorf & Blanchfield was co-lead counsel in this securities fraud class action. The plaintiff class recovered \$3.85 million in cash and 4.46 million shares of common stock. An additional \$11.75 million in settlements was obtained from the accountants and underwriters.

**In re Tricord Systems Inc. Securities Litigation**, Master File No. 3-94-746, District of Minnesota. The firm was class counsel and served on the executive committee in this securities fraud class action.

**In re United Health Group Incorporated PSLRA Litigation**, Court File No. 06-1691 JMR/FLN, District of Minnesota. Reinhardt Wendorf & Blanchfield was liaison counsel in this securities class action that recovered \$925,500,000 in settlements on behalf of the class in addition to significant corporate governance reforms.

**In re Xcel Securities, Derivative & "ERISA" Litigation**, Master File No. 02-2677(DSD/FLN), District of Minnesota. Reinhardt Wendorf & Blanchfield served as liaison counsel in this securities fraud class action. Class counsel negotiated a settlement in the amount of \$80,000,000 for the plaintiff class.

**Young v. ev3, Inc et al.**, Court File No. 27-cv-10-14045 (Henn. Cty. District Court). The firm was class counsel in this shareholder class action alleging breach of fiduciary duty.

## CONSUMER AND RICO LITIGATION

The attorneys of Reinhardt Wendorf & Blanchfield have zealously protected consumer rights in state and federal courts, including the United States Supreme Court. Cases the firm has successfully litigated include deceptive acts and practices in the areas of lending, false and deceptive advertising, fraud, breach of contract, misrepresentation, unsafe food, dishonest and deceptive marketing practices, invasion of privacy issues, violations of the Telephone Consumer Protection Act, and other violations of consumers' rights. Some of the consumer and RICO cases in which the attorneys of Reinhardt Wendorf & Blanchfield played a significant role are:

**In Re: 100% Grated Parmesan Cheese Marketing and Sales Practices Litigation.**, MDL No. 2705, U.S. District Court, Northern District of Illinois. The firm currently serves on the executive committee in this consumer class action challenging the false and deceptive advertising practices of numerous manufacturers of Parmesan Cheese.

**Boyd Demmer, et al v. Illinois Farmers Insurance Group**, Court File No. MC 00-017872, Hennepin County District Court. Reinhardt Wendorf & Blanchfield served as class counsel in this case alleging violation of Minnesota Statutes relating to the collection of insurance premiums for wage loss coverage on automobile policies. As a result of this litigation, counsel obtained refunds of a portion of the PIP premiums paid by class members.

**Buchet, et al. v. ITT Consumer Financial Corporation, et al.**, File No. 3-91-809, District of Minnesota. The firm served as co-lead counsel in this national consumer class action alleging RICO violations and forgery. Counsel recovered \$6.4 million in settlements on behalf of the plaintiff class.

**Camp v. the Progressive Corporation, et al.** Civil Action No. 01-2680 Eastern District of Louisiana. The firm served as class counsel and participated in significant discovery in this class action alleging violation of state overtime laws. The plaintiff class recovered over \$6,000,000 in settlements.

**In Re: Caterpillar, Inc. C13 and C15 Engine Products Liability Litigation**, Court File No. 14-cv-03722 (D. N.J.). Reinhardt Wendorf & Blanchfield represents one of the named plaintiffs in this class action alleging MY2007 engines suffer from a common design defect that renders MY2007 CAT engines unreliable, resulting in the engine failing, derating, or requiring repowering.

**City of Wyoming v. Procter & Gamble Company, et al.**, Court File No. 15-cv-02101-JRT-TNL (D. Minn.). Reinhardt Wendorf & Blanchfield represents the named plaintiff in

this class action filed on behalf of municipalities for damages caused to sewer systems and waste treatment facilities by “flushable wipes.”

**In Re: Conagra Peanut Butter Products Liability Litigation**, *Court File No. 07-mdl-1845 TWT (United States District Court, Northern District of Georgia)*. Reinhardt Wendorf & Blanchfield served as class counsel in this product liability class action related to peanut butter that was contaminated with salmonella. Millions of dollars in settlements were paid out to individual claimants.

**Denton v. Newell Window Furnishings, Inc.**, *Court File No. 97CH01556, Cook County, Illinois*). The firm served as co-lead counsel in this product liability class action related to lead contained in mini blinds.

**Elliot v. ITT, et al.**, *Court File No. 90-C-1841, Northern District of Illinois*. The firm served as lead counsel in this consumer class action alleging RICO violations and insurance packing.

**Frankle v. Best Buy Co., Inc.**, *Court File No. 08-cv-5501 JRT/JJG, District of Minnesota*. The firm was liaison counsel in this consumer class action alleging the improper installation and venting of dryers in consumer homes. As a result of this case, Best Buy agreed to replace improper dryer venting with heavy metal or semi-rigid duct vent at no cost to the consumer or to reimburse class members their reasonable out-of-pocket expenses if they have already replaced the improper venting.

**In Re: General Motors LLC Ignition Switch Litigation**, *Court File No. 14-md-2543 (SDNY)*. Reinhardt Wendorf & Blanchfield represents the class in this case alleging defendants knowingly sold motor vehicles containing defective ignition switches. These defective switches were cutting off engine power, thus disabling critical functions, such as power steering, power braking and airbags, needed to safely operate vehicles.

**Gerriets et al v. Western National Mutual Insurance Company**, *Court File No. MC 00-016563, Hennepin County District Court*). Reinhardt Wendorf & Blanchfield served as class counsel in this case alleging violation of Minnesota Statutes relating to the collection of insurance premiums for wage loss coverage on automobile policies. Counsel obtained refunds of a portion of the PIP premiums paid by class members.

**Good v. Ameriprise Financial, Inc., et al**, *Court File No. 06-CV-1027 DWF/SRN, District of Minnesota*. Reinhardt Wendorf & Blanchfield was class counsel in this consumer class action related to the payment of commissions.

**H. J. Inc. v. Northwestern Bell Telephone Co.**, 492 U.S. 229, 109 S.Ct. 2893 (1989) Mark Reinhardt served as lead counsel and both briefed and successfully argued before the Supreme Court of the United States in this national consumer class action alleging RICO bribery. (H.J., Inc. v. Northwestern Bell, 109 U.S. 2893 (1989)).

**Hall v. State of Minnesota et al.**, Court File No. 62-cv-15-2112 (Henn. Cty. District Court). Reinhardt Wendorf & Blanchfield is class counsel in this case alleging defendants violate the due process clauses of the United States and Minnesota Constitutions by taking possession of property it knows it does not own then selling, keeping or otherwise benefitting from unrestricted use without providing adequate notice to the rightful owners.

**Hamline Park Plaza Partnership, et al. v. Northern States Power Company**, Court File No. CT 95-004816 Hennepin County District Court. The firm served as lead counsel in this Minnesota class action alleging consumer fraud and deceptive trade practices related to Northern States Power's Lighting Retrofit Program.

**Hara v. USAA Casualty Insurance Company**, Court File No. 10-cv-3944, District of Minnesota. Reinhardt Wendorf & Blanchfield served as class counsel for this Minnesota class action for damages and equitable relief arising from Defendant's failure to calculate insurance premiums correctly using information available to it, in breach of its obligations under its form insurance policies and under Minnesota statutory law.

**Hawkins v. Thorp Loan Credit & Thrift Company**, File No. 85-6074, Hennepin County District Court. The firm served as lead counsel in this Minnesota consumer class action alleging violation of the Minnesota Small Loan Act. Counsel obtained over \$47 million in cash refunds and product discounts on behalf of the plaintiff class.

**In re Herbal Supplements Marketing and Sales Practices Litigation**, Court File No. 15-cv-5070 (N.D. Ill.) Reinhardt Wendorf and Blanchfield represents one of the named plaintiffs in this class action alleging certain store brand herbal supplements did not contain the ingredients the product label claimed the product contained, or, contained other substances that were not disclosed on the packaging for those herbal supplements.

**In Re High Carbon Concrete Litigation**, File No.: 97-20657, Hennepin County District Court. The firm was lead counsel in this consumer case brought on behalf of a class of approximately 1000 class members alleging violations of the Minnesota Deceptive Trade Practices Act and the Minnesota Prevention of Consumer Fraud Act. The class-wide settlement provided for complete replacement of the defective concrete application at no cost to the consumer.

**Hohn v. ITT**, Court File No. 4-87-808, District of Minnesota. The firm served as lead counsel in this RICO and consumer fraud class action.

**In re Jetblue Airways Corp. Privacy Litigation**, MDL Docket No. 1587. Reinhardt Wendorf & Blanchfield served as class counsel in this consumer privacy class action.

**Johnson v. American Family Mutual Insurance Company**, Court File No. 10-cv-4224, District of Minnesota. Reinhardt Wendorf & Blanchfield served as class counsel for this Minnesota class action for damages and equitable relief arising from Defendant's failure to calculate insurance premiums correctly using information available to it, in

breach of its obligations under its form insurance policies and under Minnesota statutory law.

**Johnson v. The Evangelical Lutheran Church in America**, *Court File No. 11-cv-00023 (D. Minn.)*. The Firm was counsel for the plaintiff class in this case alleging guaranteed lifetime annuity payments were drastically reduced in violation of the contract Plaintiffs entered into with the Defendants.

**Joseph King v. The Home Depot, Inc.** *Court File No. 1:04-00239-WQD District of Maryland*. Reinhardt Wendorf & Blanchfield served as class counsel in this case alleging improper assignment of credit card payments. \$4 million in settlements was recovered for the plaintiff class.

**Kluessendorf v. Progressive Preferred Insurance Company**, *Court File No. 10-cv-3945, District of Minnesota*. Reinhardt Wendorf & Blanchfield served as class counsel for this Minnesota class action for damages and equitable relief arising from Defendant's failure to calculate insurance premiums correctly using information available to it, in breach of its obligations under its form insurance policies and under Minnesota statutory law.

**Lynette Lijewski, et al. v. Regional Transit Board, et al.**, *Court File No. 4-93-Civ-1108, District of Minnesota*. The firm served as co-lead counsel in this Minnesota class action alleging violations of the Americans with Disabilities Act. Counsel obtained significant therapeutic relief as well as a cash settlement on behalf of the plaintiff class.

**In Re: McCormick & Company, Inc. Pepper Products Marketing and Sales Practices Litigation**, *MDL NO. 2665 (D.C.)*. The firm is plaintiffs' counsel in this class action alleging defendants deceived customers by selling partially empty containers of black pepper, a practice in the food industry commonly known as nonfunctional slack fill.

**Naficy et al v. Sprint Spectrum, L.P.**, *Civil File No. CV-98-4093 CBM (Shx), Central District of California*. The firm was lead counsel in this California class action alleging the Sprint PCS wireless network had not been developed to a sufficient level to allow Sprint PCS to meet anticipated demand and, as a result, the quality of service did not meet the level of quality promised in Sprint PCS advertisements. The plaintiff class settled with Sprint for restitution totaling 10% of the total air time charges up to \$20 per account, for a specified month.

**In Re: National Football League Players' Concussion Injury Litigation**, *Court File No. 12-md-02323 (D. Penn.)*. Reinhardt Wendorf & Blanchfield is class counsel in this case alleging long-term chronic injuries and financial losses suffered as a result of the Defendants wrongful conduct with respect to concussive brain injuries sustained by Plaintiffs during their NFL careers. Counsel for the class negotiated a settlement that includes medical testing and cash payments of \$1.5-\$5 million per player, depending on

diagnosis as well as \$10 million to be spent on education programs to promote safety and injury prevention.

**Nelson v. Citibank**, *Court File No. 4-29-287, District of Minnesota*. The firm served as lead counsel in this national consumer class action alleging violations of the National Bank Act.

**In re Northwest Privacy Litigation**, *Civil File No. CV 04-0126, District of Minnesota*. The firm was lead counsel in this consumer class action alleging release of confidential customer information in violation of the Electronic Communications Privacy Act, 18 U.S.C. §2701 *et seq.*, and state and federal law.

**Leonard & Eileen Olson, et al v. American Family Mutual Insurance Company**, *Court File No. MC 00-016519, Hennepin County District Court*. Reinhardt Wendorf & Blanchfield served as class counsel in this case alleging violation of Minnesota Statutes relating to the collection of insurance premiums for wage loss coverage on automobile policies. Counsel obtained refunds of a portion of the PIP premiums paid by class members.

**Palmer v. Illinois Farmers Insurance Company**, *Court File No. 10-cv-3956, District of Minnesota*. Reinhardt Wendorf & Blanchfield served as class counsel for this Minnesota class action for damages and equitable relief arising from Defendant's failure to calculate insurance premiums correctly using information available to it, in breach of its obligations under its form insurance policies and under Minnesota statutory law.

**Park v. Konica Minolta Photo Imaging, I.S.A., Inc.**, *File No. 2:05-cv-5519 (HAA), District of New Jersey*. Reinhardt Wendorf & Blanchfield served as lead counsel in this national consumer case alleging the deceptive marketing of defective digital cameras. The relief provided in the settlement extended the warranty period with respect to the defective product and, class members received repair of the defective product; reimbursement for the cost of repairs if the consumer had already had the camera repaired; or a partial reimbursement of costs if the consumer bought a new digital camera (regardless of manufacturer).

**In re Pet Food Products Liability Litigation**, *MDL Docket No. 1850*. Reinhardt Wendorf & Blanchfield served as class counsel in this products liability class action alleging contaminated pet food products caused the illness and/or death of thousands of cats and dogs across the United States. \$24,000,000 in settlements was recovered on behalf of the plaintiff class.

**Rathbun v. W.T. Grant**, 219 N.W.2d 641 (Minn. 1974). Mark Reinhardt served as lead counsel in this consumer class action alleging usury. The case was one of the first class actions brought under the new rules in Minnesota.

**Raymond Arent et al v. State Farm Mutual Automobile Insurance Company**, *Court File No. MC 00-016521, Hennepin County District Court*. Reinhardt Wendorf &

Blanchfield served as class counsel in this case alleging violation of Minnesota Statutes relating to the collection of insurance premiums for wage loss coverage on automobile policies. Counsel settled the case and obtained refunds of a portion of the PIP premiums paid by class members.

**Roth v. Life Time Fitness, Inc. et al.**, *Court File No. 15-cv-03270 (D. Minn.)* Reinhardt Wendorf & Blanchfield serves as plaintiffs' counsel in this class action alleging failure to pay wages due and owing for work performed.

**In Re Salmonella Litigation**, *File No. PI94-016304, Hennepin County District Court*. The firm served as lead counsel in this national consumer class action filed on behalf of individuals who became ill after consuming salmonella bacteria contained in ice cream. Plaintiff class recovered approximately \$4.5 million in settlements for the plaintiff class.

**In Re Schmitt Music Litigation**, *File No. 3-93-116, District of Minnesota*. The firm served as lead counsel in this consumer class action alleging RICO and usury violations in the state of Minnesota related to the Defendant's "Instrument Trial Purchase Plan" which was marketed to the parents of students in school band programs. The Plaintiff class recovered \$2.5 million in settlements.

**Streich v. American Family Mutual Ins. Co.**, 399 N.W.2d 210 (Minn. Ct. App. 1987). The firm served as lead counsel in this consumer class action alleging consumer fraud. Counsel obtained a substantial settlement for the class.

**Sutton v. FCA Restaurant Company LLC**, *Court File No. 08-cv-5122(ADM/JJK), District of Minnesota*. Reinhardt Wendorf & Blanchfield was class counsel in this class action related credit card numbers and expiration dates being printed on customer receipts in violation of the Fair Credit Reporting Act. Class members received vouchers for free food at defendant's restaurants to settle the case.

**In Re: Syngenta Litigation**, *Court File No. 27-cv-15-3785 (Hennepin County District Court)*. Reinhardt Wendorf & Blanchfield represents one of the named plaintiffs in this Minnesota case alleging the defendant introduced genetically modified corn without first obtaining approval from China, a key export market which effectively closed the market to U.S. corn shipments starting in November 2013 causing lost revenue to corn producers.

**In re Synthroid Marketing Litigation**, *Court File No. 97 C 6017, MDL 1182, Northern District of Illinois*. Reinhardt Wendorf & Blanchfield served as class counsel and participated in extensive discovery in this class action related to the marketing of thyroid medication. Over \$87 million in settlements were paid out to the plaintiff class.

**In Re: Takata Airbag Products Liability Litigation**, *Court File No. 15-MD-2599 (S.D. Fla.)*. The firm is counsel for the plaintiff class in this products liability class action related to defective Takata airbags installed in many motor vehicles. Plaintiffs' allege the defective airbags often fail to protect vehicle occupants from bodily injury during

accidents, either when they fail to deploy or when they violently explode, sometimes expelling metal debris and shrapnel at vehicle occupants.

**In Re: Target Corporation Customer Data Security Breach Litigation**, *Court File No. 14-md-0522 (D. Minn.)*. Reinhardt Wendorf & Blanchfield serves as Coordinating Liaison Counsel and represents a class of financial institution plaintiffs alleging they have suffered substantial losses as a result of Target's failure to adequately protect its sensitive payment data. Counsel negotiated a settlement of \$39,400,000 on behalf of the plaintiff class of financial institutions.

**Tripp, et al. v. Aetna, et al.**, *Court File No. 90-0008JC, District of New Mexico*. The firm served as lead counsel in this consumer class action alleging violations of the small loan act and RICO violations.

**Percie Enterprises, Inc. v. European Autoworks, Inc.**, *Court File No. 09-cv-03629 (D. Minn.)* Reinhardt Wendorf & Blanchfield served as class counsel in this class action involving claims under the Telephone Consumer Protection Act.

**In re U.S. Bancorp Litigation**, *Master File No. 99-891, District of Minnesota*. The firm served as co-lead counsel in this national consumer class action alleging breach of fiduciary duty in the release of personal customer data. Counsel obtained a settlement of \$5 million in cash and product refunds on behalf of the plaintiff class.

**In re Volkswagen and Audi Warranty Extension Litigation**, *Court File No. 07-md-1790, District of Mass.* Reinhardt Wendorf & Blanchfield served as class counsel in the national consumer fraud case related to defendant's defective design of the 1.8 litre turbo-charged engines found in model year 1997-2004 Audi vehicles and model year 1998-2004 Volkswagen Passat vehicles. As a result of the litigation, the defendant agreed to reimburse class members 50-100% of their out-of-pocket costs for oil sludge related engine repairs and replacements and reasonable related expenses.

**In Re: Volkswagen "Clean Diesel" Marketing, Sales Practices, and Products Liability Litigation**, *Court File No. 15-md-2672 (N.D. Cal.)* The firm is counsel for the plaintiff class in this case alleging Volkswagen deceptively and falsely manufactured, marketed and sold to consumers "clean" diesel automobiles as having low emissions and high fuel efficiency and vehicle performance when, in fact, vehicles contained emissions cheating software that produced false emissions results when tested.

**Yost, et al v. Allstate Insurance Company**, *Court File No. MC 00-016522, Hennepin County District Court*. Reinhardt Wendorf & Blanchfield served as class counsel in this case alleging violation of Minnesota Statutes relating to the collection of insurance premiums for wage loss coverage on automobile policies. Counsel obtained refunds of a portion of the PIP premiums paid by class members.

**Small v. Target Corp.**, *Court File No. 13-1509 (D. Minn.)* Reinhardt Wendorf & Blanchfield served as class counsel in this case alleging violation of the Telephone Consumer Protection Act.

# ATTORNEY BIOGRAPHIES

## Mark Reinhardt

Mark Reinhardt is a founding partner in Reinhardt Wendorf & Blanchfield. Prior to forming Reinhardt Wendorf & Blanchfield, Mark Reinhardt co-founded Reinhardt & Anderson in 1979. He is a 1971 graduate of Columbus School of Law, Catholic University of America, and recipient of the Reginald Heber Smith Fellowship in 1971 and again in 1972. The Fellowship allowed him to work in the area of significant class action litigation. He is admitted to practice in the Supreme Court of Minnesota and is a member of the bars of the Supreme Court of the United States, the Courts of Appeals for the Second, Third, Fourth, Sixth, Eighth and Ninth Circuits, the District of Minnesota, Eastern and Western Districts of Wisconsin and the District of Columbia.

For the last 35 years, Mr. Reinhardt has devoted a major amount of his practice to complex commercial and class action litigation. He has tried jury cases to verdict in several different areas of law, including class action/antitrust. He has taken an active role in numerous regional and national class actions and has served as lead counsel or a member of the executive committees of many of these actions. He has briefed and argued these cases at all federal levels, including the United States Supreme Court (H.J., Inc. v. Northwestern Bell, 109 U.S. 2893 (1989)). He has also been employed on a nationwide basis as a consultant on class action and RICO issues and has testified on the RICO statute before the U.S. Senate Judiciary Committee. For over ten years, Mr. Reinhardt's peers have named him a "Leading Minnesota Attorney" in the area of antitrust litigation.

Mr. Reinhardt was an adjunct Professor of law at William Mitchell College of Law and has taught many Continuing Legal Education courses in complex business litigation, racketeering, class actions, and antitrust. He is a member of the advisory board of the Civil RICO Report, a BNA publication. He has published in the areas of RICO and class action litigation. His writings include: Streich v. American Family: Anatomy of a Class Action, 12 Minn. Trial Law. 15 (Fall 1987); The Pattern of Pattern - Cases Post-H.J. Inc., 5 Civ. RICO Rep. 5 (March 6, 1990); The RICO Act, Public Utilities Fortnightly, July 1991; Coming out of the Trenches with RICO, (M.T.L.A. May 1992); Complex Commercial Litigation, (Business Torts, SC Bar-CLE Division, September 1994); When and How to Settle Class Actions (Minnesota State Bar Association CLE, March 1996); and Review of an Antitrust Class Action, (Minnesota State Bar Association CLE, November 1999); Management of the Large Case and Current Class Action Issues: Plaintiff's Perspective, (Minnesota Institute Legal Education, September 2000); Review of Nationwide Antitrust Practice (South Carolina Bankruptcy Association, February 2005) and Class Actions 101, Lunch & Learn (South Carolina Bar Association, June 2009); and Class Action 101, (Ramsey County Bar Association, February 2012).

## **Mark A. Wendorf**

Mr. Wendorf is a founding partner in Reinhardt Wendorf & Blanchfield. Prior to forming Reinhardt Wendorf & Blanchfield, Mr. Wendorf was a partner in the law firm of firm Reinhardt & Anderson. Mr. Wendorf is a 1986 graduate of William Mitchell College of Law, St. Paul, Minnesota. He practices in the areas of class action antitrust and consumer litigation, and insurance law. His practice includes both trial and appellate work in state and federal courts across the country. Mr. Wendorf served as trial counsel in one of the few antitrust class actions tried in the past 10 years. In addition to his trial and appellate court experience, Mr. Wendorf has written and lectured extensively on issues involving the applicability and reform of statutes of limitation. His writings include: *The First Amendment: Churches Seeking Sanctuary for the Sins of the Fathers*, 31 *Fordham Urb. L.J.* 617 (2004).

## **Garrett D. Blanchfield**

Mr. Blanchfield is a founding partner in the law firm of Reinhardt Wendorf & Blanchfield. Prior to forming Reinhardt Wendorf & Blanchfield, he was a partner in the St. Paul, Minnesota law firm of Reinhardt & Anderson. He has litigated class actions for more than 15 years with a focus on antitrust, securities and consumer cases. He is a 1990 graduate of Hamline University School of Law, where he was the Production Editor for the *Hamline Journal of Public Law and Policy*. Mr. Blanchfield interned with the Minnesota Court of Appeals Judge Doris Huspeni and also interned in the Canadian Department of Justice. Mr. Blanchfield was admitted to the Minnesota Bar in 1990. Upon graduation from law school, Mr. Blanchfield clerked for Minnesota District Court Judge Robert G. Schiefelbein. Mr. Blanchfield has taught legal writing at a local law school and lectured at a securities law CLE. In 2007, he obtained a unanimous reversal of a Minnesota Court of Appeals decision that limited the standing of indirect purchasers under Minnesota's Antitrust Act, *Lorix v. Crompton Corp., et al.*, 734 N.W.2d 619 (Minn. 2007). In *Robertson v. Sea Pines Real Estate Co.*, 679 F.3d 278 (4<sup>th</sup> Cir., 2012), Mr. Blanchfield successfully argued to the 4<sup>th</sup> Circuit in support of a District Court decision denying Defendant's motions to dismiss a pair of cases alleging violations of the Sherman Act.

## **Brant D. Penney**

Brant Penney began working as an attorney at Reinhardt & Anderson in 2002 and joined the successor firm of Reinhardt, Wendorf & Blanchfield in August of 2003. A 2002 graduate of William Mitchell College of Law, Mr. Penney has over 10 years of experience litigating class actions in the areas of consumer protection, TCPA, antitrust, employment, and securities law. Mr. Penney has been involved in all aspects of litigation at the state and federal level, and is admitted to practice in the Supreme Court of Minnesota, the Eighth Circuit Court of Appeals, and the District of Minnesota. He also currently serves as a Council Member of the Antitrust Law Section of the Minnesota State Bar Association. Mr. Penney published the following article: *The First Amendment: Churches Seeking Sanctuary for the Sins of the Fathers*, 31 *Fordham Urb. L.J.* 617 (2004).

## **Roberta A. Yard**

Ms. Yard joined Reinhardt Wendorf & Blanchfield in 2006. Ms. Yard had previously worked for Heins, Mills & Olson and Hammagren & Meyer. She was admitted to the bar in 2002. Ms. Yard graduated from Winona State University in 1991, *magna cum laude*, with a B.S. in Sociology/Criminal Justice, and from Santa Clara University School of Law in 2002, where she was the Editor-in-Chief of the Santa Clara Law Review. Ms. Yard practices primarily in the areas of antitrust and securities fraud class action litigation, and has experience in nearly all aspects of litigation in both state and federal court.

## **Lisa Neal Hayes**

Mrs. Hayes began working as an associate with Reinhardt, Wendorf & Blanchfield in May, 2007. Mrs. Hayes had previously worked with Whatley Drake & Kallas of Birmingham, Alabama. She was admitted to the bar in 2004. Mrs. Hayes graduated from Auburn University in 2000 with a B.S. in Human Development and Family Studies and from Cumberland School of Law in 2004. Mrs. Hayes practices primarily in the area of antitrust class action litigation.

# **EXHIBIT I**

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

IN RE: NATIONAL FOOTBALL  
LEAGUE PLAYERS' CONCUSSION  
INJURY LITIGATION

No. 2:12-md-02323-AB

MDL No. 2323

**Hon. Anita B. Brody**

Kevin Turner and Shawn Wooden,  
*on behalf of themselves and  
others similarly situated,*

Civ. Action No. 14-00029-AB

Plaintiffs,

v.

National Football League and  
NFL Properties LLC,  
successor-in-interest to  
NFL Properties, Inc.,

Defendants.

THIS DOCUMENT RELATES TO:  
ALL ACTIONS

**DECLARATION OF WILLIAM G. CALDES IN SUPPORT OF CO-LEAD CLASS  
COUNSEL'S PETITION FOR AN AWARD OF ATTORNEY'S FEES AND  
REIMBURSEMENT OF COSTS AND EXPENSES**

WILLIAM G. CALDES declares as follows pursuant to 28 U.S.C. § 1746:

1. I am a Partner of the law firm of Spector Roseman Kodroff & Willis, P. C. I submit this declaration in support of Co-Lead Class Counsel's Petition for an Award of Attorney's Fees and Reimbursement of Costs and Expenses in connection with and for services rendered and expenses incurred for the common benefit of the Settlement Class in the above-captioned multidistrict litigation ("Action") from the inception of the litigation through July 15, 2016, as well as for the payment of expenses incurred therewith. I have personal knowledge of

the matters set forth in this declaration and, if called upon, I could and would testify competently thereto.

2. SRKW performed the following duties for the common benefit of the litigation at the direction of Co-Lead counsel. SRKW attended meetings with Co-Lead counsel to discuss the organization and strategy for litigating this case. SRKW attended meetings with Co-Lead counsel to discuss the drafting and filing of relevant moving papers. SRKW collected and produced client data to Co-Lead counsel at their request for inclusion in the litigation. SRKW was in constant contact with Co-Lead counsel and conveyed all relevant issues to our client. SRKW was appointed to the Third Party Discovery Issues Committee (NFL Teams and Colleges) and the Discovery/Document Repository Committee.

3. The schedule attached hereto as Exhibit 1 is a detailed summary indicating the amount of common benefit time spent by the attorneys and professional support staff of my firm who were involved in, and billed fifty or more hours to, this Action, and the lodestar calculation for those individuals based on my firm's current billing rates. The schedule was prepared from contemporaneous daily time records regularly prepared and maintained by my firm. Time expended in preparing this application for attorney's fees and expenses has been excluded.

4. The hourly rates for the attorneys and professional support staff of my firm included in Exhibit 1 are the same as they charge for non-contingent work that is paid on an hourly basis, or for rates paid to attorneys of comparable experience and reputation in the relevant legal market and have been accepted by other federal courts in other class action cases prosecuted by my firm.

5. The total number of hours expended on the common benefit of this Action by my firm during the time period is 74.4 hours. The total lodestar for my firm for those ours is

\$51,708.00, consisting of \$51,708.00 for attorneys' time and \$-0- for professional support staff time.

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

7. As detailed in Exhibit 2 hereto, my firm is seeking reimbursement of a total of \$1,460.92 in common benefit expenses incurred in connection with the prosecution of this Action. These expenses are reflected on the books and records of my firm. These books and records are prepared from expense vouchers, check records, and other source material, and are an accurate record of the expenses incurred.

8. With respect to the standing of my firm to share in an award of fees, costs, and expenses, attached hereto as Exhibit 3 is a biography of my firm, including the attorneys in my firm who were principally involved in this Action.

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

Executed on January 9, 2017, at Philadelphia, Pa.

  
William G. Caldes

# **EXHIBIT 1**

**IN RE: NATIONAL FOOTBALL LEAGUE PLAYERS' CONCUSSION INJURY  
LITIGATION**

**No. 12-md-2323-AB**

**SPECTOR ROSEMAN KODROFF & WILLIS, PC**

**LODESTAR REPORT**

**Inception through July 15, 2016**

<b>NAME</b>	<b>HOURS</b>	<b>HOURLY RATE</b>	<b>AMOUNT</b>
<b>PARTNERS:</b>			
<b>WILLIAM CALDES</b>	74.4	695	\$51,708.00
<b>ASSOCIATES:</b>			
<b>STAFF ATTORNEYS:</b>			
<b>CONTRACT ATTORNEYS:</b>			
<b>PARALEGALS:</b>			

<b>TOTALS:</b>	74.4		\$51,708.00

# **EXHIBIT 2**

**IN RE: NATIONAL FOOTBALL LEAGUE PLAYERS' CONCUSSION INJURY  
LITIGATION**

**No. 12-md-2323-AB**

**SPECTOR ROSEMAN KODROFF & WILLIS, PC**

**COST AND EXPENSE REPORT**

**Inception through July 15, 2016**

<b>NUMBER</b>	<b>CATEGORY</b>	<b>AMOUNT</b>
1	Assessments	
2	Commercial Copies	
3	Computerized Research	44.38
4	Court Reporters/Transcripts	
5	Expert Services	
6	Facsimile	
7	Filing & Service Fees	675.00
8	In-House Copies	504.75
9	Long Distance Telephone	.63
10	Postage/Express Delivery	44.46
11	Travel/Meals/Lodging	141.70
12	Miscellaneous-CD'S BURNED	50.00
<b>TOTAL EXPENSES</b>		<b>\$1,460.92</b>

# **EXHIBIT 3**

# SPECTOR ROSEMAN KODROFF & WILLIS

A PROFESSIONAL CORPORATION  
ATTORNEYS AT LAW  
1818 MARKET STREET, SUITE 2500  
PHILADELPHIA, PENNSYLVANIA 19103  
215.496.0300  
FAX 215.496.6611  
<http://www.srkw-law.com>  
email: [classaction@srkw-law.com](mailto:classaction@srkw-law.com)

## FIRM BIOGRAPHY

Spector Roseman Kodroff & Willis, P.C. is a highly successful law firm with a nationwide practice that focuses on class actions and complex litigation, including securities, antitrust, consumer protection, and commercial claims. The firm is active in major litigation in state and federal courts throughout the country and internationally. The firm's reputation for excellence has been recognized by numerous courts which have appointed the firm as lead counsel in prominent class actions. As a result of the firm's efforts, defrauded consumers and shareholders have recovered billions of dollars in damages and implemented important corporate governance reforms. The firm is rated "AV" by Martindale-Hubbell, its highest rating for competence and integrity.

Judges throughout the country have recognized the Firm's contributions in class action cases:

- "Lead class counsel - Jeffrey Corrigan and the other lawyers from Spector Roseman Kodroff & Willis, P.C. - performed brilliantly in this exceptionally difficult case." *In re OSB Antitrust Litigation*, Master File No. 06-CV-00826 (PSD) (E.D. Pa. Dec. 9, 2008)
- "[Class counsel] did a wonderful job here for the class and were in all respects totally professional and totally prepared. I wish I had counsel this good in front of me in every case." *In re Parmalat Securities Litigation*, No. 04 Civ. 0030 (LAK) (S.D.N.Y.) (approval hearing March 2, 2009)
- "I think perhaps the most important for the class is the recovery, and I think the recovery has been significant and very favorable to the class given my understanding of the risks in the litigation. And so perhaps that's always the starting point for judging and assessing the quality of representation. The class I think was well represented, in that it got a very significant recovery in the circumstances". *In re SCOR Holding (Switzerland) AG Litigation*, No. 04 Civ. 07897 (MBM) (S.D.N.Y.) (formerly known as Converium Holdings)
- "[O]utstanding work [of counsel] ... was done under awful time constraints" and the "efforts here were exemplary...under lousy time constraints." *In re Atheros Communications, Inc. Shareholder Litigation*, C.A. No. 6124-VCN (Del. Ch.)
- "Plaintiffs' counsel have been excellent in this complex, hard-fought litigation and innovative in its notice program and efforts to find class members." *New England Carpenters Health Benefits Fund v. First Databank, Inc.*, C.A. 05-11148 (D. Mass. Aug. 3, 2009)

- “Here, Plaintiffs’ counsel are highly experienced in complex antitrust litigation, as evidenced by the attorney biographies filed with the Court. . . . They have obtained a significant settlement for the Class despite the complexity and difficulties of this case.” *Stop & Shop Supermarket Co. v. SmithKline Beecham Corp.*, C.A. No. 03-4578 (E.D. Pa. May 19, 2005)
- “Counsel are among the most experienced lawyers the national bar has to offer in the prosecution and defense of significant class actions.” *In re Lupron Marketing and Sales Practices Litigation*, 345 F. Supp. 2d 135, 137-38 (D. Mass. 2004)
- “[T]he class attorneys in this case have worked with enthusiasm and have been creative in their attempt to compensate as many members of the consumer class as possible. . . . This Court has consistently noted the exceptional efforts of class counsel.” *In re Relafen Antitrust Litigation*, 231 F.R.D. 52, 80 (D. Mass. 2005)

### **Securities/Corporate Governance Litigation**

SRKW’s securities practice group has actively managed important class actions involving securities fraud, winning not only significant damages but also important corporate governance reforms. Some of the Firm’s most notable cases include:

- *In re Abbott Labs-Depakote Shareholder Derivative Litigation*, Case No.: 1:11-cv-08114 (VMK) (N.D.Ill.). As the lead counsel, SRKW negotiated cutting-edge corporate reforms including new legal and regulatory compliance responsibilities at both the board and management levels, a clawback policy which goes well beyond the requirements under the Dodd-Frank Act of 2010, a change of the “tone at the top” to foster a culture of legal and regulatory compliance, “flow of information” protocols, and other significant reforms designed to address oversight deficiencies that resulted in Abbott having to pay \$1.6 billion in criminal and civil penalties due to the illegal marketing and sale of its Depakote drug (the second largest penalties ever paid for off-label marketing at that time).
- *In re Lehman Brothers Holdings, Inc. Equity/Debt Securities Litigation*, No. 08-cv-5523 (S.D.N.Y.). SRKW was one of the firms prosecuting the U.S. action against Lehman Brothers arising from a massive fraud pertaining to the credit market meltdown. In this securities class action, SRKW represents one of the lead plaintiffs, the Northern Ireland Local Government Officers’ Superannuation Committee (“NILGOSC”). The case settled for over \$600 million.
- *In re Parmalat Securities Litigation*, No. 04 Civ. 0030 (LAK) (S.D.N.Y.). SRKW was one of the co-lead counsel for the lead plaintiffs, who are European institutional bond holders, in this widely-known case, often called the “Enron of Europe.” This is a massive worldwide securities fraud action involving the collapse of an international dairy conglomerate, in which major financial

institutions and accounting firms created schemes to materially overstate Parmalat's revenue, income, and assets, and understate its considerable and expanding debt. The case has been heavily litigated for five years, resulting in settlements of \$98 million.

In addition, settlements with certain accounting firms provided that these defendants confirm their endorsement of specific corporate governance principles of behavior designed to advance investor protection and to minimize the likelihood of future deceptive transactions. This is the first time in a Section 10(b) case that shareholders were able to negotiate corporate governance measures from a defendant other than the issuer.

- *In re SCOR Holding (Switzerland) AG Litigation*, No. 04 Civ. 07897 (MBM) (S.D.N.Y.) (formerly known as *Converium Holdings*). In the *Converium* U.S. class action, SRKW was one of the co-lead counsel representing a European institutional investor which served as one of the lead plaintiffs in that action. The Firm negotiated a \$145 million recovery for a global class of investors, which involved settling the action on two continents – *the first trans-Atlantic resolution to a securities class action*. Part of the settlement, on behalf of foreign investors, was approved in the Netherlands under the then newly enacted Act on Collective Statement of Mass Claims. What is particularly noteworthy about the *Converium* litigation is that the Amsterdam Court of Appeal, in a landmark decision, ruled that it had jurisdiction to declare the two international settlements of that action binding. What makes the *Converium* decision groundbreaking is that, in addition to showing its willingness to provide an effective forum for European and other investors to settle their claims on a pan-European or even global basis, the Amsterdam Court of Appeal substantially broadened its jurisdictional reach – to the benefit of investors in this case and in future actions. The Dutch Court secured jurisdiction even though the claims were not brought under Dutch law, the alleged wrongdoing took place outside the Netherlands, and none of the potentially liable parties and only a limited number of the potential claimants are domiciled in the Netherlands. The decision means that European Union Member States, as well as Switzerland, Iceland and Norway, must recognize it, under the Brussels I Regulation and the Lugano Convention. Without the approval of the settlements by the Amsterdam Court of Appeal, common stock holders of *Converium*, who were excluded from the U.S. action, would not have been able to recover a portion of their losses.
- *Utah Retirement Systems v. Strauss*, No. 09-cv-3221 (E.D.N.Y.). SRKW served as counsel in an individual (opt-out) action brought on behalf of the Utah Retirement Systems relating to the scandal at American Home Mortgage – one of the companies involved in the subprime market meltdown. This action alleged violations of the Securities Act of 1933 and the Securities and Exchange Act of 1934, as well as various state laws. Although the monetary terms of the settlement are confidential, SRKW was able to negotiate an amount that was nearly four times more than what the Utah Retirement Systems would have received had it

participated in the class action.

- *In re Laidlaw, Inc. Bondholders Securities Litigation*, No. 3-00-2518-17 (D.S.C.). SRKW was a member of the Executive Committee in this complex accounting case which resulted in a settlement of \$42,875,000.
- *In re Abbott Laboratories, Inc. Derivative Shareholder Litigation*, C.A. No. 99-C 07246 (N.D. Ill.) (Abbott I). SRKW was co-lead counsel for plaintiffs. The case was dismissed twice but reversed on appeal, and settled in 2004 for substantial corporate governance reforms funded by \$27 million from directors. The ABA's *Securities Litigation Journal* called the Seventh Circuit's opinion the second most important decision in 2003.
- *Felzen v. Andreas (Archer Daniels Midland Co. Derivative Litigation)*, C.A. No. 95-2279 (C.D. Ill.). As co-lead counsel, SRKW negotiated broad corporate governance changes in the company's board structure including strengthening the independence of the board of directors, creating corporate governance and regulatory oversight committees, requiring that the audit committee be composed of a majority of outside directors, and establishing a \$8 million fund for educational seminars for directors and the retention of independent outside counsel for the oversight committees.

The Firm is in the forefront of advising and representing foreign institutional investors in U.S. class actions and in group actions in Europe, Australia and Japan. During the past 14 years, SRKW has been working with and representing various European investors and conducting educational seminars on securities class actions, as well as speaking at international shareholder and corporate governance conferences. The Firm is currently counsel to numerous large European entities.

### **Pharmaceutical Marketing Litigation**

Since 2001, the Firm has been at the vanguard of identifying and pursuing healthcare reforms. It has developed an extensive practice in representing consumers and third-party payors in class actions against pharmaceutical companies over the unlawfully high pricing of prescription drugs. These cases have proceeded in state and federal courts on a variety of legal theories, including state and federal antitrust law, state consumer protection statutes, common law claims of unjust enrichment, and the federal RICO statute.

As part of their work in this area, the Firm's attorneys have formally and informally consulted with the Attorneys General of a number of states who have been actively involved in drug and health care litigation. The Attorney General of Connecticut chose SRKW in a competitive bidding process to help lead the state's pharmaceutical litigation involving use of the Average Wholesale Price. The Firm's clients also include large employee benefit plans as well as individual consumers.

Some of the Firm's important pharmaceutical cases include the following:

- SRKW, as co-lead counsel, devised the legal theory for claims against most major pharmaceutical companies for using the Average Wholesale Price to inflate the price paid by consumers and third-party payors for prescription and doctor-administered drugs. The larger AWP case, *In re Pharmaceutical Industry Average Wholesale Price Litigation*, MDL No. 1456 (D. Mass.), was tried in part to the court in November-December 2006. On June 21, 2007, the judge issued a 183-page opinion largely finding for plaintiffs, and requesting additional evidence on damages. Moreover, plaintiffs have reached settlements in amounts exceeding \$230 million. SRKW was co-lead counsel for the class.
- *In re Lupron Marketing and Sales Practices Litigation*, MDL No. 1430 (D. Mass.). SRKW, as co-lead counsel, negotiated a settlement of \$150 million for purchasers of the cancer drug Lupron.
- *New England Carpenters Health Benefits Fund v. First Databank, Inc.*, C.A. 05-11148 (D. Mass.) and *District 37 Health and Securities Fund v. Medi-Span*, C.A. No. 07-10988 (D. Mass.). SRKW was co-lead counsel for a group of third-party payors who pay for prescription drugs at prices based on the AWP. The complaints allege that First DataBank and Medispan, two of the largest publishers of AWP, fraudulently published inflated AWP prices for thousands of drugs. The claims against McKesson settled for \$350 million. In addition, the settlement requires First DataBank and Medispan to lower the AWP price they publish for hundreds of drugs (by reducing the formulaic ratio they use to calculate AWP); and to eventually cease publishing AWP prices. Plaintiffs' experts conservatively estimate that the savings from this settlement will be in the hundreds of millions of dollars.
- *Stop & Shop Supermarket Co. v. Smithkline Beecham Corp.* C.A. 03-4578 (E.D. Pa.). SRKW was co-lead counsel on behalf of direct purchasers of the drug Paxil. The complaint alleged that the drug company misled the U.S. Patent and Trademark Office in obtaining the patents protecting Paxil and then used the patents to prevent lower-cost, generic versions of the drug from coming to market. A settlement of \$100 million was approved by the court.
- *In re TriCor Indirect Purchaser Antitrust Litigation*, C.A. No. 05-360 (D. Del.). SRKW was co-lead counsel for indirect purchasers in prosecuting state antitrust and consumer protection claims against Abbott Laboratories and Labatoires Fournier for suppressing competition from generic versions of TriCor. The indirect purchaser case settled for \$65.7 million to the class plus a substantial settlement for opt-out insurers.
- *In re Relafen Antitrust Litigation*, C.A. No. 01-12239 (D. Mass.). SRKW was co-lead counsel for indirect purchasers in prosecuting state antitrust and consumer

protection claims against GlaxoSmithKline for suppressing competition from generic versions of its drug Relafen by fraudulently obtaining a patent on the compound. The indirect purchaser settlement for \$75 million was approved by the court (the overall settlement for all plaintiffs exceeded \$400 million).

- *Vista Healthplan, Inc. v. Cephalon, Inc.*, CA No. 06-1833 (E.D. Pa.) and *In re Effexor XR Antitrust Litigation*, CA No. 11-5479 (D.N.J.). SRKW is serving as co-lead counsel in on-going litigation over pay-for-delay settlements involving the drugs Provigil and Effexor XR. The firm represented end -payors (consumers and healthplans) who were denied the chance to buy cheaper generic alternatives because of manipulation of the patent challenge and generic drug approval system by the brand name companies and some generic manufacturers.
- *In re Niaspan Antitrust Litigation* MDL No. 2460 (E.D. Pa) and *In re Suboxone Antitrust Litigation* MDL No. 2445(E.D. Pa). SRKW was appointed to serve as Liaison Counsel for a purported class of end payors for the drugs Niaspan and Suboxone. In each case, the complaint alleges that the end payors were overcharged by defendants' illegal efforts to keep generic versions off the market which caused the class to pay supra competitive monopolistic prices.

### **Antitrust Litigation**

SRKW's antitrust practice group regularly oversees important antitrust cases. Among the Firm's most significant cases are:

- *In re Automotive Parts Antitrust Litigation, MDL 12-2311 (E.D. Mich.)*. SRKW has been appointed Interim Co-Lead Counsel for Direct Purchaser Plaintiffs for all product cases filed (currently 16 different cases with more to follow). These massive price-fixing class actions are being brought on behalf of direct purchasers who were overcharged for various kinds of automotive parts, including wire harness products, heater control panels, instrument panel clusters, fuel senders, occupant safety restraint system products, bearings, air conditioning systems, starters, windshield wiper systems, windshield washer systems, spark plugs, oxygen sensors, fuel injection systems, alternators, ignition coils, and power window motors. All cases are pending before Judge Marianne Battani in the United States District Court for the Eastern District of Michigan in Detroit. SRKW and its Interim Co-Lead Counsel on behalf of the Direct Purchaser Plaintiffs have defeated motions to dismiss filed to date in all product cases. Direct Purchaser Plaintiffs have reached settlements with four defendants totaling approximately \$53 million.
- *In re Domestic Drywall Antitrust Litigation, MDL 12-2437 (E.D. Pa.)*. SRKW has been appointed as Co-Lead Counsel for plaintiffs in this nation-wide price fixing class action.
- *In re Blood Reagents Antitrust Litigation, MDL 09-2081 (E.D. Pa.)*. SRKW was

appointed sole Lead Counsel in this nation-wide, price-fixing class action. In January 2012, Spector Roseman negotiated a \$22 million settlement with one defendant, and Judge DuBois certified plaintiffs' class in August 2012 (which was upheld on appeal). The case is set for trial in early 2017.

- *McDonough, et al., v. Toys R Us, et al.* (E.D. Pa.) (Brody, J.). SRKW is Co-Lead Counsel for six sub-classes of Babies "R" Us' customers, a rare case involving resale price maintenance in which a purchaser class was certified. A settlement of \$35.5 million was achieved on behalf of the sub-classes.
- *In re Linerboard Antitrust Litigation*, MDL No. 1261 (E.D. Pa.). SRKW was appointed co-lead counsel for plaintiffs in this price-fixing antitrust action which settled for total of \$202 million, the largest antitrust settlement ever in Third Circuit.
- *In re OSB Antitrust Litigation*, Master File No. 06-CV-00826 (PSD) (E.D. Pa.). SRKW was lead counsel for a nationwide class of direct purchasers, which settled for \$120 million.
- *In re Flat Glass Antitrust Litigation*, MDL No. 1200 (W.D. Pa.). SRKW was co-lead counsel for plaintiffs in this price fixing/market allocation antitrust action which settled for \$120 million.
- *In re DRAM Antitrust Litigation*, MDL No. 1486 (N.D. Cal.). SRKW was a member of the executive committee in this action against all major manufacturers of "dynamic random access memory" ("DRAM"), alleging that defendants conspired to fix the prices they charged for DRAM in the United States and throughout the world. The case settled with all defendants for more than \$300 million.
- *In re Vitamins Antitrust Litigation*, Misc. No. 99-0197 (D. D.C.). SRKW was a member of the executive committee and co-chair of the discovery committee for plaintiffs in this price-fixing antitrust action which settled for \$300 million.

## Privacy Litigation

SRKW is also litigation numerous cases relating to privacy.

- *In re Google Inc. Street View Electronic Communications Litigation* (N.D. Cal.). SRKW was appointed Co-Lead Counsel for plaintiffs in this action. Google used its "Street View" vehicles to access wireless internet networks located in the United States and more than thirty countries around the world. Google's Street View vehicles traveled through cities and towns and collected data sent and received over the wireless networks they encountered, including all or part of e-mails, passwords, videos, audio files, and documents, as well as network names

and router information. This data was captured and stored without the knowledge or authorization of class members. Plaintiffs allege that Google's conduct violated Title III of the Omnibus Crime Control and Safe Streets Act of 1968, as amended by the Electronic Communications Privacy Act of 1986, 18 U.S.C. § 2511, *et seq.*, also known as the Wiretap Act. The District Court denied Google's motion to dismiss and Court of Appeals for the Ninth Circuit affirmed the denial of Google's motion to dismiss. The panel held that Google's data collection could be a violation of the Wiretap Act because Wi-Fi communications are "electronic communications" that are not "readily accessible to the general public." The Court rejected Google's argument that Wi-Fi communications are "radio communication" and its contention that this permitted Google to freely intercept them so long as they are not encrypted. Google is seeking Supreme Court review.

- *In Re: Heartland Payment Systems Inc. Customer Data Security Breach* MDL No. 2046 (S.D. TX). SRKW represents banks in a class action after Heartland disclosed on January 20, 2009 that it had been the victim of a security breach within its processing system in 2008. The data stolen included the digital information encoded onto the magnetic stripe built into the backs of credit and debit cards; with that data, thieves can fashion counterfeit credit cards by imprinting the same stolen information onto fabricated cards.
- *In re: Target Corporation Customer Data Breach* MDL No. 14-2522 (D. Minn). SRKW represents banks in a class-action lawsuit against Target claiming the retail giant ignored warnings from as early as 2007 that the company's point-of-sale (POS) system was vulnerable to attack, a move that put more than 40 million credit and debit card records at risk and compromised the personal information of up to an additional 70 million customers after Target's systems were penetrated by attackers from on or about November 27, 2013 through December 15, 2013.

## PARTNERS

**EUGENE A. SPECTOR**, founding partner, has extensive experience in complex litigation, and has represented both plaintiffs and defendants in antitrust and securities. Mr. Spector has handled many high profile cases, including such antitrust class actions as *In re Linerboard Antitrust Litigation*, MDL No. 1261 (E.D. Pa.), in which he was co-lead counsel and which settled for more than \$200 million, the largest antitrust case settlement ever in the Eastern District of Pennsylvania, where Judge Dubois stated: "The Court has repeatedly stated that the lawyering in this case at every stage was superb ...." 2004 WL 1221350, \*6 (E.D. Pa. June 2, 2004). Mr. Spector was also co-lead counsel in *In re Relafen Antitrust Litigation*, No. 01-12239 (D. Mass.), in which a settlement of \$75 million was obtained for the class, which Judge Young described as "the result of a great deal of very fine lawyering." Mr. Spector has been involved in securities class action litigation including *Rosenthal v. Dean Witter*, which resulted in a landmark decision by the Colorado Supreme Court that recognized, for the first time, that securities fraud could be proved without reliance being alleged. This precedent-setting case was important because under state securities law the reliance element sometimes proved difficult, especially when large numbers of people were involved in a class action suit.

Mr. Spector is currently serving as sole lead counsel in *In Re Blood Reagents Antitrust Litigation*, MDL No. 02081 (E.D. Pa.); as co-lead counsel in such antitrust cases as *In re Domestic Drywall Antitrust Litigation*, MDL No. 2437 (E.D. Pa.); *In Re Automotive Parts Antitrust Litigation*, MDL No. 2311 (E.D. Mich.); *McDonough, et al. v. Toys "R" Us, Inc. d/b/a Babies "R" Us, et al.*, 2:06-cv-00242-AB (E.D. Pa.); *Elliott, et al. Toys "R" Us, Inc. d/b/a Babies "R" Us, et al.*, 2:09-cv-06151-AB (E.D. Pa.); as a member of the direct purchaser Plaintiff's Executive Committee in *In Re Fresh and Process Potatoes Antitrust Litigation*, MDL No. 2186 (D.Id.), as a member of the Steering Committee for all Plaintiffs in *In re Online DVD Rental Antitrust Litigation*, MDL No. 2029 (N.D. Cal.), and as a member of the trial team in *In re Rail Freight Fuel Surcharge Antitrust Litigation*, MDL No. 1869 (D.D.C.).

Mr. Spector has served as lead or co-lead counsel for plaintiffs in numerous cases with successful results, such as:

- *In re Linerboard Antitrust Litigation*, MDL No. 1261 (E.D. Pa.) (settled for \$202 million, the largest antitrust settlement ever in the Third Circuit)
- *In re Relafen Antitrust Litigation*, C.A. No. 01-12239 (D. Mass.) (a drug marketing case that settled for \$75 million for indirect purchasers)
- *In re Flat Glass Antitrust Litigation*, MDL No. 1200 (W.D. Pa.) (a price-fixing/market allocation antitrust action that settled for \$120 million)
- *In re Mercedes Benz Antitrust Litigation, No. 99-4311* (D.N.J.) ( a price-fixing class action against Mercedes-Benz U.S.A. and its New York tri-state area dealers in which a \$17.5 million settlement was obtained for the class)
- *Cohen v. MacAndrews & Forbes Group, Inc.*, No. 7390 (Del. Ch.) (a class action on behalf of shareholders challenging a going-private transaction under Delaware corporate law in which a benefit in excess of \$11 million was obtained for the class)

Mr. Spector has also served as lead counsel or co-lead counsel in a number of other securities fraud class action cases and shareholder derivative actions: *Shanno v. Magee Industrial Enterprises, Inc.*, No. 79-2038 (E.D. Pa.) (trial counsel for defendants); *In re U.S. Healthcare Securities Litigation*, No. 88-559 (E.D. Pa.) (trial counsel); *PNB Mortgage and Realty Trust by Richardson v. Philadelphia National Bank*, No. 82-5023 (E.D. Pa.); *Swanick v. Felton*, No. 91-1350 (E.D. Pa.); *In re Surgical Laser Technologies, Inc. Securities Litigation*, No. 91-CV-2478 (E.D. Pa.); *Tolan v. Adler*, No. C-90-20710-WAI (PVT) (N.D. Cal.); *Rosenthal v. Dean Witter, Reynolds, Inc.*, No. 91-F-591 (D. Colo.); *Soenen v. American Dental Laser, Inc.*, No. 92 CV 71917 DT (E.D. Mich.); *In re Sunrise Technologies Securities Litigation*, Master File No. C-92-0948-THE (N.D. Cal.); *The Berwyn Fund v. Kline*, No. 4671-S-1991 (Dauphin Cty. C.C.P.); *In re Pacific Enterprises Securities Litigation*, Master File No. CV-92-0841-JSL (C.D. Cal.); *In re New America High Income Fund Securities Litigation*, Master File No. 90-10782-MA (D. Mass.); and *In re RasterOps Corp. Securities Litigation*, No. C-92-20349-RMW (EAI) (N.D. Cal. 1992).

Further, Mr. Spector has actively participated as plaintiffs' counsel in national class action antitrust cases, including *In re Dynamic Random Access Memory (DRAM) Antitrust Litigation*, No. M-02-1486 PJH (N.D. Cal.) (executive committee); *In re Vitamins Antitrust Litigation*, Misc. No. 99-0197 (TFH) (D.D.C.) (Chair of the discovery committee); *In re Neurontin Antitrust Litigation*, MDL No. 1479 (D. N.J.) (executive committee); *Ryan-House v. GlaxoSmithKline, plc*, No. 02-CV-442 (ED Va.) (co-chair class certification committee); *In re Bulk [Extruded] Graphite Products Antitrust Litigation*, Master File No. 02-CV-06030 (D. N.J.) (chair of experts committee); *In re Publication Paper Antitrust Litigation*, No. 04-MD-1631 (D. Conn.); *In re Polyester Staple Antitrust Litigation*, No. 03-CV-1576 (W.D.N.C.); *Chlorine & Caustic Soda Antitrust Litigation*, No. 86-5428 (E.D. Pa.); *In re Brand Name Prescription Drug Antitrust Litigation*, MDL No. 997 (N.D. Ill.); *Polypropylene Carpet Antitrust Litigation*, MDL No. 1075 (N.D. Ga.); *NASDAQ Market Makers Antitrust Litigation*, MDL No. 1023 (S.D.N.Y.); *Potash Antitrust Litigation*, MDL No. 981 (D. Minn.); *Commercial Tissue Products Antitrust Litigation*, MDL No. 1189 (N.D. Fla.); *High Fructose Corn Syrup Antitrust Litigation*, MDL No. 1087 (C.D. Ill.).

In 2002, Mr. Spector obtained a jury verdict of \$4.5 million in *Heiser v. SEPTA*, No. 3167 July Term 1999 (Phila. C.C.P.), an employment class action.

Mr. Spector is admitted to practice in the Commonwealth of Pennsylvania; the United States Supreme Court; the United States Courts of Appeals for the First, Third, Fifth, Sixth, Ninth, Tenth, and Eleventh Circuits; and the United States District Court for the Eastern District of Pennsylvania and the Eastern District of Michigan. He is a graduate of Temple University (B.A. 1965) and an honors graduate of Temple University School of Law (J.D. 1970), where he was an editor of the *Temple Law Quarterly*. He served as law clerk to the Honorable Herbert B. Cohen and the Honorable Alexander F. Barbieri, Justices of the Pennsylvania Supreme Court (1970-71).

Mr. Spector has written a number of articles over the years which appeared in the *National Law Journal*, the *Legal Intelligencer*, and other trade and legal publications; and he has appeared on CNBC to discuss securities fraud. He is a member of the American, Federal, Pennsylvania and Philadelphia Bar Associations; the American Bar Association's Antitrust and Litigation Sections and the Securities Law Sub-Committee of the Litigation Section; and the Federal Courts Committee of the Philadelphia Bar Association. Mr. Spector has been appointed to the Advisory Board of the American Antitrust Institute and has been named as a leading U.S. plaintiffs' antitrust lawyer by Who's Who Legal Competition 2014, published by the Global Competition Review. Mr. Spector also has been appointed to serve on the Board of Visitors of the James E. Beasley School of Law of Temple University. He is A-V rated by Martindale-Hubbell and has been named by Law & Politics to its list of Pennsylvania "Superlawyers."

**ROBERT M. ROSEMAN**, founding partner of SRKW, chairs the Firm's international and domestic securities practice. His practice focuses on investor protection issues, including the enforcement of the federal securities laws and state laws involving fiduciary duties of directors and officers, and under the laws in the various jurisdictions in Europe where group actions can be brought. An important component of his practice involves protecting U.S. and European investors

in European proceedings. In that role, he works with U.S. and European institutional investors on investor protection and corporate governance matters.

Most notable example of Mr. Roseman's role is Co-Lead Counsel is in the *Converium/SCOR* action, where he prosecuted the first US securities class action settled on two continents (for a collective \$145 million). The European portion of this settlement is being adjudicated before the Court of Appeal in Amsterdam using the Dutch Act on the Collective Settlements of Mass Damage Claims. Importantly, Mr. Roseman's international expertise helped secure a key decision from the Dutch Court of Appeal in this case that will likely make it easier in the future for U.S. and European investors to claim monies recovered from actions brought in the Netherlands.

Mr. Roseman represented European institutions and was co-lead counsel in the landmark *In re Parmalat Securities Litigation* action, the largest fraud in European corporate history that is frequently referred to as Europe's Enron, which settled for \$96.5 million. There, Mr. Roseman devised a unique legal theory against the bankrupt Parmalat which used Italian bankruptcy law to secure funds not normally available to investors. He also extracted corporate governance endorsements from defendants other than the issuer - a first in a US-based investor action.

Among other notable cases, Mr. Roseman represented Brussels-based KBC Asset Management in *In re Royal Dutch/Shell Securities Litigation* and Brussels-based Fortis Investments in *In re Chicago Bridge and Iron Securities Litigation*. He represented the Northern Ireland Local Government Officers' Superannuation Committee, a UK institution, that is one of the lead plaintiffs in the US investor action involving Lehman Brothers and was co-lead counsel *In re Atheros Communications Shareholder Litigation*, in which he obtained a preliminary injunction of a merger where inadequate information about the transaction had been disclosed to shareholders.

Mr. Roseman has been at the vanguard of using securities class actions and derivative suits to implement corporate governance changes at U.S. and European companies to help them operate more effectively and reduce the likelihood that wrongdoing will occur in the future. He litigated as lead counsel against the directors of Abbott Labs (involving off label marketing of Depakote) in which the company agreed for a four year period to implement cutting-edge, bespoke reforms addressing allegations of illegal conduct which are designed to prevent it from occurring in the future. As co-lead counsel Mr. Roseman litigated against the directors of Archer Daniels Midland Company in which the corporation agreed to implement significant reforms which, at that time, were "state of the art" corporate governance measures designed to strengthen the independence of the board of directors. Mr. Roseman also litigated against the directors of Abbott Laboratories (*Abbott I*) and settled the case for numerous corporate governance changes governing the way in which the board of directors addresses regulatory matters. The Seventh Circuit's landmark decision in this case was named second among the top ten securities law decisions of 2003 by the American Bar Association's *Securities Litigation Journal*.

Mr. Roseman has written extensively on securities and investor protection issues, including [Global Markets, Global Fraud: What We Can Learn from Europe's Enron'](#), *Investment and Pensions Europe* (May 2006 supp.); [Cost-Effective Monitoring of Corporate Fraud: Reducing](#)

[the Time Necessary to Stay Informed](#), *Investment and Pensions Europe* (June 2006 supp.); and A Trans-Atlantic Trend, *Professional Investor* (May 2005). He also appeared in a roundtable discussion in [Global Pensions](#) (October 2006 supp.).

Mr. Roseman has been a frequent speaker at numerous U.S. and international conferences on the issues of investor protection through litigation and engagement and the importance of using corporate governance measures as part of settlements to ensure that Board of Directors act in the best interest of the Company and its shareholders. In addition to speaking at numerous conferences in the U.S., Mr. Roseman appeared as an invited speaker at institutional investor conferences held in London, Paris, Munich, Milan, Barcelona, Brussels, Paris, Frankfurt and Dublin and the Annual Conference of the International Corporate Governance Network in Amsterdam in 2004 and Paris in 2011.

Mr. Roseman obtained his J.D. in 1982 from Temple University School of Law and earned his B.S. *cum laude* in political science from the State University of New York in 1978. He is admitted to practice in Pennsylvania and New York, as well as the United States District Courts for the Eastern District of Pennsylvania and Central District of Illinois, the U.S. Courts of Appeals for the Third and Seventh Circuits, United States Court of Federal Claims, and United States Supreme Court. He is a member of the Philadelphia, Pennsylvania, New York State and Federal Bar Associations.

Mr. Roseman recently served or is currently serving as lead or co-lead counsel in numerous major cases, including:

- *In re The Bancorp, Inc. Securities Litigation*, No. 14 Civ. 0952 (GMS) (D. Del.)
- *In re Abbott-Depakote Shareholder Derivative Litigation*, Case No. 1:11-cv-08114 (N.D. Ill.)
- *In re Lehman Brothers Holdings, Inc. Equity/Debt Securities Litigation*, 1:09-mdl-0217-LAK-GWG (S.D.N.Y.)
- *In re Life Partners Holdings, Inc. Derivative Litigation*, C.A. No. 2:11-CV-00043-AM (W.D. Tex.)
- *In re Atheros Communications, Inc. Shareholder Litigation*, Consolidated C.A. No. 6124-CVN (Del. Ch. Ct)
- *In re SCOR Holding (Switzerland) AG Litigation*, No. 04 Civ. 07897 (MBM) (S.D.N.Y.) (settled for \$145 million)
- *In re Parmalat Securities Litigation*, No. 04 Civ. 0030 (LAK) (S.D.N.Y.) (settled for \$98 million)
- *In re PSINet, Inc. Securities Litigation*, Civ. No. 00-1850-A (E.D. Va.) (settled for

\$17,833,000 on the eve of trial)

- *Welmon v. Chicago Bridge & Iron Co. N.V.*, No. 06 Civ. 1283 (S.D.N.Y.)

Mr. Roseman is admitted to practice in the Commonwealth of Pennsylvania and the State of New York; the United States Supreme Court; the United States Court of Federal Claims; the United States Court of Appeals for the Third and Seventh Circuits; and the United States District Courts for the Eastern District of Pennsylvania and the Central District of Illinois. He is also a member of the Philadelphia, Pennsylvania, New York State, and Federal Bar Associations. He has lectured extensively throughout Europe on the role of private litigation in enforcing U.S. securities laws. He earned a B.S. degree with honors in political science from the State University of New York in 1978, and a J.D. degree in 1982 from Temple University School of Law. He is AV-rated by Martindale-Hubbell and has been named by Law & Politics to its list of Pennsylvania “Superlawyers.”

**JEFFREY L. KODROFF** concentrates his practice in healthcare antitrust, securities and consumer litigation. He was among the first attorneys to represent clients in class action litigation against national health maintenance organizations. (*Tulino v. U.S. Healthcare, Inc.*, No. 95-CV-4176 (E.D. Pa.)). He also filed the first class action complaint against the manufacturers of the cancer drug Lupron relating to the illegal marketing practices and use of the published Average Wholesale Price. Mr. Kodroff was co-lead counsel in *In re Lupron Marketing and Sales Practices Litigation*, MDL No. 1430 (D. Mass.), which settled for \$150 million. Mr. Kodroff was also co-lead counsel in a consolidated national class action against many of the largest pharmaceutical companies in the world, including GlaxoSmithKline, BMS, J&J, Schering-Plough and AstraZeneca, for their illegal marketing and use of a false Average Wholesale Price. See *In re Pharmaceutical Industry Average Wholesale Price Litigation*, MDL No. 1456 (D. Mass.) (settlement over \$300 million.)

He has also served as lead or co-lead counsel in other substantial pharmaceutical marketing cases, including *New England Carpenters Health Benefits Fund v. First Databank, Inc. and McKesson Corp.*, C.A. 05-11148 (D. Mass.); and *District 37 Health and Securities Fund v. Medi-Span*, C.A. No. 07-10988 (D. Mass. 2007). This litigation massive class action was against pharmaceutical wholesaling giant McKesson Corporation (“McKesson”) and pharmaceutical pricing publishers First DataBank, Inc. (“FDB”) and Medi-Span. The case addressed an unlawful 5% mark-up in the Average Wholesale Prices (“AWPs”) of various drugs, causing consumers and third party payors to overpay for pharmaceuticals. The case settled for \$350 million plus an agreement to roll back AWP by 5% thereby saving the Class and others hundreds of millions of dollars.

Mr. Kodroff has also been very active in litigation against brand named pharmaceutical companies in their attempts to keep generic drugs from entering the market.

Mr. Kodroff has served or is serving as co-lead counsel in numerous major cases, including:

- *In re OSB Antitrust Litigation*, Master File No. 06-CV-00826 (E.D. Pa., Judge Paul S. Diamond) (settled for \$120 million)
- *Stop & Shop Supermarket Co. v. Smithkline Beecham Corp.* C.A. 03-4578 (E.D. Pa., Judge Padova) (settled for \$150 million)
- *In re Express Scripts, Inc., PBM Litigation*, Master Case No. 05-md-01672-SNL (E.D. Mo.)
- *In re Lovenox Antitrust Litigation*, Case No. CV05-5598 (C.D. Cal.)
- *In re DDAVP Indirect Purchaser Antitrust Litigation*, Case No. 05 Civ. 2237 (S.D.N.Y.)
- *Man-U Service Contract Trust, et al. v. Wyeth, Inc. (Effexor Antitrust Litigation)* Civil Action No. 3:11-cv-05661 (D.N.J.)
- *In re: Merck Mumps Vaccine Antitrust Litigation*, Master File No. 2:12-cv-03555 (E.D. Pa., Judge C. Darnell Jones, II)
- *Vista Healthplan Inc. v. Cephalon, Inc., et al.*, Case No. 2:06-cv-1833 (E.D. Pa., Judge Mitchell S. Goldberg) (Provigil)

Mr. Kodroff has served as lead or co-lead counsel in many class action securities fraud cases, including *In re Unisys Corporation Securities Litigation*, No. 99-CV-5333 (E.D. Pa.); *In re Dreyfus Aggressive Growth Mutual Fund Litigation*, No. 98 Civ. 4318 (HB) (S.D.N.Y.); *Kalodner v. Michaels Stores, Inc.*, No. 3:95-CV-1903-R (N.D. Tex.); *In re Valuevision International, Inc. Securities Litigation*, Master File No. 94-CV-2838 (E.D. Pa.); *In re GTECH Holdings Corp. Securities Litigation*, Master File No. 94-0294 (D.R.I.); *In re Surgical Laser Technologies, Inc. Securities Litigation*, No. 91-CV-2478 (E.D. Pa.); and *The Berwyn Fund v. Kline*, No. 4671-S-1991 (Dauphin Cty. C.C.P.).

He has also served as lead or co-lead counsel in many consumer class actions including the current case *In re Google Inc. Street View Electronic Communications Litigation*, Case No. C 10-md-02184 JW (N.D. Cal.), which arise out of Google's interception of electronic communications by its Street View vehicles. Other consumer class actions in which Mr. Kodroff has served as lead or co-lead counsel include: *Kaufman v. Comcast Cablevision of Phila., Inc.*, No. 9712-3756 (Phila. C.C.P.); *LaChance v. Harrington*, No. 94-CV-4383 (E.D. Pa.); *Smith v. Recordex*, No. 5152, June Term 1991 (Phila. Cty. C.C.P.); *Guerrier v. Advest Inc.*, C.A. No. 90-709 (D. N.J.); and *Pache v. Wallace*, C.A. No. 93-5164 (E.D. Pa.).

Mr. Kodroff has served as a Continuing Legal Education presenter on class actions and health care issues as well as making presentations at conferences including the NCPERS Health Care Symposium and the Pennsylvania Public Employees Retirement System Conference.

He also serves on the advisory board for the Bureau of National Affairs Class Action Litigation Report. Mr. Kodroff also appeared with one of his clients before the U.S. House of Representatives, Subcommittee on Housing and Community Opportunity, Committee on Banking and Financial Services on the issue of predatory lending.

Mr. Kodroff is admitted to practice in the Commonwealth of Pennsylvania and the United States District Courts for the Middle and Eastern Districts of Pennsylvania. He is a member of the Pennsylvania, Philadelphia and American Bar Associations. A graduate of LaSalle University, where he earned his undergraduate degree in finance (magna cum laude, 1986), Mr. Kodroff received his law degree from Temple University School of Law (1989). He is a resident of Dresher, Pennsylvania. Mr. Kodroff is AV-rated by Martindale-Hubbell.

**MARK S. WILLIS**, resident partner in the firm's Washington, D.C. office, heads the Firm's securities and international business development group and focuses his domestic and international litigation practice on investor protection and corporate governance matters. He was recently selected by Lawdragon Magazine for its "New Star" listing of top attorneys in the U.S.

Mr. Willis has litigated securities fraud actions for over eighteen years, working with a number of European and American institutional investors on various investor protection and corporate governance matters. He acted as co-lead counsel, representing Italian, French and Belgian institutional clients, in the *In re Parmalat Securities Litigation*, involving the largest fraud in European corporate history. He acted as co-lead counsel in the *In re Converium Holding AG Securities Litigation*, where a \$145 million trans-Atlantic settlement on behalf of a global class of investors has recently been reached. He also acts as co-lead counsel in the *In re Chicago Bridge Securities Litigation*, where he represented a large institutional investor and where a settlement was recently reached involving a \$10.5 million recovery for investors that included innovative governance reforms regarding insider trading. Mr. Willis also represents a large Belgian institution in the pan-European settlement of *In re Royal Dutch Shell Securities Litigation* pending before the Court of Appeals in Amsterdam, where European investors will share in the distribution of \$450 million.

In other matters, Mr. Willis litigated against Caremark International involving charges that Caremark committed federal Medicare fraud. It subsequently pled guilty and paid the U.S. Government a fine of approximately \$160 million and \$25 million in a civil settlement. He also litigated against National Health Labs, which resulted in a \$65 million settlement, and settled claims against Nextel Communications and Motorola.

Mr. Willis has written extensively on corporate, securities and investor protection issues, often with an international focus. Among other publications, he has authored chapters in industry journals entitled "Company Laws of the European Union" and "Admission of Securities to Official Listing on Stock Exchanges Within the European Union and the Subsequent Disclosure Obligations." He published a related article in the *International Law News* titled "A Brief Overview of the European Union's Efforts to Harmonize the Requirements for Listing Securities." Mr. Willis wrote about investor protection issues in an article published in the July/August 2003 edition of *Professional Investor* and co-authored articles published in 2005 in *Professional*

*Investor* and the *European Lawyer* regarding European investor protection issues. He also co-authored two articles published in 2006 in *Investment & Pensions Europe*. Mr. Willis also participated in a roundtable discussion regarding class actions for the October 2006 edition of *Global Pensions*. He was also the co-author of the Comment entitled “Corporation Code Sections 309 and 1203: California Redefines Directors’ Duties Towards Shareholders,” *Pepperdine Law Review*, Volume 16, No. 4 (1989).

Mr. Willis has been a frequent speaker at institutional investor conferences on the issues of investor protection through the U.S. federal securities laws and the importance of using corporate governance measures to force companies to put the interests of their shareholders first. In addition to numerous forums in the United States, Mr. Willis has addressed these topics at institutional investor conferences and other forums in London, Paris, Munich, Frankfurt, Brussels, Milan, Lisbon, and Melbourne.

Mr. Willis obtained a Masters in International Law, with an emphasis in securities regulation, from the Georgetown University Law Center in 1993. He graduated from Pepperdine University School of Law in 1989, where he was a member of the Moot Court Team and won the Dalsimer Moot Court Competition. Mr. Willis received his B.A. in English History from Brigham Young University in 1986. He is admitted to practice in the District of Columbia and the Commonwealth of Massachusetts.

**JEFFREY J. CORRIGAN** joined SRKW in 2000 as a partner to help direct the Firm’s complex antitrust litigation. From 1990 until 2000, he was a Trial Attorney with the U.S. Department of Justice in the New York office of the Antitrust Division.

Mr. Corrigan has extensive experience investigating and prosecuting complex antitrust and other white collar criminal cases. He was lead counsel on numerous federal grand jury investigations and has significant federal trial experience as well. His cases include *United States v. Tobacco Valley Sanitation*, Cr. H-90-4 (D. Conn. 1991); and *United States v. Singleton*, Crim. No. 94-10066 (D. Mass. 1995). He was nominated by the Antitrust Division in 1999 for the Attorney General’s Distinguished Service Award for his lead role on a major case involving bid-rigging at state courthouses in Queens and Brooklyn in New York City, which resulted in 49 guilty pleas. *United States v. Abrishamian*, No. 98 CR 826 (E.D.N.Y. 1998). Mr. Corrigan also played a major part in *United States v. Canstar Sports USA, Inc.*, C.A. No. 93-7 (D. Vt. 1993), a complex civil antitrust case.

Mr. Corrigan is currently serving as sole Liaison and Interim Lead Class Counsel in *In re Blood Reagents Antitrust Litigation*, MDL 09-2081 (E.D. Pa.), a nation-wide, price-fixing class action into the market for blood reagents, which are used for testing blood. Mr. Corrigan is also currently serving as Interim Co-Lead Counsel for direct purchaser plaintiffs in *In re Domestic Drywall Antitrust Litigation*, MDL 12-2437 (E.D. Pa.), a nation-wide price fixing class action.

He has been co-lead counsel in *In re OSB Antitrust Litigation*, Master File No. 06-CV-00826 (PSD) (E.D. Pa.), where a nationwide class of direct purchasers settled for \$120 million; and *In re Mercedes-Benz Antitrust Litigation*, Master File No. 99-4311 (D. N.J.) (settled

for \$17.5 million). He was also active in *In re Linerboard Antitrust Litigation*, C.A. No. 98-5055 (E.D. Pa.), which settled for \$202 million; *In re Buspirone Antitrust Litigation*, MDL Docket No.1413 (S.D.N.Y.) which in 2003 settled for \$670 million for all plaintiff groups; and *In re Flat Glass Antitrust Litigation*, MDL No. 1200 (W.D. Pa.), which settled for \$120 million.

Mr. Corrigan is a 1985 graduate of The State University of New York at Stony Brook, where he earned his B.A. in economics. He received his J.D. in 1990 from Fordham University School of Law, where he was a member of the Moot Court Board. Mr. Corrigan is admitted to practice in the states of New York and New Jersey, and in the United States Court of Appeals for the Third Circuit and the D.C. Circuit; and the United States District Courts for the District of New Jersey, Southern District of New York and the Eastern District of New York.

**ANDREW D. ABRAMOWITZ**, a partner in the Firm, graduated *cum laude* and Phi Beta Kappa from Franklin and Marshall College in 1993, where he earned a B.A. in Government. Mr. Abramowitz received his J.D. in 1996 from the University of Maryland, School of Law, where he was Assistant Editor for *The Business Lawyer*, published jointly with the American Bar Association. He was formerly an associate at Polovoy & Turner, LLC, in Baltimore, where he practiced commercial litigation and corporate transactional law, and was a law clerk at the Office of the Attorney General of Maryland in the Department of Business and Economic Development.

Mr. Abramowitz has served one of the lead counsel numerous cases under the federal securities laws and state law governing fiduciary duties. Recent cases include *In re The Bancorp, Inc. Securities Litigation*, No. 14 Civ. 0952 (GMS) (D. Del.); *Howard v. Liquidity Services, Inc.*, Case No. 1:14-cv-01183-BAH (D.D.C.); *In re Key Energy Services, Inc. Securities Litigation*, Civil Action No.: 4:14-cv-2368 (S.D. Tex.); *In re Abbott Depakote Shareholder Derivative Litigation*, No. 11 Civ. 08114 (VMK) (N.D. Ill.); *In re Life Partners Holdings, Inc. Derivative Litigation*, C.A. No. 2:11-CV-00043-AM (W.D. Tex.); *Scandlon v. Blue Coat Systems, Inc.*, No. CV 11-04293 (RS) (N.D. Cal.); *In re Synthes Inc. Shareholder Litigation*, C.A. No. 6452-CS (Del. Ch.); and *Utah Retirement Systems v. Strauss, et al.*, No. 09 Civ. 3221(TCP) (ETB) (E.D.N.Y.) (American Home Mortgage, Inc.). Notably, in *In re Atheros Communications, Inc. Shareholder Litigation*, C.A. No. 6124-VCN (Del. Ch.), Mr. Abramowitz was on the team whose efforts secured a preliminary injunction which halted the shareholder vote on Qualcomm Incorporated's proposed \$3.1 billion acquisition of Atheros Communications, Inc. until shareholders were provided with additional material information regarding the merger. He also represented lead plaintiffs in *In re Parmalat Securities Litigation*, No. 04 Civ. 0030 (LAK) (S.D.N.Y.), often called the "Enron of Europe," which was a massive worldwide securities fraud action involving the collapse of an international dairy conglomerate.

Other cases in which Mr. Abramowitz has participated include *In re Royal Dutch/Shell Securities Litigation*, C.A. No. 04-374 (D. N.J.); *In re SCOR Holding (Switzerland) AG Litigation*, No. 04 Civ. 07897 (MBM) (S.D.N.Y.); *In re Gerova Financial Group, Ltd. Securities Litigation*, No. 11 MD 2275-SAS (S.D.N.Y.); *Inter-Local Pension Fund of the Graphic Communications Conference of the International Brotherhood of Teamsters v. Cybersource Corp., et al.* (Del. Ch.); *In re PSINet, Inc. Securities Litigation*, Civ. No. 00-1850-A (E.D. Va.); *In re Unisys Corporation Securities Litigation*, No. 99-CV-5333 (E.D. Pa.); *O'Brien v. Ashcroft (Tyco Corp. Derivative*

*Litigation*), No. 03-E-0005 (N.H. Super. Ct.); *Brudno v. Wise (El Paso Corp. Derivative Action)*, C.A. No. 19953NC (Del. Ch.); *In re Xcel Energy, Inc. Securities Derivative & "ERISA" Litigation*, MDL No. 1511 (D. Minn.); *In re Bristol-Myers Squibb Derivative Litigation*, No. 02 Civ. 8571 (S.D.N.Y.); *Penn Federation BMW v. Norfolk Southern Corp.*, C.A. No. 02-9049 (E.D. Pa.); *Rosenthal v. Dean Witter Reynolds, Inc.*, No. 91-CV-429 (Dist. Ct. Douglas Cty., Colo.); *In re Visa Check/MasterMoney Antitrust Litigation*, No. CV-96-5238 (S.D.N.Y.); *Moskowitz v. Mitcham Industries, Inc.*, C.A. No. H-98-1244 (S.D. Tex.); and *In re Flat Glass Antitrust Litigation*, C.A. No. 97-550 (W.D. Pa.).

He also represents shareholders in matters relating to a stockholder's right to inspect the books and records of a corporation. This mechanism assists investors in determining whether a corporate board has committed wrongdoing. Examples of corporations from which books and records have been obtained include Community Health Systems, Inc., The McGraw-Hill Companies, and Cobalt International Energy, Inc. Mr. Abramowitz also facilitated the return of proceeds to European investors in bankruptcy proceedings and Federal Bureau of Investigation forfeiture actions relating to a multi-national Ponzi scheme (*In re Hartford Investments*, No. 09-17214(ELF)).

In addition, Mr. Abramowitz serves on the Corporate Advisory Board of the Pennsylvania Association of Public Employee Retirement Systems (PAPERS), an organization dedicated to educating trustees and fiduciaries of public pension funds throughout Pennsylvania. He also frequently participates in the University of Pennsylvania, School of Law's Mentor Program, where he serves as mentor to international students to provide insight and guidance regarding the practice of law in the U.S. He writes and speaks frequently on matters relating to securities litigation and corporate governance.

Mr. Abramowitz is admitted to practice in the State of Maryland and the United States District Court for the District of Maryland, as well as the United States District Court for the District of Colorado. He is a member of the Maryland Bar Association.

**JOHN MACORETTA** represents both individuals and businesses in a wide variety of litigation and, occasionally, transactional matters. He currently represents consumers and healthcare payors in several cases alleging that brand name pharmaceutical companies illegally kept generic drug competitors off the market. Mr. Macoretta is also involved in electronic privacy litigation, including the *In re Google Streetview Electronic Communications Litigation*, No. 10-md-02184 (N.D. Cal.) where he is a co-lead counsel representing consumers whose private wi-fi communications were intercepted. Mr. Macoretta also represents investors in stock-broker arbitration and class-action securities fraud litigation.

He has been involved in a number of significant cases, including *In re Pharmaceutical Industry Average Wholesale Price Litigation*, MDL No. 1456 (D. Mass.) (where he acted as one of the trial counsel); *In re Lupron Marketing and Sales Practices Litigation*, MDL No. 1430 (D. Mass.); *In re Unisys Corporation Securities Litigation*, No. 99-CV-5333 (E.D. Pa.); *Masters v. Wilhelmina Model Agency, Inc.*, No. 02 Civ. 4911 (S.D.N.Y.); *In re Dynamic Random Access Memory (DRAM) Antitrust Litigation*, C.A. No. M-02-1486 PJH (N.D. Cal.).

Mr. Macoretta graduated with honors from the University of Texas Law School in 1990 and received his undergraduate degree *cum laude* from LaSalle University in 1986. He is admitted to practice in the Commonwealth of Pennsylvania and the State of New Jersey; the United States Court of Appeals for the First, Third and Ninth Circuits; and the United States District Courts in the District of New Jersey, the Eastern District of Michigan and the Middle and Eastern Districts of Pennsylvania. In addition to being a member of the Philadelphia Bar Association, Mr. Macoretta also serves as an arbitrator in the Philadelphia Court of Common Pleas and the US District Court. Mr. Macoretta also serves as a *pro bono* attorney representing Philadelphia residents whose homes are facing foreclosure.

**WILLIAM G. CALDES** is a 1986 graduate of the University of Delaware, where he earned a B.A. with a double major in Economics and Political Science. Mr. Caldes received his J.D. in 1994 from Rutgers School of Law at Camden, and then served as law clerk to the Honorable Rushton H. Ridgway of the New Jersey Superior Court, Cumberland County.

Among the recent cases in which Mr. Caldes has participated are *In re Automotive Parts Antitrust Litigation*, MDL No. 2311 (E.D. Mich.); *McDonough, et al. v. Toys "R" Us, Inc. d/b/a Babies "R" Us, et al.*, No. 2:06-cv-00242-AB (E.D.Pa.); *Elliott, et al. v. Toys "R" Us, Inc. d/b/a Babies "R" Us, et al.*, No. 2:09-cv-06151-AB (E.D.Pa.); *In re Online DVD Rental Antitrust Litigation*, MDL No. 2029 (N.D.Cal.); *In re Processed Eggs Antitrust Litigation*, MDL No. 2002 (E.D.Pa.); *In re Air Cargo Shipping Services Antitrust Litigation*, MDL No. 1775 (E.D.N.Y.); *In Re: Municipal Derivatives Antitrust Litigation*, No. 1:08-md-01950-VM (S.D.N.Y.); *In Re Optical Disk Drive Products Antitrust Litigation*, No. 3:10-ms-02143-RS (N.D.Cal.); *In Re Aftermarket Filters Antitrust Litigation*, No. 1:08-cv-04883 (N.D.Ill.); *In re McKesson HBOC, Inc. Securities Litigation*, Master File No. 99-CV-20743 (N.D.Cal.); *In re K-Dur Antitrust Litigation*, MDL No. 1419 (D.N.J.); *In re Relafen Antitrust Litigation*, C.A. No. 01-12222 (D.Mass); *In re Buspirone Antitrust Litigation*, MDL No. 1413 (S.D.N.Y.); *In re Linerboard Antitrust Litigation*, C.A. No.98-5055 (E.D.Pa.); *In re Dynamic Random Assess. Memory (DRAM) Antitrust Litigation*, No.M-02-1486 PJH (N.D. Cal.); *In re Baycol Products Litigation*, No. 1431 (D. Minn.); and *In re Vitamins Antitrust Litigation*, Misc. No. 99-0197(TFH) (D.D.C.).

He has also participated in such cases as *General Refractories Co. v. Washington Mills Electro Minerals Corp.*, No. 95-CV-580S(S) (E.D.N.Y.); *In re Brand Name Prescription Drugs Antitrust Litigation*, No.94-C-897 (N.D. Ill.); *In re NASDAQ Market-Makers Antitrust Litigation*, MDL No. 1023 (S.D.N.Y.); *In re Flat Glass Antitrust Litigation*, MDL No. 1200 (W.D. Pa.); and *In re Carpet Antitrust Litigation*, MDL No. 1075 (N.D. Ga.).

Mr. Caldes is admitted to practice in the Commonwealth of Pennsylvania, the State of New Jersey, the United States District Court for the District of New Jersey, the United States District Court for Eastern District of Pennsylvania and the United States Court of Appeals for the 3rd Circuit.

**DAVID FELDERMAN** is a 1991 graduate of the University of Pennsylvania where he earned a B.A. degree in Economics. He received his J.D. degree *cum laude* from Temple

University School of Law in 1996. Upon graduation from law school, Mr. Felderman served as a law clerk to the Honorable Bernard J. Goodheart in the Court of Common Pleas, Philadelphia County. Mr. Felderman joined SRKW in 2000. He was formerly associated with McEldrew & Fullam, P.C., where his practice focused on medical malpractice litigation.

Mr. Felderman has worked on the following cases: *In re Sunoco, Inc.*, April Term, 2012, No. 3894 (Pa. Common Pleas, Phila. County); *In re Harleysville Mutual*, November Term, 2011, No. 2137 (Pa. Common Pleas, Phila. County); *In re Lehman Brothers Holdings, Inc. Equity/Debt Securities Litigation*, No. 08-cv-5523 (S.D.N.Y.); *In re Alltel Shareholder Litigation*, Civ. No. 2975-CC (Del. Chancery); *In re SCOR Holding (Switzerland) AG Litigation*, No. 04 Civ. 7897 (DLC) (S.D.N.Y.); *Ong v. Sears Roebuck and Co.*, C.A. No. 03-4142 (N.D. Ill.); and *Welmon v. Chicago Bridge & Iron Co. N.V.*, No. 06 Civ. 1283 (S.D.N.Y.).

He has also been involved in *In re AOL Time Warner Securities Litigation*, MDL Docket 1500 (S.D.N.Y.); *In re McKesson HBOC, Inc. Securities Litigation*, Master File No. 99-CV-20743 (N.D. Cal.); *In re Lupron Marketing and Sales Practices Litigation*, MDL Docket No. 1430 (D. Mass); *In re Managed Care Litigation*, C.A. No. 00-1334-MD (S.D. Fla.); *In re Monosodium Glutamate Antitrust Litigation*, MDL Docket No. 1328 (D. Minn); *In re Flat Glass Antitrust Litigation*, MDL No. 1200 (W.D. Pa.); and *In re Linerboard Antitrust Litigation*, C.A. No. 98-5055 (E.D. Pa.).

Mr. Felderman is admitted to practice in the Commonwealth of Pennsylvania and the State of New Jersey, as well as in the United States Court of Appeals for the Third Circuit; and the United States District Courts for the Eastern District of Pennsylvania and the District of New Jersey. He is currently a member of the American and Philadelphia Bar Associations. Mr. Felderman served a three year term (2000-2002) as a member of the Executive Committee of the Philadelphia Bar Association's Young Lawyers Division. As part of this commitment, he co-Chaired Legal Line, P.M. which won a national award from Lexis-Nexis during the second year he co-Chaired the program. Mr. Felderman also previously served as a member of the Philadelphia Bar Association's State Civil Committee and the Pennsylvania Trial Lawyers Association's New Lawyer Section Leadership Council. In addition, he was a Charter Member of the Philadelphia Bar Foundation's Young Lawyers Division of the Andrew Hamilton Circle.

**DANIEL J. MIRARCHI** earned his B.A. from Temple University in 1995 and his law degree from the St. John's University School of Law in 1999. During law school, Mr. Mirarchi was a legal extern for Justice Arthur Cooperman of the New York State Supreme Court, Queens County, and served as an intern to the Philadelphia District Attorney's Office and the Pennsylvania Attorney General's Office.

Among the recent cases in which Mr. Mirarchi has participated include: *In re Abbott Depakote Shareholder Derivative Litigation*, No. 11 Civ. 08114 (VMK) (N.D. Ill.); *Avalon Holdings, Inc., et al. v. BP, plc, et al.* (S.D. Tex.); *Houston Municipal Employees Pension System, et al. v. BP, plc, et al.* (S.D. Tex.); *In re Atheros Communications, Inc. Shareholder Litigation*, C.A. No. 6124-VCN (Del. Ch.); *In re Gerova Financial Group, Ltd. Securities Litigation*, No. 11 MD 2275-SAS (S.D.N.Y.); *Inter-Local Pension Fund of the Graphic Communications*

*Conference of the International Brotherhood of Teamsters v. Cybersource Corp., et al.* (Del. Ch.); *Utah Retirement Systems v. Strauss, et al.*, No. 09 Civ. 3221(TCP)(ETB) (E.D.N.Y.); *In re Parmalat Securities Litigation*, No. 04 Civ. 0030 (LAK) (S.D.N.Y.); *In re SCOR Holding (Switzerland) AG Litigation*, No. 04 Civ. 07897 (MBM) (S.D.N.Y.); *Welmon v. Chicago Bridge & Iron Co. N.V.*, No. 06 Civ. 1283 (S.D.N.Y.). He has also represented shareholders in matters relating to a stockholder's right to inspect the books and records of a corporation: *Eagle v. Community Health Systems, Inc.*, C.A. No. 7488-VCL (Del. Ch.) and *Stein, et al. v. The McGraw-Hill Companies, Inc.*, Index No. 650349/2013 (N.Y. Sup. Ct.). Mr. Mirarchi also facilitated the return of proceeds to European investors in bankruptcy proceedings and Federal Bureau of Investigation forfeiture actions relating to a multi-national Ponzi scheme in *In re Hartford Investments*, No. 09-17214 (ELF).

Prior to joining the Firm, Mr. Mirarchi was associated with the law firms of Wilson, Elser, Moskowitz, Edelman & Dicker; and Marks, O'Neill, O'Brien & Courtney, where he handled products liability, complex insurance coverage and commercial matters. He was also appointed staff counsel to the AHP Settlement Trust, the entity responsible for administering the class action settlement reached in the *In re Diet Drugs Products Liability Litigation*, MDL No. 1203 (E.D. Pa.).

Mr. Mirarchi is admitted to practice in the State of Pennsylvania and the United States District Court for the Eastern District of Pennsylvania. He is a member of the Philadelphia and Pennsylvania Bar Associations.

**JONATHAN M. JAGHER** concentrates his practice in nationwide class action litigation, specifically antitrust litigation. Recent cases include: *In re Automotive Parts Antitrust Litigation*, MDL No. 2311 (E.D. Mich.); *In re Korean Ramen Antitrust Litigation*, 13-cv-04115 (N.D.Cal.); *In re Lithium Ion Batteries Antitrust Litigation*, 13-MD-2420 (N.D.Cal.); *In re OSB Antitrust Litigation*, Master File No. 06-CV-00826 (E.D.Pa.); *In re Online DVD Rental Antitrust Litigation*, MDL No. 2029 (N.D.Cal.); *In re Processed Eggs Antitrust Litigation*, MDL No. 2002 (E.D.Pa.); and *In re Air Cargo Shipping Services Antitrust Litigation*, MDL No. 1775 (E.D.N.Y.). Prior to joining Spector Roseman Kodroff & Willis, P.C. in 2007, Mr. Jagher was a supervising Assistant District Attorney for the Middlesex District Attorney in Cambridge, Massachusetts. As a prosecutor, he tried approximately forty cases to a jury and conducted numerous investigations. Mr. Jagher was also previously associated with the law firm of Bellotti & Barretto, P.C., in Cambridge, Massachusetts, handling civil litigation.

Mr. Jagher received a B.A. degree *magna cum laude* from Boston University in 1998 and a J.D. degree from Washington University School of Law in 2001. He is currently admitted to practice law in Pennsylvania, Massachusetts, the United States District Court for the District of Massachusetts, the United States District Court for the Eastern District of Pennsylvania and the United States Court of Appeals for the Third Circuit. Mr. Jagher is a member of the Philadelphia Bar Association and the American Bar Association.

#### ASSOCIATES

**RACHEL E. KOPP** focuses her practice in antitrust litigation. She is involved in a number of significant cases, including *In re Domestic Drywall Antitrust Litigation*, No. 13-md-2437 (E.D. Pa.); *In Re Automotive Parts Antitrust Litigation*, No. 2:12-md-02311 (E.D. Mich.); *In Re Blood Reagents Antitrust Litigation*, No. 2:09-md-02081-JD (E.D. Pa.); *In Re: American Express Anti-Steering Rules Antitrust Litigation*, MDL 2221 (E.D.N.Y.); and *In Re Municipal Derivatives Antitrust Litigation*, MDL No. 1950 (S.D.N.Y.). She has also been heavily involved in *In re Parmalat Securities Litigation*, No. 04 Civ. 0030 (LAK) (S.D.N.Y.); *In Re Converium Holding AG Securities Litigation*, No. 04 Civ. 7897 (DLC) (S.D.N.Y.); *Welmon v. Chicago Bridge & Iron Co. N.V.*, No. 06 Civ. 01283 (JES) (S.D.N.Y.); and *In re Pharmaceutical Industry Average Wholesale Price Litigation*, MDL No. 1456 (D. Mass.).

Ms. Kopp has also been actively involved in the Philadelphia and American Philadelphia Bar Associations. Most recently, Ms. Kopp finished serving a three-year term on the Philadelphia Bar Association Board of Governors. Ms. Kopp has also served as the American Bar Association Young Lawyers Division (ABA YLD) liaison to the ABA Standing Committee on Membership; the Membership Director of the ABA YLD, which is comprised of approximately 150,000 young lawyers worldwide; and the ABA YLD's Administrative Director. In recognition of her service to the ABA YLD, Ms. Kopp received a Star of the Year award at the ABA Annual Meetings in 2013, 2012 and 2010.

Ms. Kopp earned her Juris Doctor degree from Villanova University Law School, where she received a Public Interest Summer Fellowship, to serve as a legal intern at New York Volunteer Lawyers for the Arts and VH1 *Save The Music*. She received a B.A. in Government and Politics from the University of Maryland, where she concentrated in languages and studied abroad in Florence, Italy. Ms. Kopp is admitted to practice in Pennsylvania and New Jersey, as well as in the U.S. Court of Appeals for the Third Circuit and the U.S. District Court for the Eastern District of Pennsylvania.

**JEFFREY L. SPECTOR** graduated from the University of Pennsylvania in 2000 with a B.S. in Economics and concentrations in Marketing and Legal Studies. He received his J.D. degree from Temple University in 2007. Prior to attending law school, Mr. Spector worked for the William Morris Agency in New York as a part of its prestigious Agent Training Program.

Mr. Spector is currently participating in *In Re Blood Reagents Antitrust Litigation*, No. 2:09-md-02081-JD (E.D. Pa.); *In re Domestic Drywall Antitrust Litigation*, No. 13-md-2437 (E.D. Pa.); *McDonough, et al. v. Toys "R" Us, Inc. d/b/a Babies "R" Us, et al.*, No. 2:06-cv-00242-AB (E.D. Pa.); *Elliott, et al. v. Toys "R" Us, Inc. d/b/a Babies "R" Us, et al.*, No. 2:09-cv-06151-AB (E.D. Pa.); and *In Re Automotive Parts Antitrust Litigation*, No. 2:12-md-02311 (E.D. Mich.).

Mr. Spector is admitted to practice law in Pennsylvania, New Jersey, and the United States District Courts for the Eastern District of Pennsylvania and the District of New Jersey, and the United States Court of Appeals for the 3rd Circuit. He is currently a member of the American and Philadelphia Bar Associations.

**DIANA ZINSER** focuses her practice on consumer protection and healthcare litigation.

She is involved in a number of cases including *In re Merck Mumps Vaccine Antitrust Litigation*, No 2:12-cv-03555 (E.D. Pa.); *In re Niaspan Antitrust Litigation*, No. 2:13-md-2460 (E.D. Pa.); *In re Suboxone Antitrust Litigation*, (E.D. Pa.), and *Vista Healthplan, Inc. v. Cephalon, Inc. et al.*, C.A. No. 2:06-cv-01833 (E.D. Pa.). Prior to joining SRKW, Ms. Zinser was an attorney with the law firm Kessler Topaz Meltzer & Check, LLC, where she was involved with antitrust and complex consumer litigation.

Ms. Zinser graduated *cum laude* from Saint Joseph's University in 2003 with a B.A. in Political Science and a minor in Economics, where she was a member of the Phi Beta Kappa, Pi Sigma Alpha, and Omicron Delta Epsilon Honor Societies. She earned her J.D. from Temple University Beasley School of Law in 2006. While attending law school, she received a summer fellowship from the Peggy Browning Fund and worked as a legal intern for Sheet Metal Workers Local Union No. 19. Ms. Zinser is admitted to practice law in Pennsylvania and the United States District Court for the Eastern District of Pennsylvania.

**ANDREW DODEMAIDE** focuses on securities fraud class actions. Prior to joining the Firm, Mr. Dodemaide was an associate for Kessler Topaz Meltzer & Check, LLP. In that role, Mr. Dodemaide evaluated potential and newly-filed securities class actions, and helped investors with significant losses obtain leadership status in the most meritorious cases. Directly after law school, Mr. Dodemaide clerked for the Honorable Jack M. Sabatino at the New Jersey Superior Court, Appellate Division.

Mr. Dodemaide graduated *summa cum laude* from Rutgers School of Law - Camden, where he was the Editor-in-Chief of the Rutgers Journal of Law and Public Policy. Mr. Dodemaide received his Bachelor's Degree in Classics from Rutgers University in New Brunswick, graduating *summa cum laude* and Phi Beta Kappa.

Mr. Dodemaide is admitted to practice law in Pennsylvania, New Jersey, and the United States District Court for the Eastern District of Pennsylvania.

**LEN A. FISHER** focused his practice in antitrust litigation. Mr. Fisher graduated from Penn State University in 2012 with a B.S. in Crime, Law and Justice, and received his J.D. degree from Temple University Beasley School of Law in 2015. During law school, he was a member of Asian Pacific American Law Students Association and clerked at two law firms. Prior to joining SRKW, Mr. Fisher was an attorney with the law firm Rawle & Henderson LLP.

Mr. Fisher is admitted to practice law in Pennsylvania, New Jersey, and the United States District Courts for the Eastern District of Pennsylvania. He is currently a member of the Philadelphia Bar Association.

#### **OF COUNSEL**

**THEODORE M. LIEVERMAN** is Of Counsel to the Firm. During his 30 years of practice, he has concentrated on civil litigation and appeals involving complex issues of federal law, including claims under the Labor Management Relations Act, the Racketeer Influenced and

Corrupt Organizations Act (RICO), federal civil rights statutes, constitutional law, the Employee Retirement Income Security Act (ERISA), the Labor-Management Reporting and Disclosure Act (LMRDA), and antitrust statutes. He has tried numerous cases to judges, juries, and administrative judges.

Mr. Lieverman was co-lead counsel in *In re TriCor Antitrust Litigation*, C.A. No. 05-360 (D. Del.) (settled for \$65.7 million to end-payor class, plus settlement for opt-out health insurers); *In re Relafen Antitrust Litigation*, C.A. No. 01-12239 (D. Mass.) (settled for \$75 million to end-payors); *Cement Masons Local 699 Health & Welfare Fund v. Mylan Laboratories*, Docket No. MER-L-000431-99 (N.J. Super. L.) (part of a \$147 million nationwide settlement); and lead counsel in *Penn Federation BMW v. Norfolk Southern Corp.*, C.A. No. 02-9049 (E.D. Pa.) (settled for changes in the 401(k) plan and \$1 million to plan participants). In 2001, he was asked to file an amicus brief on behalf of a number of distinguished historians in the important copyright case of *New York Times Co. v. Tasini*, 533 U.S. 483 (2001). He also litigated one of the leading case on the use of labor-management cooperation programs in unionized workplaces. *E.I. duPont deNemours & Co.*, 311 NLRB No. 88 (1993).

He is admitted to practice in Pennsylvania, New Jersey and Massachusetts; the United States Supreme Court; United States Courts of Appeals for the Second, Third, Eleventh, D.C. and Federal Circuits; and the United States District Courts for the Eastern and Middle Districts of Pennsylvania, the District of New Jersey, the Eastern District of Michigan and the Southern District of New York. He earned a B.A. with general and departmental honors in History from Vassar College and a J.D. degree from Northeastern University Law School.

Mr. Lieverman has lectured on various legal issues to lawyers and union officials and has been an adjunct professor of law at Rutgers Law School-Camden. In 2011, he participated in the Fulbright Specialists Program by lecturing on electoral reform and U.S. constitutional law at the Faculty of Law, University of Belgrade, Serbia. He also served as an adjunct Professor at the Faculty of Law, Vytautas Magnus University, Kaunas, Lithuania.

**JAMES McGOVERN** is Of Counsel to the Firm and works primarily with the Firm's international and domestic securities group. Mr. McGovern concentrates his practice on investor protection issues. In this capacity, Mr. McGovern works closely with SRKW's institutional investor clients, including numerous state, county, and city public pension funds, Taft-Hartley funds and asset managers, to help ensure that their investment interests are adequately protected from the risks associated with corporate fraud and poor corporate governance.

Mr. McGovern co-authored two articles on issues related to bankruptcy filings: *Special Issues In Partnership and Limited Liability Company Bankruptcies* and *When Things Go Bad: The Ramifications of a Bankruptcy Filing*.

Mr. McGovern received his law degree from Georgetown University Law Center (J.D. *magna cum laude* 2002) where he graduated with high honors and was selected for the Order of the Coif. Prior to law school, he attended American University where he received a Presidential Scholarship and graduated with high honors (B.A. International Studies *magna cum laude* 1994)

and (M.B.A. Finance *summa cum laude* 1998).

Mr. McGovern is admitted to practice law in Maryland and Washington, D.C.

**MARK BOGEN**, is Of Counsel to the Firm and concentrates his practice on securities and consumer class actions. Mr. Bogen has been involved in many successful securities, consumer and antitrust class actions. He has also served as a panelist and guest speaker on numerous panels at institutional investor conferences, discussing the importance of instituting corporate governance measures as part of the resolution of a class action case.

During the past 15 years, Mr. Bogen has written two weekly legal columns for the *Sun-Sentinel* newspaper, a *Chicago Tribune* subsidiary. In addition to writing these two weekly legal columns, Mr. Bogen also appeared on the local NBC affiliate in Florida as a legal consultant. Besides his involvement in class action law, Mr. Bogen has been legal counsel to the American Association of Professional Athletes, an association of over 4000 retired professional athletes. He has also served as an Assistant State Attorney and as a Special Assistant to the State Attorney's office in the State of Florida.

Mr. Bogen graduated from the University of Illinois with a B.S. in Political Science (1980) and earned his law degree from Loyola University in Chicago (J.D. 1983). Mr. Bogen is based in Boca Raton, Florida, and has been admitted to practice law in Illinois (1983) and Florida (1991).

**DAN MAGUIRE** is Of Counsel to the Firm and concentrates his practice with the Firms' international and domestic securities group. Mr. Maguire bases his practice in California and focuses on investor protection issues. In this capacity, Mr. Maguire works closely with SRKW's public pension clients and Taft-Hartley funds in California. Mr. Maguire's aim is to assist the fiduciaries for these funds to help ensure that their investments are adequately monitored and protected from the risks associated with corporate fraud and poor corporate governance.

For 30-years prior to joining SRKW, Mr. Maguire was the general counsel for the San Francisco Employees Retirement System ("SFERS"), a charter-based public pension plan. As general counsel for SFERS, Mr. Maguire worked with outside counsel on several well-known securities fraud class action cases as well as successful "opt-out" cases. While at SFERS, Mr. Maguire developed policies for portfolio monitoring, claims evaluation and securities litigation. Mr. Maguire also has an active civil litigation practice, with a specialty in products liability and risk management for self-insureds, which is unrelated to SRKW.

Mr. Maguire graduated from the University of San Francisco with a B.S. in History (1968) and earned his law degree from the University of San Francisco (J.D. 1973). Mr. Maguire is based in San Francisco and had been admitted to practice law in California (1973).

**MARY ANN GEPPERT** graduated *cum laude* from St. Joseph's University in 2000, with a B.S. degree in Finance. She received her Juris Doctor degree from the Widener University School of Law in 2003, where she served as the Articles Editor of the Widener Law Symposium Journal. She also was a legal intern for the Honorable James J. Fitzgerald of the Philadelphia

Court of Common Pleas.

Among the cases in which Ms. Geppert has participated are *In re Google Inc. Street View Electronic Communications Litigation*, C.A. No. 5:10-md-02184 (N.D. Cal.); *Vista Healthplan, Inc. v. Cephalon, Inc. et al.*, C.A. No. 2:06-cv-01833 (E.D. Pa.); and *In re Merck Mumps Vaccine Antitrust Litigation*, C.A. No. 2:12-cv-03555 (E.D. Pa.).

Ms. Geppert is currently admitted to practice law in Pennsylvania, New Jersey, the United States District Court for the Eastern District of Pennsylvania, and the United States District Court for the District of New Jersey. Ms. Geppert was named as a Pennsylvania Rising Star by *Philadelphia Magazine* in 2010 and 2013.

# **EXHIBIT J**

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

IN RE: NATIONAL FOOTBALL  
LEAGUE PLAYERS' CONCUSSION  
INJURY LITIGATION

Kevin Turner and Shawn Wooden,  
*on behalf of themselves and  
others similarly situated,*

Plaintiffs,

v.

National Football League and  
NFL Properties LLC,  
successor-in-interest to  
NFL Properties, Inc.,

Defendants.

THIS DOCUMENT RELATES TO:  
ALL ACTIONS

No. 2:12-md-02323-AB

MDL No. 2323

**Hon. Anita B. Brody**

Civ. Action No. 14-00029-AB

**DECLARATION OF LEONARD A. DAVIS IN SUPPORT OF CO-LEAD CLASS  
COUNSEL'S PETITION FOR AN AWARD OF ATTORNEY'S FEES AND  
REIMBURSEMENT OF COSTS AND EXPENSES**

LEONARD A. DAVIS declares as follows pursuant to 28 U.S.C. § 1746:

1. I am a partner of the law firm of Herman, Herman & Katz, LLC ("HHK"). I submit this declaration in support of Co-Lead Class Counsel's Petition for an Award of Attorney's Fees and Reimbursement of Costs and Expenses in connection with and for services rendered and expenses incurred for the common benefit of the Settlement Class in the above-captioned multidistrict litigation ("Action") from the inception of the litigation through July 15, 2016, as well as for the payment of expenses incurred therewith. I have personal knowledge of

the matters set forth in this declaration and, if called upon, I could and would testify competently thereto.

2. HHK, at the request of and as directed by Co-Lead Counsel, Chris Seeger, actively participated in common benefit litigation matters against the NFL parties. The time and expense incurred by HHK specifically dealt with research, assessment, analysis and expert specific issues relating to head and brain injuries. Research and preparation of materials applicable to the cause and treatment of concussions was provided by HHK which assisted in the development of the terms and conditions of the settlement. Furthermore, HHK attended specific brain injury conferences and provided input as to the terms and conditions outlined in the settlement document. HHK also participated in preparation of the "road show" that was intended to educate potential class members regarding the settlement and the terms and conditions of the settlement program. Meetings and conferences also took place with Co-Lead Counsel, as well as members of the Levin Fishbein law firm to assist in the litigation. Partner, Leonard Davis, and of counsel MB/JD, Joseph Kott, primarily participated for HHK. Joseph Kott brought the experience of over 20 years of practicing neurosurgery prior to becoming of counsel at HHK (of which he has been associated approximately 20 years) to the common benefit efforts that were contributed to the litigation.

3. The schedule attached hereto as Exhibit 1 is a detailed summary indicating the amount of common benefit time spent by the attorneys and professional support staff of my firm who were involved in this Action, and the lodestar calculation for those individuals based on my firm's current billing rates. For personnel who are no longer employed by my firm, the lodestar calculation is based on the billing rates of such personnel in their final year of employment by my firm. The schedule was prepared from contemporaneous daily time records regularly

prepared and maintained by my firm. Time expended in preparing this application for attorney's fees and expenses has been excluded.

4. The hourly rates for the attorneys and professional support staff of my firm included in Exhibit 1 are the same as the regular rates charged for their services in other contingent matters and have been accepted by other federal courts in other class action cases prosecuted by my firm. The overwhelming majority of HHK's work is done on a percentage basis, whether by contingency fee contract or as may be approved by the Court in a common benefit case. In some cases, there may be an hourly measure, which is cross-checked against a percentage or reasonableness, (and/or for allocation purposes, recognizing the relative contribution of the firms participating in a collective fee award), but the ultimate "hourly rates" vary widely, and are generally unknown at the commencement of the litigation. Accordingly, the rates submitted herein are a good faith effort to attempt to put some reasonable value on our time, based on the specific nature of the case, where and how and by whom the case was litigated, our general role and responsibilities in the case, the guaranteed hourly rates that may have been paid to defense counsel, and other relevant factors and circumstances.

5. The total number of hours expended on the common benefit of this Action by my firm during the time period is 136.3 hours. The total lodestar attorney time for my firm is \$89,660.00.

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

7. My firm is seeking reimbursement of a total of \$0 in common benefit expenses incurred in connection with the prosecution of this Action.

8. With respect to the standing of my firm to share in an award of fees, costs, and expenses, attached hereto as Exhibit 2 is a biography the attorneys in my firm who were principally involved in this Action. A full biography of HHK can be obtained at my firm's website located at [www.hhklawfirm.com](http://www.hhklawfirm.com).

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

Executed on January 9, 2017, at New Orleans, Louisiana.

  
\_\_\_\_\_  
Leonard A. Davis

# **EXHIBIT 1**

**IN RE: NATIONAL FOOTBALL LEAGUE PLAYERS' CONCUSSION INJURY  
LITIGATION**

**No. 12-md-2323-AB**

**HERMAN, HERMAN & KATZ**

**LODESTAR REPORT**

**Inception through July 15, 2016**

<b>NAME</b>	<b>HOURS</b>	<b>HOURLY RATE</b>	<b>AMOUNT</b>
<b>PARTNERS:</b>			
<b>Leonard A. Davis</b>	39.4	\$800	\$31,520
<b>ASSOCIATES:</b>			
<b>STAFF ATTORNEYS:</b>			
<b>OF COUNSEL ATTORNEYS:</b>			
<b>Joe Kott</b>	96.9	\$600	\$58,140
<b>PARALEGALS:</b>			
<b>TOTALS:</b>	136.30		\$89,660

# **EXHIBIT 2**



## Leonard A. Davis

### Partner

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Tulane University School of Law

J.D. 1984

University of Texas at Austin

B.A. 1981

**Practice Areas:** Complex Multi-District Litigation; Class Actions; Products Liability; Property Damage; Corporate Law; Personal Injury; Wrongful Death; Business and Commercial Law; Railroad Crossing and Derailment Litigation.

**Court Admissions:** Louisiana; U.S.D.C. Eastern, Middle and Western Districts of Louisiana; and U.S. Fifth Circuit Court of Appeals.

**Memberships:** Louisiana State Bar Association; Louisiana Association for Justice; New Orleans Bar Association; Federal Bar Association; American Bar Association (Member, Business Law Section); American Association for Justice; Mass Tort Trial Lawyers Association.

**Court Appointments:** MDL-2047 *In Re: Chinese-Manufactured Drywall Products Liability Litigation* Already Remediated Homes Committee; MDL-2243 *In Re: Fosamax (Alendronate Sodium) Products Liability Litigation (No. II)* Plaintiffs' Steering Committee; MDL-2197 *In Re: DePuy Orthopaedics, Inc. ASR Hip Implant Products* Plaintiffs' Steering Committee; MDL 2436 *In Re: Tylenol (Acetaminophen) Marketing, Sales Practices and Products Liability Litigation* Plaintiffs' Steering Committee.

**Published Works:** "Handling Railroad Grade Crossing Cases," *Trial Magazine*, November 1999. "Chinese Drywall Settlements Claims-Filing Deadline is August 26, 2013," *Louisiana Advocates* (August 2013).

**Recognitions:** *Best Lawyers in America*, 2010-present. Best Lawyers 2017 Lawyer of the Year, Mass Tort Litigation/Class Actions – Plaintiffs. *Louisiana Super Lawyers*, 2009-2017; AV Peer Review Rated by *Martindale-Hubbell*; *Benchmark Litigation*, 2013; *City Business* Leadership in Law Award, 2010. *Law Dragon* Leading Lawyers in America, 2007; *Legal 500*, 2008-2009; *New Orleans Magazine's* Top Lawyers of 2013; 2013 Top Rated

Lawyer in Mass Torts Law by American Lawyer Media and Martindale-Hubbell.

**Presentations:**

“Problems in Discovery, Railroad Litigation,” ATLA Annual Convention – Chicago 1994; “Using Mock Juries, Consultants & Focus Groups,” ATLA Annual Convention - New York 1995; “Expanding Your Practice: Business Litigation Skills,” March 1995; “Discovering the Railroad and Dealing with its Discovery Abuses,” ATLA Annual Convention - New Orleans 1996; “Discovery Checklist for a Business/Corporate Litigation Matter,” ATLA Annual Convention - Boston 1996; “Discovery of the Railroad,” ATLA Annual Convention - Boston 1996; “The Right to Discover Trade Secrets,” August 1996; “Experts in a Railroad Crossing Case,” ATLA Annual Convention - San Diego 1997; “Discovering the Corporate Insides of the Railroad,” ATLA Annual Convention - San Diego 1997; “The Opening Statement - Using It In Railroad Cases to Maximize the Plaintiff’s Advantage,” ATLA Annual Convention - Washington, D.C. 1998; “Demonstrative Evidence from Cheap to Expensive,” ATLA Annual Convention - San Francisco 1999; “Technology for the Trial Lawyer: Cutting Costs and the Cutting Edge,” ATLA National College of Advocacy - Washington, D.C. 1999; “Scott v. Philip Morris, Inc. and the Fate of Medical Monitoring Claims,” Andrews Tobacco Litigation 2000; “Hot Topics in Discovering the Inside of the Corporate Railroad,” ATLA Annual Convention – Chicago 2000; “Dealing with 23 USC 409 Issues,” ATLA Annual Convention – Montreal 2001; “Propulsid Litigation,” ATLA Annual Convention – Montreal 2001; “Discovery and Evidentiary Issues Dealing with Electronic Evidence,” 13th Annual Advanced Computer & Cyberspace Law CLE Program, University of Dayton Law School – June 2002; “Collaboration for Litigation Groups and Mass Torts,” ATLA Annual Convention – Atlanta 2002; “Efficient Discovery Through Use of Technology,” ATLA Annual Convention – Atlanta 2002. Invited attendee to The Judicial Conference Advisory Committee on the Federal Rules of Civil Procedure Conference on Electronic Discovery, February 20, 2004. “Practical Electronic Discovery,” Fear Factor Seminar, October 13, 2006. “Preparing Your Settlement Package,” Mealey’s Vioxx Settlement Conference, December 10, 2007. “Alternative Dispute Resolution,” NBI, Handling the Auto Injury Claim, February, 21, 2008. “Disaster Preparedness – Katrina: How a Law Practice Survived,” San Diego Chapter of the American Academy of Matrimonial Lawyers, April 12, 2008. “Demonstrative Evidence,” NBI, Litigating to Win Through Advanced Trial Advocacy, April 25, 2008. “Handling Catastrophic Disaster Claims” AAJ Annual Winter Convention, Miami Beach Florida, October 1, 2008. “Preparing for the Rule 26(F) Conference,” NBI, E-Discovery Now What, December 16, 2008. “The Purpose, Procedure & Strategy of Discovery,” National Business Institute, December 17, 2010. “Motions for Sanctions,” Louisiana State Bar Association, March 25, 2011. “A Paperless World? Documentary Discovery in an MDL Proceeding,” Harris

Martin's MDL Conference, September 26, 2011. "The Case Against Taishan/Taihe" Harris Martin Chinese Drywall Conference, October 20, 2011. "Motions for Sanctions," Louisiana State Bar Association Motion Practice CLE, December 20, 2011. "Mass Torts Quick Hits - You Gotta Know When to Hold 'Em, When to Fold 'Em: Chinese Drywall," Mass Torts Made Perfect, April 20, 2012. Eastern District of Louisiana: The Nation's MDL Laboratory – A Symposium Presented by The Louisiana Law Review, March 22, 2013. "Making the Numbers Sing," 2013 LSBA Jazz Fest Seminar – Spice Up Your Trial, April 26, 2013. "Dealing With China: Lessons Learned From Chinese Drywall Litigation," Harris Martin Lumber Liquidators Flooring Litigation Conference, May 17, 2015. New Orleans Bar Association's Procrastinators' Programs – Ethics, December 16, 2015.

**Reported Cases:**

Haney v. Delta Petroleum Co., Inc., 811 So.2d 1200 (La. App. 4 Cir. Mar 06, 2002); Haney v. Delta Petroleum, Co., 748 So. 2d 36 (La.App. 4 Cir. 1999); Leiching v. Conrail, 1997 U.S. Dist. LEXIS 3561; Gottsegen v. Diagnostic Imaging Svcs., 672 So. 2d 940 (La. App. 5 Cir. 1996); Ellvog, Inc. v. Schnadelbach, 661 So. 2d 1062 (La. App. 4 Cir. 1995); Sanders v. Wysocki, 631 So. 2d 1330 (La. App. 4 Cir. 1994); Stephens Imports, Inc. v. Abraham, 557 So.2d 467 (La.App. 4 Cir. Feb 15, 1990); Shames v. City of San Diego, Superior Court for the State of California for the County of San Diego, No. GIC 831539; In re: Chinese Drywall MDL-2047; In re: Vioxx MDL-1657; In re: Propulsid MDL-1355; In re: Rezulin MDL-1348; In Re: Fosamax (Alendronate Sodium) Products Liability Litigation (No. II), MDL-2243; In Re: DePuy Orthopaedics, Inc. ASR Hip Implant Products, MDL-2197.

**Professional Bio:**

Leonard A. Davis is a partner of Herman, Herman & Katz, L.L.C, as well as the national firm of Herman Gerel, LLP, headquartered in Atlanta, Georgia. After receiving his B.A. from the University Texas at Austin, Mr. Davis attended Tulane University School of Law where he received his Juris Doctorate in 1984. Mr. Davis' practice includes corporate law, commercial litigation, complex business litigation, multi-district litigation, mass torts, class actions and railroad crossing matters. He is an AV-rated attorney with *Martindale-Hubbell*. Mr. Davis is a member of the Louisiana State Bar Association, New Orleans Bar Association, Federal Bar Association, American Bar Association (Member of the Business Law Section), American Association for Justice, The Mass Tort Lawyers Association and the Louisiana Association for Justice. He is also a member of the Million Dollar Advocates Forum. He has written articles on railroad litigation for several publications, including *Trial Magazine*, and spoken at numerous seminars. He is an Adjunct Assistant Professor of Law at Tulane Law School. Mr. Davis is active in the community and serves on or has served on several boards of the New Orleans Museum of Art, Louisiana Children's Museum, Jewish Endowment Foundation, Tulane University Medical Center Chancellor's Advisory Council, the Anti-

Defamation League, New Orleans Music Legends and numerous other charitable and non-profit organizations.



## Joseph A. Kott, M.D. Attorney

---

Loyola University School of Law  
J.D. 1996

Louisiana State University School of Medicine  
Neurosurgery Residency 1981  
M.D. 1975

Tulane University  
B.S. 1970

E-mail: [jkott@hhklawfirm.com](mailto:jkott@hhklawfirm.com)

***Practice Areas:***

Medical Negligence, Personal Injury, Wrongful Death, Pharmaceutical Litigation, Medical Products Litigation

***Bar and Court Admissions:***

Louisiana; U.S.D.C. Eastern District of Louisiana; Fifth Circuit Court of Appeals; Louisiana Supreme Court

***Professional and Civic Activities:***

- Louisiana State Bar Association
- American Association for Justice
- Louisiana Association for Justice
- Louisiana State Medical Society
- Jefferson Parish Medical Society
- The American Board of Neurological Surgery
- American College of Surgeons

***Honors and Awards:***

- Diplomate of the American Board of Professional Liability Attorneys with special competence in the area of Medical Professional Liability.
- *Louisiana Super Lawyers*, 2016-2017

***Professional Bio:***

Dr. Joseph A. Kott is of counsel with Herman, Herman & Katz, L.L.C. Dr. Kott received his Juris Doctorate from Loyola University School of Law in 1996. He graduated with a B.S. degree from Tulane University in 1970, with a major in Psychology. Following graduation from Tulane University, he attended Louisiana State University School of Medicine and received his M.D. in 1975. After completing his neurosurgical residency at Louisiana State University Charity Hospital Department of Neurosurgery in 1981, Dr. Kott became board certified in neurosurgery

in 1983 and maintained an extensive neurosurgical practice until his retirement in 1997.

Dr. Kott now practices as a trial lawyer in the area of medical negligence and medical products liability litigation. He is a member of the Louisiana State Bar Association, the Louisiana Association for Justice, the American Association for Justice, Louisiana State Medical Society, Jefferson Parish Medical Society, The American Board of Neurological Surgery and the American College of Surgeons.



# **EXHIBIT K**

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

IN RE: NATIONAL FOOTBALL  
LEAGUE PLAYERS' CONCUSSION  
INJURY LITIGATION

No. 2:12-md-02323-AB

MDL No. 2323

**Hon. Anita B. Brody**

Kevin Turner and Shawn Wooden,  
*on behalf of themselves and  
others similarly situated,*

Civ. Action No. 14-00029-AB

Plaintiffs,

v.

National Football League and  
NFL Properties LLC,  
successor-in-interest to  
NFL Properties, Inc.,

Defendants.

THIS DOCUMENT RELATES TO:  
ALL ACTIONS

**DECLARATION OF JAMES R. DUGAN, II IN SUPPORT OF CO-LEAD CLASS  
COUNSEL'S PETITION FOR AN AWARD OF ATTORNEY'S FEES AND  
REIMBURSEMENT OF COSTS AND EXPENSES**

James R. Dugan, II declares as follows pursuant to 28 U.S.C. § 1746:

1. I am the owner of The Dugan Law Firm. I submit this declaration in support of Co-Lead Class Counsel's Petition for an Award of Attorney's Fees and Reimbursement of Costs and Expenses in connection with and for services rendered and expenses incurred for the common benefit of the Settlement Class in the above-captioned multidistrict litigation ("Action") from the inception of the litigation through July 15, 2016, as well as for the payment of expenses

incurred therewith. I have personal knowledge of the matters set forth in this declaration and, if called upon, I could and would testify competently thereto.

2. During the course of this litigation, The Dugan Law Firm was appointed to the Plaintiffs' Steering Committee and worked on every facet of this case including but not limited to the discovery, preemption and Riddell Committees.

3. The schedule attached hereto as Exhibit 1 is a detailed summary indicating the amount of common benefit time spent by the attorneys and professional support staff of my firm who were involved in this case and the lodestar calculation for those individuals based on my firm's current billing rates. For personnel who are no longer employed by my firm, the lodestar calculation is based on the billing rates of such personnel in their final year of employment by my firm. The schedule was prepared from contemporaneous daily time records regularly prepared and maintained by my firm. Time expended in preparing this application for attorney's fees and expenses has been excluded.

4. The hourly rates for the attorneys and professional support staff of my firm included in Exhibit 1 are the same as they charge for non-contingent work that is paid on an hourly basis, or for rates paid to attorneys of comparable experience and reputation in the relevant legal market. The hourly rates for my firm's partners, associate attorneys and professional support staff are the usual and customary hourly rates charged for these professionals' services in similar complex litigations and have been accepted as recently as September 29, 2016, in the Prograf case MDL 2242 USDC District of Massachusetts, Honorable Zobel presiding and by other federal courts in other class action cases prosecuted by my firm.

5. The total number of hours expended on the common benefit of this Action by my firm during the time period is 293.9 hours. The total lodestar for my firm for those hours is

\$188,340.50 consisting of \$795.00 for partner's time, \$695.00 for associate attorneys' time and \$395.00 for staff attorneys' time.

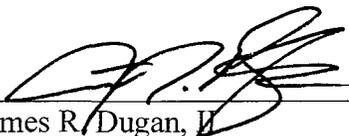
6. My firm's lodestar figures are based solely upon my firm's billing rates, which rates do not include charges for expense items. Expense items are billed separately and such charges are not duplicated in my firm's billing rates.

7. As detailed in Exhibit 2 hereto, my firm is seeking reimbursement of a total of \$118,880.16 in common benefit expenses incurred in connection with the prosecution of this Action. These expenses are reflected on the books and records of my firm. These books and records are prepared from expense vouchers, check records, and other source material, and are an accurate record of the expenses incurred.

8. With respect to the standing of my firm to share in an award of fees, costs, and expenses, attached hereto as Exhibit 3 is a biography of my firm.

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

Executed on January 9, 2017, at New Orleans, Louisiana.

  
James R. Dugan, II

# **EXHIBIT 1**

**IN RE: NATIONAL FOOTBALL LEAGUE PLAYERS' CONCUSSION INJURY  
LITIGATION**

**No. 12-md-2323-AB**

**The Dugan Law Firm**

**Exhibit 1**

**LODESTAR REPORT**

**Inception through July 15, 2016**

<b>NAME</b>	<b>HOURS</b>	<b>HOURLY RATE</b>	<b>AMOUNT</b>
<b>PARTNERS:</b>			
<b>James Dugan</b>	176.50	795.00	\$140,317.50
<b>ASSOCIATES:</b>			
<b>Douglas Plymale, PhD</b>	5.50	\$695.00	\$3,822.50
<b>STAFF ATTORNEYS:</b>			
<b>David Franco</b>	104.60	\$395.00	\$41,317.00
<b>Chad Primeaux</b>	7.30	\$395.00	\$2,883.50
<b>TOTALS:</b>	<b>293.90</b>		<b>\$188,340.50</b>

# **EXHIBIT 2**

**IN RE: NATIONAL FOOTBALL LEAGUE PLAYERS' CONCUSSION INJURY  
LITIGATION**

**No. 12-md-2323-AB**

**Dugan Law Firm**

**Exhibit 2**

**COST AND EXPENSE REPORT**

**Inception through July 15, 2016**

<b>NUMBER</b>	<b>CATEGORY</b>	<b>AMOUNT</b>
1	Assessments	100,000.00
2	Commercial Copies	390.77
3	Computerized Research	341.21
4	Court Reporters/Transcripts	
5	Expert Services	
6	Facsimile	
7	Filing & Service Fees	350.00
8	In-House Copies	
9	Long Distance Telephone	
10	Postage/Express Delivery	14.08
11	Travel/Meals/Lodging	17,761.12
12	Miscellaneous	22.98
<b>TOTAL EXPENSES</b>		<b>118,880.16</b>

# **EXHIBIT 3**

**THE DUGAN LAW FIRM, APLC**  
One Canal Place, 365 Canal Street, Suite 1000  
New Orleans, Louisiana 70130  
Ph (504) 648-0180 | Fax (504) 648-0181

JAMES R. DUGAN, II, Esq.  
Email: [jdugan@dugan-lawfirm.com](mailto:jdugan@dugan-lawfirm.com)

James R. Dugan, II, is the founding partner of The Dugan Law Firm, APLC. Mr. Dugan began his career working with the late Wendell H. Gauthier and the Law Firm of Gauthier, Downing, LaBarre, Beiser & Dean in the areas of class action, mass tort, and complex litigation, beginning with the seminal class action lawsuit filed against the tobacco industry on the basis of nicotine addiction, *Castano v. American Tobacco, et al.* which resulted in a multi-billion settlement. After Mr. Gauthier's untimely death in December of 2001, Mr. Dugan formed the Dugan & Browne Law Firm, the predecessor to The Dugan Law Firm and he continues to specialize in class action and mass tort litigation.

Over the years, Mr. Dugan has specialized in the area of complex litigation representing numerous consumers and third party-payors, including Blue Cross of Louisiana and other health insurers in cases against the manufacturers of Synthroid, Fen-Phen, Rezulin, Neurontin, Vioxx, Zyprexa, Bextra/Celebrex, Oxycontin, Ketek, Effexor, Prograf, Skelaxin, Nexium, and Suboxone. Mr. Dugan also represented the Louisiana Attorney General in the Synthroid, Baycol, Rezulin, Vioxx, and Ketek litigations to recoup medical costs the state Medicaid program expended over these drugs.

As a result of his demonstrated skill and experience in class action and mass tort practice, Mr. Dugan has been appointed by the court to serve in key leadership positions in a number of large national federal court class action cases including:

1. **In Re: Synthroid Marketing Litigation, (MDL No. 1182)** (1997-2004) USDC for the Northern District of Illinois, Eastern Division, Judge Elaine E. Bucklo. Co-Lead Counsel for a class of third party-payers. Settlement: \$45,000,000.00
2. **In Re: Diet Drugs Litigation, (MDL No. 1203)** (1997-2002) USDC for the Eastern District of Pennsylvania, Judge Lewis C. Bechtle. Co-Lead Counsel for a large group of individually represented third-party payors. Settlement: \$35,000,000.00
3. **In Re: Propulsid Litigation, (MDL No. 1355)** (2000-Present) USDC for the Eastern District of Louisiana, Judge Eldon Fallon. Member: Plaintiffs' Steering Committee. Settlement: \$90,000,000.00
4. **In Re: Rezulin Products Liability Litigation, (MDL No. 1348)** (2000-2008) USDC for the Southern District of New York, Judge Lewis A. Kaplan. Mr. Dugan was appointed by the court as Liaison Counsel to a class of Health Benefit Providers. Settlement: \$22,500,000.00
5. **In Re: Industrial Life Insurance Litigation, (MDL No. 1371)** (2000-2007) USDC for the Eastern District of Louisiana, Judge Martin L.C. Feldman, presiding. Member: Plaintiffs' Executive Committee. Settlement: \$50,000,000.00
6. **In Re: Inter-Op Hip Prosthesis Product Liability Litigation, (MDL No. 1401)** (2001-2008) USDC for the Northern District of Ohio, Eastern Division, Judge Kathleen O'Malley. Member: Plaintiffs' Steering Committee. Settlement: \$1,200,000,000.00
7. **In Re: Baycol Products Liability Litigation, (MDL No. 1431)** (2001-2007) USDC for the District of Minnesota, Judge Michael Davis. Member: Plaintiffs' Steering Committee. Settlement: 1,000,000,000.00
8. **In Re: Meridia Products Liability Litigation, (MDL No. 1481)** (2002-2006) USDC for the Northern District of Ohio, Judge James S. Gwin. Member: Plaintiffs' Steering Committee.
9. **In Re: Serzone Products Liability Litigation, (MDL No. 1477)** (2002-2007) USDC for the Southern District of West Virginia, Judge Joseph R. Goodwin. Member: Plaintiffs' Steering Committee. Settlement: \$90,000,000.00
10. **In Re: Neurontin Marketing & Sales Practices Litigation, (MDL No. 1629)** (2004-Present) USDC for the District of Massachusetts, Judge Patti B. Saris. Member: Plaintiffs' Steering Committee. Settlement: \$325,000,000.00
11. **In Re: Vioxx Products Liability Litigation, (MDL No. 1657)** (2005-Present) USDC for the Eastern District of Louisiana, Judge Fallon, Magistrate Judge Knowles. Member: Co-Chair Purchase Claims Committee. Settlement: \$80,000,000.00
12. **In Re: Zyprexa Marketing and Sales Practices Litigation, (MDL No. 1596)** (2005-Present) USDC for the Eastern District of New York, Judge Weinstein and Magistrate Judge Chrein. Member: Co-Lead Counsel for the Purchase Claims. Settlement: \$4,500,000.00

13. **In Re: Bextra and Celebrex Marketing and Sales Practices and Products Liability Litigation, (MDL No. 1699)** (2006-2010) USDC for the Northern District of California, Judge Breyer. Member: Purchase Claims Committee. Settlement: \$89,000,000.00
14. **In Re: Fosamax Product Liability Litigation, (MDL No. 1789)** (2006-Present) USDC for the Southern District of New York, Judge Keenan. Member: Plaintiffs' Steering Committee.
15. **In Re: Oxycontin Marketing and Sales Practices Litigation** (2007-2009) USDC for the Southern District of New York, Judge Koel. Co-lead counsel for third-party payors. Settlement: \$20,000,000.00
16. **In Re: Ketek Marketing and Sales Practices Litigation** (2008-Present) USDC for the Eastern District of New York, Judge Townes. Co-lead Counsel for third-party payors.
17. **In Re: Vytorin Marketing, Sales Practice, and Products Liability, (MDL No. 1938)** (2008-2010) USDC for the District of New Jersey, Judge Dennis M. Cavanaugh. Member: Plaintiffs' Steering Committee. Settlement: \$45,000,000.00
18. **In Re: Actimmune Product Liability Litigation, (08-CV-3797-MHP)** (2009-Present) USDC for the Northern District of California, Judge Marilyn H. Patel. Member: Plaintiffs' Steering Committee.
19. **In re: Light Cigarettes Marketing and Sales Practices Litigation, (MDL No. 2068)** (2009-Present) USDC for the District of Maine, Judge John Woodcock Jr. Member: Plaintiffs' Steering Committee.
20. **In Re: Celexa/Lexapro Product Liability Litigation, (MDL 2067)** (2009-Present) USDC for the District of Massachusetts, Judge Nathaniel M. Gorton. Lead Counsel for the third-party payors.
21. **In Re: Fosamax Femur Litigation, (MDL No. 2243)** (2011–Present) USDC for the District of New Jersey, Judge Joel A. Pisano. Member: Plaintiffs' Steering Committee.
22. **In Re: Effexor Antitrust Litigation** (11-CV-05590) (2011-Present) USDC for the District of New Jersey, Judge Joel A. Pisano. Member: Executive Committee for Indirect Purchasers.
23. **In Re: Prograf Antitrust Litigation, (MDL No. 2242)** (2011-Present) USDC for District of Massachusetts, Judge Rya W. Zobel. Member: Co-Lead Counsel for Indirect Purchasers.
24. **In Re: National Football Players' Concussion Injury, (MDL No. 2323)** (2012–Present), USDC for the Eastern District of Pennsylvania, Judge Anita Brody. Member: Plaintiffs' Steering Committee. Settlement: Uncapped class action settlement pending court approval.

25. **In Re: Skelaxin (Metaxalone) Antitrust Litigation, (MDL No. 2343)** (2012-Present), USDC for the Eastern District of Tennessee, Judge Curtis L. Collier. Member: Plaintiffs' Executive Committee for Indirect Purchasers. Settlement: \$4,000,000.00
26. **In Re: Pradaxa (Dabigatran Etxilate) Products Liability Litigation, (MDL No. 2385)** (2012-Present), USDC for Southern District of Illinois, Judge David R. Herndon. Member: Plaintiffs' Steering Committee. Settlement: \$650,000,000.00
27. **In Re: Nexium (Esomeprazole) Antitrust Litigation, (MDL No. 2409)** (2012-Present), USDC for the District of Massachusetts, Judge William G. Young. Member: Plaintiffs' Executive Committee for Indirect Purchasers.
28. **In Re: Fresenius Granuflo/Naturalite Dialysate Products Liability Litigation, (MDL No. 2428)** (2013-Present) USDC for the District of Massachusetts, Judge Douglas P. Woodlock. Member: Plaintiffs' Steering Committee.
29. **In Re: Suboxone (Buprenorphine Hydrochloride and Naloxone) Antitrust Litigation, (MDL No. 2445)** (2013–Present), USDC for the Eastern District of Pennsylvania, Judge Mitchell S. Goldberg. Member: Plaintiffs' Executive Committee for Indirect Purchasers.
30. **In Re: Niaspan Antitrust Litigation, (MDL No. 2460)** (2013-Present). USDC for the Eastern District of Pennsylvania, Judge Jan E. DuBois. Member: Plaintiffs' Executive Committee for Indirect Purchasers.
31. **In Re: Lidoderm Antitrust Litigation, (MDL No. 2521)** (2014-Present). USDC for the Northern District of California, Judge William H. Orrick. Member: Plaintiffs' Executive Committee for Indirect Purchasers.
32. **In Re: National Collegiate Athletic Association Student-Athlete Concussion Litigation, (MDL No. 2492)** (2014–Present), USDC for the Northern District of Illinois, Judge John Z. Lee. Member: Plaintiffs' Steering Committee. Settlement: \$75,000,000.00 class action medical monitoring settlement pending court approval.
33. **In Re: Avandia Sales & Marketing Litigation (MDL No. 1871)** (2015 – Present), USDC for the Eastern District of Pennsylvania, Judge Cynthia Rufe. Member: Co-Lead Counsel for Third-Party Payors

Mr. Dugan received his B.A. from the University of Southwestern Louisiana in Lafayette, Louisiana and his J.D. from Loyola University Law School in New Orleans, Louisiana. He is a member of the Louisiana Bar and has also been admitted to practice before a number of Federal Courts including the Eastern and Middle District's of Louisiana, Southern District of Alabama, District of Massachusetts, Eastern District of New York, United States 2<sup>nd</sup> Circuit Court of

Appeal, United States 1<sup>st</sup> Circuit of Appeal, United States 3<sup>rd</sup> Circuit Court of Appeal and United States 5<sup>th</sup> Circuit Court of Appeal. Mr. Dugan continues to be an active member in a number of well-respected legal organizations, including the Federal Bar Association, the Louisiana Association for Justice, the Orleans Parish Bar Associations and the Louisiana State and American Bar Associations. Mr. Dugan has also been named to the American Association for Justice Top 100 Trial Lawyers for the years of 2007 through 2013. Mr. Dugan currently serves on the Board of Advocates for Human Rights First. Mr. Dugan is married to Mrs. Heidi Dugan and they have two sons, James III and Jackson. Mr. Dugan also serves on the board of his sons' school, St. George Episcopal School in New Orleans.

# **EXHIBIT L**

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

IN RE: NATIONAL FOOTBALL  
LEAGUE PLAYERS' CONCUSSION  
INJURY LITIGATION

Kevin Turner and Shawn Wooden,  
*on behalf of themselves and  
others similarly situated,*  
Plaintiffs,

v.

National Football League and  
NFL Properties LLC,  
successor-in-interest to  
NFL Properties, Inc.,  
Defendants.

THIS DOCUMENT RELATES TO:  
ALL ACTIONS

No. 2:12-md-02323-AB

MDL No. 2323

**Hon. Anita B. Brody**

Civ. Action No. 14-00029-AB

**DECLARATION OF DANIEL C. GIRARD IN SUPPORT OF CO-LEAD CLASS  
COUNSEL'S PETITION FOR AN AWARD OF ATTORNEY'S FEES AND  
REIMBURSEMENT OF COSTS AND EXPENSES**

Daniel C. Girard declares as follows pursuant to 28 U.S.C. § 1746:

1. I am a managing partner of the law firm of Girard Gibbs LLP. I submit this declaration in support of Co-Lead Class Counsel's Petition for an Award of Attorney's Fees and Reimbursement of Costs and Expenses in connection with and for services rendered and expenses incurred for the common benefit of the Settlement Class in the above-captioned multidistrict litigation ("Action") from the inception of the litigation through July 15, 2016, as well as for the payment of expenses incurred therewith. I have personal knowledge of the

matters set forth in this declaration and, if called upon, I could and would testify competently thereto.

2. Under the direction of Co-Lead Counsel, attorneys at Girard Gibbs LLP contributed to the common benefit of the Settlement Class by, *inter alia*, working with Co-Lead Counsel, experts, and co-counsel to obtain final approval of the Settlement; drafting portions of Class Plaintiffs' Motion for an Order Granting Final Approval of Settlement and Certification of Class and Subclasses; reviewing objections to the Settlement and drafting responsive pleadings including motions to exclude and motions to strike; preparing for and attending the Fairness Hearing; analyzing and discussing proposed modifications to the Settlement with Co-Lead Counsel; drafting modifications to the Settlement; reviewing and analyzing appellate briefs requesting reversal of the District Court's approval of the Settlement; and drafting portions of appellate briefing in support of affirming final approval of the Settlement.

3. The schedule attached hereto as Exhibit 1 is a detailed summary indicating the amount of common benefit time spent by the attorneys and professional support staff of my firm who were involved in, and billed fifty or more hours to, this Action, and the lodestar calculation for those individuals based on my firm's current billing rates. For personnel who are no longer employed by my firm, the lodestar calculation is based on the billing rates of such personnel in their final year of employment by my firm. The schedule was prepared from contemporaneous daily time records regularly prepared and maintained by my firm. Time expended in preparing this application for attorney's fees and expenses has been excluded.

4. The hourly rates for the attorneys and professional support staff of my firm included in Exhibit 1 are the same as the regular rates charged for their services in other

contingent matters. Our firm's billing rates have been accepted by federal courts in other class action cases.

5. The total number of hours expended on the common benefit of this Action by my firm during the relevant time period is 373.1 hours. The total lodestar for my firm for those hours is \$279,489.00, consisting of \$279,489.00 for attorneys' time.

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

7. As detailed in Exhibit 2 hereto, my firm is seeking reimbursement of a total of \$8,300.11 in common benefit expenses incurred in connection with the prosecution of this Action. These expenses are reflected on the books and records of my firm. These books and records are prepared from expense vouchers, check records, and other source material, and are an accurate record of the expenses incurred.

8. With respect to the standing of my firm to share in an award of fees, costs, and expenses, attached hereto as Exhibit 3 is a biography of my firm, including the attorneys in my firm who were principally involved in this Action.

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

Executed on December 28, 2016, at San Francisco, California.

  
Daniel C. Girard

# **EXHIBIT 1**

**IN RE: NATIONAL FOOTBALL LEAGUE PLAYERS' CONCUSSION INJURY LITIGATION**

**No. 12-md-2323-AB**

**Girard Gibbs LLP**

**LODESTAR REPORT**

**Inception through July 15, 2016**

<b>NAME</b>	<b>HOURS</b>	<b>HOURLY RATE</b>	<b>AMOUNT</b>
<b>PARTNERS:</b>			
Daniel C. Girard	105.00	\$900.00	\$94,500.00
Amanda Steiner	268.10	\$690.00	\$184,989.00
<b>ASSOCIATES:</b>			
<b>STAFF ATTORNEYS:</b>			
<b>CONTRACT ATTORNEYS:</b>			
<b>PARALEGALS:</b>			
<b>TOTALS:</b>	373.1		\$279,489.00

# **EXHIBIT 2**

**IN RE: NATIONAL FOOTBALL LEAGUE PLAYERS' CONCUSSION INJURY  
LITIGATION**

**No. 12-md-2323-AB**

**Girard Gibbs LLP**

**COST AND EXPENSE REPORT**

**Inception through July 15, 2016**

<b>NUMBER</b>	<b>CATEGORY</b>	<b>AMOUNT</b>
1	Assessments	
2	Commercial Copies	
3	Computerized Research	\$3,401.05
4	Court Reporters/Transcripts	
5	Expert Services	
6	Facsimile	
7	Filing & Service Fees	
8	In-House Copies	\$189.00
9	Long Distance Telephone	\$96.06
10	Postage/Express Delivery	
11	Travel/Meals/Lodging	\$4,614.00
12	Miscellaneous	
<b>TOTAL EXPENSES</b>		<b>\$8,300.11</b>

# **EXHIBIT 3**



## ATTORNEYS

## Firm Resume

Girard Gibbs is a national litigation firm representing plaintiffs in class and collective actions in state and federal courts, and in arbitration matters worldwide. The firm serves individuals, institutions and business clients in cases involving consumer protection, securities, antitrust, personal injury, whistleblower laws, and employment laws.

Our clients range from individual consumers and small businesses to Fortune 100 corporations and public pension funds. In addition to English, our attorneys are proficient in French, Spanish, German, and Korean, and we are prepared to assist non-U.S. clients in finding solutions to legal issues within the U.S. and across international borders.

We have recovered over a billion dollars on behalf of our clients in class actions and non-class cases. In addition to litigation, our firm also provides consulting and strategic counseling services to institutional clients and professionals in securities litigation, corporate governance and international business matters. We are committed to achieving favorable results for all of our clients in the most expeditious and economical manner possible.

Girard Gibbs has been distinguished as a Tier 1 law firm for plaintiffs' mass tort and class-action litigation in the "Best Law Firms" list in the survey published in the U.S. News & World Report's Money Issue. And *The National Law Journal (NLJ)* has named Girard Gibbs to its elite "Plaintiffs' Hot List," a selection of top U.S. plaintiffs' firms recognized for wins in high-profile cases.

Thirteen of the firm's attorneys have been selected as Northern California Super Lawyers and Rising Stars. Three of the firm's senior attorneys, Daniel Girard, Eric Gibbs, and Michael Danko, have additionally been recognized among the "Top 100 Super Lawyers" in Northern California, and were selected by their peers for inclusion in *The Best Lawyers in America* 2012-2013. *Best Lawyers* also designated Mr. Girard as the 2013 "Lawyer of the Year" in San Francisco for class action litigation. Mr. Girard and Mr. Gibbs have both earned *AV-Preeminent* ratings from Martindale-Hubbell, recognizing them in the highest class of attorneys for professional ethics and legal skills, and were featured in the 2012 edition of San Francisco's Top *AV-Preeminent* Rated Lawyers.

## Partners

<i>Daniel Girard</i>	p. 2
<i>Eric Gibbs</i>	p. 4
<i>Dena Sharp</i>	p. 6

## Associates

<i>Jordan Elias</i>	p. 7
<i>Simon Grille</i>	p. 8
<i>Scott Grzenczyk</i>	p. 8
<i>Chris Hikida</i>	p. 8
<i>Walter Howe</i>	p. 9
<i>Emily Jenks</i>	p. 9
<i>Mani Khamvongsa</i>	p. 9
<i>Elizabeth Kramer</i>	p. 10
<i>Michael Marchese</i>	p. 10
<i>Esfand Nafisi</i>	p. 10
<i>Valerie Li</i>	p. 11
<i>Angelica Ornelas</i>	p. 11
<i>Adam Polk</i>	p. 11
<i>Steven Pong</i>	p. 12
<i>Paige Pulley</i>	p. 12
<i>Linh Vuong</i>	p. 12

## Of Counsel

<i>David Berger</i>	p. 13
<i>Aaron Blumenthal</i>	p. 13
<i>Caroline Corbitt</i>	p. 14
<i>Michael Danko</i>	p. 14
<i>A.J. De Bartolomeo</i>	p. 15
<i>Shane Howarter</i>	p. 16
<i>Dylan Hughes</i>	p. 16
<i>Linda Lam</i>	p. 17
<i>Steve Lopez</i>	p. 17
<i>Karen Barth Menzies</i>	p. 17
<i>Kristine Meredith</i>	p. 18
<i>Geoffrey Munroe</i>	p. 18
<i>Andre Mura</i>	p. 19
<i>Michael Schrag</i>	p. 20
<i>David Stein</i>	p. 20
<i>Amy Zeman</i>	p. 21

## SIGNIFICANT RECOVERIES

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<i>Antitrust</i>	p. 30
<i>Government Reform</i>	p. 30

## ATTORNEYS

## Partners

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**Daniel Girard** serves as the firm's managing partner and coordinates the prosecution of various consumer protection, securities, and antitrust legal matters handled by the firm.

He has successfully represented investors and consumers in a series of precedent-setting cases. Some of the cases in which Mr. Girard served as lead counsel include *Billitteri v. Securities America, Inc.*, (\$150 million settlement), *In re American Express Financial Advisors Securities Litigation*, (\$100 million settlement), *In re Prison Realty Securities Litigation*, (\$104 million settlement), *In re i2 Technologies Securities Litigation*, (\$88 million settlement), and *In re MCI Non-Subscriber Rates Litigation*, (\$90 million). He served as a member of the executive committee charged with managing *In re Lehman Brothers Holdings Securities and ERISA Litigation*, multidistrict proceedings arising out of the collapse of Lehman Brothers Holdings, Inc., the largest bankruptcy in United States history. The Lehman litigation resulted in recoveries of over \$735 million. Mr. Girard also served as lead counsel in related litigation on behalf of Lehman noteholders.



He served as a member of the Executive Committee in the *Natural Gas Antitrust Cases I, II, III and IV* antitrust litigation against numerous natural gas companies for manipulating the market for natural gas in California. The *Natural Gas* litigation resulted in total settlements of nearly \$160 million. Mr. Girard served as lead counsel in the *In re H&R Block Express IRA Litigation*, which resulted in a \$19.5 million settlement for low-income consumers. Mr. Girard also represented the California State Teachers Retirement System in litigation in a non-class securities action against Qwest Communications, Inc. and outside auditor Arthur Andersen, resulting in a recovery of \$45 million for CalSTRS.

Mr. Girard currently serves as co-lead counsel in *In re Wal-Mart Stores Derivative Litigation*, representing CalSTRS in derivative litigation arising out of alleged violations of the Foreign Corrupt Practices Act. He also serves as co-lead counsel in *In re Peregrine Financial Group Customer Litigation*, representing customers of a failed futures commission merchant. He is also on the Consumer Cases Steering Committee in *In re: Target Corporation Customer Data Security Breach Litigation* and *In re: The Home Depot, Inc. Customer Data Security Breach Litigation*, where he represents customers concerning the data security breaches at retailers Target and Home Depot. He has also been appointed as lead counsel for other data breaches involving Sony Pictures Entertainment, the Office of Personnel Management, Experian, and UCLA. Mr. Girard also serves as counsel to several public and private institutional investors in securities litigation matters both domestically and abroad, and assists in the prosecution of several international arbitration proceedings on behalf of European clients.

Mr. Girard was appointed by the Chief Justice of the Supreme Court to serve on the United States Judicial Conference's Advisory Committee on Civil Rules from 2004-2010. As a member of the Civil Rules Advisory Committee's Discovery Subcommittee, he participated in the Committee's

drafting of amendments governing electronic discovery, summary judgment and expert discovery. He was appointed by Chief Justice John Roberts to serve on the Standing Committee on Rules of Practice and Procedure beginning October 1, 2015. He is also a member of the American Law Institute, and serves on the Advisory Board of the Institute for the Advancement of the American Legal System, a national, non-partisan organization dedicated to improving the process and culture of the civil justice system.

Mr. Girard is the co-author of *Limiting Evasive Discovery: A Proposal for Three Cost-Saving Amendments to the Federal Rules*, 87 DENV. U. L. REV. 473 (2010) and *Managez efficacement vos litiges d'affaires*, Extrait du magazine, Décideurs N°121, November 2010. Other published articles include: *Stop Judicial Bailouts*, The National Law Journal, December 1, 2008, and *Billions to Answer For*, Legal Times, September 15, 2008. He is a frequent speaker on issues of electronic discovery, class actions and financial fraud, and his speaking engagements in the last five years include the following presentations: *Panelist for Class Action Settlements and Discovery presentations*, HB Litigation Conferences, May 3, 2016; *Panelist for Data Breach & Privacy presentation*, HB Litigation Conferences, February 11, 2016; *Panelist for "Hello 'Proportionality', Goodbye 'Reasonably Calculated'"*, Joint Conference of ABA Section of Litigation and Duke Law Center for Judicial Studies, January 28, 2016; *Invited Participant in Special MDL Conference*, Duke Law Center for Judicial Studies, October 8, 2015; *Co-panelist with Judge James P. O'Hara on Discovery Amendments to Federal Rules of Civil Procedure*; Kansas City Metropolitan Bar Association, D. Kan., and W. D. of Mo., September 17, 2015; *Panelist in Private Breakfast Seminar on Class Action Risk Mitigation Strategies*, Lazareff LeBars, September 22, 2015; *Invited Participant on Judicial Conference Advisory Committee on Civil Rules*, Rule 23 Mini-Conference, September 11, 2015; *Attorney Faculty in Managing Complex Litigation Workshop for US District Judges*, Federal Judicial Center, August 25-25, 2015; *Moderator and Panelist on panels addressing proposed Rule 23 amendments*, Class Action Settlement Conference, Duke Law Center for Judicial Studies, July 2015; *Panelist on Role of Consumer Class Actions in the Herbal Supplements Industry*, HarrisMartin's MDL Conference: Herbal Supplements Litigation, May 27, 2015; *Panelist on Transferee Judge Case Management*; Multidistrict Litigation Institute, Duke Law Center for Judicial Studies, April 9-10 2015; *Roundtable Participant on Settlement Class Actions*, George Washington University Law School, April 8, 2015; *Lessons from Recent Data Breach Litigation*, Western Trial Lawyers, February 26, 2015; *Speaker in Privacy & Cybersecurity Webinar*, State Bar of California, February 24, 2015; *Panelist on Preservation Issues*, Proportionality Discovery Conference, Duke Law Center for Judicial Studies, November 13-14, 2014; *Roundtable Participant on Public and Private Enforcement after Halliburton, ATP and Boilermakers*, Duke Law Center for Judicial Studies, September 26, 2014; *Co-panelist on Consolidation and Coordination in Generic Drug Cases*, HarrisMartin's Antitrust Pay for Delay Conference, September 22, 2014; *Guest Lecturer on Civil Litigation Seminar*, UC Berkeley, Hastings School of Law, September 18, 2014; *Panel Moderator on Selection and Appointment of Plaintiff's Steering Committee*, MDL Best Practices, Duke Law Center for Judicial Studies, September 11-12, 2014; *Panel on Shareholder Class Action Lawsuits under the New Companies Act*, Joint Conference of the Society of Indian Law Firms and the American Bar Association, Delhi, India, February 14-15, 2015; *Panelist on Symposium on Class Actions*, University of Michigan Law School Journal of Law Reform, March 2013; *Co-taught Seminar on Class Actions and Complex Litigation*, Duke University Law School, January 2013; *Recent Developments in U.S. Arbitration Law*, Conference on Business Law in Africa, Abidjan, Côte d'Ivoire, October 2012; *Bringing and Trying a Securities Class Action Case*, American Association for Justice 2012 Annual Convention, July 2012; *Panel on Class Actions*, U.S. Judicial Conference Standing Committee on Rules of Practice and Procedure, Phoenix, January 2012; *Panel on Paths to (Mass) Justice*, Conference on Globalization of Class Actions and Mass Litigation, The Hague, December 2011; *Contentieux et Arbitrage International: les bons réflexes à acquérir (Litigation and International*

*Arbitration: acquiring the right reflexes*), Paris, France, March 2011; *Panel on Proposals for Rule Amendments and Preservation Obligations*, United States Judicial Conference Advisory Committee on Rules of Practice and Procedure, January 2011.

Mr. Girard is a member of the Business Law Section of the American Bar Association. He is past Chair of the Business Law Section's Subcommittee on Class Actions, Co-Chair of the Business and Corporate Litigation Committee's Task Force on Litigation Reform and Rule Revision, and Vice-Chair of the Business and Corporate Litigation Committee. He has served as a guest lecturer on class actions and complex litigation at the UC Davis School of Law, UC Berkeley (Boalt Hall), UC Hastings College of the Law, and Stanford Law School.

*Best Lawyers* selected Mr. Girard for inclusion in *The Best Lawyers in America* (2012-2013) for his work in class action and securities litigation, and also named him the 2013 "Lawyer of the Year" in San Francisco for Mass Tort Litigation/Class Actions - Plaintiffs. Mr. Girard has been consistently honored as a Northern California Super Lawyer (2007-2015), and has also earned the distinction of being included in the "Top 100 Super Lawyers" in Northern California. He has been named among the highest class of attorneys for professional ethics and legal skills with an *AV-Preeminent* rating by Martindale Hubbell, and was featured in the 2012 edition of San Francisco's Top AV-Preeminent Rated Lawyers.

He served as a member of the Board of Trustees of St. Matthew's Episcopal Day School in San Mateo, California from 2003-2008, including three years as board chair from 2005-2008. He served as a volunteer conservation easement monitor for the Peninsula Open Space Trust from 1991 to 2010.

Mr. Girard is a 1984 graduate of the School of Law, University of California at Davis, where he served as an editor of the Law Review. He received his undergraduate degree from Cornell University in 1979. Mr. Girard is a member of the California Bar.

**Eric Gibbs** specializes in the prosecution of consumer and employment class actions. Mr. Gibbs has served as court-appointed lead counsel, class counsel and liaison counsel in numerous class actions throughout the United States.

He has successfully prosecuted more than 75 class action matters, including cases involving defective products, telecommunications, credit cards, unfair competition, false advertising, truth-in-lending, product liability, credit repair, employment misclassification and wage and hour under both state and federal law. Some of the recent cases in which Mr. Gibbs served as court appointed class counsel and achieved favorable results for class members include *Smith vs. The Regents of the University of California* (negotiated a material change in UCSF's privacy practices on behalf of a certified class of current and former patients of the UCSF medical center for unlawful disclosure of confidential medical information); *In Re: Pre-Filled Propane Tank Marketing and Sales Practices Litigation* (negotiated cash reimbursements of up to \$75 per class member for the purchase of allegedly under-filled propane tanks), *Browne et al. v. American Honda Motor Co., Inc.* (negotiated class settlement providing for cash reimbursements of up to \$150 for rear brake pad replacement expenses in certain Honda and Acura vehicles), *Collado v. Toyota Motor Sales, U.S.A., Inc.* (negotiated a class settlement providing for a free warranty extension and cash reimbursements for many Prius owners who paid for headlight repairs), *In Re Mercedes-Benz Tele Aid*



*Contract Litigation* (negotiated a class settlement providing for cash reimbursements of \$650, or new vehicle credits for up to \$1,300), *Parkinson v. Hyundai Motor America* (achieved nationwide class certification and settlement providing for cash reimbursements for certain flywheel / clutch parts repairs in 2003 Hyundai Tiburons), *Refuerzo v. Spansion LLC*, (negotiated more than \$8.5 million in cash settlements on behalf of a certified class of former employees in a class action for violations of the WARN Act), *In Re General Motors Dex-Cool Cases* (negotiated cash reimbursements from \$50 to \$800 per class member vehicle repair), *Bacca v. BMW of North America* (negotiated reimbursement for sub-frame repair expenses and Nationwide Sub-frame Inspection and Repair Program), and *Piercy v. NetZero* (achieved nationwide class settlement providing cash reimbursements, and changes in billing and account practices). He conducted a two-week arbitration resulting in a liability and damages award on behalf of a certified class of current and former account representatives of Masco Retail Cabinet Group who alleged they were misclassified under the Fair Labor Standards Act.

Mr. Gibbs was appointed as interim class counsel on the Plaintiffs' Executive Committee in *In re Chase Bank U.S.A., N.A. "Check Loan" Contract Litigation*, multidistrict litigation alleging that Chase Bank wronged consumers by offering them long-term fixed-rate loans, and then attempting to deny them the benefit of their bargain by more-than-doubling their loan payments. He led settlement negotiations in the case, which resulted in a \$100 million settlement with Chase eight weeks prior to trial. He also served as interim class counsel in *Milano v. Interstate Battery System of America, Inc.*, representing purchasers of automobile batteries in a breach of warranty action.

Other significant consumer class actions in which Mr. Gibbs acted in a leadership role include *Mitchell v. American Fair Credit Association* and *Mitchell v. Bankfirst, N.A.*, which generated one of the largest settlements in the United States under the credit services laws (over \$40 million); *Providian Credit Card Cases*, which resulted in one of the largest class action recoveries in the United States arising out of consumer credit card litigation (\$105 million); *In Re iPod Cases* (achieved settlement in California state-court class action alleging material misrepresentations with respect to iPods' battery life, and obtained warranty extensions, battery replacements, cash payments, and store credits for those class members who experienced an iPod battery failure), *Roy v. Hyundai Motor America* (negotiated nationwide class settlement providing for the repair of allegedly defective passenger-side airbags, reimbursement for transportation related expenses, and an alternative dispute resolution program allowing for trade-ins and buy-backs), *Paul v. HCI Direct* (achieved nationwide class certification and settlement on behalf of consumers charged for merchandise they allegedly did not knowingly order), *Kim v. BMW of North America* (negotiated nationwide class settlement providing for notification program and free vehicle repair related to defective passenger-side airbags), *In re LookSmart Litigation*, a nationwide class action settlement providing for cash and benefits valued at approximately \$20 million; and *Fantauzzo v. Razor*, where plaintiffs alleged that defendant marketed and sold electric scooters with defective stopping mechanisms, and the court approved a nationwide class action settlement providing for, among other remedies, a recall of the potentially defective electric scooters.

Mr. Gibbs has lectured on consumer class actions, including as a featured speaker addressing *Strategic Considerations Under CAFA following Supreme Court's Rulings in Shady Grove and Purdue* at the Bridgeport 9th Annual Class Action Litigation Conference; *Current Issues Arising in Attorney Fee Negotiations, Including Best Practices* at the 2010 AAJ Annual Convention; *Dealing With Objectors* at the Consumer Attorneys of California 3rd Annual Class Action Seminar; *What is a Class Action?* at the CAOC Annual Ski Seminar; *After the Class Action Fairness Act* at CAOC's 1st Annual Class Action Seminar; *Class Certification In Consumer Cases* for the Litigation Section of the Barristers Club of the San Francisco Bar Association; and *Successfully Obtaining Attorneys' Fees Under Fee-Shifting Statutes* for the Consumer Rights Section of the Barristers Club of the San Francisco Bar Association. Mr. Gibbs

is the co-author of *Consumer Class Actions in the Wake of Daugherty v. American Honda Motor Company*, CAOC's Forum Magazine, January/February 2009.

Mr. Gibbs has been selected by his peers for inclusion in *The Best Lawyers in America* (2012-2015) for his work in Mass Tort Litigation/Class Actions, and honored as a Northern California Super Lawyer (2010-2015). He also earned the distinction of being included among the "Top 100 Super Lawyers" in Northern California. With an *AV-Preeminent* rating from Martindale-Hubbell, Mr. Gibbs has been named among the highest class of attorneys for professional ethics and legal skills, and was featured in the 2012 edition of San Francisco's *Top AV-Preeminent Rated Lawyers*.

Mr. Gibbs is a member of the Board of Governors of the Consumer Attorneys of California, the Board of Governors of the American Association for Justice, the co-chair of AAJ's Consumer Privacy and Data Breach Litigation Group, and is the former co-chair and editor of the Quarterly Newsletter for the Class Action Litigation Group of AAJ. He is also a member of the American Bar Association, the National Association of Consumer Advocates, the Alameda County Bar Association, and the San Francisco Trial Lawyers Association.

Mr. Gibbs is a 1995 graduate of the Seattle University School of Law. He received his undergraduate degree from San Francisco State University in 1991. Before joining Girard Gibbs, he worked for two years as a law clerk for the Consumer Protection Division of the Washington Attorney General's Office. He is a member of the California Bar.

**Dena Sharp** has dedicated her practice to representing plaintiffs in complex litigation throughout the United States.

She specializes in the day-to-day case management of multifaceted, high-profile cases, and has developed expertise directing complex electronic discovery projects in lawsuits including *In re Lehman Brothers Holdings Securities and ERISA Litigation*, *In re SLM Corporation Securities Litigation*, *Billitteri v. Securities America, Inc.*, *In re Oppenheimer Rochester Funds Group Securities Litigation*, and *In re Nexium Antitrust Litigation*.

Ms. Sharp is an active member of The Sedona Conference Working Group on Electronic Document Retention and Production, the leading think tank on e-discovery. She has contributed to the federal rule-making process by assisting in drafting proposed revisions to the Federal Rules of Civil Procedure, which have been presented to the United States Judicial Conference Advisory Committee on Civil Rules. Ms. Sharp is also a member of the American Bar Association, where she has served as Vice-Chair of the Young Lawyers Division Litigation Committee, and the Federal Bar Association.

Ms. Sharp has been selected every year since 2009 as a Rising Star by Northern California Super Lawyers, recognizing her as one of the best young attorneys practicing in Northern California. She speaks frequently on discovery issues around the country and has served on the faculty of The Sedona Conference Institute, a continuing legal education program featuring federal and state court judges, seasoned litigators, and in-house counsel. She is the co-author of "*Four Views of Consumer Fraud*," CAOC's Forum Magazine, May/June 2012, among other articles.

Ms. Sharp is a 2006 graduate, *cum laude*, of the University of California, Hastings College of



Law, where she was a member of the Thurston Society and was the recipient of the Best Oral Advocate Award. She was also the recipient of the Witkin award in her Legal Writing and Criminal Law courses. She received her undergraduate degree in history, *magna cum laude*, from Brown University in 1997. Ms. Sharp was a summer 2005 extern for the Honorable Phyllis J. Hamilton of the United States District Court, Northern District of California. Ms. Sharp also served as a spring 2005 extern for the Honorable John E. Munter, San Francisco Superior Court. She is fluent in Spanish and German, and is admitted to the California Bar. She is also admitted to practice before the United States District Courts for the Northern, Central, Eastern and Southern Districts of California and the District of Colorado.

## Senior Counsel

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**Jordan Elias** specializes in the prosecution of consumer and antitrust class actions. He has authored numerous briefs that resulted in favorable decisions to consumers, including *Pavoni v. Chrysler Group, LLC*, 789 F.3d 1095 (9th Cir. 2015); *In re Cipro Cases I & II*, 61 Cal. 4th 116 (2015); and *Sullivan v. DB Investments, Inc.*, 667 F.3d 273 (3d Cir. 2011) (en banc).

Before joining Girard Gibbs, Mr. Elias spent several years at Loeff Cabraser Heimann & Bernstein where he pursued claims against monopolists and price-fixing cartels and against the nation's largest banks for deceptive practices. He also served as head writer for the plaintiffs in the wrongful death litigation against Toyota over its vehicles' sudden acceleration problems.



Early in his career, Jordan clerked for the late Judge Cynthia Holcomb Hall of the U.S. Court of Appeals for the Ninth Circuit. He also successfully represented technology companies in securities and intellectual property litigation at Wilson Sonsini Goodrich & Rosati.

Mr. Elias currently serves on the San Francisco Bar Association's Executive Committee. He teaches continuing legal education courses for the American Law Institute, the Practising Law Institute, Strafford Publications, and Law Seminar International. His articles on antitrust and class action law have appeared in American Bar Association and State Bar of California publications. In 2014 and 2015, Mr. Elias was honored as a Northern California Super Lawyer, and in 2012 and 2013, he was recognized as a Rising Star.

Mr. Elias is a 2003 graduate of Stanford Law School, where he was a member of the Law Review. He received his undergraduate degree, *magna cum laude*, from Yale College in 1998. Mr. Elias is a member of the California Bar.

## Associates

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**Simon S. Grille** is committed to seeking justice for plaintiffs harmed by corporate misconduct. Prior to joining Girard Gibbs, Mr. Grille worked at a prominent Bay Area law firm where he represented victims of toxic exposure in complex civil litigation. Mr. Grille also has experience working in-house at a multinational company and as an extern for the Honorable Arthur S. Weissbrodt of the United States Bankruptcy Court, Northern District of California.

Mr. Grille is a 2013 graduate of UCLA School of Law, where he was honored as a distinguished brief writer and an outstanding oral advocate in multiple moot court competitions. Mr. Grille also served as a Senior Articles Editor for the *Entertainment Law Review*. Mr. Grille received his undergraduate degree in Political Science from UC Berkeley in 2008.



**Scott Grzenczyk** is a 2011 graduate of the University of California, Davis, School of Law, where he was the Chair of the Moot Court Board and the Executive Editor of the *UC Davis Journal of International Law and Policy*.

He was the recipient of the Witkin Award for Legal Research and Writing, Best Brief and Best Advocate awards in his moot court class, and numerous awards at national moot court competitions. He was also a member of the Law School's national mock trial team and the law school faculty named him as a member of the Order of the Barristers.

Mr. Grzenczyk received his undergraduate degree in political science and certificate in political theory from Princeton University in 2006. He was selected as a Rising Star by Northern California Super Lawyers (2013-2015), recognizing him as one of the best young attorneys practicing in Northern California. Mr. Grzenczyk is admitted to the California Bar.



**Chris Hikida** is a 2013 graduate of the University of California, Davis, School of Law.

While at UC Davis, he interned at the California Department of Fair Employment and Housing where he helped investigate and prosecute employment law violations. As an intern at the United States Department of Justice Antitrust Division, Mr. Hikida helped prosecute criminal antitrust violations. Prior to joining Girard Gibbs, he clerked for Chief Justice Mark E. Recktenwald at the Supreme Court of Hawaii, and worked as a research attorney for the Supreme Court of Guam. Mr. Hikida is admitted to the California Bar.



**Walter Howe** represents plaintiffs in consumer class action, antitrust, and securities litigation ranging from defective products to fraudulent financial transactions.

Prior to joining Girard Gibbs, Mr. Howe litigated complex matters such as shareholder derivative actions, commercial tort litigation, and intellectual property disputes. Mr. Howe graduated from the University of the Pacific, McGeorge School of Law, where he served as a research editor on the *Journal of National Security Law and Policy*, and interned with the Sacramento Office of the Public Defender. He received his undergraduate degree with honors from the University of Saint Andrews in Scotland. He lives in San Francisco with his wife and two daughters.



**Emily Jenks** is a 2010 graduate of the Santa Clara University School of Law, where she served as an Associate on the *Computer and High Technology Law Journal* and focused her studies on intellectual property and high tech law.

Ms. Jenks received her undergraduate degree in international relations with emphasis on global economy from San Francisco State University in 2005. Prior to joining Girard Gibbs, she managed large scale eDiscovery projects in antitrust, product liability, as well as bribery and corruption. Ms. Jenks is fluent in Japanese and is admitted to the California Bar.



**Mani Khamvongsa** focuses her practice on antitrust enforcement on behalf of class action plaintiffs harmed by corporate wrongdoing. In addition, she has experience with complex litigation matters concerning pharmaceuticals, telecommunications, and software. Previously, Ms. Khamvongsa worked at the U.S. Department of Justice, Antitrust Division, on criminal matters involving price fixing and bid rigging. She also investigated the merger of companies for anticompetitive market effects.

Ms. Khamvongsa graduated from the University of California, Hastings College of the Law, where she worked with the Refugee and Human Rights Clinic to obtain asylum for a victim of gender violence. She also interned for the Criminal Division of the U.S. Attorney's Office, the San Francisco District Attorney's Office, and the American Civil Liberties Union of Northern California. Before law school, she received her undergraduate degree from Oberlin College with a double major in Politics and Environmental Studies.



Ms. Khamvongsa is a member of the California Bar and admitted to practice before the U.S. Court of Appeals for the Ninth Circuit and the U.S. District Court for the Northern District of California.

**Elizabeth Kramer** interned at Girard Gibbs for two consecutive summers while attending the University of San Francisco, School of Law, and joined the firm full time after graduating in 2013.

While at USF, Ms. Kramer was a member of the Investor Justice Clinic, representing elderly and low-income individuals before FINRA and in settlement negotiations to resolve alleged wrongdoing by securities firms. She recovered \$35,000 for clients during her tenure at the Clinic. Ms. Kramer was also on the board of the Women’s Law Association as chair of community outreach. She graduated with honors from the University of California at Santa Cruz with a degree in Psychology. Ms. Kramer is admitted to the California Bar.



**Michael Marchese** is a 2015 graduate of the University of California, Hastings College of the Law.

Prior to joining Girard Gibbs, he completed a post-graduate fellowship in the Litigation Division of the Oakland City Attorney’s Office. As a law student at UC Hastings, he interned at the California Coastal Commission and the Sierra Club, and was an Executive Editor of the Hastings Communications and Entertainment Law Journal.

He received his undergraduate degree with honors in Legal Studies in Business from Tulane University in 2012. Mr. Marchese is admitted to the California Bar.



**Esfand Nafisi** prosecutes class action cases on behalf of those harmed by corporate misconduct. He has successfully taken on some of the country’s largest corporations and achieved favorable results for consumers. He currently represents federal employees in the data breach of the U.S. Office of Personnel Management and consumers in the Experian data breach.

Before joining Girard Gibbs, Mr. Nafisi litigated class actions, whistleblower cases and mass tort cases in Washington, D.C., where he developed business and achieved significant recoveries. Prior to that, Mr. Nafisi worked for four years at a large Chicago law firm where he represented a corporate plaintiff in an antitrust and false advertising case that settled at trial for \$125 million.



Mr. Nafisi graduated from the Northwestern University School of Law in 2009. He founded the Northwestern University School of Law’s Legal Philosophy Club, competed in the Jessup Moot Court competition, served as a teaching and research assistant, and was invited to join the school’s highly-ranked trial advocacy team.

**Valerie Li** is a 2014 graduate of Pepperdine University School of Law, where she served on the editorial board of *The Journal of the National Association of Administrative Law Judiciary* and as member of the Moot Court Board.

While at Pepperdine, she externed for the Honorable Sheri Bluebond of the United States Bankruptcy Court, Central District of California. As an extern at the California Department of Business Oversight, Ms. Li investigated and helped prosecute securities law violations. She received her undergraduate degree with honors in Political Science from the University of Pittsburgh. Ms. Li is active in the Asian American Bar Association of Greater Bay Area and is admitted to the California Bar.



**Angelica Ornelas** is a 2011 graduate of the University of California, Berkeley School of Law (Boalt Hall).

Prior to joining Girard Gibbs, Ms. Ornelas served as a judicial law clerk at the United States District Court for the Northern District of California and the United States Bankruptcy Court for the District of Nevada.

Ms. Ornelas also worked as a fellow at the California Monitor Program, a program developed by the California Attorney General's Office to oversee the implementation of the landmark \$25 billion National Mortgage Settlement.



**Adam Polk** devotes his practice to representing plaintiffs in complex securities, antitrust, and consumer class actions. Mr. Polk takes a client-focused approach to each matter he is involved with. Over the last several years he has performed substantial work on teams of lawyers that have achieved multi-million dollar recoveries on behalf of consumers and investors. His experience covers all aspects of civil litigation, from initial case investigation and complaint preparation through settlement or trial. He currently serves on the co-lead counsel team in the *In re Sears Holdings Corporation Stockholder and Derivative Litigation*, pending in the Delaware Court of Chancery.

Prior to joining Girard Gibbs, Mr. Polk externed for Northern District of California Judges Sandra Brown Armstrong and Claudia Wilken and worked as an associate with a mid-sized regional firm where he represented both plaintiffs and defendants.

Adam is an active member of the American Bar Association's Class Action and Derivative Suits subcommittee, where he is a frequent contributor of written content regarding emerging issues in class action litigation. Mr. Polk has been selected by his peers as a Northern California Super Lawyer, Rising Star every year since 2013.



Adam Polk is an associate with the firm and a 2010 graduate of the University of California, Hastings College of the Law.

**Steven Pong** is an associate at Girard Gibbs LLP. Before joining Girard Gibbs, he worked at the Wikimedia Foundation on data protection and privacy matters in anticipation of the E.U. General Data Protection Regulation, and strategic litigation to protect free expression and global access to knowledge. He also worked on Net Neutrality rulemaking and telecommunications privacy enforcement at the Federal Communications Commission.



Steven graduated from the Georgetown University Law Center in 2015, where he served as a senior editor on the Georgetown Environmental Law Review. During law school, he counseled one of the first financial technology start-ups structured as a Public Benefit Corporation on corporate governance and privacy matters. He also spent time at the Consumer Financial Protection Bureau interpreting the extent of the agency's rulemaking and enforcement power under the Dodd-Frank Act, and served as a judicial intern for Judge Emmet G. Sullivan of the U.S. District Court for the District of Columbia.

Before law school, Steven was a paralegal in the Antitrust Division of the Department of Justice in Washington, D.C., where he supported investigations of mergers in the telecommunications, media, and technology industries.

**Paige Pulley** is an associate at Girard Gibbs LLP and is a graduate of the University of California, Berkeley School of Law (Boalt Hall).

During law school Mrs. Pulley served as co-director for the Worker's Rights Disability Law Clinic and the Wage Claim Clinic where she represented employees at unemployment insurance appeal hearings. As a law clerk for the Legal Aid Society-Employment Law Center Mrs. Pulley successfully represented low-wage clients at wage-and-hour settlement conference in front of the California Labor Commissioner. During her time as a clinical student for the International Human Rights Clinic Mrs. Pulley advocated for transitional justice in Sri Lanka following the country's 25-year long civil war. Mrs. Pulley also served as Articles Editor and Managing Editor for the *Berkeley Journal of Employment and Labor Law*.



**Linh Vuong** is a 2012 graduate of the University of San Francisco, School of Law, where she served as Executive Editor of the *USF Law Review* and a member of the Internet and Intellectual Property Justice Clinic.

She was the recipient of the CALI Award for Excellence in her Legal Ethics course, Best Oral Argument award in her moot court class, and the Intellectual Property & Technology Law Certificate with honors. Ms. Vuong was also a spring 2012 extern and post-bar volunteer law clerk for the Honorable Sandra Brown Armstrong of the United States District Court, Northern District of California in Oakland. She received her



undergraduate degree in Psychology and Asian American Studies from UCLA in 2006 and was on the Winter 2004 and Winter 2006 Dean's Honor List. Ms. Vuong is admitted to the California Bar.

She has considerable experience in prosecuting class actions in consumer fraud and privacy issues. She served on the front lines in cases such as *In re Target Corp. Customer Data Security Breach Litigation*, *In re The Home Depot, Inc. Customer Data Security Breach Litigation*, and *Corona v. Sony Pictures Entertainment, Inc.* She is currently litigating similar data breach cases such as *In re Experian Data Breach Litigation*, *In re U.S. Office of Personnel Management Data Security Breach Litigation*, and *Adlouni v. UCLA Health Systems Auxiliary*.

## Of Counsel

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**David Berger** is a 2008 graduate of Northwestern University School of Law. He competed on the Jessup Moot Court team and defended juveniles through the Bluhm Legal Clinic's Children and Family Justice Center. Prior to joining Girard Gibbs, Mr. Berger was a law clerk in the United States District Court for the Northern District of California. He also spent several years litigating complex commercial and intellectual property cases at Robins, Kaplan, Miller & Ciresi in Minneapolis, Minnesota. There, Mr. Berger recovered millions of dollars for the State of Minnesota by proving that a chain of dentists submitted false claims to state-funded health plans. He represented people injured by the Interstate 35-W bridge collapse in victim compensation proceedings. He also represented inter-governmental organizations and technology companies in high-stakes commercial and intellectual property disputes.



**Aaron Blumenthal** represents consumers and whistleblowers in class action lawsuits involving allegations of corporate misconduct. He has prosecuted a variety of consumer protection cases ranging from false advertising to defective products. He is also involved in the investigation and development of new cases.

Aaron attended the University of California, Berkeley School of Law (Boalt Hall), where he graduated *Order of the Coif* (a distinction awarded only to the top 10 percent of the graduating class). In law school, Aaron worked on consumer issues— writing and publishing a law review article on the practical strategies for combatting class action waivers in a post-*Concepcion* world.



**Caroline Corbitt** is a 2015 graduate of the University of Southern California, Gould School of Law, where she served as Executive Editor of the Southern California Interdisciplinary Law Journal. Ms. Corbitt was a summer 2013 extern for the Honorable Laurel Beeler, Magistrate Judge of the United States District Court, Northern District of California. Ms. Corbitt has also externed at the Federal Trade Commission and the California Department of Justice, Antitrust Division.



Before law school, Ms. Corbitt worked in book publishing in San Francisco, California. She received her undergraduate degree in history and literature from Harvard University in 2009.

**Michael S. Danko** is a renowned trial lawyer with more than 25 years of legal experience. He represents individuals who have suffered catastrophic personal injuries, as well as families of wrongful death victims in cases involving product defects, defective medications and medical devices, airplane and helicopter accidents, and dangerous structures. He has tried cases in state and federal courts throughout the country, and has won numerous eight-figure verdicts on behalf of his clients.



Mr. Danko represents dozens of victims of a Pacific Gas & Electric gas explosion and serves on the Plaintiffs' Steering Committee in a California state coordinated proceeding *San Bruno Fire Cases*, JCCP No. 4648. He also serves on the Science Committee for Plaintiffs in *In Re Yasmin and Yaz (Drospirenone) Marketing, Sales Practices and Products Liability Litigation*, MDL No. 2100.

In 2009, he won a \$15 million jury verdict for a client injured by a defective aircraft part, which earned him a nomination for 2009 California Trial Lawyer of the Year by the Consumer Attorneys of California.

Mr. Danko's trial advocacy has helped bring about significant reforms and changes to corporate policies. As lead counsel in *In Re Deep Vein Thrombosis Litigation*, MDL No. 04-1606 (N.D. Cal.), he represented more than one hundred air travelers who suffered strokes, pulmonary emboli, or heart attacks as a result of airline-induced blood clots. He developed theories of liability and proof regarding the cause of his clients' injuries that led to virtually every major air carrier warning air travelers about the risks of deep vein thrombosis and measures to mitigate those risks. Mr. Danko also represented parents of children who were injured or killed by a popular candy made by a foreign manufacturer. His work in proving that the candy's unusual ingredients and consistency made it a choking hazard resulted in the candy being removed from Costco and Albertson's stores nationwide, and helped lead the FDA to ban the candy from further import into the United States.

He has been named a Northern California Super Lawyer each year since the award's inception in 2004. He is a *Lawdragon 500* finalist. In 2010, he was named one of the Best Lawyers in America. He is a member of the American Association for Justice, the Lawyer Pilots Bar Association and the Consumer Attorneys of California, where he serves on the board of governors. Mr. Danko received his AB degree from Dartmouth College, *magna cum laude*, in 1980, and earned his JD from the University of Virginia School of Law in 1983.

**A.J. De Bartolomeo** has more than twenty years of experience in complex litigation, including the prosecution and defense of class actions arising under the securities, communications, consumer protection and copyright laws. Her experience extends to the prosecution of pharmaceutical and medical device litigation as well as the collection of class action recoveries and claims administration in bankruptcy proceedings. She has served as court-appointed lead counsel and class counsel in several class actions throughout the United States, and presently serves as a member of the Plaintiffs' Steering Committee in three MDL mass tort actions.



Ms. De Bartolomeo served as Lead Counsel in *Telstar v. MCI, Inc.* (S.D.N.Y.) (achieved settlement for over \$2.8 million in cash on behalf of class of commercial subscribers alleging FCA violations), *Lehman v. Blue Shield* (Cal. Super. Ct. San Francisco County) (parties negotiated a settlement for over \$6.5 million in cash on behalf of class of subscribers overpaying insurance premiums), *Powers Law Offices v. Cable & Wireless, USA* (D. Mass.) (Bankr. D. Del.) (achieved settlement for over \$2.2 million in cash after Chapter 7 filing on behalf of Rule 23(b)(3) certified class of commercial customers alleging FCA violations), and *In re Cosmo Store Services*, (Bankr. C.D. Cal.) (achieved settlement for \$1 million in cash after Chapter 11 filing on behalf of class of unsecured creditor employees). Ms. De Bartolomeo has also held a leadership position in *In re American Express Advisors Securities Litigation* (S.D.N.Y.), *CALSTRS v. Quest Communications, et al.* (Cal. Super. Ct. San Francisco County), *Cromwell v. Sprint Communications* (D. Kan.), and *Brennan v. AT&T Corp.* (S.D. Ill.). Ms. De Bartolomeo served as second chair in *In re MCI Non-Subscriber Rates Litigation* (MDL, S.D. Ill.) (\$88 million settlement). From 2005 to 2008, A. J. De Bartolomeo served on the Discovery and Law Committees in the *In Re Medtronic, Inc. Implantable Defibrillators Product Liability Litigation*, MDL No. 05-1726 (JMR/AJB) (D. Minn.).

Ms. De Bartolomeo is currently court-appointed to the Plaintiffs' Steering Committee in the *Yaz & Yasmin* birth control litigation (MDL 2100) and she also serves as Co-Chair of the Law and Briefing Committee. She is also court-appointed to the Steering Committee in the *Pradaxa* blood thinner personal injury and product liability lawsuits (MDL 2385), coordinated in federal court in East St. Louis, as well as *Actos* diabetes drug personal injury and product liability lawsuits (MDL 2299), coordinated in the Western District of Louisiana.

Ms. De Bartolomeo has been named among the highest class of attorneys for professional ethics and legal skills with an AV-Preeminent rating by *Martindale Hubbel*, and was honored as a *Northern California Super Lawyer* (2013). She is a member of the American Bar Association Sections on Litigation, Business Law and Communications, the American Bankruptcy Institute, Consumer Attorneys of California and the American Association for Justice. In July 2012, she was elected as an officer of the Women's Trial Lawyer Caucus of the American Association of Justice, and she currently serves as Second Vice-Chair. She also is also a former member of the National Association of Public Pension Attorneys, where she was an active participant in the Task Force on Securities Litigation and Damage Calculation, as well as a member of the Council of Institutional Investors.

Ms. De Bartolomeo has been invited to speak on consumer and securities class actions, mass tort actions, as well as the settlement approval process before plaintiff and defense law firms, institutional investors and government committees; most recently, for Bridgeport Continuing Education, the Women's Leadership Summit at the AAJ Annual Convention and the Fact-finding Mission to Class Actions in the United States, sponsored by the Japan Federation of Bar Associations and Kyoto Bar

Association. She is the author of “*Facilitating the Class Action Approval Process*,” AAJ’s Women Trial Lawyers Caucus Newsletter, summer 2010.

Ms. De Bartolomeo is a 1988 graduate of the University of California, Hastings College of the Law. She received her undergraduate degree from Fairfield University in 1982, and a General Course degree in Economics from the University of London, London School of Economics and Political Science (1981). Before joining Girard Gibbs, Ms. De Bartolomeo was an associate with Robins Kaplan Miller & Ciresi and a Staff Attorney with the Securities and Exchange Commission (Enforcement Division). She is admitted to the California Bar. She also is admitted to practice before the United States Supreme Court, the United States Courts of Appeals for the First and Ninth Circuits, and the United States District Courts for the District of Michigan, the Southern District of Texas, the Eastern District of Wisconsin, and the Northern, Eastern, Central and Southern Districts of California.

**Shane Howarter** is a 2016 graduate of the University of California, Los Angeles School of Law and Luskin School of Public Affairs, where he earned a joint degree in law and public policy. While in law school, Shane served as the Chief Articles Editor for the Journal of International Law and Foreign Affairs, and as the Academic Chair of the American Constitution Society.

He received his undergraduate degree in Political Science and English from the University of Illinois at Urbana-Champaign in 2012. Prior to graduating from law school, Shane was a summer associate with Gibbs Law Group, working on complex consumer protection cases.



**Dylan Hughes** specializes in the prosecution of consumer and employment class actions. He represents consumers in a variety of cases ranging from false advertising to defective products, and employees in misclassification and wage and hour cases under state and federal laws. Mr. Hughes has extensive experience prosecuting complex automobile-defect cases and helped achieve recoveries on behalf of class members in the *In Re General Motors Dex-Cool Cases* (settlement of \$50 to \$800 cash reimbursements per class member vehicle repair) and *In Re General Motors Cases*, a certified California state court class action against General Motors alleging violations of California’s “Secret Warranty” law, California Civil Code § 1794.90 *et seq.* Mr. Hughes was also involved in the *Parkinson v. Hyundai Motor America* lawsuit, in which plaintiffs certified a nationwide class alleging Hyundai sold vehicles with defective flywheel systems, before ultimately reaching a favorable settlement for the class.



Mr. Hughes has been selected for inclusion in Northern California Super Lawyers every year since 2012. He is a 2000 graduate of the University of California, Hastings College of Law. He received his undergraduate degree from the University of California at Berkeley in 1995. Mr. Hughes was a spring 2000 extern for the Honorable Charles A. Legge of the United States District Court, Northern District of California.

Before joining Girard Gibbs, Mr. Hughes was a law clerk for the Honorable Paul A. Mapes, Administrative Law Judge of the Office of Administrative Law Judges, United States Department of

Labor. Mr. Hughes is a member of the American Bar Association, Consumer Attorneys of California, the Class Action Litigation Group of the American Association for Justice and the Consumer Rights Section of the Barristers Club. He is admitted to the California Bar and is admitted to practice before the United States Court of Appeals for the Ninth Circuit as well as the United States District Courts for the Northern and Central Districts of California.

**Linda Lam** focuses her practice on representing consumers, small businesses, and employees in complex contingency litigation. Before joining the firm, Ms. Lam was an associate attorney at a national employee benefits and employment law firm, where she represented workers and retirees.

Ms. Lam graduated *magna cum laude* from the University of California, Hastings College of the Law in 2014, where she was inducted into the Order of the Coif. In law school, Ms. Lam served as the Production Editor for the Hastings Race and Poverty Law Journal. She worked as a research assistant to Professor Reuel Schiller. Additionally, Ms. Lam worked on a team in the Refugee and Human Rights Clinic to win asylum status for a domestic violence victim from Mexico. In 2012, she externed for the Honorable Joseph Spero in the Northern District of California.



**Steve Lopez** is a 2014 graduate of the University of California at Berkeley School of Law (Boalt Hall), where he was a Publishing Editor for the California Law Review and an Editor for the Berkeley Journal of Employment and Labor Law. Mr. Lopez was also a member of the La Raza Law Students Association and the Legal Aid Society–Employment Law Center’s Berkeley Workers’ Rights Clinic, where he successfully argued a client’s unemployment insurance appeal in an administrative hearing. He was the recipient of the American Jurisprudence Award in Insurance Law, and the Prosser Prize in Remedies and Employee Benefit Law.

Before law school, Mr. Lopez performed research for a consulting firm specializing in improving justice programs. He received his undergraduate degree in economics and international relations from the University of Virginia in 2008.



**Karen Barth Menzies** is a nationally-recognized mass tort attorney with more than twenty years of experience in federal and state litigation. Courts throughout the country have appointed Karen to serve in leadership positions including Lead Counsel, Liaison Counsel and Plaintiff Steering Committee in some of the largest pharmaceutical and device mass tort cases. Karen currently serves in leadership positions in the Zolofit Birth Defect Litigation (federal and California state courts), Transvaginal Mesh Litigation (federal and California state courts), Fosamax Femur Fracture Litigation (California state court), Lexapro/Celexa Birth Defect Litigation (Missouri state court).

Karen is particularly focused on women's health issues and drugs that cause harm to children. She currently represents women suffering permanent baldness following breast cancer chemotherapy treatments with Taxotere, and children who experienced severe side effects after taking the widely-prescribed medication Risperdal. Karen believes in



advocating for drug safety and for the victims in the face of profit-driven corporations. She has testified twice before FDA advisory boards as well as the California State Legislature on the safety concerns regarding the SSRI antidepressants and the manufacturers' misconduct.

Karen frequently publishes and presents on issues involving drug safety, mass tort litigation, FDA reform and federal preemption for both legal organizations (plaintiff and defense) and medical groups.

**Kristine Keala Meredith** is a trial attorney specializing in product liability litigation. She served as co-lead counsel with Mr. Danko representing more than one hundred air travelers who suffered strokes, pulmonary emboli, or heart attacks as a result of airline-induced blood clots in *In Re Deep Vein Thrombosis Litigation*, MDL No. 1606.



Ms. Meredith served on the Law and Motion committee in *In Re Yasmin and Yaz (Drospirenone) Marketing, Sales Practices and Products Liability Litigation*, MDL No. 2100, where she assisted in the successful opposition to 15 *Daubert* motions in fewer than three weeks. Before devoting her practice to representing plaintiffs, Ms. Meredith worked on the national defense counsel teams for medical device manufacturers in multi-district litigation including *In re Silicone Gel Breast Implants Product Liability Litigation*, MDL No. 926, and *In re Orthopedic Bone Screw Product Liability Litigation*, MDL No. 1014. She also represented doctors and hospitals in defense of medical malpractice actions, where she worked with some of the world's leading medical experts.

In 2010, Ms. Meredith was named a Northern California Super Lawyer. She is currently an officer of the American Association for Justice and the San Mateo County Trial Lawyers Association. She is also a member of the San Francisco Trial Lawyers Association and the Consumer Attorneys of California. She is a former chair of the Minority Issues Committee of the San Francisco Bar Association Barrister Club.

She obtained her B.S. with honors from the University of California at Davis and was awarded a scholarship to attend Brigham Young University's J. Reuben Clark Law School. While in law school, she was awarded the Distinguished Student Service Award and spent a semester at Howard University Law School in Washington, D.C., as a member of the faculty/student diversity exchange.

**Geoffrey Munroe** represents plaintiffs in high-profile class action and mass tort cases in both federal and state courts throughout the United States. He was selected as a Rising Star by Northern California Super Lawyers (2010-2014), recognizing him as one of the best young attorneys practicing in Northern California, and as a Northern California Super Lawyer in 2015. He is the co-author of "*Consumer Class Actions in the Wake of Daugherty v. American Honda Motor Company*," CAOC's Forum Magazine, January/February 2009, and a frequent contributor to the Class Action Litigation Group Newsletter of the American Association for Justice.



Mr. Munroe is a 2003 graduate of the University of California at Berkeley School of Law (Boalt Hall), where he was the recipient of the American Jurisprudence Award in Torts, Business Law & Policy and

Computer Law. He received his undergraduate degree in chemistry from the University of California at Berkeley in 2000. Mr. Munroe is a member of the Public Justice Class Action Preservation Project Committee, the Class Action Litigation Group of the American Association for Justice and the Consumer Attorneys of California. He is a member of the California Bar and is admitted to practice before the United States Court of Appeals for the Ninth Circuit, as well as the United States District Courts for the Northern, Central and Southern Districts of California.

**Andre Mura** represents plaintiffs in class action and complex litigation concerning consumers' and workers' rights, products liability, drug and medical devices, federal jurisdiction, and constitutional law. Prior to joining Gibbs Law Group LLP, Mr. Mura was senior litigation counsel at the Center for Constitutional Litigation PC, where he represented plaintiffs in high-stakes appeals and complex litigation in state supreme courts and federal appellate courts. Mr. Mura also authored briefs filed in the U.S. Supreme Court, at both the petition and merits stages, and argued dispositive motions in trial courts nationwide.



Recently, Mr. Mura successfully opposed Wal-Mart's motion to dismiss in *Reynolds v. Wal-Mart* (N.D. Fla.), a putative class action in federal court concerning deceptive food labeling. Before the U.S. Court of Appeals for the Ninth Circuit, sitting en banc, Mr. Mura also recently represented plaintiffs injured by propoxyphene, an ingredient found in Darvocet and Darvon pain relief drugs and generic pain relievers.

Mr. Mura's advocacy before the U.S. Supreme Court includes *J. McIntyre Machinery, Ltd. v. Nicastro*, 131 S. Ct. 2780 (2011), for which he drafted merits briefing addressing whether personal jurisdiction exists over a foreign manufacturer. Mr. Mura was the lead author of an amicus curiae brief for the American Association for Justice and Public Justice in *Mutual Pharmaceutical Co., Inc. v. Bartlett*, 133 S. Ct. 2466 (2013), a case examining whether federal drug safety law preempts state-law liability for defectively designed generic drugs. In *Qwest Services Corp. v. Blood*, 132 S. Ct. 1087 (2012), Mr. Mura was counsel of record for plaintiffs in opposing Supreme Court review of an \$18 million punitive damages award. SCOTUSblog, the blog of the Supreme Court of the United States, selected Mr. Mura's petition for certiorari in *Malaterre v. Amerind Risk Management Corp.*, No. 11-441 as "Petition of the Day."

Before the Missouri Supreme Court in *Watts v. Lester E. Cox Medical Centers*, 376 S.W.3d 633 (Mo. 2012), Mr. Mura successfully argued that a state law limiting compensatory damages in medical malpractice cases violated his client's constitutional right to trial by jury. In ruling in favor of Mr. Mura's client, the high court agreed to overturn a 20-year-old precedent. In *Texaco, Inc. & Chevron Corp. v. Simon*, Mr. Mura argued before the Mississippi Supreme Court in a case concerning Texaco's and Chevron's liability for pregnant women's exposure to leaded gas. The case settled favorably after oral argument but before decision.

Mr. Mura is a member of the American Bar Association (ABA) Tort Trial and Insurance Practice Section (TIPS) Plaintiffs Policy Task Force. He serves as vice-chair of the ABA-TIPS Appellate Advocacy Committee and as chair of the ABA-TIPS Supreme Court Monitoring Subcommittee. Mr. Mura is a member and former co-chair of the Young Lawyers Committee of the National Center for State Courts, as well as a member of the American Association for Justice and the Consumer Attorneys of California. He served as an executive member of the moot court board while attending The George Washington University Law School.

**Michael Schrag** has nearly 20 years of experience representing individual and small business plaintiffs in complex class actions against large corporations in litigation concerning banking, credit cards, telecommunications, and real estate. Mr. Schrag has also successfully litigated product liability, personal injury, medical malpractice, employment, and contingent breach of contract cases.



Mr. Schrag currently serves as Co-Lead Counsel in *Beaver v. Tarsadia Hotels*, in which the court granted plaintiffs' summary judgment on the issue of liability in a large unfair competition class action against real estate developers. Mr. Schrag also represents a putative class of small business owners in a RICO and fraud class action against insurer AIG. The court recently denied AIG's motion to dismiss.

Mr. Schrag served as Co-Lead Counsel in *Ammari v. Pacific Bell Directory*, representing consumers who overpaid an AT&T subsidiary for advertising in Yellow Pages directories. Plaintiffs prevailed at trial and on two appeals to obtain a \$27 million judgment for class members, a result the *National Law Journal* deemed as one of the top 100 verdicts in 2009.

Mr. Schrag has helped initiate and prosecute several class actions against Visa, MasterCard, and major U.S. banks, such as Chase and Bank of America, for failing to disclose and fixing the price of currency conversion fees charged to cardholders using credit and debit cards abroad. After prevailing at trial in *Schwartz v. Visa, et. al.*, plaintiffs were successful in obtaining a \$336 million global settlement for the class in *In re Currency Conversion Fee Antitrust Litigation* (MDL No. 1409).

Mr. Schrag helped recover over \$10 million on behalf of his clients in *In Re Sulzer Hip Prosthesis and Knee Prosthesis Liability Litigation*, a multidistrict litigation that awarded a total of \$1 billion to patients who received defective hip implants.

Mr. Schrag is a 1996 graduate of the University of California at Berkeley School of Law (Boalt Hall) and received his undergraduate degree in 1989 from Columbia College at Columbia University. Mr. Schrag began his career prosecuting securities class actions and serving as a law clerk to the Honorable Judith N. Keep, U.S. District Judge, Southern District of California. Before joining Gibbs Law Group, Mr. Schrag was a partner and co-founder of Meade & Schrag, LLP, where he prosecuted class actions and also litigated personal injury, medical malpractice, breach of contract, and business litigation matters.

**David Stein** specializes in representing plaintiffs in consumer protection and financial fraud cases.

Mr. Stein helped generate a \$25 million settlement in an automobile defect lawsuit involving Honda and Acura vehicles, and cash reimbursements for purchasers of Prius vehicles in a lawsuit against Toyota. Currently, Mr. Stein is one of the attorneys serving as court-appointed Lead Counsel who are representing consumers against Ford Motor Company in a lawsuit alleging that the 2013 Ford Fusion Hybrid and C-MAX Hybrid vehicles do not achieve the MPG rating that Ford advertised.



Mr. Stein is also representing investors in a lawsuit against U.S. Bank arising from the collapse of Peregrine Financial Group, Inc. In two settlements the former Peregrine customers have recovered more than \$70 million as a result of Peregrine's collapse. Prior to the Peregrine litigation, Mr. Stein helped secure a judgment against the Government of Guam and several of its highest ranking officials in a suit involving the government's unlawful administration of income tax refunds.

For the last three years Mr. Stein has been named a Rising Star by Northern California Super Lawyers. Before joining Girard Gibbs in 2009, Mr. Stein served as judicial law clerk to U.S. District Court Judge Keith Starrett and U.S. Magistrate Judge Karen L. Hayes, and published the article, *Wrong Problem, Wrong Solution: How Congress Failed the American Consumer*, 23 Emory Bankr. Dev. J. 619 (2007).

**Amy Zeman** represents clients in a wide variety of medical mass tort matters, including individuals harmed by transvaginal mesh, the birth-control medications Yaz and Yasmin, the diabetes drug Actos, the anti-psychotic medication Risperdal, and the Mirena intrauterine device, among others. Ms. Zeman also represents consumers in class action litigation, with experience working closely with class representatives and consumer contacts and participating in all stages of litigation. Ms. Zeman has been involved in successful actions against Chase Bank, Ducati, and Dish Network, among others. Super Lawyers Magazine recognized Ms. Zeman as a Rising Star in 2013 and 2014.



Prior to attending law school, Ms. Zeman pursued a career in the financial sector. Ms. Zeman served the members of the Marin County Federal Credit Union for almost seven years, acting as the Accounting and Compliance Manager. She is a 2010 graduate, *magna cum laude*, of the University of California, Hastings College of Law, where she was a member of the Thurston Society and served on the *Hastings Law Journal*. She received her undergraduate degrees in German and Art History and Archaeology, *summa cum laude*, from the University of Missouri in 1998. Ms. Zeman was a spring 2010 extern for the Honorable Marilyn Hall Patel of the United States District Court, Northern District of California. She was selected as a Rising Star by Northern California Super Lawyers (2013), recognizing her as one of the best young attorneys practicing in Northern California. Ms. Zeman is admitted to the California Bar.

## SIGNIFICANT RECOVERIES

Some of the cases in which the firm has had a leadership role are described below:

### False Advertising & Deceptive Marketing

*In re Hyundai and Kia Horsepower Litigation*, No. 02CC00287 (Cal. Super. Ct. Orange County). Girard Gibbs served as lead counsel in this coordinated nationwide class action against Hyundai for falsely advertising the horsepower ratings of more than 1 million vehicles over a ten year period. The case was aggressively litigated on both sides over several years. In all, over 850,000 Hyundai owners received notice of the settlement, which provided cash and other benefits, and which was had an estimated value of as much as \$125 million.

***In re Chase Bank USA, N.A. "Check Loan" Contract Litigation***, No. 09-2032 (N.D. Cal.). Girard Gibbs and several other firms led this nationwide class action lawsuit alleging deceptive marketing and loan practices by Chase Bank USA, N.A. After a nationwide class was certified, U.S. District Court Judge Maxine M. Chesney granted final approval of a \$100 million settlement on behalf of Chase cardholders.

***Hyundai and Kia Fuel Economy Litigation***, No. 2:13-ml-2424 (C.D. Cal.). In a lawsuit alleging false advertising in connection with the fuel efficiency of various Hyundai and Kia models, the court appointed Eric Gibbs as liaison counsel. The firm regularly reported to the Court, coordinated a wide-ranging discovery process, and advanced the view of over twenty-five firms seeking relief under the laws of over twenty states. Ultimately Mr. Gibbs helped negotiate a revised nationwide class action settlement with an estimated value of up to \$120 million.

***In re Providian Credit Card Cases***, J.C.C.P. No. 4085 (Cal. Super. Ct. San Francisco County). Girard Gibbs served as court-appointed co-lead counsel in this nationwide class action suit brought on behalf of Providian credit card holders. The lawsuit alleged that Providian engaged in unlawful, unfair and fraudulent business practices in connection with the marketing and fee assessments for its credit cards. The Honorable Stuart Pollack approved a \$105 million settlement, plus injunctive relief—one of the largest class action recoveries in the United States arising out of consumer credit card litigation.

***In re MCI Non-Subscriber Telephone Rates Litigation***, MDL Docket No. 1275 (S.D. Ill.). This class action lawsuit was brought on behalf of MCI subscribers charged various rates and surcharges instead of the lower rates MCI had advertised. Ten cases were consolidated for pretrial proceedings before the Honorable David R. Herndon, U.S. District Judge for the Southern District of Illinois. Judge Herndon appointed Girard Gibbs as co-lead counsel for the consolidated actions. On March 29, 2001, Judge Herndon granted final approval of a settlement for over \$90 million in cash.

***Skold v. Intel Corp.***, No. 1-05-CV-039231 (Cal. Super. Ct., Santa Clara Cty.) Girard Gibbs represented Intel consumers through a decade of hard-fought litigation, ultimately certifying a nationwide class under an innovative “price inflation” theory and negotiating a settlement that provided refunds and \$4 million in cy pres donations. In approving the settlement, Judge Peter Kirwan wrote: “It is abundantly clear that Class Counsel invested an incredible amount of time and costs in a case which lasted approximately 10 years with no guarantee that they would prevail.... Simply put, Class Counsel earned their fees in this case.”

***Steff v. United Online, Inc.***, No. BC265953, (Los Angeles Super. Ct.). This nationwide class action suit was brought against NetZero, Inc. and its parent, United Online, Inc., by former NetZero customers. Plaintiffs alleged that defendants falsely advertised their internet service as unlimited and guaranteed for a specific period of time. The Honorable Victoria G. Chaney of the Los Angeles Superior Court granted final approval of a settlement that provided full refunds to customers whose services were cancelled and which placed restrictions on Defendants’ advertising.

***Stoddard v. Advanta Corp.***, No. 97C-08-206-VAB (Del. Superior Ct.). This nationwide class action lawsuit was brought on behalf of cardholders who were promised a fixed APR for life in connection with balance transfers, but whose APR was then raised pursuant to a notice of change in terms. The Honorable Vincent A. Bifferato appointed the firm as co-lead counsel and approved a \$7.25 million settlement.

*Khaliki v. Helzberg's Diamond Shops, Inc.*, No. 11-0010-CV-W-NKL (W.D. Mo.). Girard Gibbs and co-counsel represented consumers who alleged deceptive marketing in connection with the sale of princess-cut diamonds. The firms achieved a positive settlement, which the court approved, recognizing “that Class Counsel provided excellent representation” and achieved “a favorable result relatively early in the case, which benefits the Class while preserving judicial resources.” The court went on to recognize that “Class Counsel faced considerable risk in pursuing this litigation on a contingent basis, and obtained a favorable result for the class given the legal and factual complexities and challenges presented.”

*In re: Tyson Foods Inc., Chicken Raised Without Antibiotics Consumer Litigation*, No. RDB-08-1982 (D. Md.). Girard Gibbs served as Class Counsel on behalf of consumers who purchased chicken products that were alleged to have been misleadingly labeled as “raised without antibiotics.” After discovery, counsel negotiated a \$5 million settlement that required Tyson to pay cash to class members and make a substantial cy pres contribution to food banks.

## Defective Products

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*In re iPod Cases*, JCCP No. 4355 (Cal. Super. Ct. San Mateo Cty). Girard Gibbs, as court appointed co-lead counsel, negotiated a settlement that provided warranty extensions, battery replacements, cash payments, and store credits for class members who experienced battery failure. In approving the settlement, the Hon. Beth L. Freeman said that the class was represented by “extremely well qualified” counsel who negotiated a “significant and substantial benefit” for the class members.

*Sugarman v. Ducati North America, Inc.*, No. 5:10-cv-05246-JF (N.D. Cal.). Girard Gibbs served as class counsel on behalf of Ducati motorcycle owners who the fuel tanks on their motorcycles degraded and deformed due to incompatibility with the motorcycles’ fuel. In January 2012, the Court approved a settlement that provided an extended warranty and repairs, writing, “The Court recognizes that class counsel assumed substantial risks and burdens in this litigation. Representation was professional and competent; in the Court’s opinion, counsel obtained an excellent result for the class.”

*Parkinson v. Hyundai Motor America*, No. CV 8:06-0345 (C.D. Cal.). Girard Gibbs served as class counsel in this class action featuring allegations that the flywheel and clutch system in certain Hyundai vehicles was defective. After achieving nationwide class certification, Girard Gibbs negotiated a settlement that provided for reimbursements to class members for their repairs, depending on their vehicle’s mileage at time of repair, from 50% to 100% reimbursement. The settlement also provided full reimbursement for rental vehicle expenses for class members who rented a vehicle while flywheel or clutch repairs were being performed. After the settlement was approved, the court wrote, “Perhaps the best barometer of ... the benefit obtained for the class ... is the perception of class members themselves. Counsel submitted dozens of letters from class members sharing their joy, appreciation, and relief that someone finally did something to help them.”

*In Re Medtronic, Inc. Implantable Defibrillators Product Liability Litigation*, MDL No. 05-1726 JMR (D.Minn.). Girard Gibbs served on the discovery and law committees and provided legal, discovery, and investigative support in this lawsuit, following a February 2005 recall of certain models of Medtronic implantable cardioverter defibrillator devices. Approximately 2,000 individual cases were filed around the country and consolidated in an MDL proceeding in District Court in Minnesota. The cases were settled in 2007 for \$75 million.

***Browne v. Am. Honda Motor Co., Inc.***, No. CV 09-06750 (C.D. Cal.). Girard Gibbs and co-counsel served as class counsel, representing plaintiffs who alleged that about 750,000 Honda Accord and Acura TSX vehicles were sold with brake pads that wore out prematurely. Girard Gibbs negotiated a settlement in which improved brake pads were made available and class members who had them installed could be reimbursed. The settlement received final court approval in July 2010 and provided an estimated value of approximately \$25 million.

***In Re General Motors Dex-Cool Cases.***, No. HG03093843 (Cal. Super Ct. Alameda Cty). In these class action lawsuits filed throughout the country, plaintiffs alleged that General Motors' Dex-Cool engine coolant damaged certain vehicles' engines, and that in other vehicles, Dex-Cool formed a rusty sludge that caused vehicles to overheat. After consumer classes were certified in both Missouri and California, General Motors agreed to cash payments to class members nationwide. On October 27, 2008, the California court granted final approval to the settlement.

***Roy v. Hyundai Motor America***, No. SACV 05-483-AHS (C.D. Cal.). Girard Gibbs served as court appointed co-lead counsel in this nationwide class action suit brought on behalf of Hyundai Elantra owners and lessees, alleging that an air bag system in vehicles was defective. Girard Gibbs helped negotiate a settlement whereby Hyundai agreed to repair the air bag systems, provide reimbursement for transportation expenses, and administer an alternative dispute resolution program for trade-ins and buy-backs. In approving the settlement, the Honorable Alicemarie H. Stotler presiding, described the settlement as "pragmatic" and a "win-win" for all involved.

## **Other Consumer Protection Recoveries**

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***Mitchell v. American Fair Credit Association***, No. 785811-2 (Cal. Super. Ct. Alameda Cty); ***Mitchell v. Bankfirst, N.A.***, No. C-97-1421-MMC (N.D. Cal.). This class action lawsuit was brought on behalf of California members of the American Fair Credit Association (AFCA). Plaintiffs alleged that AFCA operated an illegal credit repair scheme. The Honorable James Richman certified the class and appointed the firm as class counsel. In February 2003, Judge Ronald Sabraw of the Alameda County Superior Court and Judge Maxine Chesney of the U.S. District Court for the Northern District of California granted final approval of settlements valued at over \$40 million.

***In Re Mercedes-Benz Tele Aid Contract Litigation***, MDL No. 1914, CV No. 07-2720-DRD (D.N.J.), Girard Gibbs and co-counsel served as co-lead class counsel on behalf of consumers who were not told their vehicles' navigation systems were on the verge of becoming obsolete. Counsel successfully certified a nationwide litigation class, before negotiating a settlement valued between approximately \$25 million and \$50 million. In approving the settlement, the court acknowledged that the case "involved years of difficult and hard-fought litigation by able counsel on both sides" and that "the attorneys who handled the case were particularly skilled by virtue of their ability and experience."

***In re America Online Spin-Off Accounts Litigation***, MDL No. 04-1581-RSWL (C.D. Cal.). Girard Gibbs served as court-appointed co-lead counsel in this nationwide class action suit brought on behalf of America Online subscribers who were billed for a second account without their knowledge, authorization or consent. The litigation settled for \$25 million and changes in AOL's billing and account practices.

***In re LookSmart Litigation***, No. 02-407778 (Cal. Super. Ct. San Francisco Cty). This nationwide class action suit was brought against LookSmart, Ltd. on behalf of LookSmart's customers who paid an advertised "one time payment" to have their web sites listed in LookSmart's directory, only

to be later charged additional payments to continue service. Plaintiffs' claims included breach of contract and violation of California's consumer protection laws. On October 31, 2003, the Honorable Ronald M. Quidachay granted final approval of a nationwide class action settlement providing cash and benefits valued at approximately \$20 million.

***In re America Online, Inc. Version 5.0 Software Litigation***, MDL Docket No. 1341 (S.D. Fla.). Girard Gibbs served as co-lead counsel in this MDL proceeding, which centralized 45 class actions. The action involved alleged violations of state consumer protection statutes, the Computer Fraud and Abuse Act, and federal antitrust laws based on AOL's distribution of its Version 5.0 software upgrade. The Honorable Alan S. Gold granted final approval to a \$15.5 million cash settlement on August 1, 2002.

***In re PayPal Litigation***, No. C-02-1227-JF (PVT) (N.D. Cal., S.J. Div. 2002). Girard Gibbs served as co-lead counsel in this nationwide class action alleging violations of California consumer protection statutes and the Electronic Funds Transfer Act (EFTA). The plaintiffs alleged that PayPal unlawfully restricted access to consumers' PayPal accounts. On September 24, 2004, Judge Fogel granted final approval to a settlement valued at \$14.35 million in cash and returned funds, plus injunctive relief to ensure compliance with the EFTA.

***Powers Law Offices, P.C. v. Cable & Wireless USA, Inc.***, No. 99-CV-12007-EFH (D. Mass 1999). In this class action brought on behalf of cable and wireless subscribers overcharged for recurring and incorrect fees, Girard Gibbs prosecuted the case from 1999 through 2005. On October 27, 2005, Judge Harrington granted final approval of the \$8 million settlement and the bankruptcy court approved the 30% distribution from the unsecured creditors' fund of the bankruptcy liquidation proceeds.

***Lehman v. Blue Shield of California***, No. CGC-03-419349 (Cal. Super. Ct. San Francisco County). In this class action lawsuit alleging that Blue Shield engaged in unlawful, unfair and fraudulent business practices when it modified the risk tier structure of its individual and family health care plans, a \$6.5 million settlement was negotiated on behalf of former and current Blue Shield subscribers residing in California. The Honorable James L. Warren granted final approval of the settlement in March 2006.

***Telestar v. MCI, Inc.***, No. C-05-Civ-10672-JGK (S.D.N.Y.). This class action was brought on behalf of MCI commercial subscribers who were charged both interstate and intrastate fees for the same frame relay on prorate line service during the same billing period. On April 17, 2008, the Honorable John G. Koeltl granted final approval of a settlement for over \$2.8 million in cash.

***Wixon v. Wyndham Resort Development Corp.***, No. C-07-02361 JSW (BZ) (N.D. Cal.). Girard Gibbs served as class and derivative counsel in this litigation brought against a timeshare developer and the directors of a timeshare corporation for violations of California state law. Plaintiffs alleged that the defendants violated their fiduciary duties as directors by taking actions for the financial benefit of the timeshare developer to the detriment of the owners of timeshare interests. On September 14, 2010, Judge White granted approval of a settlement of the plaintiffs' derivative claims.

***Berrien, et al. v. New Raintree Resorts, LLC, et al.***, No. CV-10-03125 CW (N.D. Cal.). Girard Gibbs filed this class action on behalf of timeshare owners, challenging the imposition of unauthorized special assessment fees. On November 15, 2011, the Parties reached a proposed settlement of the claims asserted by the Plaintiffs on behalf of all class members who were charged the special assessment. On March 13, 2012, the Court issued its Final Class Action Settlement Approval Order and Judgment, approving the proposed settlement.

***Benedict, et al. v. Diamond Resorts Corporation, et al.***, No. CV 12-00183-DAE (D. Hawaii). Girard Gibbs filed this class action on behalf of timeshare owners, challenging the imposition of an unauthorized special assessment fee. On November 6, 2012, the parties reached a proposed settlement of the claims asserted by the plaintiffs on behalf of all class members who were charged the special assessment. On June 6, 2013, the Court approved the settlement.

***Allen Lund Co., Inc. v. AT&T Corp.***, No. C 98-1500-DDP (C.D. Cal.). This class action lawsuit was brought on behalf of small businesses whose long-distance service was switched to Business Discount Plan, Inc. Girard Gibbs was appointed class counsel by the Honorable Dean D. Pregerson. The settlement, providing for full cash refunds and free long-distance telephone service, was approved in December 1999.

***Mackouse v. The Good Guys - California, Inc.***, No. 2002-049656 (Cal. Super Ct. Alameda Cty). This nationwide class action lawsuit was brought against The Good Guys and its affiliates alleging violations of the Song-Beverly Warranty Act and other California consumer statutes. The Plaintiff alleged that The Good Guys failed to honor its service contracts, which were offered for sale to customers and designed to protect a customer's purchase after the manufacturer's warranty expired. In May 9, 2003, the Honorable Ronald M. Sabraw granted final approval of a settlement that provides cash refunds or services at the customer's election.

***Mager v. First Bank of Marin***, No. CV-S-00-1524-PMP (D. Nev.). This nationwide class action was brought on behalf of people who were enrolled in First Bank of Marin's credit card program. In May 2002, the Judge Pro of the U.S. District Court for the District of Nevada approved a settlement providing for cash and non-cash benefits to class members.

***Whitaker v. Health Net of Cal., Inc., et al.***, No. 2:11-cv-00910-KJM-DAD (E.D. Cal.) and *Shurtleff v. Health Net of Cal., Inc.*, No. 34-2012-00121600-CU-CL (Cal. Super Ct. Sacramento Cty). Girard Gibbs served as co-lead counsel in this patient privacy case. On June 24, 2014, the court granted final approval of a settlement that provided class members with credit monitoring, established a \$2 million fund to reimburse consumers for related identity theft incidents, and instituted material upgrades to and monitoring of Health Net's information security protocols.

***Smith v. Regents of the University of California, San Francisco***, No. RG-08-410004 (Cal. Super Ct. Alameda Cty). Girard Gibbs represented a patient who alleged that UCSF's disclosure of its patients' medical data to outside vendors violated California medical privacy law. The firm succeeded in negotiating improvements to UCSF's privacy procedures on behalf of a certified class of patients of the UCSF medical center. In approving the stipulated permanent injunction, Judge Stephen Brick found that "plaintiff Smith has achieved a substantial benefit to the entire class and the public at large."

***In re Countrywide Financial Corp. Customer Data Security Breach Litigation***, No. 3:08-MD-01988 (W.D. Ky.). Girard Gibbs served as a member of the executive committee representing a class of millions of customers and potential customers of Countrywide whose personal information was stolen by a former Countrywide employee and then sold to other mortgage lenders. The class settlement provided for free credit monitoring, reimbursement of out-of-pocket expenses incurred as a result of the theft, and reimbursement of up to \$50,000 per class member for identity theft losses.

***In re Sony BMG CD Technologies Litigation***, No. 1:05-cv-09575-NRB (S.D.N.Y.). Girard Gibbs served as co-lead counsel in this class action for violation of the Computer Fraud and Abuse Act, 18 U.S.C. § 1030, *et seq.* on behalf of millions of consumers who purchased SONY BMG music

compact discs encoded with digital rights management software which limited CD functionality and acted as spyware on the users' computers. Judge Naomi Reice Buchwald granted approval to a settlement that provided for a nationwide recall of certain CDs, the dissemination of software utilities to remove the offending DRM, cash and other compensation for consumers, and injunctive relief governing SONY BMG's use of DRM.

*In re H&R Block Express IRA Litigation*, MDL No. 1786 (W.D. Mo.). Girard Gibbs served as co-lead counsel in this MDL involving H&R Block's marketing and sale of its "Express IRA" investment products. The firms negotiated a coordinated settlement with the New York Attorney General that provided class members with more than \$19 million in cash (resulting in a full recovery for consumers) and non-cash benefits entitling Express IRA holders to convert their investments to alternative IRAs with lower fees.

*In re Adobe Systems, Inc. Privacy Litigation*, No. 5:13-cv-05226-LHK (N.D. Cal.): Girard Gibbs was appointed as lead counsel in this consolidated litigation on behalf of consumers who asserted privacy and consumer fraud claims arising from a 2013 data breach. In September 2014, Girard Gibbs obtained a pivotal ruling when the court denied Adobe's motion to dismiss for lack of standing, ruling that the Supreme Court's opinion in *Clapper v. Amnesty International USA*, 133 S. Ct. 1138 (2013), did not change existing standing jurisprudence. 66 F. Supp. 3d 1197 (N.D. Cal. 2014). Before this opinion, many data breach defendants had obtained dismissals for lack of standing based on *Clapper*. The Adobe ruling has been followed by a number of district courts, and most recently by the Seventh Circuit Court of Appeals in *Remijas v. Neiman Marcus Group, LLC*. 794 F.3d 688, 693-94 (7th Cir. 2015).

## Securities and Financial Recoveries

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*In re Digex, Inc. Shareholder Litigation*, Consol. Case No. 18336 (Del. Ch. Ct. 2000). Girard Gibbs represented the Kansas Public Employees Retirement System, one of two institutional lead plaintiffs in this lawsuit, in which minority shareholders of Digex, Inc. sued to enjoin MCI WorldCom's planned acquisition of a controlling interest in Digex through a merger with Intermedia Communications, Inc. In a settlement approved by Delaware Chancery Court on April 6, 2000, a fund consisting of \$165 million in MCI WorldCom stock and \$15 million in cash was secured for Digex shareholders, as well as non-cash benefits valued at \$450 million.

*Billitteri v. Securities America, Inc.*, No. 3:09-cv-01568-F (N.D. Tex.). Girard Gibbs served as lead counsel in an action against broker-dealer Securities America, Inc. and its corporate parent, Ameriprise, Inc. in connection with sales of investments in the Provident Royalties and Medical Capital investment schemes. Mr. Girard coordinated negotiations resulting in a \$150 million settlement, with \$80 million allocated to class plaintiffs represented by Girard Gibbs and \$70 million allocated to individual investors who had initiated arbitration proceedings. The settlements returned over 40% of investment losses.

*In re Lehman Brothers Equity/Debt Securities Litigation*, No. 08-Civ-5523 (S.D.N.Y. 2008). Girard Gibbs was appointed class counsel for a certified class of retail investors in structured products sold by UBS Financial Services, Inc., following the collapse of Lehman Brothers Holdings, Inc., the largest bankruptcy in United States history. The plaintiffs alleged that UBS misrepresented Lehman's financial condition and failed to disclose that the "principal protection" feature of many of the notes depended upon Lehman's solvency. Girard Gibbs negotiated a settlement that established a \$120 million fund to resolve the claims.

***In re Prison Realty Securities Litigation***, No. 3:99-0452 (M.D. Tenn.). Girard Gibbs served as co-lead counsel in this securities class action brought against a real estate investment trust and its officers and directors relating to a merger between Corrections Corporation of America and CCA Prison Realty Trust. On February 13, 2001, the Court granted final approval to a settlement for over \$120 million in cash and stock.

***In re American Express Financial Advisors Securities Litigation***, No. 04-cv-01773-DAB (S.D.N.Y.). Girard Gibbs served as co-lead counsel in this class action, brought on behalf of individuals who bought financial plans and invested in mutual funds from American Express Financial Advisors. The case alleged that American Express steered its clients into underperforming “shelf space funds” to reap kickbacks and other financial benefits. On July 13, 2007, the Court granted final approval to a cash settlement of \$100 million in addition to other relief.

***Scheiner v. i2 Technologies, Inc., et al.***, No. 3:01-CV-418-H (N.D. Tex.). Girard Gibbs represented lead plaintiff, the Kansas Public Employees Retirement System, and served as co-lead counsel on behalf of investors in i2 Technologies. The Honorable Barefoot Sanders approved cash settlements for \$88 million from the company, its officers and its former auditor, Arthur Andersen LLP. As part of the settlement, i2 agreed to institute significant corporate governance reforms.

***In re Peregrine Financial Group Customer Litigation***, No. 415546 (Cal. Super. Ct. S.F. County). Girard Gibbs served as co-lead counsel for futures and commodities investors who alleged they lost millions of dollars in the collapse of Peregrine Financial Group, Inc. The case resulted in settlements with JPMorgan Chase & Co. and U.S. Bank N.A., totaling approximately \$60 million.

***CalSTRS v. Qwest Communications, et al.***, No. 415546 (Cal. Super. Ct. S.F. County). Girard Gibbs represented the California State Teachers Retirement System in this opt-out securities fraud case against Qwest Communications, Inc. and certain of its officers and directors, as well as its outside auditor Arthur Andersen. The case resulted in a precedent-setting \$45 million settlement for California school teachers.

***In re SLM Corp. Securities Litigation***, No. 08-Civ-1029-WHP. Girard Gibbs served as lead counsel representing investors of SLM Corporation in litigation alleging that Sallie Mae, the leading provider of student loans in the U.S., misled the public about its financial performance in order to inflate the company’s stock price. After achieving nationwide class certification, Girard Gibbs negotiated a settlement that established a \$35 million fund to resolve investors’ claims.

***In re Winstar Communications Securities Litigation***, No. 01 Civ. 11522 (S.D.N.Y.) Girard Gibbs represented Allianz of America, Inc., Fireman’s Fund and other large private institutional investors against Grant Thornton and other defendants arising out of plaintiffs’ investments in Winstar Communications, Inc. The firm achieved a settlement on the eve of trial that provided a recovery rate more than 30 times higher than what class members received in a related class action. The recovery (after attorney fees) returned a remarkable 78.5% of the losses plaintiffs may have recovered at trial.

***In re Total Renal Care Securities Litigation***, No. 99-01750 (C.D. Cal.). This securities fraud action arose out of restatement of earnings by a healthcare provider, brought under the PSLRA by the Louisiana Teachers’ Retirement System and the Louisiana School Employees’ Retirement System. The case settled for \$25 million and issuer’s commitment to adopt comprehensive corporate governance reforms. Girard Gibbs served as liaison counsel.

***In re Oxford Tax Exempt Fund Securities Litigation***, No. WMN-95-3643 (D. Md.). Girard Gibbs served as co-lead counsel in this class and derivative litigation brought on behalf of a real estate limited partnership with assets of over \$200 million. Settlement providing for exempt issuance of securities under section 3(a)(10) of Securities Act of 1933, public listing of units, and additional settlement benefits valued at over \$10 million approved January 31, 1997.

***Calliott v. HFS, Inc.***, No. 3:97-CV-0924-L (N.D. Tex.). Girard Gibbs intervened on behalf of an institutional client in this securities class action arising out of bankruptcy of Amre, Inc., a seller of home remodeling and repair services. Girard Gibbs was designated lead plaintiff's counsel under the Private Securities Litigation Reform Act. Settlements for \$7.3 million were approved August 1999 and December 2000.

***In re Towers Financial Corporation Noteholders Litigation***, MDL No. 994 (S.D.N.Y.). This class action was brought against promoters and professionals associated with a failed investment scheme described by the SEC as the then "largest Ponzi scheme in U.S. history." The case resulted in \$6 million in partial settlements, and a \$250 million judgment entered against four senior Towers executives. Girard Gibbs served as liaison counsel and as a plaintiffs' executive committee member. *See In re Towers Financial Corporation Noteholders Litigation*, 177 F.R.D. 167 (S.D.N.Y. 1997) ("class counsel—particularly Plaintiffs' Liaison counsel, Daniel Girard—has represented the plaintiffs diligently and ably in the several years that this litigation has been before me").

## Mass Tort

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***In re Actos (Pioglitazone-Products Liability Litigation)***, MDL No. 6:11-md-2299 (W.D. La.). Girard Gibbs lawyers were among those court-appointed to the Plaintiffs Steering Committee and also served on the Daubert and Legal Briefing Committees, in litigation that resulted in a \$2.37 billion settlement.

***In re Yasmin and Yaz (Drospirenone) Marketing, Sales, Practices and Products Liability Litigation***, MDL No. 2385, No. 3:09-md-02100-DRH-CJP (S.D. Ill.). Girard Gibbs attorneys were appointed to the Plaintiffs Steering Committee and served as Co-Chair of the Plaintiffs' Law and Briefing Committee, in litigation ultimately resulting in settlements worth approximately \$1.6 billion.

***In re Pradaxa (Dabigatran Etexilate) Products Liability Litigation***, MDL No. 2385, No. 3:12-md-02385-DRH-SCW (S.D. Ill.), Girard Gibbs lawyers were appointed by the court to the Plaintiffs Steering Committee in mass tort litigation that resulted in settlements worth approximately \$650 million.

## Employment

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***Mitchell v. Acosta Sales, LLC***, No. 11-1796 (C.D. Cal. 2011). Girard Gibbs and co-counsel served as class counsel representing Acosta employees who alleged that they were required to work off-the-clock and were not reimbursed for required employment expenses. Girard Gibbs helped negotiate a \$9.9 million settlement for merchandiser employees who were not paid for all the hours they worked. The Court granted final approval of the settlement in September 2013.

***Rubaker v. Spansion, LLC***, No. 09-842 (N.D. Cal. 2009). Girard Gibbs and co-counsel filed a class action lawsuit on behalf of former Spansion employees that alleged that the company had failed to

provide terminated employees from California and Texas with advance notice of the layoff, as required by the Workers Adjustment and Retraining Notification Act (WARN Act). The bankruptcy court approved the class action settlement negotiated by Girard Gibbs and co-counsel in 2010. The settlement was valued at \$8.6 million and resulted in cash payments to the former employees.

## **Antitrust**

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*In re TFT-LCD (Flat Panel) Antitrust Litigation*, MDL 1827 (N.D. Cal.). Girard Gibbs serves as liaison counsel in this multi-district antitrust litigation against numerous TFT-LCD (Flat Panel) manufacturers alleging a conspiracy to fix prices, which has achieved settlements of more than \$400 million to date.

*In re Natural Gas Antitrust Cases I, II, III and IV*, J.C.C.P. No. 4221 (Cal. Super. Ct. San Diego Cty). Girard Gibbs served in a leadership capacity in this coordinated antitrust litigation against numerous natural gas companies for manipulating the California natural gas market, which has achieved settlements of nearly \$160 million.

## **Government Reform**

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*Paeste v. Government of Guam*, No. 1:11-cv-0008 (D. Guam). Girard Gibbs and co-counsel served as Class Counsel in litigation alleging the Government of Guam had a longstanding practice of delaying tax refunds for years on end. After certifying a litigation class, Plaintiffs prevailed on both of their claims at the summary judgment stage, and obtained a permanent injunction reforming the government's administration of tax refunds.

*Ho v. San Francisco Unified School District*, No. C-94-2418-WHO (N.D. Cal.). This civil rights action was brought on behalf of a certified class of San Francisco public school students of Chinese descent to terminate racial and ethnic quotas imposed under 1983 desegregation consent decree. *See Ho v. San Francisco Unified Sch. Dist.*, 965 F. Supp. 1316 (N.D. Cal. 1997), *aff'd* 147 F.3d 854 (9th Cir. 1998); *see also* 143 Cong. Rec. S6097, 6099 (1997) (statement of United States Senator Hatch referring to testimony of class representative before Senate Judiciary Committee).

# **EXHIBIT M**

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

IN RE: NATIONAL FOOTBALL  
LEAGUE PLAYERS' CONCUSSION  
INJURY LITIGATION

Kevin Turner and Shawn Wooden,  
*on behalf of themselves and  
others similarly situated,*

Plaintiffs,

v.

National Football League and  
NFL Properties LLC,  
successor-in-interest to  
NFL Properties, Inc.,

Defendants.

THIS DOCUMENT RELATES TO:  
ALL ACTIONS

No. 2:12-md-02323-AB

MDL No. 2323

**Hon. Anita B. Brody**

Civ. Action No. 14-00029-AB

**DECLARATION OF THOMAS V. GIRARDI IN SUPPORT OF CO-LEAD CLASS  
COUNSEL'S PETITION FOR AN AWARD OF ATTORNEY'S FEES AND  
REIMBURSEMENT OF COSTS AND EXPENSES**

THOMAS V. GIRARDI declares as follows pursuant to 28 U.S.C. § 1746:

1. I am a Thomas V. Girardi partner of the law firm of Girardi and Keese. I submit this declaration in support of Co-Lead Class Counsel's Petition for an Award of Attorney's Fees and Reimbursement of Costs and Expenses in connection with and for services rendered and expenses incurred for the common benefit of the Settlement Class in the above-captioned multidistrict litigation ("Action") from the inception of the litigation through July 15, 2016, as well as for the payment of expenses incurred therewith. I have personal knowledge of the

matters set forth in this declaration and, if called upon, I could and would testify competently thereto.

2. My firm along with Jason Luckasevic of Goldberg, Perksy & White, P.C., originated the "NFL Concussion Litigation" by filing the first two cases of its kind. Our firm's efforts were critical to the investigation of groundbreaking facts, creation of liability against the league and litigating the case up to and including the arguments on the NFL's Motions to Dismiss.

3. The schedule attached hereto as Exhibit 1 is a detailed summary indicating the amount of common benefit time spent by the attorneys and professional support staff of my firm who were involved in, and billed fifty or more hours to, this Action, and the lodestar calculation for those individuals based on my firm's current billing rates. For personnel who are no longer employed by my firm, the lodestar calculation is based on the billing rates of such personnel in their final year of employment by my firm. The schedule was prepared from contemporaneous daily time records regularly prepared and maintained by my firm. Time expended in preparing this application for attorney's fees and expenses has been excluded.

4. The hourly rates for the attorneys and professional support staff of my firm included in Exhibit 1 are the same as they charge for non-contingent work that is paid on an hourly basis, or for rates paid to attorneys of comparable experience and reputation in the relevant legal market and have been accepted by other federal courts in other class action cases prosecuted by my firm.

5. The total number of hours expended on the common benefit of this Action by my firm during the time period is 626.8 hours. The total lodestar for my firm for those ours is \$472,370.00 consisting only of attorney time.

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

7. As detailed in Exhibit 2 hereto, my firm is seeking reimbursement of a total of \$5,509.15 in common benefit expenses incurred in connection with the prosecution of this Action. These expenses are reflected on the books and records of my firm. These books and records are prepared from expense vouchers, check records, and other source material, and are an accurate record of the expenses incurred.

8. With respect to the standing of my firm to share in an award of fees, costs, and expenses, attached hereto as Exhibit 3 is a biography of my firm, including the attorneys in my firm who were principally involved in this Action.

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

Executed on January 9, 2017, at Los Angeles, California

/s/ Thomas V. Girardi  
Thomas V. Girardi

# **EXHIBIT 1**

**IN RE: NATIONAL FOOTBALL LEAGUE PLAYERS' CONCUSSION INJURY LITIGATION**

**No. 12-md-2323-AB**

**Girardi and Keese**

**LODESTAR REPORT**

**Inception through July 15, 2016**

<b>NAME</b>	<b>HOURS</b>	<b>HOURLY RATE</b>	<b>AMOUNT</b>
<b>PARTNERS:</b>			
<b>Thomas V. Girardi</b>	234	\$1,100	\$257,400.00
<b>Graham LippSmith</b>	258.3	\$650	\$167,895.00
<b>ASSOCIATES:</b>			
<b>Celene S. Chan</b>	134.5	\$350	\$47,075.00
<b>STAFF ATTORNEYS:</b>			
<b>CONTRACT ATTORNEYS:</b>			
<b>PARALEGALS:</b>			
<b>TOTALS:</b>			\$472,370.00

# **EXHIBIT 2**

**IN RE: NATIONAL FOOTBALL LEAGUE PLAYERS' CONCUSSION INJURY  
LITIGATION**

**No. 12-md-2323-AB**

**Girardi and Keese**

**COST AND EXPENSE REPORT**

**Inception through July 15, 2016**

<b>NUMBER</b>	<b>CATEGORY</b>	<b>AMOUNT</b>
1	Assessments	
2	Commercial Copies	
3	Computerized Research	
4	Court Reporters/Transcripts	
5	Expert Services	
6	Facsimile	
7	Filing & Service Fees	
8	In-House Copies	
9	Long Distance Telephone	
10	Postage/Express Delivery	
11	Travel/Meals/Lodging	\$5,509.15
12	Miscellaneous	
<b>TOTAL EXPENSES</b>		<b>\$5,509.15</b>

# **EXHIBIT 3**

**IN RE: NATIONAL FOOTBALL LEAGUE PLAYERS' CONCUSSION INJURY  
LITIGATION**

**No. 12-md-2323-AB**

**Girardi and Keese**

**EXHIBIT #3**

Girardi and Keese is a law firm located in Los Angeles, California. Thomas V. Girardi, the named partner of the firm, is one of the most respected attorneys in California and the United States. He has obtained more than thirty verdicts of \$1 million or more and has handled more than 100 settlements of \$1 million or more. He has tried more than 100 jury trial cases. Mr. Girardi has obtained the following settlements: \$4.85 billion against Merck for Vioxx, \$1.9 billion for California consumers defrauded by the manipulation of natural gas prices, and a \$785 million verdict against Lockheed for injuries suffered by its employees, just to name a few.

At the beginning of 2011, Herman Russomanno, reached out to Thomas V. Girardi regarding a case against the NFL. Girardi and Keese partnered with Goldberg, Perkys, & White and Russamanno and Borrello in pursuing a case against the NFL.

This case required a large amount of money and manpower. Girardi and Keese dedicated many hours to their work on this case including review of the science, speaking with various experts regarding CTE, developing the various legal theories that would be pursued against the NFL, drafting, researching and writing pleadings.

Our firms filed the first complaint against the NFL, Maxwell v. NFL in Los Angeles Superior Court on July 19, 2011. On August 3, 2011, we filed our second complaint, Pear v. NFL in the same court totaling over 120 chronically brain injured retired players. After filing the second complaint the NFL removed the cases to Federal Court. Our firms collectively worked on and filed a Motion to Remand. This is one of several motions that my firm had to brief as part of our efforts in the NFL litigation.

In the MDL litigation, Mr. Girardi served as an Executive Committee member. Mr. Girardi spent numerous hours working on behalf of the committee and in pursuing collective goals. Graham LippSmith, a partner with fifteen years experience, assisted Mr. Girardi in those efforts. Additionally, Celene Chan, an associate with nine years experience, also assisted in those efforts.

# EXHIBIT N

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

IN RE: NATIONAL FOOTBALL  
LEAGUE PLAYERS' CONCUSSION  
INJURY LITIGATION

Kevin Turner and Shawn Wooden,  
*on behalf of themselves and  
others similarly situated,*

Plaintiffs,

v.

National Football League  
and NFL Properties LLC,  
successor-in-interest to  
NFL Properties, Inc.,

Defendants.

THIS DOCUMENT RELATES TO:  
ALL ACTIONS

No. 2:12-md-02323-AB

MDL No. 2323

**Hon. Anita B. Brody**

Civ. Action No. 14-00029-AB

**DECLARATION OF BRUCE A. HAGEN IN SUPPORT OF CO-LEAD CLASS  
COUNSEL'S PETITION FOR AN AWARD OF ATTORNEY'S FEES AND  
REIMBURSEMENT OF COSTS AND EXPENSES**

BRUCE A. HAGEN declares as follows pursuant to 28 U.S.C. § 1746:

1. I am senior partner of the law firm of Hagen, Roskopf & Earle, LLC. I submit this declaration in support of Co-Lead Class Counsel's Petition for an Award of Attorney's Fees and Reimbursement of Costs and Expenses in connection with and for services rendered and expenses incurred for the common benefit of the Settlement Class in the above-captioned multidistrict litigation ("Action") from the inception of the litigation through July 15, 2016, as well as for the

payment of expenses incurred therewith. I have personal knowledge of the matters set forth in this declaration and, if called upon, I could and would testify competently thereto.

2. I have been a member of the Communications and Public Relations Subcommittee (the "CPR") to the Plaintiff's Steering Committee since its inception. Other members of the CPR were Anthony Tarricone, Steve Marks, Michael McGlamry, David Rosen and the Co-Lead Counsel. The CPR was tasked with the critical function of shaping and managing the media outreach to guide the message being put forth on behalf of the players. The CPR was instrumental in working with members of the media to unearth and expose facts about the NFL's conduct that served as a proxy for information that would normally only be developed in discovery. Since discovery efforts had been stayed by the Court until after a resolution of the preemption argument, the CPR's efforts were the only means available to develop the facts that ultimately led to the parties reaching an agreement to settle the case.

My personal involvement on the CPR was in many different areas, all of which served the overall purpose of the CPR and supported the efforts of the Co-Lead Counsel. These activities included, but are not limited to, interviewing and selecting a Public Relations firm to assist the CPR and Lead Counsel; establishing relationships with members of the media who were following the issues raised in the case; crafting the messaging to be put forth by both counsel and players; facilitating media access to players; strategy regarding media outreach and efforts; working with media, players and counsel to coordinate and conduct press conferences; discussion with various media members about issues critical to the success of the players' claims in the litigation; daily review of media coverage of the concussion litigation and issues surrounding same; working with website development to put forth a clear message in support of the players' claims and the

settlement efforts; participation in regular meetings with the PR firm and members of the CPR; coordination with the efforts being made by the CPR and the overall efforts of the PSC, PEC and lead counsel; various other tasks done in furtherance of the overall effort to secure a favorable result for the players in the NFL Concussion litigation.

All of the above efforts were done separately from any work performed on behalf of individual clients, and was done to provide a benefit to the common efforts of all plaintiffs.

3. The schedule attached hereto as Exhibit 1 is a detailed summary indicating the amount of common benefit time spent by the attorneys and professional support staff of my firm who were involved in, and billed fifty or more hours to, this Action, and the lodestar calculation for those individuals based on my firm's current billing rates. For personnel who are no longer employed by my firm, the lodestar calculation is based on the billing rates of such personnel in their final year of employment by my firm. The schedule was prepared from contemporaneous daily time records regularly prepared and maintained by my firm. Time expended in preparing this application for attorney's fees and expenses has been excluded.

4. The hourly rates for the attorneys and professional support staff of my firm included in Exhibit 1 are the same as the regular rates charged for their services in other contingent matters.

5. The total number of hours expended on the common benefit of this Action by my firm during the time period is 540.8 hours. The total lodestar for my firm for those hours is \$324,480.00, consisting of \$324,480.00 for attorney's time.

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

7. As detailed in Exhibit 2 hereto, my firm is seeking reimbursement of a total of \$16,998.08 in common benefit expenses incurred in connection with the prosecution of this Action. These expenses are reflected on the books and records of my firm. These books and records are prepared from expense vouchers, check records, and other source material, and are an accurate record of the expenses incurred.

8. With respect to the standing of my firm to share in an award of fees, costs, and expenses, attached hereto as Exhibit 3 is a biography of my firm, including the attorneys in my firm who were principally involved in this Action.

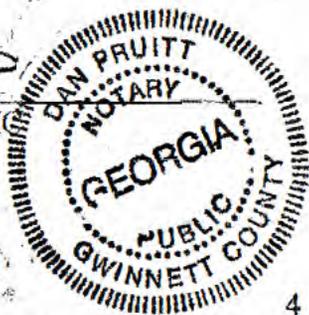
I declare under penalty of perjury that the foregoing is true and correct.

Executed on December 28, 2016 at Decatur, Georgia.

  
\_\_\_\_\_  
BRUCE A. HAGEN

Sworn to and subscribed before me  
this 28<sup>th</sup> day of December, 2016

  
\_\_\_\_\_  
NOTARY PUBLIC



4

# **EXHIBIT 1**

**RE: NATIONAL FOOTBALL LEAGUE PLAYERS' CONCUSSION INJURY LITIGATION**

**No. 12-md-2323-AB**

**HAGEN, ROSSKOPF & EARLE, LLC**

**LODESTAR REPORT**

**Inception through July 15, 2016**

<b>NAME</b>	<b>HOURS</b>	<b>HOURLY RATE</b>	<b>AMOUNT</b>
<b>PARTNERS:</b>			
Bruce A. Hagen	540.8	600.00	324,480.00
<b>ASSOCIATES:</b>			
<b>STAFF ATTORNEYS:</b>			
<b>CONTRACT ATTORNEYS:</b>			
<b>PARALEGALS:</b>			
<b>TOTALS:</b>	<b>540.8</b>		<b>\$324,480.00</b>

**Exhibit "1"**

# **EXHIBIT 2**

**IN RE: NATIONAL FOOTBALL LEAGUE PLAYERS' CONCUSSION INJURY  
LITIGATION**

**No. 12-md-2323-AB**

**Hagen, Roskopf & Earle, LLC**

**COST AND EXPENSE REPORT**

**Inception through July 15, 2016**

<b>NUMBER</b>	<b>CATEGORY</b>	<b>AMOUNT</b>
1	Assessments	10,000.00
2	Commercial Copies	
3	Computerized Research	
4	Court Reporters/Transcripts	
5	Expert Services	
6	Facsimile	
7	Filing & Service Fees	
8	In-House Copies	
9	Long Distance Telephone	
10	Postage/Express Delivery	
11	Travel/Meals/Lodging	6,998.08
12	Miscellaneous	
<b>TOTAL EXPENSES</b>		<b>\$16,998.08</b>

**Exhibit "2"**

# **EXHIBIT 3**

**IN RE: NATIONAL FOOTBALL LEAGUE PLAYERS' CONCUSSION INJURY  
LITIGATION**

**No. 12-md-2323-AB**

**BIOGRAPHY**

Bruce A. Hagen has been a licensed attorney in the State of Georgia since 1986. After spending 6 years working for other firms, Bruce A. Hagen started his own firm, Bruce A. Hagen, P.C., in 1992. Since that time, Bruce has been lead counsel on behalf of more than 10,000 clients in personal injury claims and has been lead counsel on approximately 200 trials. Bruce is widely recognized as one of the top trial lawyers in Georgia, having been named as a Georgia Super Lawyer for 14 consecutive years. Bruce is a Champion Member of the Georgia trial Lawyers Association and is a frequent speaker at GTLA conferences, most recently in December, 2016 at the annual GTLA Holiday Seminar and in April, 2016 at the GTLA Annual Conference. Bruce is also a regular lecturer for programs put on by ICLE, NBI and AAJ, having spoken at the AAJ Brain Injury Section Jazz Fest Seminar. A member of AAJ, Bruce is also the co-author of a 3 volume set published by AAJ Press called Litigating Minor Impact Soft Tissue Injury Cases.

Bruce is a regular media commentator on issues relating to Sports and the Law. Bruce has a regular segment on the top Sports Radio show in Atlanta on WCNN 680 The Fan where he discusses relevant topics on the intersection of sports and the law and is frequently sought after for media commentary by multiple local TV news sources in the Atlanta area.

Bruce first became involved in what would become known as the "NFL Concussion Litigation" in mid-2011 when he was contacted by a former player. From that initial contact, Bruce became intimately involved with the litigation, including the history of the NFL's actions as it related to the medical issue of concussions and head injuries. Bruce connected with many of the writers and journalists who were involved in exposing the NFL's conduct. Bruce also began a joint effort with other likeminded lawyers around the country to hold the NFL accountable in what ultimately led to the settlement of the present matter.

Based on Bruce's personal experience as a lawyer since 1986, his professional accomplishments and his involvement in the present case since inception, the fees and expenses that are sought in the present petition are all reasonable and appropriate and should be approved without revision by the Court.

**Exhibit "3"**

# EXHIBIT O

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

IN RE: NATIONAL FOOTBALL  
LEAGUE PLAYERS' CONCUSSION  
INJURY LITIGATION

Kevin Turner and Shawn Wooden,  
*on behalf of themselves and  
others similarly situated,*  
Plaintiffs,

v.

National Football League and  
NFL Properties LLC,  
successor-in-interest to  
NFL Properties, Inc.,  
Defendants.

THIS DOCUMENT RELATES TO:  
ALL ACTIONS

No. 2:12-md-02323-AB

MDL No. 2323

**Hon. Anita B. Brody**

Civ. Action No. 14-00029-AB

**DECLARATION OF SAMUEL ISSACHAROFF IN SUPPORT OF CO-LEAD CLASS  
COUNSEL'S PETITION FOR AN AWARD OF ATTORNEY'S FEES AND  
REIMBURSEMENT OF COSTS AND EXPENSES**

Samuel Issacharoff declares as follows pursuant to 28 U.S.C. § 1746:

1. I submit this declaration in support of Co-Lead Class Counsel's Petition for an Award of Attorney's Fees and Reimbursement of Costs and Expenses in connection with and for services rendered and expenses incurred for the common benefit of the Settlement Class in the above-captioned multidistrict litigation ("Action") from the inception of the litigation through December 28, 2016, as well as for the payment of expenses incurred therewith. I have personal

knowledge of the matters set forth in this declaration and, if called upon, I could and would testify competently thereto.

2. I have been consulted by lead attorneys for the plaintiffs since the inception of the consolidated litigation in the current MDL. All of my work consisted of legal advice on the structure of any proposed settlement. In that role, I attended meetings with cooperating counsel and, on occasion, with some of the NFL class members. However, my central work on this case began during the period of intensive settlement negotiations. My primary role was to serve as a legal advisor to lead counsel Chris Seeger on matters relating to class resolution of this case. In that role, I advised on settlement strategy and I appeared as needed at settlement discussions or before this Court. I took responsibility for the finalization of all briefs to this Court on settlement and class matters. I also served as lead counsel on all appeals of this case. I twice argued appeals before the Third Circuit, both times serving as the primary advocate in conjunction with the NFL's counsel, who argued a more limited set of issues. I coordinated with the NFL's counsel on both appeals, reviewed their briefs, and on two occasions held joint mootings sessions with NFL appellate counsel. I was also primary draftsman and counsel of record in the Supreme Court in opposition to the two petitions for certiorari. My work in the case is ongoing and I will continue to serve as lead appellate lawyer on any complications from or collateral challenges to settlement implementation.

3. The schedule attached hereto as Exhibit 1 is summary of the time I spent on the matter, all of it spent on legal briefing, argument, and advising. In addition, it includes a small number of hours spent by Cynthia Estlund on the preparation of class argument on preemption issues. Estlund is a professor at NYU Law School specializing in labor issues and she worked in assisting David Fredericks for argument on the issue before this Court.

4. The total lodestar comes to \$800,512.50. These lodestar calculations are based on current billing rates for non-contingent work for which I currently charge \$1,000 per hour for non-contingent work. For example, I submit regularly hour-based billings at this rate in a bankruptcy court and have been paid at this rate for some time. All of the hours were based on contemporaneous time records that I kept, or the small number of hours kept by Professor Estlund. Time expended in preparing this application for attorney's fees and expenses has been excluded.

5. I have separately billed for expenses and those are not included in my hourly rate. As detailed in Exhibit 2 hereto, I am seeking reimbursement of a total of \$7,302.22 in common benefit expenses incurred in connection with the prosecution of this Action. These expenses are reflected on contemporaneous billing records in this case. These expenses consist exclusively of travel to and from Philadelphia for court appointments, preparation for arguments, and for arguments before the Third Circuit. These expenses include hotel and travel, as well as meals and incidental hotel charges.

6. I attach a current CV for myself and for Cynthia Estlund. I declare under penalty of perjury that the foregoing is true and correct.

Executed on December 28, 2016 at Kent, Connecticut.



Samuel Issacharoff

# **EXHIBIT 1**



# **EXHIBIT 2**

**IN RE: NATIONAL FOOTBALL LEAGUE PLAYERS' CONCUSSION INJURY  
LITIGATION**

**No. 12-md-2323-AB**

**Samuel Issacharoff**

**COST AND EXPENSE REPORT**

**Inception through July 15, 2016**

<b>NUMBER</b>	<b>CATEGORY</b>	<b>AMOUNT</b>
1	Assessments	0
2	Commercial Copies	0
3	Computerized Research	0
4	Court Reporters/Transcripts	0
5	Expert Services	0
6	Facsimile	0
7	Filing & Service Fees	0
8	In-House Copies	0
9	Long Distance Telephone	0
10	Postage/Express Delivery	0
11	Travel/Meals/Lodging	<b>7,302.22</b>
12	Miscellaneous	0
<b>TOTAL EXPENSES</b>		<b>7,302.22</b>

# **EXHIBIT 3**

## **SAMUEL ISSACHAROFF**

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New York University School of Law  
40 Washington Square South  
New York, NY 10012  
(212) 998-6580, Fax: (212) 995-4590  
email: si13@nyu.edu

Home Address  
300 West End Ave.  
New York, N.Y. 10023  
(212) 362-9461

### **ACADEMIC EXPERIENCE**

#### ***New York University School of Law***

- Bonnie and Richard Reiss Professor of Constitutional Law (2005 - )
- Visiting Professor (2004-2005)

#### ***Harvard Law School***

- Samuel Williston Visiting Professor (Fall 2008)

#### ***Columbia Law School***

- Harold R. Medina Professor in Procedural Jurisprudence (2001 - 2005)
- Professor (1999 - 2001)
- Visiting Professor (1998-1999)

#### ***Oxford University***

- Astor Visiting Lecturer (June 2005)

#### ***Tel Aviv University***

- Visiting Professor (May-June 2006)

#### ***University of Texas School of Law***

- Joseph D. Jamail Centennial Chair in Law (1998-1999)
- Charles Tilford McCormick Professor in Law (1994-1998)
- Professor and Preston Shirley Faculty Fellow (1993-94)
- Assistant Professor (1989-1993)

#### ***University of Pennsylvania Law School***

- Lecturer in Law (1986-1989)

#### ***Gerzensee Center for Law and Economics, Switzerland***

- Visiting Lecturer on Constitutional Law (May 2008)

***University of Toronto School of Law***

- Full Professor Status Only (2011- 2014) (Dissertation reviewer)

***University of Melbourne School of Law***

- Senior Fellow (2011)

*Courses Taught:* Civil Procedure, Employment Law, Law of Democracy, Constitutional Law, Comparative Constitutional Law, Complex Litigation, Legal Process, Profession of Law

**EDUCATION**

***Yale Law School, J.D. 1983***

- Editor, Yale Law Journal.

***Graduate Center, City University of New York***

- Graduate studies in Labor History (1976-77); University Fellowship.

***Universite de Paris, 1975-76***

***State University of New York at Binghamton, B.A. 1975***

- Major in History.

**PROFESSIONAL EXPERIENCE**

- ***Guerrieri, Edmond & James, Washington, D.C.*** (1988-1989)  
Of counsel, handling special litigation for labor law firm.
- ***Lawyers' Committee for Civil Rights Under Law, Washington, D.C.*** (1985-1988)  
Staff attorney with Voting Rights Project (served as Acting Director of Voting Rights Project, 1985-86). Conducted voting rights litigation and other civil rights case work throughout the U.S.
- ***Kirschner, Walters, Willig, Weinberg & Dempsey, Associate, Phila., PA.*** (1985)  
Union labor law practice representing public and private employees in court, arbitration and administrative proceedings.
- ***Lawyers' Committee for International Human Rights*** (1984)  
Received J. Roderick MacArthur Fellowship to represent Lawyers' Committee in Argentina and Uruguay. Worked with Centro de Estudios Legales y Sociales in Buenos Aires on issues concerning transition from dictatorship to civilian government and prosecutions of former military rulers.
- ***United States Court of Appeals for the Third Circuit*** (1983-84)  
Law Clerk to Honorable Arlin M. Adams.

## PUBLICATIONS

### Articles

- *Outsourcing Politics: Political Parties and the Theory of the Firm*, \_\_\_ HOUSTON L. REV.. \_\_\_ (forthcoming 2017)
- *Voter Welfare: An Emerging Rule of Reason in Voting Rights Law*, \_\_\_ IND. L. J.. \_\_\_ (forthcoming 2016)
- *Living to Fight Another Day: Judicial Deferral in Defense of Democracy*, 2016 WISC. L. REV. 683 (with Rosalind Dixon) .
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- *Voting Rights at 50*, 67 ALA. L. REV. 387 (2016).
- *Ballot Bedlam*, 64 DUKE L. J. 1363 (2015).
- *The Australian Alternative: A View From Abroad of Recent Developments in Securities Class Actions*, 34 U. NEW SOUTH WALES L. REV. 179 (2015) (with Thad Eagles).
- *Constitutional Courts and Consolidated Power*, 62 AM. J. COMP. L. 585 (2014).
- *The Democratic Risk to Democratic Transitions*, 5 CONSTIT. COURT REV. 1 (2014).
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- *Litigation Funding and the Problem of Agency Cost in Representative Actions*, 66 DEPAUL L. REV. 561 (2014).
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- *Targeted Warfare: Individuating Enemy Responsibility*, 88 N.Y.U. L. REV 1521 (2013) (with Richard H. Pildes)
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  - *Citizens United and the American Law of Party Funding*, 30 QUADERNI COSTITUZIONALI 392 (2010) (in Italian)
  - *Pragmatic Originalism?*, 5 N.Y.U. J. OF LAW & LIBERTY 517 (2010)
  - *The Public Value of Settlement*, 78 FORDHAM L. REV. 1177 (2009) (with Robert H. Klonoff).
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- *Getting Beyond Kansas*, 74 UMKC L. REV. 613 (2006).
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- *Collateral Damage: The Endangered Center in American Politics*, 46 WILLIAM & MARY L. REV. 415 (2004).
- *The American Law of Repose*, 23 CIVIL JUSTICE QUARTERLY 324 (2004).
- *Where to Draw the Line: Judicial Review of Political Gerrymanders*, 153 PENN L. REV. 541 (2004)(with Pamela S. Karlan).
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- *Is Section 5 of the Voting Rights Act a Victim of Its Own Success?*, 105 COLUM. L. REV. 1710 (2004).
- *The Inevitability of Aggregate Settlements: An Institutional Account of American Tort Law*, 57 VANDERBILT L. REV.1571 (2004)(with John Fabian Witt).
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- *Constitutionalizing Democracy in Fractured Societies*, 58 JOURNAL OF INTERNATIONAL AFFAIRS 73 (2004)(version of prior entry).
- *Throwing in the Towel: The Constitutional Morass of Campaign Finance*, 3 ELEC. L. J. 259 (2004).
- *Emergency Contexts Without Emergency Powers: The United States' Constitutional Approach to Rights During Wartime*, 2 INT'L JOURNAL OF CONSTITUTIONAL LAW 296 (2004)(with Richard H. Pildes).
- *Between Civil Libertarianism and Executive Unilateralism: An Institutional Process Approach to Rights During Wartime*, 5 THEORETICAL INQUIRIES IN LAW 1 (2003)(with Richard H. Pildes)(overlaps with prior article).
- *Owen Fiss and the Warren Court Legacy: Politics, Law, and the Struggle for Equal Protection*, 58 MIAMI. L. REV. 35 (2003)(with Pamela S. Karlan).

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- *Regulation for Conservatives: Human Decision Making and the Case for “Asymmetric Paternalism,”* 151 PENN. L. REV. 1211 (2003)(with Colin Camerer, George Loewenstein, Ted O’Donoghue, and Matthew Rabin).
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- *Preclusion, Due Process, and the Right to Opt Out of Class Actions*, 77 NOTRE DAME L. REV. 1057 (2002)
- *The Content of Our Casebooks: Why Cases Get Litigated*, 29 FL. ST. L. REV. 1265 (2002).
- *The Two Sides of Freedom of Expression*, 1 REVISTA DE DERECHO 79 (Universidad de Montevideo – 2002).
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- *Law and Misdirection in the Debate Over Affirmative Action*, 2002 UNIV. CHI. LEGAL FORUM 11.
- *The Difficult Path From Observation to Prescription*, 77 N. Y. U. L. REV 36 (2002).
- *Behavioral Decision Theory at the Court of Public Law*, 87 CORNELL L. REV. 671 (2002).
- *Political Judgments*, 68 U. CHI. L. REV. 637 (2001).
- *Can Process Theory Constrain Courts?*, 72 U. COL. L. REV. 923 (2001)(with Michael C. Dorf).
- *Race and Campaign Finance Reform*, 79 N. CAR. L. REV. 1523 (2001).
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- *Oversight of Regulated Political Markets*, 24 HARV. J. L & PUB. POL’Y 91 (2000).
- *The Vexing Problem of Reliance in Consumer Class Actions*, 74 TULANE. L. REV. 1633 (2000).
- *Discrimination with a Difference: Can Employment Discrimination Law Accommodate the Americans with Disabilities Act?*, 79 NORTH CAROLINA L. REV. 307 (2001)(with Justin Nelson).
- *Governance and Legitimacy in the Law of Class Actions*, 1999 SUPREME COURT REVIEW 187.
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- *Governing through Intermediaries*, 85 VIRGINIA L. REV. 1627 (1999)(with Daniel Ortiz).
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- *Standing and Misunderstanding in Voting Rights Law*, 111 HARV. L. REV. 2276 (1998)(with Pamela Karlan).
- *Can Affirmative Action Be Defended?*, 59 OHIO ST. L. J. 669 (1998).
- *Can There Be a Behavioral Law and Economics?*, 51 VANDERBILT L. REV. 1729 (1998).
- *Politics as Markets: Partisan Lockups of the Democratic Process*, 50 STANFORD L. J. 643 (1998)(with Richard Pildes).
- *Creating Convergence: Debiasing Biased Litigants*, 22 J. OF LAW AND SOCIAL INQUIRY 913 (1998)(with Linda Babcock and George Loewenstein).
- *Is Age Discrimination Really Age Discrimination?: The ADEA's Unnatural Solution*, 72 N.Y.U. L. REV. 780 (1997)(with Erica Worth Harris).
- *Class Action Conflicts*, 30 U. C. DAVIS L. REV. 805 (1997).
- *Racial Gerrymandering in a Complex World: A Reply to Judge Sentelle*, 45 CATH. U. LAW REV. 1257 (1996).
- *The Constitutional Contours of Race and Politics*, 1995 SUPREME COURT REVIEW 45.
- *Contracting For Employment: The Limited Return of the Common Law*, 74 TEXAS LAW REVIEW 1783 (1996).
- *Identifying the Harm in Racial Gerrymandering Claims*, 1 MICH. J. OF RACE & LAW 47 (1996)(with Thomas C. Goldstein).
- *Supreme Court Destabilization of Single-Member Districts*, 1995 UNIV. OF CHICAGO LEGAL FORUM 205.
- *Unintended Consequences of Mandatory Disclosure*, 73 TEXAS L. REV. 753 (1995)(with George Loewenstein).
- *Groups and the Right to Vote*, 44 EMORY L. J. 869 (1995)
- *Women and the Workplace: Accommodating the Demands of Pregnancy*, 95 COL. L. REV. 2154 (1994)(with Elyse Rosenblum).
- *Race and Redistricting: Drawing Constitutional Lines after Shaw v. Reno*, 92 MICHIGAN LAW REVIEW 588 (1993)(with T. Alexander Aleinikoff).

- *Biased Judgments of Fairness in Bargaining*, 85 AMERICAN ECONOMIC REVIEW 1337 (1995)(with L. Babcock, G. Loewenstein, and C. Camerer).
- *Judging Politics: The Elusive Quest for Judicial Review of Political Fairness*, 71 TEXAS LAW REVIEW 1643 (1993).
- *Source Dependence in the Valuation of Objects*, 7 JOURNAL OF BEHAVIORAL DECISIONMAKING 157 (1994)(with G. Loewenstein)
- *Polarized Voting and the Political Process: The Transformation of Voting Rights Jurisprudence*, 90 MICH. L. REV. 1833 (1992).
- *When Substance Mandates Procedure: Martin v. Wilks and the Rights of Vested Incumbents in Civil Rights Consent Decrees*, 77 CORNELL L. REV. 189 (1992).
- *Self-Serving Assessments of Fairness and Pretrial Bargaining*, 22 JOURNAL OF LEGAL STUDIES 135 (1992)(with George Loewenstein, Colin Camerer, Linda Babcock).
- *The Census Undercount and Minority Representation: The Constitutional Obligation of the States to Guarantee Equal Representation*, 13 REVIEW OF LITIGATION 1 (1993)(with Allan J. Lichtman).
- *Administering Damage Awards in Mass-Tort Litigation*, 10 REV. OF LITIG. 463 (1991).
- *Black/White Voter Registration Disparities in Mississippi: Legal and Methodological Issues in Challenging Bureau of Census Data*, 7 J. LAW & POLITICS 525 (1991)(with Allan J. Lichtman).
- *Second Thoughts About Summary Judgment*, 100 YALE L.J. 73 (1990)(with George Loewenstein).
- *Dictatorship on Trial: Prosecution of Human Rights Violations in Argentina*, 10 YALE J. INT'L LAW 118 (1985) (with E. Mignone and C. Estlund).
- *Note, Making the Violation Fit the Remedy: The Intent Standard and Equal Protection Law*, 92 YALE L.J. 328 (1982).

### **Review Essays**

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- *Contractual Liberties in Discriminatory Markets*, Review of R. Epstein, FORBIDDEN GROUNDS, 70 TEX. L. REV. 1219 (1992).
- *Reconstructing Employment*, Review of P. Weiler, GOVERNING THE WORKPLACE: THE FUTURE OF LABOR AND EMPLOYMENT LAW, 104 HARV. L. REV. 607 (1990).

### **Books**

- FRAGILE DEMOCRACIES: CONTESTED POWER IN THE ERA OF CONSTITUTIONAL COURTS (Cambridge Univ. Press, 2015).
- CIVIL PROCEDURE (Foundation Press, 2005).
- CIVIL PROCEDURE (Foundation Press, 2d. edition, 2008).
- CIVIL PROCEDURE (Foundation Press, 3d. edition, 2011).
- THE LAW OF DEMOCRACY: LEGAL STRUCTURE OF THE POLITICAL PROCESS (with Pamela Karlan and Richard Pildes)(Foundation Press, 1998).
- THE LAW OF DEMOCRACY: LEGAL STRUCTURE OF THE POLITICAL PROCESS (with Pamela Karlan and Richard Pildes)(Foundation Press, 2d. edition, 2001).
- THE LAW OF DEMOCRACY: LEGAL STRUCTURE OF THE POLITICAL PROCESS (with Pamela Karlan and Richard Pildes)(Foundation Press, 3d. edition, 2007).
- THE LAW OF DEMOCRACY: LEGAL STRUCTURE OF THE POLITICAL PROCESS (with Pamela Karlan and Richard Pildes)(Foundation Press, 4<sup>th</sup>. edition, 2012).
- THE LAW OF DEMOCRACY: LEGAL STRUCTURE OF THE POLITICAL PROCESS (with Pamela Karlan, Richard Pildes, and Nathaniel Persily)(Foundation Press, 5<sup>th</sup>. edition, 2016).
- WHEN ELECTIONS GO BAD: THE LAW OF DEMOCRACY AND THE PRESIDENTIAL ELECTION OF 2000 (with Pamela Karlan and Richard Pildes)(Foundation Press, 2001).
- WHEN ELECTIONS GO BAD: THE LAW OF DEMOCRACY AND THE PRESIDENTIAL ELECTION OF 2000 (with Pamela Karlan and Richard Pildes)(Foundation Press, 2d. edition, 2001).
- PARTY FUNDING AND CAMPAIGN FINANCING IN INTERNATIONAL PERSPECTIVE (with K.D. Ewing) (Hart Press, Oxford, 2006).

### **Book Chapters**

- *Comparative Constitutional Law as a Window on Democratic Institutions*, in MODERN COMPARATIVE CONSTITUTIONAL LAW (Rosalind Dixon & Erin F. Delaney, eds., \_\_\_\_\_, forthcoming 2017).
- *Due Process in Law*, in INTERNATIONAL ENCYCLOPEDIA OF THE SOCIAL & BEHAVIORAL SCIENCES, 2nd ed. 696 (James D. Wright, ed., Oxford: Elsevier, 2015).
- *Citizens United y la Regulacion del Financiamiento a Partidos Politicos en los Estados Unidos de American*, in SENTENCIAS RELEVANTES DE CORTES EXTRANJERAS 153 (Tribunal Electoral del Poder Judicial de la Federacion, Mexico, 2013).
- *Drones and the Dilemma of Modern Warfare*, in DRONES AND THE PROMISE OF LAW: HOW

ADVANCES IN MILITARY TECHNOLOGY ARE TRANSFORMING ARMED CONFLICT AND CHALLENGING POLICY AND PRACTICE (P. Bergen & D. Rothenberg, eds) (Cambridge Univ. Press, 2014) (with Richard H. Pildes).

- *Epilogue: Bush v. Gore and the Constitutional Right to Vote*, in ELECTION ADMINISTRATION IN THE UNITED STATES: THE STATE OF REFORM AFTER BUSH V. GORE (M. Alvarez & B. Grofman, eds) (Cambridge Univ. Press, 2014) (with Richard H. Pildes).
- *Due Process in Law*, in INTERNATIONAL ENCYCLOPEDIA OF SOCIAL AND BEHAVIORAL SCIENCES, 2<sup>nd</sup> Ed. (Forthcoming 2015).
- *Managing Conflict Through Democracy*, in RIGHTS IN DIVIDED SOCIETIES COMPARADO 33 (Harvey & Schwartz, eds) (Hart Publishing 2012).
- *Antidiscrimination in Employment: The Simple, the Complex, and the Paradoxical*, in RESEARCH HANDBOOK ON THE ECONOMICS OF LABOR AND EMPLOYMENT LAW 385 (C. Estlund & M. Wachter, eds) (Edward Elgar Press 2012) (with E. Scharff).
- *Fairness in Aggregation*, in PROCESOS COLECTIVOS/CLASS ACTIONS: PROCEEDINGS OF 1<sup>ST</sup> INTERNATIONAL CONFERENCE ON PROCEDURAL LAW 31 (2012).
- *The Majoritarian Threat to Democracy: Constitutional Courts and the Democratic Pact*, in MAJORITY POLITICS 236 (S. Novak & J. Elster, eds) (2014).
- *Will Aggregate Litigation Come to Europe?*, in THE LAW AND ECONOMICS OF CLASS ACTIONS IN EUROPE: LESSONS FROM AMERICA 37 (J. Backhaus, A. Cassone & G. Ramello eds) (2012) (with Geoffrey Miller).
- *Party Funding and Campaign Finance Law in the United States*, in LA RESOLUCION DE LOS CONFLICTOS ELECTORALES: UN ANALISIS COMPARADO, (P. Biglino Campos & L. Delgado del Rincon, eds) (2010).
- *Facts, Investigation and the Role of Discovery*, in LITIGATION IN ENGLAND AND GERMANY: LEGAL PROFESSIONAL SERVICES, KEY FEATURES AND FUNDING 39 (P. Gottwald, ed)(2010).
- *Aggregating Private Claims*, in LITIGATION IN ENGLAND AND GERMANY: LEGAL PROFESSIONAL SERVICES, KEY FEATURES AND FUNDING 63 (P. Gottwald, ed)(2010).
- *The Institutional Dimension of Consumer Protection*, in NEW FRONTIERS OF CONSUMER PROTECTION: COMBINING PRIVATE AND PUBLIC ENFORCEMENT (F. Cafaggi & H.-W. Micklitz, eds) (2009)(with Ian Samuel).
- *Democracy and Electoral Processes*, in RESEARCH HANDBOOK ON LAW AND PUBLIC CHOICE 173 (D. Farber & A. J. O'Connell, eds) (2010)(with Laura E. Miller).
- *A Cosmopolitan Judge for a Cosmopolitan Era: An Essay in Honor of Carl Baudenbacher*, in ECONOMIC LAW AND JUSTICE IN TIMES OF GLOBALIZATION: FESTSCHRIFT FOR CARL BAUDENBACHER 131 (M. Monti, N. Liechtenstein, B. Vesterdorf, J. Westbrook, L. Wildhaber, eds)(2007).

- *Supreme Court Preemption: The Contested Middle Ground of Products Liability*, in FEDERAL PREEMPTION: STATES' POWERS, NATIONAL INTEREST 194 (Richard A. Epstein & Michael S. Greve, eds.) (2007) (with Catherine Sharkey).
- *Does Section 5 of the Voting Rights Act Still Work?*, in THE FUTURE OF THE VOTING RIGHTS ACT (D. Epstein, R. Pildes, R. de la Garza, S. O'Halloran, eds., Russell Sage, 2006).
- *Compensation for the Victims of September 11* in THE HANDBOOK OF REPARATIONS (P. De Grieff, ed., Oxford 2006) (with Anna Morawiec Mansfield).
- *Legal Regulation of Conflict of Interest*, in CONFLICTS OF INTEREST: PROBLEMS AND SOLUTIONS IN LAW, MEDICINE, AND ORGANIZATIONAL SETTINGS (M. Bazerman, G. Loewenstein, & D. Moore, eds., Cambridge Univ. Press, 2005).
- *Baker v. Carr in Context*, in CONSTITUTIONAL LAW STORIES 297-323 (M. Dorf, ed., Foundation Press, 2004) (with Stephen Ansolabehere).
- *Due Process in Law*, in INTERNATIONAL ENCYCLOPEDIA OF SOCIAL AND BEHAVIORAL SCIENCES 3894-97 (Elsevier Ltd., 2001) (2d ed. 2012).
- *Too Much Lawyering, Too Little Law*, in THE REFORM OF CIVIL PROCEDURE, (A.A.S. Zuckerman & R. Cranston, eds., Oxford Univ. Press, 1995).
- *Bargaining Impediments and Settlement Behavior* (with Charles Silver and Kent Syverud), in DISPUTE RESOLUTION: BRIDGING THE SETTLEMENT GAP, Anderson, ed., JAI Press, 1996).
- *The Redistricting Morass*, in AFFIRMATIVE ACTION AND REPRESENTATION, (A. Peacock, ed., Carolina Acad. Press, 1997).
- *Litigating for Equality of Political Opportunity*, in J. Lobel, ed., CIVIL RIGHTS LITIGATION AND ATTORNEY FEES ANNUAL HANDBOOK (Clark, Boardman, 1987).

#### ***Reports, Other Publications, and Current Manuscripts***

- "Plebiscite Options on the Status of Puerto Rico," Report prepared for the Governor of Puerto Rico and the Partido Popular Democrático October 8, 2015 (Updated February 6, 2016).
- "It's Still a Struggle," REVIEW OF ARI BERMAN, GIVE US THE BALLOT: THE MODERN STRUGGLE FOR VOTING RIGHTS IN AMERICA, The American Prospect, Fall 2015, at 92.
- "Keep Shining the Light on 'Dark Money,'" POLITICO (April 12, 2015) (with Robert F. Bauer)
- "The Future of Voting Rights 17 N.Y.U. J. LEGIS. & PUB.POL'Y (2014) (symposium contribution).
- "Where Parties Get Their Money From" The Indian Express, June 7, 2013.
- "Iraq and Afghanistan, Who Is an Enemy Combatant?" Los Angeles Times, June 4, 2010.
- "Fear Not, Critics of *Citizens United*, A Constitutionally Tested Solution is at Hand," American

Lawyer, April 2010.

- “Party Funding and Campaign Finance Law in the United States,” Report for the Venice Commission of the Council of Europe (2009).
- “The Impact of Politics and Constitutional Law on Mass Litigation: The Evolution of Civil Liability in the U.S. and Beyond,” 12<sup>th</sup> International Liability Forum 14 (Munich Re Group) (2008).
- “The Law of Politics,” 95 GEO. L. J. 1369 (2007).
- “Declarative Sentences: Congress Has the Power to Make and End War – Not Manage It,” SLATE MAGAZINE, March 5, 2007 (with Noah Feldman).
- “Create a National Voter Registration List,” BOSTON REVIEW, Vol. 31, No. 5, Sept-Oct. 2006, at 21.
- “Democracy Isn’t Built On One Election Alone,” WASHINGTON POST, Jan. 23, 2005, at B01.
- “In Real Elections, There Ought to Be Competition,” NEW YORK TIMES, Feb. 16, 2002, at A19.
- “The Court’s Legacy for Voting Rights,” NEW YORK TIMES, DEC. 14, 2000, at A39.
- “Charles Alan Wright: The Scholar as Lawyer,” in A TRIBUTE: CHARLES ALAN WRIGHT, THE MAN AND THE SCHOLAR (2000).
- “Due Process,” INTERNATIONAL ENCYCLOPEDIA OF THE SOCIAL AND BEHAVIORAL SCIENCES (2000).
- “Political Fairness and Judicial Review,” ENCYCLOPEDIA OF THE AMERICAN CONSTITUTION (1998).
- “The Census and the Constitution,” ENCYCLOPEDIA OF THE AMERICAN CONSTITUTION (1998).
- “Electoral Districting, Fairness and Judicial Review,” ENCYCLOPEDIA OF THE AMERICAN CONSTITUTION (1998).
- “Age Discrimination,” ENCYCLOPEDIA OF THE AMERICAN CONSTITUTION (1998)(with E. Harris).
- “The Destruction of Public Funding,” TEXAS LAWYER, May 12, 1997, at 20 (with David Horan).
- “All for One,” THE NEW REPUBLIC, Nov. 18, 1996, at 10 (with Richard Pildes).
- “No Place for Political Gerrymandering,” TEXAS LAWYER, Aug. 5, 1996 (with Richard Pildes).
- “Should There Be Rules of Procedure?,” Leiden University, Institute of Anglo-American Law, Clifford Chance Distinguished Lecture Series (Feb. 1995).
- “Conference: The Supreme Court, Racial Politics, and the Right to Vote: *Shaw v. Reno* and the Future of the Voting Rights Act, 44 AMERICAN UNIV. L. REV. 1 (1994).

- "A Highly Visible Bloodletting," AUSTIN AMERICAN STATESMAN, Oct. 2, 1994 (Op-ed piece on redistricting).
- "Race and Redistricting," 2 RECONSTRUCTION, No. 3 (1994).
- "The State of Voting Rights Law," 3 ISSUES IN NATIONAL AFFAIRS No. 1 (1993)(Paper prepared for the American Jewish Committee).
- "Remedial Options for the Selection of the Texas Judiciary," Report prepared for settlement negotiations in *LULAC/Houston Lawyers' Association v. State of Texas*, Jan. 14, 1993,
- "Adjusting Census Data For Reapportionment: An Independent Role for the States," TEXAS LAWYER, March 18, 1991 (with A. Lichtman).
- "The 37.5 Percent Solution: 'Limited Voting' Could Rescue Judiciary," TEXAS LAWYER, March 5, 1990.
- "The Texas Judiciary and the Voting Rights Act: Background and Options," Report prepared for the Texas Policy Research Forum (1989).
- "The Generals Give Back Uruguay," Human Rights Report of the Lawyers' Committee for International Human Rights (1985)(with C. Estlund).

#### AMERICAN LAW INSTITUTE

- Reporter, Principles of the Law: Aggregate Litigation (2010)

#### SELECTED LECTURES

- UNIVERSITY OF HOUSTON SCHOOL OF LAW, THE FRANKEL ENDOWED LECTURE, November 4, 2016: *Outsourcing Politics: Political Parties and the Theory of the Firm*
- INDIANA UNIVERSITY SCHOOL OF LAW, THE JEROME HALL ENDOWED LECTURE, February 18, 2016: *The Emerging Rule of Reason in Voting Rights Law*
- DUKE UNIVERSITY SCHOOL OF LAW, THE BRAINERD CURRIE MEMORIAL LECTURE, February 19, 2014: *Ballot Bedlam*
- UNIVERSITY OF HOUSTON LAW CENTER, THE JOHN R. BROWN MEMORIAL LECTURE, March 1, 2010: *Judging in the Time of the Extraordinary*
- BROWN UNIVERSITY, THE JANUS LECTURE, September 17, 2008: *Was the New Deal A Good Deal? New Deal Constitutionalism Reexamined*
- OXFORD UNIVERSITY, THE HART MEMORIAL LECTURE, May 6, 2008: *Democracy in Times of War*
- LEWIS & CLARK LAW SCHOOL, HIGGINS LECTURE, March 19, 2008: *Meriwether Lewis, the Air Force,*

*and the Surge: The Problem of Constitutional Settlement*

- DRAKE LAW CENTER CONSTITUTIONAL LAW DISTINGUISHED LECTURE, November 8, 2007: *Democracy at War*
- JULIUS ROSENTHAL FOUNDATION SERIES LECTURES, Northwestern University School of Law, March 28 and 29, 2007: *Fragile Democracies, and Contested Visions of Democracy*
- ASTOR VISITING LECTURE, Oxford University, June 8, 2005: *When Rights Break Down: U.S. Constitutional Responses in Times of National Security Crisis.*
- JAMES GOULD CUTLER LECTURE, William and Mary University School of Law, Feb. 19, 2004: *The Endangered Center in American Politics.*
- SIBLEY LECTURE, University of Georgia School of Law, March 16, 2000: *Political Parties, the Constitution and Democratic Competition.*
- MASON LADD LECTURE, Florida State University School of Law, March 15, 2000: *Why Do Cases Get Litigated?*

### SELECTED PROFESSIONAL ACTIVITIES

- SENIOR LEGAL COUNSEL, Obama for America Campaign, 2008, 2012.
- FELLOW, American Academy of Arts and Sciences.
- COUNCIL, American Law Institute.
- REPORTER, Principles of Aggregate Litigation, American Law Institute.
- MEMBER, Editorial Board, Foundation Press.
- BOARD OF DIRECTORS, Brennan Center for Justice at NYU School of Law, 2006-2011.
- INTERNATIONAL ADVISORY BOARD, CIPPEC – Centro de Implementación de Políticas Públicas para la Equidad y el Crecimiento, Buenos Aires, Argentina, 2012-present.
- FUTURE CLAIMS REPRESENTATIVE, Bankruptcy Trust of TH Agriculture and Nutrition, Inc, Representative for future asbestos claimants in \$900 million bankruptcy trust.
- ADVISOR, Restatement Third Employment Law, American Law Institute.
- MEMBER, Judicial Selection Task Force of the Texas Commission on Judicial Efficiency (1995-1997).
- LEGAL CONSULTANT, National Research Council, Panel on Census Requirements in the Year 2000 and Beyond (1993-1995).
- COUNSEL, *Travelers v. Bailey*, U.S. Supreme Court, 2009. Argued for Respondents.
- CONSULTANT, State of Florida, *Johnson v. DeGrandy*, (1994) (Florida legislative redistricting litigation).
- COUNSEL to State of Texas for 1992 Redistricting in *Richards v. Terrazas*, No. 91-1270 (U.S. Supreme Court), and *Texas v. United States*, No. 91-2383 (D.D.C.). (1992-1993).
- SPECIAL MASTER TASKFORCE for Eastern District of Texas Asbestos Litigation, *Cimino v. Raymark Industries, Inc.*, 751 F.Supp. 649 (E.D. Tex. 1990). (1989-1990).
- BOARD OF DIRECTORS, Lawyers' Committee for Civil Rights Under Law of Texas. (1991-1995); Executive Committee of the Board of Directors (1993-1995).
- COUNSEL to State of Texas and University of Texas Law School in *Hopwood v. State of Texas and Regents of the University of Texas System*, No. 92 CA 563 (W.D. Texas, 1992)(challenge to School of Law affirmative action admissions practices)(1992-2001).

### **AWARDS**

- *Roscoe Pound Institute Appellate Advocacy Award 2015* (Inaugural Selection)
- *Podell Distinguished Teaching Award*, New York University School of Law 2009  
Annual student-selected award to four faculty members
- *Willis L. M. Reese Prize for Teaching*, Columbia Law School 2004  
Annual student-selected award to one faculty member
- *Texas Excellence Teaching Award in the School of Law*, Univ. of Texas School of Law, 1994  
Annual student-selected award to one faculty member
- *James W. Vick Texas Excellence Awards in Academic Advising*, Univ. of Texas, 1994  
University-Wide Award
- *Open Door Award*, Univ. of Texas School of Law 1992  
Law School Student Award

### **PERSONAL**

- *Born*: Sept. 15, 1954, Buenos Aires, Argentina
- *Married* to Prof. Cynthia Estlund, New York University School of Law
- *Children*: Jessica, Lucas

# **EXHIBIT 4**

**CYNTHIA L. ESTLUND**

New York University School of Law  
40 Washington Square South · New York, NY 10012  
Tel: 212-998-6184 · E-mail: ce21@nyu.edu

**Current Academic Position**

**New York University School of Law**

Catherine A. Rein Professor of Law (July 2006 to present)

Visiting Professor (Spring 2006)

*Courses:* Labor Law, Employment Law, Torts, Property, Transnational Labor Law,  
Comparative Labor and Employment Law

**Prior Academic Positions**

**Harvard Law School**

Louis D. Brandeis Visiting Professor (Fall 2008)

**Columbia Law School**

Isidore and Seville Sulzbacher Professor of Law (2004 to 2006)

Professor of Law (1999 to 2004)

Samuel J. Rubin Visiting Professor of Law (1998-99)

Vice Dean for Research (2004-05)

**University of Texas School of Law**

Leroy G. Denman, Jr., Regents Professor of Law (1994-1999)

Professor of Law (1993-1994)

Assistant Professor of Law (1989-93)

Associate Dean for Academic Affairs (1995-1998)

**Short-term teaching appointments:**

**Interdisciplinary Center (IDC), Hertzliya** (Selected Topics in Labor &  
Employment Law), November 2013;

**Nanjing University** (Comparative Labor & Employment Law), May 2012

**University of Melbourne School of Law**, Masters in Law program (Corporate  
Governance and Employee Relations: Comparative Perspectives), May 2011

**Education**

**Degrees:**

**Yale Law School**, New Haven, CT: J.D. 1983; Notes Editor, YALE LAW JOURNAL

**Lawrence University**, Appleton, WI: B.A., *summa cum laude*, 1978  
(Government); Phi Beta Kappa

**Other:**

**J. Roderick MacArthur Fellowship** (Fall 1984): Independent study (w/ Samuel Issacharoff) of prosecution of human rights crimes in Argentina.

**Thomas J. Watson Fellowship** (1978-79): Independent study of government programs for working parents in Sweden.

**University of Lund**, Sweden (1979-80): Coursework in sociology (in Swedish)

**Professional Experience**

**Bredhoff & Kaiser**, Washington, D.C.: Associate, December 1985 to June 1989.  
Practice areas: Labor and employment law

**Sugarman & Associates**, Philadelphia, PA: Associate, January to November 1985.  
Practice area: General litigation

**Honorable Patricia M. Wald**, Judge, U.S. Court of Appeals for the District of Columbia: Law Clerk, July 1983 to July 1984

**Scholarly Publications**

**Books:**

A NEW DEAL FOR CHINA'S WORKERS? (Harvard University Press, 2017)

RESEARCH HANDBOOK ON THE ECONOMICS OF LABOR AND EMPLOYMENT LAW (Edward Elgar Publishing, Ltd., 2012) (co-edited w/ Michael Wachter)

REGOVERNING THE WORKPLACE: FROM SELF-REGULATION TO CO-REGULATION (Yale University Press, 2010)

REGULATING LABOUR IN THE WAKE OF GLOBALIZATION: NEW CHALLENGES, NEW INSTITUTIONS (Hart Publishing, 2007) (co-edited w/ Brian Bercusson)

WORKING TOGETHER: HOW WORKPLACE BONDS STRENGTHEN A DIVERSE DEMOCRACY (Oxford University Press, 2003)

**Articles and Book Chapters:**

*The "Constitution of Opportunity" in Politics and the Courts*, 94 TEXAS LAW REVIEW 1447 (2016)

*Are Unions a Constitutional Anomaly?*, 114 MICHIGAN LAW REVIEW 169-234 (2015)

*Will Workers Have a Voice in China's "Socialist Market Economy"? The Curious Revival of the Workers Congress System*, 36 COMPARATIVE LABOR LAW & POLICY JOURNAL 69-105 (2015)

- How the Workplace Constitution Ties Liberals and Conservatives in Knots*, 29 *Texas Law Review* 1137-61 (2015), reviewing SOPHIA Z. LEE, *THE WORKPLACE CONSTITUTION FROM THE NEW DEAL TO THE NEW RIGHT* (Cambridge Univ. Press, 2014)
- Working Together Transnationally*, forthcoming in *RESEARCH HANDBOOK ON TRANSNATIONAL LABOUR LAW* (Adelle Blackett & Anne Trebilcock, eds., Edward Elgar, 2015)
- Freedom of Association and the Right to Contest: Getting Back to Basics*, in *VOICES AT WORK* (Tonia Novitz & Alan Bogg, eds., 2014) (co-authored with Alan Bogg)
- Will Labour Unrest Lead to More Democratic Trade Unions in China?*, in *CHINA AND ILO FUNDAMENTAL PRINCIPLES AND RIGHTS AT WORK* (Roger Blanpain, Ulla Liukkonen, & Yifeng Chen, eds.) (Kluwer Press, 2014) (co-authored with Seth Gurgel)
- Extending the Case for Workplace Transparency to Information about Pay*, 4 *UC-IRVINE LAW REVIEW* 781-89 (2014)
- The Development of Employment Rights and the Management of Workplace Conflict*, in *OXFORD HANDBOOK OF CONFLICT MANAGEMENT IN ORGANIZATIONS* (William K. Roche, Paul Teague, and Alexander J.S. Colvin, eds., 2014)
- Comparative Labor and Employment Law in Developed Market Economies: Fostering Market Efficiencies or Repairing Market Failures?* (co-authored with Silvia Bonfanti & Nuno Garoupa), in *RESEARCH HANDBOOK IN COMPARATIVE LABOR LAW* (Matthew Finkin & Guy Mundlak, eds., 2016)
- Individual Employee Rights at Work*, in *COMPARATIVE EMPLOYMENT RELATIONS IN THE GLOBAL POLITICAL ECONOMY* (Carola Frege & John Kelley, eds., 2013)
- Workplace Democracy for the 21st Century? Rethinking a Norm of Worker Voice in the Wake of the Corporate Diversity Juggernaut*, 14 *NEVADA LAW JOURNAL* 309-21 (2014)
- Citizens of the Corporation? Workplace Democracy in a Post-Union Era*, forthcoming in *CORPORATIONS AND CITIZENSHIP* (Greg Urban, ed., 2013)
- Labor Law Reform Again? Reframing Labor Law as a Regulatory Project*, 16 *NEW YORK UNIVERSITY JOURNAL OF LEGISLATION AND PUBLIC POLICY* 383-400 (2013)
- Introduction: The Economics of Labor and Employment Law* (with Michael Wachter), in *RESEARCH HANDBOOK ON THE ECONOMICS OF LABOR AND EMPLOYMENT LAW*, above, pp. 3-19
- Why Workers Still Need a Collective Voice in the Era of Norms and Mandates*, in *RESEARCH HANDBOOK ON THE ECONOMICS OF LABOR AND EMPLOYMENT LAW*, above, pp. 463-94)

- Enforcement of Private Transnational Labor Regulation: A New Frontier in the Anti-Sweatshop Movement?*, in THE ENFORCEMENT OF TRANSNATIONAL PRIVATE REGULATION (Fabrizio Cafaggi, ed., 2012)
- The Battle over the Board and the Future of Employee Voice in the U.S.*, NEW LABOR FORUM (Spring 2012)
- A Return to Governance in the Law of the Workplace (and the Question of Worker Participation)*, forthcoming in OXFORD HANDBOOK OF GOVERNANCE (David Levi-Faur, ed., 2011)
- Just the Facts: The Case for Workplace Transparency*, 63 STANFORD LAW REVIEW 351-407 (2011)
- "It Takes A Movement" - But What Does It Take to Mobilize the Workers (In the U.S. and China)?*, 15 EMPLOYEE RIGHTS & EMPLOYMENT POLICY JOURNAL 507-19 (2011)
- Reconstituting Employee Representation in an Era of Self-Regulation* (in REGULATING LABOUR, above)
- Freeing Employee Choice: The Case for Secrecy in Union Organizing and Voting*, 123 HARVARD LAW REVIEW FORUM 10 (2010) (online comment on Benjamin I. Sachs, *Enabling Employee Choice: A Structural Approach to the Rules of Union Organizing*, 123 HARVARD LAW REVIEW 655 (2010))
- Corporate Self-Regulation and the Future of Workplace Governance*, 74 CHICAGO-KENT LAW REVIEW 617 (2009)
- Who Mops the Floors at the Fortune 500? Corporate Self-Regulation and the Low-Wage Workplace*, 12 LEWIS & CLARK LAW REVIEW 671-93 (2008)
- Free Speech Rights that Work at Work: From the First Amendment to Due Process*, 54 UCLA LAW REVIEW 1463-96 (2007)
- Something Old, Something New: Governing the Workplace by Contract Again*, 28 COMPARATIVE LABOR LAW & POLICY JOURNAL 351-75 (2007)
- Harmonizing Work and Citizenship: A Due Process Solution to a First Amendment Problem*, 2005 SUPREME COURT REVIEW 115-72 (2007)
- Between Rights and Contract: Arbitration Agreements and Non-Compete Covenants as a Hybrid Form of Employment Law*, 155 UNIVERSITY OF PENNSYLVANIA LAW REVIEW 379-445 (2007)
- Are Unions Doomed to Being a "Niche Movement" in a Competitive Economy? A Response to Professor Wachter*, 155 UNIVERSITY PENNSYLVANIA LAW REVIEW PENNUMBRA 101-08 (2007), available at <http://www.pennumbra.com/>
- Working Together Under Antidiscrimination Law: Paradoxes and Possibilities*, in NYU SELECTED ESSAYS ON LABOR AND EMPLOYMENT LAW, VOLUME 3: BEHAVIORAL

ANALYSIS OF WORKPLACE DISCRIMINATION (Kluwer Law International, 2007) (Mitu Gulati & Michael Yelnosky, eds.)

*The Story of Washington Aluminum: Labor Law as Employment Law*, in EMPLOYMENT LAW STORIES 175-211 (Samuel Estreicher & Gillian Lester, eds., 2007)

*The Death of Labor Law?*, 2 ANNUAL REVIEW OF LAW & SOCIAL SCIENCES 105-23 (2006); reprinted in ICFAI JOURNAL OF EMPLOYMENT LAW [India], April 2007

*Is the NLRA an Outmoded Statute in the 21<sup>st</sup> Century?*, 57 LABOR LAW JOURNAL 148-57 (2006)

*The Story of Price Waterhouse v. Hopkins*, in EMPLOYMENT DISCRIMINATION STORIES 65-103 (Joel W. Friedman, ed., 2006)

*Rebuilding the Law of the Workplace in an Era of Self-Regulation*, 105 COLUMBIA LAW REVIEW 319-404 (2005)

*Working Together: Crossing Color Lines at Work*, 46 LABOR HISTORY 79-98 (2005) (awarded 2005 *Labor History* Prize for Best Article on a U.S. topic)

*Putting Grutter to Work: Diversity, Integration, and Affirmative Action in the Workplace*, 26 BERKELEY JOURNAL OF LABOR & EMPLOYMENT LAW 1-46 (2005)

*Taking Grutter to Work*, 7 THE GREENBAG 215 (2004)

*Reflections on the Declining Prestige of American Labor Law Scholarship*, 23 COMPARATIVE LABOR LAW & POLICY JOURNAL 789 (2003)

*The Ossification of American Labor Law*, 102 COLUMBIA LAW REVIEW 1527-1612 (2002)

*The Supreme Court's Labor and Employment Cases of the 2001-2002 Term*, 18 THE LABOR LAWYER 291-335 (2002)

*How Wrong Are Employees About Their Rights, and Why Does It Matter?*, 77 NEW YORK UNIVERSITY LAW REVIEW 6-35 (2002)

*An American Perspective on Fundamental Labor Rights*, in ROBERT HEPPLE, ED., SOCIAL AND LABOUR RIGHTS IN A GLOBAL CONTEXT (Cambridge Univ. Press 2002)

*Working Together: The Workplace, Civil Society, and the Law*, 89 GEORGETOWN LAW JOURNAL 1-96 (2000); reprinted in NYU SELECTED ESSAYS ON LABOR AND EMPLOYMENT LAW, VOLUME 2, pp. 29-130 (David Sherwyn & Michael Yelnosky, eds.)

*Work and Family: How Women's Progress at Work (and Employment Discrimination Law) May Be Transforming the Family*, 21 COMPARATIVE LABOR LAW & POLICY JOURNAL 467-500 (2000).

*The Changing Workplace as a Locus of Integration in a Diverse Society*, 2000  
COLUMBIA BUSINESS LAW REVIEW 331-69 (2000)

*Harassment Law and the First Amendment: A Window on the Role of the  
Workplace in a Democratic Society*, in SAMUEL ESTREICHER, ED., SEXUAL  
HARASSMENT IN THE WORKPLACE: PROCEEDINGS OF NEW YORK UNIVERSITY 51<sup>ST</sup>  
ANNUAL CONFERENCE ON LABOR 363-90 (Kluwer Press, 1999)

*The Workplace in a Racially Diverse Society: Preliminary Thoughts on the Role of  
Labor and Employment Law*, 1 UNIVERSITY OF PENNSYLVANIA JOURNAL OF LABOR  
& EMPLOYMENT LAW 49-85 (1998)

*Freedom of Expression in the Workplace and the Problem of Discriminatory  
Harassment*, 75 TEXAS LAW REVIEW 687-777 (1997)

*The Architecture of the First Amendment and the Case of Discriminatory  
Workplace Harassment*, 72 NOTRE DAME LAW REVIEW 1361-89 (1997)

*Wrongful Discharge Protections in an At-Will World*, 74 TEXAS LAW REVIEW 1655-92  
(1996)

*Free Speech and Due Process in the Workplace*, 71 INDIANA LAW JOURNAL 101-151  
(1995)

*Women in the Workplace: Preface*, 4 TEXAS JOURNAL OF WOMEN & THE LAW 1 (1995)  
(preface, Symposium Issue on Women in the Workplace)

*Labor, Property, and Sovereignty after Lechmere*, 46 STANFORD LAW REVIEW 305-  
359 (1994)

*Economic Rationality and Union Avoidance: Misunderstanding the National  
Labor Relations Act*, 71 TEXAS LAW REVIEW 921-992 (1993)

*What Do Workers Want? Employee Interests, Public Interests, and Freedom of  
Expression Under the National Labor Relations Act*, 140 UNIVERSITY OF  
PENNSYLVANIA LAW REVIEW 921-1004 (1992)

*Speech on Matters of Public Concern: The Perils of an Emerging First Amendment  
Category*, 59 GEORGE WASHINGTON LAW REVIEW 1-59 (1990) (*excerpted in* JOHN  
GARVEY & FREDERICK SCHAUER, THE FIRST AMENDMENT: A READER 107-110 (1992))

*Dictatorship on Trial: Prosecution of Human Rights Violations in Argentina*, 10  
YALE JOURNAL OF INTERNATIONAL LAW 118-150 (1985) (with E.F. Mignone and S.  
Issacharoff)

*Labor Picketing and Commercial Speech: Free Enterprise Values in the Doctrine of  
Free Speech*, 91 YALE LAW JOURNAL 938-960 (1982) (Note)

### **Selected Recent Lectures and Presentations**

“A New Deal for China’s Workers?,” The Stewart Lecture on Labor and Employment  
Law, Indiana University, Maurer School of Law (September 21, 2016)

- “ ‘Bowling Alone,’ Living Apart, but Working Together,” Milton Konvitz Lecture, Cornell University, Industrial and Labor Relations School (April 27, 2015)
- “Employer Self-Regulation: Making a Virtue of Necessity?,” Innis Christie Lecture in Labour and Employment Law, Schulich School of Law, Dalhousie University, Halifax, Nova Scotia (October 16, 2014)
- “A ‘New Deal’ for Chinese Workers? A Comparative Look at Labor in China,” presented with Prof. Mary Gallagher at Hopkins China Forum, Shanghai (May 20, 2013)
- “Reflections on the Rise and Fall of Trade Unions and Strikes in the U.S.,” presented at East China Normal University (May 22, 2013); Nanjing University, School of Law (May 21, 2013); Shanghai Normal University, Shanghai (May 20, 2013); China Institute of Industrial Relations, Beijing (May 16, 2013); Chinese Academy of Social Sciences, International Symposium on Labor Relations and Collective Bargaining in the Age of Globalization, Beijing, China (July 22, 2012)
- “What is Electoral Democracy for in China? The Case of Trade Union Elections,” presented at University of Texas School of Law (March 7, 2013); as Douglas Cunningham Visitor, Queen’s University Faculty of Law, Kingston, Ontario (Jan. 28, 2013); at Annual Meeting of AALS, New Orleans (Jan. 4, 2013); at Annual Meeting of Law & Society Association, Honolulu, Hawaii (June 5, 2012)
- “Free Speech Rights that Work at Work,” presented (by Skype) at Volda Academy, Volda, Norway, Ytringsfrihetsseminaret (temaet: ytringsfrihet i arbeidslivet) (Seminar on Free Speech – theme: free speech in the workplace) (Feb. 7, 2013)
- “Can Collective Bargaining Work in China? Some Labor Relations Dilemmas,” presented at research seminar on China and ILO Fundamental Principles and Rights at Work, University of Helsinki, Helsinki, Finland (Jan. 18, 2013)
- “Democracy in and about the Workplace,” presented at University of Nevada, Las Vegas, William S. Boyd School of Law, conference on Democracy and the Workplace (Feb. 24, 2012)
- Chinese labor relations and labor law, NYU School of Law & US-Asia Law Institute, 17<sup>th</sup> Annual Timothy A. Gelatt Dialogue on the Rule of Law in Asia, China’s Quest for Justice (November 7, 2011)
- Recent developments at the NLRB, panel presentation at Suffolk University School of Law, 38<sup>th</sup> Annual Robert Fuchs Labor Law Conference (October 20, 2011)
- “Public Sector Unions and Democracy,” presented at Northwestern University School of Law, Conference on Public Sector Unionization (October 14, 2011)
- Testimony at “Hearing on Emerging Trends at the National Labor Relations Board,” Before the House Committee on Education and the Workforce, Subcommittee on Health, Employment, Labor and Pensions (February 11, 2011)

“China’s Labor Question: Will One Hundred Flowers Bloom this Time Around?,” presented at National Labor Relations Board headquarters (May 2011); University of Iowa School of Law (April 2011); University of Toronto School of Law (November 2010); and Rutgers University, Division of Global Affairs (October 2010)

“Just the Facts: The Case for Workplace Transparency,” presented at University of Melbourne Law School (April 2010), and at the Annual Meeting of the Law and Society Association, Chicago, IL (May 2010)

“The Fall and Rise of Workplace Governance in the U.S.,” presented at Shanghai Normal University (December 2010), at International University of Business and Economics School of Law, Beijing, China, and at China Institute of Industrial Relations, Beijing, China (March 2010)

“The Fall and Rise of Self-Governance at Work,” presented at University of Louisville, Brandeis School of Law, as the Carl A. Warns, Jr. Lecture, June 18, 2009

“Corporate Self-Regulation and the Future of Workplace Governance,” presented at the Chicago-Kent College of Law as the Annual Kenneth M. Piper Lecture, April 8, 2008

Testimony on Employee Free Choice Act before Senate Health, Education, Labor & Pensions Committee, March 27, 2007

“Who Mops the Floors at the Fortune 500? Corporate Self-Regulation and the Low-Wage Workplace,” presented at the Lewis & Clark College of Law as the Annual Higgins Lecture, March 18, 2008

“Putting Law to Work: The Resurrection of Workplace Self-Governance?,” presented at Case Law School as The Rush McKnight Labor Law Lecture, Feb. 28, 2007

“Corporate Self-Regulation and the Future of Workplace Governance,” presented at NYU School of Law as the Inaugural Lecture for the Catherine A. Rein Chair in Law, Jan. 29, 2008

### **Professional Activities & Honors**

Lawrence University Alumni Association, Board of Directors (from 2011)

The Labor Law Group: Executive Committee (from 2012); Member (from 2007)

University of Melbourne Centre for Employment and Labour Relations Law: Member, Advisory Board (from 2011); Visiting Professor, May 2011

American Association of University Professors, Litigation Committee (from 2010)

Obama Presidential Transition Team: Leader of agency review team reviewing National Labor Relations Board (Nov. 2008 to January 2009)

Podell Distinguished Teaching Award, NYU School of Law (2008)

Annual Higgins Visitor, Lewis & Clark College of Law (2008)

Samuel M. Kaynard Award for Excellence in the Fields of Labor & Employment Law,  
Hofstra University School of Law (2008)

American Law Institute: Member (from 2007); Advisor, Restatement of the Law 3d,  
Employment Law (from 2004)

American Association of Law Schools, Section on Labor Relations and Employment  
Law: Chair (2006); Chair-Elect (2005); Secretary (2004).

American Bar Association, Section on Labor and Employment Law: Secretary (2001-  
02)

Women's Advocacy Project, Austin, Texas: Board Member (1991-95); Chair (1993-94)

### **Personal**

Married to Samuel Issacharoff

Children: Jessica E. Issacharoff & Lucas E. Issacharoff

(Revised September 8, 2016)

# **EXHIBIT P**

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

IN RE: NATIONAL FOOTBALL  
LEAGUE PLAYERS' CONCUSSION  
INJURY LITIGATION

Kevin Turner and Shawn Wooden,  
*on behalf of themselves and  
others similarly situated,*  
Plaintiffs,

v.

National Football League and  
NFL Properties LLC,  
successor-in-interest to  
NFL Properties, Inc.,  
Defendants.

THIS DOCUMENT RELATES TO:  
ALL ACTIONS

No. 2:12-md-02323-AB

MDL No. 2323

**Hon. Anita B. Brody**

Civ. Action No. 14-00029-AB

**DECLARATION OF RICHARD LEWIS IN SUPPORT OF CO-LEAD CLASS  
COUNSEL'S PETITION FOR AN AWARD OF ATTORNEY'S FEES AND  
REIMBURSEMENT OF COSTS AND EXPENSES**

I, Richard Lewis, declare as follows pursuant to 28 U.S.C. § 1746:

1. I am a partner in the law firm of Hausfeld LLP. I submit this declaration in support of Co-Lead Class Counsel's Petition for an Award of Attorneys' Fees and Reimbursement of Costs and Expenses in connection with and for services rendered and expenses incurred for the common benefit of the Settlement Class in the above-captioned multidistrict litigation ("Action") from the inception of the litigation through July 15, 2016, as well as for the payment of expenses incurred therewith. I have personal knowledge of the

matters set forth in this declaration and, if called upon, I could and would testify competently thereto.

2. Hausfeld Partners Richard Lewis and Michael D. Hausfeld served as members of the Court-appointed Plaintiffs' Executive Committee ("PEC") and as such performed management and organizational tasks as members of the PEC, including regular participation in case management conference calls and meetings, Court status conferences, meeting and conferring with Defendants, drafting and editing case management orders, and carrying out other management tasks at the direction of Co-Lead Counsel. At the direction of Co-Lead Counsel, Mr. Lewis also conducted legal and management work important to this litigation, including but not limited to: conducting factual and legal research in preparation for, and drafting of, the Master Administrative Personal Injury and Medical Monitoring Class Action Complaints; serving as a member of the Plaintiff Steering Committee's Legal Committee and conducting key legal research on issues such as federal preemption, federal jurisdiction, and medical monitoring; drafting and editing briefs and related filings; working with medical experts related to medical monitoring; and resolving duplicative complaint filings by law firms; among other tasks.

Hausfeld Associate Jeannine M. Kenney carried out the litigation's administrative and organizational tasks as the Court-appointed Plaintiffs' Liaison Counsel, at the direction of Co-Lead Counsel, including, but not limited to: assisting Co-Lead Counsel in organizing calls of the PEC and PSC; tracking and distributing case filings to counsel; responding to plaintiffs' counsels' procedural questions; organizing calls with defense counsel and participating in meet and confers; preparing stipulations and drafting and editing proposed court orders, such as case management orders, the time and expense protocol, orders related to short-form complaints and direct filing of complaints; and filing case documents with the Court, among others. Ms. Kenney

and associate Swathi Bojedla also performed substantive legal work, including conducting legal research and drafting legal memos.

3. The schedule attached hereto as Exhibit 1 is a detailed summary indicating the amount of common benefit time spent by the attorneys and professional support staff of my firm who were involved in, and billed hours to, this Action, and the lodestar calculation for those individuals based on my firm's current billing rates. For personnel who are no longer employed by my firm, the lodestar calculation is based on the billing rates of such personnel in their final year of employment by my firm. The schedule was prepared from contemporaneous daily time records regularly prepared and maintained by my firm. Time expended in preparing this application for attorney's fees and expenses has been excluded.

4. The hourly rates for the attorneys and professional support staff of my firm included in Exhibit 1 are the same as the regular rates charged for their services in other contingent matters. Other federal courts have approved these rates in other comparable class actions prosecuted by my firm. For example, the courts in the following actions granted fee petitions approving Hausfeld's billing rates: *In re Processed Egg Products Antitrust Litigation*, No. 08-md-2002, 2012 WL 5467530, at \*6 (E.D. Pa. Nov. 9, 2012) (awarding fees based upon firm declaration noting rates ranging from \$200-340 for associates and \$470-950 for partners (ECF No. 735-17) and finding fees to be reasonable); *In re Vitamin C Antitrust Litigation*, No. 06-md-1738, 2013 WL 6858853, at \*1-4 (E.D.N.Y. Dec. 30, 2013) (finding rates from a low of \$375 for associates to \$980 for partners to be reasonable). Additionally, my firm has submitted fee petitions in other cases that reported hourly rates comparable to those sought herein and courts have approved award of fees in such cases. Examples include: Order Approving Fee Award, *In re Air Cargo Shipping Services Antitrust Litigation*, No. 06-md-1775, (E.D.N.Y. Oct.

25, 2016) (ECF No. 1732) (approving fee award based on firm declaration (ECF No. 2472-3) noting rates ranging from \$320-340 for support staff, \$340-500 for associates, and \$510-995 for partners); Order approving fee award, *In re Municipal Derivatives Antitrust Litigation*, No. 08-cv-2516 (S.D.N.Y. Nov. 5, 2012) (ECF No. 1724) (approving fee award based on firm declaration (ECF No. 1722 at 7) noting rates ranging from \$130 to \$975); Order approving fee award, *In re Flat Glass Antitrust Litigation II*, No. 08-mc-180 (W.D. Pa. May 15, 2011) (ECF No. 291) (approving fee award based on firm declaration (ECF No. 275-3 at 7) noting rates from \$230-275 for support staff, \$200-340 for associates, and \$470-950 for partners); among others.

5. The total number of hours expended on the common benefit of this Action by timekeepers in my firm billing more than 50 hours to this Action during the time period is 1,281.80 hours. The total lodestar for my firm for those hours is \$763,917.50, consisting of \$699,557.50 for attorneys' time and \$64,360.00 for paralegal and law clerk staff time.

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

7. As detailed in Exhibit 2 hereto, my firm is seeking reimbursement of a total of \$165,468.47 in common benefit expenses incurred in connection with the prosecution of this Action. These expenses are reflected on the books and records of my firm. These books and records are prepared from expense vouchers, check records, and other source material, and are an accurate record of the expenses incurred.

8. With respect to the standing of my firm to share in an award of fees, costs, and expenses, attached hereto as Exhibit 3 is a biography of my firm, including the attorneys in my firm who were principally involved in this Action.

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

Executed on December 28, 2016, at Washington, D.C.

  
Richard Lewis, Esq.

# **EXHIBIT 1**

**IN RE: NATIONAL FOOTBALL LEAGUE PLAYERS' CONCUSSION INJURY  
LITIGATION**

**No. 12-md-2323-AB**

**HAUSFELD LLP**

**LODESTAR REPORT**

**Inception through July 15, 2016**

<b>NAME</b>	<b>HOURS</b>	<b>HOURLY RATE</b>	<b>AMOUNT</b>
<b>PARTNERS:</b>			
Richard S. Lewis	422.80	\$920.00	\$388,976.00
Michael D. Hausfeld	31.30	\$995.00	\$31,143.50
<b>Subtotals:</b>	<b>454.10</b>		<b>\$420,119.50</b>
<b>ASSOCIATES:</b>			
Jeannine M. Kenney	464.90	\$450.00	\$209,205.00
Swathi J. Bojedla	171.30	\$410.00	\$70,233.00
<b>Subtotals:</b>	<b>636.20</b>		<b>\$279,438.00</b>
<b>LAW CLERKS:</b>			
Joshua Jowers	50.00	\$325.00	\$16,250.00
<b>Subtotals:</b>	<b>50.00</b>		<b>\$16,250.00</b>
<b>PARALEGALS:</b>			
James Mitchell	141.50	\$340.00	\$48,110.00
<b>Subtotals:</b>	<b>141.50</b>		<b>\$48,110.00</b>
<b>TOTALS:</b>	<b>1,281.8</b>		<b>\$763,917.50</b>

# **EXHIBIT 2**

**IN RE: NATIONAL FOOTBALL LEAGUE PLAYERS' CONCUSSION INJURY  
LITIGATION**

**No. 12-md-2323-AB**

**HAUSFELD LLP**

**COST AND EXPENSE REPORT**

**Inception through July 15, 2016**

<b>NUMBER</b>	<b>CATEGORY</b>	<b>AMOUNT</b>
1	Assessments	\$150,000.00
2	Commercial Copies	\$0.00
3	Computerized Research	\$4,513.54
4	Court Reporters/Transcripts	\$0.00
5	Expert Services	\$2,125.00
6	Facsimile	\$0.00
7	Filing & Service Fees	\$350
8	In-House Copies	\$1,083.69
9	Long Distance Telephone	\$810.28
10	Postage/Express Delivery	\$236.98
11	Travel/Meals/Lodging	\$6,145.98
12	Miscellaneous <sup>1</sup>	\$203.00
<b>TOTAL EXPENSES</b>		<b>\$165,468.47</b>

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<sup>1</sup> Includes Plaintiffs' Liaison Counsel supplies for submission of short form complaint copies to the Court (\$53.00) and the fee for attendance at John Hopkins University Brain Injury Seminars by Rich Lewis for Expert/Science Committee work tasks (\$150.00).

# **EXHIBIT 3**

# HAUSFELD



BERLIN BOSTON BRUSSELS LONDON NEW YORK PHILADELPHIA SAN FRANCISCO WASHINGTON, DC

[www.hausfeld.com](http://www.hausfeld.com)

## Hausfeld: Global Litigation Solutions Firm Resume

# HAUSFELD

Hausfeld is “the world’s leading antitrust litigation firm.”

– Politico

## Hausfeld Firm Summary

In the last decade, Hausfeld attorneys have won landmark trials, negotiated complex settlements among dozens of defendants, and recovered billions of dollars in cartel recoveries for clients both in and out of court. Renowned for skillful prosecution and resolution of complex and class-action litigation, Hausfeld is the only claimants’ firm to be ranked in the top tier in private enforcement of antitrust/competition law in both the United States and the United Kingdom by the Legal 500.

From our locations in Washington, D.C., New York, Philadelphia, San Francisco, Berlin, Brussels, and London, Hausfeld contributes to the development of law in the United States and abroad in the areas of antitrust/competition, consumer protection, environmental threats, human and civil rights, mass torts, and securities fraud. Hausfeld attorneys have studied the global integration of markets—and responded with innovative legal theories and a creative approach to claims in developed and emerging markets.

Hausfeld was founded by Michael D. Hausfeld, who is widely recognized as one of the country’s top civil litigators and a leading expert in the fields of private antitrust/competition enforcement and international human rights. The New York Times has described Mr. Hausfeld as one of the nation’s “most prominent antitrust lawyers,” while Washingtonian Magazine characterizes him as a lawyer who is “determined to change the world—and succeeding,” noting that he “consistently brings in the biggest judgments in the history of law.”

### Antitrust and Competition Litigation

Hausfeld’s reputation for leading groundbreaking antitrust class actions in the United States is well-earned. Having helmed more than thirty antitrust class actions, Hausfeld attorneys are prepared to **litigate and manage cases with dozens of defendants** (*In re Blue Cross Blue Shield Antitrust Litigation*, with more than thirty defendants), **negotiate favorable settlements for class members and clients** (*In re Air Cargo Shipping Services Antitrust Litigation*, settlements of more than \$1.2 billion), take on the financial services industry (*In re Foreign Exchange Antitrust Litigation*, with settlements of more than \$2 billion), **take cartels to trial** (*In re Vitamin C Antitrust Litigation*, trial victory of \$162 million against Chinese manufacturers of vitamin C), and **push legal boundaries where others have not** (*In re NCAA Antitrust Litigation*, another trial victory in which the court found the NCAA rules prohibiting payment of players to be unlawful).

### Consumer Protection Litigation

Hausfeld also pursues consumer protection, defective product, and Lanham Act cases on behalf of a variety of litigants including consumers, entertainers, financial institutions, and other businesses. For example, we obtained class-wide settlements for purchasers of **defective Acer laptops** (*Wolph v. Acer America Corp.*) and **victims of unfair and deceptive practices** (*Radosti v. Envision EMI, LLC* and *In re Tyson Foods, Inc., Chicken Raised Without Antibiotics Consumer Litigation*); and sought compensation for domestic beekeepers and honey packers for **fraudulent mislabeling** of imported honey (*In re Honey Transshipping Litigation*).

# HAUSFELD



## Hausfeld Firm Summary

*continued*

### Financial Services

Hausfeld has been at the forefront of numerous class actions against the financial services industry since 2009, pursuing wrongful conduct that spans the globe. Hausfeld leads two of the largest class actions against the world's biggest banks for manipulation of prices paid in the **Libor** and foreign exchange (**Forex**) markets, in which they obtained **more than \$2 billion in settlements for the class**.

### Mass Tort and Environmental Litigation

Hausfeld attorneys have pursued wide-ranging mass tort cases over the last decade. We have represented **homeowners with defective drywall** (*In re Chinese-Manufactured Drywall Products Liability Litig.*), former **football players who suffered from the long-lasting effects of concussions** (*In re National Football League Players' Concussion Injury Litigation*) **mine workers in southern Africa who contracted silicosis** from their workplace environment – the first case of its kind brought in South Africa, and **victims of dangerous prescription drugs and medical devices**, including women whose hormone replacement therapy caused them to suffer from breast cancer (*In re Prempro Products Liability Litigation*), and patients with defective hip replacements (*In re Stryker Rejuvenate and ABG II Hip Implant Products Liability Litigation*).

# HAUSFELD

“Hausfeld stands out for its ability to provide worldwide solutions, leveraging its network of offices across the US and in Europe.”

– The Legal 500 2016

## Hausfeld: A Global Reach

Hausfeld’s international reach enables it to advise across multiple jurisdictions and pursue claims on behalf of clients worldwide. Hausfeld works closely with clients to deliver outstanding results, while always addressing their business concerns. Hausfeld does so by anticipating issues, considering innovative strategies, and maximizing the outcome of legal disputes in a way that creates shareholder value. Its inventive cross border solutions work to the benefit of the multinational companies it often represents.

### Creative Solutions to Complex Legal Challenges

Hausfeld lawyers consistently apply forward-thinking ideas and creative solutions to the most vexing global legal challenges faced by clients. As a result, the firm’s litigators have developed numerous innovative legal theories that have expanded the quality and availability of legal recourse for claimants around the globe that have a right to seek recovery. Hausfeld’s impact was recently recognized by the *Financial Times*, which awarded Hausfeld the “Most Innovative Law Firm in Dispute Resolution of 2013,” as well as by the *Legal 500* who has ranked Hausfeld as the only top tier claimants firm in private enforcement of antitrust/competition law in both the United States and the United Kingdom. For example, the landmark settlement that Hausfeld negotiated to resolve claims against Parker ITR for antitrust overcharges on marine hose represented the first private resolution of a company’s global cartel liability without any arbitration, mediation, or litigation – creating opportunities never before possible for dispute resolution and providing a new model for global cartel settlements going forward.

### Unmatched Global Resources

The firm combines its U.S. offices on both coasts and vibrant European presence with a broad and deep network around the globe to offer clients the ability to seek redress or confront disputes in every corner of the world and across every industry. With over 65 lawyers in offices in Washington, D.C., New York, Philadelphia, San Francisco, Berlin, Brussels, and London, Hausfeld is a “market leader for claimant-side competition litigation.”

“Hausfeld LLP is ‘one of the most capable plaintiffs’ firms involved in the area of civil cartel enforcement’, is ‘[w]idely recognised as a market leader for claimant-side competition litigation... [It is the] market leader in terms of quantity of cases, and also the most advanced in terms of tactical thinking.”

– The Legal 500 2014 and 2015

## Antitrust Litigation

### Hausfeld’s antitrust litigation experience is unparalleled

Few, if any, U.S. law firms have litigated more class actions on behalf of companies and individuals injured by anticompetitive conduct than Hausfeld. The firm has litigated cases involving price-fixing, price manipulation, monopolization, tying, and bundling, through individual and class representation and has experience across a wide variety of industries, including automotive, banking, chemicals, construction, manufacturing, energy, financial services, food and beverage, health care, mining & metals, pharmaceuticals and life sciences, retail, sports and entertainment, technology, transportation. Clients rely on us for our antitrust expertise and our history of success in the courtroom and at the negotiation table, and the firm does not shy away from challenges, taking on some of the most storied institutions. Hausfeld is not only trusted by its clients, it is trusted by judges to pursue these claims, as evidenced by the fact that the firm has been appointed as lead or co-lead counsel in over 25 antitrust cases in the last decade. In one recent example, Judge Morrison C. England of the Eastern District of California praised Hausfeld for having “the breadth of experience, resources and talent necessary to navigate” cases of import.

Recognizing the firm’s antitrust prowess, *Global Competition Review* has opined that Hausfeld is “one of – if not the – top Plaintiffs’ antitrust firm in the U.S.” *The Legal 500* likewise consistently ranks Hausfeld among the top five firms in the United States for antitrust litigation on behalf of plaintiffs. And in naming Hausfeld to its Plaintiffs’ Hot List for the third year in a row in 2014, *The National Law Journal* opined that Hausfeld “punches above its weight” and “isn’t afraid to take on firms far larger than its size and deliver results, especially in antitrust litigation.”

### Hausfeld has achieved outstanding results in antitrust cases

Hausfeld lawyers have achieved precedent-setting legal decisions and historic trial victories, negotiated some of the world’s most complex settlement agreements, and have collectively recovered billions of dollars in settlement and judgments in antitrust cases. Key highlights include:

- ***O’Bannon v. NCAA, No. 09-cv-03329 (N.D. Cal.)***  
Hausfeld serves as lead counsel in this case, which has received considerable press attention and has been hailed as a game-changer for college sports. Following a three-week trial, Hausfeld attained a historic trial victory when the court ruled that the NCAA’s rules prohibiting payments to student-athletes for their names, images, and likenesses violate the antitrust laws. This ruling was upheld by the Ninth Circuit Court of Appeals.
- ***In re Air Cargo Shipping Services Antitrust Litig., No. 06-md-1775 (E.D.N.Y.)***  
Hausfeld serves as co-lead counsel in this case alleging over thirty international airlines engaged in conspiracy to fix the price of air cargo shipping services. The firm negotiated more than **\$1.2 billion** in settlements from over 30 defendants for the class, won certification of the class and defeated the defendants’ motions for summary judgment.

# HAUSFELD

## Antitrust Litigation

*continued*

- *In re Foreign Exchange Benchmark Rates Antitrust Litig.*, 13-cv-7789 (S.D.N.Y.)  
Hausfeld serves as co-lead counsel in this case alleging financial institutions participated in a conspiracy to manipulate a key benchmark in the foreign exchange market. To date, the firm has obtained over **\$2 billion** in settlements from **nine defendants**. The case is ongoing against the remaining defendants.
- *In re Vitamin C Antitrust Litig.*, No. 06-md-01738 (E.D.N.Y.)  
Hausfeld serves as co-lead counsel in the first class antitrust case in the United States against Chinese manufacturers. Hausfeld obtained settlements for the class of **\$22.5 million from two of the defendants** – the first after summary judgment, and the second, just before closing arguments at trial. Days later, the jury reached a verdict against the remaining defendants, and the court entered a judgment for **\$162 million** after trebling the damages awarded.
- *In re International Air Passenger Surcharge Antitrust Litig.*, No. 06-md-01793 (N.D. Cal.)  
Hausfeld served as co-lead counsel in this case against two international airlines alleged to have fixed fuel surcharges on flights between the United States and United Kingdom. Lawyers at the firm negotiated a ground-breaking **\$200 million** international settlement that provides recovery for both U.S. purchasers under U.S. antitrust laws and U.K. purchasers under U.K. competition laws.
- *In re LIBOR-Based Financial Instruments Antitrust Litig.*, No. 11-md-2262 (S.D.N.Y.)  
Hausfeld serves as co-lead counsel in this case against sixteen of the world's largest financial institutions for conspiring to fix LIBOR, the primary benchmark for short-term interest rates. To date, the firm has obtained **\$120 million** in a settlement with one defendant. The case is ongoing against the remaining defendants.
- *In re Municipal Derivatives Antitrust Litig.*, No. 08-cv-2516 (S.D.N.Y.) Hausfeld serves as co-lead counsel in this case against banks, insurance companies, and brokers accused of rigging bids on derivative instruments purchased by municipalities. The firm has obtained over **\$223 million** in settlements with **11 defendants**.
- *In re Automotive Aftermarket Lighting Products Antitrust Litig.*, No. 09-ML-2007 (C.D. Cal.)  
Hausfeld served as co-lead counsel in this case against three manufacturers for participating in an international conspiracy to fix the prices of aftermarket automotive lighting products. The firm obtained over **\$50 million** in settlements.
- *In re Processed Egg Products Antitrust Litig.*, No. 08-cv-04653 (E.D. Pa.)  
Hausfeld serves as co-lead counsel in this case alleging that egg producers, through their trade associations, engaged in a scheme to artificially inflate egg prices by agreeing to restrict the supply of both laying hens and eggs. To date, the firm has obtained nearly **\$60 million** in settlements and won certification of a class of shell egg purchasers. The case is ongoing against the remaining defendants.

# HAUSFELD



## Antitrust Litigation

*continued*

- ***In re Fresh and Process Potatoes Antitrust Litig., No. 10-MD-2186 (D. Idaho)***  
Hausfeld serves as chair of the executive committee in this case alleging that potato growers, their cooperatives, processors, and packers conspired to manipulate the price and supply of potatoes. In defeating defendants' motion to dismiss, the firm secured a judicial determination that supply restrictions are not protected conduct under a limited federal antitrust exemption available to certain grower associations—a novel question that had never before been decided by any court. The firm obtained **\$19.5 million** in settlements and valuable injunctive relief prohibiting future production limitation agreements, achieving global resolution of the case.
- ***In re American Express Anti-Steering Rules Antitrust Litig., No. 11-md-2221 (E.D.N.Y)***  
As lead counsel, Hausfeld represents a class of merchants and retailers against American Express. The merchants allege that American Express violated antitrust laws by requiring them to accept all American Express cards, and by preventing them from steering their customers to other payment methods.
- ***In re Blue Cross Blue Shield Antitrust Litig., No. 13-mdl-2496 (N.D. Ala.)***  
Hausfeld attorneys serve as co-lead counsel and hold court-appointed committee positions in this case against Blue Cross Blue Shield entities, alleging that they illegally agreed not to compete with each other for health insurance subscribers across the United States. Having defeated motions to dismiss, Hausfeld is now marshalling evidence against more than thirty defendants in preparation for summary judgment and trial.
- ***In re Rail Freight Fuel Surcharge Antitrust Litig., No. 07-mc-00489 (D.D.C.)***  
Hausfeld is co-lead counsel in this case alleging fuel-surcharge collusion among the nation's largest rail-freight carriers. Leading dozens of firms, Hausfeld mastered the discovery record and obtained class certification in the district court, after which the D.C. Circuit remanded for further consideration of discrete expert issues. This antitrust case is one of the most high-profile class actions in the United States and concerns the claims of some 30,000 shippers, from small businesses to Fortune 500 companies.

## eDiscovery Expertise

When 90% of information is created and stored electronically, success in complex litigation requires legal practitioners with the skill and experience to efficiently manage “eDiscovery”—the process of discovering electronically stored information (or “ESI”). Poorly managed, eDiscovery can be expensive, time-consuming and conflict-ridden. Skillfully managed with civility, cooperation and know-how, it offers enormous potential to litigants, lawyers, and the courts for efficient and effective discovery and case management.

Hausfeld attorneys bring their expertise and skills to achieve the latter result. They are at the forefront of eDiscovery, internationally recognized and frequently called upon to educate other attorneys on both sides of the “v.” on sound ESI discovery practices and emerging technologies. They are experienced in all aspects of eDiscovery from the earliest stages of litigation holds and preservation to the cost-efficient management of large and complex electronic document reviews involving tens of millions of documents.

Rather than waiting for problems to arise, Hausfeld attorneys manage eDiscovery from inception to minimize future disputes and reduce costs to the parties and the court. They work cooperatively with opposing counsel to identify and resolve likely eDiscovery issues at the earliest stages and proactively negotiate ESI preservation, disclosure, search, and production protocols that set clear rules of the game going forward.

### Leading Hausfeld’s eDiscovery efforts are:

**William P. Butterfield**, an internationally recognized authority on eDiscovery, was singled out by Who’s Who Legal for his eDiscovery expertise and by Chambers USA and Chambers Global for litigation/eDiscovery.

Mr. Butterfield chairs the Sedona Conference’s Working Group on Electronic Document Retention and Production and is a member of the Conference’s Working Group on International Electronic Information Management, Discovery and Disclosure. He served as editor-in-chief of *The Case for Cooperation* (2009)—the Sedona Conference’s paper promoting cooperation in discovery, and was a co-editor of *The Sedona Conference® Commentary On Preservation, Identification and Management of Sources of Information that are Not Reasonably Accessible* (2008). He teaches eDiscovery at American University’s Washington College of Law, serves on the advisory board for Georgetown University Law Center’s Advanced E-Discovery Institute, and was a contributor to the casebook *Electronic Discovery and Digital Evidence: Cases and Materials*, authored by former federal district court judge Shira Scheindlin.

**Megan Jones**, a nationally recognized litigator and skilled ESI negotiator, is frequently called upon to lead complex ESI negotiations and to speak at national ESI training events.

# HAUSFELD



## eDiscovery Expertise

*continued*

Ms. Jones, a member of the Sedona Conference, regularly writes on the topic of e-discovery. She is a co-author of The Sedona Conference's highly regarded *Glossary: E-Discovery and Digital Information Management* (Dec. 2007) as well as its publication, *Navigating the Vendor Proposal Process*. Her commentary has been published in leading trade and legal journals such as *Law Technology News*, *The National Law Journal*, and the *Federal Courts Law Review*. Ms. Jones has testified before the Federal Rules Committee on electronic discovery, participates in high-level legal gatherings such as the invitation-only Duke Law Conference on Implementing Discovery Proportionality Standard, and frequently speaks at leading national ESI conferences, such as the ABA's National E-Discovery Institute and Sedona Conference educational conferences.

**Jeannine Kenney**, an experienced litigator who works in the eDiscovery trenches daily, has navigated detailed, complex and contentious ESI issues from dispute to resolution.

Ms. Kenney, a member of the Sedona Conference's Working Group on Electronic Document Retention and Production, leads and counsels litigation teams in the negotiation of protocols for the preservation, search, and production of ESI in litigation often involving dozens of defendants, negotiates ESI search terms, technology assisted review (predictive coding) methodologies, and database disclosures and productions, and manages complex document reviews using advanced review analytics to speed discovery. She educates other practitioners on eDiscovery realities, serving as a faculty coach to participants in Georgetown University Law Center's weeklong, intensive eDiscovery Training Academy, and speaking at legal conferences. She co-authored a chapter on technology assisted review to appear in the American Bar Association's book, *Perspectives on Predictive Coding*.

## Litigation Achievements

### Significant Trial Victories

While many law firms like to talk about litigation experience, Hausfeld lawyers regularly bring cases to trial—and win. Among our trial victories are some of the largest antitrust cases in the modern era. For example, in *O'Bannon v. NCAA (N.D. Cal.)*, we conducted a three-week bench trial before the Chief Judge of the Northern District of California, resulting in a complete victory for college athletes who alleged an illegal agreement among the National Collegiate Athletic Association and its member schools to deny payment to athletes for the commercial licensing of their names, images, and likenesses. Our victory in the O'Bannon litigation followed the successful trial efforts in *Law v. NCAA (D. Kan.)*, a case challenging earning restrictions imposed on assistant college coaches in which the jury awarded **\$67 million** to the class plaintiffs that one of our lawyers represented.

In *In re Vitamin C Antitrust Litigation (E.D.N.Y.)*, we obtained, on behalf of our direct purchaser clients, a **\$162 million jury verdict** against Chinese pharmaceutical companies who fixed prices and controlled export output of Vitamin C—on the heels of \$22.5 million in settlements with other defendants, which represented the first civil settlements with Chinese companies in a U.S. antitrust cartel case. Years earlier, we took on a global vitamin price-fixing cartel in *In re Vitamins (D.D.C.)*, in which we secured a **\$1.1 billion settlement** for a class of vitamin purchasers and then took the remaining defendants to trial, culminating in a **\$148 million jury verdict**.

Our trial experience extends to intellectual property matters and general commercial litigation as well. Recently, we represented entertainment companies that sought to hold internet service provider Cox Communications accountable for willful contributory copyright infringement by ignoring the illegal downloading activity of its users. Following a trial in *BMG Rights Management (US) LLC, v. Cox Enterprises, Inc. (E.D. Va.)*, the jury returned a **\$25 million verdict** for our client.

### Exceptional Settlement Results

In less than a decade, Hausfeld has recouped over \$20 billion for clients and the classes they represented. We are proud of our record of successful dispute resolution. Among our settlement achievements, three cases merit special mention. In a case involving allegations of price-fixing among the world's largest airfreight carriers, *In re Air Cargo Shipping Services Antitrust Litigation (E.D.N.Y.)*, we negotiated settlements with more than 30 defendants totaling over \$1.2 billion—all in advance of trial. During the same time period, in *In re Foreign Exchange Benchmark Rates Antitrust Litigation (S.D.N.Y.)*, we negotiated settlements totaling more than \$2 billion with nine banks accused of conspiring to manipulate prices paid in the foreign-exchange market. And in the global *Marine Hose* matter, we broke new ground with the first private resolution of a company's global cartel liability without any arbitration, mediation, or litigation. That settlement enabled every one of Parker ITR's non-US marine-hose purchasers to recover up to 16% of their total purchases. These cases are just three among dozens of recent landmark settlements across our practice areas.

## Reputation and Leadership in the Antitrust Bar

### Court Commendations

Judges across the country have taken note of Hausfeld's experience and results achieved in antitrust litigation.

**"As to the quality of the plaintiffs' representation, I really can't say enough. I just think the way this case was handled was as good as it gets... it would be a pleasure to have any of you in front of me again on any case...[t]he representation could not have been any better."**

– Judge Brian M. Cogan

*In re Vitamin C Antitrust Litigation*, No. 06-md-1738 (E.D.N.Y.) (following the jury trial)

### Comparing Hausfeld's work through trial to Game of Thrones:

**"where individuals with seemingly long odds overcome unthinkable challenges.... For plaintiffs, their trial victory in this adventurous, risky suit, while more than a mere game, is nothing less than a win...."**

– Magistrate Judge Nathanael M. Cousin

*O'Bannon v. Nat'l College Athletic Ass'n*, 09-cv-3329 (N.D. Cal.)

**Hausfeld lawyers had achieved "really, an outstanding settlement in which a group of lawyers from two firms coordinated the work . . . and brought an enormous expertise and then experience in dealing with the case." "[Hausfeld lawyers are] more than competent. They are outstanding."**

– Judge Charles R. Breyer

*In re International Air Passenger Surcharge Antitrust Litig.*, No. 06-md-01793 (N.D. Cal.) (approving a ground-breaking \$200 million international settlement that provided recovery for both U.S. purchasers under U.S. antitrust laws and U.K. purchasers under U.K. competition laws.)

**Hausfeld has "the breadth of experience, resources and talent necessary to navigate a case of this import." Hausfeld "stands out from the rest."**

– District Judge Morrison C. England Jr.

*Four In One v. SK Foods*, No. 08-cv-3017 (E.D. Cal.)

# HAUSFELD

## Reputation and Leadership in the Antitrust Bar

*continued*



## Awards and Recognitions

### *Global Competition Review:*

In 2016, Hausfeld was awarded Global Competition Review's "Litigation of the Year – Cartel Prosecution" for its work on *In re Foreign Exchange Antitrust Benchmark Litigation*. The award recognized Hausfeld's success in the Foreign Exchange litigation to date, which has included securing settlements for more than \$2 billion in on behalf of a class of injured foreign exchange investors and overcoming two motions to dismiss in the action.

In 2015, Hausfeld attorneys were awarded *Global Competition Review's* "Litigation of the Year – Non-Cartel Prosecution," which recognized their trial victory in *O'Bannon v. National Collegiate Athletics Association*, a landmark case brought on behalf of college athletes challenging the NCAA's restrictions on payment for commercial licensing of those athletes' names, images, and likenesses in various media.

### *National Law Journal:*

In 2015, Hausfeld was named to the *National Law Journal's* "Plaintiffs Hot List" for the Fourth Year in a Row.

"Hausfeld's creative approaches underpinned key antitrust wins last year, including a trailblazing victory for former college athletes over the use of their likenesses in television broadcasts and video games..." also noting that Hausfeld along with its co-counsel, "nailed down a \$99.5 million settlement with JPMorgan Chase & Co. in January in New York federal court for alleged manipulation of market benchmarks. And it helped land nearly \$440 million in settlements last year, and more than \$900 million thus far, in multidistrict antitrust litigation against air cargo companies."

In 2014, *The National Law Journal* named Hausfeld as one of a select group of America's Elite Trial Lawyers, as determined by "big victories in complex cases that have a wide impact on the law and legal business." The award notes that Hausfeld is among those "doing the most creative and substantial work on the plaintiffs side."

### *Financial Times:*

In 2015, Michael Hausfeld was recognized by the *Financial Times* as one of the Top 10 Innovative Lawyers in North America.

In 2013, Hausfeld won the *Financial Times* Innovative Lawyer Dispute Resolution Award. The FT states that Hausfeld has "[p]ioneered a unique and market-changing litigation funding structure that improved accessibility and enabled victims to pursue actions with little or no risk."

# HAUSFELD

## Reputation and Leadership in the Antitrust Bar

*continued*



### *Chambers & Partners:*

In 2015, *Chambers & Partners UK* ranked Hausfeld in the top tier among London firms representing private claimants in competition matters, and recognized the firm's accomplishments in Banking Litigation. Chambers observed that the firm was:

"Synonymous with competition damages claims in the UK thanks to its leading role in developing the market in this area. Adept at handling class-style actions and can co-ordinate proceedings for large groups of claimants across different jurisdictions. Well placed to handle both standalone and follow-on actions."

Chambers and Partners has also ranked Hausfeld's U.S. operations in the top tier nationally for antitrust. The publication noted the firm's attributes as including:

- A reputation as a "[m]arket-leading plaintiffs' firm with considerable experience in antitrust class action suits and criminal cartel investigations."
- "[N]umerous successes in the area resulting in major recovery or settlements for its clients."
- Firm Chair Michael Hausfeld's record as "a very successful and able antitrust litigator" and "one of the titans of the Plaintiffs Bar."



### *U.S. News & World Report:*

In 2015, *U.S. News & World Report – Best Law Firms* named Hausfeld to its top tier in both Antitrust Law and Litigation. Hausfeld was also recognized in New York, San Francisco, and Washington, DC in Antitrust Law, Litigation, and Commercial Litigation.



### *Legal 500:*

In 2016, Hausfeld was ranked for the eighth year in a row to the top tier nationally for firms in civil litigation and class actions and was also ranked nationally for antitrust – cartel work by *The Legal 500*. The Legal 500 has declared:

"Representing large companies, small and medium-sized businesses, as well as individuals, Washington DC firm Hausfeld LLP remains 'top-notch' in antitrust litigation... Hausfeld LLP is 'one of the most capable plaintiffs' firms involved in the area of civil cartel enforcement', and is handling some of the major cartel-related cases..."

The Legal 500 has also recognized that Hausfeld is a "market transformer," the "most innovative firm with respect to antitrust damages," is "[d]riven by excellence," "anticipates the evolving needs of clients," and delivers "outstanding advice not only in legal terms but also with a true entrepreneurial touch' . . ."

# HAUSFELD

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## Reputation and Leadership in the Antitrust Bar

*continued*



The American Antitrust Institute

### *Concurrences*

In 2015, Hausfeld Partners Michael Hausfeld, Michael Lehmann and Sathya Gosselin, joined by co-authors Gordon Rausser and Gareth Macartney, were elected the winners of the Concurrences' 2015 Antitrust Writing Awards in the Private Enforcement (Academic) category for their article, *Antitrust Class Proceedings - Then and Now*, Research in Law and Economics, Vol. 26, 2014.

### *American Antitrust Institute:*

In 2015, Hausfeld and fellow trial counsel won the American Antitrust Institute's award for Outstanding Antitrust Litigation Achievement in Private Law Practice for their trial and appellate victories in *O'Bannon v. NCAA*.

# HAUSFELD

## Reputation and Leadership in the Antitrust Bar

*continued*

### Thought Leadership

Hausfeld lawyers do more than litigation. They exercise thought leadership in many fields. Hausfeld lawyers host, lecture at, and participate in leading legal conferences worldwide addressing ground-breaking topics, including: the pursuit of damages actions in the United States and the European Union on behalf of EU and other non-U.S. plaintiffs; nascent private civil enforcement of EU competition laws; application of the FTAIA; the impact of *Wal-mart Stores, Inc. v. Dukes* and *Comcast Corp. v. Behrend* on the class certification; reforms to the Federal Civil Rules of Procedure, emerging issues in complex litigation; legal technology and electronic discovery.

Hausfeld attorneys have presented before Congressional subcommittees, regulators, judges, business leaders, in-house counsel, private lawyers, public-interest advocates, elected officials and institutional investors, and hold leadership positions in organizations such as the American Bar Association, the American Antitrust Institute, the Women Antitrust Plaintiffs' Attorney network group, the Sedona Conference and IAALS.

Hausfeld attorneys also regularly organize and facilitate panels and conferences discussing the latest developments and trends in their respective practices and are frequently published in scholarly articles, journals, bulletins and legal treatises. Highlights from these publications and conferences include:

### Recent Articles

- Michael D. Hausfeld and Irving Scher, "**Damage Class Actions After Comcast: A View from the Plaintiffs' Side,**" *Antitrust Magazine* (Spring 2016).
- James J. Pizzirusso, "**Proving Damages in Consumer Class Actions,**" *Consumer Protection Committee*, Vol. 22/ No. 1, ABA Section of Antitrust Law (Mar. 2016).
- Brent Landau and Gary Smith, "**Bundling Claims Under Section 1 of the Sherman Act: Focusing on Firms' Abilities to Create Anticompetitive Effects in a Market, Rather Than Their Share of It,**" *Antitrust Health Care Chronicle*, Vol. 28/ No. 1, ABA Section of Antitrust Law (Jan. 2015).
- Michael D. Hausfeld, Gordon C. Rausser, Gareth J. Macartney, Michael P. Lehmann, Sathya S. Gosselin, "**Antitrust Class Proceedings – Then and Now,**" *Research in Law and Economics* (Vol. 26, 2014) (Recipient of *Concurrences'* 2015 Antitrust Writing Award for Private Enforcement (Academic) Category).
- Brent Landau and Brian Ratner, "**Chapter 39: USA,**" *The International Comparative Legal Guide to Cartels & Leniency* (Ch. 39, 2014).
- Michael Hausfeld and Brian Ratner, "**Prosecuting Class Actions and Group Litigation – Understanding the Rise of International Class and Collective Action Litigation and How this Leads to Classes that Span International Borders,**" *World Class Actions* (Ch. 26, 2012)
- Michael Hausfeld and Kristen Ward Broz, "**The Business of American Courts in *Kiobel,***" *JURIST – Sidebar* (Oct. 2012).



## Richard S. Lewis

Partner

### WASHINGTON, DC

1700 K Street, NW  
Suite 650  
Washington, DC 20006  
202-540-7151 direct  
202-540-7200 main  
202-540-7201 fax

[rlewis@hausfeld.com](mailto:rlewis@hausfeld.com)

Richard Lewis has been appointed to serve as co-lead counsel in mass tort and product liability class action cases including *In re StarLink Corn Products* (N.D. Ill) (asserting claims by farmers for genetic modification contamination of the U.S. corn supply) and *In re PPA* (asserting claims by users of unsafe over-the-counter medicines). He has also been appointed to the MDL Steering Committee in *In re Prempro Products Liability Litigation*, *In re NFL Players' Concussion Injury Litigation*, *In re Stryker Rejuvenate And ABG II Hip Implant Products Liability Litigation*, *In re Bair Hugger Forced Air Warming Products Liability Litigation*, and in *In re Chinese Manufactured Drywall Products Liability Litigation*. Rich was a member of the Chinese Drywall trial team that obtained a comprehensive remediation and property damages verdict for seven Virginia homeowners. Furthermore, Rich handled various experts in the Daubert briefing and argument; and was successful in excluding significant portions of the defense experts' opinions.

In addition, Rich served or presently serves as lead counsel or class counsel in numerous actions to obtain medical monitoring and property damage relief for communities exposed to toxic chemicals, unsafe working conditions, or unsafe drugs. These include the *In re NFL Concussion Injury Litigation*, *In re NCAA Concussion Litigation*, and *In re Diet Drug Litigation* (Fen-Phen), which resulted in a \$4 billion settlement providing medical monitoring in addition to individual personal injury awards. In addition, these include *Farnum v. Shell*, an oil spill pollution case in Barbados against international oil companies, that resulted in a settlement providing property damage compensation for 26 farmers and landowners, and *Harman v. Lipari*, a Superfund case that resulted in a settlement providing medical monitoring for thousands of residents who lived on or played near a landfill. He has litigated both individual and class childhood lead poisoning cases and is also handling environmental and workplace safety cases in India, and South Africa.

Rich also practices in the environmental health area and presently assists South African counsel in representing a certified class of South African gold miners bringing claims for lung disease against the South African mining industry, as well as residents in Los Angeles and St. Louis bringing claims for methane gas pollution and radiation contamination, respectively.

**RICHARD S. LEWIS****EDUCATION**

University of Pennsylvania, J.D., *cum laude*, 1986

University of Michigan, M.P.H., 1981

Tufts University, B.A., *cum laude*, 1976

**BAR ADMISSIONS**

District of Columbia

**AFFILIATIONS & HONORS**

Law clerk, post law school, for the Honorable Stanley S. Brotman, U.S. District Court for the District of New Jersey

National Finalist for 2010 Lawdragon 500, an annual guide to the "500 Leading Lawyers in America"

University of Pennsylvania *Law Review*, Comments Editor

**NEWS & PRESS**

"Manassas Park Woman Sues Drug Company Over Breast Cancer." *The Washington Post* quotes Richard Lewis regarding a suit against Pfizer. January 3, 2010.

Mr. Lewis interviewed in Fox News story on Prempro cancer case. November 26, 2009.

First Chinese drywall class actions filed in Virginia and North Carolina. May 21, 2009.

Comment, "O.C.A.W. v. American Cyanamid: The Shrinking of the Occupational Safety and Health Act," *University of Pennsylvania Law Review* (July 1985)

Mr. Lewis commented in *USA Today*, "Hearing on consolidation of NCAA concussion lawsuits." December 2013.



## Michael D. Hausfeld

Chairman

### WASHINGTON, DC

1700 K Street, NW  
Suite 650  
Washington, DC 20006  
202-540-7200 direct  
202-540-7200 main  
202-540-7201 fax

[mhausfeld@hausfeld.com](mailto:mhausfeld@hausfeld.com)

### LONDON

12 Gough Square  
London, United Kingdom  
EC4A 3DW  
(44) 20 7665 5000 direct  
(44) 20 7665 5000 main  
(44) 20 7665 5001 fax

Michael D. Hausfeld, one of the country's top civil litigators, is the Chairman of Hausfeld.

His career has included some of the largest and most successful class actions in the fields of human rights, discrimination and antitrust law. He has an abiding interest in social reform cases and was among the first lawyers in the U.S. to assert that sexual harassment was a form of discrimination prohibited by Title VII; he successfully tried the first case establishing that principle. He represented Native Alaskans whose lives were affected by the 1989 Exxon Valdez oil spill. Later, he negotiated a then-historic \$176 million settlement from Texaco, Inc. in a racial-bias discrimination case. Most recently, in the landmark *O'Bannon v. NCAA* litigation, Michael represented a class of current and former Division I men's basketball and FBS football players against the NCAA and its member institutions, based on rules foreclosing athletes from receiving compensation for the use of their names, images, and likenesses. At the conclusion of a three-week bench trial, the Court determined that the NCAA had violated the antitrust laws and issued a permanent injunction as requested by the plaintiffs. Immediately following the decision, Michael was named *AmLaw Litigation Daily's* "Litigator of the Week," citing the "consensus among courtroom observers [was] that Michael Hausfeld...got the best of a parade of NCAA witnesses at trial." *Law360* dubbed the trial team led by Michael as "Legal Lions," citing Hausfeld's historic victory over the NCAA.

In *Friedman v. Union Bank of Switzerland*, Michael represented a class of Holocaust victims whose assets were wrongfully retained by private Swiss banks during and after World War II. The case raised novel issues of international banking law and international human rights law. In a separate case, he also successfully represented the Republic of Poland, the Czech Republic, the Republic of Belarus, the Republic of Ukraine and the Russian Federation on issues of slave and forced labor for both Jewish and non-Jewish victims of Nazi persecution. He currently represents Khulumani and other NGOs in a litigation involving the abuses under apartheid law in South Africa.

Michael has a long record of successful litigation in the antitrust field, on behalf of individuals and classes, in cases involving monopolization,

**MICHAEL D. HAUSFELD**

tie-ins, exclusive dealings and price fixing. He was a member of the ABA Antitrust Section's Transition Taskforce, which advised the incoming Obama Administration. Michael is or has been co-lead counsel in antitrust cases against manufacturers of genetically engineered foods, managed healthcare companies, bulk vitamin manufacturers, technology companies and international industrial cartels. He is involved in ongoing investigations of antitrust cases abroad and pioneering efforts to enforce competition laws globally. He was the only private lawyer permitted to attend and represent the interests of consumers worldwide in the 2003 closed hearings by the EU Commission in the Microsoft case.

Michael has been featured in many articles and surveys. The *National Law Journal* has recognized him as one of the "Top 100 Influential Lawyers in America" and the *Legal Times* named Michael among the top 30 "Visionaries" in the Washington legal community in 2008. *The New York Times* referred to Michael as one of the nation's "most prominent antitrust lawyers," and in 2009 the *Washingtonian* named him one of thirty "Stars of the Bar." Most recently, the *Global Competition Review* stated that Hausfeld "is clearly recognized as one of the best plaintiffs firms in the country." In the past, the magazine has reported that Michael "consistently brings in the biggest judgments in the history of law" and that he is "a Washington lawyer determined to change the world — and succeeding." Michael is one of thirty negotiators profiled in *Done Deal: Insights from Interviews with the World's Best Negotiators*, by Michael Benoliel, Ed.D. He has also been described by one of the country's leading civil rights columnists as an "extremely penetrating lawyer" and by a colleague (in a *Washington Post* article) as a lawyer who "has a very inventive mind when it comes to litigation. He thinks of things most lawyers don't because they have originality pounded out of them in law school." For the past five years, *The Legal 500*, which provides comprehensive worldwide coverage on legal services and rankings, selected "mastermind of strategy" and "smart strategic thinker" Michael, as one of the top 10 Leading Lawyers in the U.S. representing plaintiffs in antitrust and cartel matters, stating that the "incredibly impressive... Michael Hausfeld and Brian Ratner are highly skilled negotiators and litigators, and real fighters with an outstanding strategic sense," and "the outstanding Mike Hausfeld is a titan of the antitrust bar."

**EDUCATION**

National Law Center George Washington University, J.D., *with honors*, 1969; Member, Order of the Coif

Brooklyn College, B.A. *cum laude*, 1966

**EDUCATION**

Harvard Law School, J.D., *cum laude*, 2001

State University of New York at Binghamton, B.A., *summa cum laude*, 1998

**BAR ADMISSIONS**

District of Columbia

New York

**MICHAEL D. HAUSFELD****AFFILIATIONS & HONORS**

Washington, DC *Super Lawyer*, 2010, 2011, and 2012

American Friends of Hebrew University, Torch Of Learning Award, October 2012

Named by *The Legal 500* as a "Leading Lawyer" in Antitrust, 2011-2015

Co-Chair - ABA Civil Redress Task Force, 2011-2012 and Civil Redress Committee, 2012-2013

Member, Editorial Board - Global Competition Litigation Review, 2011

Member - ABA International Cartel Task Force, 2010

Named by *The Ethisphere Institute* in a short list of "attorneys who matter" in the field of corporate compliance, 2009

Cited in 2009 *Chambers USA*, in the Products Liability category

Named to *SmartCEO* Magazine Legal Elite 2009 List

Named by *Legal Times* among 30 "Visionaries" in the Washington legal community, 2008

Named by *Legal Times* Fierce Sister Award, for work on the Japanese Comfort Women case, 2007

Cited by *GQ magazine* as one of "the 50 Most Powerful People in DC," 2007

Named in *The Lawyer's 2007* "International World-shakers" list of 40 international lawyers "making waves" in the UK

100 Most Influential Lawyers, *The National Law Journal*, 2006

Named repeatedly by *Lawdragon* magazine as one of the 500 leading lawyers in the United States

U.S. Department of Energy Human Spirit Award, presented "in tribute to a person who understands the obligation to seek truth and act on it is not the burden of some, but of all; it is universal."

Plaintiffs Fellow, Litigation Counsel of America

B'Nai Brith Humanitarian of the Year Award, 2002

Simon Wiesenthal Center Award for Distinguished Service

Simon Wiesenthal Center Award for Distinguished Service

Adjunct Professor, George Washington University Law School, 1996-1998

Taught in Georgetown University Law Center, 1980-1987

Member, Board of Editors, *George Washington Law Review* (1968-1969)

**NEWS & PRESS**

The Toughest Lawyer in America Is On Your Side, Neal Gabler, *Playboy Magazine*, February 2015.

Gangster Bankers - Too Big to Jail, Matt Taibbi, *Rolling Stone Magazine*, February 2013

UBS Mea Culpa May Give Libor Antitrust Plaintiffs Upper Hand, Max Stendahl, *Law360*, December 2012

## MICHAEL D. HAUSFELD

DOJ Heralds 'Robust' UBS Deal; Gibson Dunn on Defense, Mike Scarcella, *The AmLaw Litigation Daily*, December 2012

Documents May Boost Civil Suits - Revelations That Rate-Rigging Succeeded Could Prove Expensive to Banks Facing Litigation, Dana Cimilluca and Jean Eaglesham, *Wall Street Journal*, December 2012

Banks Facing New Wave of Mortgage Lawsuits, Forrest Jones, *Moneynews*, December 2012

Where There's a Will, There's a Way, *The American Lawyer*, March 2012

The Great Gamble, *Global Competition Review*, March 2012

The US Plaintiffs' Bar, *Global Competition Review*, March 2012

*Bloomberg* Interviews Hausfeld on NCAA and Student Athlete Compensation, October 2011

*Washingtonian* magazine names Mr. Hausfeld one of thirty "Stars of the Bar." December, 2009.

*Bloomberg* quotes Hausfeld on muni derivatives investigation. November 2009.

*Business Week*: Europe Inc. takes aim at price-fixers. October 2009.

*Reuters*: Hausfeld LLP filing suit on behalf of Baltimore and Mississippi municipalities. October 2009.

*New York Times*: NCAA Sued Over Licensing Practices. July 21, 2009

*Associated Press*: NY Judge Rules in Favor of 1970s Apartheid Victims. April 8, 2009

**PUBLICATIONS**

"The Business of American Courts in *Kiobel v. Royal Dutch Petroleum*." By Michael Hausfeld and Kristen Ward. *Jurist* - Sidebar, October 2012.

"Prosecuting Class Actions and Group Litigation." By Michael Hausfeld and Brian Ratner, et al., *World Class Actions*, Ch. 26., September 2012

"Private Enforcement of Antitrust Law in the United States, A Handbook - Chapter 4: Initiation of a Private Claim." By Michael Hausfeld and Brent Landau, et al., 2012

"The Importance of Private Competition Enforcement in Europe." Michael D. Hausfeld and Swathi Bojedla. *Hackney Publications: Concussion Litigation Reporter*, Vol. 1, No. 1, July 2012

"CAT-astrophe: The Failure of "Follow-On" Actions." Michael D. Hausfeld, Brent W. Landau, Sathya S. Gosselin. American Bar Association's International Cartel Workshop, February 2012

"The Novelty of *Wal-Mart v. Dukes*." Brian A. Ratner and Sathya S. Gosselin. *Business Torts & RICO News*, American Bar Association, Business Torts & Civil RICO Committee, Vol. 8, Issue 1, Fall 2011.

"Private Enforcement in Competition Law: An Overview of Developments in Law and Practice in the US and Europe." Michael D. Hausfeld and Ingrid Gubbay, Bergamo University, July 2011

"The Contingency Phobia - Fear Without Foundation," *Global Competition Litigation Review*, Issue 1, January 2011

"Initiation of a Private Claim," International Handbook on Private Enforcement, 2010

**MICHAEL D. HAUSFELD**

"Competition Law Claims – A Developing Story." *The European Antitrust Review* 2010.

"The United States Heightens Plaintiff's Burden of Proof on Class Certification: A Response." *Global Competition Litigation Review*, Volume 2 Issue 4/2009.

"Global Enforcement of Anticompetitive Conduct." *The Sedona Conference Journal*, Fall 2009.

"Observations from the Field: ACPERA's First Five Years." *The Sedona Conference Journal*, Fall 2009.

"Twombly, Iqbal and the Prisoner's Pleading Dilemma." *Law360*, October 22, 2009.

"The Value of ACPERA." *Law360*, June 2, 2009.

"Collective Redress for Competition Law Claimants." *The European Antitrust Review* 2008.

"Managing Multi-district Litigation." *The Antitrust Review of the Americas* 2008.

"A Victim's Culture." *European Business Law Review*, 2007.



## Jeannine M. Kenney

Associate

### WASHINGTON, DC

1700 K Street, NW  
Suite 650  
Washington, DC 20006  
202-540-7233 direct  
202-540-7200 main  
202-540-7201 fax

[jkenney@hausfeld.com](mailto:jkenney@hausfeld.com)

Jeannine M. Kenney is an associate in Hausfeld's Washington D.C. office, licensed in both Pennsylvania and the District of Columbia.

Jeannine's practice focuses primarily on private enforcement of federal and state antitrust laws. She was named a Rising Star in antitrust litigation in 2015 and 2016, an honor awarded to fewer than five percent of practitioners in the state.

Representative antitrust matters include:

- *In re Foreign Exchange Benchmark Rates Antitrust Litig.*, 13-cv-7789 (S.D.N.Y.), alleging a conspiracy among leading financial institutions to manipulate the foreign exchange market, in which Hausfeld serves as co-lead interim counsel and has obtained more than \$2 billion in settlements to date.
- *In re Generic Digoxin and Doxycycline Antitrust Litigation*, No. 16-md-2724 (E.D. Pa.) representing a class of end-payers alleging generic drug manufacturers and marketers conspired to unlawfully inflate the price of critical medications.
- *In re Domestic Airline Travel Antitrust Litig.*, No. 15-mc-1404 (D.D.C.) alleging major airlines conspired to reduce capacity to artificially inflate the price of domestic air travel, in which Hausfeld serves as interim co-lead counsel.
- *In re Blue Cross Blue Shield Antitrust Litig.*, No. 13-mdl-2496 (N.D. Ala.), representing subscribers alleging dozens of Blue Cross Blue Shield entities entered into an unlawful agreement not to compete, in which Hausfeld serves as co-lead counsel and discovery chair; Jeannine works primarily on e-discovery in the matter.
- *In re Processed Egg Products Antitrust Litig.*, No. 08-md-2002 (E.D. Pa.), representing egg purchasers alleging egg producers and distributors entered into an unlawful agreement to restrict egg supplies, in which Hausfeld serves as co-lead counsel and has obtained nearly \$60 million in settlements to date, secured class certification of a shell egg class, and obtained summary judgment that eliminated a primary affirmative defense.

## JEANNINE M. KENNEY

- *In re Fresh and Process Potatoes Antitrust Litig.*, No. 10-MD-2186 (D. Idaho), which alleged more than 24 potato growers, distributors, and processor defendants entered into an unlawful agreement to restrict potato supplies to inflate the price. Hausfeld chaired the 10-member Plaintiffs' Executive Committee and secured a ground-breaking ruling on a novel question of law undermining a key defense in the case, ultimately obtaining a global settlement of nearly \$20 million and significant injunctive relief. Jeannine managed the 20-plus defendant case from discovery through resolution, including all e-discovery matters.

Jeannine's practice also includes mass torts and other non-antitrust matters. She served as court-appointed Plaintiffs' Liaison Counsel in *In re National Football League Players' Concussion Injury Litigation*, MDL 2323 (E.D. Pa.) and represented hundreds of former NFL players suffering from long-term or permanent neurological or cognitive impairments as a result of head injuries during NFL play and who alleged the League hid from them the serious risks of head trauma. She also represents a putative class of former college athletes in *McCants v. National Collegiate Athletic Association, et al.*, No. 15-cv-176 (M.D.N.C.) who allege the University of North Carolina offered them fraudulent classes and, for decades, concealed that fraud.

Jeannine is adept and experienced in managing all aspects and phases of e-discovery, the complex process of discovering and producing electronically stored information (ESI). She routinely navigates detailed, complex and contentious ESI issues from dispute to resolution, including briefing and arguing e-discovery motions when necessary. A member of the Sedona Conference's Working Group on Electronic Document Retention and Production, Jeannine counsels Hausfeld's litigation teams in negotiations relating to preservation, search, and production of ESI in cases often involving dozens of defendants, negotiates ESI search terms, technology assisted review (predictive coding) methodologies, and database disclosures and productions, and manages complex document reviews using advanced review analytics to speed discovery. She educates other practitioners on e-discovery realities, serving as a faculty coach to participants in Georgetown University's intensive eDiscovery Training Academy, and speaking at conferences regarding the complexities and ethical quandaries involved in the search for and production of ESI and the importance of cooperation among the parties. She co-authored a chapter on technology assisted review—advanced methodologies used to more effectively and efficiently locate responsive ESI—to appear in the American Bar Association's upcoming publication, *Perspectives on Predictive Coding*.

Jeannine joined the firm in 2009. From 2010 to 2011, she clerked for the Honorable Cynthia M. Rufe, United States District Court Judge, Eastern District of Pennsylvania. While attending the Georgetown University Law Center, from which she graduated *magna cum laude*, Jeannine was a member of the *Georgetown Law Journal* and a member of Georgetown's highly regarded Appellate Litigation Clinic, in which she received the International Academy of Trial Lawyers' Student Advocacy Award for her work on *Lytes v. DC Water and Sewer Authority*, No. 08-7002 (D.C. Cir. 2009), which she argued as amicus curiae before the United States Court of Appeals for the District of Columbia.

Jeannine brings to her legal work nearly two decades of experience in public policy spanning a wide range of legislative and regulatory fields, including agriculture, food safety, telecommunications, and financial services, among others, advocating for the public interest and consumers. For nearly five years, she worked as a legislative assistant for two United

**JEANNINE M. KENNEY**

States Senators. As a Senior Policy Analyst for Consumers Union, publisher of *Consumer Reports*, she advocated for consumer interests before Congress and federal agencies, testifying before congressional committees, appearing as a speaker at Federal Trade Commission events, and presenting oral and written testimony to federal regulatory agencies. She has been widely quoted in print media, including the *Washington Post*, the *New York Times*, and *USA Today*, and has appeared on national cable and broadcast programs on consumer issues ranging from anticompetitive mergers, unfair consumer services contracts, consumer access to competitive and affordable telecommunications services, and financial privacy. Jeannine also served as an appointed member of two federal advisory committees related to pesticide safety. Between stints at Consumers Union, she served as the Vice President of Domestic Affairs for the National Cooperative Business Association, representing member-owned consumer, producer, and purchasing cooperatives.

**EDUCATION**

Georgetown University Law Center J.D. (*magna cum laude*, Order of the Coif)

University of Wisconsin-Madison, B.A., Political Science and Economics (with distinction)

**BAR ADMISSIONS**

The Commonwealth of Pennsylvania

The District of Columbia

The District Court for the Eastern District of Pennsylvania

The District Court for the District of Columbia

**AFFILIATIONS AND HONORS**

Super Lawyer Rising Star, Antitrust, Pennsylvania, 2015, 2016

*Georgetown Law Journal*, staff member and editor of the Journal's 2009 Annual Review of Criminal Procedure, 2007-2009

Recipient of the International Academy of Trial Lawyers Student Advocacy Award

**PRESENTATIONS & SPEECHES**

Panelist, Game On: Ethics & eDiscovery (upcoming Nov. 2016)

Agriculture & Food Litigation Roundup: Updates and Perspectives on Active Antitrust Cases in the Agriculture and Food Sectors, American Bar Association (2015, and upcoming Oct. 2016)

Presenter, Coaches Corner, Georgetown University Law Center eDiscovery Training Academy, 2016

Faculty Coach, Georgetown University Law Center eDiscovery Training Academy, 2015, 2016

Panelist, Essential Checklist for E-Discovery, D.C. Bar CLE Program, May 2015

Speaker, "So How Exactly is Plaintiffs' Side E-Discovery Practice Different?," D.C. Bar E-Discovery Committee Meeting, Jan. 2015

Panelist, ESI Discovery, NCLC Consumer Class Action Symposium, 2013

## JEANNINE M. KENNEY

## PUBLICATIONS

Jeannine Kenney, *Courts determine that non-cash consideration is subject to antitrust scrutiny under Actavis*, Oct. 2015, Lexology.

Jeannine Kenney & Kristen Ward Broz, *Supreme Court to Hear Appeal on Antitrust Liability and Trade Association Membership*, Aug. 2016, Lexology.

William P. Butterfield, Conor R. Crowley & Jeannine Kenney, *Reality Bites: Why [Technology Assisted Review's] Promises Have Yet to be Fulfilled*, International Conference on Artificial Intelligence & Law, Discovery of Electronically Stored Information Workshop, Presented June 14, 2013, <http://www.umiacs.umd.edu/~oard/desi5/additional/Butterfield.pdf>



## Swathi Bojedla

Associate

### WASHINGTON, DC

1700 K Street, NW  
Suite 650  
Washington, DC 20006  
202-540-7150 direct  
202-540-7200 main  
202-540-7201 fax

[sbojedla@hausfeld.com](mailto:sbojedla@hausfeld.com)

Swathi's career has spanned a wide range of practice areas at Hausfeld, focusing most notably on the Sports & Entertainment, Antitrust, Consumer Protection, and Mass Torts practice areas. From initial case investigations through trial, she has represented the firm's clients in all aspects of litigation. Her work has encompassed some of the highest-profile class action sports and antitrust cases in recent years, and she has been involved in the recovery of over \$500 million in settlement awards on behalf of the firm's clients.

Swathi was initially drawn to Hausfeld's leadership in cutting edge litigation that advances the public interest and promotes a level playing field. As an avid sports fan, she has relished the opportunity to represent current and former athletes as they seek fair treatment for the dedication they put into the game. In *Dryer et al. v. National Football League*, she represented a class of retired NFL players whose names, images, and likenesses were being used in NFL Films features. She was involved in negotiating a \$50 million settlement agreement, which created a Greater Good Fund to provide health and welfare programs to former NFL players and also established a licensing agency, in partnership with IMG, to help former players market their names, images, and likenesses. She continues to advise the Court-appointed Board of Directors on implementation of the settlement agreement. In *In re NCAA Student-Athlete Name and Likeness Licensing Litigation*, Swathi represented a class action on behalf of current and former Division I men's basketball and FBS football players against the NCAA and its member institutions based on rules foreclosing athletes from receiving compensation for the use of their names, images, and likenesses. In 2014, plaintiffs completed a three-week bench trial in which Swathi was part of a trial team that successfully obtained class injunctive relief allowing college athletes to receive compensation for their NIL rights, a landmark victory for college athletes. She has also litigated against the United States Olympic Committee and USA Track & Field to open up the market for sponsorship of athletes. For her work on these and other cases, Swathi was named a Rising Star Under 40 in Sports by Law360 in 2016.

Outside of the sports realm, Swathi has litigated a variety of other cases across the legal spectrum, securing favorable results for her clients. In *In re Municipal Derivatives Litigation*, Swathi worked as part of a team that secured nearly \$250 million in settlements for a class of municipalities affected by alleged bid-rigging in the market for municipal bonds. And in

**SWATHI BOJEDLA**

*In re Air Cargo Shipping Services Antitrust Litigation*, Swathi joined the trial team to prepare for trial against the final four defendants in a worldwide conspiracy to fix fuel surcharge on air cargo; her work assisted in driving settlements with the final defendants totaling nearly \$200 million. In 2016, she was recognized for her work in both cases at the American Antitrust Institute Enforcement Awards, where she won two of the three awards for Outstanding Antitrust Litigation Achievement in Private Law Practice.

Swathi has also represented numerous financial institutions across the country who have suffered damages as a result of data breaches at retailers including Target, Home Depot, Kmart, and Wendy's. Through her work on these cases, she has developed an expertise in data breach law and card brand recovery processes, and has helped to design and implement unique settlement frameworks in this developing area of law. And in 2013, Swathi participated in a mass tort action arising from the placement of unnecessary stents in patients at a Baltimore-area hospital, which culminated in a month-long jury trial in Maryland state court and a global resolution compensating over 240 affected patients.

Prior to her arrival at Hausfeld, Swathi spent time at Georgetown Law's Institute for Public Representation, a civil rights clinic, where she worked on Title VII litigation in the D.C. District Court. She has maintained this interest at Hausfeld, where she represented several female employees alleging sexual harassment against their former supervisor and employer, a San Francisco venture capitalist firm. She has also worked on several presidential campaigns and in the U.S. Senate, both for then-Senator Hillary Rodham Clinton and as a law clerk to the U.S. Senate Judiciary Committee.

Swathi attended law school at Georgetown University, where she was Managing Editor for the *Georgetown Journal of Law and Public Policy*. Prior to Georgetown, she graduated from Brown University with a B.A. in Human Biology and Public Policy. She remains actively involved in the Brown University alumni community, serving as a member of the Women's Leadership Council as well as the D.C. Area Co-Chair for the school's admissions interviewing program. Swathi also currently sits on the Board of Directors for the D.C. non-profit Changing Perceptions, which focuses on providing professional and personal support to formerly incarcerated citizens.

**EDUCATION**

Georgetown University Law Center, J.D., 2011

Brown University, B.A., Human Biology & Public Policy, 2007

**BAR ADMISSIONS**

New York

Washington, D.C.

District Court for the District of Columbia

District Court for the Southern District of New York

**AFFILIATIONS & HONORS**

Brown University Women's Leadership Council, Member (2016-present)

Changing Perceptions, Board of Directors (2016-present)

Brown University Alumni Interviewing Program, Washington, D.C. Chair (2012-present)

Managing Editor, *Georgetown Journal of Law and Public Policy* (2010-2011)

Clerk, U.S. Senate Judiciary Committee

**SWATHI BOJEDLA****NEWS & PRESS**

"Rising Star: Hausfeld's Swathi Bojedla", *Law360* (Apr. 27, 2016)

"Minority Business Leader Awards: Swathi Bojedla," *Washington Business Journal* (Feb. 26, 2016)

**PUBLICATIONS**

*Consumers Strike Out: Time Warner Cable Defeats Challenge to Rate Hikes for Unwanted Sports Content*, Trade, Sports & Professional Associations Newsletter (Spring 2015)

Swathi Bojedla, *Is Major League Baseball's Antitrust Exemption in Jeopardy?*, ABA Antitrust Section Media & Technology E-Bulletin, Vol. 1, Iss. 3 (2013)

Michael Hausfeld and Swathi Bojedla, *The NFLPA's Potential Legal Liability to Former Players for Traumatic Brain Injury*, Concussions Litigation Reporter, Vol. 1, No. 1 (2012)

**PRESENTATIONS & SPEECHES**

*Inside O'Bannon v. NCAA*, Legal Talk Network podcast (Oct. 21, 2015)

*Preparing for an Antitrust Trial as an Associate*, ABA Section of Antitrust Law (Aug. 24, 2015)

*The Sports Report: Sports, Consumer Protection and Antitrust - What's Hot in 2015!*, ABA Trade, Sports and Professional Associations (June 16, 2015)

**AWARDS**

Outstanding Antitrust Litigation Achievement in Private Law Practice (*In re Municipal Derivatives Antitrust Litigation*), American Antitrust Institute (2016)

Rising Stars Under 40 Award for Sports Law, *Law360* (2016)

Minority Business Leaders Award, *Washington Business Journal* (2016)

Rising Star, *SuperLawyers* (2016)

Outstanding Antitrust Litigation Achievement in Private Law Practice (*O'Bannon v. NCAA*), American Antitrust Institute (2015)

Litigation of the Year - Non-Cartel Prosecution (*O'Bannon v. NCAA*), *Global Competition Review* (2015)

# EXHIBIT Q

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

IN RE: NATIONAL FOOTBALL  
LEAGUE PLAYERS' CONCUSSION  
INJURY LITIGATION

Kevin Turner and Shawn Wooden,  
*on behalf of themselves and  
others similarly situated,*

Plaintiffs,

v.

National Football League and  
NFL Properties LLC,  
successor-in-interest to  
NFL Properties, Inc.,

Defendants.

THIS DOCUMENT RELATES TO:  
ALL ACTIONS

No. 2:12-md-02323-AB

MDL No. 2323

**Hon. Anita B. Brody**

Civ. Action No. 14-00029-AB

**DECLARATION OF JASON E. LUCKASEVIC IN SUPPORT OF CO-LEAD CLASS  
COUNSEL'S PETITION FOR AN AWARD OF ATTORNEY'S FEES AND  
REIMBURSEMENT OF COSTS AND EXPENSES**

JASON E. LUCKASEVIC declares as follows pursuant to 28 U.S.C. § 1746:

1. I am Jason E. Luckasevic of the law firm of Goldberg, Persky & White, P.C. I submit this declaration in support of Co-Lead Class Counsel's Petition for an Award of Attorney's Fees and Reimbursement of Costs and Expenses in connection with and for services rendered and expenses incurred for the common benefit of the Settlement Class in the above-captioned multidistrict litigation ("Action") from the inception of the MDL litigation through July 15, 2016, as well as for the payment of expenses incurred therewith. Future discussions on

pre MDL will occur at a later date per Co-Lead Counsel. I have personal knowledge of the matters set forth in this declaration and, if called upon, I could and would testify competently thereto.

2. I am a Shareholder of the law firm of Goldberg, Persky & White, P.C. and was the lawyer who originated the “NFL Concussion Litigation” when I filed the first two cases of its kind. My firm’s efforts were critical to the investigation of groundbreaking facts, creation of liability against the league and litigating of the case up to and including the arguments on the NFL’s Motions to Dismiss. Our efforts were in conjunction with Executive Committee member, Tom Girardi, and his law firm of Girardi Keese.

3. The schedule attached hereto as Exhibit 1 is a detailed summary indicating the amount of common benefit time spent by the attorneys and professional support staff of my firm who were involved in, and billed fifty or more hours to, this Action, and the lodestar calculation for those individuals based on my firm’s current billing rates. The schedule was prepared from firm records, data and attestations regularly prepared and maintained by my firm. Time expended in preparing this application for attorney’s fees and expenses has been excluded.

4. The hourly rates for the attorneys of my firm included in Exhibit 1 are the same as they charge for non-contingent work that is paid on an hourly basis, or for rates paid to attorneys of comparable experience and reputation in the relevant legal market which have been accepted by Federal Courts related to my law firm.

5. The total number of hours expended on the common benefit of this Action by my firm during the time period is 500.6 hours. The total lodestar for my firm is \$262,860.00, which is all attorney time.

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

7. As detailed in Exhibit 2 hereto, my firm is seeking reimbursement of a total of \$11,823.78 in common benefit expenses incurred in connection with the prosecution of this Action. These expenses are reflected on the books and records of my firm. These books and records are prepared from expense vouchers, check records, and other source material, and are an accurate record of the expenses incurred.

8. With respect to the standing of my firm to share in an award of fees, costs, and expenses, attached hereto as Exhibit 3 is a description of my firm, including the attorneys in my firm who were principally involved in this Action.

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

Executed on January 9, 2017, at Pittsburgh, Pennsylvania.

s/ Jason E. Luckasevic  
Jason E. Luckasevic  
Goldberg, Persky & White, P.C.  
11 Stanwix Street, Suite 1800  
Pittsburgh, PA 15222  
(412) 471-3980

# **EXHIBIT 1**

**IN RE: NATIONAL FOOTBALL LEAGUE PLAYERS' CONCUSSION INJURY  
LITIGATION**

**No. 12-md-2323-AB**

**GOLDBERG, PERSKY & WHITE, P.C.**

**EXHIBIT #1**

**LODESTAR REPORT**

**MDL Inception through July 15, 2016**

<b>NAME</b>	<b>HOURS</b>	<b>HOURLY RATE</b>	<b>AMOUNT</b>
<b>PARTNERS:</b>			
<b>Jason E. Luckasevic</b>	243.5	\$600.00	\$146,100.00
<b>Jason T. Shipp</b>	74.1	\$600.00	\$44,460.00
<b>Diana N. Jacobs</b>	87.0	\$500.00	\$43,500.00
<b>ASSOCIATES</b>			
<b>Mike Elmer</b>	96.0	\$300.00	\$28,800.00
<b>TOTALS:</b>	500.6	See above	\$262,860.00

# **EXHIBIT 2**

**IN RE: NATIONAL FOOTBALL LEAGUE PLAYERS' CONCUSSION INJURY  
LITIGATION**

**No. 12-md-2323-AB**

**Goldberg, Persky & White, P.C.**

**EXHIBIT #2**

**COST AND EXPENSE REPORT**

**MDL Inception through July 15, 2016**

<b>NUMBER</b>	<b>CATEGORY</b>	<b>AMOUNT</b>
1	Assessments	
2	Commercial Copies	
3	Computerized Research	
4	Court Reporters/Transcripts	
5	Expert Services	\$4,631.26
6	Facsimile	
7	Filing & Service Fees	
8	In-House Copies	
9	Long Distance Telephone	
10	Postage/Express Delivery	
11	Travel/Meals/Lodging	\$7,192.53
12	Miscellaneous	
<b>TOTAL EXPENSES</b>		<b>\$11,823.78</b>

# **EXHIBIT 3**

**IN RE: NATIONAL FOOTBALL LEAGUE PLAYERS' CONCUSSION INJURY  
LITIGATION**

**No. 12-md-2323-AB**

**GOLDBERG, PERSKY & WHITE, P.C.**

**EXHIBIT #3**

Goldberg, Persky & White, P.C. ("GPW") is a law firm headquartered in Pittsburgh, Pennsylvania that has successfully represented tens of thousands of injury victims in various civil actions for over 30 years. With over 20 lawyers and nearly 100 employees, our firm has offices and practices in the tristate area as well as Michigan.

In late 2006, Associate Attorney Jason Luckasevic, licensed in Pennsylvania, Michigan and Arizona, began his investigation of rampant problem of chronic brain injuries and deaths of former National Football League players through his personal relationship with Dr. Bennet Omalu, who uncovered the disease Chronic Traumatic Encephalopathy ("CTE") in former players.

To get this massive case off the ground and into a courtroom took years of time and expense. The work included investigating the science of head injuries, reading and reviewing scientific journals, examining the NFL corporate structure, as well as analyzing rule changes, injury reports and the creation and proceedings of NFL committees. The work of these committees often ran counter to the actual science of brain injuries in athletes. Thereafter, Mr. Luckasevic studied the causation of CTE by speaking with the leading experts in the field of medicine and interviewing hundreds of former players and their families. Next, he and GPW developed the legal analysis that developed the critical claims of negligence and fraud against the NFL. These theories were alleged by Mr. Luckasevic and GPW in the first two lawsuits ever filed in relation to CTE against the NFL and Riddell on behalf of over 120 former players. All of this effort, it is understood, will be considered at a later date per Co-Lead Counsel.

Concerning the MDL litigation, GPW's efforts were critical to supporting Executive Committee member, Tom Girardi and his law firm. Our efforts uncovered the critical "gap years" that were the key argument at the Motion to Dismiss hearing. Further, our efforts were critical to the creation of the master complaint, short form complaint, arguments in the Motion to Dismiss and media relations publicity matters.

Along the way, Jason Luckasevic was promoted to a Shareholder of GPW in 2008 after practicing for 8 years. He was provided assistance from fellow Shareholders Jason Shipp, licensed since 2001, Diana Jacobs, licensed since 1994, and Associate Attorney Mike Elmer.

# **EXHIBIT R**

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

IN RE: NATIONAL FOOTBALL  
LEAGUE PLAYERS' CONCUSSION  
INJURY LITIGATION

Kevin Turner and Shawn Wooden,  
*on behalf of themselves and  
others similarly situated,*

Plaintiffs,

v.

National Football League and  
NFL Properties LLC,  
successor-in-interest to  
NFL Properties, Inc.,

Defendants.

THIS DOCUMENT RELATES TO:  
ALL ACTIONS

No. 2:12-md-02323-AB

MDL No. 2323

**Hon. Anita B. Brody**

Civ. Action No. 14-00029-AB

**DECLARATION OF DERRIEL C. MCCORVEY IN SUPPORT OF CO-LEAD CLASS  
COUNSEL'S PETITION FOR AN AWARD OF ATTORNEY'S FEES AND  
REIMBURSEMENT OF COSTS AND EXPENSES**

Derriel C. McCorvey declares as follows pursuant to 28 U.S.C. § 1746:

1. I am the owner of the law firm of McCORVEY LAW, LLC. I submit this declaration in support of Co-Lead Class Counsel's Petition for an Award of Attorney's Fees and Reimbursement of Costs and Expenses in connection with and for services rendered and expenses incurred for the common benefit of the Settlement Class in the above-captioned multidistrict litigation ("Action") from April 15, 2012 through July 15, 2016, as well as for the

payment of expenses incurred therewith. I have personal knowledge of the matters set forth in this declaration and, if called upon, I could and would testify competently thereto.

2. The role of McCORVEY LAW, LLC was to conduct common benefit work as directed by Co-Lead Counsel while performing duties as a Plaintiffs' Steering Committee member firm pursuant to the firm's appointment by the Court. Specifically, my firm engaged in the following common benefit activities: attended PSC meetings, participated in conference calls and status conferences; conducted speaking engagements; reviewed drafts of pleadings; approved the settlement agreement; voted on various items; participated in making decisions on hiring of public relations firm and David Frederick for oral argument before the Third Circuit; worked in conjunction with a public relations and marketing firm under the guidance of the PSC to prep particular plaintiffs for interviews that showed the PSC and the litigation in a favorable light with Bloomberg News; gathered information relative to our firm's clients at the request of leadership in order to develop a database of plaintiffs, contributed financial capital to the common benefit fund in support of the litigation and all other tasks as assigned.

3. The schedule attached hereto as Exhibit 1 is a detailed summary indicating the amount of common benefit time spent by the attorneys and professional support staff of my firm who were involved in, and billed fifty or more hours to, this Action, and the lodestar calculation for those individuals based on my firm's current billing rates. For personnel who are no longer employed by my firm, the lodestar calculation is based on the billing rates of such personnel in their final year of employment by my firm. The schedule was prepared from contemporaneous daily time records regularly prepared and maintained by my firm. Time expended in preparing this application for attorney's fees and expenses has been excluded.

4. The hourly rates for the attorneys and professional support staff of my firm included in Exhibit 1 are the same as the regular rates charged for their services in other contingent matters.

5. The total number of hours expended on the common benefit of this Action by my firm during the time period is 331.3 hours. The total lodestar for my firm for those hours is \$198,780.00, consisting of \$198,780.00 for attorney's time and \$0.00 for professional support staff time.

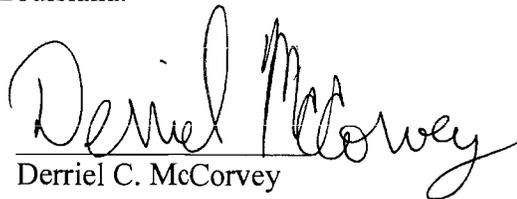
6. My firm's lodestar figures are based solely upon my firm's billing rates, which rates do not include charges for expense items. Expense items are billed separately and such charges are not duplicated in my firm's billing rates.

7. As detailed in Exhibit 2 hereto, my firm is seeking reimbursement of a total of \$104,155.65 in common benefit expenses incurred in connection with the prosecution of this Action. These expenses are reflected on the books and records of my firm. These books and records are prepared from expense vouchers, check records, and other source material, and are an accurate record of the expenses incurred.

8. With respect to the standing of my firm to share in an award of fees, costs, and expenses, attached hereto as Exhibit 3 is a biography of my firm, including the attorneys in my firm who were principally involved in this Action.

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

Executed on January 4, 2017, at Lafayette, Louisiana.

  
Derriel C. McCorvey

# **EXHIBIT 1**

**IN RE: NATIONAL FOOTBALL LEAGUE PLAYERS' CONCUSSION INJURY  
LITIGATION**

**No. 12-md-2323-AB**

**McCORVEY LAW, LLC**

**LODESTAR REPORT**

**April 15, 2012 through July 15, 2016**

<b>NAME</b>	<b>HOURS</b>	<b>HOURLY RATE</b>	<b>AMOUNT</b>
<b>PARTNERS:</b>			
<b>Derriel C. McCorvey</b>	331.3	\$600.00	\$198,780.00
<b>ASSOCIATES:</b>			
<b>STAFF ATTORNEYS:</b>			
<b>CONTRACT ATTORNEYS:</b>			
<b>PARALEGALS:</b>			
<b>TOTALS:</b>	331.3	\$600.00	\$198,780.00

# **EXHIBIT 2**

**IN RE: NATIONAL FOOTBALL LEAGUE PLAYERS' CONCUSSION INJURY  
LITIGATION**

**No. 12-md-2323-AB**

**McCORVEY LAW, LLC**

**COST AND EXPENSE REPORT**

**April 15, 2012 through July 15, 2016**

<b>NUMBER</b>	<b>CATEGORY</b>	<b>AMOUNT</b>
1	Assessments	\$100,000.00
2	Commercial Copies	
3	Computerized Research	
4	Court Reporters/Transcripts	
5	Expert Services	
6	Facsimile	
7	Filing & Service Fees	
8	In-House Copies	
9	Long Distance Telephone	
10	Postage/Express Delivery	\$ 102.72
11	Travel/Meals/Lodging	\$ 4,052.93
12	Miscellaneous	
<b>TOTAL EXPENSES</b>		<b>\$104,155.65</b>

# **EXHIBIT 3**

## **DERRIEL C. MCCORVEY**



*Post Office Box 2473  
Lafayette, Louisiana 70502  
Tel. 337-291-2431  
Fax 337-291-2433*

**McCORVEY LAW, LLC**  
[www.mccorveylaw.com](http://www.mccorveylaw.com)

### **BAR ADMISSIONS**

Mr. McCorvey is admitted to practice in: Louisiana and Texas; U.S. District Courts for the Western, Eastern and Middle Districts of Louisiana, U.S. 5<sup>TH</sup> Circuit Court of Appeal. He has been admitted pro hac vice in the U.S. District Courts, Eastern and Southern Districts of Texas, Northern District of Georgia and the Northern District of Indiana.

### **EXPERIENCE**

Mr. McCorvey has over 17 years of trial experience, encompassing a vast scope of legal representation and is the founding owner of the McCORVEY LAW, LLC. Mr. McCorvey received a Bachelor of Arts degree in economics in 1993 from Louisiana State University and a Doctorate of Jurisprudence from the Southern University Law Center in 1998.

Mr. McCorvey served as proud member of the L.S.U. Fighting Tigers Football team from 1988-1993. As a member of the Fighting Tigers, Mr. McCorvey received All S.E.C. honors in 1991, All academic S.E.C. honors from 1991-1993. Mr. McCorvey's L.S.U. academic honors also included being an L.S.U. Athletic Directors Cup recipient from 1990 -1993 and the recipient of the Andrew Gumby Award in 1993, given to the Latin student with the highest grade point average. Immediately after graduating from LSU, Mr. McCorvey played briefly as a member of the Indianapolis Colts of the National Football League in 1993.

Mr. McCorvey's primary focus has been civil trial litigation. His firm's goal is always to ensure that its clients who have suffered losses as a result of other people's negligence or wrongful conduct are adequately compensated. Derriel C. McCorvey's primary office is in Lafayette, Louisiana.

Mr. McCorvey has been appointed as a PSC member in several multi-district litigations including MDL NO. 2323, In re: National Football League Players' Concussion Injury Litigation and the MDL NO. 2391; In re: Testosterone Replacement Therapy Products Liability Litigation MDL 2545; In re: Biomet M2a Magnum Hip Implant Products Liability Litigation. He has also been involved in MDL NO. 2179, In re: Oil Spill by the Oil Rig "Deepwater Horizon" in the Gulf of Mexico, on April 20, 2010, MDL NO. 2299, In re: Actos (Pioglitazone) Products Liability Litigation, 6:11-MD-2299; In Re: American Medical/ In re: Pelvic Repair; 2:12-md-02325, MDL NO. 2328; In re: Pool Products Distribution Market Antitrust Litigation; In re: Xarelto (Rivaroxaban) Products Liability Litigation MDL NO. 2592.

Mr. McCorvey filed several early class actions on behalf of persons and businesses impacted by the Deep Water Horizon explosion on April 20, 2010 in the Gulf of Mexico and subsequent British Petroleum oil spill in the Gulf of Mexico. The class action suits filed by Mr. McCorvey, involved a diverse group of plaintiffs; specifically, charter boat captains, commercial fishermen, recreational fishermen, business owners and property owners.

After all claims arising out of the Deep Water Horizon were consolidated, Mr. McCorvey was appointed by the Plaintiff's Steering Committee, (PSC), to two common benefit plaintiff committees. (The Gulf Coast Claims Community Outreach committee as well as the B1 Bundle Master Complaint Economic Loss Workgroup.) Mr. McCorvey's work on these aforementioned workgroups is extensive and vital to the overall prosecution of the Plaintiffs' claims against BP and other responsible parties.

Mr. McCorvey has handled virtually every type of case in the area of civil litigation. The success of Mr. McCorvey's practice is founded on the premise that the client should always be the number one priority. Mr. McCorvey has tried cases in state and federal courts throughout Louisiana and Texas. To wit: [*In re: Oil Spill by the Oil Rig "Deepwater Horizon" in the Gulf of Mexico, on April 20, 2010, MDL NO. 2179 (EDLA)*]; *City of New Orleans Employee's Retirement System v. Hayward, et al, Case No. 10-cv-1640 (EDLA)*; *Calvin Richard v. BP, PLC, et al; Case*

*No. 10-cv-01438 (EDLA); Richard Brondum et al v. BP, PLC, et al; Case No. 10-cv-01613 (EDLA); Joshua Danzig v. BP, PLC, et al; Case No. 10-cv-01726 (EDLA); Jarvis Harmon, Sr. v. BP, PLC, et al; Case No. 10-cv-1931(EDLA); Rickey Mergist v. Multi-Chem Group, L.L.C., et al, Case No. 11-cv-1821(WDLA); United States v. Ernie Joseph Davis, Case No. 01-cr-00074 (EDTX); Raphiel Simien v. Louie Padilla, et al, Case No. 02-cv-2530 (WDLA); Larry Jones v. Delta Towing, L.L.C., et al Case No. 06-cv-02347 (EDLA); Denna Bly v. United Fuels & Lubricants, L.L.C., et al, Case No. 08-cv-00051 (WDLA); Garland Jean-Batiste v. Lafayette City-Parish Government, et al, Case No. 08-cv-01985 (WDLA); United States v. Clifton J. Trahan, Case No. 08-cr-00088 (EDTX); United States v. \$112,032.00 U.S. Currency; Case No. 08-cv-00686 (EDTX); United States v. Darius Nathaniel Fisher, Case No. 08-cr-0205 (WDLA); United States v. Darius Nathaniel Fisher, Case No. 10-30424 (USCOA 5<sup>th</sup> Cir.); Shawn D. Jackson v. Hall County Sheriff's Office, et al, Case No. 10-cv-00070 (NDGA); Larry Jones, Jr. v. HUB Enterprises, Inc., Case No. 11-cv-00347 (WDLA); and Shawn D. Jackson v. Hall County Government, et al, Case No. 11-cv-00058 (NDGA).; Brooks et al V. National Football League et al; Case No. 2:12-cv-0094–SSV-DEK; Oasis Pool Service, Inc. v. Pool Corp., et al, Case No. 12-cv-01095 (EDLA)]; Beauregard-Southerland, et al v. Boston Scientific Corp., et al, Case No. 5:12-cv-02317(WDLA); David L. Hurt, et al v. Biomet, Inc., et al; Case No. 2012-cv-00604–FTM-SPC (MDFL) and Daniel Duffy, Jr. and Tonya Duffy v. Pfizer, Inc., et al; Case No. 14-cv-04533.*

Mr. McCorvey is an attorney who has learned the value of cooperation dating back to his commitment as a team player as a member of the Fighting Tigers of Louisiana State University and as a member of the Indianapolis Colts.

# **EXHIBIT S**

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

IN RE: NATIONAL FOOTBALL  
LEAGUE PLAYERS' CONCUSSION  
INJURY LITIGATION

Kevin Turner and Shawn Wooden,  
*on behalf of themselves and  
others similarly situated,*

Plaintiffs,

v.

National Football League and  
NFL Properties LLC,  
successor-in-interest to  
NFL Properties, Inc.,

Defendants.

THIS DOCUMENT RELATES TO:  
ALL ACTIONS

No. 2:12-md-02323-AB

MDL No. 2323

**Hon. Anita B. Brody**

Civ. Action No. 14-00029-AB

**DECLARATION OF POPE MCGLAMRY IN SUPPORT OF CO-LEAD CLASS  
COUNSEL'S PETITION FOR AN AWARD OF ATTORNEY'S FEES AND  
REIMBURSEMENT OF COSTS AND EXPENSES**

Michael L. McGlamry declares as follows pursuant to 28 U.S.C. § 1746:

1. I am a shareholder of the law firm of Pope McGlamry. I submit this declaration in support of Co-Lead Class Counsel's Petition for an Award of Attorney's Fees and Reimbursement of Costs and Expenses in connection with and for services rendered and expenses incurred for the common benefit of the Settlement Class in the above-captioned multidistrict litigation ("Action") from the inception of the litigation through July 15, 2016, as well as for the payment of expenses incurred therewith. I have personal knowledge of the

matters set forth in this declaration and, if called upon, I could and would testify competently thereto.

2. Pope McGlamry had a continuous, active role in the common-benefit litigation. As a Pope McGlamry Shareholder, I was co-chair of the Discovery Committee and M.J. Blakely, also a Pope McGlamry shareholder, worked with me on that committee. In that role, I oversaw the drafting and revision of written discovery requests to be served on the Defendants. I also served on the Communications/ Public Relations committee. In that role, I helped to manage and worked with CLS, the retained public retains professionals who spearheaded the Plaintiffs' communications campaign and helped that group to obtain access to key retired players and spouses in support of the campaign. I attended the weekly conference call meetings and actively participated to guide and monitor the communications and information flowing to the public about the NFL concussion litigation and the underlying facts. I also, at the request of Plaintiffs' Leadership, served on the Ethics Sub-Committee that was formed to address ethical issues inherent with outside counsel contacting and seeking to obtain as clients former NFL players who had previously retained counsel. On that committee, I worked with outside experts and the claims and lien administrators to develop a coordinated response to the problem, within the boundaries of the rules of ethics and the law.

Additionally, Trip Tomlinson and Kimberly J. Johnson, both Pope, McGlamry shareholders, served on the Legal Committee, participating in weekly calls and research to address legal issues, including the potential impact of the Collective Bargaining Agreement on the former players' ability to seek redress.

Multiple other Pope McGlamry attorneys and support staff further contributed to the common-benefit efforts, as reflected in the detailed time reports submitted herewith.

3. The schedule attached hereto as Exhibit 1 is a detailed summary indicating the amount of common benefit time spent by the attorneys and professional support staff of my firm who were involved in, and billed fifty or more hours to, this Action, and the lodestar calculation for those individuals based on my firm's current billing rates. For personnel who are no longer employed by my firm, the lodestar calculation is based on the billing rates of such personnel in their final year of employment by my firm. The schedule was prepared from contemporaneous daily time records regularly prepared and maintained by my firm. Time expended in preparing this application for attorney's fees and expenses has been excluded.

4. The hourly rates for the attorneys and professional support staff of my firm included in Exhibit 1 are the same as the regular rates charged for their services in other contingent matters.

5. The total number of hours expended on the common benefit of this Action by my firm during the time period is 1,274.9 hours. The total lodestar for my firm for those ours is \$829,030, consisting of \$820,385 for attorneys' time and \$8,645 for professional support staff time.

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

7. As detailed in Exhibit 2 hereto, my firm is seeking reimbursement of a total of \$125,137.01 in common benefit expenses incurred in connection with the prosecution of this Action. These expenses are reflected on the books and records of my firm. These books and

records are prepared from expense vouchers, check records, and other source material, and are an accurate record of the expenses incurred.

8. With respect to the standing of my firm to share in an award of fees, costs, and expenses, attached hereto as Exhibit 3 is a biography of my firm, including the attorneys in my firm who were principally involved in this Action.

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

Executed on January 3, 2017 in Atlanta, Georgia.

  
Michael L. McGlamry

# **EXHIBIT 1**

**IN RE: NATIONAL FOOTBALL LEAGUE PLAYERS' CONCUSSION INJURY  
LITIGATION**

**No. 12-md-2323-AB**

**POPE McGLAMRY**

**LODESTAR REPORT**

**Inception through July 15, 2016**

<b>NAME</b>	<b>HOURS</b>	<b>HOURLY RATE</b>	<b>AMOUNT</b>
<b>SHAREHOLDERS:</b>			
Michael L. McGlamry	874.9	\$700	\$612,430
C. Neal Pope	6.1	\$800	\$4,880
Wade H. Tomlinson	31.2	\$700	\$21,840
N. Kirkland Pope	1.3	\$700	\$910
Jay F. Hirsch	0.5	\$700	\$350
G. Walter Walker	1.2	\$700	\$840
Kimberly J. Johnson	106.3	\$600	\$63,780
Michael J. Blakely	95.5	\$600	\$57,300
<b>ASSOCIATES:</b>			
Jill L. Cassert	44.2	\$500	\$22,100
Caroline McGlamry	1.2	\$450	\$540
Shaun O'Hara	78.7	\$450	\$35,415
<b>PARALEGALS:</b>			
Kay Delaney	7.8	\$275	\$2,145
Vicki Laverty	26.0	\$250	\$6,500
<b>TOTALS:</b>	1,274.9		\$829,030

# **EXHIBIT 2**

**IN RE: NATIONAL FOOTBALL LEAGUE PLAYERS' CONCUSSION INJURY  
LITIGATION**

**No. 12-md-2323-AB**

**POPE McGLAMRY**

**COST AND EXPENSE REPORT**

**Inception through July 15, 2016**

<b>NUMBER</b>	<b>CATEGORY</b>	<b>AMOUNT</b>
1	Assessments	\$100,000.00
2	Commercial Copies	\$56.35
3	Computerized Research	\$4,717.86
4	Court Reporters/Transcripts	
5	Expert Services	
6	Facsimile	
7	Filing & Service Fees	
8	In-House Copies	\$710.68
9	Long Distance Telephone	
10	Postage/Express Delivery	\$20.97
11	Travel/Meals/Lodging	\$19,631.15
12	Miscellaneous	
<b>TOTAL EXPENSES</b>		<b>\$125,137.01</b>

# **EXHIBIT 3**



**POPE MCGLAMRY**  
— ATTORNEYS AT LAW —

**Firm Resume**

January 3, 2017

Fifty years ago, C. Neal Pope, the founding partner of Pope, McGlamry, Kilpatrick, Morrison & Norwood, P.C. (“Pope McGlamry”), commenced the practice of law in east central Alabama and Georgia, having established offices in Atlanta and Columbus, Georgia and Phenix City, Alabama by the year 1984. In August of 1984, the firm and its current iteration of named partners began to, and have continued to, represent clients suffering from catastrophic injuries in a wide range of actions, including products liability cases. The firm has achieved success in its representation of clients in both individual actions and in representative capacities, and has applied its team approach to the management of complex litigation to obtain excellent results for its clients. Although its offices are located in Atlanta and Columbus, Georgia, the firm enjoys a national presence and reputation.

Pope McGlamry has the manpower, experience, and resources to handle complex litigation. The firm consists of fifteen lawyers, several of whom have clerked in the federal court system at both the district court and circuit court level, with diverse backgrounds and a wide variety of experiences. Although Pope McGlamry has historically, and primarily, represented plaintiffs in their individual and/or representative capacity, through lateral hires the firm also boasts vast experience from the defense perspective.

Much of Pope McGlamry’s success arose from its achievements litigating product liability claims, including those involving defective drugs or faulty medical devices. For example, in *Borom v. Eli Lilly Co.*, United States District Court, Middle District of Georgia, Neal Pope and Max McGlamry obtained results locally that had an effect nationally. The firm brought a wrongful death action against Eli Lilly on behalf of the family of Lola T. Jones who died from kidney and liver failure within a month of taking the company’s Oraflex drug. As a result of the litigation, not only was the family of the deceased awarded \$6 million, a significant sum in 1983, but also the drug was removed from the market so that others would not be harmed by the drug. The two not only handled the lead case involving Oraflex, but also led the litigation in other pharmaceutical and medical products cases, such as the Bjork-Shiley heart valve litigation. With the establishment of Pope McGlamry in 1984, the firm continued taking the lead in defective drugs or faulty medical devices cases such as the Halcion litigation. Another example of the firm’s product liability success is evidenced by the fact that the firm once held the record for the largest wrongful death verdict for a minor in both a Georgia state court and a Georgia federal court, with both cases grounded on products liability claims.

Pope McGlamry has also been a leader in complex litigation involving multiple plaintiffs in both the MDL setting and in class action litigation. The firm has been involved in mass tort, multi-district, and complex individual and commercial litigation, including automotive, household, pharmaceutical, agriculture, aviation, and medical device product litigation for over 30 years. More recently, Pope McGlamry has served in the leadership in several MDL actions, including the following: (1) DePuy ASR™ Hip System cases, Judicial Council Coordination Proceeding No. 4649; (2) In re: National Football League Players' Concussion Injury Litigation, MDL 2323; (3) In re: WellN<sub>x</sub> Marketing and Sales Practices Litigation, MDL 1861; and (4) In re: Consolidated Non-filing Insurance Fee Litigation, MDL 1130.

Pope McGlamry has also been involved in and designated as class counsel by federal and state courts in numerous class actions. The firm has participated in verdicts and settlements on behalf of individuals and representative plaintiffs that have generated over \$750 million in cash recovery and an additional \$1.5 billion in injunctive and in kind relief for class members. A partial list of the complex individual actions (mass tort, products liability, personal injury and wrongful death), commercial litigation and class action litigation that Pope McGlamry has participated in is available at [www.pmkm.com](http://www.pmkm.com) on the Verdicts & Settlements page. In handling these matters, Pope McGlamry has established expertise in complex cases.

Some of the firm's more significant cases highlighting its experience in complex litigation, including product liability claims, mass torts, and class actions, include:

### **Diminished Value Litigation**

- *Anderson v. Fidelity and Guaranty Insurance Underwriters, Inc., et al.*, Civil Action File No. SU2000CV-4571, Superior Court of Muscogee County, State of Georgia;
- *Bagley v. Auto-Owners Insurance Company, et al.*, Civil Action File No. SU-02-CV-2273, Superior Court of Muscogee County, State of Georgia;
- *Bickerstaff and Shearon v. Alfa Insurance Corporation, et al.*, Civil Action File No. SU02CV2287, Superior Court of Muscogee County, State of Georgia;
- *Bristol v. Allstate, et al.*, Civil Action File No. SU04VC2971, Superior Court of Muscogee County, State of Georgia;

- *Brookes v. Grange Mutual Casualty Company, et al.*, Civil Action File No. SU02CV325, Superior Court of Muscogee County, State of Georgia;
- *Brown v. Liberty Mutual Insurance Company, et al.*, Civil Action File No. SU-2002-CV-207-7, Superior Court of Muscogee County, State of Georgia;
- *Case v. GuideOne Insurance, et al.*, Civil Action File No. SU03CV2033, Superior Court of Muscogee County, State of Georgia;
- *Chung v. Superior Insurance, Civil Action File No. SU03CV1922*, Superior Court of Muscogee County, State of Georgia;
- *Colquitt v. Southern Guaranty Insurance Company, et al.*, Civil Action File No. SU02CV2651, Superior Court of Muscogee County, State of Georgia;
- *Cudd v. American Home Assurance Company, et al.*, Civil Action File No. SU03CV1783, Superior Court of Muscogee County, State of Georgia;
- *Daughtry and Morgan v. Direct General Insurance Company, et al.*, Civil Action File No. SU02CV1380-7, Superior Court of Muscogee County, State of Georgia;
- *Earl v. Allstate Insurance Company, et al.*, Civil Action File No. SU-01-CV-193, Superior Court of Muscogee County, Georgia;
- *Granberry and Gordon v. Amex Assurance Company*, Civil Action File No. SU03CV1923, Superior Court of Muscogee County, State of Georgia;
- *Griffin v. Gateway Insurance Company*, Civil Action File No. SU-03-CV-2588-7, Superior Court of Muscogee County, State of Georgia;
- *Hamrick v. Southern General*, Civil Action File No. SU03CV1889, Superior Court of Muscogee County, State of Georgia;
- *Head and Hamlet v. Georgia Farm Bureau, et al.*, Civil Action File No. SU2000CV-4573, Superior Court of Muscogee County, State of Georgia;
- *Hole v. Metropolitan Life*, Civil Action File No. SU02CV364, Superior Court of Muscogee County, State of Georgia;
- *Humes v. The Continental Insurance Company, et al.*, Civil Action File No. SU02CV2275, Superior Court of Muscogee County, State of Georgia;
- *Hyatt v. Cotton States Mutual Insurance Company*, Civil Action File No. SU2001CV-3783-9, Superior Court of Muscogee County, State of Georgia;
- *Lovelace, et al. v. Vesta Insurance Corporation, et al.*, Civil Action File No. SU03CV2035, Superior Court of Muscogee County, State of Georgia;

- *Mabry v. State Farm Mutual Automobile Insurance Co.*, Civil Action File No. SU99CV4915, Superior Court of Muscogee County, Georgia;
- *Martin and Wicker v. Government Employees Insurance Company, et al.*, Civil Action File No. SU01CV312, Superior Court of Muscogee County, State of Georgia;
- *McLean v. Progressive Casualty Insurance Company, et al.*, Civil Action File No. SU01CV1030, Superior Court of Muscogee County, State of Georgia;
- *Meier v. Hartford Casualty Insurance, et al.*, Civil Action File No. SU02CV2416-7, Superior Court of Muscogee County, State of Georgia;
- *Miller v. Horace Mann Insurance Company*, Civil Action File No. SU02CV1295-7, Superior Court of Muscogee County, State of Georgia;
- *Miller v. Travco Insurance Company, et al.*, Civil Action File No. SU-2002-CV-255, Superior Court of Muscogee County, State of Georgia;
- *Moore v. Massachusetts, Civil Action File No. SU04CV361-7*, Superior Court of Muscogee County, State of Georgia;
- *Nash v. SAFECO, et al.*, Civil Action File No. SU03CV1972, Superior Court of Muscogee County, State of Georgia;
- *Oldham v. Nationwide Mutual Insurance Company, et al.*, Civil Action File No. SU01-CV-4132-7, Superior Court of Muscogee County, State of Georgia;
- *Oldham v. American Manufacturers Mutual Insurance Company, et al.*, Civil Action File No. SU-02-CV-2271, Superior Court of Muscogee County, State of Georgia;
- *Powell v. National General Insurance Company, et al.*, Civil Action File No. SU03CV1924, Superior Court of Muscogee County, State of Georgia;
- *Pressley v. Chicago Insurance Company, et al.*, Civil Action File No. SU-03-CV-2059, Superior Court of Muscogee County, State of Georgia;
- *Spangler v. Atlanta Casualty, et al.*, Civil Action File No. SU-02-CV-1075, Superior Court of Muscogee County, State of Georgia;
- *Stahl v. St. Paul Fire & Marine Insurance Company, et al.*, Civil Action File No. SU01CV1032, Superior Court of Muscogee County, State of Georgia;
- *Walton v. United Services Automobile Association, et al.*, Civil Action File No. SU01CV1732-7, Superior Court of Muscogee County, State of Georgia;
- *Walker, et. al. v. American National General Insurance Company, et. al.*, Civil Action File No. SU-03-CV-2058, Superior Court of Muscogee County, State of Georgia; and

- *Yodlowski v. Merastar Insurance Company, et al.*, Civil Action File No. SU02CV2272, Superior Court of Muscogee County, State of Georgia.

In *Mabry v. State Farm*, Pope McGlamry was lead counsel for a certified class of policy holders who were not reimbursed for the diminished value of their vehicles following first party claims for property damage. The Supreme Court of Georgia heard issues in this case on five occasions, with Pope McGlamry prevailing on behalf of the class in each instance. The class action ultimately resulted in a \$150 million cash settlement for policy holders. Following its success in *Mabry*, Pope McGlamry proceeded with actions against every other major insurer in Georgia resulting in over \$170 million more in settlement proceeds for Georgia policy holders. Having successfully pursued all of the principal insurance providers in the state, Pope McGlamry took the novel approach of proceeding with a suit against the remaining providers as a defendant class. The firm was again successful in obtaining a cash settlement for the remaining affected policy holders in Georgia.

***Borom v. Eli Lilly Co.*, United States District Court, Middle District of Georgia**

Pope McGlamry filed suit against Eli Lilly & Company, the maker of Oraflex, for the wrongful death of Lola Jones. Pope McGlamry's experts were able to prove that within a month of initial ingestion of the drug, Oraflex caused liver and kidney problems, which ultimately led to Ms. Jones' death. Oraflex was marketed in the United States two years after being first introduced in Europe. At trial, Eli Lilly admitted that it knew of 29 deaths in Europe linked to its product before it was ever approved by the FDA. The jury returned a verdict for \$6 million and Eli Lilly removed Oraflex from the market.

***Gentry v. Volkswagen of America, Inc., et al.*, State Court of Fulton County, Georgia**

The jury in *Gentry* awarded an \$11 million verdict in the products liability and wrongful death action brought by the parents of Lori Gentry. Lori was killed following an automobile collision, and Pope McGlamry sued the vehicle manufacturer for the defective design of its passenger restraint system. The jury's verdict was upheld, and at the time, it represented the largest wrongful death verdict for a minor in a Georgia state court.

***Mason v. Ford Motor Company, United States District Court, Northern District of Georgia, Atlanta Division***

Pope McGlamry sought recovery on behalf of the family of Richard Robert Mason for his wrongful death, alleging that Ford was liable for the defective design of the fuel tank on its Ford Explorer. The jury awarded the family over \$9 million. The verdict was affirmed by the Eleventh Circuit and, at the time, represented the largest wrongful death verdict for a minor in a Georgia federal court.

***Grundberg v. Upjohn Co., United States District Court for the District of Utah***

In a case involving the sleeping pill Halcion, Pope McGlamry sued the manufacturer of the drug on behalf of the Plaintiff who had shot and killed her mother while under the drug's influence. The settlement of the case was the cover story of Newsweek. Based on evidence obtained in that action, the drug was not allowed to be sold in a number of countries and the FDA changed and strictly limited the dosage and the time the drug could be taken.

***In re: Wellnx Marketing and Sales Practices Litigation, United States District Court, District of Massachusetts, No. 07-MD-1861 (RGS)***

Sixteen actions were filed in various states alleging that Wellnx made false and misleading statements on the labeling of its products. These cases were consolidated by the MDL Panel, and Pope McGlamry was appointed to serve as co-lead counsel in the MDL. A settlement resulted in changes in marketing practices and partial refunds for consumers who participated.

**CROA Litigation**

- *Hillis v. Equifax Consumer Services, Inc., et al.*, United States District Court, Northern District of Georgia, Atlanta Division
- *Slack v. Fair Isaac Corporation, et al.*, United States District Court, Northern District of California
- *Townes v. Trans Union, LLC, et al.*, United States District Court, District of Delaware

Pope McGlamry filed separate class actions under Credit Repair Organizations Act, 15 U.S.C. § 1681 et seq., against the three national credit reporting agencies. The actions settled for cash and in-kind relief exceeding \$475 million.

***Adams v. Southern Farm Bureau Life Insurance Company, United States District Court, Northern District of Georgia, Atlanta Division***

Pope McGlamry filed a class action alleging breach of fiduciary duty, fraud, negligence, and breach of contract in regard to the sale of universal life insurance policies by Southern Farm Bureau. A class settlement valued in excess of \$50 million was approved by the Court.

***Henderson, et al. v. Scientific-Atlanta, Inc., United States District Court, Northern District of Georgia***

Pope McGlamry filed a securities fraud class action resulting in a \$14 million class settlement.

***In Re: Consolidated “Non-Filing Insurance” Fee Litigation, MDL-1130, United States District Court, Middle District of Alabama, Northern Division***

In a class action against retail and finance companies relating to alleged illegal non-filing insurance products, Pope McGlamry served as co-lead counsel for the class. Settlements included restitution in the amount of \$121,088,317 plus injunctive relief valued at \$935,996,279.

***Meyer, et al. v. Citizens and Southern National Bank, United States District Court, Middle District of Georgia***

A class action was filed on behalf of trust beneficiaries regarding the failure of the trustee to properly manage trust funds. A class settlement of \$32,600,000 was approved by the Court.

***Patterson v. CUNA Mutual Insurance Society, Inc., United States District Court, Northern District of Georgia, Atlanta Division***

Pope McGlamry filed a class action seeking relief for credit union members for the denial of credit disability and credit life benefits based on “age maximum.” The action settled for injunctive relief and cash payments of approximately \$20 million.

**Online Travel Company Cases**

- *City of Atlanta, Georgia v. Hotels.com, L.P., et al.*, Superior Court of Fulton County, State of Georgia

- *Columbus, Georgia v. Expedia, Inc.*, Superior Court of Muscogee County, State of Georgia
- *Columbus, Georgia v. Hotels.com, L.P.*, Superior Court of Muscogee County, State of Georgia
- *Columbus, Georgia v. Orbitz, LLC*, Superior Court of Muscogee County, State of Georgia

Pope McGlamry is representing the City of Atlanta and the City of Columbus in multiple litigations involving online travel companies and the manner in which they disguise fees as taxes without remitting them to the proper taxing authorities. Various aspects of these cases have been before either the Georgia Court of Appeals or the Supreme Court of Georgia five times, and Pope McGlamry has prevailed in each instance. As a result of Pope McGlamry's efforts, another online travel company reached a settlement with the City of Columbus before suit was filed.

***Executive Risk Indemnity, Inc. v. AFC Enterprises, Inc., et al.*, United States District Court, Northern District of Georgia, Atlanta Division**

Executive Risk sought to rescind the directors and officers' policy issued to AFC alleging it had been procured through fraud following a restatement of the company's earnings. Pope McGlamry defended AFC and prosecuted its counterclaim for benefits under the policy. Following a week long bench trial before the Honorable Charles A. Pannell, Jr., Executive Risk's complaint was dismissed and judgment was granted on AFC's counterclaims in the amount of \$24,295,980.40. The Eleventh Circuit affirmed the judgment of the trial court.

**Defective Seat Belt Litigation**

- *Broach v. General Motors*, State Court of Fulton County, Georgia

An auto products liability/wrongful death action was filed against GM based on its defective seat belts. The parties settled the claim for a confidential sum.

- *Gallo v. Ford Motor Company, Inc.*, United States District Court, Northern District of Georgia, Atlanta Division

Plaintiff suffered severe brain injury due to rollover and defective seat belt. A confidential settlement was reached between the parties.

- *McBride, Jr. v. General Motors Corporation*, United States District Court, Middle District of Georgia, Columbus Division

A defective seat belt led to catastrophic injuries following an accident. Pope McGlamry was able to satisfactorily resolve the matter by settlement.

- *Lehman v. General Motors Corporation*, United States District Court, Middle District of Georgia, Columbus Division

Pope McGlamry filed this auto products liability action for the catastrophic injuries and wrongful death caused by GM's defective seat belts. The parties resolved the matter out of court for a confidential sum.

- *Milam v. General Motors Corporation*, United States District Court, Eastern District of Tennessee, Northern Division

Suit was filed on behalf of the family of a minor killed due to a defective seat belt system. A confidential settlement was reached before trial.

- *Van Der Noordaa v. Hyundai Motor Company*, United States District Court, Middle District of Georgia, Columbus Division

Suit was filed following the discovery that a defective seat belt had contributed to a wrongful death. This products liability claim resolved through a confidential settlement.

***Buser v. General Motors, Circuit Court, Jackson County Missouri at Kansas City***

Pope McGlamry filed an auto products liability/wrongful death action arising from a defective roof and roof support system. The case settled for a confidential sum.

***Duvall, et al. v. General Motors Corporation, et al., Circuit for Russell County, Alabama***

Pope McGlamry sought to recover for a catastrophic brain injury resulting from a defective hood restraint system and general uncrashworthiness. The litigation was settled for undisclosed amount.

***Leddon v. Fabtech Motorsports, Inc., et al., Superior Court of Muscogee County, Georgia***

It was alleged that an eighteen year old girl was killed in a rollover accident arising from the faulty manufacture of lift kit for a Ford F-150. Pope McGlamry was able to recover \$1,300,000 in settlement for the family.

***Marler v. The City of Lanett, et al., Circuit Court of Chambers County, Alabama***

Plaintiff's husband died due to an inadequate response of the EMT service of the County and a defective defibrillator and a malfunction of same. Before trial, the case was resolved for a confidential amount.

***Carleton v. ValuJet Airlines, Inc., et al., State Court of Fulton County, Georgia***

The cases of eight passengers killed in a May 11, 1995 crash of ValuJet Flight 592 were consolidated for trial. All eight cases were settled for an undisclosed amount.

***Elliott, Jr., et al. v. United States of America, United States District Court, Middle District of Georgia, Columbus Division***

Pope McGlamry filed a wrongful death and personal injury action arising from carbon monoxide poisoning due to a defective water heater at military base. A verdict of approximately \$12 million was returned. Although appealed to the Eleventh Circuit, Pope McGlamry was able to avoid the general bar established by the Feres Doctrine.

## **Attorney Profiles**

### **C. Neal Pope**

Mr. Pope graduated with a B.A. from Auburn University in 1961 and received a LL.B. from the University of Alabama in 1966. Following his graduation from the University of Alabama, Neal began practicing law in 1966. While pursuing his education and chosen career path, Neal also served the country as a Lieutenant in the U.S. Marine Corps from 1961-1963.

Mr. Pope is a Fellow of the American College of Trial Lawyers and has been recognized by Best Lawyers in America® in products liability and personal injury litigation since 1987. He is licensed in the State and Superior Courts of Georgia, the Northern, Middle, and Southern Districts of Georgia, all Alabama State and Federal courts, the State courts of Florida, the Eleventh Circuit Court of Appeals, and the United States Supreme Court. Neal is also a member of the District of Columbia Bar, licensed to practice in its courts.

Since beginning the practice of law in 1966, Mr. Pope has been at the forefront of litigation involving products liability, personal injury, and class action. Through his active participation in all of the firm's major litigation, he continues to broaden the firm's national reputation for the handling of complex litigation.

Email: [nealpope@pmkm.com](mailto:nealpope@pmkm.com)

### **Paul Kilpatrick, Jr.**

Mr. Kilpatrick graduated from the University of Georgia with an A.B. in 1963 and a J.D. in 1965. Following his successful completion of the Georgia Bar while a student, he began practicing law in 1964. Paul served in the U.S. Army during the Vietnam Conflict, from 1965-1968, leaving with the rank of Capt. JAG. From 1968, when he left active duty military service, he has practiced law in Columbus, Georgia.

Paul is a member of several associations, including the Columbus Bar (President, 1975-1976), Russell County and American Bar Associations, State Bar of Georgia (Member, Board of Governors, 1975-1991; Member, Executive Committee, 1989-1994; President-Elect, 1990-1991; President, 1992-1993; Immediate past President, 1993-1994; Chairman, Family Law Section, 1980-1981; Member, Board of Bar Examiners, 2000-2006), The Florida Bar, Alabama State

Bar, Georgia Trial Lawyers Association, Alabama Trial Lawyers Association, Southern Conference of Bar Presidents, American Board of Trial Advocates.

Mr. Kilpatrick is licensed to practice in the State and Superior Courts of Georgia, the Northern, Middle, and Southern Districts of Georgia, all Alabama State and Federal courts, the State courts of Florida, the Eleventh Circuit Court of Appeals, and the United States Supreme Court. Paul is also a member of the District of Columbia Bar, licensed to practice in its courts.

Email: [paulkilpatrick@pmkm.com](mailto:paulkilpatrick@pmkm.com)

### **R. Timothy Morrison**

Tim Morrison graduated from the University of Alabama with a B.S. in 1972 and a J.D. in 1976. He was a member of the University of Alabama Law Review from 1975-1976. Following his graduation from the University of Alabama, Tim began practicing law in 1976.

Tim is a member of several associations, including the American Bar Associations, Alabama State Bar, State Bar of Georgia, Bar Association of the District of Columbia, Alabama Trial Lawyers Association, Georgia Trial Lawyers Association, The Association of Trial Lawyers of America, and the Lawyers Club of Atlanta. He is licensed to practice in the State and Superior Courts of Georgia, the Northern, Middle, and Southern Districts of Georgia, all Alabama State and Federal courts, the Eleventh Circuit Court of Appeals, and the United States Supreme Court. Tim is also a member of the District of Columbia Bar, licensed to practice in its courts.

Email: [timmorrison@pmkm.com](mailto:timmorrison@pmkm.com)

### **William Usher Norwood, III**

Mr. Norwood attended Emory University and graduated from the University of Georgia with an A.B. in 1965 and a LL.B. in 1967. Following his graduation from the University of Georgia, Bill began practicing law in 1967.

Bill has been elected as a Fellow of the American College of Trial Lawyers (State Chair from 1999-2000); International Academy of Trial Lawyers; and

International Society of Barristers. He is licensed in the State and Superior Courts of Georgia, the Northern, Middle, and Southern Districts of Georgia, the Eleventh Circuit Court of Appeals, and the United States Supreme Court. Bill is a member of several associations, including the Atlanta Bar Association and State Bar of Georgia (Board of Governors, 1973-1979); Georgia Board of Bar Examiners (1991-1996), Chairman, (1996); Board to Determine Fitness, (1996-1999). Mr. Norwood has been recognized as a Top 100 Super Lawyers in Georgia and in Best Lawyers in America® (1993-present). He is also a Board Member of the Institute for the Advancement of the American Legal System (IAALS) in Denver, Colorado.

Mr. Norwood enjoys a broad range of experience that includes twenty-five years spent defending medical malpractice actions, taking approximately sixty such cases to verdict. He also has extensive experience in complex litigation. Bill was named individual lead counsel in two class action cases. He also handled the oral arguments in each of the five appearances before the Supreme Court of Georgia in *Mabry v. State Farm Mutual Automobile Insurance Co.*, Superior Court of Muscogee County, Georgia, which ultimately led to the successful recovery of improperly withheld diminished value payments for the State's automobile insureds.

Not only has Bill enjoyed success in his role as lead attorney, he has also excelled in bringing parties together. For the past eight years, a significant portion of Bill's practice has been devoted to serving as a mediator, having successfully resolved more than 90 cases during that time period. He also represented the Decatur County Superior Court as Counsel to the Court in a contempt action by virtue of an appointment as Special Assistant Attorney General.

Email: [billnorwood@pmkm.com](mailto:billnorwood@pmkm.com)

### **Michael L. McGlamry**

Mr. McGlamry graduated Magna Cum Laude from Wake Forest University in 1978 and Cum Laude with a J.D. from the University of Georgia Lumpkin School of Law in 1982. Since completion of law school, Mike has continuously practiced in Atlanta, Georgia. He is licensed in the State and Superior Courts of Georgia, the Northern, Middle, and Southern Districts of Georgia, the Eleventh Circuit Court of Appeals, and the United States Supreme Court.

In addition to the above, Mike has participated as a member of the U.S. District Court, Northern District of Georgia's Ad Hoc Committee on E-Discovery. As a member of that Committee, he was involved in the development of the Federal Civil Trial Practice 2010 seminar sponsored by the Institute of Continuing Legal Education (ICLE) in Georgia. Mike has also been appointed by the State Bar President to serve on the Joint Task Force on Electronic Discovery, a joint effort of the State Bar of Georgia and the Georgia Chamber of Commerce. He presently serves on the Judicial Procedure and Administrative/ Uniform Rules Committee and Subcommittee on E-Discovery established by the Georgia State Bar. He is the Ethics Committee Chairman for the Georgia Trial Lawyers Association ("GTLA"), co-chair of the GTLA's Business Litigation Section, and Congressional District Five representative to the GTLA.

Email: [mikemcglamry@pmkm.com](mailto:mikemcglamry@pmkm.com)

### **Wade H. Tomlinson**

Wade (Trip) Tomlinson graduated from the University of Georgia with a B.B.A. in 1976 and, after teaching elementary school children for several years, he received his J.D. from the University of Georgia in 1987 (cum laude). He was a Judicial Law Clerk for the Honorable Wilbur D. Owens, Jr., Chief Judge, U. S. District Court, Middle District of Georgia (1987-1989), and for the Honorable Albert Henderson, Senior Judge, U.S. Court of Appeals, Eleventh Circuit (1989-1990).

Trip is a member of several professional associations and organizations, including the American Bar Association, where he served as an Associate Editor for the Tort & Insurance Law Journal (1995-1997), the State Bar of Georgia, and Henry Lumpkin Inn of Court (Master Bencher). He also is a founding member and serves on the Executive Committee of the Columbus Inn of Court. Trip served a three-year term on the Attorney Disciplinary Committee for the U.S. District Court, Middle District of Georgia. Trip is licensed to practice in the State and Superior Courts of Georgia, the Northern and Middle Districts of Georgia and numerous other District Courts, the U.S. Court of Federal Claims, the Third and Eleventh Circuit Court of Appeals, and the United States Supreme Court.

Trip is and has been actively involved in leadership roles in numerous civic, charitable and community organizations. Currently, he serves as a trustee, board member, or Commissioner for: The Columbus Museum; One Columbus

(promoting unity and respect within a diverse community); The Housing Authority of Columbus, Georgia; UGA Honors Program Advisory Board; Georgia Appleseed Center for Law and Justice. Trip formerly served on the boards of the Muscogee Excellence in Education Foundation and the Chattahoochee Riverkeeper and Chattahoochee RiverWatch.

Email: [triptomlinson@pmkm.com](mailto:triptomlinson@pmkm.com)

### **Jay F. Hirsch**

Jay Hirsch is a graduate of Tulane University (Bachelor of Arts, 1983) and the University of Georgia School of Law (J.D., 1986). Jay is licensed to practice in the State and Superior Courts of Georgia, the Northern and Middle Districts of Georgia, the State courts of Florida, the U.S. Court of Federal Claims, the Eleventh Circuit Court of Appeals, and the United States Supreme Court.

Jay is a member of the State Bar of Georgia, the Florida Bar, the Atlanta Bar Association, and the Georgia Trial Lawyers Association (GTLA). Mr Hirsch is a Champion member of the GTLA and has served on the Board of Trustees of the Civil Justice Political Action Committee (2003-2006).

Email: [jayhirsch@pmkm.com](mailto:jayhirsch@pmkm.com)

### **N. Kirkland Pope**

Mr. Pope graduated with a B.S. in Finance from Auburn University in 1992 and accepted a commission in The United States Marine Corps the same year. He served as an infantry officer with the Second Marine Division. In 2001 he received his J.D. from the University of Alabama, and started his own practice upon graduating law school. In 2003, as a part of the Marine Reserves, Kirk was deployed with the Fourth Marine Division to Wasit Province, Iraq as a part of Operation Iraqi Freedom. He joined Pope McGlamry from Pope and Rayfield, PC in 2006 and is located in the firm's Atlanta office.

Kirk is licensed in the State and Superior Courts of Georgia, the Northern, Middle, and Southern Districts of Georgia, the Eleventh Circuit Court of Appeals, and the United States Supreme Court. He is also licensed in the State courts of Alabama, the Northern and Middle Districts of Alabama, and the Northern and

Southern Districts of Illinois. He has been identified as a Rising Star by Super Lawyers, recognized as a Best Lawyer in America®, and was selected to the National Trial Lawyers Association consisting of the top 100 trial lawyers from each state.

Email: [kirkpope@pmkm.com](mailto:kirkpope@pmkm.com)

### **Kimberly J. Johnson**

Ms. Johnson graduated from DePauw University with a B. Mus. in 1991 and taught music in the public schools for four years before attending law school. She received her J.D. from at the University of Alabama in 1998 (summa cum laude). She served as a Judicial Law Clerk for the Honorable W. Harold Albritton III, then-Chief Judge, U.S. District Court, Middle District of Alabama (1998-1999), and for the Honorable Emmett R. Cox, Circuit Judge, U.S. Court of Appeals, Eleventh Circuit (1999-2000).

Kim is licensed in the State and Superior Courts of Georgia, the Northern and Middle Districts of Georgia, all Alabama State courts, the Sixth and Eleventh Circuit Courts of Appeals, and the United States Supreme Court. In both her practice and in her clerkships, Ms. Johnson has been intimately involved in complex litigations involving product liability claims and consumer class actions.

Ms. Johnson has served on the editorial board of *The Verdict*, a publication of the Georgia Trial Lawyers Association, and has been identified as a Rising Star by Super Lawyers.

Email: [kimjohnson@pmkm.com](mailto:kimjohnson@pmkm.com)

### **Michael J. (“M.J.”) Blakely, Jr.**

Mr. Blakely is a trial lawyer that specializes in handling catastrophic personal injury and wrongful death cases, mass torts, class actions and other complex litigation. He attended Oxford College and Emory College of Emory University where he worked to obtain his Bachelor of Arts in 2002. Mr. Blakely earned his Juris Doctorate from the University of Georgia School of Law in 2006. While in law school, Mr. Blakely was a member of the Mock Trial Board and Mock Trial Team. He received the Weinberg, Wheeler, Hudgins, Gunn and Dial

Award for Outstanding Mock Trial Advocate. He served as a research assistant for Dean Rebecca H. White in the area of Employment Discrimination, and was a Joseph Henry Lumpkin Inn of Court Pupil, the Vice-President of the Black Law Student's Association, and a Dean's Ambassador.

Prior to joining the law firm of Pope McGlamry, Mr. Blakely worked for a large suburban law firm in Gwinnett County. He has tried several cases to verdict and successfully argued before the Supreme Court of Georgia. Mr. Blakely is a member of the State Bar of Georgia, the Georgia Trial Lawyers Association, the American Association for Justice, the Lawyers Club of Atlanta, and the University of Georgia Alumni Association. In 2010, Mr. Blakely was invited back to the Joseph Henry Lumpkin Inn of Court as a Barrister where he served a two year term.

Mr. Blakely was admitted to the practice of law in the State of Georgia in 2006, and is licensed to practice in all Georgia courts, as well as the United States District Court for the Northern and Middle Districts of Georgia and the Supreme Court of the United States.

Email: [mjblakely@pmkm.com](mailto:mjblakely@pmkm.com)

### **Caroline G. McGlamry**

Caroline McGlamry was born in Atlanta, Georgia and graduated cum laude with a B.A. from the University of North Carolina at Chapel Hill in 2009. Caroline spent a year working in Washington, D.C. before furthering her studies at the University of Georgia School of Law where she graduated with a J.D. in 2013. While in law school, Caroline served as the Executive Notes Editor for the Georgia Journal of International and Comparative Law. She also served as President of UGA's Street Law and on the Athens Peer Court Design & Implementation Team, where she helped develop and implement a Teen Court model for the Athens, GA community.

In 2013, Caroline joined Pope McGlamry and has focused her career on representing plaintiffs in personal injury, wrongful death, products and pharmaceutical liability, class actions and mass torts actions.

Caroline is active in the community, serving Youth Counselor/ Blaze Committee at her church, Haygood United Methodist Church, and as Chairman of the Grady High School Mock Trial Foundation Board. In her spare time, Caroline

enjoys running and playing tennis, spends football season cheering on the Dawgs, and basketball season cheering even harder for the Tar Heels.

Email: [carolinemcglamry@pmkm.com](mailto:carolinemcglamry@pmkm.com)

# **EXHIBIT T**

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

IN RE: NATIONAL FOOTBALL  
LEAGUE PLAYERS' CONCUSSION  
INJURY LITIGATION

Kevin Turner and Shawn Wooden,  
*on behalf of themselves and  
others similarly situated,*

Plaintiffs,

v.

National Football League and  
NFL Properties LLC,  
successor-in-interest to  
NFL Properties, Inc.,

Defendants.

THIS DOCUMENT RELATES TO:  
ALL ACTIONS

No. 2:12-md-02323-AB

MDL No. 2323

**Hon. Anita B. Brody**

Civ. Action No. 14-00029-AB

**DECLARATION OF CRAIG R. MITNICK IN SUPPORT OF CO-LEAD CLASS  
COUNSEL'S PETITION FOR AN AWARD OF ATTORNEY'S FEES AND  
REIMBURSEMENT OF COSTS AND EXPENSES**

Craig R. Mitnick, Esq. declares as follows pursuant to 28 U.S.C. § 1746:

1. I am a partner of the law firm of Mitnick Law Office, LLC and submit this declaration in support of Co-Lead Class Counsel's Petition for an Award of Attorney's Fees and Reimbursement of Costs and Expenses in connection with and for services rendered and expenses incurred for the common benefit of the Settlement Class in the above-captioned multidistrict litigation ("Action") from the inception of the litigation through July 15, 2016, as

well as for the payment of expenses incurred therewith. I have personal knowledge of the matters set forth in this declaration and, if called upon, I could and would testify competently thereto.

2. The role of Mitnick Law Office / Craig R. Mitnick in the common benefit litigation against the NFL parties as directed by Co-Lead Counsel is as follows :

- a. Over the past several decades I have developed friendships and professional relationships with countless individuals who played professional football for the NFL and who are now part of the NFL retired player community. Many of these relationships date back almost three decades.
- b. At all times throughout my participation in the MDL on behalf of the Plaintiff Class, I worked to protect, educate, and provide value to all parties involved in the matter, including Class Counsel and the global Class of Plaintiffs.
- c. I became involved in the NFL Retired Player's Injury Litigation in December of 2011. Shortly after I became involved in the MDL, I spent an exurbanite amount of time working from early 2012 through the latter part of 2014 engaging hundreds, if not thousands of former NFL players to communicate the importance of the litigation to each of them.
- d. From early 2012 until the time the District Court issued preliminary approval of the matter's Settlement Agreement in April of 2014, I spent hundreds of hours educating and informing Members of the Retired NFL Player Community as to the importance of becoming a named Plaintiff in the litigation. This was not only for their personal well-being, but to better the game of football by protecting the well-being of its' young players and by creating awareness surrounding the issues

of concussions and cognitive decline. Given efforts during the pre-settlement phase of the MDL litigation, I am confident that I played an extensive role in how quickly the litigation gained momentum within the Retired NFL Player Community.

- e. I garnered the early endorsements of key retired players in order to further drive the momentum of the MDL. Additionally, I personally met with individual key decision makers and influencers within the NFL Alumni Community to gain their support for the litigation. Several of the key influencers who endorsed the litigation early on through my efforts include; *Joseph Pisarcik*, President and CEO of the NFL Alumni Association, *Bart Oates* (President of the New York/New Jersey NFL Alumni Chapter and member of the NFL Alumni Association's Board of Directors), *Al Smith* (President of the Tennessee NFL Alumni Chapter and member of the Alumni Association's Board of Directors), *John Haines* (President of the Austin, Texas NFL Alumni Chapter and member of the Association's Board of Directors), *Ron Jaworski* (Member of the Alumni Association Board of Directors), *Bill Schultz* (President of the Indianapolis, Indiana NFL Alumni Chapter and member of the Association's Board of Directors), *Ron Rice* (President of the Detroit, Michigan NFL Alumni Chapter and member of the Association's Board of Directors), *Jim Karsatos* (President of the Columbus, Ohio NFL Alumni Chapter), *Steve Thurlow* (President of the Stanford, Connecticut NFL Alumni Chapter), *Beasley Reece* (President of the Philadelphia, Pennsylvania NFL Alumni Chapter), *Raul Allegre*, (Former member of the Association's Board of Directors), *Jeffery Nixon*, NFL retired player influencer

and most prominent blogger within the retired player community and Derrick Frost, (Former member of the Board of Directors of the NFLPA.

- f.* In early September of 2013, almost immediately after the terms of the initial Settlement Agreement were made public, I met with Co-lead counsel, Christopher Seeger in the Northern New Jersey/New York City area. After discussions with Mr. Seeger, I began to spend as much time and energy as was necessary to educate, inform and ultimately garner the endorsement of the Settlement Agreement by the global class of plaintiffs. From the time of that initial meeting with Mr. Seeger and continuing through the time that the District Court granted final Approval of the Settlement Agreement in April of 2015, I spent an exhaustive number of hours on educating retired players throughout the country on the terms of the proposed Settlement, the legal obstacles that both the NFL and Retired Players faced by way of preemption, statute of limitations and causation.
- g.* I traveled speaking to groups of Retired NFL Players of all ages and demographics throughout the country, including presentations at the XLVIII Super Bowl venue in New York, New York on January 29, 2014 and at the 2014 Hall of Fame ceremony in Canton, Ohio on August 1, 2014. These presentations were geared to educate and engage Retired NFL Players attending these to garner their endorsement of the Settlement Agreement. Additionally, over the course of 34 months between October 3, 2013 through August 10, 2016, I traveled the country engaging thousands of retired players at their respective NFL Alumni chapter meetings. These in-person Chapter presentations were highly publicized by Alumni Chapter Presidents to ensure heavy turnouts by the Retired Player

Community. Informational and Frequently asked question sessions were held in cities that included Austin, Texas on October 30, 2013; New York, New York on October 2, 2013, June 7, 2014 and June 6, 2014; Greenwich, Connecticut on May 5, 2014; Indianapolis, Indiana on December 17, 2013; Hackensack-Meadowlands, New Jersey on October 1, 2013, Fargo, North Dakota on October 21, 2014; Orlando, Florida on March 21, 2014; Cincinnati, Ohio on December 18, 2013; Denver, Colorado on October 25, 2014; Franklin, Tennessee on February 5, 2015; Birmingham, Alabama on October 23, 2014; Phoenix, Arizona on April 14, 2015; Las Vegas, Nevada on April 25, 2014; Chicago, Illinois on May 27, 2014; and San Diego, California on August 10, 2016. In addition to these Alumni Chapter presentations, I traveled to various parts of the country to reinforce the endorsements of individual key decision makers and influencers within the Retired NFL Community. Without exception, high quality brochures and informational materials, detailing the terms of the final Settlement Agreement were distributed at every NFL Retired Player event where a presentation took place. Printed materials always reflected the most reflect up-to-date relevant information on the Settlement. Copies of the informational materials were also distributed to attending spouses, as the players' spouses are often times the main influencers of the household.

- h. In addition to in-person group presentations, hundreds, if not thousands of Retired Players were engaged through telephonic conference calls that focused primarily on the current status of the Settlement followed by extensive frequently asked question sessions. An example is a conference call that took place on March 12,

2014. The conference call included operator assisted services and took place from the National Football League Alumni Association's corporate office in Mount Laurel, New Jersey. Participation during the call included hundreds of Retired NFL Alumni Members and the call lasted over an hour and a half. Members were asked to submit their questions or concerns prior to the call by emailing them directly to the Alumni Association, at which time the most commonly asked questions were defined and subsequently answered during the conference call. Additionally, Retired Players from around the Country, as well as from Canada were able to ask live questions utilizing the operator assistance service during the latter part of the call. Additional conference calls, similar to the call described above took place from October of 2013 through the time the Settlement received final approval in July of 2015. These calls varied from mass attendee participation to far more intimate calls where key influencers within the NFL Player Community listened to status updates and then participated in open discussions. During the time-period between March of 2012 and May of 2015, multiple calls took place with the NFL Alumni Association Board of Directors and the NFL Alumni Chapter Presidents, as well as with key influencers and decision makers within the NFLPA to garner additional endorsements within the Retired Player Community.

- i. To further solidify existing endorsements of the Settlement Agreement and garner new ones, in-person presentations were also conducted at the NFL Alumni Association's annual meetings in April of 2014, April of 2015 and April of 2016, as well as at the NFL Players Association 2014 annual conference that took place

during the week of March 20, 2014 in Orlando, Florida. These larger alumni venues were utilized to inform and educate attending NFL Players on Settlement details and to provide one-on-one informational sessions to those Retired Players who requested more information, or who had concerns regarding the Settlement.

- j.* The goal of each in-person presentation, or telephonic conference call described above, was to garner the endorsement of as many Retired NFL Players as possible by educating the players on the favorable medical and financial benefits afforded to each of them through the Settlement Agreement. This was not an easy task as many Retired Players had misinformation regarding the Settlement, the medical testing that was proposed through BAP, the financial compensation that was being offered through MAF, as well as the overall risk and obstacles that the Players faced in continuing to litigate the matter in lieu of Settling the MDL.
- k.* Throughout my travels, I was forced to dispel much of the misinformation that was spreading among retired players regarding the litigation with accurate, relevant and timely information. Many retired players and their spouses, some of who had filed suit and others that had not, had either misinformation or no information at all regarding the litigation, causing doubt with the proposed settlement. Many players and their spouses were so uninformed that they believed that by endorsing the litigation, they would be perceived within their community as greedy. The stigma that existed early on in the litigation by the public “that no real correlation existed between concussions and long term injury” and that “those retired players who were filing suit against the NFL were in it for a money grab” was still resonating with many players and their wives. It was apparent that

educating these former players and their spouses about the MDL, including the proposed Settlement Agreement, the validity of the entire subject matter, as well as having them understand the legal obstacles that they faced (pre-emption, causation, statute of limitations) would be critical to their endorsement of the Settlement and to the Settlement receiving final approval by the District Court, as well as within the court of public opinion.

- l. Numerous Quotes from key decision makers and high profile individuals within the Retired NFL Player Community were garnered throughout the litigation through my efforts. The importance of these endorsements is evident their inclusion in Class Counsel's brief in support of Final Settlement Approval.
- m. The countless hours of preparation time, travel time, presentation time and time spent on development and distribution of informational materials was instrumental to the unprecedented approval rate of over 99% of the 22,000-member Plaintiff-Class who ultimately endorsed the Settlement. This unprecedented Class endorsement was a critical factor in lead counsel's final argument in support of Final Approval for approval at the Final Fairness Hearing on November 19, 2014.
- n. In Summary, I worked in excess of 1900 hours during the course of the litigation, always with a sense of continued passion and respect for the MDL. Countless hours were spent on the preparation and distribution of hard-copy presentation materials; drafting and publishing up-to-date information; engaging in individual and mass player conference calls; providing in-person group presentations; continually distributing, publishing and updating frequently asked question

materials; as well as, continuously and positively reinforcing the litigation to ensure that players understood the fairness, reasonableness and tremendous value of the settlement agreement.

- o. Consistent and persuasive arguments as to why each player in the plaintiff class should endorse the final Settlement Agreement took place on a daily basis from the date the Settlement received preliminary approval until the matter received final approval by the Court. Prior to my efforts being focused on the endorsement of the final Settlement Agreement, hundreds of man hours were spent on promoting the litigation, clearly leading to an exponential increase in the momentum of the litigation. This is evident by the ultimate number of players (5,000 plus) who placed their reputations on the line to become involved in the hundreds of lawsuits that were filed, at such a rapid pace from the onset of the action.
- p. In addition to the efforts set forth above, countless hours were expended on obtaining written and video endorsements of the Settlement terms from some of the most influential and high profile players within the Retired NFL Player Community. These endorsements were placed in videos and disseminated to the Retired Player Community. Videos produced include “Settlement Urgency”, released June 8, 2015; “Consequences of Opting Out of the Concussion Settlement”, released July 20, 2015, “Settlement Pros and Cons”, released April 2, 2015, “The Legal Battle”, released May 18, 2013, “Concussion Litigation Question and Answer”, released September 14, 2014 and “The NFL Concussion Settlement Retired Player Opinions”, released August 18, 2014.

- q. My efforts throughout the litigation on behalf of the global Class of Plaintiffs have resulted in tremendous value to the Plaintiff Class, their spouses, Class Counsel, and the NFL parties. Additionally, these efforts in part, greatly helped catapult the unexpected passion within the Retired NFL Player Community in promoting concussion awareness. Retired NFL Players of all ages and backgrounds spoke out to the media, as well as to members of their own communities about the importance of player safety. This new found passion by retired players was a major contributing factor in the fundamental change that has occurred in how the world now views the correlation between concussions and long term injury. Children and athletes of all ages and skill sets are protected now more than even before. The significant changes in medicine, science and law that have come about could not have materialized without the mass support of the Retired Player Community.
- r. The time and energy that was expended in educating the Retired NFL Player Community on the science of concussions and the depth and reach of the terms of Settlement Agreement was an enormous task that ultimately took almost 2000 hours of my time.
- s. From the onset of the multidistrict litigation through today, I gave up most of my practice of law, as that time was necessary to accomplish the goals set forth in this Declaration. Prior to the litigation, I was personally responsible for the majority of net revenues to my firm. The large majority of those revenues were forgone during the concussion litigation, given the risk that I incurred to assist with a successful resolution for the Plaintiff Class.

- t. Throughout my entire involvement in the matter, I continually endorsed Class Counsel without exception and I specifically endorsed the efforts of Co-Lead Counsel, Chris Seeger in the overwhelmingly successful negotiation of the Concussion Settlement Agreement. The combined efforts of all parties in this historic case will now allow 20,000 retired NFL players living throughout North America to receive medical benefits, as well as financial compensation in excess of \$1 billion dollars.
- u. Letter from Joseph Pisarcik, President and CEO of the NFL Alumni Association; Declaration of the NFLAA Board of Directors; and Letter from Val Butts, wife of Retired player Marion Butts are attached hereto as Exhibit 4.

3. Additionally, the schedule attached hereto as Exhibit 1 is a detailed summary indicating the amount of common benefit time spent by me on behalf of the global Class of Plaintiffs in this matter. My hourly rates are based on my current billing rates. The schedule was prepared from contemporaneous daily time records regularly prepared and maintained by my firm. Time expended in preparing this application for attorney's fees and expenses has been excluded.

4. The hourly rates set forth in Exhibit 1 are the same as the regular rates charged for my services in other contingent matters.

5. The total number of hours expended on the common benefit of this Action by my firm during the time period is 1,198.15 hours. The total lodestar for my firm for those hours is \$898,612.50, consisting entirely of my fees.

6. My firm's lodestar figures are based solely upon my firm's billing rates, which rates

do not include charges for expense items. Expense items are billed separately and such charges are not duplicated in my firm's billing rates.

7. As detailed in Exhibit 2 hereto, my firm is seeking reimbursement of a total of \$83,082.20 in common benefit expenses incurred in connection with the prosecution of this Action. These expenses are reflected on the books and records of my firm. These books and records are prepared from expense vouchers, check records, and other source material, and are an accurate record of the expenses incurred.

8. With respect to the standing of my firm to share in an award of fees, costs, and expenses, attached hereto as Exhibit 3 is a biography of my firm and myself.

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

Executed on January 4, 2017, at Haddonfield, New Jersey.



CRAIG R. MITNICK, Esquire

# **EXHIBIT 1**

**EXHIBIT 1**

**IN RE: NATIONAL FOOTBALL LEAGUE PLAYERS' CONCUSSION INJURY  
LITIGATION**

**No. 12-md-2323-AB**

**MITNICK LAW OFFICE, LLC**

**LODESTAR REPORT**

**Inception through July 15, 2016**

<b><u>NAME</u></b>	<b><u>HOURS</u></b>	<b><u>HOURLY RATE</u></b>	<b><u>AMOUNT</u></b>
<b><u>PARTNERS:</u></b>			
Craig R. Mitnick	1,198.15	\$750.00	\$898,612.50
<b>ASSOCIATES:</b>			
None			
<b>STAFF ATTORNEYS:</b>			
None			
<b>CONTRACT ATTORNEYS:</b>			
None			
<b>PARALEGALS:</b>			
None			
<b>TOTALS:</b>	<b>1,198.15</b>	<b>\$750.00</b>	<b>\$898,612.50</b>

# **EXHIBIT 2**

**EXHIBIT 2**

**IN RE: NATIONAL FOOTBALL LEAGUE PLAYERS' CONCUSSION INJURY  
LITIGATION**

**No. 12-md-2323-AB**

**MITNICK LAW OFFICE**

**COST AND EXPENSE REPORT**

**Inception through July 15, 2016**

<b>NUMBER</b>	<b>CATEGORY</b>	<b>AMOUNT</b>
1	Assessments	N/A
2	Commercial Copies	\$23,321.60
3	Computerized Research	N/A
4	Court Reporters/Transcripts	N/A
5	Expert Services	N/A
6	Facsimile	N/A
7	Filing & Service Fees	N/A
8	In-House Copies	N/A
9	Long Distance Telephone	N/A
10	Postage/Express Delivery	\$972.52
11	Travel/Meals/Lodging	\$26,799.08
12	Miscellaneous	\$31,989
<b>TOTAL EXPENSES</b>		<b>\$83,082.20</b>

# **EXHIBIT 3**

## EXHIBIT 3

### MITNICK LAW OFFICE / CRAIG R. MITNICK, ESQUIRE

1. I am the Managing Partner of Mitnick Law Office, LLC with primary offices located in Haddonfield, New Jersey. Mitnick Law Office is a boutique litigation firm that specializes in the areas of civil and criminal litigation, as well as mass tort claim resolution.
2. I have extensive experience in the areas of complex civil and criminal litigation, public speaking and mass communication. I received my BBA in finance from Emory University (Atlanta, Georgia) in May of 1984 and subsequently received my Juris Doctor from the George Washington University School of Law (Washington DC) in May of 1987.
3. I am licensed to practice law and a member in good standing with the Courts in the state of New Jersey, including the United States District Court for the District of New Jersey. Additionally, I am licensed to practice law and I am in good standing with the Courts of the Commonwealth of Pennsylvania, including the United States District Court for the Eastern District of Pennsylvania and the United States Third Circuit Court of Appeals.
4. I began my professional career as a New Jersey County Assistant Prosecutor in September of 1987, almost 30 years ago. I began my litigation experience by being assigned to a Superior Court trial team where I tried dozens of Jury trials and negotiated hundreds of resolutions to matters that were assigned to me. Around the same time, I was selected by my superiors to become a certified instructor of law and procedure at two large county law enforcement academies located in Southern New Jersey. Several years later, after leaving the public sector in 1991, I entered the private practice of law where I began to focus on the practice of

complex civil and criminal litigation. I have since litigated over 50 jury trials in the Superior Court of New Jersey, The United States District Court of New Jersey, The Superior Court of the Commonwealth of Pennsylvania and the District Court for The Eastern District of Pennsylvania. Given my diverse litigation and public speaking experience, I was contracted as an on-air legal analyst for Fox News Channel, Fox News Syndicated Radio Station Group, Fox affiliate channels, as well as the CBS syndicated Radio Network from January 2004 until September of 2008. It was during this five (5) year time span that I analyzed complex legal matters that were being covered by the local, regional and national media. Subject matters included Congressional hearings, United States Supreme Court decisions, matters involving multidistrict and mass tort litigation (including the World Trade Center First Responder litigation, asbestos litigation and various Bellwether trials).

5. Additionally, my professional affiliations include membership in the American Bar Association, The National Association of Criminal Defense Attorneys, The New Jersey Bar Association, The Pennsylvania Bar Association, Top American Lawyers, ASLA and The American Institute of Criminal Defense Attorneys. I have also been selected for inclusion into Distinguished Attorneys (Civil Litigation Division), and The National Trial Attorneys top 100.

# **EXHIBIT 4**



November 29, 2016

**The Honorable Anita Brody**

**RE: NFL Concussion Litigation Acknowledgment**

**To the Court:**

**As the President and CEO of the NFL Alumni Association, I speak with retired NFL players living throughout the country on a daily basis. Sadly, I have seen, and continue to see, the cognitive deterioration of many of my former teammates whose lives have been dramatically changed due to their days playing professional football.**

**Initially, back in early 2012, when I learned of the lawsuits that were being filed against the NFL for concussions, I contacted Craig Mitnick, an attorney who I knew personally and trusted implicitly, in hopes of finding out more details about the lawsuit.**

**Many of the members of the NFL Alumni Association were very hesitant about joining the suit and attaching their name because they feared the possibility of being labeled by the public in a negative light, such as being greedy. Craig was instrumental in changing so many of their minds because he explained to them thoroughly the lawsuit and its ramifications for us financially and really let us make a decision on our own to be involved or to opt out.**

**Craig convinced hundreds, if not thousands of former players that supporting the lawsuit, whether they formally joined or not, was the correct thing to do. I truly believe that if not for Craig Mitnick's efforts and passion for their cause, far less of a percentage of retired players around the country would have joined the suit as quickly as they did. It was Craig's passion and detailed knowledge about the lawsuit and its importance that caused players to step up to the plate in order to not only protect themselves, but to also better the game of football by making it a safer sport.**

**Throughout the entire course of the litigation Craig, at his own expense, visited Alumni Chapters around the country to clarify the details of the lawsuit, inform players of its importance and to address any questions and concerns they or their wives had. He visited San Diego, Austin, Tennessee, Chicago, Indianapolis, the Hall of Fame in Canton, Ohio and Orlando to name a few. He never once asked for reimbursement. He just wanted to get the players knowledgeable, up to speed with full disclosure regarding the concussion lawsuit.**



There is absolutely no doubt in my mind, given my first-hand knowledge, that Craig was instrumental in how quickly the case grew in numbers and how quickly the momentum behind the case increased. I believe him, in working with Chris Seeger, in getting information to our Alumni and to our members was instrumental in letting them make their decisions of not opting out of the suit.

Through educating and keeping our members up to date on the litigation, Craig was consistent from the time the suits were filed and remains consistent in his efforts as the claim process will hopefully now begin. In fact, Craig's efforts were complimented by the passion he always exhibited for the well-being of the players and the ultimate success of the case. During several meetings, as well as conference calls with Alumni and members of the Board of Directors, he was always able to handle players who were adverse to the lawsuit, most of the time changing their dislike for the litigation into support of it.

Throughout the course of the last several years, I have spoken with and met several attorneys involved in the case. Lastly, I must say Craig was the only one who was willing to drop his percentage drastically for all of his clients involved in the lawsuit. I really respected his willingness to take a large cut in commission and for coming to our players' aid.

Sincerely,

A handwritten signature in black ink, appearing to read "Joe Pisarcik", written over a large, stylized circular flourish.

JOSEPH PISARCIK  
President & CEO  
NFL Alumni Association

**DECLARATION OF THE NATIONAL FOOTBALL LEAGUE ALUMNI ASSOCIATION BOARD OF DIRECTORS IN SUPPORT OF MITNICK LAW OFFICE, LLC'S FEE PETITION IN THE MATTER OF In Re National Football League Player's Concussion Injury Litigation**

The members declare, pursuant to 28 U.S.C. Section 1746, based upon each of our personal knowledge, information and belief, the following:

1. Almost four (5) years ago many of us, along with our NFL Alumni Chapter members, began to hear rumblings that concussions may possibly lead to longer-term health issues. We learned that several of our teammates had filed lawsuits against the NFL for their lack of honesty when it came to the League's knowledge in regard to any correlation between concussions and their relationship to our long-term health.
2. The litigation was very confined at the time and based on our own conversations with many of our Chapter Presidents and members, we believe that the lawsuits would have remained confined, or in the very least would have moved at a much slower pace if not for the efforts and passion of a few individuals involved in the litigation, including Craig Mitnick, Esquire.
3. Given how quickly the case picked up momentum and was Settled in such a short time by way of negotiation, many retired NFL players throughout the country can rest more comfortably knowing that the medical testing and financial benefits available to us will increase the quality of our lives.
4. Just as important as the protection of retired NFL players is the fact that athletes, medical doctors and scientific experts are now aware of the effect concussions can have on our brains and the long-term damage they can cause to us. It is now the children and the generations to follow who will benefit forever into the future from our sacrifice.
5. Many retired players initially were extremely cautious to get involved in the lawsuits, given the fear of being labeled incompetent and the fear of being labeled greedy. Craig Mitnick kept our Board of Directors, executive staff, and most importantly, our members informed and up to date during the initial filings of the lawsuits and then educated us with regard to the Settlement terms and why they were so beneficial to all of us. Craig personally convinced many of our Chapter leaders and members around the Country to get involved with the litigation and as Chris Seeger worked so diligently to find a favorable settlement for us, Craig continued to keep us educated, informed and reduced the uncertainty that many of us felt. It was not the money that he spoke about, or a sales pitch to become a client of his firm, rather his passion was grounded

upon the awareness of the consequences that concussions could have on our long-term health, as well as on our children and grandchildren's health.

6. Craig continually made sure that retired players in our Chapters had literature that they could take home to their wives and to show other players the benefits of joining the litigation and remaining in the litigation. Whether Craig spoke at the Superbowl, the Hall of Fame, or at the NFLAA Chapter meetings, the information received was critical to many retired players' endorsement of the case, as we were able to understand the obstacles we faced and the benefits of the ultimate Settlement.
7. We feel that the hard work, passion, and personal interaction by Craig Mitnick, with hundreds, if not thousands of our members was a driving factor in how quickly the case picked up momentum and how quickly the matter was ultimately endorsed by ninety-nine (99%) percent of our player community.
8. What others may not have realized is that many of our wives were more concerned than we were about our reputations being ruined and our ability to financially support our families being jeopardized, yet after personal conversations with Craig early on, they became as passionate as we became about the case.
9. We are fully aware that Attorneys involved in the case took on different roles at different times and all of them should be commended. However, specifically Chris Seeger's efforts in getting the deal done and Craig Mitnick's efforts in solidifying the Settlement with former players by educating us, keeping us informed and explaining the legalities and benefits of the deal were unmatched. We thank both of them immensely!
10. Lastly, we would like to thank your Honor for the passion, fairness and courage in protecting all of us and for making football a safer sport with the NFL being a safer playing field.

I declare under penalty of perjury that the foregoing statements are true and correct.  
Executed on this \_\_\_\_\_ day of November, 2016. *December 8*

Name: *Paul J. Jankowski*

Signature: *[Handwritten Signature]*

I declare under penalty of perjury that the foregoing statements are true and correct.  
Executed on this \_\_\_\_\_ day of November, 2016.

Name: \_\_\_\_\_

Signature: \_\_\_\_\_

I declare under penalty of perjury that the foregoing statements are true and correct.  
Executed on this \_\_\_\_\_ day of November, 2016.

Name: \_\_\_\_\_

Signature: \_\_\_\_\_

I declare under penalty of perjury that the foregoing statements are true and correct.  
Executed on this \_\_\_\_\_ day of November, 2016.

Name: \_\_\_\_\_

Signature: \_\_\_\_\_

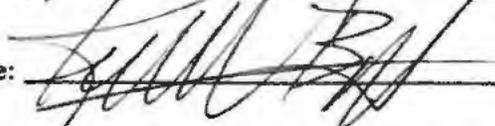
I declare under penalty of perjury that the foregoing statements are true and correct.  
Executed on this \_\_\_\_\_ day of November, 2016.

Name: \_\_\_\_\_

Signature: \_\_\_\_\_

I declare under penalty of perjury that the foregoing statements are true and correct.  
Executed on this 6 day of ~~November~~, 2016.

*December*  
Name: Kenneth Byers

Signature: 

I declare under penalty of perjury that the foregoing statements are true and correct.  
Executed on this \_\_\_\_\_ day of November, 2016.

Name: \_\_\_\_\_

Signature: \_\_\_\_\_

I declare under penalty of perjury that the foregoing statements are true and correct.  
Executed on this \_\_\_\_\_ day of November, 2016.

Name: \_\_\_\_\_

Signature: \_\_\_\_\_

I declare under penalty of perjury that the foregoing statements are true and correct.  
Executed on this \_\_\_\_\_ day of November, 2016.

Name: \_\_\_\_\_

Signature: \_\_\_\_\_

I declare under penalty of perjury that the foregoing statements are true and correct.  
Executed on this \_\_\_\_\_ day of November, 2016.

Name: \_\_\_\_\_

Signature: \_\_\_\_\_

I declare under penalty of perjury that the foregoing statements are true and correct  
Executed on this                      day of November, 2016.

*Bensly G. Cooca Jr., President Philadelphia Chapter NFLA.*

I declare under penalty of perjury that the foregoing statements are true and correct  
Executed on this                      day of November, 2016.

I declare under penalty of perjury that the foregoing statements are true and correct  
Executed on this                      day of November, 2016.

I declare under penalty of perjury that the foregoing statements are true and correct  
Executed on this                      day of November, 2016.

I declare under penalty of perjury that the foregoing statements are true and correct  
Executed on this                      day of November, 2016.

To whom it may concern:

In October 1998, at the very young age of 31 years old, my husband, Marion Butts, was seen by neurologists for symptoms for post traumatic head injuries sustained during his football career with the National Football League. He was diagnosed with permanent neurological damage and dementia. In 2002, Marion was declared permanently disabled by the Social Security Administration. Marion's struggle with neurological problems began long before Social Security deemed him totally and permanently disabled, nevertheless, after a more exacerbating struggle for many more years, the National Football League also followed suit and granted my husband his full disability benefits. This struggle has been a very arduous and devastating task for my family and many other NFL families who we have come to know over the years. Our struggles were battles that we all felt were being fought alone and without any advocacy. Many NFL players and their families are not versed in legal matters, and that includes my family as well. I was asked to speak before the United States Congress in the early years when concussions and deaths of NFL players were beginning to draw the attention of lawmakers. I decided not to appear because I did not want our private lives to be put on public display for the world to see. Most NFL players do not want people to know that they are having cognitive and neurological problems, and this does include my husband. This is precisely why I feel it is incumbent of me to work behind the scenes to help my husband and every other NFL player that I come in contact with. I have taken on this challenge and duty for my husband for many years, but many players do not have the means or wherewithal to fight for themselves, so it is imperative that we have committed, compassionate and vigilant people who can help us further our journey.

I was given the name of Craig Mitnick from a friend at a law firm I contacted. At 9.38 am on September 13, 2013, I contacted Mr. Craig Mitnick with regards to the concussion litigation. This was the most important call that I had ever made because it changed the course of our lives. After a very long detailed conversation detailing with what my husband and many other NFL players have endured with regards to injuries and deaths, I was certain, that finally my husband and all the other NFL players who had no one previously to advocate for them, now, had that advocate. I had never spoken to or met Mr. Mitnick prior to this initial conversation. What any person or family member who is related to a NFL player knows is that the large majority of players do not know what is happening to their brains and why they are having so many neurological issues that are turning their lives upside down.

To make matters even worse, NFL players have never had someone who can very poignantly and succinctly educate them regarding this very complicated concussion litigation. Mr. Craig Mitnick is the only lawyer who has taken the time, literally years, to travel across the country to meet with thousands of NFL players, their families, and their unions to inform and educate them about this settlement and how it can be advantageous to them and their families for their lifetime. Years prior to the settlement announcement, while in the litigation stage, Mr. Mitnick put in hundreds, if not thousands, of hours educating and updating our families about this concussion settlement and how it could effect us. We were all quite confused about whether or not we should opt in or out because no one was out there to help us understand what was going

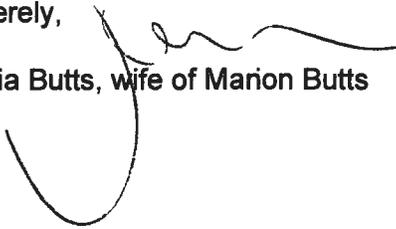
on and how the lawsuit would effect us. Many NFL families, as well as our own, were reluctant to opt in because we were all afraid of signing our lives away and give away our rights to future litigation. I know for a fact, from the many discussions that I have had with other NFL players and their wives and families, that without Mr. Mitnick's dedication and commitment to our well-being, thousands of players would have opted out of this lawsuit.

I can also attest to the most important thing that players find more honorable about Mr. Mitnick than anything money or a settlement can buy... that Mr. Mitnick unselfishly gives the same resolute, undivided and dedicated attention to every NFL payer that he comes in contact with, regardless of whether he represents them or not. This is why I know that my husband and many NFL players across the country now have an advocate who has, and will continue to, dedicate a huge part of his life and practice to the betterment of players. His vigilance and knowledge has brought my family and the families of NFL players throughout the country the solace and peace that they all deserve.

This has been a hard struggle for all of the NFL payers and our families, but I am now optimistic and assured that our fight is going to be a much easier one with Mr. Mitnick on our side. Thank you for your care and concern regarding this matter.

Sincerely,

Valicia Butts, wife of Marion Butts

A handwritten signature in black ink, appearing to read 'Valicia Butts', with a large, sweeping flourish underneath.

# EXHIBIT U

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

IN RE: NATIONAL FOOTBALL  
LEAGUE PLAYERS' CONCUSSION  
INJURY LITIGATION

Kevin Turner and Shawn Wooden,  
*on behalf of themselves and  
others similarly situated,*

Plaintiffs,

v.

National Football League and  
NFL Properties LLC,  
successor-in-interest to  
NFL Properties, Inc.,

Defendants.

THIS DOCUMENT RELATES TO:  
ALL ACTIONS

No. 2:12-md-02323-AB

MDL No. 2323

**Hon. Anita B. Brody**

Civ. Action No. 14-00029-AB

**DECLARATION OF DAVID A ROSEN IN SUPPORT OF CO-LEAD CLASS  
COUNSEL'S PETITION FOR AN AWARD OF ATTORNEY'S FEES AND  
REIMBURSEMENT OF COSTS AND EXPENSES**

DAVID A. ROSEN declares as follows pursuant to 28 U.S.C. § 1746:

1. I am a former partner of the law firm of Rose, Klein & Marias LLP. I was appointed Judge of the Los Angeles Superior Court where I have sat since March 1, 2016. I submit this declaration in support of Co-Lead Class Counsel's Petition for an Award of Attorney's Fees and Reimbursement of Costs and Expenses in connection with and for services rendered and expenses incurred for the common benefit of the Settlement Class in the above-captioned multidistrict litigation ("Action") from the inception of the litigation through July 15,

2016, as well as for the payment of expenses incurred therewith. I have personal knowledge of the matters set forth in this declaration and, if called upon, I could and would testify competently thereto.

2. I was a member of the Plaintiffs' Steering Committee, an active member of the Public Relations Sub-Committee, and chair of the Workers' Compensation Sub-Committee. I also served on the Lien and Ethics Sub-Committees. Specifically in my role with the Public Relations Committee, I actively participated in the selection of and consultation with our professional consultants, and helped prepare individual claimants for public relations activity. With respect to the Workers' Compensation Committee, I studied and produced a memorandum as to the way in which the different workers' compensation laws and systems of the 50 states consider and handle professional athlete's claims in general, and brain trauma claims specifically. This included research into Workers' Compensation statute of limitation issues, cumulative trauma issues and the interface between workers' compensation and civil or third party actions.

3. The schedule attached hereto as Exhibit 1 is a detailed summary indicating the amount of common benefit time spent by the attorneys and professional support staff of my firm who were involved in, and billed fifty or more hours to, this Action, and the lodestar calculation for those individuals based on my firm's current billing rates. For personnel who are no longer employed by my firm, the lodestar calculation is based on the billing rates of such personnel in their final year of employment by my firm. The schedule was prepared from contemporaneous daily time records regularly prepared and maintained by my firm. Time expended in preparing this application for attorney's fees and expenses has been excluded.

4. The hourly rates for the attorneys and professional support staff of my firm included in Exhibit 1 are the same as the regular rates charged for their services in other

contingent matters and have been accepted by other federal courts in other class action cases prosecuted by my firm.

5. The total number of hours expended on the common benefit of this Action by my firm during the time period is 243.03 hours. The total lodestar for my firm for those hours is \$157,969.50, consisting of \$157,969.50 for attorneys' time and \$0.00 for professional support staff time.

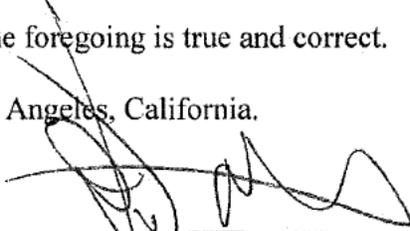
6. My firm's lodestar figures are based solely upon my firm's billing rates, which rates do not include charges for expense items. Expense items are billed separately and such charges are not duplicated in my firm's billing rates.

7. As detailed in Exhibit 2 hereto, my firm is also seeking reimbursement of a total of \$112,168.64 in common benefit expenses incurred in connection with the prosecution of this Action. These expenses are reflected on the books and records of my firm. These books and records are prepared from expense vouchers, check records, and other source material, and are an accurate record of the expenses incurred.

8. With respect to the standing of my firm to share in an award of fees, costs, and expenses, attached hereto as Exhibit 3 is a biography of my firm, including the attorneys in my firm who were principally involved in this Action.

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

Executed on December 22, 2016, at Los Angeles, California.



David A. Rosen

# **EXHIBIT 1**

**IN RE: NATIONAL FOOTBALL LEAGUE PLAYERS' CONCUSSION INJURY  
LITIGATION**

**No. 12-md-2323-AB**

**[ROSE KLEIN & MARIAS]**

**LODESTAR REPORT**

**Inception through July 15, 2016**

<b>NAME</b>	<b>HOURS</b>	<b>HOURLY RATE</b>	<b>AMOUNT</b>
<b>PARTNERS:</b>			
<b>David A. Rosen</b>	243.03	\$650.00	\$157,969.50
<b>ASSOCIATES:</b>			
<b>STAFF ATTORNEYS:</b>			
<b>CONTRACT ATTORNEYS:</b>			
<b>PARALEGALS:</b>			

<b>TOTALS:</b>			\$157,969.50
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# **EXHIBIT 2**

**IN RE: NATIONAL FOOTBALL LEAGUE PLAYERS' CONCUSSION INJURY  
LITIGATION**

**No. 12-md-2323-AB**

**[ROSE KLEIN & MARIAS]**

**COST AND EXPENSE REPORT**

**Inception through July 15, 2016**

<b>NUMBER</b>	<b>CATEGORY</b>	<b>AMOUNT</b>
1	Assessments	\$100,000.00
2	Commercial Copies	
3	Computerized Research	
4	Court Reporters/Transcripts	
5	Expert Services	
6	Facsimile	
7	Filing & Service Fees	
8	In-House Copies	
9	Long Distance Telephone	\$3.52
10	Postage/Express Delivery	
11	Travel/Meals/Lodging	\$12,165.12
12	Miscellaneous	
<b>TOTAL EXPENSES</b>		<b>\$112,168.64</b>

# **EXHIBIT 3**

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## Rosen, David A.

Rose, Klein & Marias, LLP



801 S. Grand Avenue, 11th Floor  
Los Angeles, CA 90017

Phones: 213-626-0571  
Fax: 213-623-7755  
Contact Us

[www.rkmlaw.net](http://www.rkmlaw.net)  
Other websites associated with this firm:  
[www.pro-unionsweb.com](http://www.pro-unionsweb.com)

### LAWYER OVERVIEW

David Rosen focuses on the trial preparation, trial and appeal of toxic tort, asbestos exposure, and employment dispute cases. Mr. Rosen has represented workers and consumers from many different trades and areas in these matters, handling a number of jury trials and successful appeals.

Mr. Rosen is a member of the American Association for Justice (AAJ) - Board of Governors 2008 to present, the Consumer Attorneys of California (CAOC) - Board of Governors 1993 to present, the Consumer...

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#### Current Employment Position(s)

- Managing Partner

#### Year Joined Firm

- 1979

#### Practice Areas

- Toxic Torts, including Asbestos Exposure 45%
- Employment Disputes 20%
- Consumer, Class Actions, Environmental 35%

#### Litigation

- 98%

#### Representative Cases

- Traub v. Board of Retirement, 34 Cal. 3d 793 (1983)
- Anderson v. Owens Corning, 53 Cal. 3d 987 (1991)
- Nelson v. Flintkote, 172 Cal. App. 3d 727 (1985)
- Hartwell Corp. v. Superior Court, 27 Cal. 4th 256 (2002)
- Clark v. Baxter Healthcare, 83 Cal.App. 4th 1048 (2000)
- Everts v. Intermedics, 29 Cal.App. 4th 779 (1994)

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### MAP LOCATION



Placement on map is approximate.

### HOW DO I CHOOSE A LAWYER?

Consider the following:  
**Comfort Level** - Are you comfortable telling the lawyer personal information? Does the lawyer seem interested in solving your problem?  
**Credentials** - How long has the lawyer been in practice? Has the lawyer worked on other cases similar to yours?  
**Cost** - How are the lawyer's fees structured - hourly or flat fee? Can the lawyer estimate the cost of your case?  
**City** - Is the lawyer's office conveniently located?

### NOT SURE WHAT QUESTIONS TO ASK A LAWYER?

Here are a few to get you started:

- How long have you been in practice?
- How many cases like mine have you handled?
- How often do you settle cases out of court?
- What are your fees and costs?
- What are the next steps?

### WANT TO CHECK LAWYER DISCIPLINE?

## ROSE, KLEIN & MARIAS LLP



SELECT AN OFFICE  
TO CALL NOW

## A Law Firm With A History Of Excellence

For more than 80 years, our law firm has been committed to two things:

- First, we are committed to getting maximum compensation for each of our clients in personal injury and workers' compensation cases.
- Second, we are committed to furthering the laws that apply to these cases and the way that these cases are handled. We strive to create an environment in which people who are hurt at work or injured due to an act of negligence do not have to struggle to get by.

The history of Rose, Klein & Marias began in 1936, when attorney Victor C. Rose began practicing law in Los Angeles. Four years later, he was joined by Alfred M. Klein. In 1946, Eugene Marias joined the team.

In the decades since, the firm has expanded to include dozens of experienced lawyers. We now have ten locations to conveniently serve all of Southern California. Although we have

grown, our dedication to helping our clients hasn't changed. This dedication is what has allowed us to thrive. We are driven to succeed.

## Dedicated to Personal Injury and Workers' Compensation

Our law firm is focused on two areas of practice: workers' compensation and personal injury. These are the matters we have devoted our careers to. These are the cases we care about. Our focus means that we have the depth of knowledge to help our clients get results.

We take pride in the fact that attorneys from our firm have spearheaded many of the types of cases we handle. In 1975, we were the first law office in California to bring a lawsuit against asbestos manufacturers for damage done by their product. Throughout the years, we have broken new ground in numerous types of personal injury and workers' comp cases.

## Leadership in the Profession

Our team is made up of leaders. Among our lawyers are past presidents of the California Applicants' Attorneys Association (CAAA) and the Consumer Attorneys of California (CAOC).

Our peers, as well as our future peers, turn to us to learn about the law. In addition to giving seminars on various topics, our law firm has a 45-year history of educating the lawyers of the future at the University of Southern California (USC) and the University of California - Los Angeles (UCLA).

## Our Next Accomplishment: Compensation for You

While our history is filled with many accomplishments, the one we want to discuss with you is one we have yet to achieve: getting you the compensation you need to move forward with your life. Let us show you how we will achieve it.

Want a Free Consultation? The best way is to Contact us today to schedule a free consultation about any personal injury or workers' compensation case, from auto accidents to repetitive motion injuries.

## Schedule Your Free Consultation

### Schedule your free consultation:

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Cerritos: 562-606-0348

Ontario: 909-581-9476

San Diego: 619-677-1431

Ventura: 805-290-4882

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### Firm Affiliations:



# EXHIBIT V

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

IN RE: NATIONAL FOOTBALL  
LEAGUE PLAYERS' CONCUSSION  
INJURY LITIGATION

Kevin Turner and Shawn Wooden,  
*on behalf of themselves and  
others similarly situated,*

Plaintiffs,

v.

National Football League and  
NFL Properties LLC,  
successor-in-interest to  
NFL Properties, Inc.,

Defendants.

THIS DOCUMENT RELATES TO:  
ALL ACTIONS

No. 2:12-md-02323-AB

MDL No. 2323

**Hon. Anita B. Brody**

Civ. Action No. 14-00029-AB

**DECLARATION OF FREDERICK SCHENK IN SUPPORT OF CO-LEAD CLASS  
COUNSEL'S PETITION FOR AN AWARD OF ATTORNEY'S FEES AND  
REIMBURSEMENT OF COSTS AND EXPENSES**

FREDERICK SCHENK declares as follows pursuant to 28 U.S.C. § 1746:

1. I am a partner of the law firm of Casey, Gerry, Schenk, Francavilla, Blatt & Penfield, LLP. I submit this declaration in support of Co-Lead Class Counsel's Petition for an Award of Attorney's Fees and Reimbursement of Costs and Expenses in connection with and for services rendered and expenses incurred for the common benefit of the Settlement Class in the above-captioned multidistrict litigation ("Action") from the inception of the litigation through July 15, 2016, as well as for the payment of expenses incurred therewith. I have personal

knowledge of the matters set forth in this declaration and, if called upon, I could and would testify competently thereto.

2. Casey Gerry became involved in the steering committee in April, 2012 when we were appointed by the US District Court to serve on the plaintiff's steering committee. Casey Gerry was appointed to the communication and media subcommittee which played a critical role in managing of the messaging, content and press releases that were shared with the public. Also, the daily dissemination of content that was being sent out on social media was forwarded to us. Frederick Schenk has a degree in communications from UCLA. With that background in media and journalism, he was selected as the representative for our law firm to review and determine what, if any, responses needed to be crafted and to determine who would best be able to respond to the messaging. He was prepared to help respond to adverse media issues that were brought to the steering committee and was prepared to assess appropriate responses that would have to be crafted on behalf of the committee.

There were several scheduled steering committee meetings which took place in New York which Mr. Schenk attended and at which topics included discussions regarding the committee's assessment of the press and the messaging which was being crafted by the committee and the professional staff whom we hired to assist us. Mr. Schenk also attended the preemption oral arguments in the US District Court, Eastern District of Pennsylvania. The day prior to that hearing, Mr. Schenk met with our team of counsel in order to participate in the discussion where we were invited to pose mock questions for the purpose of seeking out responses from our counsel. In addition, there were scheduled phone conferences which occurred throughout the time the case was pending that involved.

Mr. Schenk also attended meetings in New York where invitations had been extended to all plaintiff's attorneys who had clients or who wanted to learn more about the proposed class action. There were many scheduled phone conference calls in anticipation of and in preparation of that event. Mr. Schenk participated in most of those calls and in the meeting which occurred in New York where the proposed plan was presented and where a lively discussion took place. This meeting included individual discussions between those of us on the steering committee and lawyers from around the country who were invited to attend in order to learn more about the anticipated terms of the settlement.

During the course of the litigation, Mr. Schenk was often contacted by lawyers on the committee to discuss and to share information that would help us stay on targeted messaging. As steering committee members, we often served as ombudsmen to make sure that those who had cases, but were not on the steering committee, were properly advised as to the process and to share what information was permitted to be disclosed in order for non-committee counsel to advise their own clients of the status of the potential class action.

3. The schedule attached hereto as Exhibit 1 is a detailed summary indicating the amount of common benefit time spent by the attorneys and professional support staff of my firm who were involved in, and billed fifty or more hours to, this Action, and the lodestar calculation for those individuals based on my firm's current billing rates. For personnel who are no longer employed by my firm, the lodestar calculation is based on the billing rates of such personnel in their final year of employment by my firm. The schedule was prepared from contemporaneous daily time records regularly prepared and maintained by my firm. Time expended in preparing this application for attorney's fees and expenses has been excluded.

4. The hourly rates for the attorneys and professional support staff of my firm included in Exhibit 1 are the same as the regular rates charged for their services in other matters.

5. The total number of hours expended on the common benefit of this Action by my firm during the time period is 417.40 hours. The total lodestar for my firm for those ours is \$333,920 consisting of \$333,920 for attorneys' time.

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

7. As detailed in Exhibit 2 hereto, my firm is seeking reimbursement of a total of \$86,651.72 in common benefit expenses incurred in connection with the prosecution of this Action. These expenses are reflected on the books and records of my firm. These books and records are prepared from expense vouchers, check records, and other source material, and are an accurate record of the expenses incurred.

8. With respect to the standing of my firm to share in an award of fees, costs, and expenses, attached hereto as Exhibit 3 is a biography of my firm, including the attorneys in my firm who were principally involved in this Action.

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

Executed on January 5, 2017 at San Diego, California.

  
\_\_\_\_\_  
FREDERICK SCHENK  
CASEY, GERRY, SCHENK,  
FRANCAVILLA, BLATT & PENFIELD,  
LLP

# **EXHIBIT 1**

**IN RE: NATIONAL FOOTBALL LEAGUE PLAYERS' CONCUSSION INJURY LITIGATION**

**No. 12-md-2323-AB**

**EXHIBIT #1**

**Casey, Gerry, Schenk, Francavilla, Blatt & Penfield, LLP**

**LODESTAR REPORT**

**Inception through July 15, 2016**

<b>NAME</b>	<b>HOURS</b>	<b>HOURLY RATE</b>	<b>AMOUNT</b>
<b>PARTNERS:</b>			
<b>Frederick Schenk</b>	417.40	800	\$333,920
<b>ASSOCIATES:</b>			
<b>STAFF ATTORNEYS:</b>			
<b>CONTRACT ATTORNEYS:</b>			
<b>PARALEGALS:</b>			
<b>TOTALS:</b>	417.40		\$333,920

# **EXHIBIT 2**

**IN RE: NATIONAL FOOTBALL LEAGUE PLAYERS' CONCUSSION INJURY  
LITIGATION**

**No. 12-md-2323-AB**

**EXHIBIT #2**

**Casey, Gerry, Schenk, Francavilla, Blatt & Penfield, LLP**

**COST AND EXPENSE REPORT**

**Inception through July 15, 2016**

<b>NUMBER</b>	<b>CATEGORY</b>	<b>AMOUNT</b>
1	Assessments	\$75,000.00
2	Commercial Copies	
3	Computerized Research	
4	Court Reporters/Transcripts	
5	Expert Services	
6	Facsimile	
7	Filing & Service Fees	
8	In-House Copies	
9	Long Distance Telephone	
10	Postage/Express Delivery	
11	Travel/Meals/Lodging	\$11,651.72
12	Miscellaneous	
<b>TOTAL EXPENSES</b>		<b>\$86,651.72</b>

# **EXHIBIT 3**

**EXHIBIT #3**

CASEY GERRY SCHENK FRANCAVILLA BLATT & PENFIELD, LLP  
(CASEYGERRY)  
FIRM BIO

Casey Gerry Schenk Francavilla Blatt & Penfield, LLP (CaseyGerry), founded in 1947, is one of the oldest plaintiffs' firms in the State of California. Partners David S. Casey, Jr. and Frederick Schenk represented Gray Davis in bringing a 17200 action on behalf of the State of California, as well as playing a leadership and co-trial role in the Exxon Valdez litigation. The firm has extensive experience in mass and/or multi-party class action in the complex litigation area, including the Scott class action in Louisiana, the Brown class action in California, as well as playing a leadership role (with Herman Mathis Casey & Kitchens) in In Re Propulsid Products Liability Litigation (MDL 1355) and In Re: Rezulin Products Liability Litigation (MDL 1348). The firm helped lead a recovery of \$40 million in improper sewage rate charge cases involving Shames v. City of San Diego and in representing POW's from World War II against companies which enslaved them in In Re World War II Era, et al. v. Mitsui & Co., Ltd. (MDL 1347). The firm also played a role in one of the largest commercial fraud cases against Honda of America on behalf of dealers who were defrauded by paying bribes for new car allocations. The firm has over 30 years of experience in asbestos litigation, automobile product litigation (Barrett v. GM seatbacks, Carter v. GM gas tanks), hypodermic needle stick cases, and an improper tax case resulting in a multi-million dollar recovery in Villa v. City of Chula Vista. The firm has represented the City of San Diego and County of San Diego in asbestos litigation and has played a lead role in wage & hour litigation in Galvez v. Waste Management. The firm also played a leadership role in In Re Incretin Mimetics Products Liability Litigation (MDL 2452) and In Re Ephedra Products Liability Litigation (MDL 1598), and currently serves on the Plaintiffs' Steering Committee for In Re: Volkswagen "Clean Diesel" Marketing, Sales Practices, and Products Liability Litigation (MDL 2672).

The firm currently serves on the Plaintiffs' Steering Committee for the NFL Players Concussion Injury Litigation and CaseyGerry partner Frederick Schenk is a member of its Communications/Media Committee. Members of the firm include two past presidents of the Association of Trial Lawyers of American (now AAJ) and the past president of the State Bar of California. Firm members have been recognized as members of the International Academy of Trial Lawyers and International Society of Barristers and included multiple times in the *Los Angeles Daily Journal* list of Top 100 Lawyers in California. Five of the firm's partners are members of the American Board of Trial Advocates (ABOTA), and partner Frederick Schenk currently serves on the Executive Committee of the San Diego chapter of ABOTA.

# **EXHIBIT W**

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

IN RE: NATIONAL FOOTBALL  
LEAGUE PLAYERS' CONCUSSION  
INJURY LITIGATION

Kevin Turner and Shawn Wooden,  
*on behalf of themselves and  
others similarly situated,*

Plaintiffs,

v.

National Football League and  
NFL Properties LLC,  
successor-in-interest to  
NFL Properties, Inc.,

Defendants.

THIS DOCUMENT RELATES TO:  
ALL ACTIONS

No. 2:12-md-02323-AB

MDL No. 2323

**Hon. Anita B. Brody**

Civ. Action No. 14-00029-AB

**DECLARATION OF ANTHONY TARRICONE IN SUPPORT OF CO-LEAD CLASS  
COUNSEL'S PETITION FOR AN AWARD OF ATTORNEY'S FEES AND  
REIMBURSEMENT OF COSTS AND EXPENSES**

Anthony Tarricone declares as follows pursuant to 28 U.S.C. § 1746:

1. I am a partner of the law firm of Kreindler & Kreindler LLP. I submit this declaration in support of Co-Lead Class Counsel's Petition for an Award of Attorney's Fees and Reimbursement of Costs and Expenses in connection with and for services rendered and expenses incurred for the common benefit of the Settlement Class in the above-captioned multidistrict litigation ("Action") from the inception of the litigation through July 15, 2016, as

well as for the payment of expenses incurred therewith. I have personal knowledge of the matters set forth in this declaration and, if called upon, I could and would testify competently thereto.

2. Partner Anthony Tarricone conceived, organized and directed the carefully orchestrated communications strategy for the litigation. Anthony Tarricone co-chaired the Communications Committee, and personally sought out and was responsible for retaining Ray DeLorenzi and the entire team at CLS Strategies. He worked closely with co-lead counsel, Sol Weiss and Chris Seeger, as well as Steve Marks (PEC member and Co-Chair of the Communications Committee) to implement and execute the plaintiffs communications strategy, which involved work on a daily basis until the settlement was announced and at various times thereafter as necessary.

All common benefit work performed by the Kreindler firm was directly authorized by Co-Lead Counsel.

3. The schedule attached hereto as Exhibit 1 is a detailed summary indicating the amount of common benefit time spent by the attorneys and professional support staff of my firm who were involved in, and billed fifty or more hours to, this Action, and the lodestar calculation for those individuals based on my firm's current billing rates. For personnel who are no longer employed by my firm, the lodestar calculation is based on the billing rates of such personnel in their final year of employment by my firm. The schedule was prepared from contemporaneous daily time records regularly prepared and maintained by my firm. Time expended in preparing this application for attorney's fees and expenses has been excluded.

4. The hourly rates for the attorneys and professional support staff of my firm included in Exhibit 1 are the same as the regular rates charged for their services in other contingent matters.

5. The total number of hours expended on the common benefit of this Action by myself only is **1,573** hours. The total lodestar for my hours is **\$1,258,400.00**, which excludes time expended by other attorneys and support staff as directed for purposes of this Declaration.

In addition to my personal common benefit time, other attorneys in my firm (partners and associates) expended a total of 73.7 hours, and support staff (paralegal) expended 6.7 hours, with a lodestar for this time of \$42,600 for attorney time and \$1,340 for paralegal time, totaling \$43,940.

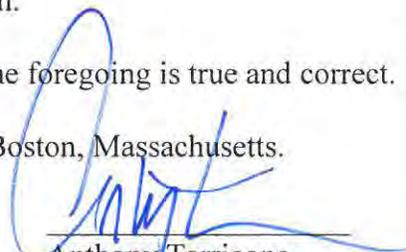
6. My firm's lodestar figures are based solely upon my firm's billing rates, which rates do not include charges for expense items. Expense items are billed separately and such charges are not duplicated in my firm's billing rates.

7. As detailed in Exhibit 2 hereto, my firm is seeking reimbursement of a total of **\$120,832.04** in common benefit expenses incurred in connection with the prosecution of this Action. These expenses are reflected on the books and records of my firm. These books and records are prepared from expense vouchers, check records, and other source material, and are an accurate record of the expenses incurred.

8. With respect to the standing of my firm to share in an award of fees, costs, and expenses, attached hereto as Exhibit 3 is a biography of my firm, including the attorneys in my firm who were principally involved in this Action.

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

Executed on the 23<sup>rd</sup> day of January at Boston, Massachusetts.



Anthony Tarricone  
Kreindler & Kreindler LLP  
855 Boylston Street  
Boston, MA 02116  
617-424-9100

# **EXHIBIT 1**

**IN RE: NATIONAL FOOTBALL LEAGUE PLAYERS' CONCUSSION INJURY  
LITIGATION**

**No. 12-md-2323-AB**

**KREINDLER & KREINDLER LLP**

**LODESTAR REPORT**

**Inception through July 15, 2016**

<b>NAME</b>	<b>HOURS</b>	<b>HOURLY RATE</b>	<b>AMOUNT</b>
<b>PARTNERS:</b>			
<b>Anthony Tarricone</b>	1,573	\$800.00	\$1,258,400.00
<b>ASSOCIATES:</b>			
<b>STAFF ATTORNEYS:</b>			
<b>CONTRACT ATTORNEYS:</b>			
<b>PARALEGALS:</b>			
<b>TOTALS:</b>	1,573		\$1,258,400.00

# **EXHIBIT 2**

**IN RE: NATIONAL FOOTBALL LEAGUE PLAYERS' CONCUSSION INJURY  
LITIGATION**

**No. 12-md-2323-AB**

**KREINDLER & KREINDLER LLP**

**COST AND EXPENSE REPORT**

**Inception through July 15, 2016**

<b>NUMBER</b>	<b>CATEGORY</b>	<b>AMOUNT</b>
1	Assessments	\$100,000.00
2	Commercial Copies	\$529.00
3	Computerized Research	\$1,082.82
4	Court Reporters/Transcripts	
5	Expert Services	
6	Facsimile	
7	Filing & Service Fees	
8	In-House Copies	
9	Long Distance Telephone	
10	Postage/Express Delivery	90.00
11	Travel/Meals/Lodging	\$19,130.22
12	Miscellaneous	
<b>TOTAL EXPENSES</b>		<b>\$120,832.04</b>

# **EXHIBIT 3**



Anthony Tarricone, Partner

**Kreindler & Kreindler LLP**

855 Boylston Street

Boston, Massachusetts 02116

Phone: 617-424-9100

Fax: 617-424-9120

E-mail: [atarricone@kreindler.com](mailto:atarricone@kreindler.com)

Anthony Tarricone has over 30 years experience representing families who have suffered the emotional and financial devastation that results from the unexpected death or injury of a spouse, child, parent or loved one. He has a proven record of success litigating wrongful death and catastrophic injury cases involving aircraft accidents and disasters; defective products; medical negligence; and other complex cases. Before joining Kreindler & Kreindler LLP, Mr. Tarricone was a founding partner of Sarrouf, Tarricone Flemming, where he headed the firm's aviation practice, handling a broad spectrum of cases from air carrier disasters to general aviation accidents in claims against air carriers; manufacturers of aircraft and components; the Federal Aviation Administration (FAA); aircraft repair stations; and operators of charter and rental aircraft. Mr. Tarricone is currently the Chair of International Practice for the American Association of Justice and is a member of PEOPIL (Pan American Organisation of Personal Injury Lawyers). He has served for many years as a member of the Board of Governors and Executive Committee of the Association of Trial Lawyers recently named American Association for Justice which is the largest association of civil trial attorneys in the world. For the past several years he has been elected as a national officer of the Association, most recently serving as President. He has also served as President of the Massachusetts Academy of Trial Attorneys, where he continues to serve as a Governor and member of the Executive Committee. Mr. Tarricone has long been a vocal advocate for individuals who have suffered harm by the negligence and wrongful conduct of corporate and governmental interests. Through his extensive work in state and national trial lawyer organizations, Mr. Tarricone has fought to ensure that individuals have meaningful legal remedies and access to justice in state and federal courts throughout the nation.

Mr. Tarricone presently serves on the Plaintiffs' Executive Committee and as Plaintiffs' Liaison Counsel in the Granuflo Dialysis Litigation as well as currently serving on the Plaintiffs' Steering Committee of the NFL Concussion Injury Litigation. He also recently served as a Committee Coordinator for the Plaintiffs' Steering Committee in the Deepwater Horizon BP Oil Spill litigation. He has a long history of working harmoniously and effectively in settings involving diverse parties and interests and has worked with lawyers and firms throughout the United States and in Europe.

Mr. Tarricone is also a member of the National Transportation Safety Board Bar Association and the Lawyer-Pilots Bar Association. He is a frequent lecturer and writer for Bar Associations and Professional Associations. He has been selected for listing in the Best Lawyers in America and Super Lawyers publications, and he holds the highest rating established by Martindale-Hubbell, which is given to lawyers and law firms considered by the legal community to have Very High to Preeminent Legal Ability and who embrace Very High Professional Standards.

Mr. Tarricone attended Suffolk University Law School, where he served as Note Editor of the Law Review and graduated first in his class. After graduation, he served as Law Clerk to the Justices of the Superior Court before entering private practice.

# **EXHIBIT X**

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

IN RE: NATIONAL FOOTBALL  
LEAGUE PLAYERS' CONCUSSION  
INJURY LITIGATION

Kevin Turner and Shawn Wooden,  
*on behalf of themselves and  
others similarly situated,*  
Plaintiffs,

v.

National Football League and  
NFL Properties LLC,  
successor-in-interest to  
NFL Properties, Inc.,  
Defendants.

THIS DOCUMENT RELATES TO:  
ALL ACTIONS

No. 2:12-md-02323-AB

MDL No. 2323

**Hon. Anita B. Brody**

Civ. Action No. 14-00029-AB

**DECLARATION OF CHARLES S. ZIMMERMAN IN SUPPORT OF CO-LEAD CLASS  
COUNSEL'S PETITION FOR AN AWARD OF ATTORNEY'S FEES AND  
REIMBURSEMENT OF COSTS AND EXPENSES**

Charles S. Zimmerman declares as follows pursuant to 28 U.S.C. § 1746:

1. I am a Partner of the law firm of Zimmerman Reed LLP. I submit this declaration in support of Co-Lead Class Counsel's Petition for an Award of Attorney's Fees and Reimbursement of Costs and Expenses in connection with and for services rendered and expenses incurred for the common benefit of the Settlement Class in the above-captioned multidistrict litigation ("Action") from the inception of the litigation through July 15, 2016. I

have personal knowledge of the matters set forth in this declaration and, if called upon, I could and would testify competently thereto.

2. I am a member of the Plaintiffs' Steering Committee in this matter. My law firm was one of the founding members of the NFL Concussion Litigation. We currently represent over 400 retired NFL players. Our investigation of the factual and legal claims in this action started in early 2010, when several retired NFL players we were representing in the publicity rights case *Dryer, et al v. National Football League*, began detailing to us the neurological difficulties they were experiencing and asking questions about the blows to the head they suffered while active players. A pattern began to emerge and we decided to further investigate the NFL's potential liability to our clients.

The issues described to us by our NFL clients in 2010 had particular significance to my firm. A former law partner at our firm, retired NFL player Fred McNeill, exhibited similar symptoms. Fred was a trusted partner and good friend, but we could not understand his declining cognitive performance. When we reached out to the many hundreds of our then-clients who were retired NFL football players, the response was overwhelming. Nearly all of our clients reported some symptoms of neurological illness and a desire to participate in seeking a remedy against the NFL.

Our initial investigation of potential claims against the NFL involved several conferences with Dr. Bennet Omalu and other key figures in the science of NFL head injuries. These meetings occurred before the commencement of any litigation and these coordinated proceedings. By mid-2011, we decided to fully pursue the matter. We filed our first complaint in December 2011, and filed numerous subsequent complaints on behalf of retired NFL players.

With several law firms filing related complaints, we convened and participated in the first organizational meeting of counsel in this matter with the Hausfeld and Anapol Weiss firms, at Hausfeld's Washington DC offices on December 5, 2011. There, we discussed and decided upon our desire to advocate for MDL status of the action in the Eastern District of Pennsylvania before the Hon. Anita B. Brody. Those efforts ultimately came to fruition upon the ruling of the Judicial Panel on Multidistrict Litigation, which created this MDL.

After the formation of the MDL, I sought and was appointed to the Plaintiffs' Steering Committee. My firm and I worked at the request of Lead Counsel on a variety of matters, including researching and drafting memoranda regarding the NFL's preemption defense, meeting with experts regarding a medical monitoring protocol, participating in leadership strategy meetings and activities, coordinating the participation of players for public relations and other efforts, providing information necessary for settlement efforts, and, perhaps most significantly, chairing a subcommittee on class member representation and ethics issues. In this role with the ethics subcommittee, my firm helped to retain a consulting ethics expert on behalf of the MDL, Professor John Burkoff, and coordinated the efforts to address class member confusion and ethical issues created by misleading advertising campaigns aimed at NFL retired players. We worked with lead counsel and many other MDL counsel, the Garretson group, and Settlement Administrator BrownGreer to address issues surrounding class member confusion and ethics.

My firm and I also worked extensively with our clients and other leadership counsel to gain support and approval of the Settlement in this matter at each step. We will continue this work to support implementation of the Settlement for the benefit of all retired players, including our hundreds of clients.

3. The schedule attached hereto as Exhibit 1 is a detailed summary indicating the amount of common benefit time spent by the attorneys and professional support staff of my firm who were involved in, and billed fifty or more hours to, this Action, and the lodestar calculation for those individuals based on my firm's current billing rates. For personnel who are no longer employed by my firm, the lodestar calculation is based on the billing rates of such personnel in their final year of employment by my firm. The schedule was prepared from contemporaneous daily time records regularly prepared and maintained by my firm. Time expended in preparing this application for attorney's fees and expenses has been excluded.

4. The hourly rates for the attorneys and professional support staff of my firm included in Exhibit 1 are the same as they charge for non-contingent work that is paid on an hourly basis, or for rates paid to attorneys of comparable experience and reputation in the relevant legal market.

5. The total number of hours expended on the common benefit of this Action by my firm during the time period is 1,106.50 hours. The total lodestar for my firm for those hours is \$885,907.25, consisting of \$870,727.25 for attorneys' time and \$15,180.00 for professional support staff time.

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

7. As detailed in Exhibit 2 hereto, my firm is seeking reimbursement of a total of \$135,545.72 in common benefit expenses incurred in connection with the prosecution of this Action. These expenses are reflected on the books and records of my firm. These books and

records are prepared from expense vouchers, check records, and other source material, and are an accurate record of the expenses incurred.

8. With respect to the standing of my firm to share in an award of fees, costs, and expenses, attached hereto as Exhibit 3 is a biography of my firm, including the attorneys in my firm who were principally involved in this Action.

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

Executed on January 6, 2017, at Minneapolis, Minnesota.

s/ Charles S. Zimmerman  
Charles S. Zimmerman

# **EXHIBIT 1**

**IN RE: NATIONAL FOOTBALL LEAGUE PLAYERS' CONCUSSION INJURY  
LITIGATION**

**No. 12-md-2323-AB**

**ZIMMERMAN REED LLP**

**LODESTAR REPORT**

**Inception through July 15, 2016**

<b>NAME</b>	<b>HOURS</b>	<b>HOURLY RATE</b>	<b>AMOUNT</b>
<b>PARTNERS:</b>			
Charles S. Zimmerman	580.75	\$900	\$522,675.00
J. Gordon Rudd, Jr.	210.20	\$795	\$167,109.00
David M. Cialkowski	95.30	\$695	\$66,233.50
Brian C. Gudmundson	165.05	\$695	\$114,709.75
<b>PARALEGALS:</b>			
Tina M. Olson	55.20	\$275	\$15,180.00
<b>TOTALS:</b>	1106.50		\$885,907.25

# **EXHIBIT 2**

**IN RE: NATIONAL FOOTBALL LEAGUE PLAYERS' CONCUSSION INJURY  
LITIGATION**

**No. 12-md-2323-AB**

**ZIMMERMAN REED LLP**

**COST AND EXPENSE REPORT**

**Inception through July 15, 2016**

<b>NUMBER</b>	<b>CATEGORY</b>	<b>AMOUNT</b>
1	Assessments	\$100,000.00
2	Commercial Copies	
3	Computerized Research	\$652.30
4	Court Reporters/Transcripts	
5	Expert Services	\$1887.50
6	Facsimile	
7	Filing & Service Fees	
8	In-House Copies	\$1127.80
9	Long Distance Telephone	\$347.46
10	Postage/Express Delivery	\$1,473.44
11	Travel/Meals/Lodging	\$30,024.83
12	Miscellaneous	\$32.39
<b>TOTAL EXPENSES</b>		<b>\$135,545.72</b>

# **EXHIBIT 3**

ZIMMERMAN | REED  
— FIRM RESUME

MINNEAPOLIS

Zimmerman Reed, LLP  
1100 IDS Center,  
80 South 8th Street  
Minneapolis, MN 55402  
t: 612.341.0400  
f: 612.341.0844  
zimmreed.com

LOS ANGELES

Zimmerman Reed, LLP  
2381 Rosecrans Avenue,  
Suite 328  
Manhattan Beach, CA 90245  
t: 877.500.8780  
f: 877.500.8781  
zimmreed.com

PHOENIX

Zimmerman Reed, LLP  
14646 North Kierland Blvd  
Suite 145  
Scottsdale, Arizona 85254  
t: 480.348.6400  
f: 480.348.6415  
zimmreed.com

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Alyssa J. Leary ..... 7

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## **FIRM PRACTICE AND ACHIEVEMENTS**

Zimmerman Reed is a nationally recognized leader in complex and class action litigation and has been appointed as lead counsel in some of the largest and most complex cases in federal and state courts across the country. The firm was founded in 1983 and has successfully represented thousands of consumers and injured individuals nationwide in significant and demanding cases. The firm's practice includes a wide range of legal issues and complex cases involving consumer fraud, ERISA, shareholder actions, environmental torts, pharmaceutical drugs, dangerous or defective products, human rights violations, and privacy litigation. Since 2010, Zimmerman Reed has earned a first-tier "Best Law Firm" ranking released by U.S. News & World Report.

## **ZIMMERMAN REED ATTORNEYS**

**Carolyn G. Anderson** is a Managing Partner at Zimmerman Reed and leads the firm's Securities & Financial Fraud, Antitrust, and Public & Attorney General practice groups.

Carolyn has successfully represented small investors, institutional clients, and states in individual and nationwide securities fraud, ERISA, and antitrust actions. She has served in a leadership role in obtaining significant recoveries in both individual actions and multi-state actions.

Carolyn is currently serving as Lead Counsel in a case representing the State of New Mexico. In that case, the State is alleging antitrust and unfair practices against Visa and MasterCard. Carolyn also served as Lead Counsel in an antitrust action, working with a coalition of four Attorneys General, against manufacturers of LCD displays. The case was filed in state court but removed to federal court under the Class Action Fairness Act (CAFA). After opposing this removal at the district court and the Fifth Circuit, the State petitioned the U.S. Supreme Court. The Supreme Court ruled unanimously in favor of Mississippi, reversing the Fifth Circuit's decision and clarifying the standard for removal of state actions under CAFA. *Mississippi ex rel. Hood v. AU Optronics*, 134 S. Ct. 736 (2014).

Carolyn also represents the Office of Attorney General for the State of Mississippi, defending that Office in an action brought by Google, challenging the State's authority to issue a Civil Investigative Demand (CID). Google attempted to enjoin the Attorney General's CID authority and the district court granted that motion. In April, 2016, the State prevailed and the district court's decision was reversed by the Fifth Circuit.

Carolyn was also appointed Co-Lead Counsel on behalf of investors alleging losses due to Wells Fargo's securities lending program. The case settled for \$62 million, two days before trial was set to commence. She serves as Interim Co-Lead Counsel in an ERISA matter pending in the District of Minnesota, against fiduciaries of U.S. Bancorp Pension Plan for violations of ERISA. Carolyn also served as Class Counsel on behalf of investors who had purchased bond funds from Morgan Keegan in a lawsuit that arose from the collapse of three mutual funds. The case also involved the auditor as a defendant. In 2016, a \$125 million settlement was reached with the assistance of mediator Layn Phillips, a former U.S. Attorney and former United States District Judge.

In prior representation, Carolyn represented large groups of investors with significant losses involving Merrill Lynch, AIG, Boston Scientific, and Lehman Brothers. Carolyn also led a legal team in a case brought by investors against American Express Financial Advisors, challenging that company's practices and breaches of fiduciary duty with its investing customers. The case, brought under the Investment Advisor Act, resulted in a \$100 million settlement. Carolyn also successfully represented Midwest farmers/shareholders who challenged an ethanol plant's merger with Archer Daniels Midland; she was appointed Class Counsel in that matter. The case was resolved weeks prior to trial. Carolyn was also appointed Lead Counsel in a securities fraud lawsuit involving Boston Scientific, representing a public pension fund and a certified class.

In addition to serving in positions of leadership in investor protection litigation, Carolyn currently represents *pro bono* one hundred not-for-profit organizations related to their losses from the \$3.6 billion Petters Ponzi scheme, centered in Minnesota. She was appointed by the federal judge to serve as Assistant Liquidating Trustee under the supervision of the Court and the Liquidating Trustee for assets being distributed to some of those investors. In *U.S. v. Petters*, No. 08-cv-05348 (D. Minn.), the Firm worked with the Department of Justice and the court-appointed receiver, to successfully recover and distribute millions of dollars to victims pursuant to a settlement with one of the Petters financiers.

Carolyn maintains strong ties with the National Association of Attorneys General, individual state Attorneys General, state pension fund officers, and other institutional investors. She is a frequent lecturer at colleges and law schools, and has served as a legal education faculty member on the topics of complex litigation, legal ethics, the 2008 financial crisis, and securities law.

Carolyn currently serves as a board member and Chairperson for Children's Shelter of Cebu, an interdenominational ministry for abandoned and neglected children. She also serves as a board member with Bloomberg Law on its Litigation Innovation Board.

Carolyn graduated cum laude from Trinity College, where she received a Bachelor of Arts degree in Psychology. She received her law degree cum laude from Hamline University School of Law where she was a Dean's Scholar, received the Cali Award for Excellence in Constitutional Law, and served on Hamline Law Review, where her case note article was selected for publication. Carolyn also studied law at Hebrew University in Jerusalem, Israel in course-work focusing on Law, Religion, & Ethics. Carolyn was previously honored as Rising Star of Law and, in 2014, 2015, and 2016, she was recognized as a Super Lawyer by her peers in Minnesota.

Carolyn is admitted to practice before, and is a member in good standing of, the Bar of the State of Minnesota, the United States District Court for the District of Minnesota, the Court of Appeals for the Eighth Circuit and the First Circuit, and the U.S. Supreme Court. In addition to these courts, Carolyn works on cases with local counsel nationwide. She is a member of the Federal Bar Association, the American Association for Justice, the Minnesota Bar Association, and the Hennepin County Bar Association.

**Hannah P. Belknap** is an associate with Zimmerman Reed, working in the firm's Los Angeles, California office. Hannah focuses her practice on consumer class actions and complex litigation, including the areas of Consumer Protection and Employee Rights & Overtime. She currently represents consumers who allege Maxim Healthcare Services violated their rights under the federal Fair Credit Reporting Act by unlawfully procuring consumer reports as part of their employment application, as well as Maxim employees who were not paid minimum wages for all of the services they provided. Hannah is part of a team of lawyers representing consumers who allege Hain Celestial Seasonings falsely advertises its teas as 100% Natural, when they actually contain pesticides and other carcinogens. She also represents mortgage borrowers who were charged unlawful kickbacks through a nationwide force-placed homeowner's insurance scheme.

Hannah is a graduate of the University of the Pacific, McGeorge School of Law where she earned her JD with a Business Law Concentration. She was the recipient of the Witkin Award for Academic Excellence for Legal Research and Writing and attended her law school's Salzburg, Austria Summer Program taught by Supreme Court Associate Justice Anthony M. Kennedy. In 2012, Hannah was a summer intern in Washington D.C. working in the Office of the General Counsel of the Commodity Futures Trading Commission (CFTC). Prior to law school, Hannah attended the University of California, Santa Barbara, earning her Bachelor of Arts degree in Philosophy and Law and Society. Hannah is licensed to practice law in California.

**David M. Cialkowski** is a partner with Zimmerman Reed, and dedicates a substantial portion of his practice to the area of complex and mass tort litigation, with a primary focus on consumer protection and products liability litigation.

David was a member of the legal team that represented the Mississippi Attorney General's Office in Mississippi ex rel. Hood v. AU Optronics, 134 S. Ct. 736 (2014), an antitrust case against manufacturers of LCD displays in which the Court held that an attorney general's parens patriae case is not a "mass action" under the Class Action Fairness Act. The Supreme Court ruled unanimously in Mississippi's favor. He served as a member of the Plaintiffs' Steering Committee in In re Apple iPhone 3G and 3GS "MMS" Marketing and Sales Practices Litigation, a consumer protection class action, MDL 2116, based in New Orleans, Louisiana. He worked extensively on the Levaquin MDL trial team on behalf of clients who experienced tendon ruptures and tears after taking the popular Johnson & Johnson antibiotic. He also served as court-appointed co-lead counsel in In re Dockers Roundtrip Airfare Promotion Sales Practices Litigation, a consumer protection class action based in the U.S. District Court for the Central District of California. David has worked extensively on behalf of plaintiffs in In re St. Jude Silzone Heart Valves Product Liability Litigation, MDL 1396. He has also contributed substantially to pretrial summary judgment and class certification briefing in the Fedex Ground Package Systems employment status litigation, MDL 1700. David represented residents of Minot, North Dakota, in In re Soo Line Railroad Company Derailment of January 18, 2002 in Minot, N.D., who were injured by the toxic spill caused by the derailment of a Canadian Pacific Railway train, and helped draft federal legislation clarifying the scope, and thus reducing courts' application, of railroad preemption.

David earned his undergraduate degree from the University of Illinois's College of Liberal Arts and Sciences *cum laude* with High Distinction in the Department of English. Additionally, he participated in the honors program as a James Scholar, received the Elizabeth and Charles Ellis Merit Scholarship, and is a member of Phi Beta Kappa. David graduated from the University of Illinois College of Law, where he participated in the civil litigation clinic, was an editor for the Poetic Justice literary magazine, and was voted one of the top ten percent of university teaching assistants.

David is licensed to practice and a member in good standing, for the Bars of the State of Minnesota and the State of Illinois. His professional associations include membership in the Minnesota State Bar Association and Hennepin County Bar Association. David has been recognized as a Rising Star of Law from 2006–2008, 2010–2013 and 2015.

**Brian C. Gudmundson** is a partner and concentrates his practice on complex litigation and commercial class actions, including the areas of Consumer, Antitrust, Securities & Financial Fraud, Intellectual Property, and Sports Law. Brian represents individuals, businesses, and public and private institutional clients in a variety of complex cases.

Brian is a member of Plaintiffs Executive Committee in *In Re General Mills Glyphosate Litigation*, Case No. 16-cv-2869-MJD-BRT, asserting deceptive sales practices based upon alleged presence of glyphosate in products labeled “100% natural” and in *Vikram Bhatia, D.D.S. v. 3M Company*, 16-cv-01304-DWF-TNL, asserting claims on behalf of dentists and dental practices for allegedly defective dental crown products. Brian is a member of the plaintiffs steering committee in *In re: Vizio, Inc. Consumer Privacy Litigation*, MDL 2693, asserting violations of state and federal law for unlawful collection and sale of private consumer data. He is co-lead counsel in *GLS Companies, et al. v. Minnesota Timberwolves Basketball LP*, challenging implementation of paperless ticketing system and restrictions on transfer of game tickets on behalf of ticketholders. Brian is also a member of the plaintiffs steering committee in the Home Depot Data Breach MDL 2583 representing banks and credit unions in recovering losses. Brian represents retired NHL players alleging the National Hockey League minimized concussion risks from its players for decades. Brian is a member of the lead counsel team that achieved a \$39 million settlement on behalf of banks and other financial institutions in recovering losses due to the 2013 Target data breach. He is also a member of the lead counsel team that achieved a \$50 million settlement on behalf of retired National Football League players in a class action against the League for the unauthorized use of former players' identities to generate revenue. He represents hundreds of individual retired NFL players in claims arising from concussive head injuries suffered while NFL players. Presently, Brian represents MoneyGram Payment Systems, Inc. in claims against several Wall Street banks alleging over \$400 million of losses due to the fraudulent sale of securities containing undisclosed, toxic mortgage-based assets. He also specializes in claims under the RICO Act and currently represents multiple non-profit and faith-based investors pro bono in RICO claims arising from the \$3.5 billion Petters Ponzi scheme

Brian served as court-appointed co-lead counsel in *In Re: Dockers Roundtrip Airfare Promotion Sales Practices Litigation* (C.D. Cal.), which culminated in a multimillion dollar settlement on behalf of a nationwide class of consumers. In 2005, Brian was part of a securities litigation team that achieved a \$2.5 billion settlement against AOL-Time Warner on behalf of investors.

Brian received his BA from the University of Minnesota and his JD, *cum laude*, from the University of Minnesota Law School. Brian is admitted to the state courts of Minnesota, the U.S. District Courts for the District of Minnesota and the Northern District of Illinois, and the Tenth Circuit Court of Appeals. Brian has been recognized as a Rising Star of Law every year since 2010.

**June P. Hoidal** is an partner representing individuals and businesses who experienced losses as a result of securities and consumer fraud and antitrust violations. She is a member of the legal team representing the State of Mississippi in an antitrust action against manufacturers of LCD screens. Her work included assisting with briefing before the U.S. Supreme Court, which unanimously ruled in favor of Mississippi by finding the State's *parens patriae* action was not removable to federal court. *Mississippi ex rel. Hood v. AU Optronics*, 134 S. Ct. 736 (2014). June also represented investors alleging losses due to Wells Fargo's securities lending program, a case that settled two days before trial was set to commence for \$62 million. She currently represents the State of New Mexico in a matter against Visa and MasterCard, alleging antitrust and unfair practices; participants of the U.S. Bancorp Pension Plan alleging violations of ERISA; and investors of Medtronic in a shareholder derivative case.

Prior to joining the firm, June served as a judicial law clerk to the Honorable Arthur J. Boylan on the United States District Court for the District of Minnesota. She gained substantial experience following law school at two law firms in Washington, D.C. and Minneapolis, practicing in diverse subject areas, including contract disputes, franchise, products liability, insurance, and employment law.

June currently serves as a board member and as the lead co-chair of the Associates Campaign for The Fund for Legal Aid. She also currently serves as a member of the Advisory Board for the Minnesota Urban Debate League and the Publications Committee for the Bench & Bar of Minnesota. Previously, she served as a Commissioner for the City of Saint Anthony Parks Commission, and a member of the Diversity Committee and the Women in the Legal Profession Committee of the Minnesota State Bar Association. In addition, June volunteered as an assistant debate coach for the Minnesota Urban Debate League and worked pro bono for Legal Assistance of Dakota County, Volunteer Lawyers Network, and The Advocates for Human Rights.

June graduated cum laude from the University of Minnesota Law School in 2003, where she was the Lead Managing Editor for the Minnesota Law Review and a member of the Dean's List. She is admitted to the state courts of Minnesota and the U.S. District Courts for the District of Minnesota. June has been recognized as a Rising Star of Law in 2007, 2015, and 2016.

**Jason P. Johnston** is a partner at our Minneapolis office, focusing primarily on complex cases involving individuals injured by defective drugs and faulty medical devices, advocating for clients both locally and nationally. Jason's personal engagement, resolute view of the law, and solid practice style make him a strong voice for his clients and an integral part of our firm.

Jason represents clients injured from defective orthopedic hip devices manufactured by DePuy, Biomet, Stryker and Smith & Nephew. In the Stryker litigation, Jason helps patients who experienced serious health complications as a result of a modular hip that was recalled from the

market, and was part of the team that first moved the Judicial Panel on Multidistrict Litigation (JPML) to consolidate all Stryker hip claims in the District of Minnesota. During the Biomet M2a hip litigation, Jason was a member of the Plaintiffs' Science Committee where he reviewed technical documents and participated in depositions involving the design and development of the hip implant systems. Jason also represents clients injured by other orthopedic medical devices, including knee replacement systems manufactured by Zimmer. In the Zimmer NexGen knee litigation, Jason serves as a member of the Plaintiffs' Steering Committee and has also taken depositions of key witnesses in addition to working closely with experts.

Jason's medical device litigation experience extends beyond orthopedic devices, including, actively pursuing litigation for clients injured by St. Jude's Riata heart defibrillator leads and he is a member of the Claims Review Committee following a mass settlement involving Medtronic's Sprint Fidelis heart defibrillator leads. He also represents plaintiffs injured by various pharmaceutical drugs, including, Avandia, and Aredia/Zometa. Currently, Jason represents clients who have suffered cardiovascular injuries after taking testosterone therapy supplements, such as Androgel.

He recently accepted a case from the District of Minnesota's Federal Pro Se Project, a program that provides pro se plaintiffs with volunteer counsel to improve access to justice in the Federal Courts, ultimately securing a settlement against the plaintiff's employer for racial discrimination allegations. Jason had previous experience in civil rights litigation when he assisted clients in recovering almost \$1 million in a class action litigation involving various constitutional and civil rights violations.

A graduate of the University of St. Thomas School of Law, he was recognized by the Minnesota Justice Foundation for his pro bono service work and also received a Dean's Award in both Adoption and Consumer Law. He maintains close ties with the University of St. Thomas School of Law as a participant in their mentor program, where he is paired with a law student each year to act as a resource in navigating the legal field. Prior to law school, Jason attended Winona State University earning his Bachelor of Science degree, magna cum laude, in Marketing. Since 2014, Jason has been recognized as a Rising Star of Law.

Jason is admitted to the state courts of Minnesota and U.S. District Court for the District of Minnesota.

**Andre S. LaBerge** brings over twenty years of professional experience - as an attorney and as a business executive - in his advocacy for the rights of investors and consumers, providing counsel to several of the firm's practice areas. He has represented participants in Wells Fargo's securities lending program, investors with losses in Morgan Keegan open end bond funds, and the Office of Attorney General in the LCD antitrust litigation.

Andre has practiced law in Chicago and Minneapolis, and has represented clients at all court levels and in various regulatory forums. He has also served as Vice President, Chief Compliance Officer, General Counsel, and FINRA Registered Principal and Designated Supervisor in the financial services industry with companies that supervised and supported large numbers of securities brokers, financial planners, and insurance agents.

Andre is a graduate of DePaul University College of Law, where he was a Senior Editor for the Journal of Health and Hospital Law, and worked as a Mansfield Foundation Fellowship intern at Southern Minnesota Regional Legal Services. He is a member of the Minnesota State Bar Association and the Hennepin County Bar Association.

**Michael J. Laird** is an Associate at Zimmerman Reed focusing on the areas of sports law and consumer fraud. He currently supports the firm's efforts in representing retired NHL & NFL players in separate lawsuits alleging that the chronic cumulative effects of concussions were minimized.

A magna cum laude graduate of the University of Minnesota Law School, Michael served as a member of the Journal of Law, Science & Technology, and a member of the American Bar Association Moot Court team. While in law school, Michael also started a medical-legal partnership with the Phillips Neighborhood Clinic to identify and resolve legal issues affecting patient care and well-being in under-served communities, as a member of the Community Practice and Policy Development Clinic.

While in law school, Michael externed for the Honorable Jeffrey J. Keyes of the United States District Court for the District of Minnesota. He also was a law clerk for both the Bad River Band of Chippewa Indians Natural Resources Department and the Minnesota Pollution Control Agency. Michael is licensed to practice law in Minnesota.

**Alyssa J. Leary** focuses her practice on environmental and consumer protection law. She currently represents corn farmers and exporters in our Syngenta litigation after they suffered economic harm from using the Syngenta's unapproved, genetically modified corn strain. In consumer protection litigation, she is representing RV owners who have defective Dometic refrigerators. Alyssa is also part of the team representing consumers alleging Pacquiao and his promoters kept his shoulder injury secret prior to the highly publicized Pacquiao-Mayweather Pay-Per-View fight.

Alyssa graduated magna cum laude and Order of the Coif from Tulane University Law School and holds a Certificate in Environmental Law. While at Tulane, she worked as an editor for the Tulane Law Review, and studied economic and environmental issues in Brazil.

In addition to her law degree, Alyssa holds a Master of Science in Resource Conservation and a Certificate in Natural Resource Conflict Resolution from the University of Montana. She obtained a Bachelor of Science degree in Biology/Natural Science from the University of Puget Sound.

Prior to joining Zimmerman Reed, Alyssa worked as a renewable energy and construction law attorney and interned at the U.S. Attorney's Office for the Eastern District of Louisiana, the U.S. Marshals Service Office of General Counsel in Washington D.C., and also for the Cottonwood Environmental Law Center in Bozeman, Montana. Alyssa is licensed to practice law in Minnesota and Texas.

**Caleb LH Marker** is a partner in the firm's Los Angeles office and has dedicated a significant portion of his practice to consumer protection and employment cases, including retail

consumers, misclassified employees, mortgage borrowers, student loan borrowers, farmers, data privacy victims, and nursing home patients.

Caleb is a creative litigator who has been a leader in the consumer protection area and has actively involved as class counsel in cases that have provided meaningful recoveries, through trial or settlement. He currently represents musicians and entertainers in Internet-related copyright and royalty disputes, consumers in a variety of false advertising actions, corn farmers and exporters whose crops lost value as a result of unapproved GMO corn contamination (In re: Syngenta AG MIR162 Corn Litigation, MDL 2591), mortgage borrowers who were charged unlawful kickbacks through a nationwide force-placed homeowner's insurance scheme, and patients who are prescribed Enbrel.

Caleb's relationship with Zimmerman Reed began his first year as a lawyer in Michigan, when the firm served as co-counsel in his very first lawsuit. Years later, that lawsuit resulted in the largest settlement in Michigan that year. In recent years, Caleb's successes include leading a class action against the City of Los Angeles and Xerox that drew widespread media attention, winning a trial that now requires the City to end its decades-long outsourcing of the City's parking violations bureau in a case that will help over a hundred thousand motorists in Los Angeles over the next few years. He was also counsel on a case that achieved an \$11.5 million settlement on behalf of student loan borrowers against the Michigan Treasury Department - securing approval of the first class action settlement in that state's new court of claims. Caleb has also led high-profile class action lawsuits that have changed industries and resulted in significant awards, including a \$24.2 million in settlements in a series of cases for employees who were misclassified and a multi-million dollar award for nursing home patients who were inadequately cared for due to nurse understaffing.

Caleb is admitted to the State Bar of California, the District of Columbia Bar Association (inactive), the State Bar of Michigan, numerous federal district courts across the country, and the U.S. Court of Appeals for the Ninth Circuit. He has briefed and argued appeals in California, Michigan, and the Ninth Circuit. He is a member of the Los Angeles County Bar Association, the Federal Bar Association, and Consumer Attorneys of California.

He also serves on the Los Angeles County Bar's Access to Justice Committee, which aims to maximize the delivery of legal services to the poor and encourage attorneys to provide free legal services to those in need. Several of Caleb's successes have been recognized as a "Top Settlement & Verdict" by the Los Angeles Daily Journal and Michigan Lawyers Weekly. He has been interviewed by numerous media outlets, including NBC, Fox Business, NPR, *The Wall Street Journal*, AP, the *Los Angeles Times*, *LA Weekly*, and Law360. He has also been recognized as a 2015 Rising Star of Law in Southern California by Super Lawyers after a peer-nomination and review process.

**Jacqueline A. Olson** is an associate representing clients injured by pharmaceutical drugs and recalled or defective medical devices on cases including Mirena IUD, Stryker Hip Replacements, and Transvaginal Mesh implants. Prior to joining the firm, she worked in almost every department of a law firm - from paralegal, to marketing, to law clerk, to lawyer. During this time, she gained valuable insight about the inner workings of a firm giving her a unique and compassionate perspective in advocating for her clients.

A graduate of Hamline University School of Law, Jacqueline served as the Associate and Primary Editor of the Hamline Journal of Public Law & Policy and also served as an intern assisting law clerks to the Honorable Richard H. Kyle. Her academic honors include the Dean's Honor Roll, and a CALI Award in Commercial Law, Sales and, Leases of Goods. She was the recipient of the Best Brief Award in Legal Research and Writing Course. As a student attorney in Hamline's Employment Discrimination Mediation Clinic, Jacqueline successfully mediated and negotiated settlements for employees who had filed discrimination charges with the Equal Employment Opportunity Commission (EEOC) and alleged they were discriminated against because of their age, sex or disability. Jacqueline is licensed to practice law in Minnesota.

**Bryce D. Riddle** concentrates his practice on complex litigation and commercial class actions in the areas of Sports Law, Data Breach, and Consumer Protection. Currently, Bryce works on the team representing retired NHL players alleging the National Hockey League failed to minimize concussion risks for its players for decades. In data breach litigation, he represents financial institutions in cases against The Home Depot and Wendy's to recover losses arising from breaches that compromised customer financial information. Bryce also works on the Vizio consumer privacy litigation asserting violations of state and federal law for the unauthorized collection and sale of customers' private and personal data.

Bryce graduated cum laude from the University of Minnesota Law School in 2014, where he was a member of the Minnesota Journal of International Law and a Dean's Scholarship recipient. While in law school, he participated in the Student Exchange Program in Milan, Italy at Bocconi University School of Law and also externed for the Honorable David S. Doty of the United States District Court for the District of Minnesota. He subsequently served as a judicial law clerk for the Honorable Elizabeth V. Cutter and the Honorable Bridget A. Sullivan in Minnesota's Fourth Judicial District. Bryce is licensed to practice law in Minnesota and California state courts, as well as federal court in the District of Minnesota.

**Christopher P. Ridout** is a partner working in the areas of complex litigation including consumer protection, labor and employment, unfair business practices, false advertising, toxic tort, commercial and residential hazardous substance exposure.

He was appointed as co-interim lead counsel representing a class of consumers in a mislabeling lawsuit alleging that Celestial Seasonings tea products falsely claim to be "all natural" when they contain pesticide residue from the agricultural process. In consumer litigation, Chris represents classes of consumers and employees in connection with data breaches that have compromised personal, financial, medical, and employment information. He represents a class of GM diesel truck owners alleging that the DMAX diesel engine design is defective causing a reduction in fuel efficiency by 25-30 percent. He is challenging the billing practices of the Los Angeles Department of Water alleging excessive fees, rates and charges to customers that exceed the costs of provided water and power services. Chris also represents RV owners in a class action lawsuit alleging that Norcold knew of a potentially dangerous RV refrigerator fire risk, but hid that information from the public. He also advocates on behalf of musicians and entertainers in Internet-related copyright and royalty disputes.

Over the last decade, Chris has been involved in the resolution of a series of class action lawsuits including a settlement of more than \$24 million on behalf of misclassified employees, an \$11.5 million settlement for Michigan students loan borrowers over an interest rate dispute, a \$9 million settlement claiming Naked Juice violated state and federal laws regarding the marketing and sale of its product, and a multi-million dollar award for residents of various nursing home facilities alleging widespread and intentional failure to provide sufficient care to the residents due to understaffing.

Chris attended Harvard University where he received his Bachelor of Arts Degree in 1986. While focusing on his major of American History, he was a member of the Harvard Varsity Football Team and played in the historic 100th Harvard-Yale match-up commonly referred to as "The Game." In his senior year, Chris was awarded the "William Payne LeCroix Memorial Award" given to that team member exhibiting the most loyalty and dedication to the Harvard Varsity Football Team.

After graduating from the University of the Pacific McGeorge School of Law in 1989, he was admitted to the California Bar that same year. He has also been admitted to practice before the United States District Court for the Southern, Central, and Northern Districts of California; the United States District Court for the District of Colorado; the United States District Court for the District of Minnesota; the United States District Court for the Northern District of Ohio; and the United States Court of Appeals for the Ninth Circuit.

**Hart L. Robinovitch** is a partner with Zimmerman Reed, working in the firm's Scottsdale, Arizona office. Hart focuses his practice in the areas of consumer and shareholder actions, and sports law.

Hart currently represents corn farmers and DDGS exporters in the Syngenta Viptera Litigation who have experienced the effects of China's ban of U.S. corn and corn-derived products, suffering lower prices, decreased sales and other losses as the prices of U.S. corn has decreased. He is a member of the lead counsel team representing retired NHL players alleging the National Hockey League minimized the chronic cumulative effects of concussion risks from its players for decades. Hart also represents clients in a class action lawsuit on behalf of RV owners alleging that Norcold knew of a potentially dangerous RV refrigerator fire risk, but hid that information from the public.

Hart has been involved in numerous state and federal court lawsuits around the country challenging the misclassification of entertainers as independent contractors opposed to employees in the nightclub industry. He also represented consumers in other actions alleging deceptive and unlawful business conduct towards customers including, but not limited to, false advertising practices, "bait and switch" tactics, altering contractual terms without valid consideration, and retailers' requests and/or requirements that their customers provide personal identification information when they complete a transaction using their credit card, in violation of state and/or federal statutes. In addition, Hart represented residents of various skilled nursing facilities alleging pervasive and intentional failure to provide sufficient direct nursing care staffing resulting in harm to the residents.

For the past decade, Hart has represented clients in a series of class action lawsuits contesting mortgage lenders' excessive billing and deposits practices for mortgage escrow accounts. Hart

is now involved in numerous federal court lawsuits around the country alleging that mortgage banks and lenders have violated federal and state laws. These cases allege payment of kickbacks and/or illegal and unearned referral fees by the banks and lenders to mortgage brokers who refer mortgage clients who are then charged inflated interest rates on the mortgages. In addition, he represents consumers in other actions contesting the imposition of overcharges and improper fees or other contractual violations in various mortgage transactions. He has worked with co-counsel in state and federal courts across the country.

A native of Canada, Hart earned his degree from the University of Toronto Law School in 1992 where he served as an Associate Editor on the University of Toronto Faculty of Law Review. He received his Bachelor of Science degree in 1989 from the University of Wisconsin-Madison.

Hart is admitted to practice before, and is a member in good standing of, the Bars of the States of Arizona and Minnesota and the United States District Court for the Districts of Arizona, Minnesota, and the Eastern District of Michigan. Hart is also licensed to practice law before the United States Courts of Appeals for the Sixth, Eighth, Ninth, and Eleventh Circuits, and the United States Supreme Court. Hart's memberships include the National Association of Consumer Advocates and Canadian American Bar Association.

**J. Gordon Rudd, Jr.** is a managing partner at Zimmerman Reed, representing clients in the areas of mass tort, consumer fraud, and employment law. Gordon has been appointed class counsel in cases venued in both state and federal courts across the country.

Gordon was recently part of the team that achieved a \$50 million settlement in the complicated court fight over publicity rights for retired NFL players. In a separate lawsuit, he represents hundreds of retired NFL players suffering from concussive head injuries that occurred while playing in the league. Gordon also represented thousands of individuals injured by the largest release of anhydrous ammonia in U.S. history. Two of those individuals were awarded \$1.2 million by a jury. Eventually, these trials led to a settlement on behalf of other residents of Minot, North Dakota injured by the derailment. Currently, he is representing hundreds of homeowners whose properties have been exposed to a toxic chemical vapor called trichloroethylene (TCE).

In Mass Tort litigation, Gordon leads several cases, including representing clients who experienced uncontrollable urges to gamble while taking top-selling prescription drug Abilify, representing nursing home residents sickened by a Hepatitis C outbreak (the second-largest outbreak of the disease in U.S. History), men who have suffered cardiovascular injuries following their use of testosterone therapy supplements, and clients who experienced severe bleeding problems while taking Xarelto.

Gordon is also working on a number of multi-district litigation cases. Gordon is a member of the lead counsel team representing banks and other financial institutions seeking recovery of losses from the 2013 Target data breach. He also holds leadership positions on several Plaintiffs' Steering Committees including *In re H&R Block IRS Form 8863 Litigation*, MDL 2474, *In re Life Time Fitness, Inc., Telephone Consumer Protection Act (TCPA) Litigation*, MDL 2564, *In re FedEx Ground Package System, Inc.*, MDL 1700, and *In re Building Materials Corp. of America Asphalt Roofing Shingle Products Liability Litigation*, MDL 2283.

Gordon graduated from Connecticut College, where he received a Bachelor of Arts degree in English Literature & Government. He received his law degree from the University of Cincinnati College of Law. Gordon is licensed to practice before, and is a member in good standing of, the Bar of the State of Minnesota and the United States District Court for the District of Minnesota. Gordon is admitted to the United States Court of Appeals for the Eighth Circuit. He has been admitted to appear pro hac vice in cases pending in the states of California, Oregon, Arizona, New Mexico, Texas, North Dakota, Ohio, Florida, Georgia, Tennessee, and Michigan. Since 2006, Gordon has been selected as a Super Lawyer by his peers in Minnesota.

**Behdad C. Sadeghi** focuses his practice on complex litigation involving consumer protection, securities fraud, and financial fraud in state and federal courts around the country.

Behdad worked on the team representing investors who sustained losses as a result of alleged federal securities law violations by Morgan Keegan and its affiliates that achieved a \$125 million settlement. He also represented a class of financial institutions who suffered losses resulting from a major data breach in a class action against the Target Corporation that resulted in a \$39 million dollar settlement. In consumer litigation, he successfully achieved a multi-million dollar wrongful death settlement against a major automobile manufacturer, and a settlement on behalf of a group of elderly victims of one of the largest hepatitis C outbreaks in the nation's history. He also represents a putative class of consumers alleging violations of the Telephone Consumer Protection Act by Papa Murphy's and SuperAmerica.

Behdad graduated magna *cum laude* from William Mitchell College of Law, where he was a member of the William Mitchell Journal of Law and Practice and the Niagara International Moot Court Team; he also participated in the school's Civil Advocacy Clinic. His academic honors include a CALI Excellence for the Future Award, four Dean's List honors, and a Burton Award Nomination for Excellence in Legal Writing. Behdad is licensed to practice law in Minnesota.

**Charles S. Zimmerman** is a founding partner at Zimmerman Reed and is a nationally recognized leader in complex and class action litigation. He frequently speaks at industry conferences and CLEs, and is the author of a newly published book on complex litigation. During more than 30 years of practice, Bucky has successfully represented thousands of clients through individual actions and nationwide class actions. His cases have involved the tobacco industry, pharmaceutical companies, and shareholder suits. Bucky has served as lead counsel, PSC member and liaison counsel in numerous major pharmaceutical and medical device cases over the last 15 years. He currently serves on the Lead Counsel Committee for Stryker Hip Litigation, was appointed to the Plaintiffs' Steering Committee in the NFL Players' Concussion Injury Litigation, and is Lead Counsel representing banks in the Target Data Breach case. He has also served as Co-Lead Plaintiffs' Counsel in the Baycol, Guidant, Levaquin, Medtronic, Zicam, NFL Retired Players Publicity Rights, and National Arbitration Forum MDLs. Through his leadership in these and other groundbreaking cases, Bucky continues to advance the interests of his clients and the legal profession.

In addition to his case work, Bucky continues to lecture on complex litigation and working with the media in high profile cases for a variety of organizations including the Minnesota State Bar

Association, Minnesota Continuing Legal Education, the University of Minnesota Law School, William Mitchell College of Law, the Minnesota Association for Justice, and Mealey's Publications. He is also an adjunct professor of law teaching Mass Torts at the University of Minnesota Law School. In 2006, Bucky authored "Pharmaceutical and Medical Device Litigation," a mass tort manual published by Thompson/West.

He has been recognized by his peers in Minnesota as a Super Lawyer from 2000 - 2007, 2011, 2012, 2013, 2014, and 2015. He was also selected as the 2013 & 2014 Minneapolis Mass Tort Litigation / Class Actions - Plaintiffs Lawyer of the Year by The Best Lawyers in America.

Bucky is a graduate of the University of Minnesota Law School. He also received his undergraduate degree from the University of Minnesota and was a three letter winner, Williams Scholar, and captain of the varsity U of M tennis team his junior and senior years. Bucky is a member of the United States Professional Tennis Association obtaining national ranking, and has won gold and silver medals at the world Maccabiah and Pan American Maccabiah games.

Bucky is licensed to practice law in the States of Minnesota and Arizona, and is admitted to the United States District Court for the District of Minnesota, District of Colorado, and District of North Dakota, and the United States Supreme Court. He is also admitted to the Third, Fifth, Sixth, and Eighth United States Circuit Courts of Appeals.

Bucky served as co-chairman of the Advisory Committee for Mealey's Propulsid Litigation Conference and he chaired the faculty of a Minnesota Institute for Legal Education seminar, "Dealing with Complex Litigation." Bucky has also lectured and served as a member of the faculty at Mealey's "Norplant Conference," Mealey's "Breast Implant Conferences," Andrew's Publications' "Medical Devices Litigation Conference," as well as numerous conferences on the subject of Tobacco Litigation and "Youth and Addiction." Additionally, he was a guest lecturer on the subject of Complex Litigation at the University of Minnesota School of Law in conjunction with course work prepared by Professor Robert J. Levy, and the William Mitchell College of Law in conjunction with course work prepared by the Honorable Thomas Carey.

Bucky's memberships include the Minnesota Association for Justice, American Association for Justice, the Federal Bar, the Minnesota State Bar Association, the Hennepin County Bar Association, and the Bar Associations of the Fifth and Eighth Federal District Courts.

## CASE RESUME: RECENT LEADERSHIP POSITIONS

### Consumer Litigation

- *Adams v. Target Corporation*, United States District Court, Central District of California
- *Chapman v. Sport Chalet*, Superior Court of Los Angeles County, State of California
- *Chavez v. Wal-Mart Stores Inc.*, United States District Court, Central District of California
- *City of Wyoming, et al. v. Procter & Gamble Company, et al.*, United States District Court, District of Minnesota
- *Dearmon, et al. v. Mercury Finance Company*, Fourth Judicial District Court, State of Minnesota
- *DeGrise, et al. v. Ensign Group, Inc., et al.*, Superior Court of Sonoma County, State of California
- *DeLillo, et al. v. NCS Pearson, et al.*, United States District Court, District of Minnesota
- *Diamond, et al. v. AVCO Auto Finance, et al.*, Superior Court of California, Monterey County
- *Drobnak, et al. v. Andersen Windows, Inc.*, United States District Court, District of Minnesota
- *Esparza v. Coach, Inc., et al.*, United States District Court, Central District of California
- *Fischl, et al. v. Direct Merchants Bank*, Fourth Judicial District, State of Minnesota
- *Garcia, et al. v. Metro Gang Strike Force*, United States District Court, District of Minnesota
- *Grant, et al. v. Regions Mortgage Co. f/k/a First Commercial Mortgage Co.*, Superior Court of California, Ventura County
- *Gutter, et al. v. Bank One Louisiana*, Orleans Parish Civil District, State of Louisiana
- *In re Building Materials Corp. of America Asphalt Roofing Shingle Products Liability Litigation*, MDL 2283 (Member of the Plaintiffs' Steering Committee)
- *In re Apple iPhone "MMS" Sales Practices Litigation*, MDL 2116 (Member of the Plaintiffs' Steering Committee)
- *In re Building Materials Corp. of America Asphalt Roofing Shingle Products Liability Litigation*, MDL 2283 (Member of the Plaintiffs' Steering Committee)
- *In re Castano Tobacco Litigation*, United States District Court for the Eastern District of Louisiana
- *In re Dockers Roundtrip Airfare Promotion Sales Practices Litigation*, United States District Court, Central District of California
- *In re Dry Max Pampers Litigation*, United States District Court, Southern District of Ohio
- *In re H&R Block IRS Form 8863 Litigation*, MDL 2474, United States District Court, Western District of Missouri
- *In re Life Time Fitness, Inc., Telephone Consumer Protection Act (TCPA) Litigation*, MDL 2564
- *In re McCormick & Company, Inc. Pepper Products Marketing and Sales Practice Litigation*, MDL 2665
- *In re Medco Health Solutions, Inc., Pharmacy Benefits Management Litigation*, MDL 1508 (Lead Counsel)
- *In re National Arbitration Forum Trade Practices Litigation*, MDL 2122

- *In re Target Corporation Customer Data Security Breach Litigation*, MDL 2522, United States District Court, District of Minnesota
- *In re Uponor, Inc., F1807 Plumbing Fittings Products Liability Litigation*, MDL 2247 (Member of the Plaintiffs' Steering Committee)
- *In re Zurn Pex Plumbing Products Liability Litigation*, MDL 1958 (Liason Counsel)
- *Kurvers, et al. v. National Computer Systems, Inc.*, Fourth Judicial District Court, State of Minnesota
- *Lennartson v. Papa Murphy's Holdings, Inc., et al.*, United States District Court, Western District of Washington
- *McDonald, et al. v. Eli Lilly & Company*, United States District Court, District of Minnesota
- *Mehrens v. Redbox Corp.*, Superior Court of Los Angeles County, State of California
- *Mills, et al., v. Roto-Rooter Services Company*, Fourth Judicial District Court of Hennepin County, State of Minnesota
- *Monteuil v. Ensign Group, Inc., et al.*, Superior Court of Los Angeles County, State of California
- *Minnerath, et al. v Zurn Pex Inc.*, United States District Court, District of Minnesota
- *O'Hara, et al. v. Marvin Lumber, et al.*, Fourth Judicial Court, State of Minnesota
- *Pistilli, et al. v. Life Time Fitness*, Fourth Judicial District, State of Minnesota
- *Rapp v. Green Tree Servicing, LLC et al.*, United States District Court, District of Minnesota
- *Rubinstein v. Michaels*, Superior Court of Los Angeles County, State of California
- *Russo, et al. v. NCS Pearson, Inc., et al.*, United States District Court, District of Minnesota
- *Sara Lee Meat Contamination Litigation, Cress v. Sara Lee*, Circuit Court of Cook County, State of Illinois, Court File No. 98 L 15072
- *Scott v. American Tobacco Co., Inc., et al.*, Court File No.: 96-8461, Civil District Court for the Parish of New Orleans, Louisiana
- *Soular v. Northern Tier Energy, LP, et al.*, United States District Court, District of Minnesota
- *U.S. Hotel and Resort Management, Inc. et al. v. Onity Inc.*, United States District Court, District of Minnesota
- *Wallace, et al. v. ConAgra Foods Inc. d/b/a Hebrew National*, United States District Court, District of Minnesota
- *Wick v. Twilio, Inc.*, United States District Court, Western District of Washington
- *Wright, et al. v. Malt-O-Meal Company*, Fourth Judicial District, State of Minnesota

#### **Defective Drugs and Devices**

- *Guttormson et al. v. Manor Care of Minot ND, LLC et al.*, United States District Court, District of North Dakota
- *In re Avandia Pharmaceutical Litigation*
- *In re Baycol Products Litigation MDL 1431* (Co-Lead Counsel)
- *In re Biomet M2A Magnum Hip Implant Products Liability Litigation*, MDL 2391 (Member of the Plaintiffs' Steering Committee)
- *In re Breast Implant Litigation MDL 926* (Member of the Plaintiffs' Steering Committee)

- *In re Celebrex and Bextra Products Liability Litigation*, MDL 1694 (Member of the Plaintiffs' Steering Committee)
- *In re Darvocet, Darvon And Propoxyphene Products Liability Litigation*, MDL 2226
- *In re DePuy Orthopaedics, Inc., ASR Hip Implant Products Liability Litigation*, MDL 2197
- *In re Diet Drugs Products Liability Litigation (Phentermine / Fenfluramine / Dexfenfluramine)* MDL 1203 (Member of the Plaintiffs' Steering Committee)
- *In re Digitek Products Liability Litigation*, MDL 1968 (Member of the Plaintiffs' Steering Committee)
- *In re Ephedra Products Liability Litigation*, MDL 1598
- *In re Guidant Implantable Defibrillators Products Liability Litigation*, MDL 1708 (Co-Lead Counsel)
- *In re Intergel Products Litigation*, Carver County, Minnesota
- *In re Levaquin Products Liability Litigation*, MDL 1943 (Lead Counsel)
- *In re Meridia Products Liability Litigation*, MDL 1481 (Member of the Plaintiffs' Steering Committee)
- *In re Medtronic Implantable Defibrillators Products Liability Litigation* MDL 1726 (Co-Lead Counsel)
- *In re Medtronic, Inc., Sprint Fidelis Leads Products Liability Litigation (Co-Lead Counsel)*
- *In re Neurontin "Off-Label" Marketing Litigation*, MDL 1629 (Member of the Plaintiffs' Steering Committee)
- *In re Orthopedic Bone Screw Litigation* MDL 1014 (Member of the Plaintiffs' Steering Committee)
- *In re Phenylpropanolamine (PPA) Products Liability Litigation*, MDL 1407
- *In re Propulsid Products Liability Litigation* MDL 1355 (Member of the Plaintiffs' Steering Committee)
- *In re Rezulin Products Liability Litigation*, MDL 1348 (Member of the Plaintiffs' Steering Committee)
- *In re Serzone Products Liability Litigation*, MDL 1477 (Member of the Plaintiffs' Steering Committee)
- *In re St. Jude Silzone Heart Valves Product Liability Litigation*, MDL 1396 (Liason Counsel)
- *In re Stryker Rejuvenate and ABG II Hip Implant Products Liability Litigation*, MDL 2441 (Lead Counsel Committee)
- *In re Sulzer Inter-Op Orthopedic Hip Implant Litigation* MDL 1401 (Member of the Plaintiffs' Steering Committee)
- *In re Telectronics Pacemaker Litigation* MDL 1057 (Member of the Plaintiffs' Steering Committee)
- *In re Viagra Products Liability Litigation*, MDL 1724 (Lead Counsel)
- *In re Vioxx Products Liability Litigation*, MDL 1657 (Member of the Plaintiffs' Steering Committee)
- *In re Zicam Cold Remedy Product Liability Litigation*, MDL 2096 (Lead Counsel)
- *In re Zimmer NexGen Knee Implant Products Liability Litigation*, MDL 2272 (Member of the Plaintiffs' Steering Committee)

### Securities, Investment Fraud, Corporate Governance and Antitrust

- *Adedipe, et al. v. U.S. Bank, Nat'l Ass'n, et al.*, United States District Court, District of Minnesota (Co-Lead Counsel)
- *AI Plus, Inc. and IOC Distribution, Inc. v. Petters Group Worldwide, et al.*, United States District Court, District of Minnesota
- *Alessi v. Medicis Pharmaceutical Corp., et al.*, Superior Court of Maricopa County, State of Arizona
- *Apotheker v. Insight Enterprises, Inc., et al.*, Superior Court of Maricopa County, State of Arizona
- *Bamboo Partners v. Apollo Group, Inc., et al.*, United States District Court, District of Arizona
- *Barnett v. Apollo Group, Inc., et al.*, Superior Court of Maricopa County, State of Arizona
- *City of Ann Arbors Employees' Retirement System v. MoneyGram International, Inc.*, United States District Court, District of Minnesota
- *City of Farmington Hills Employees Retirement System v. Wells Fargo Bank, N.A.*, United States District Court, District of Minnesota
- *City of Tallahassee Pension Plan v. Insight Enterprises, Inc., et al.*, Superior Court of Maricopa County, State of Arizona
- *Dillen v. Insight Enterprises, Inc., et al.*, United States District Court, District of Arizona
- *Fry v. Fry*, Fourth Judicial District, State of Minnesota
- *Gaither v. Computer Network Technology Corporation, et al.*, Fourth Judicial District, State of Minnesota
- *Garg v. Virtual Radiologic Corporation, et al.*, Fourth Judicial District, State of Minnesota
- *Haritos, et al. v. American Express Financial Advisors*, U.S. District Court, District of Arizona
- *Hazuka v. Hypercom Corporation, et al.*, United States District Court, District of Arizona
- *In re ATS Medical, Inc. Shareholders Litigation*, Fourth Judicial District, State of Minnesota
- *In re Blue Cross Blue Shield Antitrust Litigation*, MDL 2406
- *In re Boston Scientific Corporation Securities Litigation*, U.S. District Court, District of Massachusetts
- *In re Ditropan XL Antitrust Litigation*, United States District Court, Northern District of California
- *In re Domestic Drywall Antitrust Litigation*, MDL 2437
- *In re E.W. Blanch Holdings Securities Litigation*, United States District Court, District of Minnesota
- *In re LCD Antitrust Litigation*, United States District Court, Northern District of California
- *In re Lipitor Antitrust Litigation*, MDL 2332
- *In re Medtronic, Inc. Derivative Litigation*, United States District Court, District of Minnesota
- *In re Medtronic, Inc. Securities Litigation*, United States District Court, District of Minnesota
- *In re Merrill Lynch & Co., Inc. Securities, Derivative and ERISA Litigation*, United States District Court, Southern District of New York
- *In re Pemstar, Inc. Securities Litigation*, United States District Court, District of Minnesota

- *In re Pool Products Distribution Market Antitrust Litigation*, MDL 2328
- *In re Region Morgan Keegan Securities, Derivative and ERISA Litigation* [*In re Regions Morgan Keegan Open-End Mutual Fund Litigation*], United States District Court, Western District of Tennessee
- *In re Region Morgan Keegan Securities, Derivative and ERISA Litigation* [*Landers v. Morgan Asset Management*], United States District Court, Western District of Tennessee
- *In re St. Jude Medical, Inc. Securities Litigation*, United States District Court, District of Minnesota
- *In re Stellent, Inc. Securities Litigation*, United States District Court, District of Minnesota
- *In re Stratasys Ltd. Shareholder Securities Litigation*, United States District Court, District of Minnesota
- *In re Suboxone Antitrust Litigation*, MDL 2445
- *In re SuperValu, Inc. Securities Litigation*, United States District Court, District of Minnesota
- *In re Target Corporation Securities Litigation*, United States District Court, District of Minnesota
- *In re Taser International Securities Litigation*, United States District Court, District of Arizona
- *In re The St. Paul Companies, Inc., et al.*, United States District Court, District of Minnesota
- *In re Tricor Indirect Purchaser Antitrust Litigation*, United States District Court, District of Delaware
- *In re Vitamins Antitrust Litigation*, United States District Court, District of District of Columbia
- *In re Xcel Energy, Inc. Securities Litigation*, United States District Court, District of Minnesota
- *In re Zomax, Inc. Securities Litigation*, United States District Court, District of Minnesota
- *Klosek, et al. v. Ameriprise Financial, Inc., et al.*, United States District Court, District of Minnesota
- *Krause v. UnitedHealth Group, Inc., et al.*, United States District Court, District of Minnesota
- *Langdale v. Mobility Electronics, Inc., et al.*, United States District Court, District of Arizona
- *Langley v. Syntax-Brilliant Corp., et al.*, United States District Court, District of Arizona
- *Liu v. JDA Software Group., et al.*, Superior Court of Maricopa County, State of Arizona
- *Mars Hill Media v. Petters Group Worldwide, et al.*, United States District Court, District of Minnesota
- *Mok v. Rucker, et al.*, United States District Court, District of Minnesota
- *MoneyGram Payment Systems, Inc. v. Citigroup, Inc., et al.*, Fourth Judicial District, State of Minnesota
- *MoneyGram Payment Systems, Inc. v. Deutsche Bank AG, et al.*, Fourth Judicial District, State of Minnesota
- *New Orleans Employees' Retirement System v. UBS, AG, et al.*, United States District Court, Southern District of New York
- *Reinhardt v. Syntax-Brilliant Corp., et al.*, Superior Court of Maricopa County, State of Arizona
- *Rensch v. Northern Oil & Gas, Inc., et al.*, United States District Court, District of Minnesota

- *Rupp, et al. v. Thompson et al. (Minnesota Corn Processors)*, Fifth Judicial District Court, State of Minnesota
- *Schmidt, et al. v. eFunds Corporation, et al.*, Superior Court of Arizona, Maricopa County
- *Scull v. Compellent Technologies, Inc., et al.*, United States District Court, District of Minnesota
- *St. Barnabas Hospital, Inc., et al. v. Ovation Pharmaceuticals, et al.*, United States District Court, District of Minnesota
- *State of New Mexico v. Visa, Inc., et al.*, First Judicial District, State of New Mexico
- *Stevenson v. ev3 Inc., et al.*, Fourth Judicial District, State of Minnesota
- *Surooj v. Polaris Industries, Inc., United States District Court*, District of Minnesota
- *Tran v. Joly, et al.*, United States District Court, District of Minnesota
- *West, Jr. v. American International Group, Inc., et al.*, United States District Court, Southern District of New York
- *Yurman v. Plato Learning, Inc., et al.*, United States District Court, District of Minnesota

### **Sports Law**

- *Dryer v. National Football League*, United States District Court, District of Minnesota (Lead Counsel)
- *In re National Collegiate Athletic Association Student-Athlete Concussion Litigation*, MDL 2492 (Member of the Executive Committee)
- *In re National Hockey League Players' Concussion Injury Litigation*, MDL 2551 (Co-Lead Counsel)
- *In re National Football League Players' Concussion Injury Litigation*, MDL 2323 (Member of the Plaintiffs' Steering Committee)

### **Employment Violations - Wage and Hour Litigation**

- *Bernstein, et al. v. M.G. Waldbaum, Inc., et al.*, United States District Court, District of Minnesota
- *Christman, et al. v. FPMI Solutions, Inc.*, United States District Court, Northern District of California
- *Daud, et al. v. Gold'n Plump Poultry, Inc.*, United States District Court, District of Minnesota
- *DeKeyser, et al. v. ThyssenKrupp Waupaca, Inc.*, United States District Court, Eastern District of Wisconsin
- *Doe v. Cin-Lan, Inc., et al.*, United States District Court, Eastern District of Michigan
- *Doe I, et al., v. R&B Muskegon, Inc., et al.*, United States District Court, Western District of Michigan
- *Fluegel, et al. v. FedEx Ground Package System, Inc.*, United States District Court, Northern District of Illinois
- *Ford, et al. v. Townsends, Inc.*, United States District Court, Eastern District of Arkansas
- *Frank, et al. v. Gold'n Plump Poultry, Inc.*, United States District Court, District of Minnesota
- *Garner, et al v. Butterball, LLC*, United States District Court, Eastern District of Arkansas

- *Grabman, et al. v. Brakebush Brothers, Inc.*, United States District Court, Eastern District of Wisconsin
- *Griffin, et al. v. FedEx Corporation, et al.*, United States District Court, Northern District of Illinois Eastern Division
- *Helmert, et al. v. Butterball, LLC*, United States District Court, Eastern District of Arkansas
- *Hudson, et al. v. Butterball, LLC*, United States District Court, Western District of Missouri
- *In re Fedex Ground Package System, Inc.*, MDL 1700 (Member of the Plaintiffs' Steering Committee)
- *Larkin et al. v. CPI Corp, et al.*, United States District Court, Western District of Wisconsin
- *Milner, et al. v. Farmers Insurance Exchange*, United States District Court, District of Minnesota
- *Patterson, et al. v. 68-444 Perez, Inc., et al.*, United States District Court, Central District of California
- *Patzke, et al. v. American Express TRS Co., Inc.*, United States District Court, District of Arizona
- *Phelps, et al. v. Green Bay Dressed Beef, LLC*, United States District Court, Eastern District of Wisconsin
- *Robinson, et al. v. Novellus Systems, Inc.*, United States District Court, Northern District of California
- *Salazar, et al. v. Butterball, LLC*, United States District Court, District of Colorado
- *Trauth v. Spearmint Rhino Companies Worldwide, Inc., et al.*, United States District Court, Central District of California
- *Trauth v. Déjà vu Consulting, Inc., et al.*, Superior Court of Los Angeles County, State of California
- *Trejo et al. v. Townsends, Inc.*, United States District Court, Middle District of North Carolina

#### **Environmental and Toxic Torts**

- *Adams, et al. v. DPC Enterprises, LP, et al.*, Jefferson County Circuit Court, State of Missouri
- *Cooksey v. Hawkins Chemical Company*, Hennepin County District Court File No. 95-3603
- *Cuff, et al. v. Brenntag North America, Inc., et al.* United States District Court, Northern District of Georgia Atlanta Division
- *Ebert et al. v. General Mills, Inc.*, United States District Court, District of Minnesota
- *Fastrip, Inc., et al. v. CSX Corporation*, United States District Court, Western District of Kentucky
- *In re MTBE Water Contamination Litigation*, MDL 1358, United States District Court, Southern District of New York
- *In re Soo Line Railroad Company Derailment of January 18, 2002 in Minot, N.D.*, Hennepin County District Court File No. 06-1833
- *In re Welding Rods Products Liability Litigation*, MDL 1535, United States District Court, Northern District of Ohio

- *Martin, et al. v. BioLab, Inc., et al.*, United States District Court, Northern District of Georgia Atlanta Division
- *McGruder, et al. v. DPC Enterprises, LP, et al.*, Maricopa County Superior Court, State of Arizona
- *Mehl, et al. v. Canadian Pacific Railway, et al.*, United States District Court, District of North Dakota
- *Ponce, et al. v. Pima County, et al.*, Maricopa County Superior Court, State of Arizona
- *Sanders, et al. v. Norfolk Southern Corporation, et al.*, United States District Court, District of South Carolina
- *Weincke, et al. v. Metropolitan Airports Commission*, State of Minnesota, Hennepin County District Court (Class Counsel)

### **Homeowner Mortgage Litigation**

- *Anderson, et al. v. The Money Store*, United States District Court, District of South Carolina
- *Boschee v. Burnet Title Company*, Fourth Judicial District, State of Minnesota
- *Edwards / White, et al. v. Long Beach Mortgage Company / Washington Mutual Bank F.A., et al.*, Fourth Judicial District Court, State of Minnesota
- *Gewecke v. U.S. Bank, et al.*, United States District Court, District of Minnesota
- *Glover v. Standard Federal Bank*, United States District Court, District of Minnesota
- *Grady v. Burnett Realty*, Fourth Judicial District, State of Minnesota
- *Henry, et al. v. Associate Home Equity Services*, United States Bankruptcy Court, Southern District of California
- *Holland v. Countrywide Home Loans*, Nassau County Supreme Court, State of New York
- *In re Mortgage Escrow Litigation, MDL 899* (Lead Counsel)
- *Lang v. Town and Country Credit*, United States District Court, District of Minnesota
- *Larpenteur, et al. v. Burnet Realty, Inc., et al.*, Fourth Judicial District, State of Minnesota
- *Logan, et al. v. Norwest Mortgage Bank Minnesota, N.A.*, Fourth Judicial District Court, State of Minnesota
- *Lund v. Universal Title Company*, Fourth Judicial District, State of Minnesota
- *Nobles, et al. v. Countrywide Home Loans*, Alameda County Superior Court, State of California
- *Mahoney v. Fidelity National Title Company*, United States District Court, Central District of California
- *McBride v. Reliastar*, United States District Court, Northern District of Georgia
- *Mitchell, et al. v. Chicago Title Insurance Company*, Fourth Judicial District Court, State of Minnesota
- *Ricci, et al. v. Ameriquest Mortgage Company*, Fourth Judicial District, State of Minnesota
- *Schlink v. Edina Realty Title*, Fourth Judicial District, State of Minnesota
- *Schuetz v. Banc One*, United States District Court, District of Arizona
- *Stepan v. Edina Realty Title*, Fourth Judicial District Court, State of Minnesota
- *Taft v. Wells Fargo Bank N.A.*, Fourth Judicial District, State of Minnesota
- *Wilson v. Commercial Federal Mortgage Corp.*, United States District Court, Northern District of Alabama

# EXHIBIT Y

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# An Empirical Study of Class Action Settlements and Their Fee Awards

*Brian T. Fitzpatrick\**

This article is a comprehensive empirical study of class action settlements in federal court. Although there have been prior empirical studies of federal class action settlements, these studies have either been confined to securities cases or have been based on samples of cases that were not intended to be representative of the whole (such as those settlements approved in published opinions). By contrast, in this article, I attempt to study every federal class action settlement from the years 2006 and 2007. As far as I am aware, this study is the first attempt to collect a complete set of federal class action settlements for any given year. I find that district court judges approved 688 class action settlements over this two-year period, involving nearly \$33 billion. Of this \$33 billion, roughly \$5 billion was awarded to class action lawyers, or about 15 percent of the total. Most judges chose to award fees by using the highly discretionary percentage-of-the-settlement method, and the fees awarded according to this method varied over a broad range, with a mean and median around 25 percent. Fee percentages were strongly and inversely associated with the size of the settlement. The age of the case at settlement was positively associated with fee percentages. There was some variation in fee percentages depending on the subject matter of the litigation and the geographic circuit in which the district court was located, with lower percentages in securities cases and in settlements from the Second and Ninth Circuits. There was no evidence that fee percentages were associated with whether the class action was certified as a settlement class or with the political affiliation of the judge who made the award.

## I. INTRODUCTION

Class actions have been the source of great controversy in the United States. Corporations fear them.<sup>1</sup> Policymakers have tried to corral them.<sup>2</sup> Commentators and scholars have

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\*Vanderbilt Law School, 131 21st Ave. S., Nashville, TN 37203; email: brian.fitzpatrick@vanderbilt.edu.

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<sup>1</sup>See, e.g., Robert W. Wood, *Defining Employees and Independent Contractors*, *Bus. L. Today* 45, 48 (May–June 2008).

<sup>2</sup>See Private Securities Litigation Reform Act (PSLRA) of 1995, Pub. L. No. 104-67, 109 Stat. 737 (codified as amended in scattered sections of 15 U.S.C.); Class Action Fairness Act of 2005, 28 U.S.C. §§ 1453, 1711–1715 (2006).

suggested countless ways to reform them.<sup>3</sup> Despite all the attention showered on class actions, and despite the excellent empirical work on class actions to date, the data that currently exist on how the class action system operates in the United States are limited. We do not know, for example, how much money changes hands in class action litigation every year. We do not know how much of this money goes to class action lawyers rather than class members. Indeed, we do not even know how many class action cases are resolved on an annual basis. To intelligently assess our class action system as well as whether and how it should be reformed, answers to all these questions are important. Answers to these questions are equally important to policymakers in other countries who are currently thinking about adopting U.S.-style class action devices.<sup>4</sup>

This article tries to answer these and other questions by reporting the results of an empirical study that attempted to gather all class action settlements approved by federal judges over a recent two-year period, 2006 and 2007. I use class action settlements as the basis of the study because, even more so than individual litigation, virtually all cases certified as class actions and not dismissed before trial end in settlement.<sup>5</sup> I use federal settlements as the basis of the study for practical reasons: it was easier to identify and collect settlements approved by federal judges than those approved by state judges. Systematic study of class action settlements in state courts must await further study;<sup>6</sup> these future studies are important because there may be more class action settlements in state courts than there are in federal court.<sup>7</sup>

This article attempts to make three contributions to the existing empirical literature on class action settlements. First, virtually all the prior empirical studies of federal class action settlements have either been confined to securities cases or have been based on samples of cases that were not intended to be representative of the whole (such as those settlements approved in published opinions). In this article, by contrast, I attempt to collect every federal class action settlement from the years 2006 and 2007. As far as I am aware, this study is the first to attempt to collect a complete set of federal class action settlements for

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<sup>3</sup>See, e.g., Robert G. Bone, *Agreeing to Fair Process: The Problem with Contractarian Theories of Procedural Fairness*, 83 B.U.L. Rev. 485, 490–94 (2003); Allan Erbsen, *From “Predominance” to “Resolvability”: A New Approach to Regulating Class Actions*, 58 Vand. L. Rev. 995, 1080–81 (2005).

<sup>4</sup>See, e.g., Samuel Issacharoff & Geoffrey Miller, *Will Aggregate Litigation Come to Europe?*, 62 Vand. L. Rev. 179 (2009).

<sup>5</sup>See, e.g., Emery Lee & Thomas E. Willing, *Impact of the Class Action Fairness Act on the Federal Courts: Preliminary Findings from Phase Two’s Pre-CAFA Sample of Diversity Class Actions* 11 (Federal Judicial Center 2008); Tom Baker & Sean J. Griffith, *How the Merits Matter: D&O Insurance and Securities Settlements*, 157 U. Pa. L. Rev. 755 (2009).

<sup>6</sup>Empirical scholars have begun to study state court class actions in certain subject areas and in certain states. See, e.g., Robert B. Thompson & Randall S. Thomas, *The Public and Private Faces of Derivative Suits*, 57 Vand. L. Rev. 1747 (2004); Robert B. Thompson & Randall S. Thomas, *The New Look of Shareholder Litigation: Acquisition-Oriented Class Actions*, 57 Vand. L. Rev. 133 (2004); *Findings of the Study of California Class Action Litigation* (Administrative Office of the Courts) (First Interim Report, 2009).

<sup>7</sup>See Deborah R. Hensler et al., *Class Action Dilemmas: Pursuing Public Goals for Private Gain* 56 (2000).

any given year.<sup>8</sup> As such, this article allows us to see for the first time a complete picture of the cases that are settled in federal court. This includes aggregate annual statistics, such as how many class actions are settled every year, how much money is approved every year in these settlements, and how much of that money class action lawyers reap every year. It also includes how these settlements are distributed geographically as well as by litigation area, what sort of relief was provided in the settlements, how long the class actions took to reach settlement, and an analysis of what factors were associated with the fees awarded to class counsel by district court judges.

Second, because this article analyzes settlements that were approved in both published and unpublished opinions, it allows us to assess how well the few prior studies that looked beyond securities cases but relied only on published opinions capture the complete picture of class action settlements. To the extent these prior studies adequately capture the complete picture, it may be less imperative for courts, policymakers, and empirical scholars to spend the considerable resources needed to collect unpublished opinions in order to make sound decisions about how to design our class action system.

Third, this article studies factors that may influence district court judges when they award fees to class counsel that have not been studied before. For example, in light of the discretion district court judges have been delegated over fees under Rule 23, as well as the salience the issue of class action litigation has assumed in national politics, realist theories of judicial behavior would predict that Republican judges would award smaller fee percentages than Democratic judges. I study whether the political beliefs of district court judges are associated with the fees they award and, in doing so, contribute to the literature that attempts to assess the extent to which these beliefs influence the decisions of not just appellate judges, but trial judges as well. Moreover, the article contributes to the small but growing literature examining whether the ideological influences found in published judicial decisions persist when unpublished decisions are examined as well.

In Section II of this article, I briefly survey the existing empirical studies of class action settlements. In Section III, I describe the methodology I used to collect the 2006–2007 federal class action settlements and I report my findings regarding these settlements. District court judges approved 688 class action settlements over this two-year period, involving over \$33 billion. I report a number of descriptive statistics for these settlements, including the number of plaintiff versus defendant classes, the distribution of settlements by subject matter, the age of the case at settlement, the geographic distribution of settlements, the number of settlement classes, the distribution of relief across settlements, and various statistics on the amount of money involved in the settlements. It should be noted that despite the fact that the few prior studies that looked beyond securities settlements appeared to oversample larger settlements, much of the analysis set forth in this article is consistent with these prior studies. This suggests that scholars may not need to sample unpublished as well as published opinions in order to paint an adequate picture of class action settlements.

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<sup>8</sup>Of course, I cannot be certain that I found every one of the class actions that settled in federal court over this period. Nonetheless, I am confident that if I did not find some, the number I did not find is small and would not contribute meaningfully to the data reported in this article.

In Section IV, I perform an analysis of the fees judges awarded to class action lawyers in the 2006–2007 settlements. All told, judges awarded nearly \$5 billion over this two-year period in fees and expenses to class action lawyers, or about 15 percent of the total amount of the settlements. Most federal judges chose to award fees by using the highly discretionary percentage-of-the-settlement method and, unsurprisingly, the fees awarded according to this method varied over a broad range, with a mean and median around 25 percent. Using regression analysis, I confirm prior studies and find that fee percentages are strongly and inversely associated with the size of the settlement. Further, I find that the age of the case is positively associated with fee percentages but that the percentages were not associated with whether the class action was certified as a settlement class. There also appeared to be some variation in fee percentages depending on the subject matter of the litigation and the geographic circuit in which the district court was located. Fee percentages in securities cases were lower than the percentages in some but not all other areas, and district courts in some circuits—the Ninth and the Second (in securities cases)—awarded lower fee percentages than courts in many other circuits. Finally, the regression analysis did not confirm the realist hypothesis: there was no association between fee percentage and the political beliefs of the judge in any regression.

## II. PRIOR EMPIRICAL STUDIES OF CLASS ACTION SETTLEMENTS

There are many existing empirical studies of federal securities class action settlements.<sup>9</sup> Studies of securities settlements have been plentiful because for-profit organizations maintain lists of all federal securities class action settlements for the benefit of institutional investors that are entitled to file claims in these settlements.<sup>10</sup> Using these data, studies have shown that since 2005, for example, there have been roughly 100 securities class action settlements in federal court each year, and these settlements have involved between \$7 billion and \$17 billion per year.<sup>11</sup> Scholars have used these data to analyze many different aspects of these settlements, including the factors that are associated with the percentage of

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<sup>9</sup>See, e.g., James D. Cox & Randall S. Thomas, Does the Plaintiff Matter? An Empirical Analysis of Lead Plaintiffs in Securities Class Actions, 106 Colum. L. Rev. 1587 (2006); James D. Cox, Randall S. Thomas & Lynn Bai, There are Plaintiffs and . . . there are Plaintiffs: An Empirical Analysis of Securities Class Action Settlements, 61 Vand. L. Rev. 355 (2008); Theodore Eisenberg, Geoffrey Miller & Michael A. Perino, A New Look at Judicial Impact: Attorneys' Fees in Securities Class Actions after *Goldberger v. Integrated Resources, Inc.*, 29 Wash. U.J.L. & Pol'y 5 (2009); Michael A. Perino, Markets and Monitors: The Impact of Competition and Experience on Attorneys' Fees in Securities Class Actions (St. John's Legal Studies, Research Paper No. 06-0034, 2006), available at <<http://ssrn.com/abstract=870577>> [hereinafter Perino, Markets and Monitors]; Michael A. Perino, The Milberg Weiss Prosecution: No Harm, No Foul? (St. John's Legal Studies, Research Paper No. 08-0135, 2008), available at <[http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1133995](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1133995)> [hereinafter Perino, Milberg Weiss].

<sup>10</sup>See, e.g., RiskMetrics Group, available at <<http://www.riskmetrics.com/scas>>.

<sup>11</sup>See Cornerstone Research, Securities Class Action Settlements: 2007 Review and Analysis 1 (2008), available at <[http://securities.stanford.edu/Settlements/REVIEW\\_1995-2007/Settlements\\_Through\\_12\\_2007.pdf](http://securities.stanford.edu/Settlements/REVIEW_1995-2007/Settlements_Through_12_2007.pdf)>.

the settlements that courts have awarded to class action lawyers.<sup>12</sup> These studies have found that the mean and median fees awarded by district court judges are between 20 percent and 30 percent of the settlement amount.<sup>13</sup> These studies have also found that a number of factors are associated with the percentage of the settlement awarded as fees, including (inversely) the size of the settlement, the age of the case, whether a public pension fund was the lead plaintiff, and whether certain law firms were class counsel.<sup>14</sup> None of these studies has examined whether the political affiliation of the federal district court judge awarding the fees was associated with the size of awards.

There are no comparable organizations that maintain lists of nonsecurities class action settlements. As such, studies of class action settlements beyond the securities area are much rarer and, when they have been done, rely on samples of settlements that were not intended to be representative of the whole. The two largest studies of class action settlements not limited to securities class actions are a 2004 study by Ted Eisenberg and Geoff Miller,<sup>15</sup> which was recently updated to include data through 2008,<sup>16</sup> and a 2003 study by Class Action Reports.<sup>17</sup> The Eisenberg-Miller studies collected data from class action settlements in both state and federal courts found from court opinions published in the Westlaw and Lexis databases and checked against lists maintained by the CCH Federal Securities and Trade Regulation Reporters. Through 2008, their studies have now identified 689 settlements over a 16-year period, or less than 45 settlements per year.<sup>18</sup> Over this 16-year period, their studies found that the mean and median settlement amounts were, respectively, \$116 million and \$12.5 million (in 2008 dollars), and that the mean and median fees awarded by district courts were 23 percent and 24 percent of the settlement, respectively.<sup>19</sup> Their studies also performed an analysis of fee percentages and fee awards. For the data through 2002, they found that the percentage of the settlement awarded as fees was associated with the size of the settlement (inversely), the age of the case, and whether the

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<sup>12</sup>See, e.g., Eisenberg, Miller & Perino, *supra* note 9, at 17–24, 28–36; Perino, *Markets and Monitors*, *supra* note 9, at 12–28, 39–44; Perino, Milberg Weiss, *supra* note 9, at 32–33, 39–60.

<sup>13</sup>See, e.g., Eisenberg, Miller & Perino, *supra* note 9, at 17–18, 22, 28, 33; Perino, *Markets and Monitors*, *supra* note 9, at 20–21, 40; Perino, Milberg Weiss, *supra* note 9, at 32–33, 51–53.

<sup>14</sup>See, e.g., Eisenberg, Miller & Perino, *supra* note 9, at 14–24, 29–30, 33–34; Perino, *Markets and Monitors*, *supra* note 9, at 20–28, 41; Perino, Milberg Weiss, *supra* note 9, at 39–58.

<sup>15</sup>See Theodore Eisenberg & Geoffrey Miller, *Attorney Fees in Class Action Settlements: An Empirical Study*, 1 J. Empirical Legal Stud. 27 (2004).

<sup>16</sup>See Theodore Eisenberg & Geoffrey Miller, *Attorneys' Fees and Expenses in Class Action Settlements: 1993–2008*, 7 J. Empirical Legal Stud. 248 (2010) [hereinafter Eisenberg & Miller II].

<sup>17</sup>See Stuart J. Logan, Jack Moshman & Beverly C. Moore, Jr., *Attorney Fee Awards in Common Fund Class Actions*, 24 Class Action Rep. 169 (Mar.–Apr. 2003).

<sup>18</sup>See Eisenberg & Miller II, *supra* note 16, at 251.

<sup>19</sup>*Id.* at 258–59.

district court went out of its way to comment on the level of risk that class counsel had assumed in pursuing the case.<sup>20</sup> For the data through 2008, they regressed only fee awards and found that the awards were inversely associated with the size of the settlement, that state courts gave lower awards than federal courts, and that the level of risk was still associated with larger awards.<sup>21</sup> Their studies have not examined whether the political affiliations of the federal district court judges awarding fees were associated with the size of the awards.

The Class Action Reports study collected data on 1,120 state and federal settlements over a 30-year period, or less than 40 settlements per year.<sup>22</sup> Over the same 10-year period analyzed by the Eisenberg-Miller study, the Class Action Reports data found mean and median settlements of \$35.4 and \$7.6 million (in 2002 dollars), as well as mean and median fee percentages between 25 percent and 30 percent.<sup>23</sup> Professors Eisenberg and Miller performed an analysis of the fee awards in the Class Action Reports study and found the percentage of the settlement awarded as fees was likewise associated with the size of the settlement (inversely) and the age of the case.<sup>24</sup>

### III. FEDERAL CLASS ACTION SETTLEMENTS, 2006 AND 2007

As far as I am aware, there has never been an empirical study of all federal class action settlements in a particular year. In this article, I attempt to make such a study for two recent years: 2006 and 2007. To compile a list of all federal class settlements in 2006 and 2007, I started with one of the aforementioned lists of securities settlements, the one maintained by RiskMetrics, and I supplemented this list with settlements that could be found through three other sources: (1) broad searches of district court opinions in the Westlaw and Lexis databases,<sup>25</sup> (2) four reporters of class action settlements—*BNA Class Action Litigation Report*, *Mealey's Jury Verdicts and Settlements*, *Mealey's Litigation Report*, and the *Class Action World* website<sup>26</sup>—and (3) a list from the Administrative Office of Courts of all district court cases

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<sup>20</sup>See Eisenberg & Miller, *supra* note 15, at 61–62.

<sup>21</sup>See Eisenberg & Miller II, *supra* note 16, at 278.

<sup>22</sup>See Eisenberg & Miller, *supra* note 15, at 34.

<sup>23</sup>*Id.* at 47, 51.

<sup>24</sup>*Id.* at 61–62.

<sup>25</sup>The searches consisted of the following terms: (“class action” & (settle! /s approv! /s (2006 2007))); (((counsel attorney) /s fee /s award!) & (settle! /s (2006 2007)) & “class action”); (“class action” /s settle! & da(aft 12/31/2005 & bef 1/1/2008)); (“class action” /s (fair reasonable adequate) & da(aft 12/31/2005 & bef 1/1/2008)).

<sup>26</sup>See <<http://classactionworld.com/>>.

coded as class actions that terminated by settlement between 2005 and 2008.<sup>27</sup> I then removed any duplicate cases and examined the docket sheets and court orders of each of the remaining cases to determine whether the cases were in fact certified as class actions under either Rule 23, Rule 23.1, or Rule 23.2.<sup>28</sup> For each of the cases verified as such, I gathered the district court's order approving the settlement, the district court's order awarding attorney fees, and, in many cases, the settlement agreements and class counsel's motions for fees, from electronic databases (such as Westlaw or PACER) and, when necessary, from the clerk's offices of the various federal district courts. In this section, I report the characteristics of the settlements themselves; in the next section, I report the characteristics of the attorney fees awarded to class counsel by the district courts that approved the settlements.

#### A. Number of Settlements

I found 688 settlements approved by federal district courts during 2006 and 2007 using the methodology described above. This is almost the exact same number the Eisenberg-Miller study found over a 16-year period in both federal *and* state court. Indeed, the number of annual settlements identified in this study is *several times* the number of annual settlements that have been identified in any prior empirical study of class action settlements. Of the 688 settlements I found, 304 were approved in 2006 and 384 were approved in 2007.<sup>29</sup>

#### B. Defendant Versus Plaintiff Classes

Although Rule 23 permits federal judges to certify either a class of plaintiffs or a class of defendants, it is widely assumed that it is extremely rare for courts to certify defendant classes.<sup>30</sup> My findings confirm this widely held assumption. Of the 688 class action settlements approved in 2006 and 2007, 685 involved plaintiff classes and only three involved

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<sup>27</sup>I examined the AO lists in the year before and after the two-year period under investigation because the termination date recorded by the AO was not necessarily the same date the district court approved the settlement.

<sup>28</sup>See Fed. R. Civ. P. 23, 23.1, 23.2. I excluded from this analysis opt-in collective actions, such as those brought pursuant to the provisions of the Fair Labor Standards Act (see 29 U.S.C. § 216(b)), if such actions did not also include claims certified under the opt-out mechanism in Rule 23.

<sup>29</sup>A settlement was assigned to a particular year if the district court judge's order approving the settlement was dated between January 1 and December 31 of that year. Cases involving multiple defendants sometimes settled over time because defendants would settle separately with the plaintiff class. All such partial settlements approved by the district court on the same date were treated as one settlement. Partial settlements approved by the district court on different dates were treated as different settlements.

<sup>30</sup>See, e.g., Robert H. Klonoff, Edward K.M. Bilich & Suzette M. Malveaux, *Class Actions and Other Multi-Party Litigation: Cases and Materials* 1061 (2d ed. 2006).

defendant classes. All three of the defendant-class settlements were in employment benefits cases, where companies sued classes of current or former employees.<sup>31</sup>

### C. Settlement Subject Areas

Although courts are free to certify Rule 23 classes in almost any subject area, it is widely assumed that securities settlements dominate the federal class action docket.<sup>32</sup> At least in terms of the number of settlements, my findings reject this conventional wisdom. As Table 1 shows, although securities settlements comprised a large percentage of the 2006 and 2007 settlements, they did not comprise a majority of those settlements. As one would have

Table 1: The Number of Class Action Settlements Approved by Federal Judges in 2006 and 2007 in Each Subject Area

<i>Subject Matter</i>	<i>Number of Settlements</i>	
	<i>2006</i>	<i>2007</i>
Securities	122 (40%)	135 (35%)
Labor and employment	41 (14%)	53 (14%)
Consumer	40 (13%)	47 (12%)
Employee benefits	23 (8%)	38 (10%)
Civil rights	24 (8%)	37 (10%)
Debt collection	19 (6%)	23 (6%)
Antitrust	13 (4%)	17 (4%)
Commercial	4 (1%)	9 (2%)
Other	18 (6%)	25 (6%)
Total	304	384

NOTE: Securities: cases brought under federal and state securities laws. Labor and employment: workplace claims brought under either federal or state law, with the exception of ERISA cases. Consumer: cases brought under the Fair Credit Reporting Act as well as cases for consumer fraud and the like. Employee benefits: ERISA cases. Civil rights: cases brought under 42 U.S.C. § 1983 or cases brought under the Americans with Disabilities Act seeking nonworkplace accommodations. Debt collection: cases brought under the Fair Debt Collection Practices Act. Antitrust: cases brought under federal or state antitrust laws. Commercial: cases between businesses, excluding antitrust cases. Other: includes, among other things, derivative actions against corporate managers and directors, environmental suits, insurance suits, Medicare and Medicaid suits, product liability suits, and mass tort suits.

SOURCES: Westlaw, PACER, district court clerks' offices.

<sup>31</sup>See *Halliburton Co. v. Graves*, No. 04-00280 (S.D. Tex., Sept. 28, 2007); *Rexam, Inc. v. United Steel Workers of Am.*, No. 03-2998 (D. Minn. Aug. 29, 2007); *Rexam, Inc. v. United Steel Workers of Am.*, No. 03-2998 (D. Minn. Sept. 17, 2007).

<sup>32</sup>See, e.g., John C. Coffee, Jr., *Reforming the Security Class Action: An Essay on Deterrence and its Implementation*, 106 *Colum. L. Rev.* 1534, 1539–40 (2006) (describing securities class actions as “the 800-pound gorilla that dominates and overshadows other forms of class actions”).

expected in light of Supreme Court precedent over the last two decades,<sup>33</sup> there were almost no mass tort class actions (included in the “Other” category) settled over the two-year period.

Although the Eisenberg-Miller study through 2008 is not directly comparable on the distribution of settlements across litigation subject areas—because its state and federal court data cannot be separated (more than 10 percent of the settlements were from state court<sup>34</sup>) and because it excludes settlements in fee-shifting cases—their study through 2008 is the best existing point of comparison. Interestingly, despite the fact that state courts were included in their data, their study through 2008 found about the same percentage of securities cases (39 percent) as my 2006–2007 data set shows.<sup>35</sup> However, their study found many more consumer (18 percent) and antitrust (10 percent) cases, while finding many fewer labor and employment (8 percent), employee benefits (6 percent), and civil rights (3 percent) cases.<sup>36</sup> This is not unexpected given their reliance on published opinions and their exclusion of fee-shifting cases.

#### D. Settlement Classes

The Federal Rules of Civil Procedure permit parties to seek certification of a suit as a class action for settlement purposes only.<sup>37</sup> When the district court certifies a class in such circumstances, the court need not consider whether it would be manageable to try the litigation as a class.<sup>38</sup> So-called settlement classes have always been more controversial than classes certified for litigation because they raise the prospect that, at least where there are competing class actions filed against the same defendant, the defendant could play class counsel off one another to find the one willing to settle the case for the least amount of money.<sup>39</sup> Prior to the Supreme Court’s 1997 opinion in *Amchem Products, Inc. v. Windsor*,<sup>40</sup> it was uncertain whether the Federal Rules even permitted settlement classes. It may therefore be a bit surprising to learn that 68 percent of the federal settlements in 2006 and 2007 were settlement classes. This percentage is higher than the percentage found in the Eisenberg-Miller studies, which found that only 57 percent of class action settlements in

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<sup>33</sup>See, e.g., Samuel Issacharoff, *Private Claims, Aggregate Rights*, 2008 Sup. Ct. Rev. 183, 208.

<sup>34</sup>See Eisenberg & Miller II, *supra* note 16, at 257.

<sup>35</sup>*Id.* at 262.

<sup>36</sup>*Id.*

<sup>37</sup>See Martin H. Redish, *Settlement Class Actions, The Case-or-Controversy Requirement, and the Nature of the Adjudicatory Process*, 73 U. Chi. L. Rev. 545, 553 (2006).

<sup>38</sup>See *Amchem Prods., Inc v Windsor*, 521 U.S. 591, 620 (1997).

<sup>39</sup>See Redish, *supra* note 368, at 557–59.

<sup>40</sup>521 U.S. 591 (1997).

state and federal court between 2003 and 2008 were settlement classes.<sup>41</sup> It should be noted that the distribution of litigation subject areas among the settlement classes in my 2006–2007 federal data set did not differ much from the distribution among nonsettlement classes, with two exceptions. One exception was consumer cases, which were nearly three times as prevalent among settlement classes (15.9 percent) as among nonsettlement classes (5.9 percent); the other was civil rights cases, which were four times as prevalent among nonsettlement classes (18.0 percent) as among settlements classes (4.5 percent). In light of the skepticism with which the courts had long treated settlement classes, one might have suspected that courts would award lower fee percentages in such settlements. Nonetheless, as I report in Section III, whether a case was certified as a settlement class was not associated with the fee percentages awarded by federal district court judges.

### *E. The Age at Settlement*

One interesting question is how long class actions were litigated before they reached settlement. Unsurprisingly, cases reached settlement over a wide range of ages.<sup>42</sup> As shown in Table 2, the average time to settlement was a bit more than three years (1,196 days) and the median time was a bit under three years (1,068 days). The average and median ages here are similar to those found in the Eisenberg-Miller study through 2002, which found averages of 3.35 years in fee-shifting cases and 2.86 years in non-fee-shifting cases, and

Table 2: The Number of Days, 2006–2007, Federal Class Action Cases Took to Reach Settlement in Each Subject Area

<i>Subject Matter</i>	<i>Average</i>	<i>Median</i>	<i>Minimum</i>	<i>Maximum</i>
Securities	1,438	1,327	392	3,802
Labor and employment	928	786	105	2,497
Consumer	963	720	127	4,961
Employee benefits	1,162	1,161	164	3,157
Civil rights	1,373	1,360	181	3,354
Debt collection	738	673	223	1,973
Antitrust	1,140	1,167	237	2,480
Commercial	1,267	760	163	5,443
Other	1,065	962	185	3,620
All	1,196	1,068	105	5,443

SOURCE: PACER.

<sup>41</sup>See Eisenberg & Miller II, *supra* note 16, at 266.

<sup>42</sup>The age of the case was calculated by subtracting the date the relevant complaint was filed from the date the settlement was approved by the district court judge. The dates were taken from PACER. For consolidated cases, I used the date of the earliest complaint. If the case had been transferred, consolidated, or removed, the date the complaint was filed was not always available from PACER. In such cases, I used the date the case was transferred, consolidated, or removed as the start date.

medians of 4.01 years in fee-shifting cases and 3.0 years in non-fee-shifting cases.<sup>43</sup> Their study through 2008 did not report case ages.

The shortest time to settlement was 105 days in a labor and employment case.<sup>44</sup> The longest time to settlement was nearly 15 years (5,443 days) in a commercial case.<sup>45</sup> The average and median time to settlement varied significantly by litigation subject matter, with securities cases generally taking the longest time and debt collection cases taking the shortest time. Labor and employment cases and consumer cases also settled relatively early.

#### *F. The Location of Settlements*

The 2006–2007 federal class action settlements were not distributed across the country in the same way federal civil litigation is in general. As Figure 1 shows, some of the geographic circuits attracted much more class action attention than we would expect based on their docket size, and others attracted much less. In particular, district courts in the First, Second, Seventh, and Ninth Circuits approved a much larger share of class action settlements than the share of all civil litigation they resolved, with the First, Second, and Seventh Circuits approving nearly double the share and the Ninth Circuit approving one-and-one-half times the share. By contrast, the shares of class action settlements approved by district courts in the Fifth and Eighth Circuits were less than one-half of their share of all civil litigation, with the Third, Fourth, and Eleventh Circuits also exhibiting significant underrepresentation.

With respect to a comparison with the Eisenberg-Miller studies, their federal court data through 2008 can be separated from their state court data on the question of the geographic distribution of settlements, and there are some significant differences between their federal data and the numbers reflected in Figure 1. Their study reported considerably higher proportions of settlements than I found from the Second (23.8 percent), Third (19.7 percent), Eighth (4.8 percent), and D.C. (3.3 percent) Circuits, and considerably lower proportions from the Fourth (1.3 percent), Seventh (6.8 percent), and Ninth (16.6 percent) Circuits.<sup>46</sup>

Figure 2 separates the class action settlement data in Figure 1 into securities and nonsecurities cases. Figure 2 suggests that the overrepresentation of settlements in the First and Second Circuits is largely attributable to securities cases, whereas the overrepresentation in the Seventh Circuit is attributable to nonsecurities cases, and the overrepresentation in the Ninth is attributable to both securities and nonsecurities cases.

It is interesting to ask why some circuits received more class action attention than others. One hypothesis is that class actions are filed in circuits where class action lawyers

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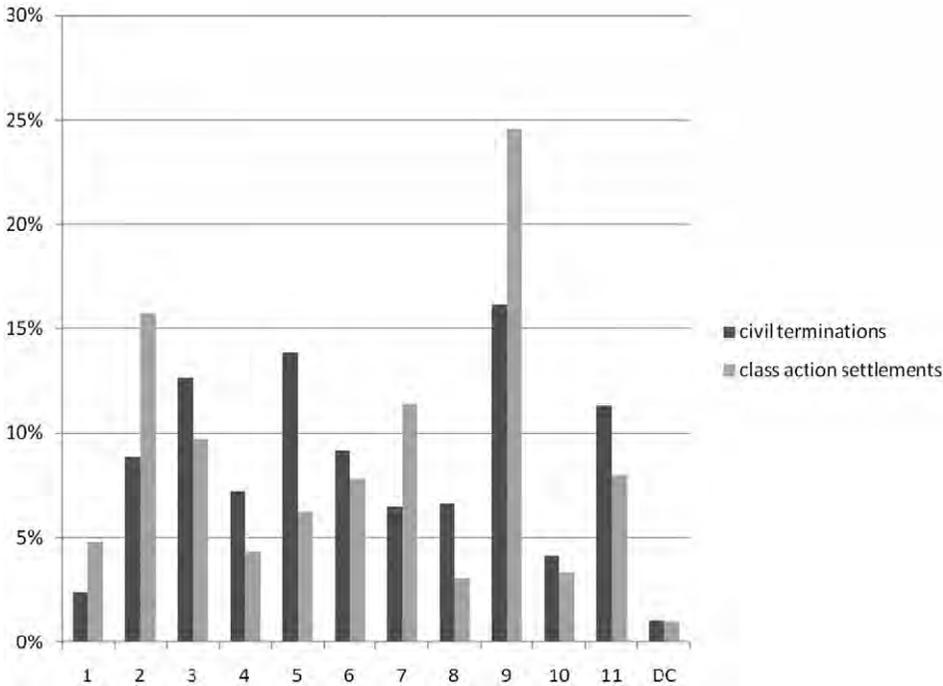
<sup>43</sup>See Eisenberg & Miller, *supra* note 15, at 59–60.

<sup>44</sup>See *Clemmons v. Rent-a-Center W., Inc.*, No. 05-6307 (D. Or. Jan. 20, 2006).

<sup>45</sup>See *Allapattah Servs. Inc. v. Exxon Corp.*, No. 91-0986 (S.D. Fla. Apr. 7, 2006).

<sup>46</sup>See Eisenberg & Miller II, *supra* note 16, at 260.

Figure 1: The percentage of 2006–2007 district court civil terminations and class action settlements in each federal circuit.



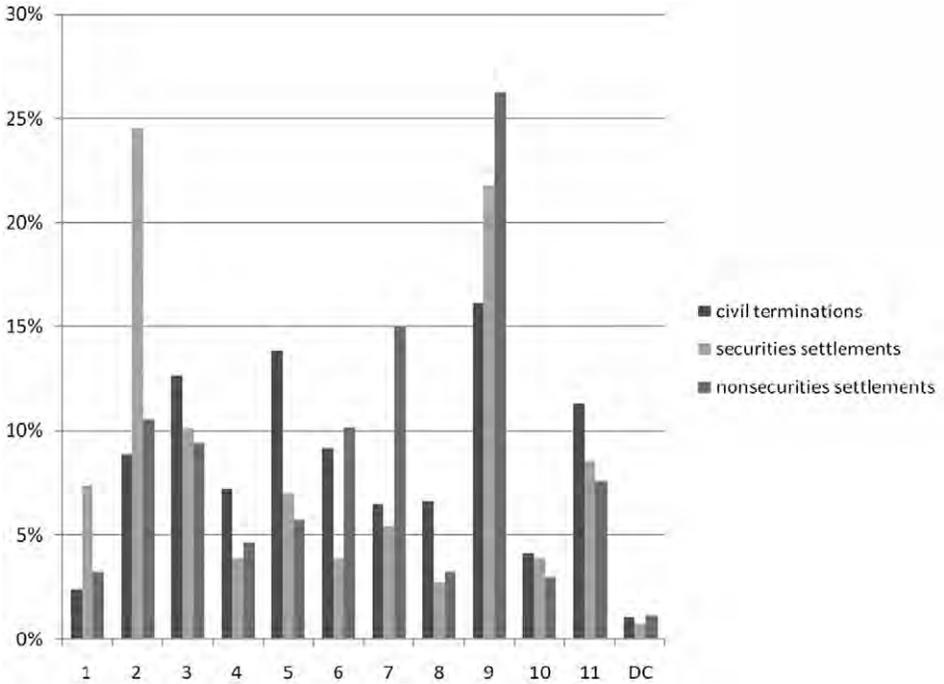
SOURCES: PACER, Statistical Tables for the Federal Judiciary 2006 & 2007 (available at <<http://www.uscourts.gov/stats/index.html>>).

believe they can find favorable law or favorable judges. Federal class actions often involve class members spread across multiple states and, as such, class action lawyers may have a great deal of discretion over the district in which file suit.<sup>47</sup> One way law or judges may be favorable to class action attorneys is with regard to attorney fees. In Section III, I attempt to test whether district court judges in the circuits with the most over- and undersubscribed class action dockets award attorney fees that would attract or discourage filings there; I find no evidence that they do.

Another hypothesis is that class action suits are settled in jurisdictions where defendants are located. This might be the case because although class action lawyers may have discretion over where to file, venue restrictions might ultimately restrict cases to jurisdic-

<sup>47</sup>See Samuel Issacharoff & Richard Nagareda, Class Settlements Under Attack, 156 U. Pa. L. Rev. 1649, 1662 (2008).

Figure 2: The percentage of 2006–2007 district court civil terminations and class action settlements in each federal circuit.



SOURCES: PACER, Statistical Tables for the Federal Judiciary 2006 & 2007 (available at <<http://www.uscourts.gov/stats/index.html>>).

tions in which defendants have their corporate headquarters or other operations.<sup>48</sup> This might explain why the Second Circuit, with the financial industry in New York, sees so many securities suits, and why other circuits with cities with a large corporate presence, such as the First (Boston), Seventh (Chicago), and Ninth (Los Angeles and San Francisco), see more settlements than one would expect based on the size of their civil dockets.

Another hypothesis might be that class action lawyers file cases wherever it is most convenient for them to litigate the cases—that is, in the cities in which their offices are located. This, too, might explain the Second Circuit’s overrepresentation in securities settlements, with prominent securities firms located in New York, as well as the

<sup>48</sup>See 28 U.S.C. §§ 1391, 1404, 1406, 1407. See also *Foster v. Nationwide Mut. Ins. Co.*, No. 07-04928, 2007 U.S. Dist. LEXIS 95240 at \*2–17 (N.D. Cal. Dec. 14, 2007) (transferring venue to jurisdiction where defendant’s corporate headquarters were located). One prior empirical study of securities class action settlements found that 85 percent of such cases are filed in the home circuit of the defendant corporation. See James D. Cox, Randall S. Thomas & Lynn Bai, Do Differences in Pleading Standards Cause Forum Shopping in Securities Class Actions?: Doctrinal and Empirical Analyses, 2009 Wis. L. Rev. 421, 429, 440, 450–51 (2009).

overrepresentation of other settlements in some of the circuits in which major metropolitan areas with prominent plaintiffs' firms are found.

### G. *Type of Relief*

Under Rule 23, district court judges can certify class actions for injunctive or declaratory relief, for money damages, or for a combination of the two.<sup>49</sup> In addition, settlements can provide money damages both in the form of cash as well as in the form of in-kind relief, such as coupons to purchase the defendant's products.<sup>50</sup>

As shown in Table 3, the vast majority of class actions settled in 2006 and 2007 provided cash relief to the class (89 percent), but a substantial number also provided in-kind relief (6 percent) or injunctive or declaratory relief (23 percent). As would be

Table 3: The Percentage of 2006 and 2007 Class Action Settlements Providing Each Type of Relief in Each Subject Area

<i>Subject Matter</i>	<i>Cash</i>	<i>In-Kind Relief</i>	<i>Injunctive or Declaratory Relief</i>
Securities ( <i>n</i> = 257)	100%	0%	2%
Labor and employment ( <i>n</i> = 94)	95%	6%	29%
Consumer ( <i>n</i> = 87)	74%	30%	37%
Employee benefits ( <i>n</i> = 61)	90%	0%	34%
Civil rights ( <i>n</i> = 61)	49%	2%	75%
Debt collection ( <i>n</i> = 42)	98%	0%	12%
Antitrust ( <i>n</i> = 30)	97%	13%	7%
Commercial ( <i>n</i> = 13)	92%	0%	62%
Other ( <i>n</i> = 43)	77%	7%	33%
All ( <i>n</i> = 688)	89%	6%	23%

NOTE: Cash: cash, securities, refunds, charitable contributions, contributions to employee benefit plans, forgiven debt, relinquishment of liens or claims, and liquidated repairs to property. In-kind relief: vouchers, coupons, gift cards, warranty extensions, merchandise, services, and extended insurance policies. Injunctive or declaratory relief: modification of terms of employee benefit plans, modification of compensation practices, changes in business practices, capital improvements, research, and unliquidated repairs to property.

SOURCES: Westlaw, PACER, district court clerks' offices.

<sup>49</sup>See Fed. R. Civ. P. 23(b).

<sup>50</sup>These coupon settlements have become very controversial in recent years, and Congress discouraged them in the Class Action Fairness Act of 2005 by tying attorney fees to the value of coupons that were ultimately redeemed by class members as opposed to the value of coupons offered class members. See 28 U.S.C. § 1712.

expected in light of the focus on consumer cases in the debate over the anti-coupon provision in the Class Action Fairness Act of 2005,<sup>51</sup> consumer cases had the greatest percentage of settlements providing for in-kind relief (30 percent). Civil rights cases had the greatest percentage of settlements providing for injunctive or declaratory relief (75 percent), though almost half the civil rights cases also provided some cash relief (49 percent). The securities settlements were quite distinctive from the settlements in other areas in their singular focus on cash relief: every single securities settlement provided cash to the class and almost none provided in-kind, injunctive, or declaratory relief. This is but one example of how the focus on securities settlements in the prior empirical scholarship can lead to a distorted picture of class action litigation.

#### H. Settlement Money

Although securities settlements did not comprise the majority of federal class action settlements in 2006 and 2007, they did comprise the majority of the money—indeed, the *vast majority* of the money—involved in class action settlements. In Table 4, I report the total amount of ascertainable value involved in the 2006 and 2007 settlements. This amount

Table 4: The Total Amount of Money Involved in Federal Class Action Settlements in 2006 and 2007

Subject Matter	Total Ascertainable Monetary Value in Settlements (and Percentage of Overall Annual Total)			
	2006 (n = 304)		2007 (n = 384)	
Securities	\$16,728	76%	\$8,038	73%
Labor and employment	\$266.5	1%	\$547.7	5%
Consumer	\$517.3	2%	\$732.8	7%
Employee benefits	\$443.8	2%	\$280.8	3%
Civil rights	\$265.4	1%	\$81.7	1%
Debt collection	\$8.9	<1%	\$5.7	<1%
Antitrust	\$1,079	5%	\$660.5	6%
Commercial	\$1,217	6%	\$124.0	1%
Other	\$1,568	7%	\$592.5	5%
Total	\$22,093	100%	\$11,063	100%

NOTE: Dollar amounts are in millions. Includes all determinate payments in cash or cash equivalents (such as marketable securities), including attorney fees and expenses, as well as any in-kind relief (such as coupons) or injunctive relief that was valued by the district court.

SOURCES: Westlaw, PACER, district court clerks' offices.

<sup>51</sup>See, e.g., 151 Cong. Rec. H723 (2005) (statement of Rep. Sensenbrenner) (arguing that consumers are “seeing all of their gains go to attorneys and them just getting coupon settlements from the people who have allegedly done them wrong”).

includes all determinate<sup>52</sup> payments in cash or cash equivalents (such as marketable securities), including attorney fees and expenses, as well as any in-kind relief (such as coupons) or injunctive relief that was valued by the district court.<sup>53</sup> I did not attempt to assign a value to any relief that was not valued by the district court (even if it may have been valued by class counsel). It should be noted that district courts did not often value in-kind or injunctive relief—they did so only 18 percent of the time—and very little of Table 4—only \$1.3 billion, or 4 percent—is based on these valuations. It should also be noted that the amounts in Table 4 reflect only what defendants *agreed to pay*; they do not reflect the amounts that defendants *actually paid* after the claims administration process concluded. Prior empirical research has found that, depending on how settlements are structured (e.g., whether they awarded a fixed amount of money to each class member who eventually files a valid claim or a pro rata amount of a fixed settlement to each class member), defendants can end up paying much less than they agreed.<sup>54</sup>

Table 4 shows that in both years, around three-quarters of all the money involved in federal class action settlements came from securities cases. Thus, in this sense, the conventional wisdom about the dominance of securities cases in class action litigation is correct. Figure 3 is a graphical representation of the contribution each litigation area made to the total number and total amount of money involved in the 2006–2007 settlements.

Table 4 also shows that, in total, over \$33 billion was approved in the 2006–2007 settlements. Over \$22 billion was approved in 2006 and over \$11 billion in 2007. It should be emphasized again that the totals in Table 4 understate the amount of money defendants agreed to pay in class action settlements in 2006 and 2007 because they exclude the unascertainable value of those settlements. This understatement disproportionately affects litigation areas, such as civil rights, where much of the relief is injunctive because, as I noted, very little of such relief was valued by district courts. Nonetheless, these numbers are, as far as I am aware, the first attempt to calculate how much money is involved in federal class action settlements in a given year.

The significant discrepancy between the two years is largely attributable to the 2006 securities settlement related to the collapse of Enron, which totaled \$6.6 billion, as well as to the fact that seven of the eight 2006–2007 settlements for more than \$1 billion were approved in 2006.<sup>55</sup> Indeed, it is worth noting that the eight settlements for more than \$1

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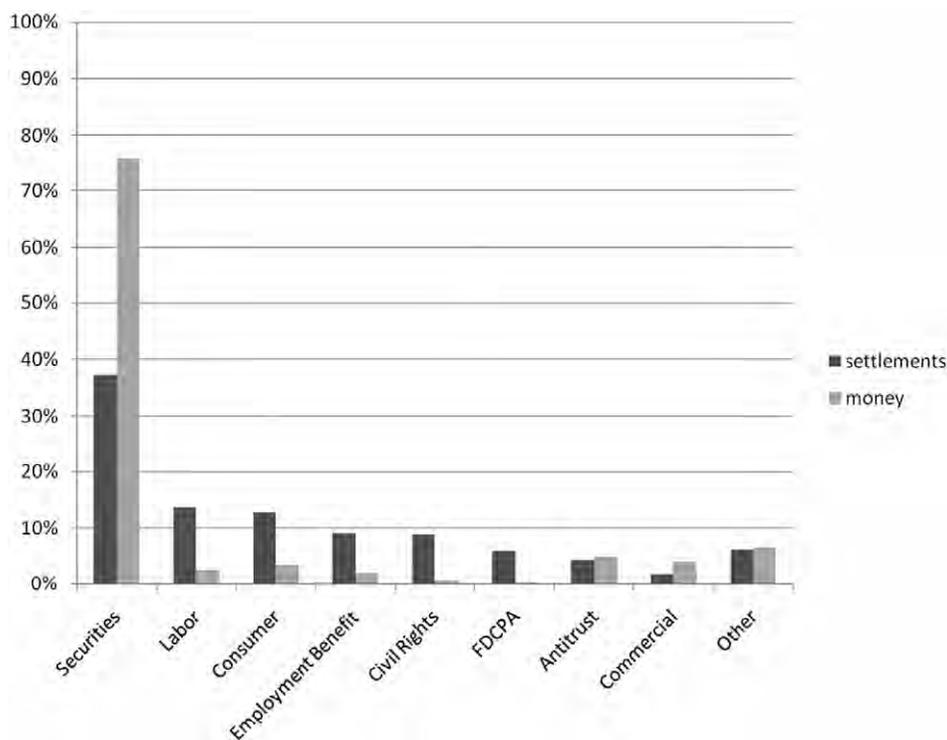
<sup>52</sup>For example, I excluded awards of a fixed amount of money to each class member who eventually filed a valid claim (as opposed to settlements that awarded a pro rata amount of a fixed settlement to each class member) if the total amount of money set aside to pay the claims was not set forth in the settlement documents.

<sup>53</sup>In some cases, the district court valued the relief in the settlement over a range. In these cases, I used the middle point in the range.

<sup>54</sup>See Hensler et al., *supra* note 7, at 427–30.

<sup>55</sup>See *In re Enron Corp. Secs. Litig.*, MDL 1446 (S.D. Tex. May 24, 2006) (\$6,600,000,000); *In re Tyco Int'l Ltd. Multidistrict Litig.*, MDL 02-1335 (D.N.H. Dec. 19, 2007) (\$3,200,000,000); *In re AOL Time Warner, Inc. Secs. & "ERISA" Litig.*, MDL 1500 (S.D.N.Y. Apr. 6, 2006) (\$2,500,000,000); *In re Diet Drugs Prods. Liab. Litig.*, MDL 1203 (E.D. Pa. May 24, 2006) (\$1,275,000,000); *In re Nortel Networks Corp. Secs. Litig. (Nortel I)*, No. 01-1855 (S.D.N.Y. Dec. 26, 2006) (\$1,142,780,000); *In re Royal Ahold N.V. Secs. & ERISA Litig.*, 03-1539 (D. Md. Jun. 16, 2006)

Figure 3: The percentage of 2006–2007 federal class action settlements and settlement money from each subject area.



SOURCES: Westlaw, PACER, district court clerks' offices.

billion accounted for almost \$18 billion of the \$33 billion that changed hands over the two-year period. That is, a mere 1 percent of the settlements comprised over 50 percent of the value involved in federal class action settlements in 2006 and 2007. To give some sense of the distribution of settlement size in the 2006–2007 data set, Table 5 sets forth the number of settlements with an ascertainable value beyond fee, expense, and class-representative incentive awards (605 out of the 688 settlements). Nearly two-thirds of all settlements fell below \$10 million.

Given the disproportionate influence exerted by securities settlements on the total amount of money involved in class actions, it is unsurprising that the average securities settlement involved more money than the average settlement in most of the other subject areas. These numbers are provided in Table 6, which includes, again, only the settlements

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(\$1,100,000,000); *Allapattah Servs. Inc. v. Exxon Corp.*, No. 91-0986 (S.D. Fla. Apr. 7, 2006) (\$1,075,000,000); *In re Nortel Networks Corp. Secs. Litig. (Nortel II)*, No. 05-1659 (S.D.N.Y. Dec. 26, 2006) (\$1,074,270,000).

Table 5: The Distribution by Size of 2006–2007 Federal Class Action Settlements with Ascertainable Value

<i>Settlement Size (in Millions)</i>	<i>Number of Settlements</i>
[\$0 to \$1]	131 (21.7%)
(\$1 to \$10]	261 (43.1%)
(\$10 to \$50]	139 (23.0%)
(\$50 to \$100]	33 (5.45%)
(\$100 to \$500]	31 (5.12%)
(\$500 to \$6,600]	10 (1.65%)
Total	605

NOTE: Includes only settlements with ascertainable value beyond merely fee, expense, and class-representative incentive awards.

SOURCES: Westlaw, PACER, district court clerks' offices.

Table 6: The Average and Median Settlement Amounts in the 2006–2007 Federal Class Action Settlements with Ascertainable Value to the Class

<i>Subject Matter</i>	<i>Average</i>	<i>Median</i>
Securities ( <i>n</i> = 257)	\$96.4	\$8.0
Labor and employment ( <i>n</i> = 88)	\$9.2	\$1.8
Consumer ( <i>n</i> = 65)	\$18.8	\$2.9
Employee benefits ( <i>n</i> = 52)	\$13.9	\$5.3
Civil rights ( <i>n</i> = 34)	\$9.7	\$2.5
Debt collection ( <i>n</i> = 40)	\$0.37	\$0.088
Antitrust ( <i>n</i> = 29)	\$60.0	\$22.0
Commercial ( <i>n</i> = 12)	\$111.7	\$7.1
Other ( <i>n</i> = 28)	\$76.6	\$6.2
All ( <i>N</i> = 605)	\$54.7	\$5.1

NOTE: Dollar amounts are in millions. Includes only settlements with ascertainable value beyond merely fee, expense, and class-representative incentive awards.

SOURCES: Westlaw, PACER, district court clerks' offices.

with an ascertainable value beyond fee, expense, and class-representative incentive awards. The average settlement over the entire two-year period for all types of cases was almost \$55 million, but the median was only \$5.1 million. (With the \$6.6 billion Enron settlement excluded, the average settlement for all ascertainable cases dropped to \$43.8 million and, for securities cases, dropped to \$71.0 million.) The average settlements varied widely by litigation area, with securities and commercial settlements at the high end of around \$100

million, but the median settlements for nearly every area were bunched around a few million dollars. It should be noted that the high average for commercial cases is largely due to one settlement above \$1 billion;<sup>56</sup> when that settlement is removed, the average for commercial cases was only \$24.2 million.

Table 6 permits comparison with the two prior empirical studies of class action settlements that sought to include nonsecurities as well as securities cases in their purview. The Eisenberg-Miller study through 2002, which included both common-fund and fee-shifting cases, found that the mean class action settlement was \$112 million and the median was \$12.9 million, both in 2006 dollars,<sup>57</sup> more than double the average and median I found for all settlements in 2006 and 2007. The Eisenberg-Miller update through 2008 included only common-fund cases and found mean and median settlements in federal court of \$115 million and \$11.7 million (both again in 2006 dollars),<sup>58</sup> respectively; this is still more than double the average and median I found. This suggests that the methodology used by the Eisenberg-Miller studies—looking at district court opinions that were published in Westlaw or Lexis—oversampled larger class actions (because opinions approving larger class actions are, presumably, more likely to be published than opinions approving smaller ones). It is also possible that the exclusion of fee-shifting cases from their data through 2008 contributed to this skew, although, given that their data through 2002 included fee-shifting cases and found an almost identical mean and median as their data through 2008, the primary explanation for the much larger mean and median in their study through 2008 is probably their reliance on published opinions. Over the same years examined by Professors Eisenberg and Miller, the Class Action Reports study found a smaller average settlement than I did (\$39.5 million in 2006 dollars), but a larger median (\$8.48 million in 2006 dollars). It is possible that the Class Action Reports methodology also oversampled larger class actions, explaining its larger median, but that there are more “mega” class actions today than there were before 2003, explaining its smaller mean.<sup>59</sup>

It is interesting to ask how significant the \$16 billion that was involved annually in these 350 or so federal class action settlements is in the grand scheme of U.S. litigation. Unfortunately, we do not know how much money is transferred every year in U.S. litigation. The only studies of which I am aware that attempt even a partial answer to this question are the estimates of how much money is transferred in the U.S. “tort” system every year by a financial services consulting firm, Tillinghast-Towers Perrin.<sup>60</sup> These studies are not directly

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<sup>56</sup>See *Allapattah Servs. Inc. v. Exxon Corp.*, No. 91-0986 (S.D. Fla. Apr. 7, 2006) (approving \$1,075,000,000 settlement).

<sup>57</sup>See Eisenberg & Miller, *supra* note 15, at 47.

<sup>58</sup>See Eisenberg & Miller II, *supra* note 16, at 262.

<sup>59</sup>There were eight class action settlements during 2006 and 2007 of more than \$1 billion. See note 55 *supra*.

<sup>60</sup>Some commentators have been critical of Tillinghast’s reports, typically on the ground that the reports overestimate the cost of the tort system. See M. Martin Boyer, *Three Insights from the Canadian D&O Insurance Market: Inertia, Information and Insiders*, 14 *Conn. Ins. L.J.* 75, 84 (2007); John Fabian Witt, *Form and Substance in the Law of*

comparable to the class action settlement numbers because, again, the number of tort class action settlements in 2006 and 2007 was very small. Nonetheless, as the tort system no doubt constitutes a large percentage of the money transferred in all litigation, these studies provide something of a point of reference to assess the significance of class action settlements. In 2006 and 2007, Tillinghast-Towers Perrin estimated that the U.S. tort system transferred \$160 billion and \$164 billion, respectively, to claimants and their lawyers.<sup>61</sup> The total amount of money involved in the 2006 and 2007 federal class action settlements reported in Table 4 was, therefore, roughly 10 percent of the Tillinghast-Towers Perrin estimate. This suggests that in merely 350 cases every year, federal class action settlements involve the same amount of wealth as 10 percent of the entire U.S. tort system. It would seem that this is a significant amount of money for so few cases.

#### IV. ATTORNEY FEES IN FEDERAL CLASS ACTION SETTLEMENTS, 2006 AND 2007

##### A. Total Amount of Fees and Expenses

As I demonstrated in Section III, federal class action settlements involved a great deal of money in 2006 and 2007, some \$16 billion a year. A perennial concern with class action litigation is whether class action lawyers are reaping an outsized portion of this money.<sup>62</sup> The 2006–2007 federal class action data suggest that these concerns may be exaggerated. Although class counsel were awarded some \$5 billion in fees and expenses over this period, as shown in Table 7, only 13 percent of the settlement amount in 2006 and 20 percent of the amount in 2007 went to fee and expense awards.<sup>63</sup> The 2006 percentage is lower than the 2007 percentage in large part because the class action lawyers in the Enron securities settlement received less than 10 percent of the \$6.6 billion corpus. In any event, the percentages in both 2006 and 2007 are far lower than the portions of settlements that contingency-fee lawyers receive in individual litigation, which are usually at least 33 percent.<sup>64</sup> Lawyers received less than 33 percent of settlements in fees and expenses in virtually every subject area in both years.

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Counterinsurgency Damages, 41 *Loy. L.A.L. Rev.* 1455, 1475 n.135 (2008). If these criticisms are valid, then class action settlements would appear even more significant as compared to the tort system.

<sup>61</sup>See Tillinghast-Towers Perrin, *U.S. Tort Costs: 2008 Update 5* (2008). The report calculates \$252 billion in total tort “costs” in 2007 and \$246.9 billion in 2006, *id.*, but only 65 percent of those costs represent payments made to claimants and their lawyers (the remainder represents insurance administration costs and legal costs to defendants). See Tillinghast-Towers Perrin, *U.S. Tort Costs: 2003 Update 17* (2003).

<sup>62</sup>See, e.g., Brian T. Fitzpatrick, *Do Class Action Lawyers Make Too Little?* 158 *U. Pa. L. Rev.* 2043, 2043–44 (2010).

<sup>63</sup>In some of the partial settlements, see note 29 *supra*, the district court awarded expenses for all the settlements at once and it was unclear what portion of the expenses was attributable to which settlement. In these instances, I assigned each settlement a pro rata portion of expenses. To the extent possible, all the fee and expense numbers in this article exclude any interest known to be awarded by the courts.

<sup>64</sup>See, e.g., Herbert M. Kritzer, *The Wages of Risk: The Returns of Contingency Fee Legal Practice*, 47 *DePaul L. Rev.* 267, 284–86 (1998) (reporting results of a survey of Wisconsin lawyers).

Table 7: The Total Amount of Fees and Expenses Awarded to Class Action Lawyers in Federal Class Action Settlements in 2006 and 2007

<i>Subject Matter</i>	<i>Total Fees and Expenses Awarded in Settlements (and as Percentage of Total Settlement Amounts) in Each Subject Area</i>	
	<i>2006</i> (n = 292)	<i>2007</i> (n = 363)
Securities	\$1,899 (11%)	\$1,467 (20%)
Labor and employment	\$75.1 (28%)	\$144.5 (26%)
Consumer	\$126.4 (24%)	\$65.3 (9%)
Employee benefits	\$57.1 (13%)	\$71.9 (26%)
Civil rights	\$31.0 (12%)	\$32.2 (39%)
Debt collection	\$2.5 (28%)	\$1.1 (19%)
Antitrust	\$274.6 (26%)	\$157.3 (24%)
Commercial	\$347.3 (29%)	\$18.2 (15%)
Other	\$119.3 (8%)	\$103.3 (17%)
Total	\$2,932 (13%)	\$2,063 (20%)

NOTE: Dollar amounts are in millions. Excludes settlements in which fees were not (or at least not yet) sought (22 settlements), settlements in which fees have not yet been awarded (two settlements), and settlements in which fees could not be ascertained due to indefinite award amounts, missing documents, or nonpublic side agreements (nine settlements).

SOURCES: Westlaw, PACER, district court clerks' offices.

It should be noted that, in some respects, the percentages in Table 7 overstate the portion of settlements that were awarded to class action attorneys because, again, many of these settlements involved indefinite cash relief or noncash relief that could not be valued.<sup>65</sup> If the value of all this relief could have been included, then the percentages in Table 7 would have been even lower. On the other hand, as noted above, not all the money defendants agree to pay in class action settlements is ultimately collected by the class.<sup>66</sup> To the extent leftover money is returned to the defendant, the percentages in Table 7 understate the portion class action lawyers received relative to their clients.

### *B. Method of Awarding Fees*

District court judges have a great deal of discretion in how they set fee awards in class action cases. Under Rule 23, federal judges are told only that the fees they award to class counsel

<sup>65</sup>Indeed, the large year-to-year variation in the percentages in labor, consumer, and employee benefits cases arose because district courts made particularly large valuations of the equitable relief in a few settlements and used the lodestar method to calculate the fees in these settlements (and thereby did not consider their large valuations in calculating the fees).

<sup>66</sup>See Hensler et al., *supra* note 7, at 427–30.

must be “reasonable.”<sup>67</sup> Courts often exercise this discretion by choosing between two approaches: the lodestar approach or the percentage-of-the-settlement approach.<sup>68</sup> The lodestar approach works much the way it does in individual litigation: the court calculates the fee based on the number of hours class counsel actually worked on the case multiplied by a reasonable hourly rate and a discretionary multiplier.<sup>69</sup> The percentage-of-the-settlement approach bases the fee on the size of the settlement rather than on the hours class counsel actually worked: the district court picks a percentage of the settlement it thinks is reasonable based on a number of factors, one of which is often the fee lodestar (sometimes referred to as a “lodestar cross-check”).<sup>70</sup> My 2006–2007 data set shows that the percentage-of-the-settlement approach has become much more common than the lodestar approach. In 69 percent of the settlements reported in Table 7, district court judges employed the percentage-of-the-settlement method with or without the lodestar cross-check. They employed the lodestar method in only 12 percent of settlements. In the other 20 percent of settlements, the court did not state the method it used or it used another method altogether.<sup>71</sup> The pure lodestar method was used most often in consumer (29 percent) and debt collection (45 percent) cases. These numbers are fairly consistent with the Eisenberg-Miller data from 2003 to 2008. They found that the lodestar method was used in only 9.6 percent of settlements.<sup>72</sup> Their number is no doubt lower than the 12 percent number found in my 2006–2007 data set because they excluded fee-shifting cases from their study.

### *C. Variation in Fees Awarded*

Not only do district courts often have discretion to choose between the lodestar method and the percentage-of-the-settlement method, but each of these methods leaves district courts with a great deal of discretion in how the method is ultimately applied. The courts

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<sup>67</sup>Fed. R. Civ. P. 23(h).

<sup>68</sup>The discretion to pick between these methods is most pronounced in settlements where the underlying claim was not found in a statute that would shift attorney fees to the defendant. See, e.g., *In re Thirteen Appeals Arising out of San Juan DuPont Plaza Hotel Fire Litig.*, 56 F.3d 295, 307 (1st Cir. 1995) (permitting either percentage or lodestar method in common-fund cases); *Goldberger v. Integrated Res. Inc.*, 209 F.3d 43, 50 (2d Cir. 2000) (same); *Rawlings v. Prudential-Bache Props., Inc.*, 9 F.3d 513, 516 (6th Cir. 1993) (same). By contrast, courts typically used the lodestar approach in settlements arising from fee-shifting cases.

<sup>69</sup>See Eisenberg & Miller, *supra* note 15, at 31.

<sup>70</sup>*Id.* at 31–32.

<sup>71</sup>These numbers are based on the fee method described in the district court’s order awarding fees, unless the order was silent, in which case the method, if any, described in class counsel’s motion for fees (if it could be obtained) was used. If the court explicitly justified the fee award by reference to its percentage of the settlement, I counted it as the percentage method. If the court explicitly justified the award by reference to a lodestar calculation, I counted it as the lodestar method. If the court explicitly justified the award by reference to both, I counted it as the percentage method with a lodestar cross-check. If the court calculated neither a percentage nor the fee lodestar in its order, then I counted it as an “other” method.

<sup>72</sup>See Eisenberg & Miller II, *supra* note 16, at 267.

that use the percentage-of-the-settlement method usually rely on a multifactor test<sup>73</sup> and, like most multifactor tests, it can plausibly yield many results. It is true that in many of these cases, judges examine the fee percentages that other courts have awarded to guide their discretion.<sup>74</sup> In addition, the Ninth Circuit has adopted a presumption that 25 percent is the proper fee award percentage in class action cases.<sup>75</sup> Moreover, in securities cases, some courts presume that the proper fee award percentage is the one class counsel agreed to when it was hired by the large shareholder that is now usually selected as the lead plaintiff in such cases.<sup>76</sup> Nonetheless, presumptions, of course, can be overcome and, as one court has put it, “[t]here is no hard and fast rule mandating a certain percentage . . . which may reasonably be awarded as a fee because the amount of any fee must be determined upon the facts of each case.”<sup>77</sup> The court added: “[i]ndividualization in the exercise of a discretionary power [for fee awards] will alone retain equity as a living system and save it from sterility.”<sup>78</sup> It is therefore not surprising that district courts awarded fees over a broad range when they used the percentage-of-the-settlement method. Figure 4 is a graph of the distribution of fee awards as a percentage of the settlement in the 444 cases where district courts used the percentage method with or without a lodestar cross-check and the fee percentages were ascertainable. These fee awards are exclusive of awards for expenses whenever the awards could be separated by examining either the district court’s order or counsel’s motion for fees and expenses (which was 96 percent of the time). The awards ranged from 3 percent of the settlement to 47 percent of the settlement. The average award was 25.4 percent and the median was 25 percent. Most fee awards were between 25 percent and 35 percent, with almost no awards more than 35 percent. The Eisenberg-Miller study through 2008 found a slightly lower mean (24 percent) but the same median (25 percent) among its federal court settlements.<sup>79</sup>

It should be noted that in 218 of these 444 settlements (49 percent), district courts said they considered the lodestar calculation as a factor in assessing the reasonableness of the fee percentages awarded. In 204 of these settlements, the lodestar multiplier resulting

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<sup>73</sup>The Eleventh Circuit, for example, has identified a nonexclusive list of 15 factors that district courts might consider. See *Camden I Condo. Ass’n, Inc. v. Dunkle*, 946 F.2d 768, 772 n.3, 775 (11th Cir. 1991). See also *In re Tyco Int’l, Ltd. Multidistrict Litig.*, 535 F. Supp. 2d 249, 265 (D.N.H. 2007) (five factors); *Goldberger v. Integrated Res. Inc.*, 209 F.3d 43, 50 (2d Cir. 2000) (six factors); *Gunter v. Ridgewood Energy Corp.*, 223 F.3d 190, 195 n.1 (3d Cir. 2000) (seven factors); *In re Royal Ahold N.V. Sec. & ERISA Litig.*, 461 F. Supp. 2d 383, 385 (D. Md. 2006) (13 factors); *Brown v. Phillips Petroleum Co.*, 838 F.2d 451, 454 (10th Cir. 1988) (12 factors); *In re Baan Co. Sec. Litig.*, 288 F. Supp. 2d 14, 17 (D.D.C. 2003) (seven factors).

<sup>74</sup>See Eisenberg & Miller, *supra* note 15, at 32.

<sup>75</sup>See *Staton v. Boeing Co.*, 327 F.3d 938, 968 (9th Cir. 2003).

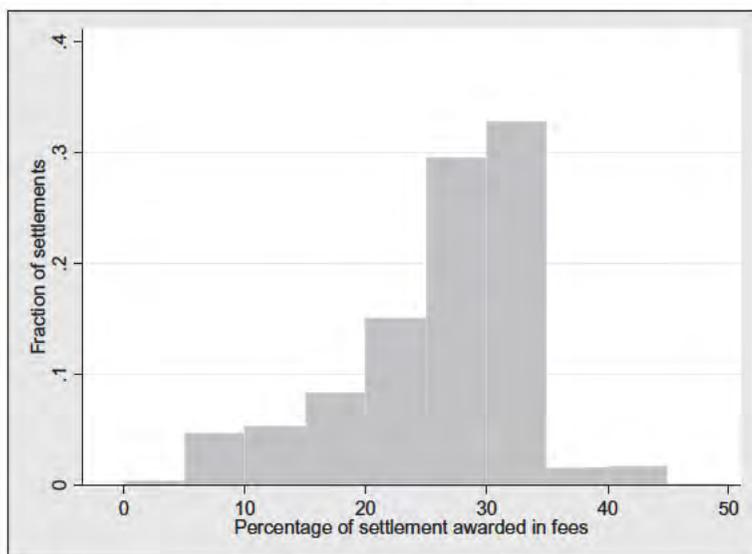
<sup>76</sup>See, e.g., *In re Cendant Corp. Litig.*, 264 F.3d 201, 282 (3d Cir. 2001).

<sup>77</sup>*Camden I Condo. Ass’n*, 946 F.2d at 774.

<sup>78</sup>*Camden I Condo. Ass’n*, 946 F.2d at 774 (alterations in original and internal quotation marks omitted).

<sup>79</sup>See Eisenberg & Miller II, *supra* note 16, at 259.

Figure 4: The distribution of 2006–2007 federal class action fee awards using the percentage-of-the-settlement method with or without lodestar cross-check.



SOURCES: Westlaw, PACER, district court clerks' offices.

from the fee award could be ascertained. The lodestar multiplier in these cases ranged from 0.07 to 10.3, with a mean of 1.65 and a median of 1.34. Although there is always the possibility that class counsel are optimistic with their timesheets when they submit them for lodestar consideration, these lodestar numbers—only one multiplier above 6.0, with the bulk of the range not much above 1.0—strike me as fairly parsimonious for the risk that goes into any piece of litigation and cast doubt on the notion that the percentage-of-the-settlement method results in windfalls to class counsel.<sup>80</sup>

Table 8 shows the mean and median fee percentages awarded in each litigation subject area. The fee percentages did not appear to vary greatly across litigation subject areas, with most mean and median awards between 25 percent and 30 percent. As I report later in this section, however, after controlling for other variables, there were statistically significant differences in the fee percentages awarded in some subject areas compared to others. The mean and median percentages for securities cases were 24.7 percent and 25.0 percent, respectively; for all nonsecurities cases, the mean and median were 26.1 percent and 26.0 percent, respectively. The Eisenberg-Miller study through 2008 found mean awards ranging from 21–27 percent and medians from 19–25 percent,<sup>81</sup> a bit lower than the ranges in my

<sup>80</sup>It should be emphasized, of course, that these 204 settlements may not be representative of the settlements where the percentage-of-the-settlement method was used without the lodestar cross-check.

<sup>81</sup>See Eisenberg & Miller II, *supra* note 16, at 262.

Table 8: Fee Awards in 2006–2007 Federal Class Action Settlements Using the Percentage-of-the-Settlement Method With or Without Lodestar Cross-Check

<i>Subject Matter</i>	<i>Percentage of Settlement Awarded as Fees</i>	
	<i>Mean</i>	<i>Median</i>
Securities ( <i>n</i> = 233)	24.7	25.0
Labor and employment ( <i>n</i> = 61)	28.0	29.0
Consumer ( <i>n</i> = 39)	23.5	24.6
Employee benefits ( <i>n</i> = 37)	26.0	28.0
Civil rights ( <i>n</i> = 20)	29.0	30.3
Debt collection ( <i>n</i> = 5)	24.2	25.0
Antitrust ( <i>n</i> = 23)	25.4	25.0
Commercial ( <i>n</i> = 7)	23.3	25.0
Other ( <i>n</i> = 19)	24.9	26.0
All ( <i>N</i> = 444)	25.7	25.0

SOURCES: Westlaw, PACER, district court clerks' offices.

2006–2007 data set, which again, may be because they oversampled larger settlements (as I show below, district courts awarded smaller fee percentages in larger cases).

In light of the fact that, as I noted above, the distribution of class action settlements among the geographic circuits does not track their civil litigation dockets generally, it is interesting to ask whether one reason for the pattern in class action cases is that circuits oversubscribed with class actions award higher fee percentages. Although this question will be taken up with more sophistication in the regression analysis below, it is worth describing here the mean and median fee percentages in each of the circuits. Those data are presented in Table 9. Contrary to the hypothesis set forth in Section III, two of the circuits most oversubscribed with class actions, the Second and the Ninth, were the only circuits in which the mean fee awards were *under* 25 percent. As I explain below, these differences are statistically significant and remain so after controlling for other variables.

The lodestar method likewise permits district courts to exercise a great deal of leeway through the application of the discretionary multiplier. Figure 5 shows the distribution of lodestar multipliers in the 71 settlements in which district courts used the lodestar method and the multiplier could be ascertained. The average multiplier was 0.98 and the median was 0.92, which suggest that courts were not terribly prone to exercise their discretion to deviate from the amount of money encompassed in the lodestar calculation. These 71

Table 9: Fee Awards in 2006–2007 Federal Class Action Settlements Using the Percentage-of-the-Settlement Method With or Without Lodestar Cross-Check

<i>Circuit</i>	<i>Percentage of Settlement Awarded as Fees</i>	
	<i>Mean</i>	<i>Median</i>
First ( <i>n</i> = 27)	27.0	25.0
Second ( <i>n</i> = 72)	23.8	24.5
Third ( <i>n</i> = 50)	25.4	29.3
Fourth ( <i>n</i> = 19)	25.2	28.0
Fifth ( <i>n</i> = 27)	26.4	29.0
Sixth ( <i>n</i> = 25)	26.1	28.0
Seventh ( <i>n</i> = 39)	27.4	29.0
Eighth ( <i>n</i> = 15)	26.1	30.0
Ninth ( <i>n</i> = 111)	23.9	25.0
Tenth ( <i>n</i> = 18)	25.3	25.5
Eleventh ( <i>n</i> = 35)	28.1	30.0
DC ( <i>n</i> = 6)	26.9	26.0

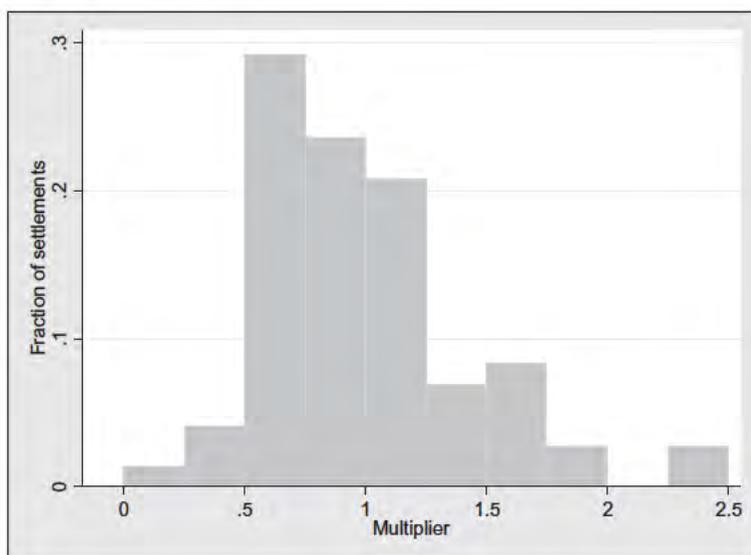
SOURCES: Westlaw, PACER, district court clerks' offices.

settlements were heavily concentrated within the consumer (median multiplier 1.13) and debt collection (0.66) subject areas. If cases in which district courts used the percentage-of-the-settlement method with a lodestar cross-check are combined with the lodestar cases, the average and median multipliers (in the 263 cases where the multipliers were ascertainable) were 1.45 and 1.19, respectively. Again—putting to one side the possibility that class counsel are optimistic with their timesheets—these multipliers appear fairly modest in light of the risk involved in any piece of litigation.

#### *D. Factors Influencing Percentage Awards*

Whether district courts are exercising their discretion over fee awards wisely is an important public policy question given the amount of money at stake in class action settlements. As shown above, district court judges awarded class action lawyers nearly \$5 billion in fees and expenses in 2006–2007. Based on the comparison to the tort system set forth in Section III, it is not difficult to surmise that in the 350 or so settlements every year, district court judges

Figure 5: The distribution of lodestar multipliers in 2006–2007 federal class action fee awards using the lodestar method.



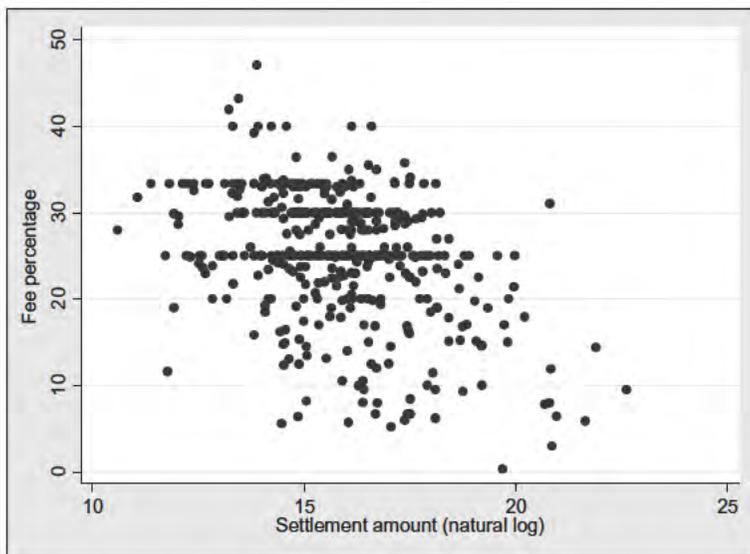
SOURCES: Westlaw, PACER, district court clerks' offices.

are awarding a significant portion of all the annual compensation received by contingency-fee lawyers in the United States. Moreover, contingency fees are arguably the engine that drives much of the noncriminal regulation in the United States; unlike many other nations, we regulate largely through the ex post, decentralized device of litigation.<sup>82</sup> To the extent district courts could have exercised their discretion to award billions more or billions less to class action lawyers, district courts have been delegated a great deal of leeway over a big chunk of our regulatory horsepower. It is therefore worth examining how district courts exercise their discretion over fees. This examination is particularly important in cases where district courts use the percentage-of-the-settlement method to award fees: not only do such cases comprise the vast majority of settlements, but they comprise the vast majority of the money awarded as fees. As such, the analysis that follows will be confined to the 444 settlements where the district courts used the percentage-of-the-settlement method.

As I noted, prior empirical studies have shown that fee percentages are strongly and inversely related to the size of the settlement both in securities fraud and other cases. As shown in Figure 6, the 2006–2007 data are consistent with prior studies. Regression analysis, set forth in more detail below, confirms that after controlling for other variables, fee percentage is strongly and inversely associated with settlement size among all cases, among securities cases, and among all nonsecurities cases.

<sup>82</sup>See, e.g., Samuel Issacharoff, *Regulating after the Fact*, 56 DePaul L. Rev. 375, 377 (2007).

*Figure 6:* Fee awards as a function of settlement size in 2006–2007 class action cases using the percentage-of-the-settlement method with or without lodestar cross-check.



SOURCES: Westlaw, PACER, district court clerks' offices.

As noted above, courts often look to fee percentages in other cases as one factor they consider in deciding what percentage to award in a settlement at hand. In light of this practice, and in light of the fact that the size of the settlement has such a strong relationship to fee percentages, scholars have tried to help guide the practice by reporting the distribution of fee percentages across different settlement sizes.<sup>83</sup> In Table 10, I follow the Eisenberg-Miller studies and attempt to contribute to this guidance by setting forth the mean and median fee percentages, as well as the standard deviation, for each decile of the 2006–2007 settlements in which courts used the percentage-of-the-settlement method to award fees. The mean percentages ranged from over 28 percent in the first decile to less than 19 percent in the last decile.

It should be noted that the last decile in Table 10 covers an especially wide range of settlements, those from \$72.5 million to the Enron settlement of \$6.6 billion. To give more meaningful data to courts that must award fees in the largest settlements, Table 11 shows the last decile broken into additional cut points. When both Tables 10 and 11 are examined together, it appears that fee percentages tended to drift lower at a fairly slow pace until a settlement size of \$100 million was reached, at which point the fee percentages plunged well below 20 percent, and by the time \$500 million was reached, they plunged well below 15 percent, with most awards at that level under even 10 percent.

<sup>83</sup>See Eisenberg & Miller II, *supra* note 16, at 265.

Table 10: Mean, Median, and Standard Deviation of Fee Awards by Settlement Size in 2006–2007 Federal Class Action Settlements Using the Percentage-of-the-Settlement Method With or Without Lodestar Cross-Check

<i>Settlement Size (in Millions)</i>	<i>Mean</i>	<i>Median</i>	<i>SD</i>
[\$0 to \$0.75] ( <i>n</i> = 45)	28.8%	29.6%	6.1%
(\$0.75 to \$1.75] ( <i>n</i> = 44)	28.7%	30.0%	6.2%
(\$1.75 to \$2.85] ( <i>n</i> = 45)	26.5%	29.3%	7.9%
(\$2.85 to \$4.45] ( <i>n</i> = 45)	26.0%	27.5%	6.3%
(\$4.45 to \$7.0] ( <i>n</i> = 44)	27.4%	29.7%	5.1%
(\$7.0 to \$10.0] ( <i>n</i> = 43)	26.4%	28.0%	6.6%
(\$10.0 to \$15.2] ( <i>n</i> = 45)	24.8%	25.0%	6.4%
(\$15.2 to \$30.0] ( <i>n</i> = 46)	24.4%	25.0%	7.5%
(\$30.0 to \$72.5] ( <i>n</i> = 42)	22.3%	24.9%	8.4%
(\$72.5 to \$6,600] ( <i>n</i> = 45)	18.4%	19.0%	7.9%

SOURCES: Westlaw, PACER, district court clerks' offices.

Table 11: Mean, Median, and Standard Deviation of Fee Awards of the Largest 2006–2007 Federal Class Action Settlements Using the Percentage-of-the-Settlement Method With or Without Lodestar Cross-Check

<i>Settlement Size (in Millions)</i>	<i>Mean</i>	<i>Median</i>	<i>SD</i>
(\$72.5 to \$100] ( <i>n</i> = 12)	23.7%	24.3%	5.3%
(\$100 to \$250] ( <i>n</i> = 14)	17.9%	16.9%	5.2%
(\$250 to \$500] ( <i>n</i> = 8)	17.8%	19.5%	7.9%
(\$500 to \$1,000] ( <i>n</i> = 2)	12.9%	12.9%	7.2%
(\$1,000 to \$6,600] ( <i>n</i> = 9)	13.7%	9.5%	11%

SOURCES: Westlaw, PACER, district court clerks' offices.

Prior empirical studies have not examined whether fee awards are associated with the political affiliation of the district court judges making the awards. This is surprising because realist theories of judicial behavior would predict that political affiliation would influence fee decisions.<sup>84</sup> It is true that as a general matter, political affiliation may influence district court judges to a lesser degree than it does appellate judges (who have been the focus of most of the prior empirical studies of realist theories): district court judges decide more routine cases and are subject to greater oversight on appeal than appellate judges. On the other hand, class action settlements are a bit different in these regards than many other decisions made by district court judges. To begin with, class action settlements are almost never appealed, and when they are, the appeals are usually settled before the appellate court hears the case.<sup>85</sup> Thus, district courts have much less reason to worry about the constraint of appellate review in fashioning fee awards. Moreover, one would think the potential for political affiliation to influence judicial decision making is greatest when legal sources lead to indeterminate outcomes and when judicial decisions touch on matters that are salient in national politics. (The more salient a matter is, the more likely presidents will select judges with views on the matter and the more likely those views will diverge between Republicans and Democrats.) Fee award decisions would seem to satisfy both these criteria. The law of fee awards, as explained above, is highly discretionary, and fee award decisions are wrapped up in highly salient political issues such as tort reform and the relative power of plaintiffs' lawyers and corporations. I would expect to find that judges appointed by Democratic presidents awarded higher fees in the 2006–2007 settlements than did judges appointed by Republican presidents.

The data, however, do not appear to bear this out. Of the 444 fee awards using the percentage-of-the-settlement approach, 52 percent were approved by Republican appointees, 45 percent were approved by Democratic appointees, and 4 percent were approved by non-Article III judges (usually magistrate judges). The mean fee percentage approved by Republican appointees (25.6 percent) was slightly *greater* than the mean approved by Democratic appointees (24.9 percent). The medians (25 percent) were the same.

To examine whether the realist hypothesis fared better after controlling for other variables, I performed regression analysis of the fee percentage data for the 427 settlements approved by Article III judges. I used ordinary least squares regression with the dependent variable the percentage of the settlement that was awarded in fees.<sup>86</sup> The independent

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<sup>84</sup>See generally C.K. Rowland & Robert A. Carp, *Politics and Judgment in Federal District Courts* (1996). See also Max M. Schanzbach & Emerson H. Tiller, *Reviewing the Sentencing Guidelines: Judicial Politics, Empirical Evidence, and Reform*, 75 U. Chi. L. Rev. 715, 724–25 (2008).

<sup>85</sup>See Brian T. Fitzpatrick, *The End of Objector Blackmail?* 62 Vand. L. Rev. 1623, 1640, 1634–38 (2009) (finding that less than 10 percent of class action settlements approved by federal courts in 2006 were appealed by class members).

<sup>86</sup>Professors Eisenberg and Miller used a square root transformation of the fee percentages in some of their regressions. I ran all the regressions using this transformation as well and it did not appreciably change the results. I also ran the regressions using a natural log transformation of fee percentage and with the dependent variable natural log of the fee amount (as opposed to the fee percentage). None of these models changed the results

variables were the natural log of the amount of the settlement, the natural log of the age of the case (in days), indicator variables for whether the class was certified as a settlement class, for litigation subject areas, and for circuits, as well as indicator variables for whether the judge was appointed by a Republican or Democratic president and for the judge's race and gender.<sup>87</sup>

The results for five regressions are in Table 12. In the first regression (Column 1), only the settlement amount, case age, and judge's political affiliation, gender, and race were included as independent variables. In the second regression (Column 2), all the independent variables were included. In the third regression (Column 3), only securities cases were analyzed, and in the fourth regression (Column 4), only nonsecurities cases were analyzed.

In none of these regressions was the political affiliation of the district court judge associated with fee percentage in a statistically significant manner.<sup>88</sup> One possible explanation for the lack of evidence for the realist hypothesis is that district court judges elevate other preferences above their political and ideological ones. For example, district courts of both political stripes may succumb to docket-clearing pressures and largely rubber stamp whatever fee is requested by class counsel; after all, these requests are rarely challenged by defendants. Moreover, if judges award class counsel whatever they request, class counsel will not appeal and, given that, as noted above, class members rarely appeal settlements (and when they do, often settle them before the appeal is heard),<sup>89</sup> judges can thereby virtually guarantee there will be no appellate review of their settlement decisions. Indeed, scholars have found that in the vast majority of cases, the fees ultimately awarded by federal judges are little different than those sought by class counsel.<sup>90</sup>

Another explanation for the lack of evidence for the realist hypothesis is that my data set includes both unpublished as well as published decisions. It is thought that realist theories of judicial behavior lose force in unpublished judicial decisions. This is the case because the kinds of questions for which realist theories would predict that judges have the most room to let their ideologies run are questions for which the law is ambiguous; it is

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appreciably. The regressions were also run with and without the 2006 Enron settlement because it was such an outlier (\$6.6 billion); the case did not change the regression results appreciably. For every regression, the data and residuals were inspected to confirm the standard assumptions of linearity, homoscedasticity, and the normal distribution of errors.

<sup>87</sup>Prior studies of judicial behavior have found that the race and sex of the judge can be associated with his or her decisions. See, e.g., Adam B. Cox & Thomas J. Miles, *Judging the Voting Rights Act*, 108 *Colum. L. Rev.* 1 (2008); Donald R. Songer et al., *A Reappraisal of Diversification in the Federal Courts: Gender Effects in the Courts of Appeals*, 56 *J. Pol.* 425 (1994).

<sup>88</sup>Although these coefficients are not reported in Table 8, the gender of the district court judge was never statistically significant. The race of the judge was only occasionally significant.

<sup>89</sup>See Fitzpatrick, *supra* note 85, at 1640.

<sup>90</sup>See Eisenberg & Miller II, *supra* note 16, at 270 (finding that state and federal judges awarded the fees requested by class counsel in 72.5 percent of settlements); Eisenberg, Miller & Perino, *supra* note 9, at 22 ("judges take a light touch when it comes to reviewing fee requests").

Table 12: Regression of Fee Percentages in 2006–2007 Settlements Using Percentage-of-the-Settlement Method With or Without Lodestar Cross-Check

<i>Independent Variable</i>	<i>Regression Coefficients (and Robust t Statistics)</i>				
	<i>1</i>	<i>2</i>	<i>3</i>	<i>4</i>	<i>5</i>
Settlement amount (natural log)	-1.77 (-5.43)**	-1.76 (-8.52)**	-1.76 (-7.16)**	-1.41 (-4.00)**	-1.78 (-8.67)**
Age of case (natural log days)	1.66 (2.31)**	1.99 (2.71)**	1.13 (1.21)	1.72 (1.47)	2.00 (2.69)**
Judge's political affiliation (1 = Democrat)	-0.630 (-0.83)	-0.345 (-0.49)	0.657 (0.76)	-1.43 (-1.20)	-0.232 (-0.34)
Settlement class		0.150 (0.19)	0.873 (0.84)	-1.62 (-1.00)	0.124 (0.15)
1st Circuit		3.30 (2.74)**	4.41 (3.32)**	0.031 (0.01)	0.579 (0.51)
2d Circuit		0.513 (0.44)	-0.813 (-0.61)	2.93 (1.14)	-2.23 (-1.98)**
3d Circuit		2.25 (1.99)**	4.00 (3.85)**	-1.11 (-0.50)	—
4th Circuit		2.34 (1.22)	0.544 (0.19)	3.81 (1.35)	—
5th Circuit		2.98 (1.90)*	1.09 (0.65)	6.11 (1.97)**	0.230 (0.15)
6th Circuit		2.91 (2.28)**	0.838 (0.57)	4.41 (2.15)**	—
7th Circuit		2.55 (2.23)**	3.22 (2.36)**	2.90 (1.46)	-0.227 (-0.20)
8th Circuit		2.12 (0.97)	-0.759 (-0.24)	3.73 (1.19)	-0.586 (-0.28)
9th Circuit		—	—	—	-2.73 (-3.44)**
10th Circuit		1.45 (0.94)	-0.254 (-0.13)	3.16 (1.29)	—
11th Circuit		4.05 (3.44)**	3.85 (3.07)**	4.14 (1.88)*	—
DC Circuit		2.76 (1.10)	2.60 (0.80)	2.41 (0.64)	—
Securities case		—	—	—	—
Labor and employment case		2.93 (3.00)**	—	—	2.85 (2.94)**
Consumer case		-1.65 (-0.88)	—	-4.39 (-2.20)**	-1.62 (-0.88)
Employee benefits case		-0.306 (-0.23)	—	-4.23 (-2.55)**	-0.325 (-0.26)
Civil rights case		1.85 (0.99)	—	-2.05 (-0.97)	1.76 (0.95)
Debt collection case		-4.93 (-1.71)*	—	-7.93 (-2.49)**	-5.04 (-1.75)*
Antitrust case		3.06 (2.11)**	—	0.937 (0.47)	2.78 (1.98)**

Table 12 *Continued*

Independent Variable	Regression Coefficients (and Robust t Statistics)				
	1	2	3	4	5
Commercial case		-0.028 (-0.01)		-2.65 (-0.73)	0.178 (0.05)
Other case		-0.340 (-0.17)		-3.73 (-1.65)	-0.221 (-0.11)
Constant	42.1 (7.29)**	37.2 (6.08)**	43.0 (6.72)**	38.2 (4.14)**	40.1 (7.62)**
N	427	427	232	195	427
R <sup>2</sup>	.20	.26	.37	.26	.26
Root MSE	6.59	6.50	5.63	7.24	6.48

NOTE: \*\*significant at the 5 percent level; \*significant at the 10 percent level. Standard errors in Column 1 were clustered by circuit. Indicator variables for race and gender were included in each regression but not reported.

SOURCES: Westlaw, PACER, district court clerks' offices, Federal Judicial Center.

thought that these kinds of questions are more often answered in published opinions.<sup>91</sup> Indeed, most of the studies finding an association between ideological beliefs and case outcomes were based on data sets that included only published opinions.<sup>92</sup> On the other hand, there is a small but growing number of studies that examine unpublished opinions as well, and some of these studies have shown that ideological effects persisted.<sup>93</sup> Nonetheless, in light of the discretion that judges exercise with respect to fee award decisions, it hard to characterize *any* decision in this area as “unambiguous.” Thus, even when unpublished, I would have expected the fee award decisions to exhibit an association with ideological beliefs. Thus, I am more persuaded by the explanation suggesting that judges are more concerned with clearing their dockets or insulating their decisions from appeal in these cases than with furthering their ideological beliefs.

In all the regressions, the size of the settlement was strongly and inversely associated with fee percentages. Whether the case was certified as a settlement class was not associated

<sup>91</sup>See, e.g., Ahmed E. Taha, Data and Selection Bias: A Case Study, 75 UMKC L. Rev. 171, 179 (2006).

<sup>92</sup>Id. at 178–79.

<sup>93</sup>See, e.g., David S. Law, Strategic Judicial Lawmaking: Ideology, Publication, and Asylum Law in the Ninth Circuit, 73 U. Cin. L. Rev. 817, 843 (2005); Deborah Jones Merritt & James J. Brudney, Stalking Secret Law: What Predicts Publication in the United States Courts of Appeals, 54 Vand. L. Rev. 71, 109 (2001); Donald R. Songer, Criteria for Publication of Opinions in the U.S. Courts of Appeals: Formal Rules Versus Empirical Reality, 73 Judicature 307, 312 (1990). At the trial court level, however, the studies of civil cases have found no ideological effects. See Laura Beth Nielsen, Robert L. Nelson & Ryon Lancaster, Individual Justice or Collective Legal Mobilization? Employment Discrimination Litigation in the Post Civil Rights United States, 7 J. Empirical Legal Stud. 175, 192–93 (2010); Denise M. Keele et al., An Analysis of Ideological Effects in Published Versus Unpublished Judicial Opinions, 6 J. Empirical Legal Stud. 213, 230 (2009); Orley Ashenfelter, Theodore Eisenberg & Stewart J. Schwab, Politics and the Judiciary: The Influence of Judicial Background on Case Outcomes, 24 J. Legal Stud. 257, 276–77 (1995). With respect to criminal cases, there is at least one study at the trial court level that has found ideological effects. See Schanzenbach & Tiller, *supra* note 81, at 734.

with fee percentages in any of the regressions. The age of the case at settlement was associated with fee percentages in the first two regressions, and when the settlement class variable was removed in regressions 3 and 4, the age variable became positively associated with fee percentages in nonsecurities cases but remained insignificant in securities cases. Professors Eisenberg and Miller likewise found that the age of the case at settlement was positively associated with fee percentages in their 1993–2002 data set,<sup>94</sup> and that settlement classes were not associated with fee percentages in their 2003–2008 data set.<sup>95</sup>

Although the structure of these regressions did not permit extensive comparisons of fee awards across different litigation subject areas, fee percentages appeared to vary somewhat depending on the type of case that settled. Securities cases were used as the baseline litigation subject area in the second and fifth regressions, permitting a comparison of fee awards in each nonsecurities area with the awards in securities cases. These regressions show that awards in a few areas, including labor/employment and antitrust, were more lucrative than those in securities cases. In the fourth regression, which included only nonsecurities cases, labor and employment cases were used as the baseline litigation subject area, permitting comparison between fee percentages in that area and the other nonsecurities areas. This regression shows that fee percentages in several areas, including consumer and employee benefits cases, were lower than the percentages in labor and employment cases.

In the fifth regression (Column 5 of Table 12), I attempted to discern whether the circuits identified in Section III as those with the most overrepresented (the First, Second, Seventh, and Ninth) and underrepresented (the Fifth and Eighth) class action dockets awarded attorney fees differently than the other circuits. That is, perhaps district court judges in the First, Second, Seventh, and Ninth Circuits award greater percentages of class action settlements as fees than do the other circuits, whereas district court judges in the Fifth and Eighth Circuits award smaller percentages. To test this hypothesis, in the fifth regression, I included indicator variables only for the six circuits with unusual dockets to measure their fee awards against the other six circuits combined. The regression showed statistically significant association with fee percentages for only two of the six unusual circuits: the Second and Ninth Circuits. In both cases, however, the direction of the association (i.e., the Second and Ninth Circuits awarded *smaller* fees than the baseline circuits) was opposite the hypothesized direction.<sup>96</sup>

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<sup>94</sup>See Eisenberg & Miller, *supra* note 15, at 61.

<sup>95</sup>See Eisenberg & Miller II, *supra* note 16, at 266.

<sup>96</sup>This relationship persisted when the regressions were rerun among the securities and nonsecurities cases separately. I do not report these results, but, even though the First, Second, and Ninth Circuits were oversubscribed with securities class action settlements and the Fifth, Sixth, and Eighth were undersubscribed, there was no association between fee percentages and any of these unusual circuits except, again, the inverse association with the Second and Ninth Circuits. In nonsecurities cases, even though the Seventh and Ninth Circuits were oversubscribed and the Fifth and the Eighth undersubscribed, there was no association between fee percentages and any of these unusual circuits except again for the inverse association with the Ninth Circuit.

The lack of the expected association with the unusual circuits might be explained by the fact that class action lawyers forum shop along dimensions other than their potential fee awards; they might, for example, put more emphasis on favorable class-certification law because there can be no fee award if the class is not certified. As noted above, it might also be the case that class action lawyers are unable to engage in forum shopping at all because defendants are able to transfer venue to the district in which they are headquartered or another district with a significant connection to the litigation.

It is unclear why the Second and Ninth Circuits were associated with lower fee awards despite their heavy class action dockets. Indeed, it should be noted that the Ninth Circuit was the baseline circuit in the second, third, and fourth regressions and, in all these regressions, district courts in the Ninth Circuit awarded smaller fees than courts in many of the other circuits. The lower fees in the Ninth Circuit may be attributable to the fact that it has adopted a presumption that the proper fee to be awarded in a class action settlement is 25 percent of the settlement.<sup>97</sup> This presumption may make it more difficult for district court judges to award larger fee percentages. The lower awards in the Second Circuit are more difficult to explain, but it should be noted that the difference between the Second Circuit and the baseline circuits went away when the fifth regression was rerun with only nonsecurities cases.<sup>98</sup> This suggests that the awards in the Second Circuit may be lower *only* in securities cases. In any event, it should be noted that the lower fee awards from the Second and Ninth Circuits contrast with the findings in the Eisenberg-Miller studies, which found no intercircuit differences in fee awards in common-fund cases in their data through 2008.<sup>99</sup>

## V. CONCLUSION

This article has attempted to fill some of the gaps in our knowledge about class action litigation by reporting the results of an empirical study that attempted to collect all class action settlements approved by federal judges in 2006 and 2007. District court judges approved 688 class action settlements over this two-year period, involving more than \$33 billion. Of this \$33 billion, nearly \$5 billion was awarded to class action lawyers, or about 15 percent of the total. District courts typically awarded fees using the highly discretionary percentage-of-the-settlement method, and fee awards varied over a wide range under this method, with a mean and median around 25 percent. Fee awards using this method were strongly and inversely associated with the size of the settlement. Fee percentages were positively associated with the age of the case at settlement. Fee percentages were not associated with whether the class action was certified as a settlement class or with the

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<sup>97</sup>See note 75 *supra*. It should be noted that none of the results from the previous regressions were affected when the Ninth Circuit settlements were excluded from the data.

<sup>98</sup>The Ninth Circuit's differences persisted.

<sup>99</sup>See Eisenberg & Miller II, *supra* note 16, at 260.

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political affiliation of the judge who made the award. Finally, there appeared to be some variation in fee percentages depending on subject matter of the litigation and the geographic circuit in which the district court was located. Fee percentages in securities cases were lower than the percentages in some but not all of the other litigation areas, and district courts in the Ninth Circuit and in the Second Circuit (in securities cases) awarded lower fee percentages than district courts in several other circuits. The lower awards in the Ninth Circuit may be attributable to the fact that it is the only circuit that has adopted a presumptive fee percentage of 25 percent.

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

IN RE: NATIONAL FOOTBALL LEAGUE PLAYERS’  
CONCUSSION INJURY LITIGATION

Kevin Turner and Shawn Wooden, on behalf of themselves  
and others similarly situated,

Plaintiffs,

v.

National Football League and NFL Properties LLC,  
successor-in-interest to NFL Properties, Inc.,

Defendants.

No. 2:12-md-02323-AB

MDL No. 2323

CIVIL ACTION NO: 2:14-cv-  
00029-AB

THIS DOCUMENT RELATES TO:  
ALL ACTIONS

**[PROPOSED] ORDER GRANTING CO-LEAD CLASS COUNSELS’ PETITION  
FOR AN AWARD OF ATTORNEYS’ FEES, REIMBURSEMENT OF COSTS  
AND EXPENSES, ADOPTION OF A SET-ASIDE OF FIVE PERCENT OF  
EACH MONETARY AWARD AND DERIVATIVE CLAIMANT AWARD,  
AND CASE CONTRIBUTION AWARDS FOR CLASS REPRESENTATIVES**

CO-LEAD CLASS COUNSEL having filed a petition (“Petition”) for (i) an award of attorneys’ fees and reimbursement of common benefit costs and expenses, pursuant to section 21.1 of the Class Action Settlement Agreement as Amended (ECF No. 6481-1), to which this Court granted final approval on April 22, 2015 (ECF No. 6509) (“Settlement Agreement” or “Settlement”); (ii) adoption of a set-aside of five percent from Monetary Awards for Qualifying Diagnoses made to Eligible Retired NFL Football Players and Representative Claimants (“Monetary Awards”) and from Derivative Claimant Awards under Articles VI and VII the Settlement, respectively; and (iii) class representative Case Contribution (or incentive) awards of

\$100,000 each to Shawn Wooden, the Estate of Corey Swinson, and the Estate of Kevin Turner; and the matter having come on for consideration by the Court;

NOW, on this \_\_\_\_\_ day of \_\_\_\_\_, 2017, upon consideration of the Petition, it is ORDERED, ADJUDGED, and DECREED that the Petition be, and hereby is, GRANTED; and

IT IS FURTHER ORDERED as follows:

1. The Court awards \$112,500,000 in attorneys' fees and reimbursement of costs and expenses. All attorneys' fees and reimbursement of costs and expenses shall be paid from the Attorney's Fees Qualified Settlement Fund established pursuant to sections 21.2 and 23.7 of the Settlement Agreement and this Court's Order of \_\_\_\_\_, 2017.
2. Class Counsel are awarded aggregate attorneys' fees in the amount of \$ \_\_\_\_\_ and reimbursement of costs and expenses in the amount of \$ \_\_\_\_\_, for a total aggregate award of \$ \_\_\_\_\_.
3. Co-Lead Counsel Christopher A. Seeger shall have the exclusive responsibility and discretion to make the allocation of the foregoing interim fee and costs/expenses award among those Plaintiffs' Counsel seeking compensation for common benefit work and common benefit costs and expenses incurred, and he shall do so not later than thirty days of the date of entry of this Order.

[or]

Co-Lead Counsel Christopher A. Seeger shall have the responsibility and discretion to make the initial allocation of the foregoing interim fee and costs/expenses award among those Plaintiffs' Counsel seeking compensation for common benefit work and common benefit costs and expenses incurred, and he shall do so not later than thirty days of the date of entry of this Order. Within ten days of his proposed allocation of the interim fees and cost/expense reimbursements, Mr. Seeger shall file a report with the Court detailing same for its review.

4. To the extent that any objections to Class Counsel's fee application were filed, the disposition of those objections, including any appeals taken, shall not delay Mr. Seeger's allocation and distribution of fees, except that any amount in dispute shall be set aside in the Attorney's Fees Qualified Settlement Fund pending final resolution of any appeals from this Court's ruling on those

- objections. Once all direct appeals are exhausted, Mr. Seeger may apply to the Court for the release of whatever amount was set aside pursuant to this paragraph for his appropriate allocation and distribution among Plaintiffs' Counsel.
5. Pending the Court's resolution of petitions for attorneys' fees and reimbursement of expenses filed by counsel for settlement objectors (*e.g.*, ECF No 7070), the sum of \$ \_\_\_\_\_ shall be segregated and maintained in the Attorney's Fees Qualified Settlement Fund pending further Order of the Court. Once this Court rules on the fee petitions of objectors' counsel, Mr. Seeger may apply to the Court for the release of whatever portion of the amount set aside under this paragraph is not awarded to objectors' counsel for his appropriate allocation and distribution among Plaintiffs' Counsel.
  6. The Claims Administrator is hereby directed to withhold five percent of all Monetary Awards and Derivative Claimant Awards for the purpose of creating a fund to compensate future work performed in connection with the implementation of the Settlement Agreement by the Class Counsel whom this Court appointed in paragraph 6 of its Amended Final Order and Judgment entered on May 8, 2015 (ECF No. 6534), as well as any other counsel performing such work, provided that the work is expressly authorized in writing by Co-Lead Class Counsel.
  7. Within thirty days of the date of entry of this Order, Co-Lead Class Counsel shall file with the Court a proposed protocol for the Claim Administrator's withholding of the set-asides authorized in paragraph 6 above, the retention and oversight of the fund resulting from such set-asides, and the procedure for applications for awards of fees and reimbursement of costs and expenses for work performed in connection with the implementation of the Settlement Agreement.
  8. Shawn Wooden, the Estate of Kevin Turner, and the Estate of Corey Swinson shall each be paid the sum of \$100,000 as class and subclass representative Case Contribution/ incentive awards. The cost of this total of \$300,000 in incentive award payments shall be paid from the Attorneys' Fees Qualified Settlement Fund. The Court's making of these incentive awards shall not require the NFL Parties to fund the Attorneys' Fees Qualified Settlement Fund beyond the \$112.5 million required under section 21.2 of the Settlement Agreement.

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Anita B. Brody  
United States District Judge